

## **Planning Board**

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

## **Zoning Board of Appeals**

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

### **MINUTES OF THE REGULAR PLANNING BOARD MEETING AND JOINT SPECIAL ZONING BOARD OF APPEALS MEETING HELD OCTOBER 5, 2017**

PRESENT were RUSSELL OSTER, CHAIRMAN, FRANK ESSER, LINDA STANCLIFFE, DAVID TARBOX, TIMOTHY CASEY, MICHAEL CZORNYJ and KEVIN MAINELLO.

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

The Brunswick Zoning Board of Appeals, pursuant to Notice of Special Meeting, is joining the Planning Board meeting for purposes of conducting a joint public hearing on the application for commercial solar collection systems filed by PV Engineers, P.C. c/o Borrego Solar Systems, Inc. PRESENT were MARTIN STEINBACH, CHAIRMAN, ANN CLEMENTE, E. JOHN SCHMIDT, WILLIAM SHOVER, and CANDACE SCLAFANI.

Chairman Oster reviewed the agenda for the Planning Board meeting, noting that the site plan/special use permit application filed by Stewart's Shops for property located at 1001 Hoosick Road is adjourned at the request of the applicant, and will be placed on the October 19 agenda.

Both the Planning Board and Zoning Board of Appeals opened their respective meetings. Both the Planning Board and Zoning Board of Appeals thereupon opened a joint public hearing on the application submitted by PV Engineers, P.C. c/o Borrego Solar Systems, Inc. for property located at 138 Brick Church Road. The pending applications for this project include site plan, special use permit, and subdivision pending before the Planning Board, and area variances with

respect to setback requirements and underground utility requirements pending before the Zoning Board of Appeals. The joint public hearing is being opened by the Planning Board and Zoning Board of Appeals with respect to their respective pending permit applications. Chairman Oster and Chairman Steinbach directed that the notice of public hearing be read into the record. The notice of joint public hearing was read, with the joint public hearing notice having been published in the Troy Record, posted on the Town signboard, posted on the Town website, and mailed to owners of all properties located within 300 feet of the project site. The Boards requested that the applicant make a presentation concerning the proposed project. The applicant was represented by Rob Garrity of Borrego Solar Systems, Inc., Ed Fitzgerald, Esq., project attorney, Dean Smith, P.E., project Engineer, as well as the owner of the underlying property, Kirk Gendron, being present. Attorney Fitzgerald presented an overview of the proposed commercial solar system project, which includes two proposed commercial solar collector systems; one system proposed to be located on a 10-acre area on the east side of the project site, and one system to be located on an 11-acre area on the west side of the project site. Attorney Fitzgerald explained that these will be two independent solar collection systems, which are required to be located on separate lots under Public Service Commission Regulations. Attorney Fitzgerald explained that Borrego will be leasing the property from Gendron for the operation of the commercial solar collection systems. Attorney Fitzgerald reviewed the required permits and approvals under the Brunswick Zoning Law. Attorney Fitzgerald explained that the subdivision of the property, which will result in the existing property being divided into three lots, is required pursuant to Public Service Commission Regulations, which state that commercial solar collection systems up to 2 megawatts/DC Power must be located on separate lots and be separately interconnected to the public utility. Attorney Fitzgerald reviewed the proposed lot layouts, which will include two proposed flag lots for the commercial solar collection systems, and the remaining lot for the existing residential use.

Attorney Fitzgerald also reviewed the requested area variances, including the variance from the mandatory 100-foot setback from lot lines for the commercial solar collection systems. Attorney Fitzgerald explained that the area variance being sought is only from the internal lot line created as a result of subdivision, and seeks to have the 100-foot setback reduced so that the solar collector systems can be located closer together internally on the property. Attorney Fitzgerald stated that the exterior lot lines will continue to maintain the 100-foot setback as required under the Brunswick Zoning Law. Attorney Fitzgerald stated that a reasonable condition that the Zoning Board should consider in connection with the setback area variance is to limit the variance for commercial solar collector system operation only, and no other use may be put in place pursuant to that variance. Attorney Fitzgerald also reviewed the Brunswick Zoning Law language concerning underground utility installation, and stated that the Brunswick Building Department will be making a final zoning determination concerning that language. Attorney Fitzgerald stated that, in the event the Brunswick Building Department did determine that all utility interconnection facilities leading to the existing utility lines on Brick Church Road need to be underground, then the applicant will need to pursue the area variance as National Grid has informed Borrego Solar that above-ground poles are required to bring the utility into the project site. Attorney Fitzgerald stated that National Grid has determined in this case that the general requirement for a minimum of six utility poles for each solar collector system will be reduced in this case, so that only three telephone poles per solar collector system will be required, and that all additional National Grid facilities will be underground. Dean Smith, P.E., project engineer, then discussed the National Grid utility interconnection, stating that in the ordinary case, National Grid requires a minimum of 6–7 poles per system, but that in this case, National Grid agreed to limit the number of poles to three poles per solar collector system. Mr. Smith explained that the first pole into the project site would be approximately 100 feet off Brick Church Road, and that there would be a 35-foot distance

between the two additional poles that National Grid would install on the site. After the third telephone pole, Mr. Smith stated that the utility interconnection all the way to the proposed solar panels will be completely underground. Mr. Smith reviewed the photosimulations submitted in connection with the application, with vantage points from both the east and the west directions on Brick Church Road, reviewing both pre-construction and post-construction view-sheds. Both Attorney Fitzgerald and Mr. Garrity then further discussed the National Grid interconnection, confirming that a total of three standard telephone poles will be installed for each solar collector system. Mr. Garrity also reviewed the proposed access road that will provide access to the solar collector systems as well as the driveway for the existing Gendron home. Planning Board member Esser stated that the solar panels should be manufactured in the U.S.A. rather than China. The applicant stated that it too would like to purchase the panels from a manufacturer in the U.S.A. but that currently the panels are predominantly manufactured in China. Planning Board Member Esser also stated that the areas to the exterior of the proposed solar panels should remain in a forever green status. The applicant stated that such area would be retained by the landowner, and would not be part of the solar project, but that this condition could be discussed with the owner. Mr. Smith explained that approximately 20 acres will be used for panel installation, and that this acreage is currently predominantly agricultural, but that approximately 4.69 acres will need to be cut to provide open space for the solar panel systems. Mr. Smith stated that of this 4.69-acre cut area, approximately 1.3 acres will be cut and stumped, with the remainder merely cut with the stumps left in place. Attorney Fitzgerald stated that a reasonable restriction for consideration would be to limit the cut to the requested area, and that any further vegetation removal or tree cut would be subject to further Planning Board review. Zoning Board Member Clemente asked for clarification regarding the National Grid utility installation and interconnection, and specifically the types of poles and location on the project site. Mr. Garrity reviewed the proposed pole

installation, stating that the poles would be standard telephone poles, with the first set of poles to be approximately 100 feet off Brick Church Road, with 35-foot distance between the two subsequent poles, and therefore approximately 170 feet of above-ground utility lines would exist off Brick Church Road, with all remaining utility being underground until interconnection with the solar panels. Mr. Garrity stated that there is very little leeway that solar companies have with National Grid on these interconnections. Planning Board Member Czornyj asked whether the final utility pole installed by National Grid prior to going underground would be a standard telephone pole, or would require any additional equipment. Mr. Garrity stated that the third pole would be the same standard pole as the initial two poles installed for each system. Planning Board Member Stancliffe asked whether National Grid would have a utility easement. Mr. Garrity stated that National Grid would have a utility easement over the property. Planning Board Member Stancliffe asked whether the National Grid lines could be combined once the utility goes underground. Mr. Garrity stated that PSC requirements dictate that the utility connection for each solar collection facility remains separate, and therefore the utility connection would need to remain separate even when it goes underground. Planning Board Member Casey inquired about the access road, confirming that only one access driveway will be utilized for both access to the solar panels and as the driveway for the existing house. Mr. Smith confirmed that only one access road will be used. Mr. Smith also explained that maintenance for the solar panels and solar equipment is approximately 2–3 times per year, and otherwise the proposed access driveway will largely function like the current residential driveway. Zoning Board Member Clemente asked whether there were specific dates for equipment maintenance. Mr. Smith stated that there are no specific dates, and maintenance is done on an as-needed basis. Zoning Board Member Clemente asked about snow removal. Mr. Smith stated that snow removal is not a significant need, as the solar panels do generate a slight amount of heat and snow generally does not accumulate on the solar

panels, and that the only snow removal required would be if there is such a significant amount of snowfall that the snow is above three feet from ground level so that it is starting to block the solar panels, which in Borrego's experience is quite rare. The Planning Board and Zoning Board then opened the floor for receipt of public comment. Debra Gordon, 122 Brick Church Road, stated that she loved the project, but did have a question on what will occur on the flag-lot frontage for each solar system. The applicant stated that there is no proposed improvement for these flag lots, and that only the single road will be used for access, and that the flag lots are created simply to meet legal requirements for public road frontage. Ms. Gordon stated that she is the property owner next door to this project, and that she is in support of the project. Kirk Gendron, the property owner at 138 Brick Church Road, stated that he does support the project, and in terms of panels being manufactured in China, he views it as a choice between solar power and reliance on foreign oil. Tim Buck, speaking on behalf of Henry and Wendy Buck, 45 Buck Road, asked how close the solar panel equipment would be to the lot line. Mr. Smith stated that there would be a 100-foot setback from the lot line to the solar panel modules. Mr. Buck asked whether there would be any changes to topography or removal of the existing hedgerow. Mr. Smith stated that there would be little change to topography, but there will be tree clearance so that the existing trees will not create shade on the solar panels. Mr. Smith confirmed that there was no construction directly affecting off-site properties. Jim Tkacik, 387 Brunswick Road, stated he is a big supporter of solar power, and inquired how big the proposed panels were. Mr. Smith stated that the highest point of the panels is approximately 9 feet, with a 25 degree horizontal slope. Mr. Tkacik had a question regarding the language in the Brunswick Zoning Law regarding impervious surfaces. Mr. Smith confirmed that the panels themselves are impervious, but that the ground surface is open and pervious, and stormwater runoff from the panels will percolate into the soil. Mr. Tkacik asked about Borrego's experience with stormwater runoff at other locations. Mr. Smith stated that there

is not significant sheeting runoff from the solar panel installations, and that for installations on former agricultural land, the runoff is usually less since grasses will be planted which tend to soak up the stormwater runoff. Mr. Tkacik asked about who gets the power generated from the solar panels. Mr. Smith stated that the power is generated back into the grid, but that ultimately this project will be selling shares to other owners and that power generation will show up as a credit on individual utility bills. Wendy Buck, 45 Buck Road, had a concern regarding construction debris. Mr. Smith stated that all packaging material from the solar equipment will be taken off-site. John Trczinski stated that he owns property abutting two sides of the project, and has no objections. Clay Danish, 170 Brick Church Road, stated that he owns property on the west side of the project, and asked whether there was a wetlands map for this project site. Mr. Smith stated that the full plan set for this project includes delineated wetlands, and reviewed the wetlands map with Mr. Danish. Mr. Danish asked whether the road would be installed through wetland areas. Mr. Smith stated that the wetlands were under the jurisdiction of the Army Corps of Engineers, and that pursuant to nationwide permit number 51, the access road can be installed through the wetland area, and that Army Corps of Engineers allows up to 1/2-acre of impact for clean energy projects, but the impact in this case will be less than 1/10-acre. Mr. Danish asked whether the project would change the drainage. Mr. Smith stated that there would not be a change in drainage, and that the plan is currently being reviewed by the Army Corps of Engineers. Mr. Danish asked whether the utility poles would be placed on other properties. Mr. Smith stated that the poles would be placed on the property of Gendron, and that National Grid would obtain a utility easement, and that Borrego Solar will have both access and utility easements. Mr. Danish asked whether the proposal is to install utilities underground through the wetland areas. Mr. Smith stated that this was allowed by Army Corps of Engineers, and is currently being reviewed by the Army Corps in connection with this project. Mr. Danish asked about security around the commercial

solar facility. Mr. Smith stated that there would be an 8-foot chain link fence that will be locked, with installation of a Knox box, and that each separate system would be separately fenced. Mr. Danish observed that there were significant topography changes on the project site. Mr. Smith concurred, stating that panels will be installed on slopes, but that the particular system being installed can accommodate a 20-degree slope without required grade changes. The project will be designed to accommodate the existing slope, and will be part of the construction detail to be prepared for this project. Mr. Danish asked about the DC/AC location on the project site. Mr. Smith identified the location of inverters on the project site. Planning Board Chairman Oster and Zoning Board Chairman Steinbach inquired whether there were any further public comments. Hearing none, Planning Board Chairman Oster and Zoning Board Chairman Steinbach inquired of Attorney Gilchrist as to procedural issues. Attorney Gilchrist stated that an option to consider is the Planning Board closing its public hearing on the special permit, site plan, and subdivision applications, as those applications were fully submitted and the public has had a full opportunity to submit public comments. Attorney Gilchrist then stated, in connection with the Zoning Board public hearing on the variance applications, the Zoning Board could consider the option of keeping its public hearing open until such time as the Building Department renders its written determination concerning the Brunswick Zoning Law provisions on underground utility installation and interconnection. In this regard, Attorney Gilchrist stated that a procedure for consideration by both the Planning Board and Zoning Board of Appeals is to allow the Planning Board to close its public hearing, but to have the Zoning Board adjourn its public hearing and keep that public hearing open and continue that public hearing at its regular meeting to be held October 16, pending the written determination of the Brunswick Building Department on the Brunswick Zoning Law interpretation on utility interconnection requirements. Both the Planning Board and Zoning Board of Appeals agreed with the proposed procedure. Thereupon, the Planning Board



closed the public hearing on the special permit, site plan, and subdivision application submitted by PV Engineers, P.C. c/o Borrego Solar Systems, Inc. for the proposed commercial solar collection facility. The Zoning Board of Appeals determined to keep its public hearing open, and will continue its public hearing at its regular meeting to be held October 16 at 6:00pm. Attorney Gilchrist then advised the Planning Board that, with the close of the Planning Board public hearing, State law requires the Planning Board to act on the subdivision application within 62 days, and that in the event additional time is required for review and consideration of the Borrego application, the applicant will need to consider granting an extension to that time frame. Attorney Fitzgerald understood the issue and indicated that he would review that request with his client, and that issue will be further discussed at the October 19 Planning Board meeting.

The Zoning Board of Appeals then unanimously voted to end their special meeting, with the next regular business meeting of the Zoning Board of Appeals to be held October 16 commencing at 6:00pm.

The Planning Board then continued its regular meeting.

The members of the Planning Board reviewed the draft minutes of the September 7, 2017 meeting. Upon motion of Member Czornyj, seconded by Member Casey, the draft minutes of the September 7, 2017 meeting were unanimously approved without amendment (Member Stancliffe abstaining).

The Planning Board members then reviewed the draft minutes of the September 21, 2017 meeting. Upon motion of Member Mainello, seconded by Member Tarbox, the draft minutes of the September 21, 2017 meeting were unanimously approved without amendment.

The first item of business on the agenda was the special permit/site plan/subdivision applications submitted by PV Engineers, P.C. c/o Borrego Solar Systems, Inc. for property located at 138 Brick Church Road. Chairman Oster noted that the public hearing on these applications has

been held, that Borrego did respond to a significant number of the public comments during the public hearing, but that the Planning Board will require a written response to be submitted by Borrego on the applications. Chairman Oster asked whether there were any questions of the Planning Board members. Member Stancliffe had questions about the grounding of the electric system. This issue was reviewed by Mr. Garrity. Mr. Garrity also said that the system will be in compliance with the National Electric Code. Member Tarbox asked about the depth of test wells on the site. Mr. Smith stated that it is up to the opinion of the geotechnical consultant, but probably approximately 100 feet in depth. Member Tarbox asked about crossing the wetlands with the access road. This was reviewed by Mr. Smith, stating that the design and elevation will be reviewed by the Army Corps of Engineers. Member Tarbox stated that he did not want to see any water backing up onto neighboring property owners, and that this matter will need to be reviewed carefully by the Planning Board. Mr. Bonesteel asked about the total length of the proposed gravel access driveway. Mr. Smith said it would be in the general length of 1,500–2,000 feet. Mr. Bonesteel and Mr. Smith then reviewed the culvert design for the access roadway. Member Casey asked about the anticipated review period by the Army Corps of Engineers. Mr. Smith stated that Borrego is now responding to the initial set of comments of the Army Corps of Engineers, and that hopefully a determination will be made within a month or so by the Army Corps. The Planning Board members and the applicant discussed tree cutting restrictions concerning the issue of protection of bat populations, and that trees on the site could be cut between November 1 and March 31. This matter is placed on the October 19 agenda for further discussion.

Chairman Oster repeated that the special use permit and site plan applications submitted by Stewart's Shops for property located at 1001 Hoosick Road is adjourned until the October 19 meeting.

The next item of business on the agenda was the site plan application submitted by Christine Hadsell for property located at 377 Tamarac Road. Christine Hadsell was in attendance. Ms. Hadsell stated that a new site plan had been submitted to the Town on October 5 with additional information on the proposed barn and schematic of the proposed barn. Ms. Hadsell identified the new well location on the site plan, and also noted that sight distances onto Tamarac Road had been added to the site plan. Ms. Hadsell stated that the barn is now being proposed as 30 feet by 28 feet, and that two rooms were added to meet the minimum size requirements under the Brunswick Zoning Law. Chairman Oster noted that topography had not been added to the site plan, and that the Planning Board will require the topography to be added to the site plan as part of the site plan review. Ms. Hadsell discussed the topography, which her surveyor should have completed by the following week and that an amended site plan would then be submitted to the Planning Board for review. Chairman Oster also raised the issue of the County driveway permit, and asked Mr. Bonesteel to review that. Mr. Bonesteel stated that the County driveway permit issued for this project was premised on the use of the driveway for residential purposes, and that an additional submission to the County for a commercial driveway will be required. Ms. Hadsell stated that she spoke with the Deputy Engineer at the Rensselaer County Highway Department, who indicated that the County has no jurisdiction over the driveway, and therefore no need to change the permit. Mr. Bonesteel stated that such advice was incorrect, that an additional submission for a commercial driveway must be submitted to the County for review, particularly in light of the need for the County to review sight distance information in connection with a commercial driveway, as well as consideration of the vehicles utilizing Tamarac Road in connection with an additional commercial driveway. Ms. Hadsell will follow up with this directly with Mr. Bonesteel. Member Stancliffe reviewed the location of the driveway in connection with its proximity to the lot line common with Viasner, stating that the driveway did appear to be too

close to the lot line, and that the addition of topography on the site plan will aid the Planning Board in reviewing this issue. Mr. Bonesteel confirmed that the Planning Board will need to review topography on the site plan in order to properly assess the driveway location and operation. Member Stancliffe stated it should be confirmed that the new well location has the appropriate offset from the septic system located on the Schermerhorn lot, and Ms. Hadsell stated that this will be checked. Chairman Oster asked whether the proposed well on the site would be used not only for the barn but as well as for any future residence on the property. Ms. Hadsell stated that she planned to use the same well for both the barn as well as a future residence, and the Planning Board had a short discussion concerning the well location. Chairman Oster confirmed that a revised site plan would be submitted which includes topographical information, and that Ms. Hadsell will follow up with Mr. Bonesteel regarding the required County driveway permit for commercial purposes. Chairman Oster stated that in his opinion, the horse trailer turning onto Tamarac Road for this type of use would be similar to a boat trailer, but that the Planning Board has to consider this as a commercial use and perform the necessary review for sight distances as well as traffic safety on Tamarac Road. Ms. Hadsell stated that she did not intend to have any large horse trailers remaining on the property, and anticipates that horse trailer usage would be rare. Ms. Hadsell also stated that Tamarac Road has a 35mph limit in this location. Chairman Oster acknowledged the speed limit, but also noted that trucks do utilize Tamarac Road, and traffic safety issues must be considered. Mr. Bonesteel concurred, and stated the traffic issue was not necessarily a traffic volume issue, but is more of a traffic safety issue, and will be reviewed by the Planning Board. The Planning Board noted that the recommendation of the Rensselaer County Planning Department had been received on this application, and it determines that local consideration shall prevail. This matter is placed on the October 19 agenda for further discussion.

The next item of business on the agenda was the waiver of subdivision application submitted by Paul Bouchard for property located on Denise Drive. Mr. Bouchard was present. Mr. Bouchard repeated that he seeks to divide a 0.37-acre portion from the existing lot at 2 Denise Drive, and transfer that 0.37-acre to the lot on 4 Denise Drive, and merge the 0.37-acre portion into the 4 Denise Drive lot. Mr. Bouchard stated that he is looking to sell the property located at 2 Denise Drive, and will continue to reside at 4 Denise Drive. Attorney Gilchrist stated that he had reviewed the application with the Town Attorney, and that no issues were present regarding drainage easements, and the Planning Board should appropriately review this proposal as a lot line adjustment. Attorney Gilchrist also noted that the proposed lot line adjustment would continue to provide 2 Denise Drive with direct frontage on the existing Denise Drive cul-de-sac, but would then provide direct fee ownership frontage for 4 Denise Drive onto the same cul-de-sac. The Planning Board viewed this positively. Chairman Oster inquired whether there were any further questions or comments from the Planning Board members. Hearing none, Member Czornyj made a motion to adopt a negative declaration under SEQRA, which motion was seconded by Member Tarbox. The motion was unanimously approved, and a SEQRA negative declaration adopted. Thereupon, Member Czornyj made a motion to approve the waiver of subdivision subject to the condition that the 0.37-acre portion divided from 2 Denise Drive must be legally merged into the title for 4 Denise Drive, with proof of such merger filed with the Brunswick Building Department. Member Tarbox seconded the motion subject to the stated condition. The motion was unanimously approved, and the waiver of subdivision approved subject to the stated condition.

There were no new items of business.

The index for the October 5, 2017 joint meeting of the Planning Board and the Zoning Board of Appeals is as follows:

1. PV Engineers, P.C. c/o Borrego Solar Systems, Inc. - Special use permit/site plan/subdivision/area variances - Planning Board public hearing on special use permit/site plan/subdivision closed; Zoning Board of Appeals public hearing on area variances adjourned and to be continued at the Zoning Board of Appeals regular meeting to be held October 16, 2017 at 6:00pm.

The index for the regular business meeting of the Brunswick Planning Board is as follows:

1. PV Engineers, P.C. c/o Borrego Solar Systems, Inc. - Special use permit/site plan/subdivision - 10/19/2017;
2. Stewart's Shops - Special use permit/site plan - 10/19/2017;
3. Hadsell - Site plan - 10/19/2017;
4. Bouchard - Waiver of subdivision - Approved with condition.

The proposed agenda for the October 19, 2017 Planning Board regular meeting currently is as follows:

1. PV Engineers, P.C. c/o Borrego Solar Systems, Inc. - Special use permit/site plan/subdivision;
2. Stewart's Shops - Special use permit/site plan;
3. Hadsell - Site plan.