

## **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 NOVEMBER 20, 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 October 16, 2017 meeting were reviewed. The Zoning Board unanimously approved the minutes of the October 16, 2017 meeting without amendment. The Zoning Board also reviewed the minutes of the October 5, 2017 joint public hearing and special meeting of the Zoning Board of Appeals, together with the Planning Board, on the Borrego Solar commercial solar facility application. One edit was noted, at page 3, line 16; the phrase “above-ground pools” is amended to “above-ground poles”. Subject to that correction, the Zoning Board unanimously approved the October 5, 2017 joint public hearing and special meeting minutes.

The first item of business on the agenda was the area variance application submitted by Edward and Martha Holland for property located at 4 Easy Street. The applicant seeks to construct an addition to the house currently located at 4 Easy Street, and to maintain the same building line, but an area variance is required as the house is currently located 30 feet from the front lot line and, under the current Brunswick Zoning Law, a front yard setback of 35 feet is required in this Zoning District. The extension to the non-conforming structure requires an area variance. The applicants were in attendance. Chairman Steinbach inquired of the applicants as to whether there were any changes to the application. The applicants indicated there were no changes to the application

documents. Thereupon, the Zoning Board opened a public hearing on the area variance application. The notice of public hearing was read into the record, with such 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. No members of the Zoning Board had any further questions or comments. The Zoning Board then closed the public hearing on the Holland area variance application. Chairman Steinbach inquired whether the Board was ready to proceed with deliberation on the variance application. The Board indicated that it was prepared to act on the application. The application seeks a lot line setback in connection with a residential application, and constitutes a Type 2 action under SEQRA. The Zoning Board members then proceeded to deliberate on the factors in connection with the area variance request, determining that the proposed addition to the house in the proposed location would not produce an undesirable change in the character of the neighborhood, nor create a detriment to nearby properties, as the increased residential use is consistent with neighborhood character; that the benefit sought by the applicant through the area variance cannot be achieved by an alternative, feasible method, as the applicant is seeking to maintain the existing building line and add an addition to the existing home; that a setback of 30 feet where a 35-foot setback is required was not deemed to be substantial; that the variance would not result in any adverse effect on the physical or environmental conditions in the neighborhood; and that while the need for the area variance could be considered self-created, this factor did not prohibit the grant of the area variance, and that this factor is mitigated by the existence of a non-conforming structure and the owners' intent to maintain a consistent building line in connection with an addition to the home. The Zoning Board members then considered these factors in weighing the benefit to the applicant in granting the

variance as opposed to any detriment to the neighborhood in particular or the Town in general. In consideration of these factors, Member Sclafani made a motion to grant the area variance, which motion was seconded by Member Shover. The motion was unanimously approved, and the area variance granted.

The next item of business on the agenda were the area variance applications submitted by Borrego Solar for the proposed utility-scale solar farm for property located on 138 Brick Church Road. The variance applications seek relief from the 100-foot setback in four locations as a result of the subdivision of the original parcel in connection with this project, and the requirement to have all utilities located underground. The Zoning Board members confirmed that the public hearing on these area variance applications was closed, and that the applicant had submitted the requested additional information through correspondence dated November 9, 2017. Rob Garrity, of Borrego Solar; Dean Smith, of PV Engineers; and Edward Fitzgerald, Esq., project attorney, were present for the applicant. Mr. Smith reviewed the information contained in the November 9, 2017 submittal with the Zoning Board members. Mr. Smith specifically reviewed the locations of the proposed setback variances. These include an area 75 feet between the parcel created for the western solar system and the remainder parcel from Tax Map No. 92-4-5.1, both of which are under the ownership of Gendron. Mr. Smith noted that no additional tree cutting or clearing is proposed for this setback area. Mr. Smith also stated that the existing vegetative buffer in this location, which is approximately 50 feet wide, between the solar field and the adjacent property owned by Danish to the west will remain in place. Mr. Smith also reviewed the area of the requested 60-foot setback variance which is also between the parcel created for the western solar system and the remainder parcel from Tax Map No. 92-4-5.1. Mr. Smith stated that there was no additional tree cutting or clearing proposed for this area. Mr. Smith stated that the existing

vegetative buffer, approximately 80 feet wide, between the solar field and the adjacent property owned by Gendron to the south will remain in place. Mr. Smith then also reviewed the lot line created between the eastern and western solar facilities, noting that this 20-foot setback and 40-foot setback was internal to the property, and the system was designed to maintain maximum buffer to the exterior property lines. Mr. Smith also reviewed the adjacent property owners to the project site. Member Schmidt inquired as to the setbacks on the internal lot line between the east and west systems, and inquired whether additional perimeter tree cutting would be required if the 100-foot setback was maintained from the internal lot line. Mr. Smith stated that Borrego Solar would have to clear additional vegetation in order to locate the two solar facilities without the internal line setback variance. Mr. Smith stated that Borrego Solar was seeking to maximize the use of the existing farm field on the property for the solar facility. Member Sclafani confirmed that the setback variance for the internal lot line would eliminate the need for additional clearing and tree cutting on the site. Member Clemente inquired about the fencing between the two solar facilities, and whether there would be one row or two rows of fencing. Mr. Smith stated that there would only be one 8-foot high fence between the east and west solar facilities. Member Shover asked whether the northern remainder parcel owned by Gendron could ever be developed. Mr. Smith stated that a 25-foot area was maintained to connect the northern piece to Brick Church Road, which would allow the construction of a driveway meeting Town specifications. Attorney Fitzgerald stated that if the setback variance in this location was approved, a reasonable condition to be imposed by the Zoning Board would be no further development on the northern parcel without further Town review. Member Sclafani noted that the information and maps submitted through the November 9, 2017 correspondence clearly explained the basis for the requested setback variances, and that the property owner affected most by the variances is Gendron, but that

they are the underlying property owner on this application. Member Sclafani also noted that the proposal is to leave existing vegetation in place that will provide 80 feet and 50 feet of existing vegetative buffer. Member Sclafani also observed that installation of the fence during the early stages of construction will keep any debris from blowing off the site. Mr. Smith stated that any construction debris would be only a short-term issue, that Borrego will have an on-site Supervisor during construction; and that the fence will be installed during the early phase of construction to address any blowing debris. Member Sclafani stated that she visited the property, and that in her opinion the design is good as the location of the solar systems reduces off-site visibility. Member Clemente questioned the installation of the utility poles, and who would own the poles and have jurisdiction over the poles. Mr. Smith stated that the poles would be installed by and be under the jurisdiction of National Grid. Member Clemente asked whether all of the proposed utility poles would be of the same height. Mr. Smith stated they would all be of the same height. Mr. Smith then reviewed the plan for the pole installation, including the transformer-type equipment on the first and second poles, with the third pole being a transition to underground utility installation. Attorney Gilchrist noted for the record that a photosimulation of the utility poles with transformer-type information is included in the record. Chairman Steinbach confirmed that the first pole would be located approximately 100 feet off Brick Church Road. Chairman Steinbach then confirmed that the second and third poles would be 35 feet apart and stated that, in his opinion, the second and third poles would not be easily visible from Brick Church Road. Chairman Steinbach also stated that, in his opinion, the proposed wooden telephone-type poles for the Borrego Solar system are similar to the existing utility/telephone poles which run up and down Brick Church Road. Member Sclafani stated that she agreed with that opinion. Member Shover asked about the status of the project before the Brunswick Planning Board. Attorney Gilchrist reviewed the SEQRA

negative declaration adopted by the Brunswick Planning Board as SEQRA lead agency, and that the Planning Board had acted to approve the special use permit, site plan, and 3-lot subdivision. Attorney Gilchrist noted that the Planning Board had attached several conditions to the special use permit and site plan approvals, and reviewed the conditions with the members of the Zoning Board. Member Clemente noted that the Army Corps of Engineers application for coverage under the wetlands Nationwide Permit remains pending. Member Clemente then requested a summary of the underground utility line installation after the 3 above-ground utility poles. Mr. Smith reviewed the location and installation specifications for the underground utility for the project. Chairman Steinbach inquired whether the members of the Zoning Board were ready to proceed with deliberation on the requested variances. The Zoning Board members were prepared to act. Attorney Gilchrist reviewed the procedure on the variance applications, noting that the required public hearing on the area variance applications had been held, that the recommendation of the Rensselaer County Planning Department had been received, and that SEQRA had been completed through a coordinated environmental review with the Brunswick Planning Board serving as lead agency. The Zoning Board determined to act upon the requested area variances separately, addressing the setback variance application first. With regard to whether the requested setback variances would result in an undesirable change in the character of the neighborhood or create a detriment to nearby properties, Member Sclafani stated that the proposed setbacks promote a good overall project design with the least change to the existing neighborhood, that the setbacks are primarily required in connection with the subdivision of the parcels to meet PSC requirements, and that the setback variances would not create a detriment to off-site properties as existing vegetation along the exterior perimeter line will be maintained; Chairman Steinbach stated that the change of the use of the property from agricultural to alternative energy production is a change in

the character of the area, but that in his opinion it was not a negative change in character, and that the impact of having solar panels on the property is a subjective consideration; Member Shover concurred with Chairman Steinbach's statement. As to whether a feasible alternative is available to the requested setback variances, Chairman Steinbach stated that in his opinion, the design for the solar facility works for this site, is feasible and is a viable plan, and any alternative plan would require additional vegetation removal and possible visual impact. As to whether the requested setback variances are substantial, Chairman Steinbach noted that the internal setbacks of 20 and 40 feet can be considered substantial, but are required only as a result of the internal subdivision line to come into compliance with PSC regulations; that with regard to all of the setbacks along the perimeter, the solar facility equipment would continue to be 100 feet from the original property line and that the setback variances are necessitated only in connection with the 3-lot subdivision to have the facilities come into compliance with PSC regulatory requirements; that substantial vegetation remains to create a buffer to off-site properties; that all of the requested setback variances are not substantial in this case; and that denial of the area variances could result in increasing impact to neighboring properties. The Zoning Board members concurred that the requested setbacks will not result in any adverse physical or environmental impact, noting that the Brunswick Planning Board had adopted a SEQRA negative declaration as lead agency, that a stormwater plan is in place for the project, and that the Army Corps of Engineers will review any potential wetland impacts. As to whether the need for the setback variances is self-created, Chairman Steinbach noted that the setback variances are required as a result of the 3-lot subdivision, which in turn is required to come into compliance with PSC regulations for this solar facility, and therefore the need for the variances should not be considered self-created. The Zoning Board members then considered these factors, and balanced the benefit to the applicant in granting

the requested setback variances as opposed to any detriment to the neighborhood in particular or the Town in general. Based on these considerations and determinations, Member Clemente made a motion to approve the setback variances for the Borrego Solar facility, subject to the following conditions:

1. The applicant must maintain the existing vegetative buffer of approximately 50 feet between the solar field and the adjacent property owned by Danish to the west, and approximately 80 feet between the solar field and the adjacent property owned by Gendron to the south, and that if any such vegetation is lost due to disease or other event, the applicant must replace such vegetation in kind with similar vegetation to maintain the vegetated visual buffer as currently in place, with the provision that if a tree is lost that is in excess of 10 feet in height, then such tree would be replaced with a minimum 8–10 foot tall tree;
2. No further development of the remaining lands of Gendron without further review and approval by the Town of Brunswick for such time as the solar panels exist on the property.

Member Sclafani seconded the motion subject to the stated conditions. The motion was unanimously granted, and the setback area variances granted subject to the stated conditions. Thereupon, the Zoning Board members proceeded to deliberate on the requested area variance concerning the above-ground utility poles. As to whether the three above-ground wooden utility poles for each solar facility would result in an undesirable change in the character of the neighborhood or create a detriment to nearby properties, Member Sclafani noted that there already exist similar wooden utility poles up and down Brick Church Road, and that the addition of a total



of six wooden poles for utility purposes in connection with the solar facility would not change the character of the area, particularly in light of the fact that only the first pole for each facility located 100 feet off of Brick Church Road would be easily seen from the public roadway. The Zoning Board members concurred in those points. As to whether a feasible alternative existed, Chairman Steinbach noted that the applicant was not in full control of the utility installation, but that National Grid was involved as well, and that the record in this case showed that National Grid was requiring the installation of three above-ground utility poles in connection with this facility. Member Sclafani noted that the Town had worked with the applicant to have the total number of poles reduced from 12 to 6 in connection with this facility. As to whether this requested variance to allow three above-ground utility poles was substantial, Member Schmidt noted that in his opinion, a total of 6 above-ground wooden utility poles was not substantial for this area, and that all remaining electric conduit utilities on the project site would remain underground. Member Sclafani also noted that the original proposal of 12 utility poles had been reduced to a total of 6 utility poles, 3 utility poles per solar facility. As to whether the proposed variance would create a detriment to the physical or environmental condition in the neighborhood, the Zoning Board members did note that a photosimulation was provided, and that the installation of the above-ground poles would not result in any significant adverse visual impact; that a SEQRA negative declaration had been adopted by the Brunswick Planning Board serving as SEQRA lead agency; that a stormwater plan was in place for the facility; and that all wetland impacts were to be reviewed by the Army Corps of Engineers. As to whether the need for the variance for the above-ground utility poles was self-created, the Zoning Board members noted that the need for the above-ground utility poles was due to National Grid requirements. In consideration of these factors and further deliberation, Chairman Steinbach made a motion to grant the requested area variance to

allow the installation of a total of 6 above-ground wooden utility poles for this facility as depicted in the photosimulations presented in the application materials, which motion was seconded by Member Schmidt. The motion was unanimously approved, and the area variance granted.

There were no new items of business.

The index for the November 20, 2017 meeting is as follows:

1. Holland - Area variance - Granted;
2. Borrego Solar - Area variance for setbacks from property lines - Granted with conditions; Area variance to allow above-ground wooden utility poles - Granted.

There are currently no agenda items for the December 18 meeting.