

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 OCTOBER 21, 2019

PRESENT were ANN CLEMENTE, CHAIRPERSON, E. JOHN SCHMIDT, MARTIN STEINBACH, WILLIAM SHOVER and PATRICIA CURRAN.

ALSO PRESENT was CHARLES GOLDEN, Brunswick Building Department.

Chairperson Clemente reviewed the agenda for the meeting as posted on the Town signboard and Town website. Chairperson Clemente noted two corrections to the agenda. First, the use variance application of Blue Sky Towers II, LLC/Cellco Partnership d/b/a Verizon Wireless is adjourned, in light of the fact that the balloon test was just conducted on Saturday, October 19, and the applicant had previously informed the Zoning Board that it would need a period of at least a few weeks to prepare a report on the balloon test prior to returning to the Zoning Board for further review of the application. Second, the area variance application submitted by Borrego Solar for its proposed solar farm at the end of Dusenberry Lane is added to the agenda for consideration.

The draft minutes of the September 16, 2019 meeting were reviewed. Upon motion of Chairperson Clemente, seconded by Member Steinbach, the minutes of the September 16, 2019 meeting were unanimously approved without amendment.

The first item of business on the agenda was a public hearing on the use variance applications submitted by Rensselaer Land Trust/Rensselaer Plateau Alliance for property located in the vicinity of Cole Lane. The applicant has submitted a use variance application seeking

approval to allow a 9.9-acre tract located in the Town of Brunswick (part of a larger parcel also located in the City of Troy) to be used for outdoor recreation as its primary use; and also a use variance seeking the use of a 0.71-acre area on a larger parcel owned by JJ Cillis Builders as a trailhead and parking area in connection with the proposed outdoor recreation use on the 9.9-acre tract on the opposite side of Cole Lane (and also on the larger parcel of which the 9.9-acre tract is a part). Both the 9.9-acre tract and the 0.71-acre tract are located in the R-25 Zoning District. Kristina Younger of the Rensselaer Land Trust, and Lawrence Howard, a member of the Board of the Rensselaer Plateau Alliance, were present for the applicants. Chairperson Clemente inquired whether there were any changes to either use variance application since the September Zoning Board meeting. Ms. Younger stated that there were no changes to either use variance application. Ms. Younger provided an overview of the proposal, which includes utilizing the exiting large vacant parcel located primarily in the City of Troy with 9.9 acres located in the Town of Brunswick off of Cole Lane for outdoor public recreation use, and also utilizing the 0.71-acre area located on the opposite side of Cole Lane for purpose of a trailhead/parking lot area, to be utilized in conjunction with the open space recreation use; Ms. Younger stated that the large parcel located both in Troy and Brunswick is currently being used for hiking and other open space recreation purposes, and that the acquisition by the Rensselaer Land Trust/Rensselaer Plateau Alliance would make this official open public recreation area as opposed to merely informal public use as has been done in the past. Ms. Younger also stated that the only access point to the large parcel from a public road is from the access onto Cole Lane, and that there is no other frontage on a public highway for this large parcel, either in the Town of Brunswick or the City of Troy. Ms. Younger stated that this project has been identified by the Rensselaer Land Trust/Rensselaer Plateau Alliance as “Poestenkill Bends”. The Zoning Board then opened a public hearing on the use

variance applications. The notice of public hearing was read into the record, noting that the public hearing notice was published in the Troy Record, placed on the Town signboard, posted on the Town website, and mailed to owners of all properties located within 300 feet of the project site. Chairperson Clemente then opened the floor for the receipt of public comment. Raymond White, who identified himself as a former Troy Police Department Sergeant, stated that he was also a real estate broker and had worked on the Gunderson parcel located on Cole Lane, and that there were certain restrictions in the Gunderson title; that he owns two lots on Cole Lane, and that he enjoys that general area for purposes of wildlife and open space; that if this proposed recreation use by the Rensselaer Land Trust and Rensselaer Plateau Alliance is allowed, this will change the character of the area around Cole Lane, as it will no longer be strictly rural but will be more like a public city park; that the area will no longer be private; and that he does not want to see the Cole Lane general rural and country character change to more of a city business-type use. Fred Alm, Elmgrove Avenue, stated that the proposed use by the Rensselaer Land Trust and Rensselaer Plateau Alliance will not change the character of the area to an urban or city-type, but that the area will remain as open space and recreation; that the proposed parking lot on the opposite side of Cole Lane is small, and probably will be able to accommodate one bus; that the parking lot is not going to be busy; that the busses being discussed will only be school busses so that school children can utilize the open space and recreation trails; and that this proposed use by the Rensselaer Land Trust and Rensselaer Plateau Alliance will not create any nuisance. Patricia Riviera-Kearney and John Kearney, 42 Cole Lane, stated that they live next to what is proposed to be the parking lot, and that they are totally against this proposal; that the parking lot is proposed to accommodate two busses plus cars; inquired where other vehicles would park if the proposed parking lot was crowded; that Cole Lane is fragile due to drainage problems; that a gas line in this area is barely covered due to

summer rain runoff; that they are also living next to a property that is in foreclosure, and people who come to see the foreclosure property turn around on their lawn, and questioned how all of the cars and busses coming to this recreation/trail area would be prevented from also using their property for turn arounds; that they are opposed to a parking lot in their neighborhood; that the parking lot and the recreation area would be an attraction for kids at night, and cause nothing but problems; that the Town of Brunswick has no local police department, the area is not routinely patrolled, and they are concerned about crime and other problems; that there are flooding issues and drainage problems around this area of Cole Lane, and this area can't take any more water or runoff from a parking lot; that they have concerns about emergency vehicle access; that the general area is very beautiful, and this proposed use would change that character; and that they are very opposed to this proposal. Sharon Zankel presented comments both on her behalf and that of her husband, Lewis Zankel, residing at 734 Pinewoods Avenue; the comments of Lewis and Sharon Zankel are set forth in a written letter to the Brunswick Zoning Board of Appeals dated October 21, 2019, a copy of which is part of the record of this application; and for purposes of full disclosure, Sharon Zankel identified herself as the Town Historian for the Town of Brunswick, but is providing comments on this application solely in her capacity as a resident of the Town of Brunswick. Mike Bergen, 63 Cole Lane, stated that he lives adjacent to the proposed trailhead; that the applications for these use variances are incomplete and inadequate; that there is not a site plan presented in connection with the proposed parking lot area, and the plans that were submitted are inadequate; that the applications do not comply with the use variance criteria set forth in the Brunswick Zoning Law; that if the intent of the Rensselaer Land Trust and Rensselaer Plateau Alliance is to conserve this area, there is no obligation to develop new trails for public use; that this particular property is not unique, and the use variance request is not unique and would apply

generally to the entire Zoning District; that the use of the land on the opposite side of Cole Lane would result in a substantial change in the character of the area, and there is nothing like this proposal in the area; that in terms of unnecessary hardship, the Rensselaer Land Trust and Rensselaer Plateau Alliance bought this land with the knowledge of the Brunswick Zoning Law requirements, and any hardship is self-inflicted; that he has lived in this location for 25 years, and has never seen anyone walk into this area through the ravine off of Cole Lane, and that the area is not used for recreation but rather deposit of a lot of garbage; that the property proposed for the trail system immediately off Cole Lane is at a significant grade, and there is going to have to be a lot of work done in this area to get the trail system into this lot; that the plans do not provide any specific description of where the trails are to be located, just squiggly lines on a sketch. Mr. Bergen also prepared and reviewed a series of sketches of the proposed parking lot area, stating that there is not adequate area for the installation of an appropriate access driveway with a turnaround for a bus, whether it is designed as a cul-de-sac or a T-turnaround; that the proposed area of the parking lot was a proposed residential lot on a prior major subdivision application submitted by JJ Cillis Builders, and that this area would have constituted a corner lot (Cole Lane and the new subdivision road), requiring two front yard setback lines for any use on that land; that the application materials do not include any lease agreement or other agreement between the Rensselaer Land Trust/Rensselaer Plateau Alliance and JJ Cillis Builders, the owner of the land on which the parking lot is proposed; that the area of the parking lot is steeply sloped, which he scaled off the prior major subdivision plat, with grades approaching 13–14%, which are inadequate for a parking area; that this property is already being advertised by the Rensselaer Land Trust and Rensselaer Plateau Alliance as being located in Troy, but they are now asking for access in Brunswick; that this application is incomplete and inadequate and does not meet the requirements for a use

variance. Eric Wisher, 30 Fairfield Road, said he is speaking both on his behalf as well as for his four neighbors; that this area is very tranquil now; that his and his neighbor's properties border this land, and that this land is currently not being used by the public, but would be used by the public if this proposal is allowed, changing the character of the area; that it was his understanding that the initial proposal was to have access to this trail system through the cemetery, but that the cemetery owners would not allow it, and now they are asking for parking through the Town of Brunswick; that this will be a significant impact for properties along Cole Lane; that the proposed parking area does not have adequate room for busses; that this proposal would result in additional garbage being strewn in the area; and that he wanted to continue to enjoy his private property, his privacy, and the tranquility of the area. Beth Carpenter, 33 Cole Lane, stated that she had resided at this property for 25 years; that no one goes down into this property because of a significant ravine off of Cole Lane; and that she does not want a parking lot next to her property. Mike Pietro, 75 Cole Lane, also stated that the area is very quiet and tranquil; that there are significant drainage problems in the area, and that the New York State Department of Environmental Conservation was in the general area approximately two years ago; stated that the area needed a lot of work to maintain appropriate drainage, and that the Town needs to coordinate with the Department of Environmental Conservation on this matter; that the area is already being conserved as open space, but this proposal would only add foot traffic which was not previously impairing the area; and that this proposal will result in additional garbage, crime, and increased risk for the existing homeowners in the area. Catherine June, 8 Oxford Circle, stated that she was approached by the Rensselaer Land Trust to be a part of the planning process for this project; that she is familiar with the Poestenkill Community Forest being operated by the Rensselaer Land Trust and Rensselaer Plateau Alliance, and that the concerns raised by neighbors on this application have not been a

problem at the Poestenkill Community Forest; that people currently enter this property through the cemetery, but that will not be allowed in the future; that people never leave garbage after having hiked through this area; that the fear of crime and increased garbage is just a fear, and not a reality; that people need to be outside and able to walk and hike for their health as people need exercise and open space; that this is a beautiful piece of land that should be enjoyed by the public; that there are trails on the property already being used by the public; that while the traffic and number of people using the property may increase, the Rensselaer Plateau Alliance is all about community involvement and will work with the community to make sure that this is a success; and that people need to be open minded to allow access to nature. Fred DeMay, the president of the Rensselaer Plateau Alliance, stated that the alliance is a new organization, that they are learning from operating two community forests, and that the alliance heard similar concerns at the two other locations they operate but have not experienced any problems; in terms of the state of the plans for the parking lot, the alliance did not want to invest in preparing detailed site plans unless they knew the variance would be granted; that the alliance will look at all drainage issues and concerns when preparing the more detailed site plan, and that the plans are conceptual at this point; that while the parcel acquired by the Rensselaer Land Trust and Rensselaer Plateau Alliance is about 80 acres, located both in Troy and Brunswick, the only legal access into the property is from Cole Lane located in the Town of Brunswick; and that the Rensselaer Land Trust and Rensselaer Plateau Alliance are simply looking to contribute to the overall health and well-being of the community. Ben Larson, 1 Pheasant Lane, stated that he has accessed this property for about 10 years for hiking; that the most useful portion of this property is near the cemetery, and that the other areas on the property are very wet and not very useable; that the Rensselaer Land Trust should be preserving land, and this is already accomplished as this property has generally remained open;

that informal access has always been allowed, but now the operation of a formal trail system and parking lot will change the character of the area; that if these organizations did not research appropriate access to the property prior to purchasing it, that is on them, and should not be on the neighborhood; and that he is opposed to this proposal. Jim Cillis, owner of the property opposite the trail system on Cole Lane, and owner of the property on which the parking lot is being proposed, stated that the parking lot is not being proposed to be paved; that this area was the first lot that would be located on a new subdivision road if the subdivision is pursued in the future; that the lot directly opposite to this parking lot would have been designed for a large stormwater detention basin; that the parking lot has been explained to him as being very low-key and not busy, and almost in the nature of a trailhead at a state park; and that the description of the use of this land as a “parking lot” is not really accurate, as it is really more in the nature of a pull-off. Fred Alm, Elmgrove Avenue, stated that the Rensselaer Land Trust owns a parcel behind the Vanderheyden Estates, and that they have experienced no problems at all at that location. Abby Kiley, 63 Cole Lane, states that she lives adjacent to this proposed site; that this will place a heavy burden on the existing homeowners; that this will result in a loss of privacy and security to the existing homeowners; that there is no local police department to properly patrol the area if this use were allowed; and that this trail system should not be allowed due to the significant ravine off Cole Lane. Chairperson Clemente asked Mr. Golden whether any written comments had been received. Mr. Golden stated that no written comments had been received on this application. Chairperson Clemente inquired whether there were any further members of the public who wished to provide any comment. Hearing none, Chairperson Clemente made a motion to close the public hearing on the use variance applications, which motion was seconded by Member Shover. The motion was unanimously approved, and the public hearing closed. Member Steinbach then stated that he was

a member of the Rensselaer Land Trust, and felt that it would be best if he recused himself from any discussion or vote on these applications. Chairperson Clemente thanked Member Steinbach for this disclosure. Member Steinbach is recused from further participation on this matter. Chairperson Clemente then stated that these applications seek use variances, and that the standards for consideration of granting a use variance were very strict, and generally discussed those standards. Chairperson Clemente also stated that there were several questions which still remained on this application, including the exact location of the trail system; how drainage would be handled, including an existing culvert pipe under Cole Lane; the boundaries between the trail area and existing neighbors needs to be better identified; that more detail was needed regarding the trail system and the parking lot area, and that a site plan of the parking lot area should be submitted; a grading plan should be provided, given the discussion concerning the ravine off of Cole Lane into the proposed trail system as well as the grade changes in the area of the proposed parking lot; maintenance of the parking lot should be described; that a blind curve exists on Cole Lane and that this should be addressed in terms of the traffic access; whether a pedestrian cross walk across Cole Lane between the parking lot area and the trail system should be required; and general pedestrian safety given that there is no shoulder on Cole Lane. Chairperson Clemente also stated that the comments received during the public hearing needed to be addressed by the applicants on the record. Member Schmidt also stated that the applicant has not addressed all of the qualifications needed for the use variance, particularly the lack of any information on economic issues. Attorney Gilchrist generally reviewed the standard to be applied by the Zoning Board on these use variance applications, specifically that application of the Zoning regulations and restrictions will cause the applicant unnecessary hardship, and that in order to prove unnecessary hardship the applicant must demonstrate to the Zoning Board of Appeals that for each permitted use under the Zoning

regulations, the applicant cannot realize a reasonable economic return, and that proof of lack of economic return is demonstrated by competent financial evidence; that the alleged hardship relating to the property is unique, and does not apply to a substantial portion of the district or neighborhood; that the requested use variance, if granted, will not alter the essential character of the neighborhood; and that the alleged hardship has not been self-created. Chairperson Clemente stated that the applicants will need to supply the Zoning Board of Appeals with a response to the comments received, as well as the additional information requested by the Zoning Board and evidence to meet the standards as reviewed by Attorney Gilchrist. Lawrence Howard of the Rensselaer Plateau Alliance stated that the applicants will respond to the Zoning Board in writing. There was a question from the audience as to whether an area variance would be required for the parking lot. The Zoning Board stated that the applicant will need to respond to that comment. A member of the audience also inquired whether a special use permit or site plan review will be required at the Planning Board in the event the use variances were granted. Attorney Gilchrist stated that the need for a special use permit or site plan for this use was a determination to be made by the Building Department. Chairperson Clemente stated that this matter will be placed on the agenda for the November meeting for further discussion.

Member Steinbach then returned to the Zoning Board to continue participation in the remainder of the meeting.

The next item of business on the agenda was a use variance application submitted by Mark and Carol Young for property located at 45 Norfolk Street. The applicants seek a use variance for property located at 45 Norfolk Street for the purpose of bringing an existing four-unit rental building into compliance with the current Zoning Law. Chairperson Clemente reviewed the record, which shows that a special use permit had been issued by the Brunswick Zoning Board of

Appeals for a two-unit duplex for this structure; that at some point between 1985 and 2005, the structure was converted into a four-unit rental use without obtaining an amended special use permit; that the current owners purchased the property around 2005, at which point it was already improved as a four-unit rental building, and it has been used as a four-unit rental building since that time; that under the current Brunswick Zoning Law, the property is situated in the R-9 Zoning District in which a four-unit rental building is not an allowed use; that the Brunswick Building Department has inspected the property, and that it does meet all fire code requirements for a four-unit rental structure, has adequate ingress and egress, and has adequate parking for a four-unit rental use. Carol Young was present, and stated that the facts as described in the record are accurate, and that there have been no changes to the use variance application since the last meeting. Ms. Young stated that she cannot manage the property anymore due to her physical condition; that she is seeking to sell the property; and that she has a buyer ready to purchase the property, but that the property needs to be brought into compliance with the Brunswick Zoning Law. The Zoning Board of Appeals then opened a public hearing on the application. The notice of public hearing was read, noting that the public hearing notice was published in the Troy Record, placed on the Town signboard, posted on the Town website, and mailed to owners of all properties located within 300 feet of the project site. Chairperson Clemente opened the floor for the receipt of public comment. There was no member of the public that wished to provide any comment on this application. Chairperson Clemente inquired whether there were any written comments received by the Town. Mr. Golden confirmed that no written comments had been received. Chairperson Clemente inquired whether there were any questions of the Zoning Board members. Member Shover wanted to confirm with Mr. Golden that the information concerning the fire inspection was accurate. Mr. Golden confirmed that the Building Department had performed the fire inspection,

and it was accurately described by Chairperson Clemente. Member Schmidt noted that there was no information in the application concerning financial hardship, and whether the property could obtain a reasonable economic return for the uses allowed in the R-9 Zoning District. This was noted on the record. Chairperson Clemente inquired whether there were any further questions or comments by the Zoning Board members. Hearing none, Chairperson Clemente made a motion to close the public hearing on the Young use variance application, which motion was seconded by Member Steinbach. The motion was unanimously approved, and the public hearing closed. Attorney Gilchrist again reviewed with the Zoning Board members the required elements for consideration of the use variance application, including whether the owner could realize a reasonable economic return for any of the uses allowed in the R-9 Zoning District, as demonstrated by competent financial evidence; that the hardship relating to the property is unique, and does not apply to a substantial portion of the district; that the requested use variance, if granted, would not alter the essential character of the neighborhood; and that the hardship has not been self-created. The Zoning Board members discussed these elements, and confirmed that there was adequate evidence submitted to address the second, third, and fourth elements; however, the Zoning Board members determined that there was not adequate information submitted to address the financial hardship element. The Zoning Board members then discussed with the applicant whether she had any information concerning the cost of converting the four-unit rental unit into a two-unit duplex, and whether the economic return for selling the property as a two-unit duplex was reasonable based on this record. The applicant indicated she did not have that information currently, but could provide that information to the Zoning Board. Ms. Young did state that the property has been assessed as a four-unit rental building on the Brunswick assessment rolls for as long as she has owned the property. Mr. Golden also confirmed that, to his knowledge, there were no other four-

unit buildings in the Norfolk Street neighborhood, and that, to his knowledge, there have been no complaints received regarding the use of this property as a four-unit rental building. It was determined that the applicant will submit additional evidence concerning financial hardship to the Zoning Board for consideration. This matter is placed on the November 18 agenda for further deliberation.

The next item of business on the agenda was the area variance application submitted by Tim Slyer for property located at 2014 Piney Point Road. Tim Slyer was present on the application. Mr. Slyer reiterated that he is seeking to install a 12-foot by 14-foot prefabricated shed on the property, and would like to locate the shed five feet from the side yard lot line, where the Brunswick Zoning law requires a 15-foot side yard lot line setback. Mr. Slyer confirmed that nothing has changed in the application materials; that he marked the area of the shed on the property so the Zoning Board members could view the location; that the shed will match the existing residential structure; that there is a six-foot privacy fence that will hide the shed from view; and that he is trying to fit the shed into the side yard area so that it would not have to be placed in the middle of his backyard; and further that there are existing large trees on his neighbor's lot that would be adjacent to the shed location, providing further screening in addition to the six-foot privacy fence. The Zoning Board then opened a public hearing on the application. The notice of public hearing was read, noting that the public hearing notice was published in the Troy Record, placed on the Town signboard, posted on the Town website, and mailed to owners of all properties located within 300 feet of the project site. Chairperson Clemente opened the floor for receipt of public comment. No members of the public wished to provide comment. Thereupon, Chairperson Clemente made a motion to close the public hearing, which motion was seconded by Member Shover. The motion was unanimously approved, and the public hearing closed. The Zoning Board

members determined that they were prepared to proceed with deliberation on this application. First, Chairperson Clemente noted for the record that this application seeks a setback variance for a residential use, and constitutes a Type 2 action under SEQRA. The Zoning Board members then considered the application under the required elements. First, whether the proposed use would result in an undesirable change in the character of the neighborhood or create a detriment to nearby properties, Member Shover noted that many properties in this neighborhood had a shed in the side yard, and that this use would not change the character of the neighborhood nor create any detriment to nearby properties; the Zoning Board members concurred. As to whether a feasible alternative exists for the applicant, Chairperson Clemente stated that in her opinion, there was not a feasible alternative since the only available alternative would place the shed in the middle of the backyard, which would not be an appropriate location for the shed in her opinion; the Zoning Board members concurred. As to whether the requested area variance is substantial, Member Schmidt stated that he did feel the extent of the variance was substantial, but was consistent with other accessory buildings in the neighborhood, and this factor should be viewed in that light; the Zoning Board members concurred. As to whether the requested variance would result in an adverse effect on the physical or environmental conditions in the neighborhood, all Zoning Board members concurred that there would be no potential physical or environmental impacts from placing the shed in the proposed location; that the shed would be adequately screened and would not result in any visual impacts; and that the proposed location was well laid out on the residential lot. As to whether the difficulty necessitating the variance is self-created, the Zoning Board members concurred that this was self-created, but that this factor should not be determinative on this application; that the shed was appropriately located on this residential lot, and the lot as a whole was very well maintained. Considering the application materials and record, and in consideration of the elements deliberated

by the Zoning Board members, and in balancing the benefit to the applicant in granting the variance as opposed to any detriment to the neighborhood or Town in granting the variance, Member Shover made a motion to approve the variance as requested, which motion was seconded by Member Steinbach. The motion was unanimously approved, and the area variance granted. Chairperson Clemente directed the applicant to continue to coordinate with the Building Department on all requirements for the shed installation.

The Zoning Board then addressed the area variance application submitted by Borrego Solar for the proposed solar farm to be located at the end of Dusenberry Lane. Gregory Gibbons, P.E., representing Borrego Solar, was present at the meeting. Also in attendance was Ronald Laberge, P.E., consulting review engineer for both the Zoning Board of Appeals and the Planning Board on this Borrego Solar application. Borrego Solar has applied for an area variance to allow the installation of above-ground utility poles for the utility interconnection with the solar farm, where the Brunswick Zoning Law requires all utility installation to be underground. It was noted that a joint public hearing had been held by the Zoning Board with the Planning Board, at which the area variance public hearing was completed. It is also noted that the Brunswick Planning Board served as SEQRA lead agency on this action, and that the Planning Board had completed its SEQRA review through the adoption of a negative declaration. It is also noted for the record that the Planning Board has acted upon the special use permit and site plan application submitted by Borrego Solar for this project, and has approved the special use permit and site plan subject to conditions. Attorney Gilchrist provided the Zoning Board members with a copy of the Planning Board resolution approving the project, and reviewed the conditions to that Planning Board action. Chairperson Clemente inquired whether the Zoning Board could incorporate the Planning Board conditions in any action that the Zoning Board made on the area variance application. Attorney

Gilchrist stated that the conditions attached to the area variance application should specifically address the area variance itself, but that the Zoning Board could include a condition that required compliance with all Planning Board conditions. Mr. Gibbons reviewed the photosimulation depicting the above-ground utility pole installation, noting that at most, six poles would be installed. Mr. Gibbons reviewed the proposed pole locations on the project site. Mr. Laberge noted that the complete record documents had been listed as an attachment to the Planning Board resolution, noting all of the comments received during the public hearing as well as comments made by his office had been fully addressed by Borrego Solar through written responses. The Zoning Board stated it was prepared to deliberate on the area variance application. Again, it is noted for the record that SEQRA has been completed by the Brunswick Planning Board serving as lead agency, through the adoption of a negative declaration. The Zoning Board then reviewed the elements for the requested area variance. As to whether the requested variance would produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties, Member Shover noted that there are existing above-ground utility poles on Dusenberry Lane, and that the additional pole installation on the project site would be consistent with that character; and further that the poles would be off of a dead end street, and would not be inconsistent with the remainder of Dusenberry Lane; Chairperson Clemente also noted that Borrego Solar will be planting trees along the property adjacent to the Wheeler lot, which would provide additional screening. As to whether a feasible alternative existed for the applicant to pursue, the Zoning Board members noted that this was a requirement by National Grid to approve the interconnection with the solar project, and while an underground installation was technically possible, it would not be allowed by National Grid, and therefore a feasible alternative did not exist on this application. As to whether the requested area variance is substantial, Member Steinbach noted that the applicant

did provide a photosimulation of the project, showing that there would not be any significant impact to the neighbors, and that Borrego would be installing additional plantings along the Wheeler property area, and felt these factors should be considered in connection with this element, even though the variance could be considered substantial since no above-ground utilities are allowed under the Brunswick Zoning Law and up to six utility poles are being proposed here. As to whether the requested variance would result in an adverse effect on the physical or environmental condition in the neighborhood, it was noted that a SEQRA negative declaration has been adopted; Chairperson Clemente also noted that Borrego Solar will be installing additional plantings along the Wheeler property area; and that Borrego Solar will be required to repair any damage to Dusenberry Lane as a result of the facility construction. On that factor, Chairperson Clemente inquired how the road inspection will be undertaken, and whether financial security should be required in connection with the road repair. Mr. Laberge stated that a pre-construction survey will be conducted by Borrego in coordination with the Brunswick Building Department and Brunswick Highway Department, and that a post-construction road survey will then be completed to determine if any damage to Dusenberry Lane has occurred, and that the Planning Board condition requires Borrego Solar to make all required repairs to Dusenberry Lane before a certificate of compliance is issued to allow solar facility operation. Mr. Laberge stated that in his experience, a requirement that the road repair be completed before the facility can be operated is more effective than financial security, since Borrego Solar will have the incentive to get the repairs completed timely so that the facility can become operational. As to whether the need for the variance is self-created, all Zoning Board members concurred that the need for the variance is self-created, but viewed this factor in light of National Grid's requirement that the above-ground poles be installed for the interconnection. Based upon the complete record in this matter, as well as

consideration of the elements which were reviewed and discussed by the Zoning Board members, and in balancing the benefit to the applicant in granting the area variance as opposed to any detriment to the neighborhood or Town as a whole, Member Shover made a motion to grant the area variance to allow the installation of above-ground utility poles for this solar project, subject to the following conditions:

1. Compliance with all Planning Board conditions imposed on the grant of the special use permit and site plan approval, subject to condition 3 below.
2. A maximum of six (6) standard wooden above-ground utility poles are allowed in the locations depicted on the approved plan.
3. Concerning condition 1(r) of the Planning Board approvals, the trees or vegetation approved by the Town to be installed adjacent to the Wheeler parcel must be maintained by the solar facility owner/operator for as long as the solar field is operating.

Member Steinbach seconded the motion subject to the stated conditions. The motion was unanimously approved, and the area variance granted subject to the stated conditions.

The next item of business on the agenda was the area variance application submitted by Brown/Trifocal Brewing, Inc. The applicant seeks area variances for an existing garage structure located at 138 Brick Church Road for use as a craft brewery. Alex Brown, 138 Brick Church Road, was present on the application. Mr. Brown generally reviewed the proposal, where he seeks to utilize the existing garage structure for a craft brewery and taproom; that the applications seek

area variance for a front yard setback as well as use of the accessory building located closer to the front lot line than the primary structure on the lot. Mr. Brown stated that he has submitted a site plan and special use permit application to the Brunswick Planning Board, as well as the area variance applications submitted to the Zoning Board. Attorney Gilchrist stated that the Brunswick Planning Board has initially reviewed the site plan and special use permit applications, and requested additional information from the applicant. Mr. Brown confirmed that the Planning Board was seeking additional information concerning access to an auxiliary parking area; more information concerning a walkway to the outdoor patio area; coordination with NYSDOT on curb cut approvals for Route 278; and coordination with the Eagle Mills Fire Department concerning emergency access. The Zoning Board members stated that they would like this information submitted in connection with the area variance application, and placed this matter on the November 18 agenda for further discussion. It is anticipated that if the area variance applications are deemed complete at the November 18 meeting, the public hearing on the area variance applications could be held at the December meeting.

The next item of business on the agenda was the area variance application submitted by Gary Skiff for property located at 4 Greene Street. The applicant seeks an area variance for a proposed front porch/deck addition to an existing building located at 4 Greene Street. Mr. Skiff and his builder were present on the application. There was discussion concerning the measurement of the setback from the front lot line, particularly the issue of whether measurement from the edge of pavement to the structure was correct, or if the measurement needed to be made from the public right of way. Mr. Golden stated that he was still working with the Town Clerk on obtaining the deed for Greene Street. Both Mr. Skiff and his builder stated that they had been working with the Town for a long period of time on trying to obtain this information, and that the matter should be

moved forward. Attorney Gilchrist stated that the Town is not delaying this applicant; that the applicant had every ability to perform a title search to obtain the road deed and determine the extent of the public right of way; further, that the applicant had every ability to perform its own survey, and provide that survey to the Town for review; and that the Town was trying to work with the applicants in tracking down the road deed, when it had no obligation to do so. The applicant stated that he was not aware he could have performed a title search or prepared a survey. This matter is placed on the November 18 agenda for further discussion.

The index for the October 21, 2019 meeting is as follows:

1. Rensselaer Plateau Alliance/Rensselaer Land Trust - Use variances - 11/18/2019;
2. Young - Use variance - 11/18/2019;
3. Slyer - Area variance - Approved;
4. Borrego Solar - Area variance - Approved with conditions;
5. Brown/Trifocal Brewing Inc. - Area variances - 11/18/2019;
6. Skiff - Area variance - 11/18/2019.

The proposed agenda for the November 18, 2019 meeting currently is as follows:

1. Young - Use variance;
2. Skiff - Area variance;
3. Brown/Trifocal Brewing Inc. - Area variances;
4. Rensselaer Plateau Alliance/Rensselaer Land Trust - Use variances;
5. Blue Sky Towers II, LLC/Cellco Partnership d/b/a Verizon Wireless - Use variance.