

## **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 AUGUST 15, 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 and Town website. The draft minutes of the July 18, 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 July 18, 2022 regular meeting without correction, which motion was seconded by Member Mainello. The motion was unanimously approved, and the minutes of the July 18, 2022 regular meeting were approved.

The first item of business on the agenda was an area variance application submitted by Edward Frazee for property located at 554 Brunswick Road. Edward Frazee was present to review the application. 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. Chairperson Clemente asked Mr. Frazee if there had been any changes to the application since the last Zoning Board meeting. Mr. Frazee stated that there had been no changes to the application. Chairperson Clemente noted for the record that Parsonage Way is a non-deeded roadway, that Mr. Frazee's property line goes to the edge of that roadway. Chairperson

Clemente also stated that Mr. Frazee is proposing 12 feet of setback where 25 feet of setback is required under the Brunswick Zoning Law. Chairperson Clemente opened the public hearing on the application. There were no public comments on the application. Chairperson Clemente 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. Chairperson Clemente asked the other Zoning Board members if there were any questions or comments on the application and there were none. 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 the project is a Type II action under SEQRA, which does not require any further SEQRA review. 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, Chairperson Clemente stated that it would not as many neighboring properties have sheds and Mr. Frazee building a shed on his property would be consistent with the character of the neighborhood. As to whether a feasible alternative is available, Member Curran stated that the proposed location of the shed is the only feasible location due to the layout of the lot and the location of existing structures on the lot. As to whether the requested variance is substantial, Chairperson Clemente stated that it is not due to the unique layout of the lot, and the fact that it has two front setbacks. As to whether the variance would create an adverse environmental or physical impact, Member Mainello stated that it would have no environmental impact and minimal visual impact. As to whether the difficulty giving rise to the need for the variance is self-created, Chairperson Clemente stated that the applicant is the one who wants to build the shed, but that it is only partially self-created due to the unique nature of the lot, and that it has two front setbacks. Chairperson Clemente asked the Zoning

Board members if there were any further questions, and there were not. Chairperson Clemente also noted 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. Member Curran made a motion to grant the area variance, which was seconded by Member Schmidt. 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 Kerri Montgomery for property located at 575 Pinewoods Avenue. Kerri Montgomery was present to review the application. 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. Chairperson Clemente asked Ms. Montgomery if there had been any changes to the application since the last Zoning Board meeting. Ms. Montgomery stated that there had been no changes to the application. Chairperson Clemente opened the public hearing on the application. There were no public comments on the application. Chairperson Clemente 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. Chairperson Clemente asked the other Zoning Board members if there were any questions or comments on the application and there were none. Chairperson Clemente made a motion to close the public hearing, which was seconded by Member Lockrow. The motion was unanimously approved, and the public hearing was closed. Chairperson Clemente stated that the project is a Type II action under SEQRA, which does not require any further SEQRA review. Chairperson Clemente 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. Chairperson Clemente also stated for the record that the height of the proposed accessory structure was 14 feet. 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, Chairperson Clemente stated that it would not, as many lots on Pinewoods Avenue have sheds. As to whether a feasible alternative is available, Member Curran stated that there is not due to the way the house is situated on the lot, as well as there being a septic system behind the house. Chairperson Clemente agreed, and added that the location of the driveway on the lot made the proposed location the only feasible location for the accessory structure. As to whether the requested variance is substantial, Chairperson Clemente stated that it was not as the structure would have significant setback from Pinewoods Avenue and neighboring properties. As to whether the variance would create an adverse environmental or physical impact, Member Mainello stated that it would not as the structure would not be very visible. As to whether the difficulty giving rise to the need for the variance is self-created, Member Lockrow stated that it is as the applicant is one who wants to build the structure, but that it is only partially self-created due to the shape of the lot, location of the house on the lot, and that the proposed location is the only feasible location for the accessory structure. Chairperson Clemente agreed, noting that the action being self-created was relevant, but not determinative. Chairperson Clemente asked the Zoning Board members if there were any further questions, and there were not. 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 third 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 and John Watson, both of Atlas Renewables, and David Brennan, Esq. were present to review the application. Chairperson Clemente stated that the Zoning Board had received new visual information from the applicant that had been requested at the July 18 meeting. Attorney Gilchrist noted for the record that the Zoning Board had held a private session immediately before the Zoning Board meeting to discuss the legal issues associated with the review standard for a use variance for a solar project, which continues to be under review. Attorney Gilchrist confirmed that there is currently no New York case law concerning the applicable use variance standard for solar facilities, and that the Zoning Board would continue to review and address the review the standard at the Board's September meeting. Mr. Brennan concurred that there was currently no New York case law on the applicable use variance standard for solar facilities, then asked when a public hearing on the application could be scheduled. Attorney Gilchrist stated that it was premature to schedule a public hearing as the application and record must be complete before a public hearing can be scheduled, and the applicable legal review standard must be determined in order to then determine if the record is complete, and accordingly a public hearing should not be scheduled at this point. Mr. Brennan stated that he understood and would be prepared to discuss the review standard at the Zoning Board's September meeting. Mr. Torrent then reviewed the new visual assessments presented to the Zoning Board that had been requested at the July 18 meeting, showing visual assessments of the two solar projects from the Sugar Hill Apartments, Newbury Drive, McChesney Avenue

Extension, Brunswick Road, Heather Ridge, and East Road. Mr. Torrent reviewed how the new simulations showed a surface elevation viewpoint of the requested sites, as well as from a viewpoint from the height of trees located in proximity of each site. Mr. Torrent also reviewed leaf-on and leaf-off conditions for the sites. Member Mainello stated that it was difficult to see where the solar fields were on the submittals received by the Zoning Board, noting that even though the Zoning Board members understood where the solar fields were based on the applicant's application materials and visual simulations, members of the public might not be able to understand them. Member Lockrow asked how many trees would be removed for both project sites, and Mr. Torrent reviewed the amount of trees, stating that more trees would be taken down for the Sycaway Solar project. Member Lockrow noted that the entire area of the Sycaway Solar project site was wooded, that many trees would need to be cut down for the project, that the loss of so many trees would affect the visual impact on surrounding properties, and that surrounding properties at higher elevations would be more likely to see the solar panels. Mr. Torrent responded by highlighting the height of the trees remaining after construction and the height of the solar panels. Member Lockrow still questioned the visual impact post-construction of the Sycaway Solar site. The Zoning Board members discussed the visual impacts based on relevant elevations and the heights of the trees surrounding both sites. Mr. Torrent stated that he could produce cross-sections of both sites from various viewpoints. Member Schmidt noted that the solar panels were not in the visual simulations showed to the Zoning Board, and asked if that meant that the solar panels would not be seen from any of the viewpoints shown whatsoever. Mr. Torrent stated that the solar panels would not be seen at all from any of the viewpoints shown. Member Mainello noted that the simulations submitted to the Zoning Board were at different heights, with some being at 60 feet and others at 400 feet, and that it was a bit confusing. Member Mainello reiterated Member

Schmidt's question, asking if according to the applicant, the solar panels would not be visible from any of the viewpoints reviewed, including at ground level. Mr. Torrent confirmed that the solar panels would not be visible from any of the viewpoints reviewed. Chairperson Clemente asked where the Poestenkill Creek was in relation to the project sites. Mr. Watson pointed out the Poestenkill Creek in relation to the sites on the site map and stated that the creek would be about 200 feet from solar panels at the Sycaway Solar site and about 225 feet from the solar panels at the Brunswick Solar site. Mr. Torrent stated that there would be no grading on either site and that both projects would be using existing topography. Chairperson Clemente asked the other Zoning Board members if they would be interested in a site visit, and all members concurred that a site visit would be helpful. Chairperson Clemente asked if a site visit would be considered a special meeting. Mr. Brennan stated that the New York Open Meetings Law allows the Zoning Board to hold a site visit meeting as long as no deliberation or action is taken. Attorney Gilchrist agreed, stating that he would review applicable Open Meetings Law standards with Mr. Brennan before the site visit. Attorney Gilchrist also stated that there was no need to publish a special meeting notice, and that the date would be identified in the minutes. The Zoning Board and Mr. Torrent discussed access to the project sites, stating that the Brunswick Solar site would be accessed from the public road, and that the Sycaway Solar site would require private access and that Mr. Torrent would need to coordinate with the landowner for access to that site. The Zoning Board agreed to hold the site visit on August 29, 2022 at 4:00pm, and that the Zoning Board members would meet at Town Hall and drive to the sites from there. This matter is placed on the September 19, 2022 agenda for further discussion.

Mr. Torrent then asked if the Zoning Board was prepared to review the responses to public comments made at the July 7 joint public hearing concerning the North Troy Solar project

submitted by Atlas Renewables on property located off Oakwood Avenue and Farrell Road. Chairperson Clemente stated that the Zoning Board had received the responses immediately before the meeting, that the Zoning Board members should have time to review them before discussing the responses with the applicant, and that the Zoning Board would be ready to discuss the responses at its next meeting. This matter is placed on the September 19, 2022 agenda for further discussion.

The Zoning Board then discussed two items of new business. The first item of new business was an area variance application submitted by Paulsen Development of Albany, LLC for property located at 112 McChesney Avenue. Nick Tomasi, Project Manager at BBL Construction Services, and Greg Beswick, P.E., of Creighton Manning Engineering, LLP, were present for the applicant. Mr. Tomasi stated that the applicant is proposing to build a 24,000 square foot, two-story medical office building and is seeking an area variance for the height of the building, which will have a parapet on the roof and be 36 feet at its highest point, and that a maximum of 30 feet is allowed under the Brunswick Zoning Law. Mr. Tomasi stated that the maximum height was proposed to be 36 feet for architectural purposes and also to help shield rooftop equipment. Mr. Tomasi then reviewed the elevations of the building and surrounding area. Member Mainello asked if there would be any view of the rooftop equipment behind the parapet. Mr. Tomasi stated that there would be no view of the rooftop equipment from McChesney Avenue. The Zoning Board then generally discussed the layout of the project. Chairperson Clemente asked what was directly in front of the building. Mr. Tomasi stated that there would be parking for the building and a road to adjacent apartments. Member Mainello stated that there were likely no firefighting issues regarding the building's height as long as there was a road that went completely around the building and was available to firefighting vehicles and equipment. Member Mainello also stated that the application would still require formal review by the fire department. Member Mainello



asked if there would be a shared entrance to the site and the adjacent apartments or other buildings. Mr. Tomasi stated that the building would have its own entrance off McChesney Avenue. Mr. Golden asked where the banked parking that was proposed for the building would be located. Mr. Beswick pointed out where the banked parking would be on the site map. Member Mainello asked if the entire building would be medical offices. Mr. Tomasi stated that patients would be seen and medical testing done on the first floor, and that the entire second floor would be medical offices. Member Schmidt asked where specifically on McChesney Avenue the building would be as it was not clear on the site map. Mr. Tomasi pointed out where the building would be on the site map. Member Mainello agreed that it was not entirely clear on the site map where the building would be and that the site map should be updated to include a general area locator. Mr. Tomasi stated that the map would be updated with a site locator. Member Curran if the equipment on the roof of the building would be visible to the adjacent apartments. Mr. Tomasi stated that the rooftop equipment would not be visible due to the trees between the medical building and the apartments. Member Curran asked if any trees on the site would be removed. Mr. Tomasi stated that no trees would be removed as they provide a good visual buffer for the surrounding properties. Attorney Gilchrist stated that the applicant also had a site plan application before the Planning Board, that the Planning Board was seeking to serve as lead agency under SEQRA, and that notice of intent to establish lead agency had been sent to all involved agencies, which included the Zoning Board. The Zoning Board members stated that there was no objection to the Planning Board serving as lead agency under SEQRA. Member Mainello asked if banked parking would also require approval from the Zoning Board. Attorney Gilchrist stated that it did not, as banked parking is allowable under the Brunswick Zoning Law. Mr. Golden also stated that the light poles proposed for the site were below the maximum allowable height for light poles. Chairperson Clemente stated

that the application was complete for purposes of holding a public hearing. A public hearing on this application is scheduled for September 19, 2022 at 6:00pm.

The second item of new business was an area variance application submitted by Van Phung for property located at 42 Humiston Avenue. Van Phung and Denise Breen were present to review the application. Ms. Breen stated that there is an existing garage on the property and that they are looking to build a lean-to structure off the back of the garage for boat storage and build a deck off the back of the garage. Chairperson Clemente asked what specific area variance was being requested. Mr. Golden noted that the applicant had been before the Zoning Board previously for two area variances, for the size and height of the garage, with the garage having a 1,920 square foot building footprint with a 2,940 square foot interior area including a limited second story loft area, but that a full second story is currently being built. Mr. Golden noted that 1,500 square feet is allowed for an accessory structure, that 2,940 square feet was allowed by the prior area variance, and that the applicant is proposing an additional 900 square feet for the second story and 880 square feet for the deck and lean-to roof extension. Mr. Golden stated that the issue is that what was previously approved by the Zoning Board for the loft is not what is currently being built, and that if what is actually being built exceeds what is allowed under the prior variance granted by the Zoning Board, then there would be a noncompliance issue. Attorney Gilchrist stated that the Brunswick Building Department must review the prior Zoning Board record to determine if there is in fact a noncompliance issue and that if what is currently being built by the applicant exceeds what was approved by the prior variance, then the Building Department will need to address the noncompliance issue through enforcement before any further variances can be reviewed by the Zoning Board. Attorney Gilchrist stated that the record is not complete until the Building Department reviews the noncompliance issue. Chairperson Clemente stated that due to the

noncompliance issue, the current application is incomplete and the Zoning Board cannot move forward. Mr. Phung briefly reviewed the construction of the second floor and why he is building something different from what was approved. Attorney Gilchrist stated that Mr. Phung's explanation is directed to the Building Department as part of its compliance review. This matter is placed on the September 19, 2022 agenda for further discussion.

The index for the August 15, 2022 regular meeting is as follows:

1. Frazee – area variance (approved).
2. Montgomery – area variance (approved).
3. Atlas Renewables (Brunswick & Sycaway Solar) – use variances (September 19, 2022).
4. Atlas Renewables (North Troy Solar) – area variance (September 19, 2022).
5. Paulsen Development – area variance (September 19, 2022).
6. Phung – area variance (September 19, 2022).

The proposed agenda for the September 19, 2022 regular meeting is currently as follows:

1. Paulsen Development – area variance (public hearing to commence at 6:00pm).
2. Atlas Renewables (Brunswick & Sycaway Solar) – use variances.
3. Atlas Renewables (North Troy Solar) – area variance.
4. Phung – area variance.