

Zoning Board of Appeals

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

MINUTES OF THE BRUNSWICK ZONING BOARD OF APPEALS REGULAR MEETING HELD JANUARY 25, 2021

PRESENT were ANN CLEMENTE, CHAIRPERSON, PATRICIA CURRAN, ANDREW MORIN, and JOHN MAINELLO III.

ABSENT was E. JOHN SCHMIDT.

ALSO PRESENT was CHARLES GOLDEN, Brunswick Building Department.

The meeting began with Chairperson Clemente noting that a special meeting of the Zoning Board of Appeals scheduled for January 11, 2021 had been cancelled due to weather and all agenda items from that meeting would be addressed at this meeting.

The draft minutes of the December 21, 2020 regular meeting were reviewed. Upon motion from Chairperson Clemente, seconded by Member Morin, the minutes of the December 21, 2021 regular meeting were unanimously approved without amendment.

The first item of business on the agenda was an area variance application submitted by Joseph Millington, Jr. and Erin Crotty for property located at 7 Howe Lane. The applicants seek to build an inground pool on their property with a 10-foot rear yard setback, where the Town of Brunswick Zoning Law requires a setback of 25 feet. Joseph Millington, Jr. and Erin Crotty were both present. Chairperson Clemente requested the applicants review the application. Ms. Crotty stated that there had been no changes to the application since the last Zoning Board meeting. Ms. Crotty also stated that while they could comply with the 25-foot setback, their builder would like the flexibility to build the pool with a setback of up to 10 feet from the rear property line if needed,

noting that they would try to meet the required setback as much as possible. 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 sign board, posted on the Town website, and mailed to owners of all properties located within 300 feet of the project site. Chairperson Clemente opened the public hearing on the application. There were no public comments on the application. Chairperson Clemente inquired whether the Town Building Department had received any written comments on the application. Mr. Golden stated that no written comments had been received. Chairperson Clemente made a motion to close the public hearing, which was seconded by Member Morin. The motion was unanimously approved, and the public hearing was closed. The Planning Board noted that this was a Type II action under SEQRA. The Zoning Board members then reviewed the elements for consideration on the area variance application. As to whether the requested variance would result in an undesirable change in the character of the neighborhood or create a detriment to nearby properties, Chairperson Clemente noted that inground pools are allowable in A-40 zoning districts and that the pool will not be visible from Smith Hill Road or the adjoining properties. Furthermore, an adjoining property owner supports the application. This will result in no change in character of the neighborhood. As to whether a feasible alternative was available, Member Curran stated that there was no feasible alternative for this project. The Zoning Board also discussed topography of the area, and the stone/soil conditions. As to whether the requested variance was substantial, Chairperson Clemente stated that a rear setback of 10 feet and variance of 15 feet is not too substantial, especially on a 2.74-acre parcel in an A-40 zoning district. As to whether the variance would create an adverse environmental or physical impact, the Zoning Board stated that there would be no impact to traffic, drainage, dust levels, or noise levels. As to whether the difficulty giving rise to the need for the variance was self-created, Member Curran stated that

it is self-created, but the proposed location for the pool is the only feasible location given the size of the pool and lot characteristics. The Zoning Board agreed that in balancing the benefit to the applicant as opposed to any detriment to the community and neighborhood, the variance should be granted. Member Curran made a motion to grant the requested area variance, which was seconded by Member Morin. The motion was unanimously approved and the area variance was granted. Chairman Clemente directed the applicants to continue to coordinate with the Brunswick Building Department on this matter.

The second item of business on the agenda was an area variance application submitted by Joshua Laiacona for property located at 59 Tambul Lane. The applicant seeks to build a 30-foot by 40-foot garage at the end of an existing driveway. Joshua Laiacona was present to review the project. Chairperson Clemente requested the applicant review the application. Mr. Laiacona stated that there had been no changes to the application since the last Zoning Board meeting and made it clear that the project location was chosen because the garage would be located at the end of an existing driveway and would be too close to the house on the property otherwise. 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 sign board, posted on the Town website, and mailed to owners of all properties located within 300 feet of the project site. Chairperson Clemente opened the public hearing on the application. David Oster, an adjacent landowner, stated that he had no problem with the project in concept, but asked if the structure could be moved to the west at all so it would not be as close to his property. Mr. Oster stated that the property line Mr. Laiacona was using should be marked before construction on the property begins. Mr. Oster also asked if a requirement be added that Mr. Laiacona must plant shrubs along the property line to better hide the structure from the Oster property. There were no further public comments. Chairperson

Clemente inquired whether the Town Building Department had received any written comments on the application. Mr. Golden stated that no written comments had been received. Member Curran asked if the garage would have a toilet and utility sink. Mr. Laiacona said it would. Member Curran asked if the garage would be one story tall. Mr. Laiacona said no, it would actually be two stories, with the second story being a storage space. Member Morin asked if the garage would be for commercial purposes. Mr. Laiacona said that no, it would be residential, and clarified that the second-floor storage space would be exclusively for residential purposes also. Chairperson Clemente asked Mr. Laiacona to address the public comments from Mr. Oster. Mr. Laiacona stated that Brian Holbritter, the engineer on the project, would do a survey of the property before starting the construction and would clearly mark the property line. Mr. Laiacona stated that he is willing to plant evergreen trees on his property to make up for the trees he will be forced to cut down in order to build the garage. Mr. Laiacona also stated that he is willing to work with Mr. Oster on where the garage is placed on his property as he has room to move the structure on all sides other than the rear of the structure, which would face his house, due to the flag-like shape of his lot. Member Curran asked about the dimensions of the two stories in the structure. Mr. Laiacona stated that the first floor would be 40 feet by 30 feet, while the second floor would 40 feet by 20 feet. Mr. Laiacona also stated that the structure would total a maximum of 1,500 square feet and that he will get more information on the structure to the Brunswick Building Department if necessary. Member Curran stated that she would like more information on the structure and Attorney Gilchrist advised keeping the public hearing open while more information is gathered and submitted. Chairperson Clemente made a motion to keep the public hearing open and Member Curran seconded. The motion was unanimously approved and the public hearing was kept open. This matter is placed on the February 22 agenda for further discussion.

The Zoning Board proceeded to its first item of new business, which was an area variance application submitted by Joshua Laiacona for property located at 59 Tambul Lane. The applicant seeks to build an inground pool at the back of his property. Joshua Laiacona was present to review the project. Chairperson Clemente requested the applicant review the application. Mr. Laiacona stated that he is seeking to build an inground pool on his property and that he wants a 10-foot rear yard setback whereas a 25-foot rear yard setback is required under the Brunswick Zoning Law. Chairperson Clemente stated that the application was complete to hold a public hearing. A public hearing on this application is scheduled for February 22, 2021 at 6:00 pm.

The Zoning Board then returned to its scheduled agenda. The third item of business on the agenda was a use variance application submitted by Peter and Bonny Lupe for property located at 4112 NYS Route 2. The applicants seek to operate a daycare center on the premises. Peter and Bonny Lupe were both present. Chairperson Clemente requested the applicants review the application. Mr. Lupe stated that there had been no changes to the application since the last Zoning Board meeting. Chairperson Clemente noted that a petition with 157 signatures in favor of the project had been received by the Town. 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 sign board, posted on the Town website, and mailed to owners of all properties located within 300 feet of the project site. Chairperson Clemente opened the public hearing on the application. There were no public comments on the application. Member Curran asked what the ages of the children attending the daycare would be. Mr. Lupe stated they would be between 18 months and 5 years old. Member Morin asked what the difference is between a daycare and a preschool. Mr. Lupe stated that a daycare looks after children for 8 hours, while a preschool looks after children for half a day. Chairperson Clemente asked if the prior tenant of the building on the property ran a daycare

center. Mr. Lupe stated that since the prior tenant ran their business for 8 hours every day, it was a daycare center. Chairperson Clemente asked if the prior tenant's business model was based on a daycare or a preschool. Mr. Lupe said he was not sure. Chairperson Clemente made a motion to close the public hearing, which was seconded by Member Mainello. The motion was unanimously approved, and the public hearing was closed. Chairperson Clemente stated that the Zoning Board needed to be certain whether the use variance was for a daycare or preschool in the building. Attorney Gilchrist stated that one of the required review standards that must be considered by the Zoning Board on a use variance requires economic proof, and must show that a reasonable economic return cannot be met for any of the allowable uses in the particular zoning district. Attorney Gilchrist then reviewed the allowable uses at that lot and stated that the applicant must submit economic proof that a reasonable economic return cannot be achieved for each allowable use. Mr. Lupe stated that he had submitted a letter dated January 11, 2021 to the Zoning Board detailing the economic hardship the applicants would endure to bring back the restaurant/bar that had previously been in the daycare center space, and that he does not know the economic hardship they would endure for using the space for any of the other allowable uses. Attorney Gilchrist explained that Zoning Board needed to be especially careful with this decision because they would be setting a precedent, and that they would need to act in the same way on all other similar applications going forward. Member Curran asked what the space had been before the previous tenant. Mr. Lupe stated that it had been a hair salon and a café before becoming a daycare, and that he had not been aware daycares were not allowed there under the zoning law when it was converted. Mr. Lupe stated that when it initially became a daycare, that it was approved by New York State and the Town and it is unclear how a daycare could be approved by so many entities despite it being an illegal use under the Zoning Law. Mr. Golden then reviewed the history of the

property, stating that it had been a mixed-use structure back in the 1990s. Mr. Lupe stated that since purchasing the property they had done significant work on it and that converting it to a daycare had been a significant investment on their part. Chairperson Clemente reiterated that the burden here is on the applicant and that they must research all possible allowable uses for the property, and that there is a difficult standard to meet for a use variance. Chairperson Clemente stated that the applicants needed to provide supplemental financial information, as well as information clarifying whether this is a daycare or preschool. Attorney Gilchrist agreed, stating that there needed to be additional evidence on the record. Chairperson Clemente stated that the Zoning Board was sympathetic to the applicants, but that the Zoning Board must also protect the Town of Brunswick itself when it acts. It was suggested that a special meeting be held in February 2021 to further discuss this matter and all members of the Zoning Board agreed. A special meeting to discuss this application was set for February 8, 2021 at 6:00 pm.

The fourth item of business on the agenda was a use variance and area variance application submitted by Blue Sky Towers III, LLC/Cellco Partnership d/b/a Verizon Wireless for property located on Creek Road. Dave Brennan, Esq. was present for the applicant. Ronald Laberge, PE, the Town's review engineer, was also present. Mr. Brennan briefly reviewed the project, stating that the shot clock for the Zoning Board to review the project had already been extended multiple times, that the Planning Board has already adopted a Negative Declaration under SEQRA on the project, and that the Zoning Board is in a position to deliberate on the application. Mr. Brennan stated that the area variance is for the setback required under the Brunswick Zoning Law, as it is less than 750 feet from the nearest residence, and that the use variance is needed because cell towers are not an allowable use in the zoning district. Attorney Gilchrist stated that according to the Federal Telecommunications Act, a municipal board cannot prohibit cell towers or discriminate

between companies when deliberating on a cell tower. Mr. Laberge then reviewed the project, stating that the project will consist of a stealth monopole designed as a pine tree, which will blend into the vegetation on-site, with artificial branches placed from 30 feet above grade to the top of the pole to reduce visual impacts. Attorney Gilchrist clarified that the Zoning Board must determine whether the cell tower addresses a public need and that effects of the tower on the public will be minimal. Mr. Laberge then stated that alternative sites for the project were researched. Mr. Laberge also stated that the largest consideration would be visual impact, and that there should be consideration of noise impacts as well. Mr. Laberge also stated that branches would be repaired if broken and that there will only be two arrays due to the height of the tower. Chairperson Clemente asked for details on the maintenance and repair of the branches on the tower, and if the maintenance and repair should be included as a condition on the application. Mr. Laberge stated that the applicant is planning regular maintenance of the branches and will repair any that need to be repaired, but that requiring repair and maintenance as a condition is reasonable. Member Morin asked if weathering, discoloration, and rusting of the branches would require maintenance or repair according to the applicant. Mr. Laberge said those would be considered regular “wear and tear” and would fall under actions requiring maintenance or replacement. Chairperson Clemente asked when the generators would run and if they would be run together. Mr. Laberge stated that the generators would run from 9:00am to 4:00pm and that they could likely be staggered. Mr. Brennan then confirmed that running the two generators could be staggered. Mr. Laberge also stated that the natural topography and vegetation on-site would reduce sound, stating that even though the project’s sound analysis didn’t take the topography and vegetation into account, they naturally serve to reduce sound. Member Morin asked if the access road onto the project site would be gated. Mr. Laberge said it would be. Member Morin asked if the chain link fence around the cell tower

would have privacy slats in it. Mr. Laberge said it would not, but there would be evergreen trees around the fence. Chairperson Clemente asked how the height of this cell tower would compare to the heights of other towers in the area. Mr. Brennan stated that most nearby towers are 60-65 feet tall, which is shorter than the tower being proposed here, and that they are plainly visible from the surrounding areas. Mr. Brennan clarified that the current plan only includes one generator, as Verizon will not deploy one, and that using two generators is only a possible plan, meaning that the condition to stagger operating the two generators will only be necessary if a second generator is used in the future. Chairperson Clemente asked if the applicant researched and analyzed alternate locations for the tower on-site, as well as other sites. Mr. Brennan confirmed that they had done both. Member Morin asked to confirm that based on the studies done, there were no other feasible sites for the tower. Mr. Brennan confirmed that after studying several other properties, the current proposed site works best and meets the gap in coverage needs. Member Mainello how maintenance, including painting, on the tower would be done. Mr. Brennan stated that the tower will be factory painted before construction, and that maintenance will be done with a man-lift. Member Mainello asked how the maintenance and repair condition would be enforced when it could take some time to deliver new branches and get people out to the tower for the repairs. Mr. Brennan stated that maintenance and repair would be done as quickly as possible, that extra branches may be provided with the tower during construction which would be kept on-site, and that one damaged branch would most likely not be very visible. Chairperson Clemente asked who specifically would do the maintenance and repair. Mr. Brennan stated that workers from Verizon and AT&T would do the work, and that they will check the tower once or twice a year for damage even if none is reported. Attorney Gilchrist asked the Zoning Board what their thoughts were about the setback variance. Member Mainello agreed that it was the best on-site location for the tower.

Chairperson Clemente said that it was the least noticeable location for the least amount of nearby property owners. Member Morin said that it is the location with the least amount of visual impact. Chairperson Clemente asked if neighboring property owners could plant trees on their own property to lessen the already small visual impact at the applicant's expense. Mr. Brennan stated that the applicant had discussed this with neighboring property owners previously and would be willing to discuss with them again, but stated that it should not be a requirement for the project to move forward since the visual impact had been adequately addressed through the tower location and monopine design. Mr. Laberge agreed, stating that a significant visual assessment of the project had already been completed and there would be no basis on the record for the applicant to pay surrounding property owners to put up trees in their backyards. This matter is placed on the February 8 special meeting agenda for further discussion.

The fifth item of business on the agenda was an area variance application submitted by Usman Rashid for property located at 793 Pawling Avenue. Mark Danskin was present for the applicant. Mr. Danskin briefly reviewed the project, stating that the Zoning Board had requested more detailed responses to the public comments at their last meeting and he had submitted a letter to the Zoning Board dated January 9, 2021 with more thorough responses. Chairperson Clemente asked about the flow of traffic and parking on the project site. Mr. Danskin pointed out where the parking would be and how cars could navigate through the project site. Member Morin asked how many cars would be for sale on the property at any given time. Mr. Danskin said three to four cars would be available. Member Morin asked for confirmation that the application initially called for the structure to be used to repair cars for sale only, but now the structure will also repair cars for the general public. Mr. Danskin confirmed that was correct. Member Morin asked if the curb cut being proposed would only be on Pawling Avenue. Mr. Danskin said that was correct and that

there would be no entrance onto the site from Lakeview Avenue. Member Morin asked for confirmation that cars would only be worked on inside the garage, not outside. Mr. Danskin stated that the work on cars would mostly be done in the garage, but also in the approved parking area subject to Planning Board review. Chairperson Clemente briefly reviewed the application, including that it was submitted in May 2020 and that a public hearing was held on the application in June 2020. Chairperson Clemente stated that a short EAF had been submitted. Chairperson Clemente made a motion to adopt a negative declaration under SEQRA, which motion was seconded by Member Mainello. The motion was unanimously approved, and a SEQRA negative declaration adopted. The Zoning Board members then reviewed the elements for consideration on the area variance application. As to whether the requested variance would result in an undesirable change in the character of the neighborhood or create a detriment to nearby properties, Chairperson Clemente stated that the structure going over the property line, as shown in the initial set of plans, would absolutely be undesirable. Mr. Danskin stated that an updated set of plans shows that all of the structure will be located on the owner's parcel and that it has been designed specifically so it does not add any load to the retaining wall. Mr. Laberge added that the Reeves report submitted on the project specifies that no weight may be added to that retaining wall. As to whether a feasible alternative was available, Member Curran stated that the structure will be based on a previous building on the site and that the applicant did not explore any other options. The Zoning Board noted that a smaller building was not considered. As to whether the requested variance was substantial, the Zoning Board noted that the structure calls for a zero-foot setback to the rear and a three-foot setback to the side, both of which are substantial. Mr. Golden stated that these setbacks were being proposed due to being on a corner lot. Member Morin stated that he was uncomfortable with setbacks of zero feet and three feet. Mr. Danskin noted that the structure would be built where

a previous structure had been located on this lot. Member Curran, however, pointed out that since this would be a new business and a new building, the current standards must be met. As to whether the variance would create an adverse environmental or physical impact, the Zoning Board reviewed the effects of the structure on traffic, drainage, dust, and odor. Member Morin asked if cars being worked on would be left in the structure or be parked outside on Lakeview Avenue or Pawling Avenue, and whether there would be on-street parking on Pawling Avenue. Mr. Danskin stated that parking would only be allowed in approved parking areas on the lot following site plan review by the Planning Board. The Zoning Board stated that traffic and noise impacts could occur. As to whether the difficulty giving rise to the need for the variance was self-created, the Zoning Board noted that this was a new business on an old lot and that the purchaser had knowledge of limitation of the space when it was purchased, and therefore the difficulty is self-created. Member Morin made a motion to deny the variance, which was seconded by Member Curran. The motion was approved 3-1, with Member Mainello opposed, and the area variance was denied.

The Planning Board then returned to new business items. The second item of new business was an area variance application submitted by Antoinette Cardinuto for property located at 84 Mt Pleasant Avenue. The applicant seeks to add a 12-foot by 24-foot addition to her house. Chairperson Clemente stated that the application is complete for a public hearing. A public hearing on this application is scheduled for February 22, 2021 at 6:15 pm. Chairperson Clemente asked if the Zoning Board members had permission to see the property. Ms. Cardinuto stated that they did.

The third item of new business was an area variance application submitted by Tamarac Solar, LLC for property located at 126 Brick Church Road. Norman Ward, a landscape architect from Environmental Design Partnership, LLP, and Gillian Black, Director of Project Development from Eden Renewables, were present for the applicant. Mr. Ward briefly reviewed the project,

stating that it is a major commercial solar project that will provide low-cost renewable energy. Mr. Ward talked about bringing this project in front of the Planning Board in December 2020 for a sketch plan conference where the applicant made it known they are seeking site plan and special use permit approval. Mr. Ward also stated that at a January 2021 Planning Board meeting, the Board undertook action to commence lead agency coordination on the application under SEQRA. Mr. Ward and Mr. Black then reviewed the layout of the project. They stated that the area is mostly hidden from view, as the solar array will be pushed up the hill. The project will also require a setback variance for the 100-foot setback. Mr. Ward stated that the project will include two poles and two pad mounts, with all other equipment being located underground. It is possible the project may ultimately require only one pole, but two poles are being planned now. The two pad mounts will be 4-feet by 6-feet and 6-feet by 6-feet and the applicants will submit specifications to the Zoning Board. Mr. Black stated that the Planning Board had suggested locations where visual impact of the project should be studied, including Rt. 351, Rt. 2, and Bulson Road. This analysis will also be submitted to the Zoning Board. Chairperson Clemente noted in the EAF the applicant submitted, page 10 asks if there are any facilities within 1,500 feet of the project site that serves children and noted that the Brunswick Center Services should also be listed. Mr. Golden asked what type of fence would be around the project site. Mr. Ward stated that it would be a livestock fence, with a small space at the bottom for animals to get through. Mr. Golden asked what the size of the battery storage facility would be. Mr. Ward stated that the facility would be 53-foot containers, one for each array area. This matter is adjourned without date pending action by the Planning Board.

The index for the January 25, 2021 meeting is as follows:

1. Millington – area variance (approved).

2. Laiacona – area variance (February 22, 2021).
3. Laiacona – area variance (February 22, 2021).
4. Lupe – use variance (February 8, 2021).
5. Blue Sky Towers III, LLC/Cellco Partnership d/b/a Verizon Wireless – use variance and area variance (February 8, 2021).
6. Rashid – area variance (denied).
7. Cardinuto – area variance (February 22, 2021).
8. Tamarac Solar – area variance (adjourned without date).

The proposed agenda for the February 8, 2021 special meeting is currently as follows:

1. Lupe – use variance.
2. Blue Sky Towers III, LLC/Cellco Partnership d/b/a Verizon Wireless – use variance and area variance.

The proposed agenda for the February 22, 2021 regular meeting is currently as follows:

1. Laiacona – area variance (public hearing to commence at 6:00 pm).
2. Laiacona – area variance (public hearing to continue).
3. Cardinuto – area variance (public hearing to commence at 6:15 pm).