

## **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 JULY 18, 2022**

PRESENT were ANN CLEMENTE, CHAIRPERSON, E. JOHN SCHMIDT, PATRICIA CURRAN, JOHN MAINELLO III, and DARYL LOCKROW.

ALSO PRESENT was CHARLES GOLDEN, Brunswick Building Department.

Chairperson Clemente reviewed the agenda for the meeting, as posted on the Town sign board. The draft minutes of the June 20, 2022 regular meeting were reviewed. There were no edits or corrections to be made. Chairperson Clemente made a motion to approve the minutes of the June 20, 2022 regular meeting without correction, which motion was seconded by Member Curran. The motion was unanimously approved, and the minutes of the June 20, 2022 regular meeting were approved.

The draft minutes of the July 7, 2022 joint special meeting with the Planning Board were reviewed. There were no edits or corrections to be made. Chairperson Clemente made a motion to approve the minutes of the July 7, 2022 joint special meeting without correction, which motion was seconded by Member Schmidt. The motion was unanimously approved, and the minutes of the July 7, 2022 joint special meeting were approved.

The first item of business on the agenda was an application for two use variances submitted by Brunswick Solar, LLC and Sycaway Solar, LLC, subsidiaries of Atlas Renewables, LLC for property located on Shippey Lane and Brunswick Road. Lluís Torrent, of Atlas Renewables, and David Brennan, Esq. were present to review the application. Mr. Torrent reviewed a new visual

simulation of both project sites, showing a complete perspective of the area, stating that there would be no visual impacts to any third-party properties from the project. Mr. Torrent also stated that he would submit additional visual simulations if the Zoning Board had any additional vantage points they wanted analyzed. Chairperson Clemente asked what the orientation of the solar panels would be. Mr. Torrent stated that both project sites will use fixed structures and that the simulations shown were moving from the east to west direction. Chairperson Clemente asked if the solar panels would be anti-glare, and Mr. Torrent confirmed that they would be. Chairperson Clemente asked what neighborhood near the project sites would have the most visual impact due to all relevant factors, including topography and elevation. Mr. Torrent reviewed on the site map where the closest properties to the site were, and stated that he had met with the neighbor living closest to the Brunswick Solar site and the neighbor has no objection to the project. Chairperson Clemente asked where the apartments on McChesney Avenue Extension were in relation to the project sites. Mr. Torrent pointed out the apartments on the site map and stated that he would produce visual assessments from McChesney Avenue Extension. Member Curran asked if the houses on McChesney Avenue Extension would have any visual impact from the project sites. Mr. Torrent stated that the sites would not be visible from those houses due to trees providing screening. Member Curran asked if there would be no visual impact on the houses even in the winter, when there are no leaves on trees. Mr. Torrent stated that during the winter, those houses may see some equipment at the edge of the site, but not the solar panels, and he would provide a visual simulation to show that. Chairperson Clemente noted that the Shippey Lane site was forested and asked if the Brunswick Road site was as well. Mr. Torrent confirmed that the Brunswick Road site was also forested. Chairperson Clemente asked what the acreage of both sites was. Mr. Torrent stated that the Brunswick Solar project site is approximately 24 acres and will use approximately 14 acres for

the solar project, and that the Sycaway Solar project site is approximately 43 acres and will use approximately 21 acres for the solar project. Member Curran asked how panels each site would have. Mr. Torrent stated that he did not have an exact number as the efficiency of solar modules is always increasing, but that the Brunswick Solar project is currently anticipated to use approximately 8,500 panels and the Sycaway Solar project is currently anticipated to use approximately 11,000 panels. Member Mainello asked about the elevations of the homes in Brunswick Hills and Heather Ridge Road off of Brunswick Road. Mr. Torrent stated that he did not know, but that he could provide that information, and generally discussed the elevations of the areas surrounding the project sites. Member Mainello stated that he definitely wanted to see information on whether or not both project sites could be seen from Brunswick Hills and Heather Ridge Road. Mr. Golden noted that according to the visual simulations, there would not be enough tree clearing and that some of the panels would be shaded. Mr. Torrent agreed, stating that some panels being shaded could be an impact to solar energy production. Chairperson Clemente asked where the utility poles would be located on the Sycaway Solar site. Mr. Torrent identified where the poles would be on the site map and discussed the locations of the interconnections with National Grid. Chairperson Clemente also asked if there would be any utility poles on the Brunswick Solar site, and Mr. Torrent stated that there would not. Member Curran asked that if it was guaranteed that there would be an interconnection with National Grid, and if National Grid was reserving a spot in their queue for the two projects. Mr. Torrent stated that this was answered in the letter submitted to the Zoning Board on May 6, and reviewed that the interconnection with National Grid is secured as the applicant has paid the full fee, over one million dollars total, for a position in National Grid's queue for the two projects. Member Mainello noted that there was a large fire a National Grid substation in East Greenbush the previous weekend, causing power to

go out across the region, and asked what would happen to the solar farm interconnection if that were to happen. Mr. Torrent stated that such a fire would likely qualify as force majeure, and that National Grid would not be required to buy power while their equipment was down. Member Mainello asked if the power generated by the solar panels could be transferred to another National Grid substation if a fire or emergency occurred and knocked out the substation. Mr. Torrent stated that the power would not be transferred, as once a solar project is connected to a substation, it can only send power to that specific substation. Mr. Torrent asked if there were any other locations that the Zoning Board wanted to see visual impact simulations of, stating that McChesney Avenue Extension, Brunswick Hills, and Heather Ridge Road had already been requested. Member Mainello clarified that he wanted to see visual impacts in all different seasons, to show leaf-on and leaf-off impacts, and that the main issue would be elevation and distance to the solar fields. Chairperson Clemente asked that the new visual impact simulations be ready for the Zoning Board's August meeting. Attorney Gilchrist stated that he wanted more time to review the public utility use variance submission from Mr. Brennan, and that it would also be discussed at the Zoning Board's August meeting. Mr. Brennan stated that the applicant would be discussing moving forward with the project and scheduling a public hearing in the coming months at the Zoning Board's August meeting. Mr. Brennan also stated that the applicant wanted input on the impact to the community, and that if the impact to the community is low, then the utility use variance standard would be lower. Member Curran noted that the Zoning Board members attended a joint public hearing with the Planning Board on July 7 on a separate solar project submitted by Atlas Renewables, that members of the public had expressed disappointment at how brief the applicant's presentation was and how small and insufficient the site plan maps were, and asked that the applicant be much more thorough at the public hearing for these two projects. Mr. Brennan noted

that he was not at the July 7 public hearing, as he is not involved with that project, but he would make sure the public hearing for these projects was thorough. This matter is placed on the August 15, 2022 agenda for further discussion.

The second item of business on the agenda was a use variance application submitted by David Leon for property located at 660 Hoosick Road. Walter Lippmann, Project Manager with M.J. Engineering and Land Surveying, P.C., was present to review the application. Mr. Lippmann stated that the Zoning Board and Planning Board had held a joint public hearing on the applications before both Boards on June 16, that the applicant had responded to all public comments in writing, that the applicant had reviewed the written responses to public comment at the Planning Board's July 7 meeting, that the Planning Board had made a Negative Declaration on the project under SEQRA at the July 7 meeting, and that the applicant is now back before the Zoning Board to discuss the use variance. Chairperson Clemente stated that the standards for granting a use variance are more difficult to achieve than for an area variance, and that the Zoning Board sees far fewer use variance applications than area variance applications. Chairperson Clemente reminded the Zoning Board members of the use variance standard, as well as the use variance application submitted by Peter and Bonny Lupe for property on NYS Route 2, and the significant analysis of the economic factors that the Zoning Board undertook on the Lupe application over several meetings in early 2021. Attorney Gilchrist then discussed the distinction regarding the Leon application in that the Zoning Board had already issued a use variance for the adjacent parking area, and that the applicant had submitted economic data for the prior use variance application at that time. Attorney Gilchrist also stated that the Zoning Board had the option of relying on the existing record for this project, which does include economic data for the adjacent parking area in the same R-9 residential zoning district, or requesting further information from the applicant.

Member Curran stated that the Zoning Board had enough information to proceed, and that additional information would be redundant as it would be the same information the applicant had already submitted for the prior use variance. The other Zoning Board members agreed. The Zoning Board then reviewed the four standards of unnecessary hardship necessary to grant a use variance. 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 that parcel is 0.1-acres in an R-9 residential zone, and is not big enough to do anything else on under the Brunswick Zoning Law. The remaining Zoning Board members concurred, noting that the project record contains the necessary economic proof that a reasonable return cannot be achieved for any allowed uses in the R-9 zoning district for this parcel. 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. Attorney Gilchrist stated that the smaller size of the parcel was a relevant factor. The Zoning Board members agreed, noting that the parcel was unique due to its size. The third standard is that the requested variance, if granted, will not alter the essential character of the neighborhood. Member Schmidt stated that the immediate surrounding area is already entirely commercial, causing no change in the character of the area. The fourth standard is whether the alleged hardship has been self-created. Member Mainello stated that it was self-created, but that the current request is very limited. Chairperson Clemente then asked if there was a vegetation buffer on the site. Mr. Lippmann confirmed that there was, and reviewed where the buffer was on the site map and described it in relation to the proposed parking area. Mr. Lippmann also stated that a stormwater basin had been moved since the initial application was approved, and showed on the site map where the new location for the basin was. Member Mainello asked if there would be signage for vehicle and pedestrian traffic in the parking area. Mr.

Lippmann confirmed that there would be and pointed it out on the site map. Mr. Golden noted that there would also be traffic arrows painted on the pavement in the parking area. Chairperson Clemente asked if there should be any conditions on the application. Attorney Gilchrist stated that there were three conditions for the Zoning Board to consider: maintaining the existing vegetation as shown on the site map; otherwise remaining in compliance with the landscaping plan; and continued compliance with all prior conditions of the previous use variance, with the exception of the relocation of the stormwater basin. Member Curran made a motion to grant the use variance subject to the stated conditions, which was seconded by Member Schmidt. The motion was unanimously approved and the use variance was granted subject to the stated conditions.

The Zoning Board then discussed two items of new business. The first item of new business was an area variance application submitted by Edward Frazee for property located at 554 Brunswick Road. Edward Frazee was present to review the application. Mr. Frazee stated that he was planning to build a 16-foot x 20-foot shed next to an existing garage, and that he was seeking a front yard setback variance as 25 feet of setback is required and he is requesting 12 feet. Mr. Frazee noted that there was an error on the map, as it stated the proposed front yard setback is 1.5 feet when he is requesting 12 feet of setback. Mr. Frazee also confirmed that reason for the variance is self-created, as he would have to put in a new driveway if he were to put it anywhere else on his property. Member Mainello asked if the existing garage would stay. Mr. Frazee confirmed that the garage was staying and that he was building the shed next to it. Chairperson Clemente stated that the application was complete for purposes of holding a public hearing. A public hearing on this application is scheduled for August 15, 2022 at 6:00pm.

The second item of new business was an area variance application submitted by Kerri Montgomery for property located at 575 Pinewoods Avenue. Brian Montgomery was present to

review the application. Mr. Montgomery stated that the applicant was planning to build an accessory structure next to the house on the property, and that due to the orientation of the house, a section of the accessory structure will be located in front of the primary structure, which is why an area variance is required. Member Curran asked what the height of the accessory structure would be. Mr. Montgomery stated that the height of the walls would be 10 feet and the peak of the building would be between 12-15 feet. Chairperson Clemente stated that the application was complete for purposes of holding a public hearing. A public hearing on this application is scheduled for August 15, 2022 at 6:15pm.

One item of old business was discussed. Mr. Golden briefly discussed the status of the construction of the Hannaford supermarket on Lord Avenue. Mr. Golden, Attorney Gilchrist, and the Zoning Board members then discussed how the project's landscaping plan and buffering for the neighbors would be implemented, and the tree and/or fence option for buffering. The Zoning Board members agreed that Mr. Golden should contact the neighbors by mail and identify the choices for buffering, listing the specific tree and type of fence being offered.

The index for the July 18, 2022 regular meeting is as follows:

1. Atlas Renewables (Brunswick & Sycaway Solar) – use variances (August 15, 2022).
2. Leon – use variance (approved with conditions).
3. Frazee – area variance (August 15, 2022).
4. Montgomery – area variance (August 15, 2022).

The proposed agenda for the August 15, 2022 regular meeting is currently as follows:

1. Frazee – area variance (public hearing to commence at 6:00pm).
2. Montgomery – area variance (public hearing to commence at 6:15pm).
3. Atlas Renewables (Brunswick & Sycaway Solar) – use variances.