

ZONING  
BOARD

MINUTES

2010

**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 22, 2009, at 6:00 P.M.

Present at the meeting were: Mark Cipperly, 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 October, 2009, meeting. Member Shaughnessy noted an error in the last paragraph on the first page, third line of the paragraph. "16 feet six inches" should read "18 feet six inches". Member Trzcinski made a motion to accept the minutes as corrected. Member Shaughnessy seconded. The motion carried 5 - 0.

The next item of business was the appeal and petition of of WILLIAM J. DURIVAGE, owner-applicant, dated January 7, 2010, for area variances pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with an existing swimming pool filter and an existing swimming pool shed on a lot located at 103 Menemsha Lane, in the Town of Brunswick, because the pool filter violates the rear yard setback in an R-25 District in that 25 feet is required and less than 1 foot is proposed, and because the pool shed violates the rear yard setback in an R-25 District in that 25 feet is required and 3 feet is proposed. Attorney Cioffi read the Notice of Public Hearing aloud.

William Durivage appeared. He stated that he purchased the property in 1980. He had been told by the prior owner, his uncle, that the property line on his property followed the tree line created by some small trees planted by his neighbor on the south, Mr. Purcell. In 1984, he put in an above-ground pool. In 2002, he put in an in-ground pool, in the same place as the above-ground. He built a pool/screen house in 2004. All the time he thought that he was in full compliance with the setbacks. In 2006, his neighbor, Mr. Purcell had his property surveyed. As a result, he found out that the his assumption about the property line between his land and that of Mr. Purcell was incorrect. The pool filter was actually located on Mr. Purcell's property. The pool house encroaches on the rear setback. He then moved the filter onto his own property, but just over the line and it still violates the rear setback. He was told by a pool company that it would cost him \$5,000.00 to move the pool filter. He has no written estimate. He wants to leave both the filter and the pool house

where they are. He thought he was in compliance when he built them. He acknowledged that he never obtained a building permit for the pool house. He mentioned in to the Building Inspector when he obtained the permit for the in-ground pool in 2004, and he thought the pool house was included.

Richard, Purcell, 93 Menemsha Lane, applicant's neighbor to the south, said that he is the person complaining. He stated that maps of his property going back to 1974 clearly show the property line. In 2006, he had only the line between his property and that of Mr. Durivage re-surveyed. Bill Darling did the survey. He put markers in the ground and also stakes depicting the boundary line. A few days later, the stakes were gone. He found the 3 statkes on the Durivage property and he tried to put them back. But he is not sure if they are now in the right place. He wants the Zoning Ordinance to be enforced. He was told by the Town that there is no permit for the pool house. He wants everything moved. Mr. Purcell submitted the survey map to the Board. He also submitted letters from the Town to Mr. Durivage dated August 15, 2006, April 4, 2008, September 8, 2009, and December 10, 2009. The letters essentially documented that the pool filter and pool house violated the rear yard setback and either needed to be moved or variances obtained.

Mr. Durivage said that he does not believe the filter still encroaches on Mr. Purcell's property. Mr. Kreiger said that he has not verified that. Mr. Purcell said that he can hear the pool pump and filter from his deck and from his kitchen. The Chairman told Mr. Durivage that he should get a written estimate regarding the cost of moving the filter. Mr. Durivage said he built in good faith. Mr. Durivage said he took the survey stakes down so he could mow the grass there, as he had been doing for years. He said he put metal stakes in the ground so he could mow over them. Member Shaughnessy said that he believed the survey maps handed up by Mr. Purcell were inconsistent.

Bob Mammon, 105 Menemsha, asked what was the point of this proceeding. Everyone in the area has gotten along well for years. He can understand that the sound of the pool filter is an issue, and that it would be an issue if the filter and pool house were on Mr. Purcell's property. Mr. Purcell said that the sound is not the issue. The issue is re-sale of his property. If the filter and pool house are left where they are, it will affect the value of his property. He and his wife are getting old and may want to sell soon, Also, there is a zoning law. It should be followed.

Member Shaughnessy made a motion to continue the public hearing to the March 15, 2010, meeting. Member Schmidt seconded. The motion carried 5 - 0.

The next item of business was consideration of the referral from the Town Board for a recommendation on the application of Brunswick Associates of Albany, LP, for an amendment of the Brunswick West Apartments planned development district. Dan Hershberg, Hershberg & Hershberg, the surveyor for the project, appeared. He handed up updated plans and maps to the Board. Mr. Hershberg summarized the project. He stated that the intention is to add 84 additional units to the 96 already existing. The project density will remain at abot 9,000 sq. ft. per unit. The plan is to also add some garages to both new and existing apartment units. He stated that the Planning Board has given a favorable recommendation, and that he has worked closely with the Town Engineering Consultant and the fire companies to address their concerns about the project. The existing units at the apartment complex are currently full.

The Chairman stated that the Board would issue a written determination at the next meeting.

The next item of business was the Request for a Special Use Permit of NIAGARA MOHAWK POWER CORP., owner-applicant, dated January 14, 2010, pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the upgrade and expansion of the existing National Grid North Troy Electrical Power Substation located at 166 Plank Road, in the Town of Brunswick, because public utility buildings for servicing the neighborhood are only allowed in an R-15 District by way of a special use permit issued by the Zoning Board of Appeals. Attorney Cioffi read the Notice of Public Hearing aloud.

Nick Spagnoletti, Project Manager, Tom Hall, Project Engineer, and Joe Kryzak, Right of Way Agent, appeared for National Grid. They explained that there is a problem with the long-existing power substation located at 166 Plank Road. The metal clad switchgear unit, which contains the relays, breakers and other necessary equipment, is very old and has been causing problems. There have recently been fires there. The switchgear unit needs to be replaced. A new, modern unit will be constructed some 60 feet to the east of the existing one. They will leave the existing switchgear unit in place and working until the new one is constructed and ready for use. When the new unit is operational, the old one will be scrapped. A new structure will be constructed where the existing switchgear unit is currently located. That new structure will be used to support wires running from the transformer to the new metal clad switchgear unit. Only this portion of the substation is being affected. The rest will remain unchanged. Pictures of the old switchgear unit and the one to be constructed were handed up to the Board.

Neither Mr. Kreiger nor the applicant's representatives knew whether there is an existing special use permit for the substation. It was noted that the substation has been there for many years and may pre-date the Zoning Ordinance. Mr. Kreiger advised that the County Planning Agency responded to the the referral by stating that local considerations should prevail.

The Board then reviewed the short-form EAF. One correction was noted on Question 7 of Part I. The amount of land affected initially is correct at .24 acres, but the amount of land ultimately affected should be .75 acres. The Board then turned to Part 2 of the EAF. It was noted that the project received clearance from the NYS Historic Preservation Office indicating that it would not affect cultural resources. It was further noted that the New York State Department of Environmental Conservation and the U.S. Fish and Wildlife Service have indicated that the project would have no impact on State or Federal listed threatened or endangered species. It was also noted that the power station has long-existed and any visual impacts or impacts on community character already exist and that this project will not appreciably change what is now on the premises, except to improve its reliability. The Board did not identify any adverse environmental impacts. Member Hannan then made motion to issue a negative declaration of environmental significance under SEQRA. Member Shaughnessy seconded. The motion carried 5 - 0.

The Board then turned to consideration of the special use permit criteria. The Board found that the project is reasonably necessary for the public health and welfare because this substation provides electrical power to a portion of the town and must therefore be reliable. The Board also found that the facility is appropriately located, noting that the facility is long-existing and there have been no problems regarding its location. The Board found that there is adequate parking at the

facility, noting that it is not open to the public. The Board found that the project will have no effect on neighborhood character or property values, noting, again, that the power station has long-existed and any such effects already exist. The Board also found that the project would not result in any traffic problems, noting that the facility is not open to the public.

Member Hannan then offered a Resolution granting a special use permit as requested, allowing the replacement of the failing, outdated, metal switchgear structure at the existing Niagara Mohawk North Troy Power Substation located at 166 Plank Road with a new switchgear unit at a new location on the same premises, all as set forth in detail in the supporting documents submitted to the Town in support of the application under cover dated January 15, 2010. Member Schmidt seconded. The matter was put to a vote and all members voted in the affirmative. The Resolution was declared adopted.

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

Dated: Brunswick, N.Y.  
March 8, 2010

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 March 15, 2010, at 6:00 P.M.

Present at the meeting were: Mark Cipperly, Member  
Caroline Trzcinski, Member  
James Shaughnessy, Member  
E. John Schmidt, Member  
James Hannan, Chairman (arrived late)

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 6:05 P.M. Attorney Cioffi advised that since Chairman Hannan was not present, the first order of business would be for the Board to select a Temporary Chairman. Member Trzcinski made a motion to select Member Shaughnessy Temporary Chairman. Member Schmidt seconded. The motion carried 4 - 0.

The next item of business was approval of the minutes of the February, 2010, meeting. Attorney Cioffi stated that Member Trzcinski had pointed out some errors in the Draft Minutes: In the first paragraph, the date was listed as February 22, 2009. It should read "February 22, 2010". On the fifth line from the bottom of the first page, the second word, "the", should be deleted. On the second line on page 2, the word "in" should read "it". Member Trzcinski made a motion to accept the minutes as corrected. Member Shaughnessy seconded. The motion carried 4 - 0.

The next item of business was further consideration of the appeal and petition of WILLIAM J. DURIVAGE, owner-applicant, dated January 7, 2010, for area variances pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with an existing swimming pool filter and an existing swimming pool shed on a lot located at 103 Menemsha Lane, in the Town of Brunswick, because the pool filter violates the rear yard setback in an R-25 District in that 25 feet is required and less than 1 foot is proposed, and because the pool shed violates the rear yard setback in an R-25 District in that 25 feet is required and 3 feet is proposed.

William Durivage appeared. He stated that he had a survey of his property done by Clark Engineering, but he does not yet have the map. He also obtained an estimate from Concord Pool to move the filter, heater and lines so they comply with the setback. The estimate was for \$4590.00 He handed it up to the Board. He has also offered to purchase a strip of land from Mr. Purcell which would alleviate the setback issue. He handed up a Google Map of the area. He will submit the survey at the next meeting. At approximately 6:15 P.M., Chairman Hannan arrived and assumed the

Chair. Mr. Durivage said that he believes that his survey will comport with Mr. Purcell's survey. He said that some realtors told him that the setback violation would not affect the value of Purcell's property. He also noted that some towns do not require that the pool filter comply with the setbacks. When he previously moved the pool filter onto his own property from Purcell's, but within the setback, he did so himself. The original pool house, a screen house, was built in 2003. It had a hard roof. It was pre-fab and portable. In 2004, he put on a bigger roof and there is now a solid wall in the back, although the 3 sides are still screen. He did not obtain a building permit in 2004 when he changed the screen house. The portable screen house was mentioned in the original building permit application. The screen house is 18' x 18', with the overhang. It cannot be moved.

Richard Purcell, 93 Menemsha Lane, acknowledged that he received various proposals from Mr. Durivage to purchase a strip of land. He and his family considered the proposals and decided not to accept. He noted that there are new survey markers in the ground. He believes Durivage's survey will match his. Mr. Purcell said that he is most concerned about the location of the pool filter and the overhang and corner-post of the pool house. He is not asking that the entire pool house be moved. There was also a discussion regarding whether the setback in question should be considered the rear yard or side yard. It makes a difference because the rear yard and side yard setbacks are different. Attorney Cioffi asked Mr. Kreiger to review the situation and advise the Board at the next meeting.

This application was put over to the April 19, 2010, meeting for further proceedings.

The next item of business was further consideration of the referral from the Town Board for a recommendation on the application of Brunswick Associates of Albany, LP, for an amendment of the Brunswick West Apartments planned development district. Dan Hershberg, Hershberg & Hershberg, the project engineer, appeared. He summarized the application. There were no questions from the Board. Attorney Cioffi stated that the Board had before it a draft Response to Referral before it, as well as a proposed Resolution adopting the same. The Response to Referral contains a generally favorable recommendation to the Town Board as regards the application. Chairman Hannan offered the Resolution adopting the draft Response to Referral. Member Trzcinski seconded. A roll call vote was taken and all voted in the affirmative.

The next item of business was the appeal and petition of MICHAEL F. FINK, owner-applicant, dated February 18, 2010, for an area variance pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the repair, expansion and conversion of an one-car garage into a two-car garage on a lot located at 21 East Road, in the Town of Brunswick, because the proposed construction violates the side yard setback in an R-40 District in that 25 feet is required and 6.4 feet is proposed. Attorney Cioffi read the Notice of Public Hearing aloud.

Michael Fink appeared. He is asking to reduce the side yard setback so he can have a two-car garage. He produced an e-mail from the neighbor impacted by the construction which stated that he had no objection to the construction in that location. The Chairman said he would prefer a letter from the neighbor rather than an e-mail.

Mr. Fink said that he needs a two-car garage to protect his vehicles from the elements. It will also conform better to the neighborhood. Member Schmidt observed that there is a very short

distance to the property line if he is allowed to build there. Mr. Fink said his neighbor's home will be far enough from the garage so it won't bother him. He also has discussed buying the tree line between the properties from his neighbor. That would give him more space.

Mr. Kreiger noted that the hearing notice sent to 17 East Road was returned. That house is vacant. The Chairman stated that he wants a formal letter from the adjoining neighbor agreeing to the variance. There was some discussion of giving an approval conditional on receiving the letter from the neighbor, but the Board decided not to do so. Chairman Hannan made a motion to continue the public hearing to the April 19, 2010, meeting. Member Shaughnessy seconded. The motion carried 5 - 0.

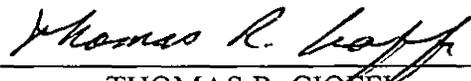
The next item of business was consideration of the referral from the Town Board for a recommendation regarding the Duncan Meadows Planned Development District application submitted by ECM Land Development. ECM was represented by Architect Francis Bossolini. He advised the Board that the applicant has already prepared a DEIS on this project, that the public hearing has been held and the public comment period has run. They are in the process of preparing an FEIS. The project site is 91 acres, located on McChesney Avenue and McChesney Avenue Extension. The property is currently zoned R-25 and A-40. The proposal is to build condominiums, 88 units on the westerly portion of the site, and 78 units on the easterly portion. 50 units of age-restricted senior housing in a single two-story building are also proposed. The storm water management system on the site will be owned and maintained by a Homeowner's Association. The sewer and water utilities will be constructed to Town standards and then conveyed to the Town. The density will be one unit per 17,000 sq. ft. Two-thirds of the site will remain green. Large tracts of land, including wetlands, will remain untouched. There will be no further development on the site once this project is built. There will be an impact on the sewer pump station behind the Honda dealership. They will contribute to an upgrade. The condos will be priced from \$175,000.00 and up into the \$200,000.00's. The senior housing will be offered at market rate, with no income restrictions.

The Chairman stated that a written recommendation would be forthcoming.

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

Dated: Brunswick, N.Y.  
April 15, 2010

Respectfully submitted,

  
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THOMAS R. CIOFFI

Town Attorney - Zoning Board Secretary

**TOWN OF BRUNSWICK  
ZONING BOARD OF APPEALS**

**REGULAR MEETING**

**March 15, 2010**

**RESOLUTION ADOPTING DETERMINATION**

**WHEREAS**, an application for the amendment of the existing Brunswick West Apartments planned development district (PDD) located at NY Route 7 and Brunswick Drive in the Town of Brunswick having been filed by Brunswick Associates of Albany, LP; 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:

<b>MEMBER CIPPERLY</b>	<b>VOTING</b>	<u>Aye</u>
<b>MEMBER SCHMIDT</b>	<b>VOTING</b>	<u>Aye</u>
<b>MEMBER SHAUGHNESSY</b>	<b>VOTING</b>	<u>Aye</u>
<b>MEMBER TRZCINSKI</b>	<b>VOTING</b>	<u>Aye</u>
<b>CHAIRMAN HANNAN</b>	<b>VOTING</b>	<u>Aye</u>

The foregoing Resolution was thereupon declared duly adopted.

Dated: March 15, 2010

TOWN OF BRUNSWICK  
ZONING BOARD OF APPEALS

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In the Matter of the Application of

BRUNSWICK ASSOCIATES OF ALBANY, LP

Applicant

RESPONSE TO  
REFERRAL

For the Amendment of the Brunswick West Apartments Planned  
Development District Under the Zoning Ordinance of the TOWN  
OF BRUNSWICK

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The Town Board has received an application from Brunswick Associates of Albany, LP, for the amendment of the existing Brunswick West Apartments planned development district (PDD) located at NY Route 7 and Brunswick Drive in the Town of Brunswick. There are currently 96 rental units in the apartment complex. This proposal would add an additional 84 apartments for a total of 180 residential rental units on the 38.95 acre site. In addition, the applicant proposes to construct some 84 garage units in 14 garage buildings to be rented in conjunction with the new units, with some being offered to renters of existing units as well. In addition to the garages, some 294 parking spaces are proposed, as well as 10 spaces for RV storage. The resulting density on the site will be approximately 9,426 sq. ft. per apartment unit.

The Zoning Board of Appeals adopts a positive recommendation on this proposal, subject to thorough and careful review of the same by the Town Board, and the caveats and conditions hereafter stated. The Board notes that the Town Board has already approved the existing Brunswick West Apartment complex, and has therefore previously determined that apartments are an appropriate land use in this area. This Board also notes that the density of the apartment complex after the proposed new construction is fully consistent with the density of the existing complex, some 9,000+ sq. ft. per apartment unit. The Board also notes that the existing apartments are all rented, so there appears to be a need for additional rental units in the area.

This Board does recommend, however, that, assuming the proposed new units are approved and constructed, this apartment complex be considered fully built out, and that no further units be permitted on this site in the future. Additionally, it is strongly recommended that all of the green space shown on the existing PDD plan be required to remain in a forever green, natural state. The Board also takes note of the comments and recommendations made by the Planning Board in its Resolution dated February 4, 2010, with respect to setbacks, emergency vehicle access, vehicular circulation, parking, school bus considerations, and building construction and appearance, and fully concurs with the same.

Dated: Brunswick, New York  
March 15, 2010

**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 19, 2010, at 6:00 P.M.

Present at the meeting were: Mark Cipperly, 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 March, 2010, meeting. There were no changes noted. Member Shaughnessy made a motion to accept the minutes as submitted. Member Schmidt seconded. The motion carried 5 - 0.

The next item of business was further consideration of the appeal and petition of MICHAEL F. FINK, owner-applicant, dated February 18, 2010, for an area variance pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the repair, expansion and conversion of an one-car garage into a two-car garage on a lot located at 21 East Road, in the Town of Brunswick, because the proposed construction violates the side yard setback in an R-40 District in that 25 feet is required and 6.4 feet is proposed. Mr. Fink appeared. He submitted to the Board a letter from the affected adjoining property owner explicitly consenting to the variance. Attorney Cioffi read the letter dated March 22, 2010, from Fadhilika Atiba-Weza, into the record. There were no further questions or any further discussion.

Member Schmidt made a motion to classify this matter a Type 2 action under SEQRA. Member Shaughnessy seconded. The motion carried 5 - 0. Member Trzcinski thereupon offered a Resolution granting the area variance. Member Schmidt seconded. The Resolution was adopted by a vote of 5 - 0.

The next item of business was further consideration of the appeal and petition of WILLIAM J. DURIVAGE, owner-applicant, dated January 7, 2010, for area variances pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with an existing swimming pool filter and an existing swimming pool shed on a lot located at 103 Menemsha Lane, in the Town of Brunswick, because the pool filter violates the rear yard setback in an R-25 District in that 25 feet is required and

less than 1 foot is proposed, and because the pool shed violates the rear yard setback in an R-25 District in that 25 feet is required and 3 feet is proposed.

Robert Hess, Esq., appeared, representing Mr. Durivage. He handed up to the Board a written submission in support of the variance request. He noted that a survey of the property line has recently been completed. The pool house overhang and the pool pump appear to be the problems here and neither thing is visible from Menemsha Lane. Accordingly, he stated, impact on the public is really not an issue. He also noted that there is a large stand of trees between the "offending structures" and Mr. Purcell's property, which alleviates the visual and aesthetic impact of those structures on the Purcells. He further opined that moving the pump in order to comply with the setbacks may actually result in moving it closer to the Purcells' house. They have made several proposals to the Purcells to purchase some land so they can be in compliance with the setbacks. The Purcells have refused to sell. The cost to move the pump, based on estimates they have received, is \$5500.00. The cost to remove the pool house overhang is \$3500.00. They are willing to install a fence to shield these structures from the Purcells' view. The variances requested are not substantial given the circumstances. While the need for the variances was self-created by Mr. Durivage, he built where he did in good faith, believing he was building on his own property and in compliance with the setbacks. They believe the Purcells were also confused about the property line, as they never complained when the structures were being built. Mr. Hess stated that they do not believe that the pool pump is a "structure" as defined in the Zoning Ordinance, and that it therefore does not need to meet the setbacks.

The Chairman noted that the pool house was built without a building permit. Mr. Kreiger stated that the original building permit for the pool allowed for a movable screen house. The current pool house was built later and does not have a building permit or approval. Member Schmidt said that he is concerned that the proposed variances are significant from the property lines. Also, the offers made by Mr. Durivage to purchase some land from the Purcells were not large enough under the circumstances. Mr. Durivage said that a realtor told him what to offer, but he did not submit anything in writing from the realtor. Mr. Hess said that the offers were based on market value.

Attorney Cioffi asked why it was so costly to move the pool pump now. He moved it previously on his own, from the Purcell property onto his own, but still within the setback. He said moving the pool filter off Purcells' property was a small job. He did not have to dig up any lines or valves. The only thing actually on Purcells' property was half of the filter tank. He just had to cut into a plastic line and install an elbow. Mr. Durivage stated that Mr. Kreiger told him at the time it would probably be acceptable if he just moved the pool filter off the Purcells' property. Mr. Kreiger confirmed that he said that.

Richard Purcell stated that if the trees block his view of the pool house and pool pump so well, why is Durivage willing to install a fence. He also noted that Durivage has been planting trees on the Purcell property for some time, and he does not want them there. There are more than a dozen trees planted on his property by Durivage that he wants removed. They want the full 25 foot setbacks to be respected. There were always property line markers in the ground. Durivage must have known he was not building on his own property. They never checked the property line when Durivage was building things. They assumed he was complying with the law.

The Chairman stated that he wondered whether there was some way the Purcells and the Durivages could compromise this. The Chairman made a motion to recess briefly to allow the Members to review the materials just submitted. Member Cipperly seconded. The motion carried 5 - 0. After a brief recess, Member Shaughnessy made a motion to return to session. Member Cipperly seconded. The motion carried 5 - 0.

Attorney Hess advised the Board that, during the recess, the Purcells and the Durivages agreed to a solution to their dispute which they would the Board to consider in resolving the instant grievance requests. The proposed resolution is as follows:

1. As to the pool pump and filter, Mr. Durivage will move it so that it is set back at least 15 feet from the property line. This would include the pump, filter, heater, and all above-ground appurtenances, including the concrete slab.
2. Mr. Durivage will remove five (5) trees to be selected by the Purcells from the Purcell property, within a time frame to be set by the Board.
3. The Purcells would waive and withdraw any complaint or objection to the pool house overhang remaining where it is, on the Durivage property, some two feet from the property line.

Mr. Purcell agreed that that was the understanding.

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

Attorney Cioffi advised that it was the Board's preference that the parties agreement and understanding as outlined by Mr. Hess be reduced to writing, signed by the parties, and submitted to the Board within two weeks of today's date. The Board's intention would then be to close the public hearing and issue a decision on the variance requests, taking into account the agreement and understanding of the parties. The matter was adjourned to May 17, 2009, for further proceedings.

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

Dated: Brunswick, N.Y.  
May 3, 2010

Respectfully submitted,



THOMAS R. CIOFFI  
Town Attorney - Zoning Board Secretary

**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 May 17, 2010, at 6:00 P.M.

Present at the meeting were: Mark Cipperly, Member  
James Shaughnessy, Member  
E. John Schmidt, Member  
James Hannan, Chairman

Member Trzcinski was 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 further consideration of the referral from the Town Board regarding the Duncan Meadows Planned Development District. Attorney Cioffi advised that the Board Members had before them a draft determination which, if adopted by the Board, would make a generally positive recommendation on the project. Attorney Cioffi further advised that the Board also had before it a Resolution adopting the said draft determination. Chairman Hannan offered the Resolution. Member Shaughnessy seconded. A roll call vote was taken and all Members present voted in the affirmative.

The next item of business was approval of the minutes of the April, 2010, meeting. There were no changes noted. Member Shaughnessy made a motion to accept the Minutes as submitted. Member Schmidt seconded. The motion carried 4 - 0.

The Chairman noted that there are two application for area variances on the agenda involving the same neighborhood, the Langmore Lane area. He asked Mr. Kreiger about the neighborhood, generally. Mr. Kreiger stated that the area is zoned A-40. Just under an acre is required to build but most lots in the area are well under that. Many lots in the area have sheds close to the property line.

The next item of business was the appeal and petition of CHARLES D. ALUND, JR., owner-applicant, dated April 13, 2010, for area variances pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the construction of a Storage/Garden Shed on a lot located at 63 N. Langmore Lane, in the Town of Brunswick, because the proposed construction violates the front yard setback in an A-40 District in that 75 feet is required and 42 feet is proposed, and also violates the rear yard setback in that 25 feet is required and 7 feet is proposed. Attorney Cioffi read the Notice of Public Hearing aloud.

Charles D. Alund, Jr., appeared. He stated that he wants to build a new shed and remove the existing one. He has lived at this location for about 1 year. He has considered placing the new shed on various locations on his property. The main problem is that the grade drops off about 8 feet in all directions from the house. It would be cost prohibitive to raise the grade sufficiently. Also, half the back yard is taken up by his septic system. The existing shed is about 6 feet from the property line. He does not know how long it has been there. He would still have a problem with the grade if he put the new shed where the old one is.

Maureen Gorman, 21 Langmore Lane, stated that she has no problem with the shed. Bob Mainello, 8 Woodcut Lane, stated that he lives directly across the street and has a direct view of the house and shed. He has no problem with it. Robert Nelson, 7 Woodcut Lane, said he lives right next door. He has a problem varying the front yard setback. The shed would be in front of his house. Helen Potter, also residing at 7 Woodcut Lane, stated that Mr. Alund already built the concrete slab for the shed without getting a building permit.

Mr. Alund stated that he built the pad in October 2009. He did not know he needed a permit. Once he found out, he stopped work. Mr. Kreiger confirmed that Ms. Potter complained to the Town about the pad. He then advised Mr. Alund that he would have to stop work. Mr. Alund also stated that the proposed shed would not sit out in front of the Nelson/Potter house. He intends to situate the gable roof on the shed so as to minimize the visual impact. Mr. Alund stated that he did tell Ms. Potter and Mr. Nelson that he wanted to build a shed there. He also apologized to them for having some scaffolding lying around his property. Mr. Nelson handed up a sketch showing where the shed would be in relation to his house. Mr. Alund referred to his submitted pictures which show the Nelson/Potter house in relation to the shed. Mr. Nelson insisted that his house is 60 feet from Woodcut Lane. The proposed shed would be in front of their house. Mr. Alund said he can't just replace the old shed. It is too small. It won't even hold his tractor. He wants to build a new shed to hold his possessions, and he wants it to match his house. Mr. Nelson said that Mr. Alund has 200 feet along his property line on which he can situate a new shed. He has no problem with the side setback. Ms. Potter said that Mr. Alund lied to her about having a building permit when she questioned him about the pad.

Attorney Cioffi suggested that the Board ask Mr. Kreiger to determine whether it is common in the neighborhood for people to have accessory structures within the front setback, and whether Mr. Alund's construction options on his property are as limited as he says. The Board did so. The Chairman stated that the public hearing should be continued to June 21, 2010, for Mr. Kreiger's report. Member Cipperly so moved. Member Schmidt seconded. The motion carried 4 - 0.

The next item of business was the appeal and petition of LAWRENCE MURRAY, owner-applicant, dated April 21, 2010, for area variances pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the construction of a 14' x 16' Dutch Style Barn on a lot located at 69 N. Langmore Lane, in the Town of Brunswick, because the proposed construction violates the side yard setback in an A-40 District in that 25 feet is required and 3 feet is proposed, and also violates the rear yard setback in that 25 feet is required and 5 feet is proposed. Attorney Cioffi read the Notice of Public Hearing aloud.

Lawrence Murray appeared. He stated that this is the only place he can build. It is below

grade, out of the way, and not very visible. Bob Mainello, 8 Woodcut Lane, and Maureen Gorman, 21 Langmore Lane, both stated they had no problem with the application. No one spoke in opposition. The Chairman stated that he wanted Mr. Kreiger to look at this one as well. Member Schmidt said that he is uncomfortable with the shed being this close to the line. Member Shaughnessy made a motion to continue the public hearing to June 21, 2010. Member Schmidt seconded. The motion carried 4 - 0.

The next item of business was further consideration of the appeal and petition of WILLIAM J. DURIVAGE, owner-applicant, dated January 7, 2010, for area variances pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with an existing swimming pool filter and an existing swimming pool shed on a lot located at 103 Menemsha Lane, in the Town of Brunswick, because the pool filter violates the rear yard setback in an R-25 District in that 25 feet is required and less than 1 foot is proposed, and because the pool shed violates the rear yard setback in an R-25 District in that 25 feet is required and 3 feet is proposed.

Robert Hess, Esq., appeared, representing Mr. Durivage. Lawrence Howard, Esq., appeared for the Purcells. Mr. Hess stated that he thought that there was an agreement reached at the last meeting between the Durivages and the Purcells as regards the pool house and the pool filter and heater, as well as some other issues. But when he reduced it to writing, the Purcells refused to sign or even discuss it. Mr. Durivage has already moved the pool heater and filter to be set back at least 15 feet from the property line. The work is mostly completed. The existing concrete pad will be removed. He spoke to Attorney Howard about the agreement. Mr. Howard told him that the agreement was not enough for the Purcells. The Purcells want the overhang on the pool shed removed. They also want more trees removed. The application for an area variance has now been changed. The filter and heater are now 16 feet from the property line. His clients made a mistake as to the property line. This is what area variances are for. They tried to work things out.

Mr. Kreiger confirmed that the filter and heater have been moved. They are now set back 16 feet from the property line. Also, Mr. Durivage has applied for a building permit on the shed. Attorney Hess asked the Chairman if the Board intended to rule tonight, with a Member absent. Attorney Cioffi stated that the Board would likely close the public hearing and subsequently issue a written decision.

Attorney Howard stated that the Purcells came to him after the last meeting. At the meeting, they felt they had no choice but to agree, but they did not like the agreement. They feel they were pushed into the agreement. No one has even said anything about the pool being too close. The variances requested are substantial. The Purcells know that the pool will not be moved, but they would like the pool shed moved or at least the overhang removed. He has sent a letter to the Board raising various legal issues. The whole problem here is that Mr. Durivage built without getting a building permit. If he had, the problem would have been avoided.

Attorney Cioffi stated that he is sorry that the Purcells felt pressure, That was not the Board's intention. He stated that the Board would simply issue a decision on the application. However, he stated, the issue of the Durivages removal of certain trees was outside the purview of the issues raised in the application, and would probably not be part of the decision. Attorney Howard acknowledged that the subject of the trees is not within the jurisdiction of the Board.

Member Schmidt made a motion to close the public hearing. Member Cipperly seconded. The motion carried 4 - 0. The Board agreed that the attorneys could submit additional written comments to the Board, with copies to the other party, with the understanding that it would not extend the decision deadline.

Thomas Gavigan, 256 South Lake Avenue, asked to address the Board. He stated that he lives next door to Philip Chiefari who had been operating the lawnmower sales and service business out of his home. The Code Enforcement Officer directed that he cease all business operations and this Board upheld that decision. However, Mr. Chiefari is operating again. He has complained to Mr. Kreiger but Mr. Kreiger dismisses him.

Attorney Cioffi stated that the jurisdiction of this Board is appellate only, and enforcement requests need to go to Mr. Krieger. Attorney Cioffi stated that he would discuss the matter with Mr. Kreiger.

There being no further business, Member Schmidt made a motion to adjourn. Member Shaughnessy seconded. The motion carried 4 - 0.

Dated: Brunswick, N.Y.  
May 30, 2010

Respectfully submitted,

  
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THOMAS R. CIOFFI  
Town Attorney - Zoning Board Secretary

**TOWN OF BRUNSWICK  
ZONING BOARD OF APPEALS**

**REGULAR MEETING**

**May 17, 2010**

**RESOLUTION ADOPTING DETERMINATION**

**WHEREAS**, an application for the establishment of a planned development district (PDD) to be known as the Duncan Meadows Planned Development District, to be located at McChesney Avenue and McChesney Avenue Extension, in the Town of Brunswick, having been filed by ECM Land Development, LLC.; 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 Shaughnessy, was duly put to a roll call vote as follows:

<b>MEMBER CIPPERLY</b>	<b>VOTING</b>	<u>Aye</u>
<b>MEMBER SCHMIDT</b>	<b>VOTING</b>	<u>Aye</u>
<b>MEMBER SHAUGHNESSY</b>	<b>VOTING</b>	<u>Aye</u>
<b>MEMBER TRZCINSKI</b>	<b>VOTING</b>	<u>Absent</u>
<b>CHAIRMAN HANNAN</b>	<b>VOTING</b>	<u>Aye</u>

The foregoing Resolution was thereupon declared duly adopted.

Dated: May 17, 2010

TOWN OF BRUNSWICK  
ZONING BOARD OF APPEALS

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In the Matter of the Application of

ECM LAND DEVELOPMENT, LLC

Applicant

RESPONSE TO  
REFERRAL

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

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The Town Board has received an application from ECM Land Development, LLC, for the establishment of a planned development district (PDD) to be known as the Duncan Meadows Planned Development District located at McChesney Avenue and McChesney Avenue Extension in the Town of Brunswick. The application seeks approval for a mixed use residential PDD consisting of 78 town houses, 88 condominium units and 50 senior citizen apartment units situated on approximately 91 acres of land.

The Zoning Board of Appeals adopts a positive recommendation on this proposal, subject to the continuing thorough and careful review of the same by the Town Board which is now ongoing, and, subsequently, by the Planning Board in the context of site plan approval should the project progress to that point. From a zoning perspective, the Board notes that this project, a clustered residential development, is proposed to be located in an area of town in which similar uses exist or have been approved for future construction, to wit: the Sugar Hills Apartments, the ROUSE Senior Citizens Housing Complex, and the Highland Creek Planned Development District. The proposed project is consistent with the Comprehensive Plan in that it is located in an area which can be served by municipal water and sewer as well as in an area where similar uses currently exist. Like the Planning Board, this Board is satisfied with the proposed setbacks of the buildings from McChesney Avenue.

This Board does recommend, however, that any approval provide that, assuming the project is approved and built out, that no further units be permitted on this site in the future.

Dated: Brunswick, New York  
May 17, 2010

**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 June 21, 2010, at 6:00 P.M.

Present at the meeting were: Mark Cipperly, Member  
Caroline Trzcinski, Member  
James Hannan, Chairman

Member Schmidt was absent. The Board noted that Member Shaughnessy had resigned. 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, 2010, meeting. Member Trzcinski noted one correction. One page 2 of the Draft Minutes, third full paragraph, third line from the bottom, the word "feel" should read "feet". Member Trzcinski made a motion to accept the Minutes as amended. Member Cipperly seconded. The motion carried 3 - 0.

The Chairman noted that a written determination on the appeal and petition of WILLIAM J. DURIVAGE, dated January 7, 2010, for area variances pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with an existing swimming pool filter and an existing swimming pool shed at his home located at 103 Menemsha Lane, would be forthcoming at the next meeting.

The Chairman then asked Mr. Kreiger to report his findings regarding the prevalence of sheds in the Langmore Lane area. Mr. Kreiger stated that he went there today. He did not measure every shed, but he noted that at least 13 sheds appear to be too close to the property lines. According to town records, no zoning variances have been granted in that neighborhood for sheds.

The next item of business was the appeal and petition of CHARLES D. ALUND, JR., owner-applicant, dated April 13, 2010, for area variances pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the construction of a Storage/Garden Shed on a lot located at 63 N. Langmore Lane, in the Town of Brunswick, because the proposed construction violates the front yard setback in an A-40 District in that 75 feet is required and 42 feet is proposed, and also violates the rear yard setback in that 25 feet is required and 7 feet is proposed.

Charles D. Alund, Jr., appeared. He stated that the shed he wants to build is a necessity. He wants to work with the Board. If he can make an adjustment to his proposal that will resolve the matter, he will do so. Mr. Kreiger agreed with Mr. Alund that the proposed shed would be set back

further from the Nelson property line than the existing shed is. Member Cipperly asked Mr. Alund why he couldn't locate his new shed within the same plane as the shed on the Nelson property. Mr. Alund replied that the slope of the property is the problem. He would have to increase the slope some 2 ½ feet, which would be very costly. Robert Mainello, 8 Woodcut Lane, said that he lives across the street. He has no problem with the shed or the variance. Maureen Gorman, 21 Langmore Lane, said that she has no objection to the shed because Mr. Alund will then be able to get all of his things off the lawn, which will improve the appearance of the neighborhood.

Robert Nelson, 7 Woodcut Lane, asked how many of the 13 sheds Mr. Kreiger found not in compliance were violations of front yard setbacks. He noted that the proposed shed would only be 25 feet from his house. His own shed is about 100 feet from Mr. Alund's house. Mr. Kreiger confirmed that there is a slope in Mr. Alund's back yard. It slopes toward Woodcut Lane. He can't say that the location proposed by Mr. Alund is the only place on his property that the shed can be located. It was noted that the back of Alund's existing shed and the front of the Nelson shed are about even with each other.

The Chairman stated that he wanted a more thorough evaluation from Mr. Kreiger regarding illegal sheds in the area and whether the shed can be located elsewhere on the Alund property.

The Board then turned to the appeal and petition of LAWRENCE MURRAY, owner-applicant, dated April 21, 2010, for area variances pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the construction of a 14' x 16' Dutch Style Barn on a lot located at 69 N. Langmore Lane, in the Town of Brunswick, because the proposed construction violates the side yard setback in an A-40 District in that 25 feet is required and 3 feet is proposed, and also violates the rear yard setback in that 25 feet is required and 5 feet is proposed.

Lawrence Murray appeared. He stated that he appreciates the board's dilemma with these sheds. Mr. Kreiger stated that Mr. Murray has a large swimming pool that takes up a lot of space in his yard. The existing shed is right on the property line. He wants to build a new shed in the back corner of the lot. The space is very limited.

Member Trzcinski made a motion to continue both matters to the next meeting. Member Cipperly seconded. The motion carried 3 - 0.

The next item of business was the appeal and petition of ERIC KELLY, owner-applicant, dated May 9, 2010, for an area variance pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the construction of an above ground swimming pool on a lot located at 1250 Spring Avenue, in the Town of Brunswick, because the proposed construction violates the rear yard setback in an R-25 District in that 25 feet is required and 15 feet is proposed. Attorney Cioffi read the Notice of Public Hearing aloud.

Eric Kelly appeared. Due to the size and shape of his lot, he states he has limited options for the placement of the pool. Also, part of his yard is taken up by his septic system. There is also a nice tree on his lot which takes up a lot of otherwise usable space. Member Trzcinski asked Mr. Kelly whether the pool was already up. Mr. Kelly said that the sides of the pool were up. He started construction this past weekend. He knew he needed a permit and did not have one. Mr. Kreiger said

he was not aware that Mr. Kelly had started work on the pool. Member Trzcinski said it also appeared that a shed on the property was also in violation of the setbacks. The Chairman said that he was very concerned that Mr. Kelly had started building without a building permit or a variance from this Board. Mr. Kelly said that he bought the pool used and had some friends available this weekend to help him assemble it. He was concerned that the liner would be damaged if the pool were not assembled. The shed was there when he bought the house. Mr. Kelly said he was sorry he started work without permission. He said he did not understand the ramifications.

In the course of further discussions, Mr. Kelly admitted that the pool was actually fully assembled and ready for approval. The Chairman expressed extreme displeasure at this. Mr. Kelly said he was sorry. The Board advised Mr. Kreiger to consider enforcement action. The Board decided to continue the public hearing to consider whether the pool could be situated elsewhere on the property. Member Cipperly made a motion to continue the public hearing. Member Trzcinski seconded. The motion carried 3 - 0.

The next item of business was the appeal and petition of THOMAS DALEY, owner-applicant, dated April 27, 2010, for an area variance pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the construction of an open storage building on a lot located at 1356 NY 7, in the Town of Brunswick, because the proposed construction violates the side yard setback in an R-25 District in that 15 feet is required and 5 feet is proposed. Attorney Cioffi read the Notice of Public Hearing aloud.

Mark Collins, MAC Carpentry, appeared. He stated that he was representing Mr. Daley who could not be there that evening. He explained that Mr. Daley wants to be able to store firewood and a trailer in the building. He wants to build with a 5 foot setback instead of 15 as normally required. There is a significant downward slope to the property. There were discussions about the size of the building and whether it could be located elsewhere on the property. No one from the public spoke for or against the proposal. There were discussions as to whether to proceed in the absence of Mr. Daley. Also, nothing was heard from the adjoining owner who would be affected by this. After this discussion, Member Trzcinski made a motion to classify this matter a Type 2 action under SEQRA. Member Cipperly seconded. The motion carried 3 - 0. Member Trzcinski then offered a Resolution granting the variance as requested. Member Cipperly seconded. The matter was put to a roll call vote and all voted in the affirmative. The variance was granted.

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

Dated: Brunswick, N.Y.  
June 30, 2010

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 19, 2010, at 6:00 P.M.

Present at the meeting were: John Schmidt, Member  
Martin Steinbach, Member  
Mark Cipperly, Member  
Caroline Trzcinski, 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 June, 2010, meeting. Member Trzcinski made a motion to accept the Minutes as submitted. Member Cipperly seconded. The motion carried 5 - 0.

The next item of business was the Request for a Special Use Permit of NIAGARA MOHAWK POWER CORP., owner-applicant, dated May 27, 2010, pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the upgrade and expansion of the existing National Grid Sycaway Electrical Power Substation located at 259 Hillcrest Avenue, in the Town of Brunswick, because public utility buildings for servicing the neighborhood are only allowed in an R-25 District by way of a special use permit issued by the Zoning Board of Appeals. Attorney Cioffi read the Notice of Public Hearing aloud.

Nick Spagnoletti, Project Manager, and Joe Kryzak, Project Manager, appeared for the applicant. They explained that Niagara Mohawk needed to add a new switchgear unit and a new transformer to the Sycaway Electrical Power Substation. The old transformer is showing signs of overheating. There has also been an increase in electrical demand at this location. The new switchgear building will be 16' x 4'. The existing fence at the substation will be moved 45' to the north and 12' to the east. There will be some excavation and tree removal. The expansion will all take place on Niagara Mohawk's existing property there. They will need to do a Storm Water Pollution Prevention Plan. They will also need site plan approval from the Planning Board. They want to start the work in the Fall and do the overhead electrical work next Spring. Before doing the work, they will contact adjacent property owners. This project is a little different from the one they recently did at the Plank Road Substation. There, they installed a new switchgear unit and removed the old one. Here, a new switchgear unit will be added, but the old one will be retained as well.

Mr. Kreiger stated that there is no special use permit on file for the existing Sycaway Substation. Mr. Kryzak said that the Substation likely pre-dates the Town Zoning Ordinance. The expansion should not effect the majority of property owners in the area, since most of the houses are located on the west side of the Substation, and they are not expanding in that direction. This station serves the vital Route 7 corridor and is necessary to maintain and improve the delivery of electrical power.

Member Schmidt made a motion to classify this matter an unlisted action under SEQRA. Member Trzcinski seconded. The motion carried 5 - 0. Attorney Cioffi then led the Board through completion of Part II of the short-form EAF. Attorney Cioffi summarized the project as described in Part I of the EAF. The Board considered all of the questions contained in Part II of the EAF. The Board made some comments which were noted but did not identify any adverse environmental impacts. After the review was completed, Chairman Hannan made a motion to issue a negative declaration of significance under SEQRA. Member Schmidt seconded. The motion carried 5 - 0.

The Board noted that the Substation has been in existence and operation for many years, and that the statutory criteria for the issuance of a special use permit have been met. Chairman Hannan made a motion to grant the special use permit as requested. Member Schmidt seconded. The matter was put to a roll call vote and all voted in the affirmative.

The next item of business was further proceedings in the appeal and petition of ERIC KELLY, owner-applicant, dated May 9, 2010, for an area variance pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the construction of an above ground swimming pool on a lot located at 1250 Spring Avenue, in the Town of Brunswick, because the proposed construction violates the rear yard setback in an R-25 District in that 25 feet is required and 15 feet is proposed.

Marcia Doyle, Esq., appeared with Mr. Kelly. She explained that a variance was needed because the septic system on the lot precluded putting the pool anywhere else. She stated that Mr. Kelly was very sorry that he built the pool before he got the approval. Chairman Hannan said the Board was concerned about the pool being used without an electrical inspection. Attorney Doyle handed up the inspection report to the Board. There being no further discussion, Chairman Hannan made a motion to classify this matter a Type 2 action under SEQRA. Member Schmidt seconded. The motion carried 5 - 0.

Chairman Hannan then made a motion to grant the variance as requested on the condition that a map or drawing be filed with the Board by the applicant showing the location of the septic system on the lot. Member Schmidt seconded. The motion carried 5 - 0.

The next item of business was further proceedings on the appeal and petition of WILLIAM J. DURIVAGE, dated January 7, 2010, for area variances pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with an existing swimming pool filter and an existing swimming pool shed at his home located at 103 Menemsha Lane. Attorney Cioffi stated that the Board had before it a proposed written Determination as well as a draft resolution adopting the Determination. Attorney Cioffi read the draft Determination aloud. In essence, the draft Determination provided that the variances requested for the pool house and the pool filter were requests to vary the side lot line

setback of 15 feet, not the rear lot line setback of 25 feet; that the pool filter, having been moved 16 feet away from the property line, was now zoning compliant so that variance request was moot; and that a variance would be granted reducing the side lot line setback for the pool house from 15 feet to 8 feet. Member Cipperly Hannan thereupon offered the Resolution adopting the Determination. Member Schmidt seconded. The Resolution was put to a roll call vote, with Member Steinbach abstaining and all remaining Members voting in the affirmative. The Determination and the Resolution Adopting Determination have been separately filed in the Town Clerk's Office.

The next item of business was further proceedings in the appeal and petition of CHARLES D. ALUND, JR., owner-applicant, dated April 13, 2010, for area variances pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the construction of a Storage/Garden Shed on a lot located at 63 N. Langmore Lane, in the Town of Brunswick, because the proposed construction violates the front yard setback in an A-40 District in that 75 feet is required and 42 feet is proposed, and also violates the rear yard setback in that 25 feet is required and 7 feet is proposed.

Charles D. Alund, Jr., appeared. He stated that the shed can only go where he is proposing due to the excessive grade drop on his lot. He considered every other location. It would be very costly to build the shed in light of the elevations. He does not have written estimates.

Helen Potter, 7 Woodcut Lane, stated that the Board has to consider the impact of overhead power lines. She also noted that the shed on her property, which admittedly is not fully zoning compliant, has been there for 10 years and was constructed off-site. Robert Nelson, also of 7 Woodcut Lane, sought to interject and the Chairman advised him that only one person could speak at a time. The Chairman asked Mr. Nelson to leave the room. Ms. Potter went on to state that some comments contained in the Minutes of the last meeting were inaccurate. Alund's proposed shed is in front of their shed and in front of their house. Mr. Alund lied about having a building permit when he installed the concrete pad for the shed. Ms. Potter further complained that the property had not been recently surveyed. The Zoning Officer has refused to meet with them. They are the only ones in the neighborhood which will have two non-compliant sheds within their setbacks. This is an invasion of their privacy. When Mr. Nelson returned to the room, he complained that Mr. Kreiger had not met with them or looked at the situation in person. Mr. Kreiger said he could look at the property but he did not feel he could determine where a shed could be built on the Alund property.

There was then a lengthy review and discussion of the map showing the proposed location of the shed and the existing structures on the Alund property among the Board, Attorney Cioffi, Mr. Nelson, Mr. Alund and Mr. Kreiger. It was ultimately agreed that Mr. Nelson and Mr. Alund would meet with Mr. Kreiger and Member Cipperly at the Alund property to review possible alternatives.

The Board then turned to further consideration of the appeal and petition of LAWRENCE MURRAY, owner-applicant, dated April 21, 2010, for area variances pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the construction of a 14' x 16' Dutch Style Barn on a lot located at 69 N. Langmore Lane, in the Town of Brunswick, because the proposed construction violates the side yard setback in an A-40 District in that 25 feet is required and 3 feet is proposed, and also violates the rear yard setback in that 25 feet is required and 5 feet is proposed.

Lawrence Murray appeared. There was a lengthy review and discussion of the map showing

the proposed shed and the existing structures on the Murray lot focusing on whether there are alternative locations available for the shed which would not require a variance. Maureen Gorman, 21 Langmore Lane, said that the shed is a great idea as things will be stored inside. Charles Alund, 63 N. Langmore Lane, said that he is in favor of the shed. Robert Mainello, 8 Woodcut Lane, said that he is in favor of the shed. The Board acknowledged a letter dated May 30, 2010, from Maureen and Kevin Cox, 2 Longhill Road, who own adjacent property, indicating that they had no objection to the shed.

Mr. Kreiger said that Mr. Murray's pool encompasses much of his side yard. The Chairman asked Mr. Murray to consider alternatives which might obviate or reduce the variances needed.

Both the Murray and Alund matters were put over to the August 16 meeting.

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

Dated: Brunswick, N.Y.  
August 5, 2010

Respectfully submitted,



THOMAS R. CIOFFI

Town Attorney - Zoning Board Secretary

**TOWN OF BRUNSWICK  
ZONING BOARD OF APPEALS**

**REGULAR MEETING**

**July 19, 2010**

**RESOLUTION ADOPTING DETERMINATION**

**WHEREAS**, the appeal and petition of WILLIAM DURIVAGE, owner-applicant, dated January 7, 2010, for area variances pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with an existing swimming pool filter and an existing pool house and shed at his home located at 103 Menemsha Lane, in the Town of Brunswick, having duly come before this Board; and

**WHEREAS**, the Board having caused to be prepared a written Determination with respect thereto, a copy of which is annexed; 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 Cipperly and seconded by Member Schmidt, was duly put to a roll call vote as follows:

<b>MEMBER CIPPERLY</b>	<b>VOTING</b>	<b>Aye</b>
<b>MEMBER SCHMIDT</b>	<b>VOTING</b>	<b>Aye</b>
<b>MEMBER STEINBACH</b>	<b>VOTING</b>	<b>Abstain</b>
<b>MEMBER TRZCINSKI</b>	<b>VOTING</b>	<b>Aye</b>
<b>CHAIRMAN HANNAN</b>	<b>VOTING</b>	<b>Aye</b>

The foregoing Resolution was thereupon declared duly adopted.

Dated: July 19, 2010

TOWN OF BRUNSWICK  
ZONING BOARD OF APPEALS

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In the Matter of the Appeal and Petition of

DETERMINATION

WILLIAM DURIVAGE,

Applicant

For the Issuance of Area Variances Under the Zoning  
Ordinance of the TOWN OF BRUNSWICK

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This matter involves the appeal and petition of WILLIAM DURIVAGE, owner-applicant, dated January 7, 2010, for area variances pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with an existing swimming pool filter and an existing pool house and shed at his home located at 103 Menemsha Lane, in the Town of Brunswick. The Code Enforcement Officer determined that the pool filter and associated apparatus violated the 25 foot rear lot line setback for accessory structures in that it was located less than one (1) foot from the property line between applicant's property and that of his neighbor, Richard Purcell. He similarly determined that the pool house violated the rear lot line setback as well in that it is situated only three (3) feet off the Durivage - Purcell property boundary. The applicant has sought variances essentially permitting the structures to remain in place.

The pertinent facts are not substantially in dispute. The record discloses that in September, 2002, the applicant applied for a building permit to construct an in ground swimming pool at his residence. The building permit application specifically mentioned that there would be erected a "screen house approximately 10' x 12' off the west end of the patio", and that "the screen house will be prefabricated and portable". The drawing attached to the building permit application indicated that the fence which would surround the pool would be 20 -25 feet from the Durivage - Purcell property line. The building permit was granted. The pool was constructed in 2002. In 2003, the prefabricated, portable screen house was constructed. In 2004, without applying for a building permit, the applicant substantially modified the pool house. It now has a solid wall in the back, although the sides are still made of screen. The roof was extended and the pool house made substantially larger. It is now 18' x 18', including the overhang. It is no longer portable. In 2006, Richard Purcell had the property line between his property and that of the applicant located near applicant's pool surveyed. It was then that it was discovered that the applicant's pool filter and related apparatus actually encroached onto the Purcell property. The pool house was found to be

located on the applicant's property, but within three (3) feet of the line. He put survey makers in the ground and also stakes depicting the boundary line. A few days later, the stakes were gone. He found the stakes on the Durivage property. The applicant admitted that he removed the stakes to mow the grass there as he had been doing for years. Mr. Purcell also complained to the Code Enforcement Officer about the encroachment and the setback. The record shows that several letters were written to the applicant between 2006 and 2009, essentially advising him that the pool filter and the pool house were in violation of setbacks prescribed in the Zoning Ordinance and they would have to be moved or a variance permitting them to stay where they were would need to be obtained. At some point, the applicant slightly modified the filter apparatus such that it no longer actually intruded onto the Purcell property, but was still within one (1) foot of the line. The Code Enforcement Officer had mentioned to applicant at that time that it would probably be acceptable if he just got the filter off the Purcell property. Mr. Purcell, however, continued to press the issue of the setback violations with the Town. During the pendency of these proceedings, the applicant had his own survey done, which essentially confirmed the findings of the Purcell survey. The applicant also made several proposals to purchase various amounts of land along the line in question from Mr. Purcell, which would legitimize his structures. None of the purchase proposals were acceptable to Mr. Purcell. Also during the pendency of these proceedings, an attempt was made to settle the differences between the applicant and the Purcells, subject to the approval of this Board. While the Purcells were originally receptive, they subsequently decided that they did not want to settle. Believing the matter was going to be settled, the applicant moved the pool filter apparatus in accordance with the "understanding" and it is now sixteen (16) feet from the property line.

The applicant claims that he always believed that the boundary between his property and the Purcell property was the stand of trees located near the pool. He states that he was told that by his uncle, from whom he had purchased the property. He claims he never had the property surveyed until this issue came up. Mr. Purcell states that he has surveys going back to 1974 which clearly show the line. He feels that it was incumbent upon Mr. Durivage to be certain about the property line since he was making a \$20,000.00 investment in a swimming pool. There is no indication that Mr. Purcell ever complained or objected to the placement of the structures while they were going in. Applicant's apparent mistake about the property line resulted in an added complication in that he planted additional trees in the tree line mentioned above which now turn out to be on the Purcell property. Mr. Purcell wants the trees removed.

Before turning to consideration of whether the criteria for the granting of area variances have been met, there are some preliminary matters that need to be addressed. First, this Board finds that the Code Enforcement Officer erred in determining that the pool filter and pool house violated the rear setback, which is 25' in an R-25 District. In our view, the applicable setback is the side setback, which is only 15'. The definitions of "front yard", "rear yard" and "side yard" are contained in the Zoning Ordinance. In order to determine what is the rear yard and what is the side yard in a

particular lot configuration, you have to first determine what is the front yard. The definition "front yard" is as follows:

**YARD, FRONT:** That portion of a yard situated between the street line and the front line of a building.

The problem here, and undoubtedly what caused confusion for the Code Enforcement Officer, is that the applicant's lot is not located directly on a public street. Access to a public road, in this case Menemsha Lane, is apparently via an easement as the maps do not show any lot frontage on Menemsha Lane. The definition in the Zoning Ordinance, then, cannot technically be applied, since there is no street line. The Code Enforcement Officer, obviously, still attempted to apply the definition using the street line of Menemsha Lane, which does not abut applicant's lot in any way. There is actually another parcel of land between applicant's lot and Menemsha Lane to the North. This resulted in the northern side of applicant's residence being deemed its "front". Looking at the survey maps, and the pictures submitted by the parties, the "front" of the applicant's residence is clear. It is the easterly side of the house. There is a "front porch" there, as well as an adjacent concrete walkway which runs into the asphalt driveway which, in turn, leads over an adjacent parcel to Menemsha Lane. In our view, in cases such as this, where there is no frontage on a public road, the "front yard" is the space between the "front" of the house and the property line extending therefrom. It appears from the record that, at diverse times relative to this proceeding, the Town Building Department took the same view as that now adopted by the Board. For example, in the original building permit application for the pool, the drawing submitted shows the pool fence to be "20 - 25" feet from the Durivage - Purcell line. The fact that that did not cause pause to the Building Department at that time makes it pretty clear that the applicable setback being considered was a side setback of 15', not a rear setback which would have been 25', and potentially a problem. Also, in a letter dated December 10, 2009, to the applicant from Ronald Neissen, a town Building Inspector, the setback violation mentioned is the "side property line" setback of 15'.

This finding, of course, makes the setback issues raised by the pool filter and the pool house a side setback issue, not a rear setback issue. Accordingly, the required setback for both structures is 15' from the southerly side property line. As previously stated, the applicant recently moved the pool filter apparatus to a location 16' from the Durivage - Purcell line. The pool filter apparatus is therefore zoning compliant and the variance request pertaining thereto is moot. The above finding also renders moot the issue raised by applicant regarding whether the pool apparatus, such as filters, heaters, etc., must comply with setbacks, as opposed to just the pool itself. We also note that in light of this finding, the swimming pool and fence are fully zoning compliant as well.

In order to assess the merits of the application for area variances, the Board must consider the criteria set forth in Town Law, Section 267-b, subd. 3(b), which provides as follows:

(b) In making its determination, the zoning board of appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider: (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

For the purposes of clarity, each criterion will be considered separately below.

(1) WHETHER AN UNDESIRABLE CHANGE WILL BE PRODUCED IN THE CHARACTER OF THE NEIGHBORHOOD OR A DETRIMENT TO NEARBY PROPERTIES WILL BE CREATED BY THE GRANTING OF THE AREA VARIANCE.

Based upon the record developed, the Board finds that granting the sole variance now under consideration will have a minimal effect on the character of the neighborhood. As the applicant pointed out, the pool house is not visible from the nearest roadway, Menemsha Lane, which is some 400 feet away. Other than for its possible precedential value, the proximity of the pool house to the Purcells' lot line is unlikely to effect anyone other than the Purcells. The record as developed does not establish that a less than fastidious application of the side line setback in this case will cause a significant detriment to the Purcell property. Although Mr. Purcell claims that the closeness of the structure would impact the value of his property, and the applicant just as vigorously claims that it would not, neither party submitted any competent, professional testimony on the issue of the effect on property value. There is also a fairly large stand of trees between the Purcell residence and the applicant's pool and pool house. Clearly, this would limit the visual impact of the proximity of the pool house on the Purcells. It cannot be said, however, that there will be no effect on the Purcell's. They own property between the stand of trees and the Durivage - Purcell property line. Any use of that property on their part, or that of a future purchaser of the property, would certainly be impacted to some degree by the closeness of the pool house to the property line.

(2) WHETHER THE BENEFIT SOUGHT BY THE APPLICANT CAN BE ACHIEVED BY SOME METHOD, FEASIBLE FOR THE APPLICANT TO PURSUE, OTHER THAN AN AREA VARIANCE.

As pointed out by the attorney for the Purcells', if the applicant had not been initially mistaken about the property line when he constructed the pool and the pool house, there are many configurations of the structures which could have entirely avoided any need for a variance. As things currently stand, the pool house could be removed and reconstructed elsewhere (applicant states it cannot be moved) , or reduced in size, in order to comply with the applicable setback. Applicant maintains that it is infeasible to do so due to the cost. The applicant provided an estimate which purports to indicate that it would cost \$3500.00 to remove the roof overhang on the South side of the building, which would also involve taking off the roof on that side, cutting the rafters that extend for the overhang, taking out columns/supports, installing siding on the side of the building exposed by the work, rebuilding the roof line, and installing a new roof. It is noted that removing the overhang would not eliminate the need for an variance; rather, it would simply reduce the size of the variance required. With the existing overhang, applicant would need the setback reduced to three (3) feet. If the overhang were to be removed, the setback would still need to be reduced to eight (8) feet to allow the building to remain. Applicant has not provided an estimate as to the cost of tearing down the existing building and reconstructing it elsewhere.

In the judgment of this Board, under the circumstances of this case, it would certainly not be infeasible or unfair for the applicant to be required to go to considerable expense to eliminate or alleviate to a degree the need for a variance. We note that the pool house should not even exist in its current form. It is nearly twice as large as was authorized under the original building permit. Even more importantly, the authorized pool house was to be prefabricated and portable. If the applicant had not flouted the law by constructing a much improved and expanded pool house without a building permit, it would be a simple matter to just move the portable, prefabricated pool house into compliance with the setback.

The board is mindful that the applicant did make some effort to purchase some land from Mr. Purcell, which would have legitimized his structures and avoided the need for any variances. In reviewing the various proposals made, the Board does not believe that the amounts of the offers were large enough, given the circumstances, to make Mr. Purcell's refusal of them unreasonable in any way. None of the offers exceeded \$1125.00, and that amount pales in comparison to the costs claimed by applicant of removing and/or relocating the offending structures.

(3) WHETHER THE REQUESTED AREA VARIANCE IS SUBSTANTIAL.

The Board finds the requested variance, by any measure, especially from a numerical

standpoint, is substantial. The side setback in the District is 15 (fifteen) feet. Applicant proposes three (3) feet, an 80% reduction. Three (3) feet is extremely close to the line for such a large structure (18' x 18'). A significantly lesser variance might be acceptable given the totality of the circumstances.

(4) WHETHER THE PROPOSED VARIANCE WILL HAVE AN ADVERSE EFFECT OR IMPACT ON THE PHYSICAL OR ENVIRONMENTAL CONDITIONS IN THE NEIGHBORHOOD OR DISTRICT.

Reference is made to the discussion of the first criterion above. There is really nothing more to add.

(5) WHETHER THE ALLEGED DIFFICULTY WAS SELF-CREATED, WHICH CONSIDERATION SHALL BE RELEVANT TO THE DECISION OF THE BOARD OF APPEALS, BUT SHALL NOT NECESSARILY PRECLUDE THE GRANTING OF THE AREA VARIANCE.

Clearly, the need for the variance is self-created. Although we do not believe that the applicant intentionally violated the side line setback when he built the pool and pool house, in our view, the applicant, using reasonable care, could have and should have taken steps to be certain about the property line between his land and that of the Purcells before making an investment in a \$20,000.00 swimming pool. His explanation that a relative told him that the "tree line" was the boundary and that he relied on that just does not ring true. The tree line is irregular, not fixed. With specific reference to the pool house, the need for a variance is even more clearly self-created. As previously stated, without further consultation with town officials, or a building permit, the applicant vastly increased the size and nature of the pool house, changing it from a small, portable structure, to a much larger, fixed structure. If the applicant had applied for a building permit before enlarging and modifying the pool house to a significant degree, the setback issue as regards the pool house might have been discovered at that time.

Based upon all of the foregoing, and the record before it, considering the statutory criteria, and balancing the benefit to be gleaned by the applicant against detriment to the health, safety and welfare of the neighborhood and community, should the variance be granted, this Board finds that the side lot line setback for the pool house should be reduced to eight (8) feet, and a variance is hereby granted to that extent. That reduction will permit the applicant, should he be so inclined, to maintain the pool house in its current position with the elimination of the roof overhang. While not insubstantial from a strictly numerical standpoint, the decrease in the setback, we believe, is warranted based on the totality of the circumstances as discussed above. The Board feels that this

result adequately protects the interests of the adjoining property owner and the community, without being excessively punitive on the applicant.

Dated: Brunswick, New York  
July 19, 2010.

**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 16, 2010, at 6:00 P.M.

Present at the meeting were: John Schmidt, Member  
Martin Steinbach, Member  
Mark Cipperly, Member  
Caroline Trzcinski, 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, 2010, meeting. The Board decided to defer the matter to the next meeting.

The next item of business was the appeal filed by OAKWOOD PROPERTY MANAGEMENT, LLC, from a Notice of Violation issued by the Code Enforcement Officer pursuant to the Zoning Ordinance and Site Plan Review Act of the Town of Brunswick, in connection with appellant's business activities located at 215 Oakwood Avenue. Attorney Cioffi explained to the Board that the matter was not on the agenda for a public hearing this evening. There was insufficient time after the appeal was filed to notice a hearing for tonight. Rather, the matter is on the agenda for procedural purposes only.

Member Steinbach stated that he wished to recuse himself from any involvement in the consideration of this appeal. He explained that he lives in the neighborhood affected by Oakwood's business activities, and also signed a petition urging the Town to require Oakwood to cease operations. Member Steinbach thereupon left the meeting room. Member Schmidt then stated that the Gallivan Corporation, which is related to Oakwood Property Management LLC, submitted a bid to do some work on his family farm. The bids were not solicited by his farm and his farm is not paying for the work. The bid has not been awarded at this time. He does not believe there is any conflict, at least at this time, for him to be involved in this appeal. Chairman Hannan also stated that he and his son do a limited amount of work with the Gallivan Corporation. He explained that occasionally in the course of his waste disposal business, he needs to dispose of trees, wood and brush. They pay the Gallivan Corporation to take the refuse. This year, to date, he has done \$900.00 worth of business with Gallivan. Not a lot of money is involved. He does not believe that is sufficient to require him to recuse himself. If someone has a problem with that, he will give it

further consideration.

With that, Attorney Cioffi stated that the first procedural issue for the Board was scheduling the public hearing on the appeal. The Board decided to hold the public hearing at the September meeting of the Board, which would be held on Tuesday, September 21, 2010. Member Trzcinski made a motion to schedule the public hearing for September 21, 2010. Member Schmidt seconded. The motion carried 4 - 0. Attorney Cioffi explained that the other issue involved referral of the appeal to the Planning Board for a recommendation. Attorney Cioffi explained that the Zoning Ordinance provides that once an appeal is filed, the matter should be referred to the Planning Board for a recommendation. Member Trzcinski made a motion to refer the appeal to the Planning Board for a recommendation. Member Schmidt seconded. The motion carried 4 - 0. Member Steinbach then returned to the meeting room.

The next item of business was the appeal and petition of IAN BAUMES, owner-applicant, dated July 29, 2010, for an area variance pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the proposed conveyance of a portion of Tax Map ID No. 91-2-25.22, located at 44 Betts Road, in the Town of Brunswick, to an adjoining property owner, because the proposed conveyance will result in the size of the remaining portion of said lot being 27,935 sq. ft., which is below the minimum lot size in an A-40 District of 40,000 sq. ft. Attorney Cioffi read the Notice of Public Hearing aloud.

Attorney William Doyle, 317 Brick Church Road, appeared. He stated that he had been authorized by Mr. Baumes to appear and request this variance. Mr. Doyle explained that he is representing Berkshire Properties LLC in connection with an application for the establishment of a planned development district on 25 acres of land located at NY Route 7 and Betts Road. That PDD application involves commercial office space, retail space, and the transfer of some of the land adjacent to the Little League to the town. In addition, the PDD involves the creation of seven single family building lots. That matter is current before the Planning Board and an issue arose as to access. The Baumes parcel is actually in two pieces, split by Betts Road. The parcels are separately described on the same deed. Berkshire Properties LLC wants to buy the smaller of the two parcels, and use it for access to the building lots and other parts of the proposed PDD. The parcel in question is vacant land. Baumes' house, well, septic system, etc., are all on the larger parcel. When Berkshire Properties asked the Planning Board for a Subdivision Waiver, allowing them to purchase the smaller Baumes parcel, the Planning Board advised that doing so would render the remaining Baumes parcel undersized. Hence, a variance is being requested from this Board, permitting the undersized parcel to exist. Attorney Doyle explained that there are practical difficulties with the smaller Baumes parcel. The owner really can't do anything with it. It is too small to build on. His house and other infrastructure are on the larger parcel. Berkshire Properties is willing to pay Mr. Baumes \$32,000.00 for the parcel. If allowed, it would be annexed to other adjacent Berkshire Properties lands. It would not be a separate lot. Permitting the sale would be a tremendous benefit for Mr. Baumes. It would also solve the access issue for the Berkshire Properties PDD.

Mr. Doyle said that he was not aware of any other undersized lots in the area. He further stated that the septic system on the larger Baumes parcel was intact and functioning. The Board opened the matter for public comment. Norm Fivel, Wilrose Lane, stated that he wanted to make clear that approval of this variance by the Board does not constitute approval of the underlying PDD,

or a determination that the PDD should be approved. Attorney Cioffi stated that this application was different from the usual applications received by the Board involving undersized lots. Usually, the owner of a lot too small to build on under zoning rules asks for a variance permitting the building in any event. Here, we have a zoning compliant lot, and the owner is asking for permission to sell off part of it, causing it to become undersized, for the purpose of benefitting the owner and an adjoining owner. He suggested that, since the matter has already been to the Planning Board, this Board formally request the Planning Board to make a recommendation. Member Schmidt so moved. Member Steinbach seconded. The motion carried 5 - 0. The matter was put over to the September Meeting for further proceedings.

The next item of business was further proceedings in the appeal and petition of CHARLES D. ALUND, JR., owner-applicant, dated April 13, 2010, for area variances pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the construction of a Storage/Garden Shed on a lot located at 63 N. Langmore Lane, in the Town of Brunswick, because the proposed construction violates the front yard setback in an A-40 District in that 75 feet is required and 42 feet is proposed, and also violates the rear yard setback in that 25 feet is required and 7 feet is proposed.

Charles D. Alund, Jr., appeared. A series of pictures was submitted to the Board showing the existing conditions on the Alund lot. It was noted that, since the last meeting, Mr. Kreiger and Member Cipperly met at the site with Mr. Alund and Robert Nelson, the adjoining neighbor. Mr. Kreiger stated that they walked the entire site and took some measurements. He noted that the existing shed on the Alund property is more of a child's playhouse. Member Cipperly stated that he was not comfortable with the shed being sited underneath the power lines which cross the Alund property. Mr. Kreiger and Member Cipperly felt that the proposed location for the shed could be moved 4 - 5 feet toward the rear of the Alund property away from the Alund - Potter property line. The proposed location for the shed would, essentially, be moved diagonally toward Alund's house and to the rear. If this were to be done, the front setback would have to be reduced from 75 feet to 47 feet, and the rear setback reduced from 25 feet to 12 feet. The shed would then be 8 feet from the power lines. Mr. Kreiger and Member Cipperly stated that the concrete slab built by Mr. Alund without a permit would have to be removed. Mr. Alund said that this proposal was generally acceptable to him. Mr. Alund also agreed to put in two mature trees to serve as a buffer between the shed and the Nelson/Potter property. It was noted that none of this was satisfactory to Mr. Nelson at the site visit. Neither Mr. Nelson nor Ms. Potter was present at this meeting.

It was further noted that the existing shed on the Nelson/Potter property also violates the front setback and that it may violated the side setback as well. The Chairman stated that he had a real problem with the proximity of the Nelson/Potter shed to the National Grid power lines. Mr. Kreiger stated that while they were at the site, he noticed an unrelated safety violation on the Nelson/Potter property which he is pursuing.

Maureen Gorman, 21 Langmore Lane, said that she is in favor of the variance as it would mean that Mr. Alund could store his things inside. Robert Mainello, 8 Woodcut Lane, said that the somewhat lesser variance now being discussed by the Board was fine with him.

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

private session. Member Trzcinski made a motion to return to regular session. Member Steinbach seconded. The motion carried 5 - 0.

It was the consensus of the Board that the public hearing should be closed at this point. Essentially, the same comments are being made at each meeting. Nothing concrete has been submitted by Mr. Alund pertaining to his claims that it would be prohibitively expensive for him to locate the shed anywhere else on his property due to the grades. The Board indicated that it would ask Mr. Kreiger and Member Cipperly to verbally state their observations at the site visit. The public hearing would then be closed and Mr. Alund would be given two weeks to submit anything additional.

Mr. Kreiger and Member Cipperly recounted their observations at the site visit. It was generally noted that due to the grade of the property, the proximity of the power lines, the location of the septic field, and the size of the lot, the possible locations for a shed were very limited and those that there were would all require variances.

There being no additional comments from the public, the applicant or the Board, Member Steinbach made a motion to close the public hearing. Member Schmidt seconded. The motion carried 5 - 0. The Board will issue a written decision.

The Board then turned to further consideration of the appeal and petition of LAWRENCE MURRAY, owner-applicant, dated April 21, 2010, for area variances pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the construction of a 14' x 16' Dutch Style Barn on a lot located at 69 N. Langmore Lane, in the Town of Brunswick, because the proposed construction violates the side yard setback in an A-40 District in that 25 feet is required and 3 feet is proposed, and also violates the rear yard setback in that 25 feet is required and 5 feet is proposed.

Lawrence Murray appeared. He said he really had nothing more to add. Mr. Kreiger stated that he met Mr. Murray at the site. He noted that the existing shed is right on the property line. At least this request would result in there being some setbacks from the property lines. The old shed would be removed. Mr. Kreiger went on to state that there is four foot bank coming off the swimming pool and it would probably not be prudent to mess with the earthen berm trying to excavate to put a shed in.

Member Schmidt stated that the problem is that the lots are too small to live within the setbacks imposed by the Zoning Ordinance. Although the lots are zoned A-40, they are typically smaller than the minimum lot size for that District. Attorney Cioffi read into the record a letter from Maureen and Kevin Cox, 2 Longhill Road, dated May 30, 2020, stating that they had no objection to the proposed variances. Maureen Gorman stated that she is in favor of this. Member Schmidt noted that there are no power line issues here. The Chairman made a motion to classify this matter a Type 2 action under SEQRA. Member Steinbach seconded. The motion carried 5 - 0.

The Board then reviewed the criteria for granting area variances. As to whether the variances would have a negative effect on the character of the neighborhood, the Board noted that there are numerous sheds in the neighborhood which do not comply with the Zoning Ordinance. The Board noted that the typical lot sizes in the neighborhood were too small to accommodate the setbacks in

an A-40 District.

As to whether there is any way for the applicant to meet his objective without obtaining a variance, the Board noted that there were no feasible alternatives which would not require a variance if the applicant was to have a shed. The shed location being proposed is actually more zoning compliant than the existing shed. Moving the proposed location would simply require different variances. The Board also noted that the size, location and the grading around the swimming pool greatly limited feasible locations for the shed.

As to whether the variances are substantial, the Board acknowledged that they are from a strictly numerical standpoint. However, the Board noted that due to the conditions on the lot, going with lesser variances might cause problems with the swimming pool. Also, permitting a shed with these setbacks will result in the removal of an existing shed which is even more non-compliant. Given the conditions on the lot, the Board found the variances not to be substantial.

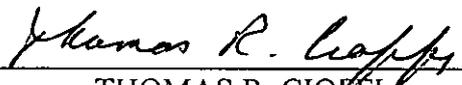
Finally, the Board found the need for the variances not to be self-created. Rather, the Board noted that it is the topography and the lot size which are causing the difficulties.

Based on the foregoing analysis, Member Cipperly offered a Resolution granting the variances as requested. Member Trzcinski seconded. The Resolution was put to a roll call vote with all members voting in the affirmative.

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

Dated: Brunswick, N.Y.  
September 15, 2010

Respectfully submitted,

  
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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 September 21, 2010, at 6:00 P.M.

Present at the meeting were: Martin Steinbach, Member  
Mark Cipperly, Member  
Caroline Trzcinski, Member  
James Hannan, Chairman

Member Schmidt was 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 July, 2010, meeting. Member Trzcinski made a motion to approve the Minutes as prepared. Member Steinbach seconded. The motion carried 4 - 0. As to the Minutes of the August 2010 meeting, the following corrections were noted: On page 1, second last line, the word "foot" should read "lot". On page 2, 3<sup>rd</sup> full paragraph, 7<sup>th</sup> line, the word "current" should read "currently". On page 3, 3<sup>rd</sup> full paragraph, 2<sup>nd</sup> line, the word "violated" should read "violate". Member Trzcinski made a motion to approve the August 2010 Minutes as corrected. Member Steinbach seconded. The motion carried 4 - 0.

The next item of business was the appeal filed by OAKWOOD PROPERTY MANAGEMENT, LLC, from a Notice of Violation issued by the Code Enforcement Officer pursuant to the Zoning Ordinance and Site Plan Review Act of the Town of Brunswick, in connection with appellant's business activities located at 215 Oakwood Avenue. Member Steinbach left the room, stating that he had recused himself from consideration of this matter. The Chairman noted that the Town Board has scheduled a Special Meeting for September 30, 2010, to consider a proposal being made by Oakwood Property Management LLC which is apparently intended to resolve all outstanding issues between the Town and Oakwood, including this appeal. The Chairman further noted that, in light of the pendency of the Special Meeting, the Planning Board adjourned its consideration of this appeal and did not issue a recommendation on the appeal, as it had been expected to do by now. For these reasons, the Chairman stated, the appeal was being adjourned. The public hearing was not opened. The matter was put on the agenda for the October 18, meeting, for further proceedings. Member Steinbach then returned to the meeting room.

The next item of business was the appeal and petition of IAN BAUMES, owner-applicant, dated July 29, 2010, for an area variance pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the proposed conveyance of a portion of Tax Map ID No. 91-2-25.22,

located at 44 Betts Road, in the Town of Brunswick, to an adjoining property owner, because the proposed conveyance will result in the size of the remaining portion of said lot being 27,935 sq. ft., which is below the minimum lot size in an A-40 District of 40,000 sq. ft.

Attorney William Doyle, 317 Brick Church Road, appeared. It was noted that, at the last meeting, the Board referred the matter to the Planning Board for a recommendation. The Board noted that the Planning Board did issue written findings and recommendations in this matter. Essentially, the Planning found and concluded that the criteria for the area variance had been met and recommended that the variance be granted. No one from the public wished to comment. The Board had no questions. Member Cipperly made a motion to classify the matter a Type 2 action under SEQRA. Member Trzcinski seconded. The motion carried 4 - 0. Member Trzcinski then offered a Resolution adopting the findings and recommendations of the Planning Board and granting the area variance as requested. Member Cipperly seconded. The motion carried 4 - 0.

The next item of business was the Request for a Special Use Permit of REISER BROTHERS, INC., owner-applicant, pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the construction and operation of a filling station on property located at the corner of NY Route 278 and NY Route 2, in the Town of Brunswick, because a filling station is a special use in a B-15 District only allowed by way of a special use permit issued by the Zoning Board of Appeals. Attorney Cioffi read the Notice of Public Hearing aloud.

Scott Reese, RLA, PLLC, appeared for the applicant. He explained that they had been before the Planning Board seeking site plan approval for a three lot subdivision at this location. One of the lots is intended to be a filling station, which the applicants would build and then sell to an operator. The applicant already has a buyer for the filling station which would include a convenience store. One of the other lots is proposed to be used for commercial building. The third lot will be vacant and unused for the time being. In the course of its review, the Planning Board noted that a Special Use Permit was required for the proposed filling station. That is why they are here.

No one from the public wished to speak in favor or the application. Kathy Murray, 69 N. Langmore Lane, said that she is the President of the Tamarac Regional Homeowner's Association, and that she opposes the application. There should not be another gas station on this corner. People live in this area for the rural setting, not for the convenience of buying gas. This will be the fourth gas station in the area, including Hudson's. It will change the residential character of the neighborhood. Route 2 is a two lane scenic highway. There are no turning lanes or sidewalks. The property will need to be heavily excavated. She estimates that there will be 10,000 truckloads of dirt taken off the site, The truck traffic will be horrendous. Once built, the traffic on Route 2 will increase. There is no need for another strip mall. There are already water issues in the area and the gas station will increase runoff and pollute the waterways. Pauline Iwanowicz, 23 Tamarac Road, stated that we don't need another convenience store. The traffic on Route 2 at that intersection is already a problem. This will make it worse. Conrad Holton, 28 Tamarac Road, stated that we don't need another gas station. Why do something which will only increase the traffic. Marilyn Whitney, 35 Tamarac Road, stated that cars are already lined up Tamarac Road every morning. This will make it worse. We don't need another gas station. It will cause traffic and safety issues. Dawn Bouchard, 41 Tamarac Road, said that there are already major problems getting out of Tamarac Road every morning. This will add another 10 minutes to her travel time. We should not develop Route

2 into a commercial highway. This will reduce property values. Jim Tsacik, 387 Brunswick Road, stated that traffic congestion will be severe at this intersection. This proposal is inconsistent with the Comprehensive Plan, which determined that Route 2 should remain a scenic highway, and that large scale excavations and changes in contour should be discouraged.

Marilyn Whitney asked whether the house on the site which would be torn down has any historical significance. Mr. Reese stated that SHPO had signed off on removing the structure. Mr. Reese added that the SEQRA process was ongoing before the Planning Board. This is a commercial piece of property. Mr. Reiser has a buyer interested in operating a filling station at the site, regardless of whether people think it is necessary or will be viable. Mr. Reiser stated that the buyer is Nice N Easy. They operate filling stations with "county store" type convenience stores. They have seven stores in upstate New York. There is a need for another gas station in this area. The person he is dealing with is Dave Monahan. This project will improve traffic conditions. It will have twice the required green space. There are only six pumps in the two existing, operating gas stations at this location. That is not enough. The country store will be like a town center. It is well needed. It will increase property values.

The Chairman stated that Hudson's Garage couldn't make a go of it there. Stewart's is already a gathering place. The Sunoco Station can't make a go of it just on gas. They are now selling pizzas. Look at the struggles at the Tamarac Plaza. He does not think another gas station is viable there. Mr. Reiser said that they have a buyer who thinks a gas station will be viable. This gas station will be set up for all kinds of trucks to easily get in and out. There is enough room for a semi to get in and out. It will only take 35 - 40 days to excavate and remove the dirt required to build this. It is not a long term project. Nan Hale, 4108 Route 2, said that she has no strong opinion on the gas station. That is a terrible corner right now. The green arrow light at Route 2 & Route 278 is the problem. That is the cause of the congestion. She believes that Mr. Reiser is trying to build something nice there.

Member Trzcinski noted that Spiak's gas station is not far away either and that the intersection is already dangerous. The Chairman suggested that someone from Nice N Easy to appear before the Board and answer any questions. Mr. Kreiger stated that other than the need for a special use permit, there are no other zoning issues. Attorney Cioffi stated that he would contact the Planning Board Attorney to coordinate the SEQRA review. He further stated that the applicant needs to address with proof the statutory criteria for the issuance of a special use permit. He also suggested that the Planning Board be asked for a recommendation on this application.

The Chairman made a motion to request a recommendation from the Planning Board. Member Steinbach seconded. The motion carried 4 - 0. The Chairman then made a motion to continue the public hearing. Member Cipperly seconded. The motion carried 4 - 0.

The next item of business was the appeal and petition of RONALD LEVESQUE o/b/o HOFFMAN DEVELOPMENT, applicant, dated August 13, 2010, for a variance pursuant to the Sign Law of the Town of Brunswick, in connection with the construction and erection of a free-standing advertising sign on a lot located at 672 Hoosick Road, in the Town of Brunswick, because the proposed construction exceeds the maximum square footage for a free-standing sign in that 35 square feet per side is permitted and 64 square feet per side is proposed. Attorney Cioffi read the

Notice of Public Hearing aloud.

Ronald Levesque, from the Sign Studio, appeared on behalf of Hoffman Development. They want a 64 sq. ft. sign. Only 17 ½ sq. ft. of additional space is being requested. Hoffman's is trying to update its signs all over. The sign will be in the same footprint as the existing sign. The same roof structure as the current sign will be utilized. The sign will be complementary to other signs in the vicinity.

Member Trzcinski said that everyone knows Hoffman's Car Wash is there. It has been there for years. Why do they need a bigger sign? Attorney Cioffi stated that the applicant needs to address the statutory criteria for granting variances from the Sign Law. Member Steinbach noted that the proposed sign is not that much bigger. Member Cipperly said that there are other alternatives they can use to better make use of the available sign space without making it larger. No one from the public wished to speak. Mr. Levesque said that the proposed sign would not look right if it was limited to 35 sq. ft.

Member Cipperly made a motion to continue the public hearing. Member Steinbach seconded. The motion carried 4 - 0.

The next item of business was the appeal and petition of PETER MAY o/b/o CAP COM F.C.U., applicant, dated August 21, 2010, for a variance pursuant to the Sign Law of the Town of Brunswick, in connection with the construction and erection of a free-standing advertising sign on a lot located at 799 Hoosick Road, in the Town of Brunswick, because the proposed construction violates the front setback from Hoosick Road for a free-standing sign in that 15 feet is required and 5 feet is proposed. Attorney Cioffi read the Notice of Public Hearing aloud.

Peter May, Hanley Sign Co., appeared for the applicant. He handed up pictures to the Board. The problem here is that if the sign is placed to meet the 15 foot setback, it will be behind the tree line, and will not be readily visible to eastbound traffic. There are 3 or 4 trees. Cap Com owns them. Mr. Kreiger stated that the Planning Board did not require at site plan review that the trees remain. Cap com wanted to keep them. The Chairman asked whether the trees could be limbed so that the sign would still be visible if placed to comply with the setback. Mr. May said he did not know what the trees would look like if they did that. Member Steinbach said he thought that the sign could be further from the road than 5 feet and still be seen. Mr. May said Cap Com and its architect decided to ask for a variance to 5 feet. Mr. May mentioned a lot of signs on Route 7 that were close to the road. Mr. Kreiger noted that those signs were all there before Route 7 was widened. The Chairman stated that he would like information as to whether the trees could be limbed to alleviate the visibility problem, without killing them or making them unsatisfactory in appearance. Mr. May said he works for a sign company and doesn't know anything about limbing trees. Attorney Cioffi suggested that Cap Com send another representative so these issues can be pursued. It is a basis tenet of the law that variances can be granted only if there is no other viable alternative. Attorney Cioffi asked that information be supplied to the Board addressing each of the criteria for variances contained in the Sign Law.

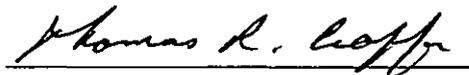
Member Steinbach made a motion to continue the public hearing. Member Cipperly seconded. The motion carried 4 - 0.

Michael Schongar, 21 Lindsay Drive, asked if he could address the Board. He is part of the North Forty Association. He wants to say something about the Oakwood Property/Gallivan matter. Member Steinbach left the room. Mr. Schongar said that he is concerned about tabling the appeal. The Gallivans expanded their business without any town approvals. They went from 5 acres to 75 acres. This has affected his property and that of his neighbors. He is urging the Board to take a hard look at this and not approve what they are doing. Member Steinbach then returned to the room.

There being no further business, Member Cipperly made a motion to adjourn. The Chairman seconded. The motion carried 4 - 0.

Dated: Brunswick, N.Y.  
October 4, 2010

Respectfully submitted,



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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 October 18, 2010, at 6:00 P.M.

Present at the meeting were: Martin Steinbach, Member  
E. John Schmidt, Member  
Mark Cipperly, Member  
Caroline Trzcinski, 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 2010 meeting. Member Trzcinski noted one correction: On page 2, first full paragraph, fourth line, the word "Board" should be inserted after the word "Planning". Member Trzcinski made a motion to approve the September 2010 Minutes as corrected. Member Steinbach seconded. The motion carried 5 - 0.

The next item of business was the appeal filed by OAKWOOD PROPERTY MANAGEMENT, LLC, from a Notice of Violation issued by the Code Enforcement Officer pursuant to the Zoning Ordinance and Site Plan Review Act of the Town of Brunswick, in connection with appellant's business activities located at 215 Oakwood Avenue. Attorney Cioffi recounted the background regarding this matter. Essentially, he stated, the Code Enforcement Officer had issued a Notice of Violation regarding various business activities undertaken by Oakwood on various parcels of land owned by them. Oakwood filed an appeal to this Board. The appeal was noticed for the September meeting of this Board. When the appeal came on to be heard, it was adjourned by the Chairman because Oakwood had made a proposal to the Town to resolve this appeal and the Planned Development District application pending before the Town Board, which was to be formally presented to and considered by the Town Board at a Special Meeting to be held on September 30, 2010. Thereafter, at its October 14, 2010, Regular Meeting, the Town Board adopted a Resolution to enter into a Memorandum of Agreement with Oakwood which could, by its terms, resolve all outstanding issues between Oakwood and the Town including this appeal. Because the Memorandum of Agreement includes an agreement that this appeal be stayed while the proceedings contemplated in the Memorandum of Agreement were being pursued, the consent of this Board to the terms of the Memorandum of Agreement is required. Attorney Cioffi further explained that the Board had before it a draft Resolution which, by its terms, consented to the terms of the

Memorandum of Agreement already approved by the Town Board. Attorney Cioffi noted that Member Steinbach, who had previously recused himself from consideration of this matter, was still in the room. Member Steinbach then left the room, noting his recusal.

Attorney Cioffi then went through the terms of the Memorandum of Agreement. Essentially, the Agreement provided that Oakwood would relocate its existing business activities on two parcels of land which are zoned "Schools and Cemeteries" to another parcel it owns on Oakwood Avenue, known as the "Haslinger parcel", which is zoned industrial, and seek amended site plan approval from the Planning Board for that move. At the same time, Oakwood would file an application with the Town Board to change the zoning of the two "Schools and Cemeteries" parcel to B-6, which is the Town's light commercial zoning designation. The re-zone application to the Town Board, and the amended site plan application to the Planning Board, would be considered on their merits by the respective Boards. If the re-zone and the amended site plan are approved, then Oakwood's business activities would be totally moved off the "Schools and Cemeteries" parcels, and on to the Haslinger parcel. That would leave all of Oakwood's business operations on parcels zoned industrial. While those applications are pending, the PDD application and this appeal would be stayed, and Oakwood would follow "best management" practices on its current operations to minimize any effects on nearby property owners. If either the re-zone application or the amended site plan application was denied, the Memorandum of Agreement would terminate and this appeal and the PDD application would again be pursued.

Member Schmidt made a motion to go into private session to ask legal questions of Mr. Cioffi. Member Trzcinski seconded. The motion carried 4 - 0. The Board then went into private session. Legal questions were asked of the Town Attorney. No action was taken. Member Schmidt made a motion to return to Regular Session. Member Trzcinski seconded. The motion carried 4 - 0. Attorney Cioffi then read the draft Resolution aloud. The Chairman stated that the public hearing had not been opened in this matter, but that he would allow the attorneys for Oakwood and for the nearby property owners to give arguments as to why the Board should or should not adopt the Resolution approving the Memorandum of Agreement.

Donald Zee, Esq., the attorney for 35 households who claim to be effected by Oakwood's business activities submitted a letter dated October 18, 2010, raising various legal arguments as to why this Board should not consent to the terms of the Memorandum of Agreement. He also submitted excerpts from the Zoning Ordinance and the Town Law in support of his position. He argued that this Board did not have the power to approve this Agreement; that it only had the duty and responsibility to decide appeals coming before it, like this one. He stated that Oakwood, by entering into the Memorandum of Agreement, had acknowledged its violations and was now trying to stop the pending enforcement proceedings. Further, that Oakwood submitted deficient scoping documents on its PDD application. He also stated that the SEQRA determination made by the Town Board regarding the approval of the Memorandum of Agreement was invalid. He urged the Board not to be the "puppet" of the Town Board and to reject the Agreement and go forward with the appeal. Todd Mathis, Esq., of Whiteman, Osterman and Hanna, attorneys for Oakwood, stated that this Board's consent to the terms of the Memorandum of Agreement makes perfect sense and simply allows proceeding to settle this matter to go forward. Holding a public hearing on the appeal at this time does not mean that there would be a decision anytime soon. Under the law, the Board and Oakwood could agree to put off the issuance of a decision on the appeal indefinitely.

The Board then proceeded to consider the draft Resolution. Member Schmidt offered the Resolution. Member Trzcinski seconded. A roll call vote was taken and the four Members present all voted in the affirmative.

The next item of business was issuance of the Board's decision in the appeal and petition of CHARLES D. ALUND, JR., owner-applicant, dated April 13, 2010, for area variances pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the construction of a Storage/Garden Shed on a lot located at 63 N. Langmore Lane, in the Town of Brunswick, because the proposed construction violates the front yard setback in an A-40 District in that 75 feet is required and 42 feet is proposed, and also violates the rear yard setback in that 25 feet is required and 7 feet is proposed. Attorney Cioffi stated that the Board had before it a draft Determination and a proposed Resolution adopting the Determination. Attorney Cioffi stated that the draft Determination, which had been provided to the Board well in advance of this meeting, essentially grants variances to Mr. Alund, but not to the extent he requested. Rather, the Determination provides that the front line setback from Woodcut Lane would be reduced to 52 feet, and the rear lot line setback reduced to 17 feet, on the conditions that the concrete pad illegally built by the applicant be removed and that the applicant plant two mature trees to minimize the visual impact of the shed on the adjoining neighbor. Chairman Hannan offered the Resolution. Member Schmidt seconded. A roll call vote was taken and all Members voted in the affirmative. The Resolution was adopted 5 - 0.

The Board noted that there was no appearance on the appeal and petition of RONALD LEVESQUE o/b/o HOFFMAN DEVELOPMENT, applicant, dated August 13, 2010, for a variance pursuant to the Sign Law of the Town of Brunswick, in connection with the construction and erection of a free-standing advertising sign on a lot located at 672 Hoosick Road. The Board put the matter on the agenda for the November 15 meeting.

The Board noted that there was no appearance on the Request for a Special Use Permit of REISER BROTHERS, INC., owner-applicant, pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the construction and operation of a filling station on property located at the corner of NY Route 278 and NY Route 2, in the Town of Brunswick. Attorney Cioffi noted that the Planning Board had assumed lead agency status on a site plan application which encompassed the proposed filling station and that no SEQRA determination had been made. The Board put the matter on the agenda for the November 15 meeting.

As to the appeal and petition of PETER MAY o/b/o CAP COM F.C.U., applicant, dated August 21, 2010, for a variance pursuant to the Sign Law of the Town of Brunswick, in connection with the construction and erection of a free-standing advertising sign on a lot located at 799 Hoosick Road, the Board noted that the application had been withdrawn.

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

Dated: Brunswick, N.Y.  
October 30, 2010

Respectfully submitted,

A handwritten signature in cursive script, reading "Thomas R. Cioffi", is written over a horizontal line.

THOMAS R. CIOFFI  
Town Attorney - Zoning Board Secretary

**TOWN OF BRUNSWICK  
ZONING BOARD OF APPEALS**

**REGULAR MEETING**

**October 18, 2010**

**RESOLUTION ADOPTING DETERMINATION**

**WHEREAS**, the appeal and petition of CHARLES D. ALUND, JR., owner-applicant, dated April 13, 2010, for area variances pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the construction of a Storage/Garden Shed on a lot located at 63 N. Langmore Lane, in the Town of Brunswick, because the proposed construction violates the front yard setback in an A-40 District in that 75 feet is required and 42 feet is proposed, and also violates the rear yard setback in that 25 feet is required and 7 feet is proposed, having duly come before this Board; and

**WHEREAS**, the Board having caused to be prepared a written Determination with respect thereto, a copy of which is annexed; 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 Chairman Hannan and seconded by Member Schmidt, was duly put to a roll call vote as follows:

<b>MEMBER CIPPERLY</b>	<b>VOTING</b>	<u>Aye</u>
<b>MEMBER SCHMIDT</b>	<b>VOTING</b>	<u>Aye</u>
<b>MEMBER STEINBACH</b>	<b>VOTING</b>	<u>Aye</u>
<b>MEMBER TRZCINSKI</b>	<b>VOTING</b>	<u>Aye</u>
<b>CHAIRMAN HANNAN</b>	<b>VOTING</b>	<u>Aye</u>

The foregoing Resolution was thereupon declared duly adopted.

Dated: October 18, 2010

TOWN OF BRUNSWICK  
ZONING BOARD OF APPEALS

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In the Matter of the Appeal and Petition of

DETERMINATION

CHARLES D. ALUND, JR.,

Applicant

For the Issuance of Area Variances Under the Zoning  
Ordinance of the TOWN OF BRUNSWICK

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This matter involves the appeal and petition of CHARLES D. ALUND, JR., owner-applicant, dated April 13, 2010, for area variances pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the construction of a Storage/Garden Shed on a lot located at 63 N. Langmore Lane, in the Town of Brunswick, because the proposed construction violates the front yard setback in an A-40 District in that 75 feet is required and 42 feet is proposed, and also violates the rear yard setback in that 25 feet is required and 7 feet is proposed. Essentially, the applicant states that due to the existing topography of his lot, the size of his lot, and the size and location of his septic field, he cannot locate a shed that will meet all setbacks, and that there is virtually no other place on his lot he can build.

This situation is a little unusual in that the neighborhood is full of sheds which are not zoning compliant. The Code Enforcement Officer reported that no fewer than thirteen (13) lots in the neighborhood had sheds which were not zoning compliant, and yet none of them had variances on file at the Town. This is due largely to the fact that the area is zoned A-40, which requires a minimum lot size of 40,000 sq. ft., and yet the lots in the neighborhood are substantially smaller than that, including the applicant's lot. Applicant's lot is only 23,490 sq. ft. in area. This is important for two reasons: First, since the area is zoned A-40, the setbacks prescribed in the Zoning Ordinance are larger than those prescribed, say, in an R-40 zone, which is more typical for a residential neighborhood such as this. Second, since the lot itself is smaller than required in an A-40 District, there is less land available to "satisfy" the setbacks. This situation is actually somewhat magnified in the applicant's case, because his lot is a "corner" lot and, therefore, under the Zoning Ordinance, is subject to two (2) front lot line setbacks of 75 feet, one from Woodcut Lane and one from N. Langmore Lane. No proof was offered as to why this neighborhood is zoned A-40 and yet the lots do not meet the prescribed minimum size. It is likely that it is an older subdivision which may have predated Planning Board review in the Town, and the developer simply made the lots smaller so he

would have more lots to sell.

In addition to the foregoing, there are several other factors which complicate this matter. Overhead National Grid power lines cross the applicant's property and, for safety reasons, building beneath them or close to them is strongly discouraged. Giving a reasonably wide berth (National Grid requires at least 10 feet clearance on each side of the line) to the power lines substantially cuts down on the available locations to site a shed. Additionally, the grade of his property drops off substantially from the applicant's house. Applicant claims he would have to raise the grade substantially to build in any area other than where he is proposing. He further claims the cost would be excessive, although he has produced no proof of that. To further complicate matters, the applicant's septic field takes up a great deal of his back yard and it would be inadvisable to build on the field.

Since so many of the lots in the neighborhood have sheds which violate the setbacks, most of the neighbors who attended the several sessions of the public hearing were supportive of the application. The one exception was applicant's neighbors to the south, Robert Nelson and Helen Potter, who reside at 7 Woodcut Lane. They essentially complain that granting the front lot line variance from Woodcut Lane will permit the applicant to build his shed in "front" of their house, in their sight plane looking toward Woodcut Lane. This, they say, will greatly diminish their use and enjoyment, and the value, of their home. It should be noted that the applicant did pour a concrete pad for the proposed shed and started building without getting a building permit. Mr. Nelson and Ms. Potter notified the Town and that is what resulted in this application being filed. Applicant claims that he was not aware of the setback requirements. It should be noted that there is an existing "shed" on the applicant's property. The record discloses, however, that it is more of a child's play house than the "serious" shed that applicant desires. Nelson - Potter feel that the new shed should be placed where the existing one is sited. Applicant claims the grade is all wrong and that it would be too costly to locate it there.

Before turning to the merits of the application, the Board must discharge its obligation under SEQRA. The Board classifies this matter, a request for an area variance on residential property, to be a Type 2 action under SEQRA. Accordingly, no further environmental review is required.

In order to assess the merits of the application for area variances, the Board must consider the criteria set forth in Town Law, Section 267-b, subd. 3(b), which provides as follows:

(b) In making its determination, the zoning board of appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making

such determination the board shall also consider: (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

For the purposes of clarity, each criterion will be considered separately below.

(1) WHETHER AN UNDESIRABLE CHANGE WILL BE PRODUCED IN THE CHARACTER OF THE NEIGHBORHOOD OR A DETRIMENT TO NEARBY PROPERTIES WILL BE CREATED BY THE GRANTING OF THE AREA VARIANCE.

Based upon the record developed, the Board finds that granting the variances requested would have a minimal effect on the character of the neighborhood. As previously stated, the neighborhood is replete with sheds which are not zoning compliant. One more non-compliant shed would not make a difference as far as the neighborhood as a whole is concerned. The issue of the detriment to the adjacent Nelson - Potter property, though, is another matter. The Board cannot discount their concern that if the variances are granted, the shed would be in their line of sight as they look toward the front on their property toward Woodcut Lane. That said, their outrage would be better received if they, themselves, did not have a non-compliant shed on their lot as well. Be that as it may, the effect on the Nelson - Potter property could be minimized somewhat by moving the shed from its proposed location diagonally in a northerly direction away from the property line between Nelson - Potter and the applicant. If the proposed location were moved ten (10) feet in this fashion, it would reduce the front lot line setback from Woodcut Lane to 52 feet and the rear lot line setback to 17 feet. This would be a substantially lesser variance and should significantly diminish the visual impact of the shed on Nelson - Potter. It would also alleviate the power line issue as the shed would be ten (10) feet from under the power lines, which would satisfy National Grid. It is noted that the grade does drop off somewhat, which would complicate building. However, as applicant has provided no proof that the cost would be prohibitive, we cannot discount this solution on that basis.

(2) WHETHER THE BENEFIT SOUGHT BY THE APPLICANT CAN BE ACHIEVED BY

SOME METHOD, FEASIBLE FOR THE APPLICANT TO PURSUE, OTHER THAN AN AREA VARIANCE.

As previously stated, given the size of the applicant's lot, the size of the setbacks due to "inappropriate" zoning, the topography of the lot, the size and location of the septic field, there is virtually no place the shed could go without necessitating one or more variances. The only alternative would be for the applicant not to have a shed. This is not really an alternative, however, and it seems a little unfair given that virtually all of the neighboring properties have sheds, regardless of their legality.

(3) WHETHER THE REQUESTED AREA VARIANCE IS SUBSTANTIAL.

The Board finds the requested variances, from a numerical standpoint, are substantial. The request is to reduce the front lot line setback by nearly one-half and to reduce the rear lot line setback by two-thirds. The significantly lesser variances mentioned in the discussion of criterion (1), above, however, can reasonably be deemed not substantial in light of the confluence of factors previously mentioned, i.e., the below minimum size of the lots in the neighborhood given the zoning, the corresponding larger setbacks, the topography of the land, the location of the National Grid overhead power lines, and the size and location of applicant's septic field.

(4) WHETHER THE PROPOSED VARIANCE WILL HAVE AN ADVERSE EFFECT OR IMPACT ON THE PHYSICAL OR ENVIRONMENTAL CONDITIONS IN THE NEIGHBORHOOD OR DISTRICT.

Again, the neighborhood is full of sheds which are not zoning compliant. One more should not make an appreciable difference. At least this one is undergoing a review. The other non-compliant sheds were apparently simply built without any permission.

(5) WHETHER THE ALLEGED DIFFICULTY WAS SELF-CREATED, WHICH CONSIDERATION SHALL BE RELEVANT TO THE DECISION OF THE BOARD OF APPEALS, BUT SHALL NOT NECESSARILY PRECLUDE THE GRANTING OF THE AREA VARIANCE.

The need for the variances was not self created. Rather, the cause was the confluence of factors listed in the discussion of criterion (3), above.

Based upon all of the foregoing, and the record before it, considering the statutory criteria, and balancing the benefit to be gleaned by the applicant against detriment to the health, safety and welfare of the neighborhood and community, should the variance be granted, this Board finds that

the front line setback from Woodcut Lane should be reduced to fifty-two (52) feet, and the rear lot line setback should be reduced to seventeen (17) feet, and variances are hereby granted to that extent. That reduction will permit the applicant to have a reasonably-sized shed, albeit at some additional cost to him (although we don't know how much because applicant offered no proof) due to having to raise the grade. While not insubstantial from a strictly numerical standpoint, the decrease in the setbacks, we believe, is warranted based on the totality of the circumstances as discussed above. The Board feels that this result adequately protects the interests of the adjoining property owner and the community, without being excessively punitive on the applicant. The variances are granted on two conditions: First, the concrete pad which the applicant poured at the location he proposed for the new shed, without a building permit, violates the setbacks and must be removed. The removal of the slab shall be deemed a condition of the variances. Second, the applicant shall plant two (2) mature trees to serve as a buffer between the Nelson - Potter property and the shed. This should further diminish the impact of the shed on the Nelson - Potter property.

Dated: Brunswick, New York  
October 18, 2010

**TOWN OF BRUNSWICK  
ZONING BOARD OF APPEALS**

**REGULAR MEETING**

**October 18, 2010**

**RESOLUTION AUTHORIZING EXECUTION OF MEMORANDUM OF AGREEMENT CONCERNING OAKWOOD PROPERTY MANAGEMENT, LLC**

**WHEREAS**, Oakwood Property Management, LLC ("Oakwood") having previously filed an application with the Town Board for the establishment of a Planned Development District with respect to property located on Oakwood Avenue (Tax Map Numbers 90.-1-12.2 and 90.-1-13.1); and

**WHEREAS**, the said application for a Planned Development District remains pending before the Town Board; and

**WHEREAS**, the Code Enforcement Officer having heretofore filed a Notice of Violation upon Oakwood concerning activities occurring on the parcels subject to the application for a Planned Development District, and also activities occurring on an adjacent parcel identified as Tax Map Number 90.-1-14 on which a site plan had been previously approved by the Planning Board; and

**WHEREAS**, Oakwood having filed an appeal from said Notice of Violation to this Board; and

**WHEREAS**, the said appeal is currently pending before this Board; and

**WHEREAS**, Oakwood having heretofore proposed to the Town a procedural framework for resolution of issues pertaining to the above-mentioned Planned Development District application pending before the Town Board, and the appeal pending before this Board; and

**WHEREAS**, such proposal has been set forth in a Memorandum of Agreement which is annexed hereto and made a part hereof; and

**WHEREAS**, the said Memorandum of Agreement, by its terms, requires the consent of this Board, in light of the pending appeal before this Board, and the fact that it contemplates a stay of proceedings on the appeal while the procedural framework set forth in the Memorandum of Agreement is pursued; and

**WHEREAS**, the Town Board having duly considered the proposal, and, after issuing a Negative Declaration under SEQRA as regards the execution of the Memorandum of Agreement,

having determined, in Resolution No. 73, 2010, enacted on October 14, 2010, that the proposed Memorandum of Agreement provides for an acceptable procedure to resolve Oakwood's Planned Development District application, and the appeal pending before this Board, and having authorized and directed the Supervisor to execute the said Memorandum of Agreement; and

**WHEREAS**, this Board having duly considered Oakwood's proposal and the proposed Memorandum of Agreement as a procedural option to address the appeal pending before this Board; now, therefore

**BE IT RESOLVED**, that this Board hereby determines that the attached Memorandum of Agreement provides an acceptable procedure to address the appeal pending before this Board and the Planned Development District application, and is in the overall best interests of the Town; and be it further

**RESOLVED**, that this Board does hereby consent to the terms and conditions of the Memorandum of Agreement; and be it further

**RESOLVED**, that the Chairman be and hereby is authorized and directed to execute the Memorandum of Agreement on behalf of this Board.

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

<b>MEMBER CIPPERLY</b>	<b>VOTING</b>	<u>Aye</u>
<b>MEMBER SCHMIDT</b>	<b>VOTING</b>	<u>Aye</u>
<b>MEMBER STEINBACH</b>	<b>VOTING</b>	<u>Recused</u>
<b>MEMBER TRZCINSKI</b>	<b>VOTING</b>	<u>Aye</u>
<b>CHAIRMAN HANNAN</b>	<b>VOTING</b>	<u>Aye</u>

The foregoing Resolution was thereupon declared duly adopted.

Dated: October 18, 2010

## MEMORANDUM OF AGREEMENT

**MEMORANDUM OF AGREEMENT** dated this 14 day of October 2010 among the Town Board of the Town of Brunswick, a municipal corporation with offices at 336 Town Office Road, Troy, New York 12180 (hereinafter, "the Town Board"), the Code Enforcement Officer of the Town of Brunswick, with offices at 336 Town Office Road, Troy, New York 12180 (hereinafter, "the CEO"), and Oakwood Property Management, LLC, a domestic limited liability corporation with offices at 215 Oakwood Avenue, Troy, New York 12180 (hereinafter, "Oakwood").

**Whereas**, Oakwood has a Planned Development District application pending before the Town Board; and

**Whereas**, Oakwood also has an appeal pending before the Town of Brunswick Zoning Board of Appeals in response to a Notice of Violation issued by the CEO to Oakwood in June 2010 (hereinafter, "the Notice of Violation"); and

**Whereas**, the purpose of this Agreement is to enable the Town Board, CEO and Oakwood to resolve a situation which underlies the Notice of Violation issued on behalf of the Town of Brunswick to Oakwood and which has been appealed by Oakwood to the Zoning Board of Appeals; and

**Whereas**, this Agreement provides for an opportunity to set forth a means of addressing this situation within a shorter time frame than can otherwise be achieved through the pursuit of appeals and additional litigation between the parties; and

**Whereas**, the property owned by Oakwood has, in part, been placed into the Empire Zone and Oakwood has sought clarification concerning its rights and authority under the Town Zoning Ordinance and Map.

**Now, therefore**, the Town Board, CEO and Oakwood hereby agree as follows:

1. Consideration of the current actions pending before the Town, including enforcement of the Notice of Violation by the CEO, the Town of Brunswick Zoning Board of Appeals' consideration of Oakwood's appeal of the Notice of Violation, and Oakwood's application for the Planned Development District are hereby stayed unless or until either the obligations set forth under this Agreement are met by the parties, or this Agreement is terminated in accordance with paragraph 6 below.

2. On or before November 1, 2010, Oakwood or one of its affiliates will seek amended site plan approval from the Town of Brunswick Planning Board for the purpose of relocating its existing operations from Tax Map Parcels 90-1-13.1 and 90-1-12.2, to a parcel which is presently zoned "Industrial," and commonly referred to as the Hasslinger parcel (tax map parcel 90-1-15). Such application shall be subject to review pursuant to all applicable procedure, including SEQRA.

3. On or before November 1, 2010, Oakwood will also petition the Town Board to rezone its non-industrially zoned parcels (tax map parcels 90-1-13.1 and 90-1-12.2) located on Oakwood Avenue to a "B-6" classification (an existing light commercial zoning district available for designation under the Town of Brunswick Zoning Ordinance); provided, however, that the area sought to be rezoned as "B-6" through such petition will exclude a 101 foot buffer along the perimeter of the parcel boundaries adjoining parcels that currently comprise the North Forty Subdivision. The "buffer" area will

retain its existing zoning district designation. Such petition shall be subject to review pursuant to all applicable procedure, including SEQRA.

4. Upon receipt of the petition for rezoning, the Town Board will, in good faith, consider the petition at its next regularly scheduled meeting, or special meeting scheduled within thirty (30) days of such regularly scheduled meeting. At that time, the Town Board shall commence a coordinated environmental impact review under SEQRA with respect to the site plan application and rezoning petition.

5. If the request for rezoning and the amended site plan approval is granted by the Town Board and Planning Board respectively and the agreement is not terminated pursuant to the terms of paragraph 6 below, Oakwood and its affiliates agree that:

- a. All future uses of tax map parcels 90-1-13.1 and 90-1-12.2 will be in accordance with the new zoning district designations and only after obtaining all necessary Town Planning Board or Zoning Board of Appeals approvals; and
- b. All uses of Tax Map Parcel Nos. 90-1-13.1 and 90-1-12.2 by Oakwood or its affiliates existing as of the date of this Agreement shall cease no later than ninety (90) days after the later of (i) the effective date of said rezoning by the Town Board, (ii) the issuance of site plan approval by the Planning Board for the use of the Hasslinger Parcel (tax map parcel 90-1-15), as well as any amended site plan approval for the Oakwood tax map parcel 90-1-14 which parcel is zoned industrial and will continue to be used by Oakwood and its affiliates and lessees, and (iii) the issuance of building permit by the Town of Brunswick Building Inspector and/or CEO allowing the use of the Hasslinger parcel (tax map parcel 90-1-15) in accordance with the approvals.

6. This Agreement shall terminate upon any of the following events:

- a. A determination by the Town Board to deny Oakwood's petition for rezoning to B-6 as more fully described above; or
- b. A determination by the Town of Brunswick Planning Board denying Oakwood's application for site plan approval or amended site plan approval application contemplated under the terms of this Agreement; or
- c. The imposition of conditions by the Planning Board on the issuance of site plan or amended site plan approval or a determination by another governmental agency, which substantially and materially prevents Oakwood and/or its affiliates from continuing their existing business operations at the industrially zoned tax map parcel 90-1-14 owned by Oakwood or from relocating and operating their businesses currently being operated on tax map parcels 90-1-13.1 and 90-1.12.2 to the Hasslinger parcel (tax map parcel 90-1-15).

7. In the event of termination of this Agreement, Oakwood's appeal to the Town of Brunswick Zoning Board of Appeals shall continue to be heard by the Zoning Board of Appeals and a public hearing shall be scheduled to occur no less than thirty (30) days after the termination of this

Agreement. Oakwood's Planned Development District application pending before the Town Board shall also be placed on the next regularly scheduled Town Board meeting agenda following the termination of this Agreement for further consideration by the Town Board.

8. During the term of this Agreement, the operations occurring on Tap Map Parcels 90-1-13.1 and 90-1-12.2 shall not be expanded, and Oakwood and/or its affiliates shall employ best management practices for such operations, including but not limited to:

- a. All leaf debris brought to the site will be removed from the site within 30 days;
- b. All grass clippings brought to the site will be removed from the site within 7 days;
- c. All conveyors that drop mulch into piles will be fitted with retractable "socks" (like a drop chute on 4 sides) which will help to eliminate the exposure of air to the mulch, decreasing the potential of odors by reducing the height from which the mulch falls into the pile or trucks;
- d. Dust will be controlled on site through the use of water trucks and the areas will be watered when site conditions warrant (a minimum of 3 times a day when conditions warrant) and watering applications will be logged; watering will only be done at times of active operation of equipment, when temperatures are above 40F, and during low humidity and dry periods;
- e. Signs will be posted for trucks to remind truck operators to limit an idling time to 5 minutes or less;
- f. The hours of operation of the grinders used in making the mulch will be limited to 7:00 a.m. to 7:00 p.m. on the weekdays and 7:30 a.m. to 3PM on Saturdays;
- g. Trucks will be loaded with mulch or other materials for early morning deliveries during the prior late afternoon (3 p.m. to 7 p.m.);
- h. Vehicles/trucks will be backed in at the end of the work day so they will pull out straight ahead in the morning, limiting any back up noise/alarms;
- i. Machinery will be placed in front of mulch piles in a manner that allows the pile to function as both a sound barrier and wind barrier;
- j. Truck speeds will be restricted to a maximum of 10 MPH within the facility. Drivers will be instructed to observe this maximum speed;
- k. Wind socks will be placed at several locations within the operations so that all drivers and equipment operators can be aware of relative wind direction and intensity; and
- l. Operators will be instructed to work the leeward side of mulch piles as much as practicable in order to prevent wind disturbance of the active face of the pile.

9. The Town Board, as SEQRA lead agency, has examined all of the terms and conditions set forth above and hereby determines that entering into this Agreement will not result in any significant adverse environmental impacts; rather, the intent of this Agreement is to provide the procedural framework for the proposed relocation of the existing uses of the two tax parcels 90-1-13.1 and 90-1-12.2 owned by Oakwood away from the North Forty residential subdivision and onto the Hasslinger parcel (tax map parcel 90-1-15) a parcel currently located within the Industrial Zoning District of the Town. Furthermore, by requiring Oakwood to submit a site plan application to the Town of Brunswick Planning Board, this action ensures that the proposed relocation to the Hasslinger parcel will be undertaken in compliance with the zoning and environmental laws and regulations of the Town. Additionally, this action also ensures that the petition by Oakwood to rezone tax map parcels 90-1-13.1

and 90-1-12.2 will likewise be subject to all applicable review requirements. A negative declaration by the Town Board pertaining to this Memorandum of Agreement is attached to this Agreement. It is not the intent of the parties, nor shall this Agreement be deemed, to waive, limit, or abrogate the parties' responsibilities under SEQRA with respect to Oakwood's proposed site plan application and petition for rezoning.

10. The parties executing this Agreement covenant to each other that they have authority to enter into this Agreement.

11. **Counterparts.** This Agreement may be executed in several counterparts by facsimile or original signature, each of which shall be deemed to be an original but all of which shall constitute one and the same instrument.

12. **Modification.** This Agreement may only be modified by an amendment, in writing, signed by the party to be charged.

13. **No Other Claims or Causes of Action.** The parties warrant and represent that at the time of the execution of this Agreement that they do not possess any pending claims or causes of action against each other.

14. **Complete Understanding of the Parties.** This Agreement constitutes the complete understanding of the parties as to all matters detailed herein.

15. **Independent Municipal Consideration.** Notwithstanding this Agreement, the parties agree that the Town Board makes no representation or commitments to the rezoning sought by Oakwood, but shall exercise its municipal authority to independently review these matters pursuant to its municipal discretion and authority.

In WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

TOWN OF BRUNSWICK TOWN BOARD

\_\_\_\_\_  
By: Supervisor Phillip H. Herrington

TOWN OF BRUNSWICK CODE ENFORCEMENT OFFICER

\_\_\_\_\_  
John Kreiger

OAKWOOD PROPERTY MANAGEMENT, LLC

\_\_\_\_\_  
Sean Gallivan

To the extent that this Agreement affects any matters pending before the Town of Brunswick Zoning Board of Appeals involving Oakwood, the Zoning Board of Appeals is made a signatory to this Agreement and consents to its terms and conditions.

TOWN OF BRUNSWICK ZONING BOARD OF APPEALS

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By: James Hannan, Chairman

**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 November 15, 2010, at 6:00 P.M.

Present at the meeting were: Martin Steinbach, Member  
E. John Schmidt, Member  
Mark Cipperly, Member  
Caroline Trzcinski, Member

Chairman Hannan was 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 first item of business was the selection of a Temporary Chairman to conduct the meeting the absence of Chairman Hannan. Member Trzcinski made a motion to select Member Cipperly as Temporary Chairman. Member Schmidt seconded. The motion carried 4 - 0. Member Cipperly called the Regular Meeting to order at 6:02 P.M.

The first next item of business was approval of the Minutes of the October 2010 meeting. No corrections were noted. Member Trzcinski made a motion to approve the October 2010 minutes as submitted. Member Steinbach seconded. The motion carried 4 - 0.

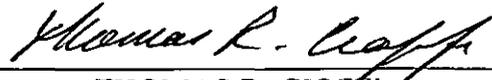
No one was present from the public. No applicants appeared on pending matters appeared..

Attorney Cioffi noted that the Hoffman sign variance application for its business on 672 Hoosick Road had been withdrawn. Further, that the Reiser special use permit application for a filling station at the corner of Routes 2 and 278 was pending before the Planning Board to provide a recommendation, and no SEQRA determination had been issued by the Planning Board, which had declared itself lead agency as regards the overall activities at the Reiser site. Attorney Cioffi suggested that the Reiser matter be carried over to the December 20 meeting. Member Schmidt so moved. Member Trzcinski seconded. The motion carried 4 - 0..

There being no further business, Member Trzcinski made a motion to adjourn. Member Steinbach seconded. The motion carried 4 - 0.

Dated: Brunswick, N.Y.  
November 27, 2010

Respectfully submitted,

Handwritten signature of Thomas R. Cioffi in cursive script.

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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 December 20, 2010, at 6:00 P.M.

Present at the meeting were: Martin Steinbach, Member  
E. John Schmidt, Member  
Mark Cipperly, Member  
Caroline Trzcinski, 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 Chairman called the Regular Meeting to order at 6:00 P.M.

The first item of business was approval of the Minutes of the November 2010 meeting. No corrections were noted. Member Trzcinski made a motion to approve the November 2010 minutes as submitted. Member Steinbach seconded. The motion carried 5 - 0.

The next item of business was the appeal and petition of MICHAEL MADDEN, owner-applicant, dated September 23, 2010, for an area variance pursuant to the Zoning Ordinance of the Town of Brunswick, in connection with the construction of a storage shed on a lot located at 280 Plank Road, in the Town of Brunswick, because the proposed construction violates the front lot line setback for a accessory structure in an A-40 District in that 75 feet is required and 42 feet is proposed. Attorney Cioffi read the Notice of Public Hearing aloud.

Michael Madden appeared. He stated that due to the slope and grade of his property, the only place where the shed can be located is where he is proposing. He is also concerned about security because valuable things will be stored in the shed. The shed will be prefabricated and will sit on gravel or crushed stone. There will be no electricity service installed in the shed at least at this time.

None of the Board Members had any questions or concerns. No one from the public wished to speak. Member Schmidt made a motion to classify the matter a Type 2 action under SEQRA. Member Trzcinski seconded. The motion carried 5 - 0. Member Cipperly then offered a Resolution granting the variance as requested. Member Trzcinski seconded. The motion carried. 5 - 0.

The next item of business was the Request for a Special Use Permit of A & S DIESEL SERVICE, INC., owner-applicant, dated September 30, 2010, pursuant to the Zoning Ordinance of

the Town of Brunswick, in connection with the construction and operation of a filling station on property located at 850 Hoosick Road, in the Town of Brunswick, because a filling station is a special use in a B-15 District only allowed by way of a special use permit issued by the Zoning Board of Appeals. Attorney Cioffi read the Notice of Public Hearing aloud.

Member Schmidt recused himself from the matter and left the meeting room. Gary Joy, the owner of the A & S Diesel property appeared along with Craig Cullum, an employee of John Ray & Sons. They indicated that the proposal here is a joint venture between A & S Diesel and John Ray & Sons to sell diesel fuel only, supplied by John Ray & Sons, on the A & S Diesel property. No gasoline would be sold. There would only be one pump. Only one vehicle could be serviced at a time. The pump would be open 24 hrs. per day. There would be no attendant. The fuel would be obtained by way of a credit card. Everything would be above ground, including the tank. The operation could be expanded if the demand is there, There is no requirement or need for fire suppression as only diesel fuel is being dispensed. The pump would be located behind the building. It would not be visible from Route 7. There would be an illuminated sign on Route 7.

Mr. Kreiger advised that the County Planning Office had not responded to the referral. The matter was put over to the January 18, 2011, meeting, for further proceedings. Member Schmidt then returned to the meeting room.

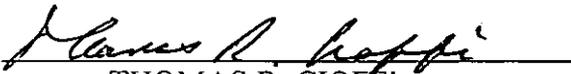
With respect to the application by Henry Reiser for a special use permit for a filling station at the corner of Routes 2 and 278, Scott Reese appeared for Mr. Reiser. The Chairman advised that the matter was not on the agenda because of an escrow account issue with the Town. Mr. Reese was allowed to submit documents. No action was taken.

William Doyle, Esq., appeared regarding the Berkshire Properties Planned Development District. He stated that he had been before the Planning Board seeking an amended recommendation regarding the PDD due to changes made to the project. He asked to be on the January 18, 2011. meeting agenda to make a further presentation to this Board in that regard. The Chairman agreed.

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

Dated: Brunswick, N.Y.  
January 13, 2011

Respectfully submitted,

  
THOMAS R. CIOFFI  
Town Attorney - Zoning Board Secretary