

# **Planning Board**

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

## **MINUTES OF THE PLANNING BOARD MEETING HELD JULY 20, 2017**

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

ABSENT was TIMOTHY CASEY.

ALSO PRESENT were CHARLES GOLDEN, Brunswick Building Department, and WAYNE BONESTEEL, P.E., Review Engineer to the Planning Board.

Chairman Oster reviewed the agenda for the meeting.

The Planning Board continued the public hearing on the minor subdivision application submitted by David Leon for property located at 660 Hoosick Road. David Leon, applicant, and Jamie Easton of M.J. Engineering were present for the application. Chairman Oster noted that the public hearing on this application had been adjourned so that research could be conducted concerning the frontage of the proposed 16+/- acre lot on a public road, and whether the proposed lot met legal requirements for subdivision. Chairman Oster requested Attorney Gilchrist to review the matter. Attorney Gilchrist reviewed the factual investigation, noting that the proposed frontage for the 16+/- acre lot is along a paper street identified as Valley Avenue, and upon research, it has been determined that title to the Valley Avenue paper street is in the Town of Brunswick, with the Town Board of the Town of Brunswick having accepted title to that paper street through resolution in 1953. The deed through which the Town of Brunswick acquired title to the Valley Avenue paper street references a 1907 map filed in the office of the Rensselaer County Clerk, and the

applicant had provided a copy of the 1907 map to the Town for review. Attorney Gilchrist stated that while Valley Avenue title had been accepted by the Town, the paper street was never improved, and remains an unimproved paper street to date. Attorney Gilchrist further stated that research discloses that an interior lot, such as the proposed 16+/- acre lot, with frontage on an unimproved paper street is presumed under the law to have an access easement over the unimproved paper street to the improved public highway, in this case being Hillcrest Avenue. Attorney Gilchrist stated that this legal principle allows the subdivision application to be considered and acted upon by the Planning Board under the New York Town Law and the subdivision regulations of the Town of Brunswick. However, Attorney Gilchrist stated that a further section of the New York Town Law prohibits the Town Building Department from issuing a building permit for any building or structure on such a lot, as the lot does not have frontage directly onto an improved public street, and when access to the improved public street is by way of easement, which in this case is presumed under the law for such an interior lot, an area variance from the Brunswick Zoning Board of Appeals will be required prior to the issuance of any building permit. Further, Attorney Gilchrist stated that the law clearly provides that the Town of Brunswick is under no obligation to improve the paper street, even if it holds title to such paper street for highway purposes. Attorney Gilchrist also stated for the record that it is important to note that the only application pending before the Planning Board at this time is a minor subdivision application to subdivide property by adding a lot line to create the 16+/- acre lot, and that no development or improvement of the 16+/- acre lot is currently being proposed. Attorney Gilchrist stated that, in the event of any further proposal to develop or improve such 16+/- acre lot which requires more than a building permit, an appropriate application must be submitted to the Town for review by the Brunswick Planning Board, and that any such application would undergo full review by the

Planning Board at that time. Attorney Gilchrist reiterated that an area variance will be required from the Brunswick Zoning Board of Appeals prior to issuance of a building permit for any improvement or development of the 16+/- acre lot for which only a building permit would otherwise be required. Mr. Easton stated that the applicant had no objection to the points raised by Attorney Gilchrist, that the proposed minor subdivision is being pursued for financing purposes only, that the separate 16+/- acre lot to the rear of the proposed commercial lot is not proposed for development at this time, and that the application is being pursued for financing purposes concerning the commercial properties adjacent to Hoosick Road. Chairman Oster noted for the record that Attorney Gilchrist had reviewed this matter with the Brunswick Town Attorney as the Town owns the paper street at issue. Chairman Oster then reiterated for the record that the only application pending before the Planning Board at this time is for a minor subdivision only, that the paper street provides the necessary access for purposes of subdivision considerations, that further Town review will be required before the proposed 16+/- acre lot is proposed for development or improvement, and that—at a minimum—a variance will be required from the Brunswick Zoning Board of Appeals prior to the issuance of any building permit for the proposed 16+/- acre lot. Chairman Oster then opened the floor for receipt of any additional public comment. Debbie Nichols, 249 Hillcrest Avenue, wanted to confirm on the record that the only thing the applicant is seeking now is to separate the front commercial properties from the rear 16+/- acre area. Mr. Easton confirmed that was the only thing being sought in the minor subdivision application. Ms. Nichols also wanted to confirm on the record that the applicant had no plan to build a road in the Valley Avenue paper street at this time. Mr. Easton confirmed that no road is being proposed to be constructed. Attorney Gilchrist also stated that it is his understanding that the Town of Brunswick has no intent to construct a public road in the Valley View paper street area. A resident

of Hillcrest Avenue also stated that putting a road in the area of Valley Avenue would create a dangerous condition onto Hillcrest Avenue. It was confirmed on the record that there was no proposal to construct any road in the area of the Valley Avenue paper street currently before the Planning Board. Mr. Easton confirmed this, stating that the Valley Avenue paper street merely provides the access to legally create the 16+/- acre lot as a subdivision. The members of the public, including residents on and along Hillcrest Avenue, stated on the record that this area is their home, and did not want their properties impacted by development of the 16+/- acre lot. David Leon stated that he had no intention whatsoever to interfere with any of the properties on and along Hillcrest Avenue, and that his developed properties are well-constructed and maintained. Chairman Oster inquired whether there were any further public comments. Hearing none, the public hearing on the Leon minor subdivision application was closed.

The Planning Board opened the regular meeting.

The draft minutes of the July 6, 2017 meeting were reviewed. Upon motion of Member Czornyj, seconded by Member Wetmiller, the draft minutes of the July 6, 2017 meeting were unanimously approved without amendment.

The first item of business on the agenda was the minor subdivision application submitted by David Leon for property located at 660 Hoosick Road. Chairman Oster stated that the public hearing had now been held on this application, again confirmed on the record that the only application pending before the Planning Board at this time is for subdivision, and that there is currently no plan or application for any development or improvement of the proposed 16+/- acre lot in the area of Hillcrest Avenue. Chairman Oster also confirmed on the record that prior to constructing any structure or building on the 16 +/- acre proposed lot that would require a simple building permit, a variance must be obtained by the property owner from the Brunswick Zoning

Board of Appeals. Chairman Oster inquired whether there was any further submittal by the applicant. The applicant stated there was nothing further to submit on the application. Member Mainello had a question concerning the variance process in front of the Zoning Board of Appeals. Attorney Gilchrist stated that the variance application would be in the nature of an area variance, with the primary issues addressed by the Zoning Board of Appeals being adequate access to the 16+/- acre lot onto Hillcrest Avenue, the improved public highway, and the specifications for any driveway or private roadway through the Valley Avenue paper street for purposes of emergency access and road maintenance. Attorney Gilchrist confirmed that such an application had not yet been made, and any further discussion on a specific variance for a private driveway or roadway through the Valley Avenue paper street area is premature. Chairman Oster asked whether there were any further questions or comments on the application. Hearing none, Attorney Gilchrist again confirmed on the record prior to any determination by the Planning Board that the only application pending in front of the Board for consideration at this time is the minor subdivision application, and that no development or improvement of the proposed 16+/- acre lot is proposed at this time. Upon that record, Member Czornyj made a motion to adopt a negative declaration under SEQRA on the minor subdivision application, with the understanding that any proposed development or improvement of the 16+/- acre lot would require further environmental impact review under SEQRA at the time of any such application. Member Wetmiller seconded the motion subject to the stated consideration. The motion was unanimously approved, and a SEQRA negative declaration adopted. Thereupon, Member Czornyj made a motion to approve the minor subdivision application subject to the condition that a variance from the Brunswick Zoning Board of Appeals is required prior to the issuance of any building permit by the Brunswick Building Department for any proposed structure or building on the 16+/- acre lot, and that such variance is

required for access by way of easement from the 16+/- acre lot to the improved public highway of Hillcrest Avenue. Member Tarbox seconded the motion subject to the stated condition. The motion was unanimously approved, and the minor subdivision application approved subject to the stated condition.

The second item of business on the agenda was the site plan application submitted by Chip Bulson for property located at 63 Indian Creek Lane. Upon request of the applicant, this application is adjourned to the August 3 meeting.

One item of old business was discussed.

The site plan application submitted by Stewart's Shops for property located at 1001 Hoosick Road was discussed. Chad Fowler of Stewart's Shops, and representatives of Creighton Manning, technical consultants, were present for the applicant. Mr. Fowler stated that Stewart's had been working with the State Historic Preservation Office concerning the historic home and barn on the property, and that SHPO had concurred through letter dated May 3, 2017 that moving the house and barn was not an economically feasible or viable option, and did agree to demolition of the structures subject to certain conditions, including incorporation of the architectural design features of the house and barn into the new Stewart's Shop design. Mr. Fowler explained that Stewart's had incorporated the architectural features into the proposed Stewart's Shop, that the proposal had been reviewed by SHPO, and that SHPO had approved the design of the new store through letter dated July 11, 2017. Mr. Fowler generally reviewed the design of the proposed Stewart's Shop, highlighting the historic features to be incorporated into the new store design. An update on the improvements to Hoosick Road and review by NYSDOT was presented, with NYSDOT having provided review comments on the highway improvement plans in May of 2017, and that Creighton Manning has responded to those comments from NYSDOT but had not yet

received any further comments or response from NYSDOT. It is noted that NYSDOT has agreed to the traffic engineering report prepared by Creighton Manning for the project, and has provided conceptual approval to the two-way turn lane and other highway improvements being proposed for the project. Chairman Oster inquired whether the road improvements would impact the south side of Hoosick Road, particularly in the area of the church. The applicant stated that the driveways to two properties on the south side of Hoosick Road will need to be regraded in order to provide a more gradual and acceptable grade to the driveway. Mr. Bonesteel confirmed on the record that the Hoosick Road widening will be occurring on both sides of Hoosick Road, which was confirmed by Creighton Manning, but also stated that all highway work will be conducted within the existing highway right-of-way. The Planning Board and Creighton Manning representatives discussed exact location of Hoosick Road highway improvements, particularly in the area of the church and adjacent homes on the south side of Hoosick Road, the golf course on the south side of Hoosick Road, and the location of the former Fowler Law Office on the north side of Hoosick Road. Member Esser noted that for cars traveling west on Hoosick Road, only the side of the new Stewart's building would be visible from that vantage point. Mr. Fowler confirmed that this observation was correct, but that the side of the Stewart's building was designed to be consistent with the front of the building in terms of historic design, and that SHPO had provided approval for the proposed design of the new Stewart's Shop store. Chairman Oster wanted to confirm that all Route 7/Hoosick Road improvement work would be done within the existing public right-of-way, except for the regrading of two driveways on the south side of Hoosick Road. Creighton Manning confirmed this on the record, and Chad Fowler confirmed on the record that all Hoosick Road improvements would be paid for by Stewart's, which currently total approximately \$400,000. Chairman Oster inquired whether the record before the Planning

Board was adequate to open a public hearing. Attorney Gilchrist stated that in his opinion, the record was adequate for opening the public hearing, noting that NYSDOT had provided concept approval for the two-way turn lane and other highway improvements, which were adequate for the site plan public hearing, and that the correspondence between Creighton Manning and NYSDOT at this point is on construction-level details. Mr. Bonesteel concurred in that opinion. Chairman Oster briefly reviewed the issue of signage and site lighting, with Mr. Bonesteel confirming that a lighting plan was included in the site plan set. The Planning Board determined to schedule a public hearing on the site plan application for its August 3 meeting at 7:00pm. Chairman Oster inquired whether Stewart's had contacted any neighboring properties, most particularly regarding the Hoosick Road improvements. Mr. Fowler had stated he had not yet contacted adjoining property owners. Member Wetmiller noted that it would be advantageous for Stewart's to work with property owners along the Hoosick Road corridor in terms of appropriate grading onto their properties to provide a better slope for property maintenance and driveway grade. Mr. Fowler stated that Stewart's was intending on doing that. Mr. Bonesteel asked a question concerning the stormwater report, which indicates stormwater discharge to stormwater facilities operated by NYSDOT, and inquired whether Stewart's had yet contacted NYSDOT and submitted the SWPPP for review. Creighton Manning will confirm submittal of the SWPPP to NYSDOT.

One item of new business was discussed.

Mark Danskin, Land Surveyor, submitted an application for waiver of subdivision for property located at 194 Bald Mountain Road (Tax Map No. 81.-2-9.1), Melissa Shudt Jerominek, property owner. Mr. Danskin stated that the parcel at 194 Bald Mountain Road is 105 acres, and the applicant is seeking to divide off 5.2 acres as a separate lot. The Planning Board generally reviewed the application materials, and determined that they were complete. The application form

was submitted, together with the application fee, and the matter is placed on the August 3 agenda for consideration. The Planning Board members did discuss appropriate driveway location and site distance on Bald Mountain Road, and members stated that they would have the opportunity to visit the property prior to the August 3 meeting.

The index for the July 20, 2017 meeting is as follows:

1. Leon - Minor subdivision - Approved with condition;
2. Bulson - Site plan - 8/3/2017;
3. Stewart's Shop - Site plan - 8/3/2017 (public hearing to commence at 7:00pm);
4. Jerominek - Waiver of subdivision - 8/3/2017.

The proposed agenda for the August 3, 2017 meeting currently is as follows:

1. Stewart's Shop - Site plan (public hearing to commence at 7:00pm);
2. Bulson - Site plan;
3. Jerominek - Waiver of subdivision.