

Planning Board
TOWN OF BRUNSWICK
336 Town Office Road
Troy, New York 12180

MINUTES OF THE PLANNING BOARD MEETING HELD August 19, 2010

PRESENT were CHAIRMAN OSTER, MICHAEL CZORNYJ, GORDON CHRISTIAN, FRANK ESSER, KEVIN MAINELLO, DAVID TARBOX and VINCE WETMILLER.

ALSO PRESENT were JOHN KREIGER, Code Enforcement Officer, and MARK KESTNER, Consulting Engineer to the Planning Board.

The draft minutes of the August 5 meeting were reviewed. Upon motion of Member Czornyj, seconded by Member Christian, the minutes were unanimously approved as drafted.

The first item of business on the agenda was the waiver of subdivision application by Precision Homes for property located at 15 Riccardi Lane. The applicant seeks to divide an existing 4.91± acre lot into two building lots. Chairman Oster noted that the proposed subdivision map shows wetlands and a stream located on this lot, and further shows a proposed culvert for the stream crossing for a driveway. Chairman Oster stated that the presence of the wetlands needed to be confirmed, and determined whether the wetlands were under the jurisdiction of the Army Corps of Engineers or the New York State Department of Environmental Conservation (Chairman Oster stated that if these are under the jurisdiction of DEC, then an additional 100' buffer would need to be considered). Mr. Kestner stated that under the original approval for this project in 1997, there was a wetlands delineation done for the project and confirmed by the Army Corps of Engineers. There is correspondence from the Army Corps of Engineers in 1997 stating that it confirmed the wetland delineation, but that such

determination was valid only for a period of five years. Mr. Kestner stated that a wetland delineation update should be required, and coordination with Army Corps of Engineers should be pursued. Further, contact with DEC is appropriate, as the wetland may have increased in size and could be considered part of a DEC wetland. Mr. Kestner also noted that there was a stream on the subject lot coming from McChesney Avenue, and that it appeared to be a part of the watercourse from the existing detention basin designed for the Walmart project. Mr. Kestner noted that DEC does have jurisdiction over the stormwater detention basin. Mr. Kreiger stated that he would contact both DEC and Army Corps of Engineers concerning this matter. Member Czornyj noted that it appeared to him that the wetlands may have expanded in size from the time of the original project review and approval. The Planning Board also noted that this request sought the addition of a 13th lot on a cul-de-sac, and therefore the matter will also need to be referred to the Town Board for waiver of the 12 lot limit on a cul-de-sac road. Chairman Oster did note that the existing building lot is approximately 5 acres, and absent any wetland conditions impacting the ability to build on the lot, the addition of a 13th lot should not be a problem since the lot size would be more than adequate and the existing roadway is more than adequate to handle an additional lot. After further discussion, the Planning Board determined that the application should also be submitted as a minor subdivision, rather than a waiver application, as the applicant is a commercial builder seeking to offer the additional lot for commercial purposes. Further, the Planning Board confirmed that an updated wetland delineation will be required, including coordination with the Army Corps of Engineers and DEC. Also, the Planning Board is requiring topography on the proposed driveway to the proposed additional building lot. This matter has been adjourned without date, and Mr. Kreiger will contact the applicant regarding the additional information required for the application.

The second item of business on the agenda was the site plan application by Rensselaer Honda for the addition of a fueling station to its new location on Hoosick Road, for the purpose of fueling automobiles that it sells and services. Mr. Kestner noted that he had been contacted by Gus Scifo of Brunswick No. 1 Fire Department, indicating that Brunswick No. 1 wanted to be included in the review of this application. This matter has been adjourned without date pending a determination on zoning issues by the Building Department/Code Enforcement office.

The next item of business on the agenda was the waiver of subdivision application by Berkshire Properties, LLC, seeking to divide an existing parcel located at the end of Betts Road. William Doyle, Esq. appeared for the applicant. The Planning Board stated that this matter had previously been referred to the Zoning Board of Appeals on the issue of an area variance, as the subdivision would create a substandard lot on the east side of Betts Road. In turn, upon review of the area variance application, the Brunswick ZBA has referred the matter back to the Planning Board for discussion and recommendation on the issue of the area variance. Attorney Doyle generally reviewed the proposed subdivision with the Planning Board members. The application seeks to divide an existing lot, which includes property both on the east side and the west side of Betts Road. The portion on the west side of Betts Road does not have any existing structures, only the remains of a barn, and the lot owner seeks to transfer title to that portion to Berkshire Properties, LLC. The portion of the lot on the east side of Betts Road has an existing house, and would remain in ownership of the current owner. The zoning district is A-40, requiring 40,000 square feet for a building lot. Attorney Doyle noted that the portion of the lot on the east side of Betts Road with the existing house would be left undersized, at approximately 28,000 square feet, but it is already developed and currently used for residential purposes. Attorney Doyle noted that there was a public hearing at the Zoning Board of Appeals on the area variance application, and that only one comment was submitted from the public. The commenter, Norm

Fivel, 101 Wilrose Lane, had stated to the ZBA that he took no position on the area variance request, but wanted to confirm that the approval of the area variance did not result in a tacit approval of the Berkshire Properties Planned Development District application. Attorney Doyle stated that there were no other public comments received at the public hearing on the area variance application. Mr. Kreiger noted that the ZBA had observed that the application was unique, and that this was not a situation where the proposed subdivision was seeking to create a substandard lot which would then be used for residential construction; rather, this is a situation where the resulting substandard lot already has a house on it and is being used for residential purposes. Attorney Doyle confirmed that the size of the remaining residential lot on the east side of Betts Road was approximately 28,000 square feet. The Planning Board noted that there was a sliver of the remaining lot on the east side of Betts Road that did not appear to be part of the residential lot. Attorney Doyle explained that this sliver adjacent to Betts Road had been transferred to Capital District Properties as part of the Hudson Hills Planned Development District, with the intended purpose of widening Betts Road upon the construction of the Hudson Hills project. Attorney Doyle stated that the 28,000 square foot lot size did not include the sliver of land transferred to Capital District Properties for the Hudson Hills project. The Planning Board also confirmed that there were no setback compliance issues on this matter, as the house already exists on the portion of the lot on the east side of Betts Road. Member Wetmiller stated that the portion of the lot on the west side of Betts Road is vacant, currently not being used, and felt that transfer to Berkshire Properties for use in conjunction with the proposed PDD was actually a better use of the property, and that he also felt that this would not be a change in the character of the area since Betts Road already divided this parcel in half, and that area to the west of Betts Road was vacant and could be presumed not to have been even a part of the lot and house on the east side. Member Wetmiller also stated that the resulting lot on the east side of

Betts Road had already been built upon, and the area to the west of Betts Road was laying idle and simply added to overall lot size, and the division of Betts Road made it appear to be a separate lot to begin with. Member Wetmiller also felt that there would be no impact to the overall aesthetics or character of the area. Chairman Oster noted that the area on the west side of Betts Road would not be maintained as a separate lot, but would be merged into the lands of Berkshire Properties. Member Mainello inquired as to who owns the title to Betts Road which bisects the lot, since the road is a highway-by-use. Attorney Doyle stated that the proposed transfer by the current lot owner to Berkshire Properties would include not only the land on the west side of Betts Road, but also all right, title and interest in the roadbed would be transferred to Berkshire Properties as well. Member Mainello thought this was important, since he did not want to see a situation where the roadbed remained in ownership with the current lot owner, but that the sliver of land already transferred to Capital District Properties bisected the roadbed from the remainder of the lot located on the east side of Betts Road. Member Mainello thought that the transfer of the roadbed together with the area on the west side of the road was appropriate. The Planning Board also discussed whether the area variance would be substantial. On this issue, the Planning Board observed that the area of the lot on which the house sits on the east side of Betts Road already had the appearance of being a separate lot, currently being separated by Betts Road. It was important to the Planning Board that the applicant was not seeking to create a new, substandard building lot, but rather maintain the appearance of a separate lot on the east side of Betts Road. The Planning Board observed that there were a number of residential district lot sizes allowed in the Brunswick Zoning Code, including R-9 (9,000 square foot lot), R-15 (15,000 square foot lot), R-25 (25,000 square foot lot), and A-40 (40,000 square foot lot). The Planning Board felt it significant that the lot size of 28,000 square feet would be greater than the remaining 3 residential lot sizes in the Town, and that a 28,000 square foot lot was not unusual

under the Brunswick Town Code. Attorney Gilchrist reviewed the statutory elements for an area variance, which were then generally discussed by the Planning Board. In particular, the Planning Board observed that one element for an area variance is whether the situation is self-created, but noted that the statute stated that this was an element for consideration but was not determinative. Given the totality of the issues, the Planning Board felt that the issue of self-created hardship should not be determinative, particularly since this lot is already bisected by an existing roadway. The Planning Board directed Attorney Gilchrist to prepare a draft recommendation, and the Planning Board will further review that draft recommendation at its September 2 meeting.

Two items of new business were discussed.

The first item of new business discussed was a waiver of subdivision application by Lindsay Partnership, seeking to divide an existing lot on Kestner Lane (Tax Map No. 90.16-2-19). Mark Kestner noted that he was one of the partners in Lindsay Partnership, and recused himself from participating in any discussion or deliberation of the application. Mr. Kestner then generally described the proposal, indicating that this lot was obtained by Lindsay Partnership several years ago, and includes property on both sides of Kestner Lane. The application seeks to divide this single parcel, so that the area on each side of Kestner Lane will become a separate building lot. Mr. Kestner noted that the resulting lot sizes would be .83± acres and .54± acres, both well in excess of the 9,000 square foot requirement in the R-9 zoning district. The Planning Board members felt that the application was appropriate as a waiver, since this lot is already divided by Kestner Lane. Member Tarbox noted that there was a metal shed shown on one of these proposed lots. Mr. Kestner stated that this was owned by an adjacent lot owner, and that Lindsay Partnership had simply allowed this owner to keep the shed where it was located rather than immediately requiring him to relocate it. Mr. Kestner noted that if the Planning Board approved the subdivision waiver, that property owner would be notified that the shed would need

to be relocated. The Planning Board members wanted the opportunity to go to the site to review the area, and take a further look at the location. This matter has been placed on the September 2 agenda for further discussion.

The second item of new business discussed was a waiver of subdivision application by Brunswick Associates of Albany, LP concerning the Brunswick West Apartments Planned Development District. Paul Goldman, Esq. appeared for the applicant. Attorney Goldman explained that the applicant was seeking to divide the Brunswick West PDD area into two lots, solely for financing purposes in connection with the construction of the recently-approved amendment to the Brunswick West PDD. Attorney Goldman reviewed the subdivision layout, noting that each proposed parcel will have a minimum of 40 foot frontage directly onto Hoosick Road. Attorney Goldman stated that he would be preparing a declaration of reciprocal easements so that each lot would have public road access and access to all utilities in conjunction with the Brunswick West Apartments. Attorney Goldman stated that nothing would change on the project except for adding a line on a map, and that this would be done for financing purposes only. He indicated he had reviewed this with the assessment office for the Town, and that this would result in the issuance of 2 tax bills, but that this still be considered as one project by Brunswick Associates of Albany, LP. After further discussion, it was determined that the proposed declaration of reciprocal easements should be drafted and submitted to Attorney Gilchrist for review, and that Mr. Kreiger be allowed time to review the subdivision map to determine compliance with all area and setback zoning requirements. The Planning Board determined that this application could continue to be viewed as a waiver application in light of the fact that this subdivision was being requested for purposes of financing only and not creation of any lots or areas for sale. This matter has been placed on the September 2 agenda for further discussion.

Mr. Kreiger advised the Planning Board that the Brunswick Zoning Board of Appeals has referred the appeal of Oakwood Property Management, LLC to the Planning Board for review and preparation of an advisory opinion. Mr. Kreiger explained that Oakwood Property Management, LLC had filed an appeal on the Notice of Violation which he had issued concerning the operation located at 215 Oakwood Avenue, and that under the Brunswick Zoning Code, the Zoning Board of Appeals was referring the matter to the Planning Board for review and advisory opinion. Mr. Kreiger provided a copy of the appeal to each member of the Planning Board. Further, at the request of the Planning Board, Mr. Kreiger provided another copy of the approved site plan (2002) for the operation at 215 Oakwood Avenue to each member of the Board. Further, the Planning Board requested that Mr. Kreiger provide to each member copies of the minutes of the Planning Board review of the site plan application in 2002. The Planning Board determined to place this item on the agenda for the September 2 meeting, to be considered during a workshop session which will commence immediately after the regular business items of the Planning Board are concluded at the September 2 meeting.

The **index** for the August 19, 2010 meeting is as follows:

1. Precision Homes – minor subdivision – adjourned without date;
2. Rensselaer Honda – site plan – adjourned without date;
3. Berkshire Properties, LLC – waiver of subdivision – 9/2/10;
4. Lindsay Partnership – waiver of subdivision – 9/2/10;
5. Brunswick Associates of Albany, LP – waiver of subdivision – 9/2/10;
6. Oakwood Property Management, LLC – referral from Zoning Board of Appeals on administrative appeal of Notice of Violation – 9/2/10 (workshop).

The **proposed agenda** for the September 2, 2010 meeting currently is as follows:

1. Berkshire Properties, LLC – waiver of subdivision;

2. Lindsay Partnership – waiver of subdivision;
3. Brunswick Associates of Albany, LP – waiver of subdivision;
4. Workshop session to consider administrative appeal by Oakwood Property Management, LLC from Notice of Violation (referral from Brunswick Zoning Board of Appeals).