

## **Zoning Board of Appeals**

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

### **MINUTES OF THE BRUNSWICK ZONING BOARD OF APPEALS MEETING HELD AUGUST 21, 2017**

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

ALSO PRESENT was KAREN GUASTELLA, Brunswick Building Department.

The draft minutes of the July 17, 2017 meeting were reviewed. Upon motion of Member Shover, seconded by Member Clemente, the draft minutes of the July 17, 2017 meeting were unanimously approved without amendment.

The first item of business on the agenda was an area variance application submitted by Jeff Stannard for property located at 303/307 Town Office Road. Jeff Stannard was present on the application. Chairman Steinbach requested Mr. Stannard to present a brief overview of the proposal. Mr. Stannard stated that at the present time, there are two residential dwellings that are located on one parcel, but are identified as 303 Town Office Road and 307 Town Office Road. Mr. Stannard stated that the construction of the homes predated the adoption of zoning in the Town of Brunswick, and that the homes were originally constructed on separate parcels but the parcels were merged prior to the adoption of zoning in the Town. Mr. Stannard stated that he is now proposing to subdivide the property along the original property line, but the resulting parcel identified as 307 Town Office Road will become substandard under current zoning, both as to lot size and lot width in the applicable Zoning District. Mr. Stannard stated that there have been no changes to the application since the July meeting. The Zoning Board then opened the public

hearing on the application. The notice of public hearing was read into the record, with the notice having been published in the Troy Record, placed on the Town signboard, posted on the Town website, and mailed to owners of properties within 300 feet of the project site. Chairman Steinbach opened the floor for receipt of public comment. No members of the public wished to comment on the application. Chairman Steinbach noted that, with regard to the proposed substandard lot at 307 Town Office Road, the issue raised at the July meeting was the location of the septic system, including the septic tank and septic field. Chairman Steinbach inquired whether the Building Department had received any information from the Rensselaer County Health Department. Ms. Guastella stated that she had contacted the Rensselaer County Health Department, but that the County has no record on file regarding the septic system at 307 Town Office Road, and has no information where the septic system is located. Mr. Stannard stated that he had sketched the location of the septic system on the survey drawing, but that it has not been located in the field and has not been independently verified by a surveyor or engineer. The Zoning Board members generally discussed the septic tank and septic field location, and the need for that information to determine whether variances should be granted for 307 Town Office Road. Member Clemente asked whether the Zoning Board needs something in writing from the Rensselaer County Health Department. Ms. Guastella stated that the County Health Department has no file on 307 Town Office Road, and that the Health Department would not go out in the field independently to verify septic system location, but that a land surveyor or engineer should verify the location of the septic system to ensure there is no encroachment of any part of the septic system on a separate lot in the event the variance for 307 Town Office Road were granted. Chairman Steinbach stated that the Zoning Board does need the information concerning the septic system verified by a land surveyor or engineer, and that Mr. Stannard should coordinate with the Building Department on the required

information. Ms. Guastella also noted that the recommendation from the Rensselaer County Planning Department is still required as well. The Zoning Board members concurred that this matter should be held over, and the public hearing continued at the September 18 meeting in order to receive the information concerning the septic system on the property. This matter is adjourned, and the public hearing continued at the September 18 meeting commencing at 6:00pm.

The next item of business on the agenda was the area variance application submitted by Melissa Charest for property located at 21 Meyer Lane. Melissa Charest was present for the application, together with David Lajeunesse, who is her contractor for the construction of a new home on the project site. The applicant seeks a front yard setback variance for this property. David Lajeunesse, 210 Thornberry Lane, Rensselaer, New York, stated that he was the contractor for the project; that Ms. Charest seeks to construct a new home on the site in the same general footprint of a prior farmhouse that was located on the site; but that the proposed location does not meet the front yard setback requirements and so a front yard setback variance is being sought. Mr. Lajeunesse explained that the footprint of the prior farmhouse is being proposed since there is an existing septic system, and existing utilities that are already in place for a residential structure at that location. Mr. Lajeunesse stated that the farmhouse which had been demolished predated zoning, and the location of the home had been designed to replace the former farmhouse structure. Mr. Lajeunesse stated that a 50-foot setback from the front lot line is required under the current Zoning Law, and that the front line of the home would be 22.6 feet from the front lot line consistent with the old farmhouse, and that Ms. Charest is seeking a variance of 27.4 feet. The applicant confirmed that there were no changes in the application since the July meeting. The Zoning Board then opened a public hearing on the application. The notice of public hearing was read into the record, with the notice having been published in the Troy Record, placed on the Town signboard,

posted on the Town website, and mailed to owners of all properties within 300 feet of the project site. Chairman Steinbach opened the floor for receipt of public comment. No members of the public wished to comment. Member Clemente then made a motion to close the public hearing, which motion was seconded by Member Shover. The motion was unanimously approved, and the public hearing on the Charest area variance application was closed. The Zoning Board then proceeded to deliberate on the application. Member Shover noted that he did not have any issue with the variance request since the home would be placed in the same location as the previous farmhouse which had been demolished. Member Sclafani agreed with that point. Chairman Steinbach asked Ms. Guastella if there were any concerns from the Building Department. Ms. Guastella stated that the location of the home was being driven by the existence of the current utility hook-ups, septic system, location of outbuildings, and a solar panel system, and that the proposed home location was the only place to rebuild the home on the site without affecting the existing utility connections and outbuilding locations, and that using the location of the former farmhouse requires the front yard setback variance. Chairman Steinbach asked whether there would be any expansion beyond the original farmhouse footprint in connection with construction of the new home. Mr. Lajeunesse stated that the new home would be 1,000 square foot less than the original farmhouse; that there would be no front porch and no addition to the rear of the new home as there was with the original farmhouse; and that the new home would not fit perfectly within the former foundation footprint but that the front of the home would be no closer to the road than the prior farmhouse. Member Shover asked whether the same well and septic system would be used with the new home. Mr. Lajeunesse confirmed that the well and septic would continue to be used. Chairman Steinbach asked whether the garage associated with the proposed new home would be closer to Meyer Lane than any part of the old farmhouse. Mr. Lajeunesse stated that the

garage door will be at the front wall line of the former farmhouse, and will be no closer to the road than the former farmhouse. The Zoning Board members had no further questions on the application. The Zoning Board proceeded to make a determination of environmental significance under SEQRA. Member Clemente stated that upon consideration of the environmental assessment form and the application documents, no significant adverse environmental impacts are anticipated, and therefore made a motion to adopt a negative declaration under SEQRA. The motion was seconded by Member Shover. The motion was unanimously approved, and a SEQRA negative declaration adopted. The Zoning Board then proceeded to deliberate on the area variance request. Chairman Steinbach stated that he did not feel the requested variance would result in any undesirable change in the character of the neighborhood or create a detriment to nearby properties, as the new house would be in the same general location as the old farmhouse, and the new home would actually be an improvement to the neighborhood as compared to the old farmhouse which was in poor condition. Member Clemente noted that there were different styles of houses in the general area, that the new home would be consistent with homes in the general area, and that the general area had significant distance between residences as well. As to whether there was a feasible alternative to the requested variance, the Zoning Board members generally concurred that a feasible alternative did not exist without disrupting the existing utilities, well, septic, solar, and outbuildings; and that the old farmhouse constituted a nonconforming use in terms of the setback from the road, and the new proposed home seeks to continue the same distance from the road. In terms of whether the requested variance is substantial, Member Shover inquired whether the home could be kept within the same building footprint but pushed further back from Meyer Lane. Mr. Lajeunesse stated that if the home were pushed back so that it was deeper into the lot, it would interfere with the existing septic system, so that the lot was somewhat constrained if the existing

utilities were to be continued. The Zoning Board members determined that in light of the fact that the old farmhouse was a nonconforming use, and the proposed new home would utilize the same footprint, the requested variance was not deemed substantial under these facts. The Zoning Board members concurred that the requested variance would not have an adverse effect on the physical or environmental conditions in the neighborhood, noting that a SEQRA negative declaration had been adopted. The Zoning Board members generally agreed that the difficulty is self-created, as the new home is sought to be constructed through the utilization of existing utilities rather than using area on the remainder of the lot to build the home, but that this factor did not preclude the granting of the area variance. Based upon these deliberations, and balancing the benefit to the applicant in granting the variance as opposed to any detriment to the neighborhood in particular and community at large, Chairman Steinbach made a motion to grant the area variance on the condition that the applicant contact and coordinate with the Building Department regarding the location of the new structure within the existing footprint, and that the front line of the new home be no closer to Meyer Lane than 22.6 feet, which motion was seconded by Member Clemente. The motion was unanimously approved, and the area variance granted subject to the stated conditions.

Two items of new business were discussed.

The first item of new business discussed was an area variance application submitted by Shawn Duffey for property located at 485 Garfield Road. The applicant seeks to construct a shed at this property in a location requiring a side yard setback variance. The applicable Zoning District requires a 25-foot side yard setback, and the applicant is proposing an 18-foot setback, resulting in the request for a 7-foot side yard setback variance. The applicant has also submitted a letter from the adjacent property owner, which indicates no opposition to the application. The Zoning

Board members reviewed the application materials, and deemed them complete for scheduling a public hearing. This matter is scheduled for public hearing at the September 18 meeting to commence at 6:15pm. The Zoning Board members confirmed the agreement of Mr. Duffey for access to the property to see the site before the public hearing.

The second item of new business discussed was an area variance application submitted by Borrego Solar for a proposed utility-scale solar farm installation at 138 Brick Church Road. Dean Smith, P.E., of PV Engineers, together with Ed Fitzgerald, Esq., project attorney, and Rob Garrity, project developer, were present for the applicant. Mr. Smith reviewed the proposed project, which seeks to put two separate solar farm facilities on the property, on the west side of the site and on the east side of the site. Each separate system would be fenced, and an equipment pad area for each facility would be provided. Mr. Smith stated that the request for the area variance is in relation to the required 100-foot setback for the exterior of the solar facility to the lot line, and that the current variance seeks relief from the 100-foot setback on the proposed interior lot line separating the two solar facilities. Mr. Smith reviewed the plan, which will continue to have in excess of a 100-foot setback from the exterior of all of the solar facilities with the current exterior lot line, but the variance is with respect to the proposed subdivision of the land creating an east facility and west facility, and seeking relief from the 100-foot setback regarding the proposed interior lot line. Mr. Smith also raised the issue of the National Grid interconnection off Route 278, and stated that the Zoning Law may be interpreted to mean that the National Grid lines from Route 278 into the project site at the point of interconnection with the Borrego Solar facility system would need to be underground. National Grid is proposing to have these poles above ground, which may give rise to the need for an additional area variance with respect to whether the poles are underground or above-ground. There was discussion regarding the Brunswick Zoning Law

provisions concerning the electric interconnection requirements and whether the poles are required to be underground or above-ground. The applicant indicated that additional submissions will be made, including a visual environmental assessment form, a photosimulation, and also submissions from National Grid regarding the utility interconnection, and public service commission regulatory requirements for the need to have these separate facilities on separate lots. The Zoning Board members reviewed the proposed plan layout with the applicants, including questions regarding setbacks from exterior lot lines. The Zoning Board discussed procedure on the area variance application and the pending special use permit and site plan applications in front of the Brunswick Planning Board. Attorney Gilchrist stated that the applicant will be submitting the identified additional information to the Building Department and Planning Board, as well as the Zoning Board, and that the matter is on the agenda of the Brunswick Planning Board for its September 7 meeting, at which time the Planning Board would likely be circulating a SEQRA lead agency coordination notice. Attorney Gilchrist stated that the Zoning Board should consider a joint public hearing with the Planning Board, which public hearing would be for purposes of the site plan and special permit by the Planning Board as well as the area variance request in front of the Zoning Board, so that the Zoning Board members could hear all comments concerning the facility as a whole and not limited to just the area variance issues. The Zoning Board members were receptive to that procedure, and indicated that they would like to hear the comments from the public on the facility as a whole, not limited to the specific area variance requests. The Zoning Board discussed the utility interconnection and the poles sought to be installed by National Grid off of Route 278, and the applicant indicated additional information would be submitted on that issue. Member Shover asked whether Borrego Solar had other locations in the area with similar solar installations.



The applicant stated that other similar applications exist in Whitehall and Amsterdam. This matter is placed on the September 18 agenda for further discussion.

The index for the August 21, 2017 meeting is as follows:

1. Stannard - Area variance - 9/18/2017 (public hearing to continue at 6:00pm);
2. Charest - Area variance - Granted subject to condition;
3. Duffey - Area variance - 9/18/2017 (public hearing to commence at 6:15pm);
4. Borrego Solar - Area variance - 9/18/2017.

The proposed agenda for the September 18, 2017 meeting currently is as follows:

1. Stannard - Area variance (public hearing to continue at 6:00pm);
2. Duffey - Area variance (public hearing to commence at 6:15pm);
3. Borrego Solar - Area variance.