

Zoning Board of Appeals

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

MINUTES OF THE BRUNSWICK ZONING BOARD OF APPEALS MEETING HELD NOVEMBER 16, 2015

PRESENT were CHAIRMAN MARTIN STEINBACH, ANN CLEMENTE, E. JOHN SCHMIDT, WILLIAM SHOVER and CAROLINE TRZCINSKI.

ALSO PRESENT was MICHAEL CZORNYJ, Brunswick Building Department.

The Zoning Board Members reviewed the draft minutes of the October 19, 2015 meeting. Upon motion of Member Trzcinski, seconded by Member Clemente, the draft minutes of the October 19, 2015 meeting were unanimously approved without amendment.

The first item of business on the agenda was the area variance application submitted by Signworks Sign Corp on behalf of Nigro Companies for property located at 716 Hoosick Road (Brunswick Plaza), specifically seeking variances in connection with installation of signs at the existing Price Chopper supermarket. Chairman Steinbach requested the applicant to present a brief overview. Fred Early of Signworks Sign Corp presented a brief overview of the proposal, describing the new branding effort being undertaken by Price Chopper to brand their stores as "Market 32". In connection with the rebranding effort, the applicant seeks to install a "Market 32" sign on the existing Price Chopper at the Brunswick Plaza, requesting a larger series of numbers and letters than are otherwise permitted under the Town Code, and also to install a series of "graphic images" that will be on panels attached to the exterior of the building in connection with the Market 32 sign. Mr. Early generally described the distance of the store from the Route 7 corridor, and also the existing buildings and structures in front of the Price Chopper store which

he states obscure the view of the store from the Route 7 corridor. Chairman Steinbach then stated the public hearing on this application would be opened. Attorney Gilchrist then stated for the record that he represents a separate private client on a completely unrelated project in another municipality in Rensselaer County, and which one of the principals/officers of the Brunswick Plaza owner, Nigro Companies, was involved and spoke in opposition to Attorney Gilchrist's client's project. While attorney Gilchrist stated that, in his opinion, this does not present a legal conflict, he is mindful of the ethical obligations to avoid even the appearance of potential bias or impropriety, and raised the existence of the circumstances to the Zoning Board of Appeals, Signworks Sign Corp, and Nigro Companies to determine whether any of these parties had any objection to attorney Gilchrist continuing to serve as counsel to the Zoning Board on this application. No parties had any objection, with the owner/officer of Nigro Companies stating that the matter which attorney Gilchrist referred to was completely unrelated, and that the Brunswick Plaza owner has no objection to attorney Gilchrist continuing in his role as counsel to the Zoning Board on this application. Attorney Gilchrist then read the Notice of Public Hearing into the record, with the Notice having been published in the Troy Record, placed on the Town Signboard, posted on the Town Website, and mailed to owners of adjacent properties. Chairman Steinbach then opened the floor for receipt of public comment on the variance application submitted by Signworks Sign Corp. No members of the public wished to provide any comment. After providing adequate opportunity for receipt of public comment, Member Shover then made a motion to close the public hearing, which motion was seconded by Member Clemente. The motion was unanimously approved, and the public hearing on the Signworks Sign Corp. variance application was closed. Chairman Steinbach then stated he had visited the Market 32 store located at Exit 15 off the Northway in Wilton, and asked whether the signs proposed for Brunswick were the same

as those installed at the Wilton store. Mr. Early stated that they were the same signs, including the same size “Market 32” sign, and the only difference being that there are five graphic panels installed at the Wilton store, and there are only four graphic panels proposed for the Brunswick store. Mr. Early stated that at the Wilton Market 32 store, Price Chopper was faced with the same setback distance issue that is present in Brunswick, and that the Wilton store was not directly facing the public road and there was an “oblique” viewing issue. Member Trzcinski asked whether the Market 32 store located in Clifton Park off Route 146 was the same as being proposed in Brunswick. The applicant stated that the Clifton Park Market 32 sign was the same size, but again the Clifton Park store had five graphic panels attached to the store, while four graphic panels are being proposed for the Brunswick store. Member Schmidt asked Mr. Czornyj as to the total square footage for a Price Chopper sign allowed under the Brunswick Town Code. Mr. Czornyj stated that this matter was complicated, as the Brunswick Plaza is an approved Planned Development District, and must be considered as an approved shopping plaza for total signage calculations. Mr. Early stated that the current Price Chopper sign itself is 116 square feet, not including all of the additional signs located on the exterior of the building below the Price Chopper sign. Mr. Early stated that the proposed graphic panels total 499 square feet. Chairman Steinbach stated that in his opinion, the setback distance of this Price Chopper store from the Route 7 corridor is a major issue, and that while the Wilton store had the additional “welcome” and “pharmacy” signs, those signs were not even memorable in terms of total signage when he viewed the Wilton Market 32 store. Chairman Steinbach also stated that the graphic panels are considered “art” in some jurisdictions, even though the Town of Brunswick Code does require them to be reviewed as signs. Chairman Steinbach thought the fact that the proposed signage were graphic panels as opposed to letters was a significant factor, that they were not obnoxious in appearance, but were rather

pleasing to look at. Mr. Early stated that the graphic panels and Market 32 sign were not very bright at night. Member Trzcinski disagreed with that opinion, and stated that in her opinion, the graphic panels and Market 32 sign she saw at the Clifton Park store were very bright. Chairman Steinbach asked whether any other members of the Zoning Board had general comments. Hearing none, Chairman Steinbach said the Zoning Board should be prepared to proceed with consideration of the variance application on the Town Code requirements. Attorney Gilchrist stated that the Zoning Board must first address environmental impact review under SEQRA, as this application seeks an area variance in connection with a commercial project. Again, Mr. Early stated that the issue of lighting the sign at night did not present any significant impact as the signs were not very bright. Again, Member Trzcinski disagreed, and said that the Clifton Park Market 32 signs were very bright at night. Member Schmidt stated that if the graphic panels are considered part of the signage, then there would be a significant visual impact from the signage display, whereas if the graphic panels were not considered part of the signage, he felt that the proposed signs would not have a significant adverse environmental impact. Attorney Gilchrist stated that under SEQRA, the issue to be determined by the Zoning Board is not whether the graphic panels are considered “signs” and included within the sign regulations under the Brunswick Town Code, but whether the action as a whole, including the installation of the graphic panels to the exterior of the building, resulted in the potential for any significant adverse environmental impact. Member Clemente said that she considered the “environment” in this case to be the surrounding neighborhood which is commercial in nature, and that signs are consistent with that general area. Member Clemente also stated that this area as a whole is commercial, and that no residential areas would be impacted by the proposed signage. The applicant also stated that from the Route 7 corridor, the proposed signage was located within a very narrow viewshed, and would not be seen from any residential

areas. Chairman Steinbach stated that, in his opinion, this was a proposed commercial sign within an existing commercial district in a shopping plaza, all along the Route 7 corridor. In his opinion, this did not result in any significant adverse environmental impact requiring a positive declaration under SEQRA. Attorney Gilchrist advised the Board that its determination must address whether any potential environmental impacts from this action are significant, and not whether there are any environmental impacts whatsoever from the proposal. Chairman Steinbach asked whether any Zoning Board member wished to make a motion for an environmental determination under SEQRA. Member Clemente made a motion to adopt a negative declaration under SEQRA, which motion was seconded by Member Shover. Chairman Steinbach, Member Clemente, and Member Shover voted in favor of adopting the motion, while Members Trzcinski and Schmidt voted in opposition. The motion was approved, and a negative declaration adopted under SEQRA. Chairman Steinbach then said the Zoning Board should proceed to deliberate on whether to grant the sign variance request, grant such variance request with conditions, or to deny the variance request. Attorney Gilchrist stated that in its deliberations, the Zoning Board must weigh the benefit to be obtained by the applicant as against any detriment to the community and the surrounding neighborhood in particular. Attorney Gilchrist stated that in weighing those factors, there were several elements which the Zoning Board should deliberate. First, the Zoning Board must consider whether the sign variance would result in any undesirable change in the character of the neighborhood or create a detriment to nearby properties. Chairman Steinbach stated that this general area was a commercial district, and felt that the sign variance would not result in any undesirable change in the character of that area nor create a detriment to nearby properties; Chairman Steinbach continued that in some respects, the proposed signage would result in an improvement to that location. Member Trzcinski asked whether the members of the Zoning Board

wanted Brunswick to be another Clifton Park, and said that if all of the Zoning Board members had not visited either the Wilton or Clifton Park Market 32 store at night, then the vote should not be taken until the Zoning Board members had done so. Member Clemente stated that the Zoning Board members should be able to take into account the information provided on the application in regard to the proposed signs, both during the day and at night; that it was significant to her that there were no public comments at all, including public comments in opposition, from anyone in that general area or neighborhood; that the character of that surrounding area is commercial; and that the signs being proposed do not result in an undesirable change to the character of that area. Member Shover asked what the alternative would be if the sign variances were denied. Member Trzcinski said that the Zoning Board should consider approving only the Market 32 sign, and not allow the graphic panels. Member Shover stated that the effort of Price Chopper is to rebrand their stores, and the proposed signage is integrated, including the Market 32 logo with the graphic panels. Mr. Early stated that it was the intent of Price Chopper to undertake a complete rebranding, which does include the Market 32 sign in conjunction with the graphic panels. Chairman Steinbach moved on to the next element for the Board to consider. Attorney Gilchrist stated the Zoning Board must consider whether the applicant has a feasible alternative to pursue to meet its signage proposal other than a variance. Member Trzcinski stated that the signage could include just the “Market 32” sign without the graphic panels. Member Schmidt agreed, and said that Price Chopper could consider installing a smaller “Market 32” sign. Mr. Early also stated that if the sign was limited to the “Market 32” sign without the graphic panels, the public would not know what the store is, and that the signage must be viewed as a whole in order to allow people to understand this is a grocery store. Chairman Steinbach moved on to the next element for consideration. Attorney Gilchrist stated that the Zoning Board must determine whether the

requested area variance is substantial. Member Trzcinski stated that the proposed increase in the signage is substantial. Member Schmidt stated that when you add up all the proposed signs, including the graphic panels, the “Market 32” sign, the “welcome” sign, the “pharmacy” sign, and the “Starbucks” sign, the total signage is over 600 square feet, and the variance is substantial. Mr. Early responded that if you add up all of the existing signs at the current Price Chopper, they total over 200 square feet, and if you compare that number to just the “Market 32” sign, which is approximately 175 square feet, there is a signage reduction, but that the total number does go up to over 600 square feet when adding the graphic panels. Mr. Early reviewed the overall integrated rebranding effort, which proposes to include both the “Market 32” sign and the graphic panels. Chairman Steinbach said that there was no question that the variance is substantial and this results in a very big change to the Price Chopper store exterior, but that everything should be taken into consideration on this application, including the fact that the front of the Price Chopper building is over 400 feet from the Route 7 corridor. Chairman Steinbach moved on to the next element for consideration. Attorney Gilchrist stated that the Zoning Board should consider whether the requested sign variance will have an adverse effect on the physical or environmental condition in the neighborhood. Chairman Steinbach stated that, in his opinion, there would be no adverse effect on the environmental or any physical conditions in the neighborhood. Member Shover said that signage currently exists at this location, and does not feel that this would result in any adverse impact. Member Clemente agreed with these conclusions. Attorney Gilchrist also noted that the fact that the Zoning Board had adopted a SEQRA negative declaration should be considered in connection with this element. Chairman Steinbach moved on to the next element for consideration. Attorney Gilchrist stated that the Board should consider whether the difficulty requiring the variance is self-created, which consideration is relevant but not necessarily preclusive of granting

the area variance. Member Clemente said that the request is self-created, but it is part of the overall rebranding effort by Price Chopper. Member Shover agreed with that comment. Chairman Steinbach noted for the record that, in his opinion, most of the sign variance applications are self-created, and that this element is relevant but it is not unusual for sign variance requests to have been self-created. Member Schmidt stated that the variance need is clearly self-created. Attorney Gilchrist counseled the Board that its members should consider the elements that were deliberated, using the information from the record to balance the benefit to the applicant in receiving the variance as opposed to any detriment created to the community and the neighborhood in particular. Chairman Steinbach asked whether there were any final comments from the Zoning Board members. Member Trzcinski again stated that no vote should be taken until each member of the Zoning Board went to Clifton Park or Wilton to see the signs lighted at night. Member Clemente stated that the Zoning Board members should be able to take into account their general knowledge, and the information included in the application documents, including photograph depictions of the signs both during the day and at night. The applicant stated that the pictures showing the Wilton store at night show that there is not a significant glow to the signs, and that the signs do not throw light a long distance. Member Schmidt stated that he had not seen either the Clifton Park or Wilton store at night, and that he is hearing very different stories from Member Trzcinski and the applicant. Member Schmidt stated that he felt that this would be a significant change, including light intensity, and that he could not vote in favor of it. Member Trzcinski repeated that she felt the signs were extremely bright at night. Chairman Steinbach asked whether there were any further comments. Hearing none, Chairman Steinbach then made a motion to grant the variance for the proposed signs at this location. That motion was seconded by Member Clemente. Chairman Steinbach, Member Clemente, and Member Shover voted in favor of the motion, with Members

Trzcinski and Schmidt voting against the motion. The motion was approved, with the vote resulting in a 3-2 vote in favor of granting the variance request. Accordingly, the requested sign variances of Signworks Sign Corp. for the Price Chopper store located at 716 Hoosick Road (Brunswick Plaza) is granted.

The next item on the agenda was the area variance application submitted by Raymond Bronk for property located at 147 Brunswick Road (NYS Route 2). Chairman Steinbach requested Mr. Bronk to present a brief overview of the requested variance. Mr. Raymond Bronk stated that he was proposing to install an 8-foot by 10-foot shed on his property approximately three to five feet off the side lot line, while the Town Code requires a 15-foot side yard setback. Mr. Bronk stated that his parcel is pie-shaped, which provides challenges to locating the shed in relation to the location of his house and garage on the lot. Chairman Steinbach asked if there were any changes to the application since the prior meeting. Mr. Bronk stated that there were no changes. The Zoning Board then opened the public hearing on this application. The Notice of Public Hearing was read into the record, with the Notice having been published in the Troy Record, placed on the Town Signboard, posted on the Town Website, and mailed to owners of adjacent properties. Chairman Steinbach then opened the floor for receipt of public comment. David Arakelian stated that he was appearing for Dorothy King, who had submitted a letter to the Zoning Board on this application dated November 10, 2015, citing several reasons why the variance should not be granted. Mr. Arakelian also stated that Mrs. King was concerned with a driveway on the Bronk lot being located on part of her property, and also that there were containers being stored on the King property that appeared to be placed there by Bronk. Mr. Arakelian stated that he would like all the Zoning Board members to have a copy of the November 10 King letter, and that the letter be kept on file on this application. Chairman Steinbach stated that each member of the Zoning

Board had the King letter dated November 10, and it would remain part of this application file. There were no other public comments. Member Clemente then made a motion to close the public hearing on the Bronk area variance application, which motion was seconded by Member Shover. The motion was unanimously approved, and the public hearing closed. Attorney Gilchrist stated that the application seeks an area variance in connection with a residential project, and therefore constitutes a Type-2 Action under SEQRA, and no further SEQRA determination is required. Chairman Steinbach said the Zoning Board should proceed to deliberate on the application. Member Schmidt asked whether the shed was proposed to be permanent or whether it was moveable. Mr. Bronk stated that it was moveable, and he proposed to put the shed on a palette/wooden base. Member Clemente had questions concerning the orientation of the shed, and questions as to its location in relation to an existing flagpole in the side yard of the Bronk property. Mr. Bronk described the side yard including the location of the flagpole as well as an existing tree line between his property and the King property, and said that he could increase the distance of the setback from the shed to the property line so that the shed was more toward the middle of the side yard, but that he would prefer to keep the flagpole in its current location. Member Clemente stated that there could be alternate locations for the shed in the side yard that could maintain the required setback. Member Clemente also noted that this lot had a driveway location that seemed to present several options for the shed placement. Chairman Steinbach felt that the content of the November 10 King letter should be read into the record, and the entire letter was read into the record. The Zoning Board then proceeded to deliberate on the elements for the requested area variance. As to whether the proposed shed location would result in an undesirable effect on the character of the area or create a detriment to nearby properties, the Zoning Board members generally agreed that this is a residential area and a shed is not out of character with the surrounding properties, and that

other properties do have sheds in this general neighborhood. The Zoning Board members did take notice of the comments made in the King letter concerning potential impacts to surrounding properties. As to whether there was a feasible alternative available to the applicant, Member Schmidt said that there was a feasible alternative available and that was relocating the shed more toward the center of the side yard. The Zoning Board generally discussed alternate locations, including on both sides of the existing garage as well as other locations in the side yard. As to whether the variance request was substantial, the Zoning Board members generally concurred that reducing a 15-foot side yard setback to between 3-5 feet would result in a significant variance. The Zoning Board members generally concurred that the placement of the shed on the Bronk property at the requested location would not result in an adverse effect on the environment or physical conditions in the area. As to whether the need for the variance was self-created, the Zoning Board members generally concurred that it was self-created, but also took notice of the irregular shape of the Bronk lot. Member Schmidt commented that he would be more comfortable in this instance if the requested variance was reduced, and found that a variance allowing the shed to be placed between 3-5 feet from the side yard lot line in this case was difficult. The Zoning Board members then entertained discussion of available alternatives for the shed location on the Bronk lot. Attorney Gilchrist stated that, while the Zoning Board had closed the public hearing on the Bronk application, it did have a period of 62 days in which to render its determination. Chairman Steinbach then stated that the determination of the Bronk variance application would be moved for further discussion at the December 21 meeting, and in the interim period, requested that Mr. Bronk meet with the Building Department to review available alternatives for the shed location. Member Czornyj that he would meet with Mr. Bronk on the Bronk site to review that issue. This matter is adjourned to the December 21 meeting.

Five items of new business were discussed.

The first item of new business discussed was an area variance application submitted by Todd O'Connor for property located at 111 Leversee Road. Mr. O'Connor was present, and explained to the Board that he was looking to rebuild an existing two-car garage which was damaged when a car ran into the garage, and that he was looking to replace the 21-foot by 22-foot two-car garage with a new garage that is 24 feet by 24 feet, but is also 18.5 feet in height, whereas the Town Code allows 12 feet in height. The Zoning Board members reviewed the application materials, and determined them to be complete to move this matter to public hearing. The public hearing on this application is scheduled for the December 21 meeting, commencing at 6:00 PM.

The second item of new business discussed is an area variance application submitted by William Barber for property located at 121 Brunswick Road at its intersection with Oxford Circle. Mr. Barber was in attendance, and explained that construction of a five-bay garage at this location was started without a building permit, and that a stop-work order had been issued, and that he is appearing before the Zoning Board to request a side yard setback for the garage in relation to Oxford Circle. Mr. Barber stated that the commencement of construction was an error, and that he understands now that he does need the variance in relation to the setback from Oxford Circle. Mr. Czornyj stated that the Zoning Board should be aware that this property constitutes a corner lot, and that under the Brunswick Zoning Code, there shall be provided on the side street a side yard equal in depth to the required setback for the front yard. The Zoning Board members reviewed the application materials and deemed them complete to move the application to public hearing. This matter is placed on the December 21 meeting for public hearing, to commence at 6:15 PM.

The third item of new business discussed was an area variance application submitted by Dan Smith for property located at 899 Hoosick Road. Mr. Smith was in attendance, and explained that two additions to an existing garage were previously constructed, and that in connection with the additions to the existing garage, a height variance is required, and that a side yard setback variance is also required as there is a setback issue concerning the back corner of the addition to the garage in relation to the adjoining property. Mr. Smith did state that there was a shed located in the rear of this lot which likewise did not comply with setback requirements, but the shed will be removed prior to the next Zoning Board meeting. The Zoning Board members reviewed the application materials and deemed them complete to move this matter forward to public hearing. This matter is scheduled for the December 21 meeting, with a public hearing to commence at 6:30 PM.

The fourth item of new business discussed was an area variance application submitted by Thomas Healy for property located at 2 Carla Lane. The applicant stated that they were seeking to install a 10-foot by 12-foot shed in the back corner of their property, which required both a rear yard setback variance and side yard setback variance. The Zoning Board members discussed that this property had been the subject of a previous variance application in relation to installation of a pool. The applicant stated that the shed is proposed for the back corner of the lot behind the pool, in an area where there is an existing privacy fence. The Zoning Board members reviewed the application materials and deemed them complete to move the matter forward to public hearing. This matter is placed on the December 21 agenda, with public hearing to commence at 6:45 PM.

The fifth item of new business discussed was a sign variance application submitted by AJ Signs on behalf of Nigro Companies for property located at 720 Hoosick Road within the Brunswick Plaza. The applicant was present, and explained that a new tenant is being proposed

for the former Goodwill space, and that a new sign stating “Pet Supplier Plus” is being proposed with 48-inch letters, whereas the Town Code limits the letters to 36 inches. The Zoning Board members reviewed the application for completeness and determined the application materials to be complete for purposes of moving the application to public hearing. This matter is placed on the December 21 agenda, with a public hearing to commence at 7:00 PM. [This application was subsequently withdrawn.]

The index for the November 16, 2015 meeting is as follows:

1. Signworks Sign Corp. – Sign variance – Granted;
2. Bronk – Area variance – 12/21/2015;
3. O’Connor – Area variance – 12/21/2015 (public hearing to commence at 6:00 PM);
4. Barber – Area variance – 12/21/2015 (public hearing to commence at 6:15 PM);
5. Daniel Smith – Area variance – 12/21/2015 (public hearing to commence at 6:30 PM);
6. Healy – Area variance – 12/21/2015 (public hearing to commence at 6:45 PM); and
7. AJ Signs on behalf of Nigro Companies – Sign variance – 12/21/2015 (public hearing to commence at 7:00 PM). [This application was subsequently withdrawn.]

The proposed agenda for the December 21, 2015 meeting currently is as follows:

1. Bronk – Area variance;
2. O’Connor – Area variance (public hearing to commence at 6:00 PM);
3. Barber – Area variance (public hearing to commence at 6:15 PM);
4. Smith – Area variance (public hearing to commence at 6:30 PM);
5. Healy – Area variance (public hearing to commence at 6:45 PM); and
6. PF Management – Area variance (signage and total parking space count) – public hearing to commence at 7:00 PM.