

Zoning Board of Appeals

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

MINUTES OF THE BRUNSWICK ZONING BOARD OF APPEALS SPECIAL MEETING HELD JULY 2, 2018

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

ABSENT was WILLIAM SHOVER.

ALSO PRESENT was KAREN GUASTELLA, Brunswick Building Department.

Chairman Steinbach opened the meeting, stating that this was a special meeting of the Brunswick Zoning Board of Appeals to address the area variance applications submitted by High Peaks Solar in connection with the proposed installation of a utility-scale solar facility on property located at 566 Brunswick Road. The Zoning Board members confirmed that the public hearing on the area variance applications had been completed; that the recommendation had been received from the Rensselaer County Department of Economic Development and Planning; that the Town of Brunswick Planning Board had adopted a SEQRA negative declaration for this action through a coordinated SEQRA review; and that the applicant had submitted supplemental visual information concerning photosimulation of the proposed above-ground utility poles and also an updated site plan. Chairman Steinbach asked if the updated site plan impacted any of the requested area variances. Kevin Bailey of High Peaks Solar was present for the applicant, and stated that the changes to the site plan did not change the proposal to locate five above-ground utility poles nor impact the proposed setback variance on the southern property line. Attorney Gilchrist reviewed the prior procedure, stating that the matter was before the Zoning Board members for deliberation

on the area variance requests. Chairman Steinbach reviewed the variance requests that were pending, including the request to have five above-ground telephone poles whereas the Brunswick Zoning Law requires underground utility connections, and also a setback of 40 feet on the southern property line where the Brunswick Zoning Law requires a setback of 100 feet. Chairman Steinbach wanted to discuss the area variance application pertaining to the above-ground poles first, and inquired of the applicant why underground facilities throughout this project were not feasible. Mr. Bailey stated that the original design for this project had all of the utility connections overhead and he had revised the site plan to put most of the electric installations for utility connections underground, but that some needed to be overhead for safety purposes, and that the Brunswick Zoning Law requires all or some of the utility connections to be underground. Attorney Gilchrist corrected the record to state that the Brunswick Zoning Law requires all utility connections to be underground in connection with commercial solar facility projects. Member Sclafani asked whether the overhead utilities were required by National Grid. Mr. Bailey stated that National Grid does require electric facilities for connection to solar facilities to be above-ground in certain locations. Attorney Gilchrist stated that the record should be clear, and was it Mr. Bailey's position that National Grid requires utility interconnections for solar facilities to be at least in part above-ground. Mr. Bailey stated that was correct, and cited National Grid bulletin 756 for this proposition. Chairman Steinbach asked whether the above-ground utility poles would be the traditional wooden 40-foot telephone pole. Mr. Bailey stated the poles would be 40-foot wooden telephone poles. Chairman Steinbach also inquired whether the need for the above-ground utility connection was for safety purposes, and Mr. Bailey stated it was for safety purposes. Mr. Bailey also stated that with regard to the single telephone pole proposed near the church parking lot near Garfield Road, there were at least a dozen other standard telephone poles in the immediate area, and the addition of one

single telephone pole would not be a significant change. Mr. Bailey stated that the four additional above-ground utility poles proposed for the project were located on the interior of the site, adjacent to the “old farm road”, and would not be seen from outside the project site. Member Clemente asked whether the four interior utility poles would run north to south, or east to west. Mr. Bailey stated that he was open to any alignment that the Zoning Board would require. Chairman Steinbach asked whether National Grid needed to determine where the utility poles were located. Mr. Bailey stated that National Grid was agreeable to any pole layout, as long as National Grid continued to have access to the pole locations. Attorney Gilchrist stated that the applicant needed to specifically locate the above-ground poles on the site, so that the Zoning Board could properly review the proposal under the area variance standards. Mr. Bailey then stated he would like to locate the single utility pole adjacent to Garfield Road, and that the four above-ground poles proposed for the interior of the site would be laid out so that three of the utility poles would run parallel to the old farm road, 25-foot on center, and one utility pole would be located near the transformer pad area on the opposite side of the federal wetland, approximately 100 feet from its connecting pole. Mr. Bailey stated that a 100-foot run with an above-ground utility line was both safe and adequate with the use of standard 40-foot wooden telephone poles. Member Clemente inquired whether any vegetation removal was proposed on the east side of the old farm road in proximity to the above-ground utility poles. Mr. Bailey stated that no vegetation removal was proposed, only topping trees to eliminate anything falling onto the above-ground utility lines, similar to tree-clearing along public roads where utility lines are located. Member Clemente inquired whether any vegetation removal was proposed along the remainder of the old farm road as depicted on the site plan. Mr. Bailey stated that no further vegetation removal or clearing is proposed along the rest of the old farm road, as the utility connection in this location would be underground, so there would be no need for any tree or

vegetation removal. Member Sclafani inquired whether the old farm road was open to the public. Mr. Bailey stated it was not open to the public. Member Sclafani wanted to confirm on the record that the above-ground utility poles on the interior of the site would not be seen from any public road. Mr. Bailey stated they would not be visible from any public road. Chairman Steinbach inquired whether there were any further questions concerning the proposal for the above-ground utility poles. Hearing none, Chairman Steinbach stated he wanted to address the proposed 40-foot setback along the southern property line, and why the applicant was proposing the reduced setback. Mr. Bailey stated that the request was based on economics, and the need to site a minimum number of panels on the parcel in order to make the project economically viable. Chairman Steinbach asked the total number of panels proposed for the project. Mr. Bailey stated there were a total of 7,320 panels. Chairman Steinbach asked how many panels were proposed within the area of the 60-foot variance on the southern property line. Mr. Bailey stated that 480 panels would be located in the area of the proposed 60-foot variance along the southern property line. Chairman Steinbach inquired whether there was any housing or other residential use near the southern property line on the adjoining property. Mr. Bailey stated that there is no residential use on the adjacent property, and that in the area of the proposed setback variance there is a hill to the east and the creek is located to the west. Chairman Steinbach asked whether the panel installation in the proposed variance area would impact the creek. Mr. Bailey stated that he has addressed comments concerning any panel location and impact to the creek, and appropriate setbacks from the creek have been included. Chairman Steinbach inquired whether there were any further questions concerning the proposed setback variance along the southern property line. Hearing none, Chairman Steinbach proposed that the Zoning Board deliberate and make determinations concerning the variance requests. The Zoning Board members concurred. Attorney Gilchrist confirmed on the record that a SEQRA determination

had been completed by the Brunswick Planning Board serving as SEQRA lead agency in a coordinated review for this action, and that the recommendation of the Rensselaer County Planning Department pursuant to General Municipal Law 239-m had been received. Chairman Steinbach stated that the Board should consider the area variance request for the above-ground utility poles first. Attorney Gilchrist reviewed the standards for consideration of the area variance. As to whether the proposed variance for the above-ground utility poles would produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties, the Zoning Board found that the four interior utility poles would be difficult to see from any off-site locations, and would be difficult to see even from the church parking lot; that the single utility pole proposed near Garfield Road would not be inconsistent with a number of other existing telephone poles in the immediate area; that the above-ground utility connections were required by National Grid, and that the applicant had located the utility poles in the least conspicuous areas on the site. As to whether a feasible alternative existed to the variance for the above-ground utility connection, the Zoning Board determined that a feasible alternative did not exist as this was a National Grid requirement. As to whether the requested variance for the above-ground utility poles is substantial, the Zoning Board found that a total of five above-ground utility poles in relation to the size of the overall project is not substantial, and that a total of five poles in relation to the total length of utility interconnection for the project was not substantial, and that most of the utility interconnection for this project remained underground. As to whether the above-ground utility poles would create an adverse effect or impact on the physical or environmental conditions in the neighborhood, the Zoning Board found that only one of the proposed poles located in proximity to Garfield Road would be visible, but that this pole location was consistent with several other telephone poles located in the immediate area, and that the four poles proposed for the interior of the site were surrounded by vegetation and were

well-screened, and further Chairman Steinbach noted for the record that the overall environmental impact of providing a clean alternative energy project should be considered on this factor as well. As to whether the difficulty requiring the area variance was self-created, the Zoning Board members felt that in this case, the difficulty was not self-created but was rather a utility interconnection requirement imposed by National Grid. Based on these findings and in balancing the benefit to the applicant as opposed to any detriment to the neighborhood in particular and the Town in general, Chairman Steinbach made a motion to approve the area variance with respect to the installation of five above-ground utility poles for this project. In the alternative, Member Clemente made a motion to grant the area variance subject to the following conditions:

1. The existing stand of pine trees located in proximity to Garfield Road in the location of the proposed utility pole installation must be maintained.
2. The access road identified as the “old farm road” and adjacent to which the three interior utility poles are proposed to be placed in parallel must comply with all applicable Fire Code and Town Code requirements for the access roadway.
3. A total of five utility poles are allowed to be installed for this project, and are limited to standard 40-foot wooden telephone poles, with one pole located in proximity to Garfield Road near the church parking lot, three poles located parallel to the “old farm road” where depicted on the site plan near the word “old” to be 25-foot on center, and one pole located near the transformer pad located on the opposite side of the federal wetlands and to be 100 feet distance from its connecting utility pole.

Member Schmidt seconded the motion subject to the stated conditions. Chairman Steinbach concurred with the conditions as well. The motion was unanimously approved, and the area variance for the installation of the utility poles for this project was granted subject to the stated conditions. The Zoning Board then moved on to consideration of the setback variance along the southern property line. As to whether the proposed setback variance along the southern property line would result in an undesirable change in the character of the neighborhood or create a detriment to nearby properties, the Zoning Board found that the layout of the site and location of the solar panels within the 60-foot variance area would not change the character of the area or create a detriment to nearby properties. As to whether a feasible alternative existed, the Zoning Board members noted that there were site constraints due to federal wetlands and setbacks from the creek, and that the applicant had laid out the project in relation to these site constraints and still made the project viable. As to whether the requested setback variance was substantial, Member Schmidt felt that it is substantial, but Chairman Steinbach stated that while the variance amount could be deemed substantial, the totality of the circumstances, site constraints, and layout of the parcels on the site were needed to make the project economically feasible; Member Clemente stated that it was not a proper determination to determine economic feasibility in relation to the request for the area variance; Chairman Steinbach agreed, stated that he was properly corrected on the record, and that economic feasibility of the project should not be considered and cannot be considered a precedent as a review standard; Member Sclafani did note that while economic feasibility is not an appropriate review factor, the need to make this project viable and the benefit of obtaining clean alternative energy is an important goal, and while the variance amount is substantial, this factor should be weighed in relation to the overall project benefits. As to whether the proposed setback variance would have an adverse effect or impact on the physical or environmental conditions in the neighborhood, Member

Schmidt stated that this variance could have an effect on the adjacent property, and that while the adjacent property is now an open field, a new owner in the future could want to put that property to a different use; the Zoning Board members did note that the neighbor did not appear at the public hearing, and did not oppose the requested setback variance; on this factor, the Zoning Board members inquired whether the applicant sought to remove any trees or vegetation on the southern property line; Mr. Bailey stated that he would be proposing limited tree topping, and cutting trees just enough so that the solar panels located in this southern portion of the project were not shielded from sunlight by the vegetation; Mr. Bailey stated that while his preference would be to remove all of the vegetation, he could have a 40-foot tree immediately along the southern property line and not lose any power production; Member Clemente stated that the project could operate with a 40-foot tree located along the southern property line during the winter time when the sun is lowest in the sky; Mr. Bailey stated that was correct, and that he would need to be able to cut the trees on an angle leading to the solar panels located near the ground height, which would result in a decreasing height of the trees leading in a northerly direction from the southern property line as one was getting closer to the solar panels; Mr. Bailey stated that High Peaks would hire an arborist or tree cutting contractor to make sure that the tree cutting was performed properly. As to whether the need for the variance was self-created, the Zoning Board members concurred that the need for the variance was self-created but should not be determinative in this case. In consideration of these findings, and in balancing the benefit to the applicant in granting the variance as opposed to any detriment to the neighborhood in particular or the Town in general, Chairman Steinbach made a motion to grant the area variance concerning the setback from the proposed property line, subject to the following conditions:

1. Any topping of trees located along the southern property line in the area of the solar panels is limited in height equal to the distance from the closest solar panel installation, resulting in a tree height requirement equal to the distance from the solar panel along the southern property line.
2. Any tree topping or vegetation removal or other cutting of vegetation is limited to those areas located on the Brunswick United Methodist Church Property.
3. A vegetative buffer must be installed immediately along the northern boundary of the solar panel installation and adjacent to the federal wetland area to provide a buffer to residential parcels to the north of the project site, which was a condition attached to the Planning Board SEQRA negative declaration and with which the Zoning Board members concur.

Member Sclafani seconded the motion subject to the stated conditions. The motion was unanimously approved, and the area variance pertaining to the setback along the southern property line granted subject to the stated conditions.

There was no further business discussed at the meeting.

The index for the July 2, 2018 special meeting is as follows:

1. High Peaks Solar - Area variance for above-ground utility pole installation -
Granted with conditions.
2. High Peaks Solar - Area variance for setback along southern property line -
Granted with conditions.

There are currently no agenda items for the July 16, 2018 regular meeting of the Zoning Board of Appeals.