

**ZONING
BOARD
MINUTES**

2009

TOWN OF BRUNSWICK
ZONING BOARD OF APPEALS

336 TOWN OFFICE ROAD, TROY, NEW YORK 12180

Phone: (518) 279-3461 -- Fax: (518) 279-4352

DRAFT MINUTES

A Meeting of the Zoning Board of Appeals of the Town of Brunswick, County of Rensselaer, State of New York, was held on January 5, 2009, at 6:00 P.M.

Present at the meeting were: Eric Wohlleber, Member
E. John Schmidt, Member
Caroline Trzcinski, Member
James Shaughnessy, Member
James Hannan, Chairman

Also present was Thomas R. Cioffi, Town Attorney and Zoning Board of Appeals Secretary, and Code Enforcement Officer John Kreiger. At 5:30 P.M., a Workshop Meeting was held wherein the Board Members reviewed files and discussed pending matters informally. The Regular Meeting was called to order at 6:00 P.M.

The first item of business was approval of the minutes of the October, 2008, meeting. Member Trzcinski made a motion to approve the minutes as submitted. Member Shaughnessy seconded. The motion carried 5 - 0.

The next item of business was the appeal and petition of LISA M. ROMEO, owner-applicant, dated August 15, 2008, for an area variance, pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the proposed construction of a storage shed on a lot located at 3 Carolina Avenue, in the Town of Brunswick, because the proposed construction violates the side yard setback in an R-9 District in that 15 feet is required but 0 feet is proposed.

Lisa Romeo appeared. The Chairman asked Ms. Romeo whether she had obtained the engineering plan as discussed at the last meeting. Ms. Romeo stated that she had not. Rather, they decided to change the location of the shed so that it will be at least 15 feet from the adjoining property owned by Scarce. However, she stated, they will now need a variance on the rear yard setback. Attorney Cioffi advised that she would have to file a new application so the matter could be noticed in accordance with the statute and usual procedures. Ms. Romeo asked whether the Board would look favorably on the new plan and likely approve the variance. Attorney Cioffi advised that the Board could not pre-judge the matter, and could not consider it without following the required procedures.

James Scarce, 7 Carolina Avenue, stated that he was glad they were no longer pursuing building so close to his property line. Ms. Romeo withdrew the pending variance and said that she would see Mr. Kreiger to prepare a new application regarding the rear yard variance for the proposed shed.

The next item of business was the appeal and petition of ROSE MAWAD, owner-applicant, dated November 20, 2008, for area variances, pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the proposed construction of a single family residence on a lot located at 313 North Lake Avenue, in the Town of Brunswick, because the proposed construction violates R-25 District setbacks as follows:

1. the front yard setback, in that 40 feet is required but 30 feet is proposed; and
2. the side yard setback, in that 15 feet is required but 8 feet is proposed; and
3. the other side yard setback, in that 25 feet is required but 18 feet is proposed.

Attorney Cioffi read the Notice of Public Hearing aloud. Tom Andres, of ABD Engineering & Surveying appeared, as did Mrs. Mawad's son. Mr. Andres stated that the remains of the old, fire-damaged, house on the site had been removed. He stated that they are looking for a 30 foot setback in the front. He noted that a lot of houses on North Lake Avenue in the vicinity are that close to the road. He said they do not want to put the new house any further back on the lot as it would interfere with the retaining wall and a pool area. The new house will be one story, 60 feet in length with a one car garage. The front of the new house will be further back from the street than the old house. Mr. Andres noted that the variances requested are not substantial. He doesn't see an adverse effect on the environment. This is a unique situation, given that an existing house which was non-compliant, was destroyed. They are trying to fit a new house into the lot.

Mr. Kreiger stated that an adjoining neighbor, Gloria Chicoine, came in and looked at the plans. She said she had no objection. He also said that he sent a referral to County Planning over 30 days ago and has received nothing back. Member Wohlleber asked whether the house could be moved back some. Mr. Andres stated that they want to have a patio by the pool. Mr. Mawad said that only his mother would be living in the house. The Board noted that no one from the public and no adjoining property owners appeared to comment on the application.

Member Schmidt made a motion to classify the matter a Type 2 action under SEQRA. Member Wohlleber seconded. The motion carried 5 - 0. The Chairman then made a motion to approve the variances as requested. Member Shaughnessy seconded. The matter was put to a roll call vote and all voted in the affirmative.

There being no further business, Member Shaughnessy made a motion to adjourn. Member Wohlleber seconded. The motion carried 5 - 0.

Dated: Brunswick, N.Y.
January 30, 2009

Respectfully submitted,


THOMAS R. CIOFFI

Town Attorney - Zoning Board Secretary

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a Public Hearing of the Zoning Board of Appeals of the Town of Brunswick, Rensselaer County, New York, will be held on the 5th day of January, 2008, at 6:00 P.M., at the Town Office Building located at 336 Town Office Road in the Town of Brunswick, on the appeal and petition of ROSE MAWAD, owner-applicant, dated November 20, 2008, for area variances, pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the proposed construction of a single family residence on a lot located at 313 North Lake Avenue, in the Town of Brunswick, because the proposed construction violates R-25 District setbacks as follows:

1. the front yard setback, in that 40 feet is required but 30 feet is proposed; and
2. the side yard setback, in that 15 feet is required but 8 feet is proposed; and
3. the other side yard setback, in that 25 feet is required but 18 feet is proposed.

FURTHER NOTICE IS HEREBY GIVEN that said ROSE MAWAD, owner- applicant, has petitioned for said area variances, and said appeal and petition are now on file in the Office of the Code Enforcement Officer, where the same may be inspected by all interested persons during regular business hours.

All persons interested in said application will be heard at the above time and place.

Dated: Brunswick, New York
December 18, 2008

BY ORDER OF THE ZONING BOARD OF APPEALS OF THE TOWN OF BRUNSWICK



THOMAS R. CIOFFI
Town Attorney

TOWN OF BRUNSWICK
ZONING BOARD OF APPEALS

336 TOWN OFFICE ROAD, TROY, NEW YORK 12180

Phone: (518) 279-3461 -- Fax: (518) 279-4352

DRAFT MINUTES

A Meeting of the Zoning Board of Appeals of the Town of Brunswick, County of Rensselaer, State of New York, was held on February 23, 2009, at 6:00 P.M.

Present at the meeting were: Eric Wohlleber, Member
E. John Schmidt, Member
Caroline Trzcinski, Member
James Shaughnessy, Member
James Hannan, Chairman

Also present was Thomas R. Cioffi, Town Attorney and Zoning Board of Appeals Secretary, and Code Enforcement Officer John Kreiger. At 5:30 P.M., a Workshop Meeting was held wherein the Board Members reviewed files and discussed pending matters informally. The Regular Meeting was called to order at 6:00 P.M.

The first item of business was approval of the minutes of the January, 2009, meeting. Member Trzcinski noted two corrections. On page 2, second paragraph, third line, the word "they" needs to be inserted before the word "are". On page 2, third paragraph, second line, the word "the" should be "he". Member Trzcinski made a motion to approve the minutes as corrected. Member Wohlleber seconded. The motion carried 5 - 0.

The next item of business was the appeal and petition of KEVIN SMITH, applicant, dated January 20, 2008, for a use variance pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the proposed construction of a barn for the storage of equipment and vehicles on a lot owned by the Estate of Sylvester Labonowski and located at 1692 State Highway 7, in the Town of Brunswick, because the proposed construction and the use of the lot for the storage of equipment and vehicles violates the Zoning Ordinance in that the storage of equipment and vehicles is not a permitted principal use in an A-40 District and may only be permitted by way of a use variance issued by the Zoning Board of Appeals. Attorney Cioffi read the public hearing notice aloud.

Kevin Smith, 36 Pennyroyal Road, Ballston Spa, NY, appeared. He stated that they want to take the existing house down and put up a barn in its place. They will build a house on the site in 2 or 3 years. He said they have a contract to buy the land, but it is conditional on receiving this variance.

Tom McGrath, 1703 NY 7, said that he wants to know more about what is being proposed. He wants to know what the actual use of the barn will be. Edgar Kreiger, 1680 NY 7, agreed, stating that he does not know what the actual use of the building will be. He would also like to see a plot plan. Joe Novak, 1698 NY 7, said he had the same concerns. What will be stored there? Maury

Kimmel, 14 Wagar Road, said she owns the property directly across from the property. While he is not saying the town should allow what is being proposed here, something needs to be done with this area. It looks like a ghost town. Michael Labonowski, 14 Mountwood Drive, Glenville, stated that he is the executor of the estate which is trying to sell the property to Mr. Smith. Attorney Cioffi stated that he was glad that Mr. Labonoski was present as the estate would have to be part of this application if it is to go forward.

Member Trzcinski stated that she was concerned about the reference in paragraph 10 of the sales contract which states that the property could be used for commercial purposes. Mr. Smith said that the lawyers apparently put that in there. But he is looking to build a large building to store his cars and some farm equipment there. There would be no commercial use of the building at all. Possibly, it would be used for some agricultural purposes down the road. Mr. Smith said that he currently rents out buildings for storage. He would also use the building to store a delivery truck he uses for his business. He is looking for a parcel to use for storing things. They will keep the existing barn as well. They want to rip down the house because it would be too costly to renovate. It is also on the best part of the lot to build.

Members Shaughnessy and Wohlleber inquired why they could not build the house first. Kyle Smith, 36 Pennyroyal Road, Ballston Spa, stated that the house would be for him when he is older. He is only 21 now and not ready to start a family. The existing house is unlivable. The old barn will stay and also be used for storage.

Member Schmidt observed there was no site plan. Kevin Smith said they were not going to invest in a site plan until they were sure they would get the variance. Member Schmidt then inquired about the delivery truck which would be stored there. Mr. Smtih stated that he owns the Shop & Save in Schaghticoke. They also have a store in Ravena. They have a large panel truck that they sometimes in the business. They want to store it in this building.

The Chairman then asked Attorney Cioffi to read the statutory criteria for obtaining a use variance. Attorney Cioffi read the criteria directly from Section 267-b of the Town Law. He stated that a use variance is the most extreme relief the Board can grant and they are rarely granted. He explained that Mr. Smith could not establish that he could not get a reasonable return on the property by using it for a permitted principal use because he does not own the property and has no investment in it. And if he purchases the property and then seeks the variance, it would have to be denied because the need for the variance would have been self-created, as he is well aware of the zoning restrictions. Attorney Cioffi stated that the only party which could potentially seek a use variance is the owner, the estate. And even then, the estate would have to establish, among other things, that it could not obtain a reasonable return on its investment in the property by selling it, or using it, for a principal use which is allowed under the Zoning Ordinance. Here, the property is zoned for private dwellings and farms. The estate would have to show it could not get a reasonable return on its investment by selling it for those purposes. That would require competent financial proof of the estate's investment in the property, appraisals, proof of attempts to sell the property, and the like. It is a difficult burden.

Mr. Labonowski asked what the Board wants him to do to be able to sell the property to Mr. Smith. He understands that there may be legal requirements, but the Board should be there to help

him. He has marketed the property and has had other offers. But this is the best one. Attorney Cioffi stated that he is there to advise the Board on the law so it can properly consider and rule on the application. There was considerable further discussion between Attorney Cioffi and Mr. Labonowski regarding the Board looking at this strictly from a legal perspective.


Thomas McGrath said that he understands the need to dispose of the estate, but he is concerned that the disappearance of the house and erection of a commercial structure would change the character of the community. Attorney Cioffi noted that one of the criteria for the grant of a use variance was whether it would result in a change in the character of the community.

Mr. Smith stated that it is not a commercial building. Just storing his truck at that location does not make it a commercial building. He will not store groceries there. Mr. Labonowski asked how he can work with the Town to make this happen. He asked the Board a lot of questions about what could and could not be done on the property. Attorney Cioffi said that the matter now before the Board was a request for a use variance. The proper way to get other issues before the Board was to raise them first with the Code Enforcement Officer. Attorney Cioffi offered to meet with them as well. Mr. Smith stated that he wanted to keep the application open. Member Shaughnessy made a motion to continue the public hearing to the March 16, 2009, meeting.

There being no further business, Member Wohlleber made a motion to adjourn. Member Schmidt seconded. The motion carried 5 - 0.

Dated: Brunswick, N.Y.
March 7, 2009

Respectfully submitted,


THOMAS R. CIOFFI

Town Attorney - Zoning Board Secretary

NOTICE OF PUBLIC HEARING

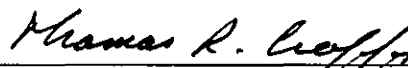
NOTICE IS HEREBY GIVEN that a Public Hearing of the Zoning Board of Appeals of the Town of Brunswick, Rensselaer County, New York, will be held on the 23rd day of February, 2009, at 6:00 P.M., at the Town Office Building located at 336 Town Office Road in the Town of Brunswick, on the appeal and petition of KEVIN SMITH, applicant, dated January 20, 2008, for a use variance pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the proposed construction of a barn for the storage of equipment and vehicles on a lot owned by the Estate of Sylvester Labonowski and located at 1692 State Highway 7, in the Town of Brunswick, because the proposed construction and the use of the lot for the storage of equipment and vehicles violates the Zoning Ordinance in that the storage of equipment and vehicles is not a permitted principal use in an A-40 District and may only be permitted by way of a use variance issued by the Zoning Board of Appeals.

FURTHER NOTICE IS HEREBY GIVEN that the said KEVIN SMITH, applicant, has filed said appeal and petition, and said appeal and petition are now on file in the Office of the Code Enforcement Officer, where the same may be inspected by all interested persons during regular business hours.

All persons interested in said appeal and petition will be heard at the above time and place.

Dated: Brunswick, New York
February 7, 2009

BY ORDER OF THE ZONING BOARD OF APPEALS OF THE TOWN OF BRUNSWICK



THOMAS R. CIOFFI

Town Attorney

TOWN OF BRUNSWICK
ZONING BOARD OF APPEALS

336 TOWN OFFICE ROAD, TROY, NEW YORK 12180

Phone: (518) 279-3461 -- Fax: (518) 279-4352

DRAFT MINUTES

A Meeting of the Zoning Board of Appeals of the Town of Brunswick, County of Rensselaer, State of New York, was held on April 20, 2009, at 6:00 P.M.

Present at the meeting were: Eric Wohlleber, Member
E. John Schmidt, Member
Caroline Trzcinski, Member
James Shaughnessy, Member
James Hannan, Chairman

Also present was Thomas R. Cioffi, Town Attorney and Zoning Board of Appeals Secretary, and Code Enforcement Officer John Kreiger. At 5:30 P.M., a Workshop Meeting was held wherein the Board Members reviewed files and discussed pending matters informally. The Regular Meeting was called to order at 6:00 P.M.

The first item of business was approval of the minutes of the February, 2009, meeting. Member Trzcinski made a motion to accept the Minutes as prepared. Member Shaughnessy seconded. The motion carried 5 - 0.

The next item of business was the appeal and petition of PETER ST. GERMAIN, applicant, dated March 19, 2009, for a variance pursuant to the Sign Law of the Town of Brunswick, in connection with the proposed construction of a free-standing sign advertising Brunswick Physical Therapy on a lot located at 4164 NY Route 2, owned by Partners in Family Medicine, because the proposed construction violates the Sign Law in that only one free standing sign is permitted and a free-standing sign already exists on the premises. Attorney cioffi read the Notice of Public Hearing aloud.

Peter St. Germain, 8 Empire Drive, Poestenkill, appeared. He stated that he is a Physical Therapist. He is renting space from the doctors at this location and he wants a sign to advertise his business. He is taking over the space formerly occupied by the X-ray business. Members Trzcinski and Shaughnessy stated that the sign for this business should be added to the existing sign or a new sign constructed advertising all the businesses operated at the premises. Mr. Germain said that the existing sign is old and does not draw attention. He does not know for sure how much his proposed sign will cost, but he thinks about \$800.00. He has not spoken to the doctors about adding his business to their sign. The current sign says "Tamarac Family Medical & Dental". The consensus of the Board was that it would be best if there were only one free-standing sign in front of the premises. Mr. St. Germain said that he would speak to the doctors about obtaining a new sign advertising all of the businesses. No one from the public wished to speak. Member Shaughnessy made a motion to continue the matter to the May 18, 2009, meeting. Member Wohlleber seconded.

The motion carried 5 - 0.

The next item of business was the appeal and petition of ROBERT DUNCAN, applicant, dated March 23, 2009, for a variance pursuant to the Sign Law of the Town of Brunswick, in connection with the proposed construction of a free-standing, off-premises sign advertising Duncan's Nursery and Vegetable Farm, which is located at 481 McChesney Avenue Ext., on a lot located at 736 Hoosick Road, owned by Judith Bisio, because the proposed construction violates the Sign Law in that advertising signs are not permitted to be located off the premises upon which the business being advertised is located. Attorney Cioffi read the Notice of Public Hearing aloud.

Robert Duncan appeared. He stated that he wants to have a 4' x 4' sign advertising the sale of his nursery and farm products from his farm on McChesney Avenue on property on Route 7 he is renting from Judith Bisio. He wants to have the sign up each year from May 1 through November 1. Attorney Cioffi stated that he spoke to Robert Sommers at the Department of Agriculture & Markets and was advised that the Agricultural Districts Law only provides protection for an off premises sign if the sign is located in the agricultural district. Here, the proposed sign is to be located on Route 7 and, according to Mr. Kreiger, would be outside the agricultural district. Therefore, Mr. Duncan can have the off premises sign only if he meets the criteria for a variance set forth in the Sign Law. Mr. Kreiger stated that the Bisio property is zoned commercial so having the sign there will not violate zoning.

Mr. Kreiger stated that Mr. Duncan had already obtained site plan approval from the Planning Board for his nursery and farm product sales business. Mr. Kreiger also stated that a referral was sent to County Planning over thirty (30) days ago, and there has been no response.

The Chairman stated that he wanted to go into private session to ask Attorney Cioffi some legal questions. Member Wohlleber made a motion to do so. Member Trzcinski seconded. The motion carried 5 - 0. In the private session, Attorney Cioffi responded to legal questions from the Board. No action was taken. The Chairman made a motion to return to regular session. Member Shaughnessy seconded. The motion carried 5 - 0.

The Board then considered the criteria for a variance. The first criteria is whether the variance is necessary for the reasonable use of the land and buildings. Mr. Duncan stated that about 800 - 1,000 cars go by his farm each day. He has been informed that about 20,000 cars per day go by the site where he wants to place the sign. Last year, his farm product and nursery business grossed about \$18,000.00. He believes he can do five times that if he has the sign on Route 7. He does not feel that he can make a success of his business without the sign.

The next criteria was whether the variance was in harmony with the general purposes of the Sign Law. The Board noted that the Sign Law does permit temporary signs advertising farm products, but not specifically off premises signs. Mr. Duncan said that he would be happy to put a display of some of the products he is offering on the lot where the sign is to be located.

The next criteria was whether the variance would cause a detriment to the neighborhood or nearby properties. Mr. Duncan said, if anything, he will add to the neighborhood. The Board noted that there are many signs on Route 7. This one is not large or obtrusive. The Board also noted that

there are at least two other off premises signs for agricultural businesses in the area, which have been there for many years. There is a sign for Spiak's Greenhouse on Mickel Hill Road. There is also a sign on Route 7 advertising the "Garlic Lady". These signs are seasonal and have been there for years.

The next criteria is whether the owner will sustain practical difficulty and unnecessary hardship absent the variance. Mr. Duncan said he cannot make a go of his business without the sign on Route 7. Mr. Duncan stated that he has heavily invested in this business. He has already built 4 greenhouses at a cost of some \$80,000.00. He feels that only with the added sales generated by the proposed sign, can he recoup his investment.

The consensus of the Board is that Mr. Duncan has satisfied the criteria for the variance. Mr. Duncan agreed that the sign would be only up from May 1 through November 1 each year. The sign would be limited to advertising his nursery and vegetable business. This will be the only off premises sign he requests for this business.

Chairman Hannan offered a Resolution granting the variance as requested on the following conditions:


1. Mr. Duncan will place a display on the Bisio property in the vicinity of the sign, showing some of the products being offered for sale at his farm;
2. Only farm and nursery products can be mentioned on the sign - no other businesses - and specifically not Mr. Duncan's boat and auto storage business;
3. The sign be seasonal and temporary in nature - it shall be up only from May 1 through November 1 each year;
4. Mr. Duncan will request no other off premises signs for this business.

Member Schmidt seconded. The resolution was put to a roll call vote and all voted in the affirmative. The Resolution carried.

There being no further business, Member Shaughnessy made a motion to adjourn. Member Wohlleber seconded. The motion carried 5 - 0.

Dated: Brunswick, N.Y.
April 25, 2009

Respectfully submitted,


THOMAS R. CIOFFI
Town Attorney - Zoning Board Secretary

NOTICE OF PUBLIC HEARING


NOTICE IS HEREBY GIVEN that a Public Hearing of the Zoning Board of Appeals of the Town of Brunswick, Rensselaer County, New York, will be held on the 20th day of April, 2009, at 6:00 P.M., at the Town Office Building located at 336 Town Office Road in the Town of Brunswick, on the appeal and petition of PETER ST. GERMAIN, applicant, dated March 19, 2009, for a variance pursuant to the Sign Law of the Town of Brunswick, in connection with the proposed construction of a free-standing sign advertising Brunswick Physical Therapy on a lot located at 4164 NY Route 2, owned by Partners in Family Medicine, because the proposed construction violates the Sign Law in that only one free standing sign is permitted and a free-standing sign already exists on the premises.

FURTHER NOTICE IS HEREBY GIVEN that the said PETER ST. GERMAIN, applicant, has filed said appeal and petition, and said appeal and petition are now on file in the Office of the Code Enforcement Officer, where the same may be inspected by all interested persons during regular business hours.

All persons interested in said appeal and petition will be heard at the above time and place.

Dated: Brunswick, New York
April 1, 2009

BY ORDER OF THE ZONING BOARD OF APPEALS OF THE TOWN OF BRUNSWICK


THOMAS R. CIOFFI
Town Attorney

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a Public Hearing of the Zoning Board of Appeals of the Town of Brunswick, Rensselaer County, New York, will be held on the 20th day of April, 2009, at 6:00 P.M., at the Town Office Building located at 336 Town Office Road in the Town of Brunswick, on the appeal and petition of ROBERT DUNCAN, applicant, dated March 23, 2009, for a variance pursuant to the Sign Law of the Town of Brunswick, in connection with the proposed construction of a free-standing, off-premises sign advertising Duncan's Nursery and Vegetable Farm, which is located at 481 McChesney Avenue Ext., on a lot located at 736 Hoosick Road, owned by Judith Bisio, because the proposed construction violates the Sign Law in that advertising signs are not permitted to be located off the premises upon which the business being advertised is located.

FURTHER NOTICE IS HEREBY GIVEN that the said ROBERT DUNCAN, applicant, has filed said appeal and petition, and said appeal and petition are now on file in the Office of the Code Enforcement Officer, where the same may be inspected by all interested persons during regular business hours.

All persons interested in said appeal and petition will be heard at the above time and place.

Dated: Brunswick, New York
April 1, 2009

BY ORDER OF THE ZONING BOARD OF APPEALS OF THE TOWN OF BRUNSWICK



THOMAS R. CIOFFI
Town Attorney

TOWN OF BRUNSWICK
ZONING BOARD OF APPEALS

336 TOWN OFFICE ROAD, TROY, NEW YORK 12180

Phone: (518) 279-3461 -- Fax: (518) 279-4352

DRAFT MINUTES

A Meeting of the Zoning Board of Appeals of the Town of Brunswick, County of Rensselaer, State of New York, was held on May 18, 2009, at 6:00 P.M.

Present at the meeting were: Eric Wohlleber, Member
E. John Schmidt, Member
James Shaughnessy, Member

Also present was Thomas R. Cioffi, Town Attorney and Zoning Board of Appeals Secretary, and Code Enforcement Officer John Kreiger. Member Trzcinski and Chairman Hanna were absent. At 5:30 P.M., a Workshop Meeting was held wherein the Board Members reviewed files and discussed pending matters informally. The Regular Meeting was called to order at 6:10 P.M.

The first item of business was election of a temporary Chairman to conduct the meeting in the absence of Chairman Hannan. Member Wohlleber made a motion to elect Member Shaughnessy as temporary Chairman. Member Schmidt seconded. The motion carried 3 - 0.


The next item of business was approval of the Minutes of the April, 2009, meeting. One correction was noted. On the first page, third full paragraph, second to last line, the name "cioffi" should have been capitalized. Member Shaughnessy made a motion to accept the Minutes as amended. Member Wohlleber seconded. The motion carried 3 - 0.

The next item of business was the appeal and petition of PETER ST. GERMAIN, applicant, dated March 19, 2009, for a variance pursuant to the Sign Law of the Town of Brunswick, in connection with the proposed construction of a free-standing sign advertising Brunswick Physical Therapy on a lot located at 4164 NY Route 2, owned by Partners in Family Medicine, because the proposed construction violates the Sign Law in that only one free standing sign is permitted and a free-standing sign already exists on the premises. The Board noted that the applicant was not present. Member Shaughnessy made a motion to continue the matter to the June 21, 2009, meeting. Member Schmidt seconded. The motion carried 3 - 0.

There being no further business, Member Wohlleber made a motion to adjourn. Member Shaughnessy seconded. The motion carried 3 - 0.

Dated: Brunswick, N.Y.
June 30, 2009

Respectfully submitted,


THOMAS R. CIOFFI

Town Attorney - Zoning Board Secretary

TOWN OF BRUNSWICK
ZONING BOARD OF APPEALS

336 TOWN OFFICE ROAD, TROY, NEW YORK 12180

Phone: (518) 279-3461 -- Fax: (518) 279-4352

DRAFT MINUTES

A Meeting of the Zoning Board of Appeals of the Town of Brunswick, County of Rensselaer, State of New York, was held on July 20, 2009, at 6:00 P.M.

Present at the meeting were: Eric Wohlleber, Member
Caroline Trzcinski, Member
James Hannan, Chairman

Members Schmidt and Shaughnessy were absent. Also present was Thomas R. Cioffi, Town Attorney and Zoning Board of Appeals Secretary, and Code Enforcement Officer John Kreiger. At 5:30 P.M., a Workshop Meeting was held wherein the Board Members reviewed files and discussed pending matters informally. The Regular Meeting was called to order at 6:00 P.M.

The first item of business was approval of the minutes of the May, 2009, meeting. There were no corrections. Member Trzcinski made a motion to accept the minutes. The Chair seconded. The motion carried 3 - 0.

The next item of business was consideration of the referral from the Town Board of the Berkshire Properties LLC planned development district application. William Doyle, Esq., appeared for the applicant. Mr. Doyle explained that the proposed planned development district comprises 26 acres located on Route 7, west of Betts Road. Some of the property is commercially zoned and some is A-40. This is essentially the site formerly proposed for a Super Wal-Mart which never went forward.

There are three major uses proposed. First, a 13 acre parcel is proposed to be subdivided into 7 residential lots of various sizes. They are to be single family homes with individual on-site wells and septic systems. Second, a 5 acre parcel adjacent to the Brunswick Little League is proposed to be turned over to the Town to be used for sports and recreation purposes. Third, a 7 acre parcel will be divided into 2 lots which will be used for commercial purposes. One lot will have a 6,000 sq.ft. commercial building adjacent to Route 7. It is intended to be used as a restaurant, bank or the like. The other lot will have a 30,000 sq.ft. retail commercial facility. Ingress and egress will be from Betts Road. The applicant does not know at this point the specific commercial uses which will be built on those parcels or what companies will occupy the space. It will market the space to interested companies. The commercial buildings will be served by municipal water and sewer. The applicant is currently having the wetlands on the site delineated.

The land to be conveyed to the Town will be in a basically undeveloped state. Member Wohlleber observed that the proposed parking on the C-2 commercial parcel appears scattered. Mr. Doyle explained that they have to deal with the setbacks from the wetlands. He also stated that the

building on the C-2 parcel might be a retail plaza as opposed to a single establishment. It could also be a restaurant. They are having trouble finding an end-user. They are looking a family restaurant chain or the like.

As to the residential parcels, they had to be big enough for individual well and septic as there is no plan at this time to extend the municipal services to that portion of the site. Large, upscale homes of 3,000 sq.ft. or more, are proposed. There are wetlands on the land proposed to be donated to the Town. It is unclear exactly how much of the land will be usable by the Town because of this, although they are trying to optimize the donated lot to take account of the wetlands. The Town will need to get access from the Little League to get to the donated parcel.

Chairman Hannan stated that the parking appears to be scattered and, possibly, inadequate. A restaurant on the site would be welcome. He stated that he is not sure about the residential proposal. The lots are very diverse in size.

There was then a further discussion of the adequacy of the parking on the commercial parcels. Mr. Doyle said that the C-1 parcel will have 30 spaces and the C-2 parcel will have 150 spaces. He will check with the engineers to see if this meets all standards.


Kathy Betzinger, 1 Valley View Drive, stated that she would prefer to see senior housing on the residential parcel unless the residential building lots could be made bigger.

The Chairman stated that the matter would be considered further at the August 17 meeting.

There being no further business, Member Trzcinski a motion to adjourn. Member Wohlleber seconded. The motion carried 3 - 0.

Dated: Brunswick, N.Y.
July 30, 2009

Respectfully submitted,


THOMAS R. CIOFFI
Town Attorney - Zoning Board Secretary

TOWN OF BRUNSWICK
ZONING BOARD OF APPEALS

336 TOWN OFFICE ROAD, TROY, NEW YORK 12180

Phone: (518) 279-3461 -- Fax: (518) 279-4352

DRAFT MINUTES

A Meeting of the Zoning Board of Appeals of the Town of Brunswick, County of Rensselaer, State of New York, was held on August 17, 2009, at 6:00 P.M.

Present at the meeting were: Eric Wohlleber, Member
Caroline Trzcinski, Member
James Shaughnessy, Member
E. John Schmidt, Member
James Hannan, Chairman

Also present was Thomas R. Cioffi, Town Attorney and Zoning Board of Appeals Secretary, and Code Enforcement Officer John Kreiger. At 5:30 P.M., a Workshop Meeting was held wherein the Board Members reviewed files and discussed pending matters informally. The Regular Meeting was called to order at 6:00 P.M.

The first item of business was approval of the minutes of the July, 2009, meeting. There were no corrections. Member Trzcinski made a motion to accept the minutes. Member Wohlleber seconded. The motion carried 5 - 0.

The next item of business was the appeal and petition of UPSTATE ASSOCIATES, applicant, dated July 8, 2009, for an area variance pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the proposed construction of a 24' x 12' shed on a lot owned by Cortland Oneida LLC and located at 4 Oneida Avenue, in the Town of Brunswick, because the proposed construction violates the rear yard setback in a B-15 District in that 30 feet is required and 15 feet is proposed. Attorney Cioffi read the Notice of Public Hearing aloud.

Barry Thompson, 255 North Lake Avenue, stated that he owns Upstate Associates, which is a landscaping business. He leases the property at 4 Oneida Avenue for his business. He said that he wants to put in a small display area in front of a shed which is on consignment from a vendor. It is a good size shed. There would be no foundation. It is not a permanent structure. The display area would show retaining walls, outside kitchens, and brick work. He is selling the shed on consignment, but he would store things in there in the mean time. If he moves the shed forward to comply with the rear setback, he will lose his display area. Mr. Thompson said he could do with a smaller shed if necessary.

It was noted by the Board that Mr. Thompson had applied to the Planning Board for site plan approval and that the Planning Board had directed him here when it was observed that the shed violated the rear yard setback.

There were no comments from the public. Mr. Thompson produced a letter from the owner of property abutting to the rear stating that he had no objection to the variance. Mr. Kreiger stated that the referral to the County Planning Office came back indicating that local considerations should prevail.

Member Shaughnessy made a motion to classify the matter an unlisted action under SEQRA. Member Trzcinski seconded. The motion carried 5 - 0. Attorney Cioffi led the Board through the short-form EAF. No significant environmental impacts were noted. Member Hannan then made a motion to issue a negative declaration of significance under SEQRA. Member Schmidt seconded. The motion carried 5 - 0. Member Shaughnessy thereupon offered a Resolution granting and approving the variance as requested. Member Trzcinski seconded. Chairman Hannan put the matter to a roll call vote and all Members voted in the affirmative.

The next item of business was further consideration of the referral from the Town Board of the Berkshire Properties LLC planned development district application. William Doyle, Esq., appeared for the applicant. Mr. Doyle said that he was here to answer any further questions. There were none. The Board stated there would likely be a decision on the referral at the next meeting.

The next item of business was the appeal of PHILIP CHIEFARI, owner-appellant, dated July 22, 2009, from the Order of the Code Enforcement Officer of the Town of Brunswick dated June 9, 2009, directing that all commercial and business activity, including small engine service, repair and sales under the business name "Lawnmower Guy" on the premises owned by the owner-appellant, located at 260 South Lake Avenue, in the Town of Brunswick, be ceased, because the said premises are located in a residential zone in which commercial uses are not permitted under the Zoning Ordinance of the Town of Brunswick. Attorney Cioffi read the Notice of Public Hearing aloud.

Philip Chiefari appeared. He stated that 5 years ago he decided that he needed to do a home-based business. He stated that he was verbally told by the Town of Brunswick that he could operate his business from his home. He filed a "D.B.A." with the County, obtained a State Sales Tax No., and a federal tax ID. He advertises his business in The Record Yellow Pages. He presented the board with a petition from satisfied customers who want him to stay open. He also has a lot of receipts to show that people who live on South Lake Avenue use his services. Earlier this year, he received a letter from the Code Enforcement Officer pertaining to junk and rubbish on the site. Two weeks later he received a cease and desist order from the Code Enforcement Officer stating that he could no longer operate his business. At that time, he had 15 lawnmowers in for repair. He got permission from the Town to finish fixing them. He has limited hours. Two anonymous letters got this started. He denies that he opens his business at 6:00 A.M. and works until 10:00 P.M. He does not know who he spoke with from the Town when he claims to have received permission to operate the business from his home.

John Kreiger, the Code Enforcement Officer stated that in January 2009, he received an anonymous complaint stating that a small engine service, repair and sales business was being operated at 260 South Lake Avenue, a residentially-zoned area. He went to the location and could see nothing from the road except for a sign on the mailbox stating the name of the business. He received another anonymous letter in March. Then an owner of a nearby property called complaining about the business operation and sent in pictures. He met with Mr. Chiefari on June 3. From his

observations and conversations with Mr. Chiefari, and review of Mr. Chiefari's internet website, he determined that Mr. Chiefari services and repairs small engines at the site and also sells new and used lawnmowers. The garage had lawnmowers in it. There were three racks of used mowers on the site which were being used for parts or were for sale. There were piles of metal outside being held as scrap. There were racks of firewood. There was also a swimming pool which has lawnmowers in it. He cited Mr. Chiefari for the storage of junk and debris on his property. He also advised Mr. Chiefari that it was likely that he was illegally operating a business in a residential zone. On June 9, 2009, after concluding that Mr. Chiefari's business operations did not meet the criteria for a "Home Occupation" under the Zoning Ordinance, he issued an order to Mr. Chiefari advising him that he was illegally operating the business and directing him to cease all business operations at that location.

Mr. Chiefari stated that everything noted by Mr. Kreiger was covered. All lawnmowers were covered. There is also a 6 foot privacy fence at his property. Someone trespassed on his property to take pictures.

The Chairman opened the floor to people who wished to speak in favor of permitting Mr. Chiefari to continue to operate his business. Tony Cerrulli, 5 Oxford Road, stated that he lives adjacent to the rear of Mr. Chiefari's property. He has never had a problem with mowers running early in the morning or late at night. There is no traffic there. There is a privacy fence at the rear of Mr. Chiefari's property. There is minimal impact on the neighborhood. Bill Broderick, 528 Garfield Road, stated that he is a customer and friend of Mr. Chiefari. These complaints are from people who moved in after the business started operating. He stated that there were always small businesses in this area. Mr. Chiefari never tried to hide anything. Ann Zugalla, 6 Oxford Road, stated that she had no issues with the business. There is no noise or smell. John Elliott, 29 Pickering Lane, said that he is a customer and Mr. Chiefari does a good job. His property is neat and tidy. Lane Zugalla, 6 Oxford Road, stated that he has known Mr. Chiefari for years. This business is his only source of income. He does a good job. Stuart Eaton, 272 South Lake, stated that he has lived there for 43 years. The area has always been residential and commercial. Bill Vaughn ran a television repair shop at 258 south Lake for years. Mike Fisher, 210 South Lake, stated that he is a neighbor and customer. He has been to Mr. Chiefari's place of business. There was no mess, no foul odors, and he never heard any engine running before 9:00 A.M. Russ Testo, 3 Oxford Road, stated that he has observed no problem with noise or any illegal activities there. Mr. Chiefari is very knowledgeable about mowers and his business is good for the area. Dick Wood, Town of Bethlehem, stated that he is Mr. Chiefari's uncle. Phil told him that he had checked things out with the Town and got an OK before he started the business. The lawnmower business is seasonal, not 24 -7. Although the business does generate scrap, Phil gets rid of it when he can. The property needed repair when they bought it. The swimming pool that has mowers in it was not a "working pool". He has seen Phil turn away customers. He works by appointment only. He has never seen more than 2 or 3 cars there on any given day. Susan Blais, 10 Checkerberry Lane, said that she was there once on a social occasion and saw no evidence that a business was being operated. Linda Comstock, 3689 Route 2, stated that Mr. Chiefari has good character and is an asset to the community. She has never observed any equipment outside or any smells. John Lareau, 145 Brunswick Road, said that he is an occasional customer, with no personal agenda. He is annoyed about the anonymous complaints. There have been other businesses on South Lake though he does not know any details. Andrea Hobura, 210 South Lake, stated that there used to be a flower shop

on South Lake Drive. Paul Rapp, 7 Oxford Road, stated that he is located directly behind Mr. Chiefari. He has lived there for 28 years. Chiefari is a good neighbor. There is a fence around all of his material. Everything is always locked up. Brunswick has always had small businesses. Machnick used to run his business completely out of his house. Realtors and lawyers had offices in the area. There is no stream of traffic. Bill Vaughn ran a TV repair shop in his house on South Lake. Janet Roberts, 40 Miracle Lane, Loundonville, stated that she spends a lot of time at 70 Oxford Lane. She finds Mr. Chiefari to be a fine young man who just wants to earn a living. He never starts work before 10:00 A.M., he works by appointment only, and he would never cheat you. There is no noise. There is no traffic. Mike Beditz, 169 South Lake, said that he does not respect anonymous letters, and neither should the Board. Everyone has lawnmowers, weed whackers and blowers. There was once a filling station on South Lake near the curve. Another man in the area sold cars. There is also a U.S. military facility on South Lake. Lori Cerrulli, 5 Oxford Road, stated that Mr. Chiefari is a good neighbor and friend. He never disrespects customers.

The Chairman then opened the floor to those who wished to speak against permitting Mr. Chiefari to continue to operate his business. William Piazza, 268 South Lake, said that he has lived there for 51 years. If Phil can fix lawnmowers, why can't he sell cars on his lot. If this is permitted, the neighborhood will turn into a commercial area like Hoosick Street. Brian McVay, 264 South Lake, said that his house is located very close to Phil's back door. Their houses are very close together. His back yard abuts Phil's back yard and Phil's business is right in his back yard. The noise from the motors Phil is working on is right on top of him. He can't enjoy his own back yard. The odors from Phil's property are out of line. For the past four years they have had an uneasy truce. He had to put up a fence. He was friendly with Phil until Phil tried to re-zone the neighborhood. He was not aware when he moved in that this was a full-time business. He thought it was a hobby and that Phil repaired lawnmowers for friends. He was not aware that Phil was the sole breadwinner in his family as has been stated. He believes Phil's wife works for Albany Medical Hospital. The other people who spoke earlier and praised Phil's business do not live as close to it as he does. There are stale gasoline and oil smells coming from Phil's property. The visual impacts are abated by the fence. He is not home during the day or on Saturdays, so he can't say how noisy it is then. Late Saturday afternoons, and Sundays, he would want to sit out in his yard but the odors from Phil's garage bother him. His sitting area is only 20 feet from Phil's garage. A lot of junk and debris that was stored on the property has recently been removed. Terry Scriven, 284 South Lake Avenue, stated that what people are missing is that this is a residential area. Having a business in a neighborhood means more traffic. This is a quiet, residential area. Bill Vaughn, who people mentioned had repaired televisions at his house on South Lake, did so back in the 1980's, not recently. Maybe no one ever complained about it. Thomas Gavigan, 258 South Lake, lives adjacent to Mr. Chiefari. About one and one-half years ago, he moved out of the City of Troy to get away from the City noise. There was a large green bin containing scrap metal sitting in Mr. Chiefari's driveway from February 2008 to the time he was cited by the Town. Before he moved to Brunswick, he checked out the zoning in the area and made sure it was residential only. This is a quality of life issue for him.. It is not about the quality of Mr. Chiefari's work or his character. The business operates randomly every day of the week. What Mr. Chiefari claims about Saturday hours is untrue. It is also not true that he operates by appointment only. There have been people in cars in Mr. Chiefari's yard blowing their horns at 6:00 A.M. to 7:00 A.M. He has observed Mr. Chiefari zip-tying lawnmowers to make them run continuously while trying to fix them. There have been occasions where he has been unable to turn into his own driveway because it is blocked by Mr.

Chiefari's customers. Traffic backs out from Chiefari's driveway onto South Lake, which is a traffic hazard. Chiefari's customers also park on land he owns across the street. His customers sometimes come onto his property, thinking it is the lawnmower business. He has even had one person walk right into his home, thinking it was Chiefari's workshop. If there are no fumes associated with Chiefari's business, why can't he just work inside. If Chiefari wanted to operate a business, why didn't he buy property in a commercial area. Having a lot of customers and friends does not make this business legal. It has an effect on the value of his property. There is always junk stored on the property. There should not be customer traffic and customer visits in this area. The people on Oxford Road who think this business is great live 75 - 100 yards away - not right next door, like he does. People, like Barry Thompson who was on the agenda earlier this evening for his business on Oneida Avenue, who operate businesses have to go before the Planning Board for site plan approval, where requirements are imposed to control things like noise, odors, traffic. Mr. Chiefari did not go through site plan approval. This business alters the character of the neighborhood. If other are permitted to do this, the neighborhood will become a mini - Hoosick Street. Even though the Town issued a cease and desist order, Chiefari continues even to date to have people come to his home to do business. Christa McVay, 264 South Lake, said that she lives right next to Chiefari on the driveway side. She moved there in May 2005. They learned about the business only after they moved in. Customers trespass on their property to get to Chiefari's business. Customers looking for Chiefari's business block her driveway. Customers sometimes become abusive. She has asked Mr. Chiefari repeatedly to tone down the noise. His business is all she can see when she goes out of her house. She wants her child to be able to use her back yard without worrying about fumes and chemical odors coming from Chiefari's. This is a noise and safety issue. Mr. Chiefari can rent a garage in a commercial zone to operate his business.

Mr. Chiefari said he does not zip-tie motors, but he does let the motors run to get them to warm up when he is working on them. He later admitted that once or twice a day he does zip-tie a motor, but only to get it to warm up. He does not let them run till they run out of gas. His garage is not heated. This time of year he only has time to work on lawnmowers, so he just collects the scrap until he has a load large enough to make it worthwhile to sell. He is not aware of any smells coming out of his garage.

The Board noted the investigation reports filed by the Code Enforcement Officer as well as the documents submitted by Mr. Chiefari and others. Member Trzcinski made a motion to close the public hearing. Member Wohlleber seconded. The motion carried 5 - 0. The Chairman stated that a written decision would be issued.

There being no further business, the Chairman made a motion to adjourn. Member Shaughnessy seconded. The motion carried 5 - 0.

Dated: Brunswick, N.Y.
September 15, 2009

Respectfully submitted,



THOMAS R. CIOFFI

Town Attorney - Zoning Board Secretary

NOTICE OF PUBLIC HEARING

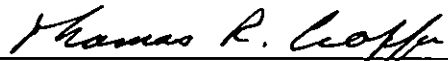
NOTICE IS HEREBY GIVEN that a Public Hearing of the Zoning Board of Appeals of the Town of Brunswick, Rensselaer County, New York, will be held on the 17th day of August, 2009, at 6:00 P.M., at the Town Office Building located at 336 Town Office Road in the Town of Brunswick, on the appeal of PHILIP CHIEFARI, owner-appellant, dated July 22, 2009, from the Order of the Code Enforcement Officer of the Town of Brunswick dated June 9, 2009, directing that all commercial and business activity, including small engine service, repair and sales under the business name "the Lawnmower Guy" on the premises owned by the owner-appellant, located at 260 South Lake Avenue, in the Town of Brunswick, be ceased, because the said premises are located in a residential zone in which commercial uses are not permitted under the Zoning Ordinance of the Town of Brunswick.

FURTHER NOTICE IS HEREBY GIVEN that the said PHILIP CHIEFARI, owner-appellant, has filed said appeal, and said appeal is now on file in the Office of the Code Enforcement Officer, where the same may be inspected by all interested persons during regular business hours.

All persons interested in said appeal will be heard at the above time and place.

Dated: Brunswick, New York
July 30, 2009

BY ORDER OF THE ZONING BOARD OF APPEALS OF THE TOWN OF BRUNSWICK



THOMAS R. CIOFFI

Town Attorney

NOTICE OF PUBLIC HEARING

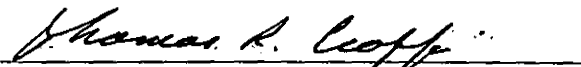
NOTICE IS HEREBY GIVEN that a Public Hearing of the Zoning Board of Appeals of the Town of Brunswick, Rensselaer County, New York, will be held on the 17th day of August, 2009, at 6:00 P.M., at the Town Office Building located at 336 Town Office Road in the Town of Brunswick, on the appeal and petition of UPSTATE ASSOCIATES, applicant, dated July 8, 2009, for an area variance pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the proposed construction of a 24' x 12' shed on a lot owned by Cortland Oneida LLC and located at 4 Oneida Avenue, in the Town of Brunswick, because the proposed construction violates the rear yard setback in a B-15 District in that 30 feet is required and 15 feet is proposed.

FURTHER NOTICE IS HEREBY GIVEN that the said UPSTATE ASSOCIATES, applicant, has filed said appeal and petition, and said appeal and petition are now on file in the Office of the Code Enforcement Officer, where the same may be inspected by all interested persons during regular business hours.

All persons interested in said appeal and petition will be heard at the above time and place.

Dated: Brunswick, New York
July 30, 2009

BY ORDER OF THE ZONING BOARD OF APPEALS OF THE TOWN OF BRUNSWICK



THOMAS R. CIOFFI
Town Attorney

TOWN OF BRUNSWICK
ZONING BOARD OF APPEALS

336 TOWN OFFICE ROAD, TROY, NEW YORK 12180
Phone: (518) 279-3461 -- Fax: (518) 279-4352

DRAFT MINUTES

A Meeting of the Zoning Board of Appeals of the Town of Brunswick, County of Rensselaer, State of New York, was held on September 21, 2009, at 6:00 P.M.

Present at the meeting were: Eric Wohlleber, Member
Caroline Trzcinski, Member
James Shaughnessy, Member
E. John Schmidt, Member
James Hannan, Chairman

Also present was Thomas R. Cioffi, Town Attorney and Zoning Board of Appeals Secretary. Code Enforcement Officer John Kreiger was absent. At 5:30 P.M., a Workshop Meeting was held wherein the Board Members reviewed files and discussed pending matters informally. The Regular Meeting was called to order at 6:00 P.M.

The first item of business was approval of the minutes of the August, 2009, meeting. There were no corrections. Member Trzcinski made a motion to accept the minutes. Member Shaughnessy seconded. The motion carried 5 - 0.

Member Wohlleber then made a motion to go into private session to ask legal questions of the Town Attorney. Member Shaughnessy seconded. The motion carried 5 - 0. The private session followed. No action was taken. Member Shaughnessy made a motion to return to regular session. Member Trzcinski seconded. The motion carried 5 - 0.

The next item of business was further consideration of the referral from the Town Board of the Berkshire Properties LLC planned development district application. William Doyle, Esq., appeared for the applicant. Attorney Cioffi stated that the Board had before it a draft written Determination regarding the referral as well as a draft Resolution adopting the same. Attorney Cioffi read the draft Determination aloud. The Determination was to make a favorable recommendation to the Town Board on the PDD application. Chairman Hannan thereupon offered the resolution adopting the draft Determination. Member Trzcinski seconded. The resolution was put to a roll call vote and all voted in the affirmative. A copy of the Resolution and Determination are attached to these Minutes.

The next item of business was further consideration of the appeal of PHILIP CHIEFARI, owner-appellant, dated July 22, 2009, from the Order of the Code Enforcement Officer of the Town of Brunswick dated June 9, 2009, directing that all commercial and business activity, including small engine service, repair and sales under the business name "Lawnmower Guy" on the premises owned by the owner-appellant, located at 260 South Lake Avenue, in the Town of Brunswick, be ceased,

because the said premises are located in a residential zone in which commercial uses are not permitted under the Zoning Ordinance of the Town of Brunswick. Attorney Cioffi stated that the Board had before it a draft written Decision regarding the appeal as well as a draft Resolution adopting the same. Attorney Cioffi read the draft Decision aloud. The Decision was to deny the appeal and uphold the order of the Code Enforcement Officer. Member Wohlleber thereupon offered the resolution adopting the draft Decision. Member Schmidt seconded. The resolution was put to a roll call vote and all voted in the affirmative. A copy of the Resolution and Decision are attached to these Minutes.

The next item of business was the appeal and petition of LISA LAJEUNESSE, owner-applicant, dated August 4, 2009, for an area variance pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the proposed construction of a prefabricated shed on a lot located at 13 LedgeWood Drive, in the Town of Brunswick, because the proposed construction violates the rear yard setback in an R-15 District in that 20 feet is required and 6 feet is proposed. Attorney Cioffi read the Notice of Public Hearing aloud.

Lisa Lajeunesse appeared. She stated that where she wants to put the shed is the only flat area on her lot. The rest is at a grade. She stated that Nancy Alund, the adjoining owner to the rear, told her that she has no objection.

The Board noted that no one from the public wished to speak for or against the application. Member Schmidt stated that he felt the shed would be too close to the line. The Chairman asked whether the shed would be used for any business purpose. The applicant stated it would be used to only to store equipment.

Member Wohlleber made a motion to classify the matter a Type 2 action under SEQRA. Member Schmidt seconded. The motion carried 5 - 0. Member Trzcinski thereupon offered a Resolution approving the variance as requested. Member Wohlleber seconded. The Resolution carried 5 - 0.

The next item of business was the appeal and petition of SCOTT RUCCHAR, owner-applicant, dated August 26, 2009, for an area variance pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the proposed construction of a barn on a lot located at 9 Moonlawn Road, in the Town of Brunswick, because the proposed construction violates the maximum height for an accessory structure in an R-15 District in that a maximum height of 15 feet is permitted but 20 feet is proposed. Attorney Cioffi read the Notice of Public Hearing aloud.

Scott Ruchar appeared. He wants to construct a pole barn for storage. He plans to put a boat in there, as well as a flat bed truck, lawnmowers, a roto-tiller, and a snow blower. It will not be used for business. Bob Cipperly, 25 Moonlawn Road, stated that this is a residential area and he wants to know what the pole barn will really be used for. Mr. Ruchar stated that the floor of the barn will initially be crushed stone, possibly concrete later. He wants the building to be high so he will have clearance to store things. He wants 12 feet in height, from floor to ceiling. He is going to build it himself.

Attorney Cioffi read the criteria for granting area variances. Chairman Hannan made a

motion to continue the public hearing to October 19, 2009. Member Shaughnessy seconded. The motion carried 5 - 0.

The next item of business was the application for a zoning permit of NEAL NORTON and KAREN NORTON, applicants, dated August 24, 2009, for a special use permit pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the proposed renovation of an existing single family residence located at 216 Grange Road, in the Town of Brunswick, to include a one (1) bedroom apartment, because multiple dwellings are only allowed in the Town of Brunswick by way of a special use permit issued by the Zoning Board of Appeals. Attorney Cioffi read the Notice of Public Hearing aloud.

Neal Norton, Alex Road, Latham, New York, appeared. He and his wife want to buy this property and renovate it. It is a 3800 sq. ft. home with 7 bedrooms. They want to make it into a duplex. There will be a 3 bedroom home which they will live in and a 1400 sq. ft., one bedroom, apartment which they will rent out. They will ask \$1,000 - \$1,200 per month in rent. The septic system and well are in good working order. However, the building is deteriorating. They do not plan to change the outside of the house except to take out a widow and replace it with a door for the apartment. There is garage parking for 5 cars.

The house has been on the market a long time. No one wants to buy such a large single family house. The Chairman read into the record a letter for Gary Doyle Realty. Essentially, the letter indicated that they can't sell the house because it is too large, although they have shown it 43 times. The Chairman also read into the record a letter from Thomas and Kathleen Hamlin, the current owners of the property. Essentially, the letter stated that a 7 bedroom, 3 ½ half bath house is too large for most families, and that the proposed apartment will not affect the neighbors. Mr. Norton indicated that the current owners paid \$200,000 for the house. They have offered \$175,000. They are not planning to buy the house and then sell it, although they may sell it someday.

Member Shaughnessy made a motion to go into private session to ask legal questions of the Town Attorney. Member Schmidt seconded. The motion carried 5 - 0. The private session followed. No action was taken. Member Shaughnessy made a motion to return to regular session. Member Schmidt seconded. The motion carried 5 - 0.

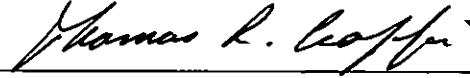
Gail Lenihan, Eddy Lane, stated that she has walked the property. It is a nice old building. It is in disrepair and will not last long if not renovated. An unoccupied building is no benefit to the Town. Only the interior will change.

Member Shaughnessy made a motion to classify the matter a Type 2 action under SEQRA. Member Wohlleber seconded. The motion carried 5 - 0. Member Trzcinski thereupon offered a Resolution to grant the special use permit on the condition that the property be at all times owner occupied. Member Shaughnessy seconded. The Resolution carried 5 - 0.

There being no further business, Member Shaughnessy made a motion to adjourn. Member Wohlleber seconded. The motion carried 5 - 0.

Dated: Brunswick, N.Y.
October 12, 2009

Respectfully submitted,

A handwritten signature in cursive script, reading "Thomas R. Cioffi". The signature is written in black ink and is positioned above a horizontal line.

THOMAS R. CIOFFI
Town Attorney - Zoning Board Secretary

**TOWN OF BRUNSWICK
ZONING BOARD OF APPEALS**

REGULAR MEETING

September 21, 2009

RESOLUTION ADOPTING DETERMINATION

WHEREAS, an application for the establishment of a planned development district (PDD) from Berkshire Properties, LLC, concerning property located on New York State Route 7 and Betts Road, more specifically Rensselaer County Tax Map parcels 91.00-2-15 and 91.00-2-26.1, having been filed; and

WHEREAS, the Town Board having referred the application to this Board for comment; and

WHEREAS, the Board having caused to be prepared a written Response to Referral with respect to the said referral, which is annexed hereto; now, therefore, after due deliberation

BE IT RESOLVED, that the annexed Response to Referral be and hereby is approved and adopted in all respects.

The foregoing Resolution which was offered by Chairman Hannan and seconded by Member Trzcinski, was duly put to a roll call vote as follows:

MEMBER WOHLLEBER	VOTING	Aye
MEMBER SCHMIDT	VOTING	Aye
MEMBER SHAUGHNESSY	VOTING	Aye
MEMBER TRZCINSKI	VOTING	Aye
CHAIRMAN HANNAN	VOTING	Aye

The foregoing Resolution was thereupon declared duly adopted.

Dated: September 21, 2009

TOWN OF BRUNSWICK
ZONING BOARD OF APPEALS

In the Matter of the Application of

BERKSHIRE PROPERTIES, LLC,

Applicant

RESPONSE TO
REFERRAL

For the Establishment of a Planned Development District Under
the Zoning Ordinance of the TOWN OF BRUNSWICK

The Town Board has received an application for the establishment of a planned development district (PDD) from Berkshire Properties, LLC, concerning property located on New York State Route 7 and Betts Road, more specifically Rensselaer County Tax Map parcels 91.00-2-15 and 91.00-2-26.1. The proposal includes commercial retail and single family residential uses, as well as the proposed donation of a parcel of land to the Town for municipal purposes. More specifically, the commercial retail portion of the PDD is located on NYS Route 7 and Betts Road, and essentially proposes two (2) commercial buildings for retail and/or restaurant use, with one building proposed to be approximately 6,000 square feet and the other building approximately 30,000 square feet. Ingress and egress points are located on Route 7 and Betts Road, and onsite parking is included. The single family residential portion of the PDD is located at the northern end of Betts Road and proposes seven (7) single family residential lots with private wells and septic, as well as a new subdivision road with a cul-de-sac. Lots would range from one (1) acre to three and one-half (3.5) acres. The central portion of the site, comprising some five (5) acres, is adjacent to property owned by the Brunswick Little League. The applicant proposes to donate that parcel to the Town for municipal purposes, which might include recreational and open space uses.

This application is in the relative early stages of the process. There has been no determination of environmental significance at this point by the Town Board. Based on the concept plan and general layout presented to this Board, as well as the other information provided to date, it is the sense of this Board that the general concept plan and layout of uses for the proposed PDD is favorable and an appropriate use of the property. The Board views the use of the Route 7 frontage for commercial applications and the rear of the site at the northern end of Betts Road for single family residential purposes to be good planning and in general harmony with the Comprehensive Plan. Additionally, the dedication of five (5) acres of land for open space and recreational uses can only be viewed as positive.

This is not to say that there are no "questionable" aspects to the plan as it currently stands. Parking in the commercial areas appears to be somewhat scattered and, possibly, inadequate. Having individual wells and septic on the residential lots, especially given the lots are as small as one (1) acre, might also be reconsidered in light of the proximity of the residential lots to the Hudson Hills PDD, which will have public water and sewer, and the fact that the commercial portion of the site will

be served by public water and sewer. Also, it is unclear how much of the parcel to be donated to the Town will be usable due to the wetlands, and the parcel itself is landlocked, requiring access through the adjacent parcel owned by the Little League. Finally, the precise uses of the commercial building have not yet been established. For these reasons, the Zoning Board of Appeals would like to be permitted to comment further once the record is further developed.

Dated: Brunswick, New York
September 21, 2009

**TOWN OF BRUNSWICK
ZONING BOARD OF APPEALS**

REGULAR MEETING

September 21, 2009

RESOLUTION ADOPTING DETERMINATION

WHEREAS, an appeal having been filed by PHILIP CHIEFARI, owner-appellant, dated July 22, 2009, from the Order of the Code Enforcement Officer of the Town of Brunswick dated June 9, 2009, directing that all commercial and business activity, including small engine service, repair and sales under the business name "Lawnmower Guy" on the premises owned by the owner-appellant, located at 260 South Lake Avenue, in the Town of Brunswick, be ceased, because the said premises are located in a residential zone in which commercial uses are not permitted under the Zoning Ordinance of the Town of Brunswick; and

WHEREAS, the appeal having duly come on for a public hearing before this Board; and

WHEREAS, the Board having caused to be prepared a written Determination with respect to the said appeal, which is annexed hereto; now, therefore, after due deliberation

BE IT RESOLVED, that the annexed Determination be and hereby is approved and adopted in all respects.

The foregoing Resolution which was offered by Member Wohlleber and seconded by Member Schmidt, was duly put to a roll call vote as follows:

MEMBER WOHLLEBER	VOTING	Aye
MEMBER SCHMIDT	VOTING	Aye
MEMBER SHAUGHNESSY	VOTING	Aye
MEMBER TRZCINSKI	VOTING	Aye
CHAIRMAN HANNAN	VOTING	Aye

The foregoing Resolution was thereupon declared duly adopted.

Dated: September 21, 2009

TOWN OF BRUNSWICK
ZONING BOARD OF APPEALS

In the Matter of the Appeal of

DECISION

PHILIP CHIEFARI,

Appellant

From an Order of the Code Enforcement of the TOWN OF
BRUNSWICK

This proceeding involves the appeal of PHILIP CHIEFARI, owner-appellant, dated July 22, 2009, from the Order of the Code Enforcement Officer of the Town of Brunswick dated June 9, 2009, directing that all commercial and business activity, including small engine service, repair and sales under the business name "Lawnmower Guy" on the premises owned by the owner-appellant, located at 260 South Lake Avenue, in the Town of Brunswick, be ceased, because the said premises are located in a residential zone in which commercial uses are not permitted under the Zoning Ordinance of the Town of Brunswick.

The record reflects that based upon anonymous complaints, and further information and documentation obtained from the persons who subsequently identified themselves as making those complaints, the Code Enforcement Officer conducted an investigation into whether the appellant was conducting a commercial business in a residential zone in violation of the Zoning Ordinance. Based upon the investigation, the Code Enforcement Officer concluded on June 9, 2009, that the appellant was operating a commercial lawnmower and small engine service, repair and sales business at his premises located at 260 South Lake Avenue, which property is residentially-zoned and at which commercial uses are not permitted, in violation of the Zoning Ordinance and Site Plan Review Act of the Town of Brunswick, and directed that all commercial and business operations at that location be ceased immediately. Appellant now appeals from that Order.

A public hearing was conducted in this matter on August 17, 2009. Numerous individuals, most of whom reside in that area of town, spoke very highly of the appellant, both as a person and as a business owner, stated that the business had minimal effects on the neighborhood, and further stated that appellant should be permitted to continue operating his business at that location. Appellant submitted documentary evidence showing that many individuals in the area used his services as well as a petition signed by many individuals essentially stating that he should be permitted to continue operating. A few people in the neighborhood objected to the operation of a commercial business in a residential zone. The two (2) neighbors living closest to the appellant's business complained that the neighborhood was residentially zoned, and that the business generated excessive noise, customer traffic and odors, which adversely effected their use and enjoyment of their homes.

There is no doubt that the appellant has been operating a commercial lawnmower and small engine service, repair and sales business at his premises and that the premises are residentially-zoned. Appellant admits as much. It is his contention, however, that his business is permitted at this location because it is a "Home Occupation" as that term is defined in the Zoning Ordinance. In essence, the sole issue for the Board's determination is whether his "business" falls within the definition of "Home Occupation" in the Zoning Ordinance.

Article I, Section 1, of the Zoning Ordinance defines Home Occupation as follows:

HOME OCCUPATION: An occupation or profession which

- a. Is customarily carried on in a dwelling unit or in a building or other structure accessory to a dwelling unit, and
- b. Is carried on by a member of the family residing in the dwelling unit, and
- c. Is clearly incidental and secondary to the use of the dwelling unit for residential purposes, and
- d. which conforms to the following additional conditions:
 1. The occupation or profession shall be carried on wholly within a principal building or within a building or other structure accessory thereto.
 2. Not more than one person outside the family shall be employed in the Home Occupation.
 3. There shall be no exterior display, no exterior sign (except as permitted under column 22), no exterior storage of materials and no other exterior indication of the Home Occupation or variation from the residential character of the principal building.
 4. No offensive noise, vibration, smoke, dust odors, heat or glare shall be produced.

In particular, a Home Occupation includes—but is not limited to—the following:

Professional office of a physician, dentist, lawyer, engineer, architect or accountant, within a dwelling occupied by the same.

Teaching, with musical instruction limited to a single pupil at a time.

However, a Home Occupation shall not be interpreted to include the following:

Commercial stables and kennels

Funeral Establishments

Restaurants

Essentially, the Home Occupation provisions of the Zoning Ordinance provide for an exception to the provisions of the Zoning Ordinance which prohibit commercial uses in residential zones. For this reason, the provisions must be strictly construed. Additionally, there is no provision in the "Home Occupation" provision, or elsewhere in the Town Code, which provides for any site plan review of Home Occupations. Other commercial enterprises are subject to site plan review by the Town Planning Board, which would deal with such issues as hours of operation, and mitigation of noise and odors, parking, etc. This is yet another reason why the types of enterprises which qualify as Home Occupations should be limited.

Turning to the analysis of whether appellant's business meets the cited criteria for a Home Occupation, the Board notes at the very outset that Section "a" of the definition is troublesome. Clearly, to qualify as a Home Occupation, the occupation or profession must be one that is "customarily carried on in a building or other structure accessory to a dwelling unit". Appellant's business consists of lawnmower and small engine service, repairs and sales. As to the sales aspect of the business, the Board notes that none of the "examples" set forth in the definition as qualifying as a Home Occupation involve retail sales of commodities, as opposed to services. As to the small engine service and repair, in the opinion of this Board, such services are not "customarily carried on in a dwelling unit, or a structure accessory to a dwelling unit. Appellant's operation of a full-blown business of this type, out of his home, is in the Board's estimation, quite unique. Again, the examples of services which qualify as Home Occupations, which are admittedly not exclusive, but are instructive, involve professional services and teaching.

Even, however, if Section "a" was not an issue, several of the criteria in section "d" are problematic. Section d.1. requires that, to qualify, the occupation or the profession "shall be carried on wholly within the principal building, or within a building or other structure accessory thereto". Here, appellant admitted to the Code Enforcement Officer to working on lawnmowers and other engines both inside and outside of his garage. Also, referring to the "plot plan" included by the Code Enforcement Officer in his investigation, appellant has snow blowers, lawnmowers, tire racks holding lawnmowers, parts and scrap metal, located, stored, and in some cases offered for sale, outside in various parts of his lot, including in an old above-ground swimming pool. Clearly, appellant is not operating his business "wholly" within enclosed residential buildings, as is required in the definition. Indeed, it is unlikely he could do so. It would likely be dangerous to run and repair internal combustion engines indoors.

Similarly, section d.3. is problematic in that it precludes the "exterior storage of materials" and "other exterior indication of the Home Occupation". Here, as previously stated, appellant stores lawnmowers, snow blowers, some of them being offered for sale, as well as parts and scrap metal, outdoors on his property.

Finally, section d.4. is also problematic in that it precludes enterprises from qualifying as Home Occupations if they produce "offensive noise, vibration, smoke, dust, odors, heat or glare". Here, the business primarily involves small engine service and repair. In order to repair engines, they must be run. Internal combustion engines, by their very nature, produce noise, vibration, smoke, odors and heat. While it is true that virtually all homeowners have lawnmowers, trimmers, snow blowers, etc., which they operate as needed to do work on their property, here we are talking about a business which appears to operate on a frequent basis, and on which there are no restrictions on hours of operation. Clearly, the noise, vibration, smoke, and odors emanating from this lot are going to be far greater in both frequency and intensity than would be the case for a normal homeowner. Although many people who spoke in favor of appellant's business stated that there was no noise or odor coming from appellant's property, the Board views this as questionable, and motivated by their friendship and respect for appellant, and their desire to see his business continue. As previously stated, engines, by definition, cause these effects. Also, the Board finds as credible the claims of the neighbors living closest to the appellant's business who complain of offensive noise and odors, from the engines, gasoline, oil, solvents and other materials which are a part of appellant's business.

Based on the above, the Board concludes that appellant's business does not qualify as a Home Occupation under the Zoning Ordinance, as it does not meet all of the statutory criteria therefor. We so rule in full recognition that most of the people in the vicinity, at least those who attended the public hearing, feel that appellant's business should continue. By virtually all accounts, appellant is a good friend and neighbor, and is a capable, talented person who offers a valuable service. Such considerations, however, have absolutely no bearing on zoning. There is no place for personalities in making zoning determinations. Should we judge the legality of a business when the owner does a lousy job and is rude and abusive to his neighbors, differently than we judge the legality of appellant's? The Board must turn a blind eye to such considerations and base its decision solely on the facts and the law.

Moreover, if the Board were to determine that appellant's business met the criteria of a Home Occupation, it would open the floodgates to others claiming that they could operate all manner of commercial enterprises out of their homes. If, for example, appellant can repair small engines and sell lawnmowers and other outdoor equipment from his home, why couldn't someone else repair automobiles? Or open a used car lot? Why couldn't people operate small convenience stores, selling to people at retail, from their homes or another building on their residential lots? If the Board construes the Home Occupation provisions too liberally, we could end up with commercial uses throughout our residential areas.

Neither does it matter whether, as appellant claims, someone from the town told him that his business was legal. First, there is no independent proof of that. According to appellant, the "permission" was strictly oral, and he does not even know who he claims to have spoken to. In any case, even if such a representation had been made in error, it would not bind the Town, or this Board.

Estoppel does not lie against municipalities to prevent their enforcement of zoning laws (Shumacker v Town of Cortland, 143 A.D. 2d 999; Matter of Dellman, Inc. v Connell, 140 Misc 675, aff'd 240 App Div 816). Nor does it make any difference that appellant was operating his business before the adjacent neighbors who are complaining moved in. These individuals, and the public at large, have a right to the protections of their use and enjoyment of their properties which are afforded by the Zoning Ordinance.

Finally, the largely anecdotal evidence that there have been other businesses in this neighborhood for years does not change the result here. The Board takes notice that the area in question is currently strictly residential. There are no businesses located anywhere nearby. The fact that there were businesses there at some point does not necessarily mean anything. The businesses may have pre-dated zoning. Or, they may have been valid home occupations.

Based on all of the foregoing, the appeal be and hereby is DENIED, and the Order of the Code Enforcement Officer stands.

Dated: Brunswick, New York
September 21, 2009

**TOWN OF BRUNSWICK
ZONING BOARD OF APPEALS**

REGULAR MEETING

September 21, 2009

RESOLUTION ADOPTING DETERMINATION

WHEREAS, an appeal having been filed by PHILIP CHIEFARI, owner-appellant, dated July 22, 2009, from the Order of the Code Enforcement Officer of the Town of Brunswick dated June 9, 2009, directing that all commercial and business activity, including small engine service, repair and sales under the business name "Lawnmower Guy" on the premises owned by the owner-appellant, located at 260 South Lake Avenue, in the Town of Brunswick, be ceased, because the said premises are located in a residential zone in which commercial uses are not permitted under the Zoning Ordinance of the Town of Brunswick; and

WHEREAS, the appeal having duly come on for a public hearing before this Board; and

WHEREAS, the Board having caused to be prepared a written Determination with respect to the said appeal, which is annexed hereto; now, therefore, after due deliberation

BE IT RESOLVED, that the annexed Determination be and hereby is approved and adopted in all respects.

The foregoing Resolution which was offered by Member Wohlleber and seconded by Member Schmidt, was duly put to a roll call vote as follows:

MEMBER WOHLLEBER	VOTING	Aye
MEMBER SCHMIDT	VOTING	Aye
MEMBER SHAUGHNESSY	VOTING	Aye
MEMBER TRZCINSKI	VOTING	Aye
CHAIRMAN HANNAN	VOTING	Aye

The foregoing Resolution was thereupon declared duly adopted.

Dated: September 21, 2009

TOWN OF BRUNSWICK
ZONING BOARD OF APPEALS

In the Matter of the Appeal of

DECISION

PHILIP CHIEFARI,

Appellant

From an Order of the Code Enforcement of the TOWN OF
BRUNSWICK

This proceeding involves the appeal of PHILIP CHIEFARI, owner-appellant, dated July 22, 2009, from the Order of the Code Enforcement Officer of the Town of Brunswick dated June 9, 2009, directing that all commercial and business activity, including small engine service, repair and sales under the business name "Lawnmower Guy" on the premises owned by the owner-appellant, located at 260 South Lake Avenue, in the Town of Brunswick, be ceased, because the said premises are located in a residential zone in which commercial uses are not permitted under the Zoning Ordinance of the Town of Brunswick.

The record reflects that based upon anonymous complaints, and further information and documentation obtained from the persons who subsequently identified themselves as making those complaints, the Code Enforcement Officer conducted an investigation into whether the appellant was conducting a commercial business in a residential zone in violation of the Zoning Ordinance. Based upon the investigation, the Code Enforcement Officer concluded on June 9, 2009, that the appellant was operating a commercial lawnmower and small engine service, repair and sales business at his premises located at 260 South Lake Avenue, which property is residentially-zoned and at which commercial uses are not permitted, in violation of the Zoning Ordinance and Site Plan Review Act of the Town of Brunswick, and directed that all commercial and business operations at that location be ceased immediately. Appellant now appeals from that Order.

A public hearing was conducted in this matter on August 17, 2009. Numerous individuals, most of whom reside in that area of town, spoke very highly of the appellant, both as a person and as a business owner, stated that the business had minimal effects on the neighborhood, and further stated that appellant should be permitted to continue operating his business at that location. Appellant submitted documentary evidence showing that many individuals in the area used his services as well as a petition signed by many individuals essentially stating that he should be permitted to continue operating. A few people in the neighborhood objected to the operation of a commercial business in a residential zone. The two (2) neighbors living closest to the appellant's business complained that the neighborhood was residentially zoned, and that the business generated excessive noise, customer traffic and odors, which adversely effected their use and enjoyment of their homes.

There is no doubt that the appellant has been operating a commercial lawnmower and small engine service, repair and sales business at his premises and that the premises are residentially-zoned. Appellant admits as much. It is his contention, however, that his business is permitted at this location because it is a "Home Occupation" as that term is defined in the Zoning Ordinance. In essence, the sole issue for the Board's determination is whether his "business" falls within the definition of "Home Occupation" in the Zoning Ordinance.

Article I, Section 1, of the Zoning Ordinance defines Home Occupation as follows:

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 - c. Is clearly incidental and secondary to the use of the dwelling unit for residential purposes, and
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 1. The occupation or profession shall be carried on wholly within a principal building or within a building or other structure accessory thereto.
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Teaching, with musical instruction limited to a single pupil at a time.

However, a Home Occupation shall not be interpreted to include the following:

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Restaurants

Essentially, the Home Occupation provisions of the Zoning Ordinance provide for an exception to the provisions of the Zoning Ordinance which prohibit commercial uses in residential zones. For this reason, the provisions must be strictly construed. Additionally, there is no provision in the "Home Occupation" provision, or elsewhere in the Town Code, which provides for any site plan review of Home Occupations. Other commercial enterprises are subject to site plan review by the Town Planning Board, which would deal with such issues as hours of operation, and mitigation of noise and odors, parking, etc. This is yet another reason why the types of enterprises which qualify as Home Occupations should be limited.

Turning to the analysis of whether appellant's business meets the cited criteria for a Home Occupation, the Board notes at the very outset that Section "a" of the definition is troublesome. Clearly, to qualify as a Home Occupation, the occupation or profession must be one that is "customarily carried on in a building or other structure accessory to a dwelling unit". Appellant's business consists of lawnmower and small engine service, repairs and sales. As to the sales aspect of the business, the Board notes that none of the "examples" set forth in the definition as qualifying as a Home Occupation involve retail sales of commodities, as opposed to services. As to the small engine service and repair, in the opinion of this Board, such services are not "customarily carried on in a dwelling unit, or a structure accessory to a dwelling unit. Appellant's operation of a full-blown business of this type, out of his home, is in the Board's estimation, quite unique. Again, the examples of services which qualify as Home Occupations, which are admittedly not exclusive, but are instructive, involve professional services and teaching.

Even, however, if Section "a" was not an issue, several of the criteria in section "d" are problematic. Section d.1. requires that, to qualify, the occupation or the profession "shall be carried on wholly within the principal building, or within a building or other structure accessory thereto". Here, appellant admitted to the Code Enforcement Officer to working on lawnmowers and other engines both inside and outside of his garage. Also, referring to the "plot plan" included by the Code Enforcement Officer in his investigation, appellant has snow blowers, lawnmowers, tire racks holding lawnmowers, parts and scrap metal, located, stored, and in some cases offered for sale, outside in various parts of his lot, including in an old above-ground swimming pool. Clearly, appellant is not operating his business "wholly" within enclosed residential buildings, as is required in the definition. Indeed, it is unlikely he could do so. It would likely be dangerous to run and repair internal combustion engines indoors.

Similarly, section d.3. is problematic in that it precludes the "exterior storage of materials" and "other exterior indication of the Home Occupation". Here, as previously stated, appellant stores lawnmowers, snow blowers, some of them being offered for sale, as well as parts and scrap metal, outdoors on his property.

Finally, section d.4. is also problematic in that it precludes enterprises from qualifying as Home Occupations if they produce "offensive noise, vibration, smoke, dust, odors, heat or glare". Here, the business primarily involves small engine service and repair. In order to repair engines, they must be run. Internal combustion engines, by their very nature, produce noise, vibration, smoke, odors and heat. While it is true that virtually all homeowners have lawnmowers, trimmers, snow blowers, etc., which they operate as needed to do work on their property, here we are talking about a business which appears to operate on a frequent basis, and on which there are no restrictions on hours of operation. Clearly, the noise, vibration, smoke, and odors emanating from this lot are going to be far greater in both frequency and intensity than would be the case for a normal homeowner. Although many people who spoke in favor of appellant's business stated that there was no noise or odor coming from appellant's property, the Board views this as questionable, and motivated by their friendship and respect for appellant, and their desire to see his business continue. As previously stated, engines, by definition, cause these effects. Also, the Board finds as credible the claims of the neighbors living closest to the appellant's business who complain of offensive noise and odors, from the engines, gasoline, oil, solvents and other materials which are a part of appellant's business.

Based on the above, the Board concludes that appellant's business does not qualify as a Home Occupation under the Zoning Ordinance, as it does not meet all of the statutory criteria therefor. We so rule in full recognition that most of the people in the vicinity, at least those who attended the public hearing, feel that appellant's business should continue. By virtually all accounts, appellant is a good friend and neighbor, and is a capable, talented person who offers a valuable service. Such considerations, however, have absolutely no bearing on zoning. There is no place for personalities in making zoning determinations. Should we judge the legality of a business when the owner does a lousy job and is rude and abusive to his neighbors, differently than we judge the legality of appellant's? The Board must tun a blind eye to such considerations and base its decision solely on the facts and the law.

Moreover, if the Board were to determine that appellant's business met the criteria of a Home Occupation, it would open the floodgates to others claiming that they could operate all manner of commercial enterprises out of their homes. If, for example, appellant can repair small engines and sell lawnmowers and other outdoor equipment from his home, why couldn't someone else repair automobiles? Or open a used car lot? Why couldn't people operate small convenience stores, selling to people at retail, from their homes or another building on their residential lots? If the Board construes the Home Occupation provisions too liberally, we could end up with commercial uses throughout our residential areas.

Neither does it matter whether, as appellant claims, someone from the town told him that his business was legal. First, there is no independent proof of that. According to appellant, the "permission" was strictly oral, and he does not even know who he claims to have spoken to. In any case, even if such a representation had been made in error, it would not bind the Town, or this Board.

Estoppel does not lie against municipalities to prevent their enforcement of zoning laws (Shumacker v Town of Cortland, 143 A.D. 2d 999; Matter of Dellman, Inc. v Connell, 140 Misc 675, aff'd 240 App Div 816). Nor does it make any difference that appellant was operating his business before the adjacent neighbors who are complaining moved in. These individuals, and the public at large, have a right to the protections of their use and enjoyment of their properties which are afforded by the Zoning Ordinance.

Finally, the largely anecdotal evidence that there have been other businesses in this neighborhood for years does not change the result here. The Board takes notice that the area in question is currently strictly residential. There are no businesses located anywhere nearby. The fact that there were businesses there at some point does not necessarily mean anything. The businesses may have pre-dated zoning. Or, they may have been valid home occupations.

Based on all of the foregoing, the appeal be and hereby is DENIED, and the Order of the Code Enforcement Officer stands.

Dated: Brunswick, New York
September 21, 2009

**TOWN OF BRUNSWICK
ZONING BOARD OF APPEALS**

REGULAR MEETING

September 21, 2009

RESOLUTION ADOPTING DETERMINATION

WHEREAS, an application for the establishment of a planned development district (PDD) from Berkshire Properties, LLC, concerning property located on New York State Route 7 and Betts Road, more specifically Rensselaer County Tax Map parcels 91.00-2-15 and 91.00-2-26.1, having been filed; and

WHEREAS, the Town Board having referred the application to this Board for comment; and

WHEREAS, the Board having caused to be prepared a written Response to Referral with respect to the said referral, which is annexed hereto; now, therefore, after due deliberation

BE IT RESOLVED, that the annexed Response to Referral be and hereby is approved and adopted in all respects.

The foregoing Resolution which was offered by Chairman Hannan and seconded by Member Trzcinski, was duly put to a roll call vote as follows:

MEMBER WOHLLEBER	VOTING	Aye
MEMBER SCHMIDT	VOTING	Aye
MEMBER SHAUGHNESSY	VOTING	Aye
MEMBER TRZCINSKI	VOTING	Aye
CHAIRMAN HANNAN	VOTING	Aye

The foregoing Resolution was thereupon declared duly adopted.

Dated: September 21, 2009

TOWN OF BRUNSWICK
ZONING BOARD OF APPEALS

In the Matter of the Application of

BERKSHIRE PROPERTIES, LLC,

Applicant

RESPONSE TO
REFERRAL

For the Establishment of a Planned Development District Under
the Zoning Ordinance of the TOWN OF BRUNSWICK

The Town Board has received an application for the establishment of a planned development district (PDD) from Berkshire Properties, LLC, concerning property located on New York State Route 7 and Betts Road, more specifically Rensselaer County Tax Map parcels 91.00-2-15 and 91.00-2-26.1. The proposal includes commercial retail and single family residential uses, as well as the proposed donation of a parcel of land to the Town for municipal purposes. More specifically, the commercial retail portion of the PDD is located on NYS Route 7 and Betts Road, and essentially proposes two (2) commercial buildings for retail and/or restaurant use, with one building proposed to be approximately 6,000 square feet and the other building approximately 30,000 square feet. Ingress and egress points are located on Route 7 and Betts Road, and onsite parking is included. The single family residential portion of the PDD is located at the northern end of Betts Road and proposes seven (7) single family residential lots with private wells and septic, as well as a new subdivision road with a cul-de-sac. Lots would range from one (1) acre to three and one-half (3.5) acres. The central portion of the site, comprising some five (5) acres, is adjacent to property owned by the Brunswick Little League. The applicant proposes to donate that parcel to the Town for municipal purposes, which might include recreational and open space uses.

This application is in the relative early stages of the process. There has been no determination of environmental significance at this point by the Town Board. Based on the concept plan and general layout presented to this Board, as well as the other information provided to date, it is the sense of this Board that the general concept plan and layout of uses for the proposed PDD is favorable and an appropriate use of the property. The Board views the use of the Route 7 frontage for commercial applications and the rear of the site at the northern end of Betts Road for single family residential purposes to be good planning and in general harmony with the Comprehensive Plan. Additionally, the dedication of five (5) acres of land for open space and recreational uses can only be viewed as positive.

This is not to say that there are no "questionable" aspects to the plan as it currently stands. Parking in the commercial areas appears to be somewhat scattered and, possibly, inadequate. Having individual wells and septic on the residential lots, especially given the lots are as small as one (1) acre, might also be reconsidered in light of the proximity of the residential lots to the Hudson Hills PDD, which will have public water and sewer, and the fact that the commercial portion of the site will

be served by public water and sewer. Also, it is unclear how much of the parcel to be donated to the Town will be usable due to the wetlands, and the parcel itself is landlocked, requiring access through the adjacent parcel owned by the Little League. Finally, the precise uses of the commercial building have not yet been established. For these reasons, the Zoning Board of Appeals would like to be permitted to comment further once the record is further developed.

Dated: Brunswick, New York
September 21, 2009

NOTICE OF PUBLIC HEARING

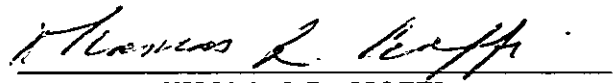
NOTICE IS HEREBY GIVEN that a Public Hearing of the Zoning Board of Appeals of the Town of Brunswick, Rensselaer County, New York, will be held on the 21st day of September, 2009, at 6:00 P.M., at the Town Office Building located at 336 Town Office Road in the Town of Brunswick, on the application for a zoning permit of NEAL NORTON and KAREN NORTON, applicants, dated August 24, 2009, for a special use permit pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the proposed renovation of an existing single family residence located at 216 Grange Road, in the Town of Brunswick, to include a one (1) bedroom apartment, because multiple dwellings are only allowed in the Town of Brunswick by way of a special use permit issued by the Zoning Board of Appeals.

FURTHER NOTICE IS HEREBY GIVEN that the said NEAL NORTON and KAREN NORTON, applicants, have filed said application, and said application are now on file in the Office of the Code Enforcement Officer, where the same may be inspected by all interested persons during regular business hours.

All persons interested in said appeal and petition will be heard at the above time and place.

Dated: Brunswick, New York
August 31, 2009

BY ORDER OF THE ZONING BOARD OF APPEALS OF THE TOWN OF BRUNSWICK


THOMAS R. CIOFFI
Town Attorney

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a Public Hearing of the Zoning Board of Appeals of the Town of Brunswick, Rensselaer County, New York, will be held on the 21st day of September, 2009, at 6:00 P.M., at the Town Office Building located at 336 Town Office Road in the Town of Brunswick, on the appeal and petition of LISA LAJEUNESSE, owner-applicant, dated August 4, 2009, for an area variance pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the proposed construction of a prefabricated shed on a lot located at 13 Ledgewood Drive, in the Town of Brunswick, because the proposed construction violates the rear yard setback in an R-15 District in that 20 feet is required and 6 feet is proposed.

FURTHER NOTICE IS HEREBY GIVEN that the said LISA LAJEUNESSE, owner-applicant, has filed said appeal and petition, and said appeal and petition are now on file in the Office of the Code Enforcement Officer, where the same may be inspected by all interested persons during regular business hours.

All persons interested in said appeal and petition will be heard at the above time and place.

Dated: Brunswick, New York
August 31, 2009

BY ORDER OF THE ZONING BOARD OF APPEALS OF THE TOWN OF BRUNSWICK



THOMAS R. CIOFFI
Town Attorney

NOTICE OF PUBLIC HEARING


NOTICE IS HEREBY GIVEN that a Public Hearing of the Zoning Board of Appeals of the Town of Brunswick, Rensselaer County, New York, will be held on the 21st day of September, 2009, at 6:00 P.M., at the Town Office Building located at 336 Town Office Road in the Town of Brunswick, on the appeal and petition of SCOTT RUCAR, owner-applicant, dated August 26, 2009, for an area variance pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the proposed construction of a barn on a lot located at 9 Moonlawn Road, in the Town of Brunswick, because the proposed construction violates the maximum height for an accessory structure in an R-15 District in that a maximum height of 15 feet is permitted but 20 feet is proposed.

FURTHER NOTICE IS HEREBY GIVEN that the said SCOTT RUCAR, owner-applicant, has filed said appeal and petition, and said appeal and petition are now on file in the Office of the Code Enforcement Officer, where the same may be inspected by all interested persons during regular business hours.

All persons interested in said appeal and petition will be heard at the above time and place.

Dated: Brunswick, New York
August 31, 2009

BY ORDER OF THE ZONING BOARD OF APPEALS OF THE TOWN OF BRUNSWICK



THOMAS R. CIOFFI
Town Attorney

TOWN OF BRUNSWICK
ZONING BOARD OF APPEALS

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DRAFT MINUTES

A Meeting of the Zoning Board of Appeals of the Town of Brunswick, County of Rensselaer, State of New York, was held on October 19, 2009, at 6:00 P.M.

Present at the meeting were: Eric Wohlleber, Member
Caroline Trzcinski, Member
James Shaughnessy, Member
E. John Schmidt, Member
James Hannan, Chairman

Also present was Thomas R. Cioffi, Town Attorney and Zoning Board of Appeals Secretary, and Code Enforcement Officer John Kreiger. At 5:30 P.M., a Workshop Meeting was held wherein the Board Members reviewed files and discussed pending matters informally. The Regular Meeting was called to order at 6:00 P.M.

The first item of business was approval of the minutes of the September, 2009, meeting. There were no corrections. Member Trzcinski made a motion to accept the minutes. Member Shaughnessy seconded. The motion carried 5 - 0.

The next item of business was further consideration of the appeal and petition of SCOTT RUCCHAR, owner-applicant, dated August 26, 2009, for an area variance pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the proposed construction of a barn on a lot located at 9 Moonlawn Road, in the Town of Brunswick, because the proposed construction violates the maximum height for an accessory structure in an R-15 District in that a maximum height of 15 feet is permitted but 20 feet is proposed.

Scott Ruchar appeared. Member Trzcinski asked whether he could really build the barn for \$18,000.00. Mr. Ruchar stated that he could. He can get rough cut lumber from his family's saw mill. He plans no concrete work at this point. He has a backhoe so he can do his own excavation work. Member Schmidt asked what he planned to store inside. Mr. Ruchar mentioned a 21 foot long boat, a truck, and a fifth wheel camper. The door needs to be at least 12 feet high. He wants to store the camper inside and the camper is 11 feet in height.

After some further discussion, Mr. Ruchar stated that he could reduce the roof slope from 4 vertical on 12 horizontal to 3 vertical on 12 horizontal. Member Shaughnessy noted that that would bring the height of the structure down to 16 feet six inches. The Chairman then made a motion to classify the matter a Type 2 action under SEQRA. Member Schmidt seconded. The motion carried 5 - 0.

Member Shaughnessy then offered a Resolution approving an increase in the permitted maximum height of the proposed structure from 15 feet to 18 feet six inches. Member Schmidt seconded. The motion carried 5 - 0.

There being no further business, Member Shaughnessy made a motion to adjourn. Member Wohlleber seconded. The motion carried 5 - 0.

Dated: Brunswick, N.Y.
November 5, 2009

Respectfully submitted,


THOMAS R. CIOFFI

Town Attorney - Zoning Board Secretary