

## **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 DECEMBER 19, 2016**

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

ABSENT was CANDACE SCLAFANI.

ALSO PRESENT was KAREN GUASTELLA, Brunswick Building Department.

The Zoning Board members reviewed the draft minutes of the November 21, 2016 meeting. Upon motion of Member Clemente, seconded by Chairman Steinbach, the minutes of the November 21, 2016 meeting were unanimously approved without amendment.

The first item of business on the agenda was the special use permit submitted by Cumberland Farms regarding property located at 630 Hoosick Road, at the intersection of Hoosick Road and Hillcrest Avenue. The applicant seeks to construct a Cumberland Farms convenience store, and requires a special use permit in connection with the proposed six-pump, self-serve gasoline island. Stefanie Bitter, Esq., project attorney, together with Jim Gillespie, P.E. of Bohler Engineering and Wendy Holsberger, P.E. of Creighton Manning, were present for the applicant. Attorney Bitter reviewed the proposed project, by which Cumberland Farms seeks to construct a 4,786 square foot convenience store with a six-pump fuel island at 630 Hoosick Road, on a 1.3 acre site that has frontage on Hoosick Road and Hillcrest Avenue; that the current use of the site includes a residence and associated outbuildings, which would be demolished in the event the Cumberland Farms store is constructed; that access from Hoosick Road is proposed through the existing entrance way for the

Advance Auto Parts store, which was identified as phase 1 of the overall site development, with the Cumberland Farms being proposed for phase 2; that a separate access point is proposed on Hillcrest Avenue; that the site is located in the B-15 and R-9 Zoning Districts, but that no commercial use is being proposed within the R-9 District, and limited solely to the B-15 Zoning District; that the special use permit application is required in connection with the installation of the six-pump fuel island; that Cumberland Farms will meet the requirements of the Brunswick No. 1 Fire Department concerning their comments for the proposal; that the site is served by public water and public sewer; that adequate parking is proposed; that the use is complimentary to the surrounding mixed commercial area; that the use is pedestrian friendly, including outdoor seating areas as well as bicycle access; and that the proposal will not create a traffic hazard. Attorney Bitter then reviewed the special use criteria, including the specific special use criteria for a filling station found in Brunswick Zoning Ordinance Section 7(D), stating that the project meets all specific special use criteria; and also the general special use criteria found at Brunswick Zoning Ordinance Section 7(C), and stating that the project meets all of the general criteria, including the fact that the project will not create a traffic hazard. Attorney Bitter generally stated that the majority of the customers will be existing pass-by traffic, and that the site is located on the south side of Hoosick Road and will generally be traveling with the westbound traffic during the AM peak, and the eastbound traffic during the PM peak. Attorney Bitter stated that there will only be a 5% increase in total traffic, but that the traffic issues will be discussed by Ms. Holsberger. Mr. Gillespie reviewed the site specific project, providing pictures of the current Cumberland Farms store in Latham as well as a rendering of the Brunswick project site with the proposed new store superimposed. Mr. Gillespie also reviewed the proposed architecture for the Brunswick store, which will be colonial in nature, including a gable roof, shingles, dormers, columns, and cultured stone both on the building and the gas canopy. Mr. Gillespie stated that this type of store

has been well-received where constructed in other communities. Ms. Holsberger reviewed the traffic assessment report prepared for the project, stating that the report was prepared in compliance with NYSDOT and ITE standards. Ms. Holsberger stated that site specific traffic data was collected, both at the intersection of Hillcrest Avenue and Route 7 and also the site access driveway located opposite Leonard Avenue. Ms. Holsberger stated that projections of future traffic increases were considered, both under a “no-build” and under a “build” scenario. Regarding the “build” scenario, Ms. Holsberger stated that trip generation figures for convenience-type stores were used to determine projected additional traffic associated with the proposed Cumberland Farms. Ms. Holsberger reviewed projected data for both the AM peak and PM peak periods under the “build” condition, and reviewed the projected delays from entering Hoosick Road from Leonard Avenue and Hillcrest Avenue, stating that there would be an additional seven-second delay from Leonard Avenue during the AM peak and a nine-second delay from Leonard Avenue during the PM peak; and no additional delay from Hillcrest Avenue during the AM peak, but an additional eight-second delay from Hillcrest Avenue during the PM peak. Ms. Holsberger stated that with these figures, traffic mitigation is not required under NYSDOT standards. Ms. Holsberger did state that the traffic report presented a conservative analysis regarding traffic impacts. The Zoning Board then opened a public hearing on the special use permit application. The notice of public hearing was read into the record, noting that the public hearing notice was published in the Troy Record, placed on the Town signboard, posted on the Town website, and mailed to owners of adjacent properties. Chairman Steinbach opened the floor for receipt of public comment. Pam Harbour, 14 Leonard Avenue, stated that Leonard Avenue was a dead-end street with only one way out being the entrance onto Hoosick Road, and that Leonard Avenue was located opposite the existing Advance Auto Parts access driveway. Ms. Harbour stated that a traffic signal is required at this intersection, because even the Advance Auto Parts entrance has significantly

impacted the ability to get in and out of Leonard Avenue. Ms. Harbour stated that she has no problems with a Cumberland Farms store, but that the entrance way does need a traffic signal. Ms. Harbour stated that she feels the Town of Brunswick is disregarding the residents on Leonard Avenue, many of which have been residents on Leonard Avenue for more than 20 years. Ms. Harbour stated that there have already been three accidents directly across from Leonard Avenue at the location of the Advance Auto Parts driveway, including one accident which involved her son. Ms. Harbour noted that the Town of Brunswick is proposing to rezone area around Leonard Avenue to commercial, but that the Commercial Zoning District line would not extend to the last two houses at the end of Leonard Avenue, which Ms. Harbour feels is inappropriate. Ms. Harbour stated that the Cumberland Farms will significantly add to traffic issues on Hoosick Road, and acknowledges that Hoosick Road will continue to have a lot of traffic, but the access in and out of Leonard Avenue has become impossible. Ms. Harbour stated that a traffic light is not required at Hillcrest Avenue, since the Cumberland Farms will be using Hillcrest only as a means for secondary access, with the main access to both Advance Auto Parts and Cumberland Farms being directly opposite Leonard Avenue. Ms. Harbour stated that she felt the projected nine-second delay from exiting Leonard Avenue is ridiculous. Ms. Harbour stated that she felt the traffic on Hoosick Road has affected the Leonard Avenue properties, homes, and created a significant safety risk, that the residents' investments in their properties are at risk, that property values have been reduced, and that these commercial projects have affected the quality of life for residents on Leonard Avenue. Ms. Harbour also stated that the Cumberland Farms at other locations plays music at the gas pumps, and that this music will probably affect residents behind the Cumberland Farms store. Pat Germain, 18 Coolidge Avenue, stated she has lived at her residence for 38 years, and is located only one block away from the proposed Cumberland Farms. Ms. Germain stated she acknowledges the Hoosick Road corridor is zoned commercial, but questions the need for

another gas station within a few blocks of three existing gas stations; and that this section of Hoosick Road is not Wolf Road, being only two traffic lanes with a center turn lane. Ms. Germain stated that a very nice neighborhood with well-maintained single-family homes is at risk, including homes on Coolidge Avenue, Mellon Avenue, and Film Avenue, which have now been subjected to pass-through traffic trying to avoid the congestion on Hoosick Road. Ms. Germain stated that the Sycaway section of Brunswick is taking a beating with commercial development, and questions the need for an additional gas station at this location. Mark Collins raised a question regarding the public notice for public hearings in general, indicating that the Town website included the public hearing notice only within a few days of the meeting. Mr. Collins was informed that the legal notification requirements include only the Town signboard and publication in the official newspaper for the Town. Mr. Collins thanked the Board for that information. Chairman Steinbach asked whether there were any questions by the Zoning Board members for the applicant. Member Clemente asked about issues raised during the public hearing, including whether the traffic from the existing Advance Auto Parts store was taken into account in the traffic study, noting that this had been raised by Ms. Harbour. Ms. Holsberger stated that the Advance Auto Parts store had already been built and was operating when the actual traffic counts were taken, and so the traffic associated with the auto parts store was considered; Ms. Holsberger also stated that other projects that have been approved but not yet built were also accounted for in the traffic report. Member Clemente also asked about the issue raised by Ms. Germain as to the need for another gas station in the immediate vicinity. Attorney Bitter stated that Cumberland Farms does perform a statistical analysis for each store location, and has determined that this location will be supported despite the location of additional gas stations in the vicinity; that the side of the road which both existing and proposed gas stations are located is also a significant factor when determining new store locations; and that even the number of pumps being proposed was

considered during the statistical analysis. Chairman Steinbach asked about the determination for the need of any traffic signal on Hoosick Road. Ms. Holsberger stated that the determination to install traffic lights or other traffic control devices is made by NYSDOT, which assesses whether a project meets certain warrants, which may include analysis of AM and PM peak periods, four-hour periods, eight-hour periods, safety warrants, and/or pedestrian warrants; and that even if certain warrants are met, NYSDOT may conclude that a traffic light is not the correct traffic mitigation; but that in this case, the proposed Cumberland Farms does not meet any of the NYSDOT warrants for a traffic light installation. Chairman Steinbach noted for the record that NYSDOT determines whether a traffic light is installed on Hoosick Road, not the Town of Brunswick. Chairman Steinbach inquired as to procedural options for the Zoning Board of Appeals. Attorney Gilchrist stated that one option for the Board to consider is, given the discreet issues raised during the public hearing, the Zoning Board could consider closing the public hearing but require the applicant to respond to the public comments in writing on the record. Attorney Bitter concurred, stating that the applicant will respond to the public comments in writing, and that specifically she will confirm with Cumberland Farms as to any sound data in the event music is proposed to be used in the area of the gas pumps. Attorney Gilchrist also stated that a recommendation from the Rensselaer County Department of Economic Development and Planning must be received on this application before any action is taken by the Zoning Board. Chairman Steinbach thought that it was appropriate to close the public hearing but require the applicant to respond to public comments in writing. Member Schmidt made a motion to close the public hearing on the special use permit application submitted by Cumberland Farms, which motion was seconded by Member Shover. The motion was unanimously approved, and the public hearing closed. The Zoning Board determined that the applicant must respond to the public comments in writing. This matter is placed on the January 23 agenda for further discussion. In this regard, the

Zoning Board members unanimously determined to move the January meeting from January 16 to January 23, to honor the Martin Luther King Day holiday.

The next item of business on the agenda was the special use permit and use variance application submitted by Cellco Partnership d/b/a Verizon Wireless for a proposed major telecommunications facility located proximate to the intersection of Creek Road and Menemsha Lane. David Brennan, Esq., Project Attorney, and Sarah Coleman, Site Acquisition Specialist, were present for the applicant. Attorney Brennan stated that the project was last before the Zoning Board of Appeals at its October meeting, and that Verizon did respond to an initial comment letter prepared by Laberge Group, and that a subsequent submittal was made by Verizon but was not available for review by Laberge Group prior to the November meeting of the Zoning Board. Subsequent to the November meeting, Attorney Brennan stated that Laberge Group had reviewed the supplemental submission, and had generated an additional review letter dated December 14, 2016, to which Verizon will require additional written responses. Attorney Brennan stated that time will be needed to prepare the supplemental responses by Verizon, which will then need to be reviewed by Laberge Group, and that while the matter might be ready for further discussion at the Zoning Board's January meeting, it is likely that this matter will be ready for further discussion at the Zoning Board's February meeting. Chairman Steinbach asked whether Verizon is still proposing the same type of tower at the same preferred location. Attorney Brennan stated that the proposal remains as originally submitted, and generally reviewed the three alternative locations on the project site parcel. Attorney Brennan indicated that Laberge Group has also requested a consideration of other available sites, and that an RF frequency analysis will need to be performed concerning alternate site locations. Ronald Laberge, P.E., of Laberge Group was present, and generally reviewed his letter dated December 14. Mr. Laberge did reiterate the comment that alternative sites should be considered, including additional

land that is zoned A-40 to the east, which provides for major telecommunications facilities as a permitted use, rather than requiring a use variance for R-40 Zoning Districts. Mr. Laberge indicated that he will work with Verizon RF engineers to identify alternative sites for analysis. Member Clemente inquired as to a project review timeline. Attorney Gilchrist generally reviewed special use permit review timeframes, with which Attorney Brennan concurred, with Attorney Brennan adding that even if the Zoning Board was not timely acting on the application, his client's only option would be to seek court intervention to require that a determination be made, with the New York Town Law not providing any default approval for failure to timely act. Attorney Brennan also stated that under the Federal Telecommunications Act, the law does require that cellular tower applications be reviewed timely, but that this application is being timely reviewed by the Zoning Board, and that Verizon is interested in working with the Town to make sure that the application is complete and ready for public hearing. Attorney Brennan did state that Verizon will be responding to the December 14 Laberge Group comment letter in writing. Attorney Brennan did raise one issue concerning the collapse zone requirements under the Brunswick Telecommunications Local Law, which requires a collapse zone equal to the tower height plus 30 feet, which in this case is 180 feet as currently proposed. Attorney Brennan stated that rather than restricting the use of surrounding land, Verizon may seek to propose an option which includes a break point in tower construction so that the full collapse zone is not required to be 180 feet, which will not unduly restrict surrounding land from use. Attorney Brennan did state that this would be subject to review and consideration by the Town. Attorney Brennan requested that the matter be placed on the Zoning Board's January agenda, but that in the event it is not ready for further discussion at the January meeting, that the matter then be carried over to the Zoning Board's February meeting. The Zoning Board agreed with this procedure. The Zoning Board did entertain a comment from Bob Ashe, 126 Menemsha Lane, who requested that



Verizon repeat the balloon test for the proposed tower locations on notice to the neighbors, to allow the neighbors to actually see the proposed tower height from their homes. Following discussion, it was determined that the Zoning Board and Mr. Laberge will work with the applicant to determine appropriate locations for a supplemental balloon test, which Attorney Brennan indicated was agreeable to Verizon, and that the appropriate time with appropriate notification to neighbors will be discussed. This matter is placed on the January agenda for further discussion.

Three items of new business were discussed.

The first item of new business discussed was a referral from the Brunswick Town Board in connection with an application to amend the existing Brunswick Plaza Planned Development District. Gregg Ursprung, P.E., of Bergmann Associates, and Steven Powers of Nigro Companies, were present for the applicant. Mr. Ursprung presented an overview of the proposal. Mr. Ursprung explained that the plaza owner recently purchased two parcels in front of the Brunswick Plaza and adjacent to Hoosick Road, and that the current proposal was to amend the PDD district boundary to add approximately .33 acres from the PDD to the recently-purchased parcels in order to make them more developable and marketable. Mr. Ursprung stated that the only proposed amendment is adjusting the boundary of the PDD, which does require Town Board approval. Mr. Ursprung stated that the two out-parcels in the front are not part of the existing Brunswick Plaza PDD, and are not proposed to be added to the Brunswick Plaza PDD, but rather to remain as a separate commercial parcel adjacent to Hoosick Road in front of the Brunswick Plaza. The Zoning Board members indicated that they had only received the application materials at this meeting. It was determined that this matter will be placed on the January agenda for the Zoning Board, noting that the proposed PDD amendment is also pending before the Brunswick Planning Board for recommendation, and that the Planning Board recommendation should be completed at Planning Board meetings held January 5

and January 19, and should be available for the Zoning Board to review at its January 23 meeting. This matter is placed on the January agenda for further discussion.

The second item of new business discussed was a referral from the Brunswick Town Board concerning a proposed amendment to the Hudson Hills Planned Development District. William Hoblock of Capital District Properties was present for the applicant. Mr. Hoblock stated that the Hudson Hills PDD amendment application is subject to the same procedure as the prior Brunswick Plaza PDD amendment proposal. Mr. Hoblock reviewed the application materials, which include several exhibits from the underlying PDD approval. Mr. Hoblock explained that the underlying Hudson Hills PDD was approved in 2007. Part of the PDD approval included the requirement to construct two youth baseball fields on a separate 25-acre parcel as a public benefit, and after construction to dedicate the recreation fields and the 25-acres to the Town of Brunswick at no cost. Mr. Hoblock explained that the application to amend the current Hudson Hills PDD approval is to modify the public benefit to eliminate the construction of the two youth baseball fields, and to replace that public benefit with the payment of a fee. Mr. Hoblock stated that circumstances had changed in the Town of Brunswick since the 2007 PDD approval, including the fact that in 2007, the Route 2 recreation fields were facing regulatory issues concerning wetlands compliance, but that subsequent to the 2007 approval the wetlands issues were resolved and those fields would continue to be used for recreation purposes, and further that an additional little league field had been built in the intervening years. Mr. Hoblock stated that currently, the Town of Brunswick has different needs for recreational purposes, and that the payment of a fee for other recreation projects in the Town is appropriate. Mr. Hoblock stated the applicant is proposing to pay a public benefit fee of \$300,000.00, to be used by the Town of Brunswick for recreation purposes as it sees fit. Mr. Hoblock confirmed that there was no further amendment proposed, that there was no proposed change to the apartment count or layout,

and that there will be no change to the SEQRA environmental impact analysis which had been previously completed. This matter is also placed on the January agenda for further discussion on a recommendation to the Town Board, noting that the Hudson Hills PDD amendment will likewise be addressed by the Planning Board at its meetings held January 5 and January 19, anticipating that the Planning Board recommendation will be complete and available for review by the Zoning Board at its January 23 meeting.

The third item of new business discussed was a special use permit application submitted by Stewart's Shops for property located at 1001 Hoosick Road. Chad Fowler of Stewart's Shops was present for the applicant. Mr. Fowler generally reviewed the proposal, which includes construction of a new 3,675 square foot Stewart's Shop with gas pumps, canopy, vehicular access, and parking. Mr. Fowler explained that the special use permit is required in connection with the proposed gas pumps and canopy. Mr. Fowler also generally reviewed the proposed access from Hoosick Road and Sweetmilk Creek Road, indicating that construction of a center two-way left turn lane on Hoosick Road is proposed and pending for review by NYSDOT, and that a full two-way center lane is required for full access to the proposed Stewart's store from Hoosick Road. Mr. Fowler generally explained that the existing Stewart's Shop at the intersection of Hoosick Road and Route 142 has been operating since 1977, but that the industry has changed for convenience-type stores to now promote prepared food, beverages, and gasoline sales, and that the current site is simply too small to meet current industry trend. Mr. Fowler did state that Stewart's preferred the current location, but there is simply not enough room to expand, and that the necessary acreage surrounding the current Stewart's site is not available for acquisition. Mr. Fowler stated that the alternative site is being proposed, to stay in the general location of the existing Stewart's store. Mr. Fowler then generally discussed the proposed architecture and layout of the Stewart's store, which will be similar to the recently-constructed new

Stewart's store in Cropseyville at the intersection of Route 2 and Route 278. The Zoning Board indicated it had only received the application materials, and placed the matter on the January agenda for further discussion. The Zoning Board will request a formal recommendation from the Planning Board on the special use permit, which should be received prior to the January 23 Zoning Board meeting.

The index for the December 19, 2016 meeting is as follows:

1. Cumberland Farms - Special use permit - January 23, 2017;
2. Cellco Partnership d/b/a Verizon Wireless - Special use permit and use variance - January 23, 2017;
3. Brunswick Plaza PDD Amendment - Referral from Town Board - January 23, 2017;
4. Hudson Hills PDD Amendment - Referral from Town Board - January 23, 2017;
5. Stewart's Shops - Special use permit - January 23, 2017.

The proposed agenda for the January 23, 2017 meeting currently is as follows:

1. Cumberland Farms - Special use permit;
2. Cellco Partnership d/b/a Verizon Wireless - Special use permit and use variance;
3. Brunswick Plaza PDD Amendment - Referral from Town Board;
4. Hudson Hills PDD Amendment - Referral from Town Board;
5. Stewart's Shops - Special use permit.