

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 FEBRUARY 22, 2021

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

ABSENT was E. JOHN SCHMIDT.

ALSO PRESENT was CHARLES GOLDEN, Brunswick Building Department.

Chairperson Clemente noted that the regular meeting of the Zoning Board of Appeals is being held on February 22, as February 15 was the Presidents' Day holiday.

The draft minutes of the January 25, 2021 regular meeting were reviewed. Chairperson Clemente noted the following corrections: "Planning Board" should be changed to "Zoning Board" on page 2 line 9 and page 12 line 14, and "engineer" should be changed to "surveyor" on page 4 line 9. Chairperson Clemente made a motion to approve the minutes of the January 25, 2021 regular meeting subject to the noted corrections, which motion was seconded by Member Morin. The motion was unanimously approved, and the minutes of the January 25, 2021 regular meeting were approved subject to the noted corrections.

The draft minutes of the February 8, 2021 special meeting were reviewed. Upon motion from Chairperson Clemente, seconded by Member Morin, the minutes of the February 8, 2021 special meeting were unanimously approved without amendment.

The first 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 an inground

pool at the back of his property and proposes a 10-foot setback when a 25-foot setback is required by law, leading to the need for an area variance. Joshua Laiacona was present to review the project. Chairperson Clemente asked Mr. Laiacona if he had made any changes to the application since the last Zoning Board meeting and he said he had not. The Notice of Public Hearing was read into the record by Attorney Gilchrist, 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 asked if any feasible alternative locations had been considered. Mr. Laiacona stated that if he moved the pool any closer to his house, then it could interfere with the gas line and drainage on the property, as well as negatively affect the property aesthetically. 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. Chairperson Clemente stated that this was a Type II action under SEQRA. The Zoning Board 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, Member Curran noted that many nearby properties have pools, so an inground pool would be consistent with the current character of the neighborhood. As to whether a feasible alternative was available, the Zoning Board noted Mr. Laiacona's responses that moving the location of the pool could result in hitting a gas line, as well as affecting the drainage and topography of the property. As to whether the requested variance was substantial, Member Curran

stated that it is not significant as it borders agricultural farmland. Furthermore, Chairperson Clemente noted that the Zoning Board had received an Agricultural Data Statement with Mr. Laiacona's application, even though it was not necessary to submit one, which stated that there would not be any major environmental impacts from this project. As to whether the variance would create an adverse environmental or physical impact, the Zoning Board said it would not as the pool will not create noise, traffic, or runoff. As to whether the difficulty giving rise to the need for the variance was self-created, Chairperson Clemente stated that it was, but that it was not determinative on this matter. Chairperson Clemente asked if there should be any conditions with the approval of this variance and the Zoning Board agreed that there should not be. Member Curran made a motion to grant the area variance, which was seconded by Member Morin. The motion was unanimously approved and the area variance was granted. Chairperson Clemente directed the applicant to continue to coordinate with the Town 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 noted that a public hearing on this application had been opened at the Zoning Board's January 25, 2021 meeting, comments from the public had been heard, and the public hearing had been kept open. Chairperson Clemente asked Mr. Laiacona if he had made any changes to the application since the last Zoning Board meeting and he said he had not, but that he had submitted additional information to the Town Building Department, which was requested by the Zoning Board at the January 25 meeting, including that square footage of the garage, specifically of the garage's second floor. Chairperson Clemente noted that an adjacent landowner had made three public comments at the January 25 meeting: that the surveyor mark the property

line at the time of construction, that Mr. Laiacona plant shrubs to increase screening, and to move the garage more to the west. Mr. Laiacona stated that Brian Holbriiter, the surveyor on the project, would do a full survey of the property before construction, which would include clearly establishing the property line. Mr. Laiacona stated that while he has taken down some trees in order to clear space for the garage, he will plant some evergreen trees to increase screening and block the view of the garage, which he has discussed with his neighbor. Mr. Laiacona also stated that he is open to moving the garage more to the west, which he will also discuss with his neighbor. Mr. Golden noted that while Mr. Laiacona and his neighbor have adjacent properties, there is 360 feet between the homes on their properties. Member Morin asked if there is a berm on the property. Mr. Laiacona stated that there is an elevation change and that he can add some vegetation on the elevated land, which will result in there still being over 300 feet between his and his neighbor's homes while his neighbor will not be able to see the garage. Chairperson Clemente asked if there were any more public comments on the application and there were not. Chairperson Clemente made a motion to close the public hearing, which was seconded by Member Curran. The motion was unanimously approved, and the public hearing was closed. Chairperson Clemente stated that this was a Type II action under SEQRA. The Zoning Board 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, Member Curran stated that many nearby homes have accessory structures, so a garage would be consistent with the character of the area and neighborhood. As to whether a feasible alternative was available, Member Mainello stated that there are not a lot of other options as to where a garage can go on the property considering the house and driveway already there and the inground pool that will soon be built. As to whether the requested variance was substantial,

Member Morin stated that 15 feet of relief was reasonable, not substantial, considering what is already on the property. As to whether the variance would create an adverse environmental or physical impact, the Zoning Board agreed that it would not. As to whether the difficulty giving rise to the need for the variance was self-created, Member Curran stated that it was, but that it was not determinative in this matter. Chairperson Clemente asked if there should be any conditions with the approval of this variance, such as planting trees, completing a survey, and moving the garage to the west. The Zoning Board agreed that conditions on the application were not necessary, but did note that the applicant had consented on the record to accommodating the comments of the adjoining property owner and discussed by the Board. Attorney Gilchrist stated for the record that three area variances were in front of the Board, for setback, placing an accessory structure in front of a principal structure, and the garage being 1,840 square feet when accessory structures are only allowed to have 1,500 square feet. Member Curran made a motion to grant the area variances, which was seconded by Member Morin. The motion was unanimously approved and the area variances were granted. Chairperson Clemente directed the applicant to continue to coordinate with the Town Building Department on this matter.

The third item of business on the agenda 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. Antoinette Cardinuto was present to review the application. Chairperson Clemente asked Ms. Cardinuto if she had made any changes to the application since the last Zoning Board meeting and she said she had not. The Notice of Public Hearing was read into the record by Attorney Gilchrist, 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 noted that the Rensselaer County Planning Department had responded to the application, noting that there would be no adverse effects from the project and that local consideration shall prevail. Member Curran asked for if the addition would be 12-feet by 24-feet, as there are other sizes listed in the application. Ms. Cardinuto confirmed that she applied for a variance for a 12-foot by 24-foot addition, but that she had listed smaller sizes as the addition could end up being smaller; however, she is requesting an area variance in case the final specifications for the addition are 12-feet by 24-feet. Member Curran asked Mr. Golden what the maximum percentage for lot occupancy was. Mr. Golden stated that Ms. Cardinuto is looking to put an addition in a 5,600 square foot lot, as the existing lot itself is undersized. Chairperson Clemente stated that this application consists of two setbacks, a 10-foot front yard setback and a 5-foot side yard setback, but that the addition itself is compliant. Attorney Gilchrist stated for the record that the Zoning Board is dealing with both an existing nonconforming lot and existing nonconforming structure, and that even though the addition is compliant with the Town Zoning Law, Ms. Cardinuto needs the area variance because it is an addition to an existing nonconforming structure. 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. Chairperson Clemente stated that this was a Type II action under SEQRA. 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 several nearby properties have additions at the back of their homes and that Ms. Cardinuto's property has enough space at the back to serve

as a visual barrier to other properties. As to whether a feasible alternative was available, Member Morin said that based on the size of the lot that there is nowhere else to put an addition. As to whether the requested variance was substantial, the Zoning Board agreed that it was not based on the size of the lot. As to whether the variance would create an adverse environmental or physical impact, the Zoning Board agreed that it would not. As to whether the difficulty giving rise to the need for the variance was self-created, the Zoning Board agreed that even though Ms. Cardinuto wanting to put an addition onto her house was the self-created, the need for the variance was not since the lot is nonconforming under the Town Zoning Law. Member Curran made a motion to grant the area variance, which was seconded by Member Mainello. The motion was unanimously approved and the area variance was granted. Chairperson Clemente directed the applicant to continue to coordinate with the Town Building Department on this matter.

The fourth 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 to review the application. Before publicly discussing the application, the Zoning Board and Attorney Gilchrist went into private session to discuss the application. Upon returning to the meeting, Chairperson Clemente reviewed the history of the application and the findings of the Zoning Board, including:

1. The Lupe property is located at 4112 NYS Route 2 (Tax Map No. 92.0-6-8.2).
2. Under the Brunswick Zoning Law and Zoning Map adopted in 2017, the parcel is located in the A-40 Zoning District.
3. Under the prior Brunswick Zoning Ordinance and Zoning Map, the property was also located in the A-40 Zoning District.
4. Prior to 1997, the use of the structure on the Lupe Parcel included a restaurant/bar.
5. The municipal record discloses that an apartment was added to the second floor of the structure while the building was being used as a restaurant/bar; the apartment was added

to the building some time prior to 1997, but the date that the apartment was added is not known.

6. The municipal record discloses that the apartment was added to the second floor of this building without the knowledge of the Town.
7. Lupe purchased the property in or about 1996.
8. As of 1997, the uses in this structure on the Lupe parcel were as follows:
 - a. Pizza/Restaurant (1st floor)
 - b. Hair Salon (1st floor)
 - c. Office (1st floor)
 - d. Apartment (2nd floor)
9. Lupe applied for site plan approval to the Town of Brunswick in 1997 to add a second apartment on the second floor of the building, and also to construct an addition for the restaurant and office on the first floor.
10. The Brunswick Planning Board reviewed the site plan application, including engineering review.
11. In 1997, the Town Building Department determined that the property use as a mixed-use commercial site was not grandfathered; and that there were questions concerning the location of zoning district boundary lines, and determined at that time that the site plan pending before the Brunswick Planning Board could be reviewed for a mixed-use commercial use.
12. The Brunswick Planning Board granted site plan approval for the mixed-use commercial site plan on September 4, 1997, subject to the condition that sprinklers be installed in the building.
13. The uses approved by the Brunswick Planning Board site plan approval in 1997 include:
 - a. Restaurant (1st floor)
 - b. Hair Salon (1st floor)
 - c. Office (1st floor)
 - d. Two (2) apartments (2nd floor)
14. The New York State Department of State held a hearing regarding building and fire code requirements for the Lupe building in 1997; a decision was rendered allowing the mixed-use commercial uses in the building subject to conditions, including:
 - a. A sprinkler system is required for the building
 - b. The restaurant capacity shall not exceed 99 persons
 - c. Dual fire and smoke detection system is required

15. In 1997, the Brunswick Zoning Board of Appeals granted a sign variance for the Lupe property; the sign included the following tenants:
 - a. Lupe Electric
 - b. Paulie's Pizza
 - c. Shan-Teez
16. In or about 2013, a daycare center use was commenced in the Lupe building.
17. In 2013, the daycare center in the Lupe building was licensed by the New York State Office of Child and Family Services; New York State did not raise a zoning compliance issue at that time.
18. Lupe did not apply for a site plan review by the Brunswick Planning Board in 2013.
19. The Brunswick Building Department issued a building permit for interior renovations at the Lupe building to accommodate the daycare center.
20. The Brunswick Building Department has performed fire inspections in the Lupe building while the building was in use as a daycare center between 2013 and 2020.
21. In 2020, a new operator was proposed for the daycare center in the Lupe building.
22. The New York State Office of Child and Family Services, in conjunction with the licensing application review for the new operator for the daycare center, raised the zoning compliance issue at this location.
23. In conjunction with his use variance application, Lupe has submitted proof of the economic viability of converting his property to uses allowed in the A-40 Zoning District.
24. Lupe has provided cost estimates to convert the property back to use as a restaurant/bar, calculating the costs at over \$214,000 and concluding that the property cannot achieve a reasonable economic return at this point through use as a restaurant/bar.
25. Lupe has provided a report from Charles Bulson estimating the cost to convert the property to a veterinary or kennel use at approximately 2-3 million dollars.
26. The Zoning Board of Appeals finds that Charles Bulson is qualified to offer this opinion, Mr. Bulson provided his qualifications in the report he submitted, stating his opinions are based on 21 years of experience in the veterinary and animal care industry.
27. Lupe provided a report from CT Male Associates, which analyzed the economic viability of converting the Lupe property into all other permitted uses allowed in the A-40 Zoning District.

28. The CT Male report concludes that due to lot size, lot location, and costs of re-development, the Lupe property is not able to realize a reasonable economic return through converting the property to any use allowable in the A-40 Zoning District.
29. The Zoning Board of Appeals finds the CT Male report to be credible as prepared by qualified and competent individuals.

After Chairperson Clemente reviewed the Zoning Board's findings on this application, Member Morin made a motion to adopt a negative declaration under SEQRA, which motion was seconded by Member Curran. The motion was unanimously approved, and a SEQRA negative declaration adopted. Attorney Gilchrist then reviewed the four standards of unnecessary hardship necessary to grant a use variance for the Board. The first standard is that the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence. Member Curran stated that the applicants cannot realize a reasonable return, which is stated clearly in the two reports they submitted. The second standard is that the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the land use area or neighborhood. Chairperson Clemente stated that the structure is located next to the Town library, which is in compliance with Zoning Law as a community use, and that a medical building is located on NYS Route 2 in proximity to the Lupe property. The Board agreed that the daycare would be consistent with the general area and would not impact a substantial portion of the neighborhood. The third standard is that the requested variance, if granted, will not alter the essential character of the neighborhood. Member Morin stated that only the inside of the building would be affected by the use, not the outside of the building or surrounding area. The Board agreed that the daycare would not impact the essential character of the neighborhood. The fourth standard is whether the alleged hardship has been self-created. Chairperson Clemente stated that the applicants were the owners of the building who went before the Planning Board back in 1997, but failed to return to the Planning Board in 2013 when the building's use was changed to a

daycare. However, Chairperson Clemente also noted that New York State did not raise the zoning issue back in 2013 either, when it issued an operating certificate for a daycare center. Based on this deliberation, the Zoning Board made the following determinations:

1. Lupe cannot, at this time and given the current and past use of the property, realize a reasonable economic return for uses allowable in the A-40 Zoning District, with this finding based on qualified and competent financial and technical evidence.
2. There is a medical building located in proximity to the Lupe parcel on NYS Route 2; however, when reviewing the area in general, the hardship presented by this applicant does not apply to a substantial portion of the land use area or neighborhood.
3. Given the use of the property as a mixed-use commercial site for over 20 years, and as a daycare center for 7 years, the use variance sought will not alter the essential character of the neighborhood.
4. Given the history of this site; given the site was already in commercial use when Lupe purchased the property in or about 1996; given that the Brunswick Planning Board granted site plan approval for a mixed-use commercial site in 1997; given that New York State did not raise the zoning compliance issue in 2013 when it issued an operating certificate for the daycare center; and given that a building permit was issued by the Brunswick Building Department for renovations needed for use of the property as a daycare center; it is determined by the Zoning Board of Appeals that the hardship described by this applicant is not self-created.

Chairperson Clemente suggested that a condition on granting of the use variance be that if there is any change in use, that the owner of the property must come before the Planning Board for site plan review. Member Morin asked if the condition could be more thoroughly explained for the benefit of the applicants. Attorney Gilchrist stated that in the event the use variance is granted, then should the use inside the building change at any time in the future, the owner of the building would have to come before the Planning Board for site plan review. If the current tenant operating a daycare leaves and a new tenant opens a new daycare in the space, then there is no need to come before the Planning Board. However, if the new tenant were to convert the building into a restaurant for example, the owner would need to go to the Planning Board for site plan review due

to the change of use in the building. Member Morin made a motion to grant the requested use variance with the stated condition, which was seconded by Member Curran. The motion was unanimously approved and the use variance was granted.

The fifth item of business on the agenda 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 to review the application. Mr. Ward began showing a PowerPoint presentation reviewing the project's site plan through photographs he had taken as well as Google Earth images. Mr. Ward also reviewed the project's visual assessment report, which had been submitted to the Zoning Board earlier that day. Chairperson Clemente asked if it was possible to hold a joint public hearing with the Planning Board in regards to the application. Mr. Ward said that it had been discussed at the previous Planning Board meeting, that the Planning Board had suggested such a joint public hearing take place at their April 1 meeting, and that Tamarac Solar was in favor of a public hearing. Mr. Ward returned to the PowerPoint and discussed the electrical poles included in the visual assessment report. Chairperson Clemente asked how the number of proposed poles was determined. Chairperson Mr. Black stated that they have to adhere to the rules and recommendations of National Grid, who are currently requiring two poles for the project, but clarified that the final project may only require one pole if National Grid gives approval for it. Mr. Black also stated that there could be a seven-pole lineup in the plan, but Tamarac Solar is proposing two poles with a pad mount as it is cleaner and neater. Chairperson Clemente asked if it is cheaper with two poles instead of seven. Mr. Black said no, it is actually cheaper to have more poles, but National Grid is allowing Tamarac Solar to take either approach. Mr. Ward then returned to the PowerPoint presentation, reviewing the visual assessment report

from the identified off-site receptors. Member Curran asked what “low impact” meant. Mr. Ward stated that it means the solar project can only be seen in the distance and is not a significant impact to the viewshed. Mr. Ward then stated that there would be no solar panels in the southwest field on the project site due to the visual impacts it would create. Since the panels are being moved from that southwest field to another part of the project site, a setback variance is needed. Mr. Ward continued to review the vantage points studied in the visual assessment report. Mr. Ward stated that since homeowners on the east side of NYS Route 351 are able to see the panels that are part of the Borrego Solar project, they will also be able to see the panels from this project as well. Mr. Ward also stated that the visual assessment report is based on views from the public right-of-way. Chairperson Clemente stated that she was surprised by the low number of areas that the project can be seen from. Mr. Black stated that Eden Renewables always does its homework on project sites before proceeding on a project. Member Mainello asked if glare would be a factor on the project site. Mr. Black stated that for several reasons, including the panels rotating throughout the day, there is very little reflection coming off the panels. Member Morin asked if Eden Renewables usually chooses sites with low visibility. Mr. Black said they did. Mr. Black also stated that Eden Renewables works with local schools to educate students on solar energy, and that the solar panels for this project being visible from the school is good because students will be able to see the solar panels in action. Chairperson Clemente asked the Zoning Board members if they would like to hold a public hearing with the Planning Board to discuss this application. The Zoning Board members said they are interested, but Member Morin stated that he is not available to attend a meeting on April 1. Chairperson Clemente said she will contact Member Schmidt, who is absent, to see if he is interested and available. Attorney Gilchrist stated that there is no need for Tamarac Solar to be placed on the agenda for the Zoning Board’s March meeting as they have presented

and reviewed all current application materials and the next action would be a public hearing on the application, to which Mr. Ward and Mr. Black agreed. Chairperson Clemente made a motion to hold a joint public hearing with the Planning Board on this application, which was seconded by Member Mainello. The motion was unanimously approved and the Zoning Board agreed to coordinate with the Planning Board to schedule a public hearing on this application.

The index for the February 22, 2021 meeting is as follows:

1. Laiacona – area variance (approved).
2. Laiacona – area variance (approved).
3. Cardinuto – area variance (approved).
4. Lupe – use variance (approved with condition).
5. Tamarac Solar, LLC – area variance.

The proposed agenda for the March 15, 2021 meeting is currently as follows:

1. Blue Sky Towers III, LLC/Cellco Partnership d/b/a Verizon Wireless – amended resolution.