

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 MAY 16, 2022

PRESENT were PATRICIA CURRAN, JOHN MAINELLO III, and DARYL LOCKROW.

ABSENT were ANN CLEMENTE, CHAIRPERSON, E. JOHN SCHMIDT.

ALSO PRESENT was CHARLES GOLDEN, Brunswick Building Department.

Acting Chairperson Curran reviewed the agenda for the meeting, as posted on the Town sign board and Town website. The draft minutes of the April 18, 2022 regular meeting were reviewed. There were no edits or corrections to be made. Member Mainello made a motion to approve the minutes of the April 18, 2022 regular meeting without correction, which motion was seconded by Member Lockrow. The motion was unanimously approved, and the minutes of the April 18, 2022 regular meeting were approved.

The first item of business on the agenda was an area variance application submitted by Peter Hickey for property located at 5 Heather Ridge Road. Acting Chairperson Curran stated that the public hearing on the application to be held at 6:00pm had been tabled prior to the meeting. The Hickey public hearing will be re-noticed and held at the Zoning Board's June 20, 2022 regular meeting at 6:00pm.

The second item of business on the agenda was an area variance application submitted by Mark Schifano for property located at 5 Tarbell Avenue. Paul Engster, Esq., was present for the applicant. The Notice of Public Hearing was read into the record by Attorney Gilchrist, noting that

the Public Hearing Notice was published in the Eastwick Press, placed on the Town sign board, posted on the Town website, and mailed to the owners of all properties located within 300 feet of the project site. Acting Chairperson Curran asked Mr. Engster to briefly describe the project. Mr. Engster stated that he represented Dominick Maselli, who had entered into a contract to purchase part of the lot at 5 Tarbell Avenue from Mark Schifano, that there was a discrepancy between Mr. Maselli's deed and Mr. Schifano's deed, and that the transaction would eliminate that discrepancy. Mr. Engster also stated that the applicant is before the Zoning Board because the lot is located in a B-15 business zoning district, which has a 15,000 square foot minimum lot size requirement, that the lot is currently 11,021 square feet, making it an existing non-conforming lot, and that the transaction would decrease the size of the lot to 8,417 square feet, which is why the area variance is necessary. Mr. Engster stated that Mr. Maselli has no plan to use the property for a business and only wants to increase the size of his lot. Acting Chairperson Curran opened the public hearing on the application. There were no public comments on the application. Acting Chairperson Curran asked Mr. Golden if there had been any written comments on the application and he stated that there had been none, either by written letter or email. Acting Chairperson Curran asked the other Zoning Board members if there were any questions or comments on the application and there were none. Acting Chairperson Curran 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. Acting Chairperson Curran asked if all necessary setbacks would be met for the lot if the area variance was granted. Mr. Golden confirmed that all setbacks would be compliant with the Town Zoning Code if the variance was granted. Acting Chairperson Curran made a motion for a negative declaration under SEQRA on the project, which was seconded by Member Mainello. The Zoning Board voted unanimously to declare a negative declaration on the project 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, Acting Chairperson Curran stated that it is already a pre-existing non-conforming lot that will only result in a lot line adjustment, causing no change to the neighborhood. As to whether a feasible alternative is available, Member Mainello stated that there is not as the area proposed to be transferred is the only property at issue. As to whether the requested variance is substantial, Acting Chairperson Curran stated that it is not as the lot is already below the minimum square footage requirement and will remain that way, and that the lot will also remain residential in nature. As to whether the variance would create an adverse environmental or physical impact, Acting Chairperson Curran stated that it would not as it is only a lot line adjustment. As to whether the difficulty giving rise to the need for the variance is self-created, Acting Chairperson Curran stated that it was likely not as the irregularity in the chain of title of the properties is why the variance is being requested. Acting Chairperson Curran asked the Zoning Board if there were any further questions, and there were not. Attorney Gilchrist stated that the Town had received a letter from the Rensselaer County Bureau of Economic Development and Planning, stating that the project will not have a major impact on County plans and that local consideration shall prevail. Attorney Gilchrist also stated that the applicant is currently in front of the Planning Board pursuing a waiver of subdivision. Acting Chairperson Curran made a motion to grant the area variance, which was seconded by Member Lockrow. The motion was unanimously approved and the area variance was granted. Acting Chairperson Curran directed the applicant to continue pursuing the waiver of subdivision with the Planning Board.

The third item of business on the agenda was a use variance application submitted by David Leon for property located on Hoosick Road. Walter Lippmann, Project Manager with M.J.

Engineering and Land Surveying, P.C., was present for the applicant. The Notice of Public Hearing was read into the record by Attorney Gilchrist, noting that the Public Hearing Notice was published in the Eastwick Press, placed on the Town sign board, posted on the Town website, and mailed to the owners of all properties located within 300 feet of the project site. Acting Chairperson Curran asked Mr. Lippmann to briefly describe the project. Mr. Lippmann stated that since the use variance for a commercial parking area had been granted by the Zoning Board at a special meeting on April 26, 2021, the applicant had acquired an adjacent parcel of 0.1 acres. Mr. Lippmann stated that the Zoning Board had initially approved a parking lot that went around the 0.1-acre parcel and was separated from it by a retaining wall, and that the applicant is now proposing to extend the parking area over the 0.1-acre parcel, resulting in 22 additional parking spots. Mr. Lippmann also stated that the use variance previously approved for the site had been for parking in a R-9 residential zoning district, and that the use variance currently before the Zoning Board is due to additional parking in the same R-9 zone. Acting Chairperson Curran asked why the updated plans show the number of parking spots behind the Planet Fitness gym decreasing from 10 parking spots to 8 despite an overall increase of 22 parking spots. Mr. Lippmann stated that the overall parking scheme of the area has been changed from perpendicular to angular parking spots. Mr. Lippmann also stated that the change in parking behind the Planet Fitness gym was due to National Grid utility pole relocation issues, and that the change from perpendicular parking spots to angular was in order to accommodate the location of that utility pole. Member Mainello asked if there would be traffic signage for vehicle travel lanes in the parking lot. Mr. Lippmann confirmed that there would be. Member Mainello asked if truck traffic was anticipated behind the Planet Fitness gym. Mr. Lippmann stated that truck traffic was not anticipated, and clarified that there had been zero changes to the pre-approved truck traffic pattern for the site. Member Mainello stated that the

parking area should be clearly marked with crosswalks, signage, and possibly a sidewalk as well. Mr. Lippmann stated that the applicant would look into it. Member Lockrow asked if the additional parking would be customer or employee parking. Mr. Lippmann stated that it would presumably be for customers, but would not be labelled. Mr. Lippmann also stated that there would be no designated employee parking areas or for specific commercial uses. Acting Chairperson Curran asked if any of the proposed new parking spots would be located on the property owned by KFC. Mr. Lippmann confirmed that some of new spots would be on the KFC parcel, and that KFC had already signed off on the new parking proposal. Member Lockrow asked if the new parking spots would be for general parking for any commercial use in the plaza. Mr. Lippmann confirmed that they would be. Acting Chairperson Curran opened the public hearing on the application. Bill Bove, of 3 Windsor Avenue, asked what lighting fixtures would be used in the parking lot and what their hours of operation would be. Mr. Lippmann stated that the same type of lights would be used, that they would use downlighting, and that they would be on 15-foot-tall utility poles. Mr. Bove asked where snow would be moved during the winter, and Mr. Lippmann reviewed the area on the site map. Mr. Bove asked where stormwater runoff would go, and Mr. Lippmann discussed the site's stormwater plan and reviewed the detention area on the site map. Mr. Bove then asked if the new parking area had been considered in the site's stormwater plan, and Mr. Lippmann confirmed that it had been included in the updated stormwater plan. Mr. Lippmann also stated that the stormwater basin at the rear of the site had been redesigned, and that calculations confirm that the stormwater runoff from the additional parking will be accommodated by the redesigned basin. Mr. Bove then asked about the other amendments to the site that are proposed. Mr. Lippmann reviewed the other site plan amendments currently before the Planning Board, but clarified that the use variance application currently before the Zoning Board only dealt with the additional parking on a lot where

parking is not a permitted use. There were no further public comments on the application. Acting Chairperson Curran asked Mr. Golden if there had been any written comments on the application and he stated that there had been none, either by written letter or email. Acting Chairperson Curran asked the other Zoning Board members if there were any questions or comments on the application and there were none. Acting Chairperson Curran 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. Attorney Gilchrist discussed coordination with the Planning Board concerning the site plan amendment and SEQRA review, and that he would discuss the coordination with the Planning Board at its next meeting on May 19. Member Mainello made a motion to table the matter until the June 20, 2022 meeting, which was seconded by Acting Chairperson Curran. This matter is placed on the June 20, 2022 agenda for further discussion.

The fourth item of business on the agenda was two area variances submitted by Changing Visions of Energy (CVE North America, Inc.) for property located off Belair Lane. Carson Weinand, Senior Project Developer for Changing Visions of Energy, was present to review the application. Mr. Weinand briefly reviewed the project, stated that a joint public hearing had been held with the Planning Board on April 7, 2022, that written responses to all comments had been submitted to the Planning Board and Zoning Board, and the SEQRA review had been completed. Mr. Weinand also clarified that the two area variances are for an internal lot line setback and for above-ground utility poles. Acting Chairperson Curran asked if the utility poles would be visible. Mr. Weinand confirmed that the utility poles, which are to be extended off Belair Lane, would be visible, but would only impact the property owner from whom CVE is leasing the site, that there would be 5 poles with elevated equipment, that the poles will be approximately 45 feet tall each, and that the recommended installation techniques from National Grid will be used. Acting

Chairperson Curran stated that another solar project brought before the Zoning Board only had 2 utility poles on the site with a pad mount for equipment, which was approved by National Grid, and asked if that could be applicable here. Mr. Weinand stated that the applicant consulted National Grid and that it was National Grid who is requiring 5 utility poles on the site per their guidelines, and that he was not sure why the aforementioned earlier project was different. Mr. Golden suggested that it could be due to the type of equipment being used by the applicant on the site, and that the elevation of that equipment being a safety factor. Mr. Weinand stated that visual impact would be limited due to the location of the project site at the end of Belair Lane, and reiterated that it would only affect the property owner who is leasing the land to the applicant, and that the other neighbors will not see the utility poles. Member Lockrow asked how far apart the utility poles would be. Mr. Weinand stated that that the poles would only be about 20-30 feet apart, which is similar to the distance between telephone poles along public roads, so they would take up 100-150 feet in total. Attorney Gilchrist then handed out draft conditions that were to be in front of the Planning Board at its next meeting on May 19 to the Zoning Board members, Mr. Golden, and Mr. Weinand, then read through the draft conditions. Attorney Gilchrist then reiterated that SEQRA review had been completed for the project. Attorney Gilchrist then asked the Zoning Board members if they would like to consider the two variances together or separately. Member Mainello stated that it would be better to consider the variances together, as that is what the Zoning Board had done in the past, and Acting Chairperson Curran and Member Lockrow agreed. The Zoning Board then reviewed the elements for consideration on the area variance applications. As to whether the requested variances would result in an undesirable change in the character of the neighborhood or create a detriment to nearby properties, Acting Chairperson Curran stated that there would be no undesirable change as the Town Board approved the zone change and it applies

to both variances. As to whether a feasible alternative is available, Acting Chairperson Curran stated that the number of utility poles on the site is due to requirements of National Grid and that no feasible alternative is therefore available. Acting Chairperson Curran also stated that the internal lot line setback variance will improve the exterior buffers. As to whether the requested variance is substantial, Acting Chairperson Curran stated that it is substantial, but that it is driven by the National Grid requirement. As to whether the variance would create an adverse environmental or physical impact, Acting Chairperson Curran stated that it would not, which the Town Board determined through its Negative Declaration under SEQRA. As to whether the difficulty giving rise to the need for the variance is self-created, Acting Chairperson Curran stated that the utility poles were due to the National Grid requirement, and that internal lot line setback was due to the fact that the applicant is leasing several adjacent parcels. Acting Chairperson Curran asked if there were any further questions or comments on the application from the other Zoning Board members, and there was not. Acting Chairperson Curran made a motion to approve the area variances subject to Planning Board approval of the special use permit and site plan application, which was seconded by Member Mainello. The motion was unanimously approved and the area variances were granted subject to Planning Board approval of the special use permit and site plan application.

The Zoning Board then discussed one item of new business: an application for three area variances submitted by Brian Lee for property located at 662 Pinewoods Avenue. Brian Lee was present to review the application. Mr. Lee stated that he currently has a garage on his property that is falling apart and is looking to knock it down and replace it with a new 32-foot x 32-foot garage. Mr. Lee reviewed his lot layout, septic system location, location of the current garage on his property, and the proposed location of the replacement garage. Mr. Lee stated that the three

variances are for total square footage of an accessory structure, front setback, and rear setback, and that his property is a small lot and corner lot, giving rise for the need for two setback variances. There were no questions from the Zoning Board. Acting Chairperson Curran stated that the application was complete for purposes of holding a public hearing. A public hearing on this application is scheduled for June 20, 2022 at 6:15pm.

The Zoning Board then returned to its scheduled agenda. The fifth item of business on the agenda was an application for two use variances submitted by Atlas Renewables, LLC for property on Shippey Lane and Brunswick Road. Lluís Torrent, of Atlas Renewables, and David Brennan, Esq., were present to review the application. Ron Laberge, of Laberge Group, the Review Engineer to the Zoning Board on this project, was also present. Mr. Brennan stated that there had been questions at multiple previous Zoning Board meetings as to the need for solar facilities and whether or not this project met that need and qualified as public utility under the Rosenberg Standard. Mr. Brennan stated that the Town of Binghamton had granted a use variance to the applicant recently while applying the Rosenberg Standard and that the applicant had used the same analysis before the Town of Binghamton that it is being used here. Attorney Gilchrist discussed the “public utility” definition, asking what constitutes a “public utility” under general New York law for the application of the Rosenberg Standard for a use variance, how do the definitions of “commercial solar collector system” and “public utility” under the Brunswick Zoning Law affect that analysis, and how does the applicant factually meet the public utility definition. Attorney Gilchrist asked that if the public utility definition requires only that the facility produce power, then could that include a nuclear power plant or waste-to-energy plant? Attorney Gilchrist asked if the definition meant any energy producer of any kind anywhere, as long as it is too expensive to build elsewhere? Attorney Gilchrist also asked if the application of the Rosenberg Standard in this case considered

not only the proposed location's electricity interconnection, but also if it was the only economically-viable interconnection. Mr. Torrent stated that the applicant had submitted additional documents on May 6 in response to the Laberge comment letter dated April 15. Mr. Torrent then reviewed a map of the Town of Brunswick and pointed out all available substations and their transmission line capacities. Mr. Torrent stated that the applicant could add capacity to the substations, but that it would cost approximately \$1 million per mile to do so, meaning that it would not be economically feasible for the applicant to add capacity to the substations. Mr. Torrent then reviewed the map again and discussed the feeder line and substation capacities. Mr. Laberge asked if all substations that had been analyzed were located in the Town of Brunswick, and asked about substations in neighboring municipalities. Mr. Torrent stated that the applicant would run NYSERDA business analysis on available parcels and substation locations to show that properly-zoned parcels will not be economically feasible for the project. Mr. Torrent stated that the applicant contacted owners of other parcels, including the Duncan farm parcel, Engel farm parcel, and the Troy Country Club parcel, but none were available. Mr. Torrent stated that other parcels zoned properly for the project do not work from an economic standpoint under the NYSERDA model. Mr. Torrent also stated that the need for the project comes from a New York State mandate that the State produce 70% of its energy through renewable sources by 2030, and that it is a need from a State policy standpoint, not a local one. Member Mainello asked if the substation in Sycaway had adequate capacity to serve residents in that area. Mr. Brennan stated that the answer is not straightforward, that this is a new era in solar power generation due to NYS mandates and the distributive system that NYS uses for solar, and that if every community took the position that it has power locally and therefore solar is not needed, then no solar projects would ever be approved. Mr. Brennan also stated that the Rosenberg decision dealt with a gap in cell phone coverage, but

that later cell tower cases have used Rosenberg to address redundancy and capacity coverage relief, meaning that it can apply even if the need is not local. Member Mainello asked if NYS was allocating any funding toward alternative energy buildouts, which could be used to upgrade a substation. Mr. Brennan stated that NYS is not allocating any funds and that the burden for the NYS mandate of 70% energy via renewable sources falls on local municipalities, not NYS. Mr. Brennan stated that the issue boils down to a policy argument about alternative energy, that all solar companies are looking for available existing substations, that the legal issue is the land use overlay and planning function to determine if zoning works from an interconnection issue, and that if it cannot, then solar cannot be built out. Mr. Brennan stated that for this application, the project is properly sited for the interconnection and buffered, so the variance should be granted. Mr. Brennan also stated that he would make a submittal on the public utility variance applicability and the Town of Binghamton decision to the Zoning Board. Attorney Gilchrist stated that he would like to see the submittal and Binghamton decision as well, and Mr. Brennan stated that he would send both to Attorney Gilchrist as well. Mr. Torrent stated that the applicant is currently working on visual simulations for additionally requested sites. This matter is placed on the June 20, 2022 agenda for further discussion.

The index for the May 16, 2022 regular meeting is as follows:

1. Schifano – area variance (approved).
2. Leon – use variance (June 20, 2022).
3. Changing Visions of Energy – area variances (approved subject to conditions).
4. Lee – area variances (June 20, 2022).
5. Atlas Renewables – use variances (June 20, 2022).

The proposed agenda for the May 19, 2022 special meeting is currently as follows:

1. Wagner – area variance (public hearing to commence at 7:00pm).

The proposed agenda for the June 20, 2022 regular meeting is currently as follows:

1. Hickey – area variance (public hearing to commence at 6:00pm).
2. Lee – area variances (public hearing to commence at 6:15pm).
3. Leon – use variance.
4. Atlas Renewables – use variances.