

## **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 SEPTEMBER 19, 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 August 15, 2022 regular meeting were reviewed. Chairperson Clemente notes two corrections: on page 1, second line from the bottom of the page, “Parsonage Way” should be changed to “Parsonage Lane” and on page 9, line 11, “asked” should be added between “Curran” and “if”. Chairperson Clemente made a motion to approve the minutes of the August 15, 2022 regular meeting subject to the noted corrections, which motion was seconded by Member Curran. The motion was unanimously approved, and the minutes of the August 15, 2022 regular meeting were approved subject to the noted corrections.

The first item of business on the agenda was an area variance application submitted by Paulsen Development of Albany, LLC for property located at 112 McChesney Avenue. Eric Green, Project Manager at BBL Construction Services, 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. Chairperson Clemente asked Mr. Green if there had been any changes to the application since the

last Zoning Board meeting. Mr. Green stated that there had been no changes to the application. Chairperson Clemente opened the public hearing on the application. Vincent Holmes, of 105 McChesney Avenue, stated that he lived directly across from the project site and that there is already a significant traffic issue, which must be addressed before any commercial projects are approved on McChesney Avenue. Mr. Holmes discussed multiple traffic accident and road rage incidents that had occurred on or near his property, and stated that there would only be more if the project was approved. Mr. Holmes stated that the Town should establish an alternate route for traffic, that only local traffic should be allowed on McChesney Avenue, and that no more driveways should be allowed on McChesney Avenue since there are already 4 driveways between the intersection of McChesney Avenue and Hoosick Road and his property. There were no further public comments. 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 noted that a different representative for the applicant mentioned at the September 15 Planning Board meeting that a traffic study on the site had been completed and asked if that was accurate. Mr. Golden confirmed that the traffic study had been completed, that the Town had received a copy of the study earlier that day, that he had sent the study to the Planning Board members, and that he would send the study to the Zoning Board members as well. Chairperson Clemente also noted that sidewalks had been discussed extensively at the Planning Board's September 15 meeting. Mr. Green confirmed that sidewalks were discussed at the September 15 meeting, but was not sure if any decisions had been made on the issue. Attorney Gilchrist also confirmed that sidewalks had been discussed extensively at the September 15 meeting, but that no decision had been made on the issue and that

it needed to be discussed further with Rensselaer County. Mr. Golden concurred. Member Curran had a question on Part 1 of the Environmental Assessment Form (EAF) submitted by the applicant, stating that on page 2, question 8b, which asks “Are public transportation services available at or near the site of the proposed action?”, was checked “No”, but noted that there are public transportation services near the site. Member Curran also asked how people walking and biking along McChesney Avenue should be considered in relation to public transportation, at least for purposes of the EAF. The Zoning Board discussed the sidewalk issue and the availability of transportation along McChesney Avenue. Member Mainello asked if the only variance the applicant is seeking from the Zoning Board is for the height of the medical building. Mr. Golden stated that was correct. Member Mainello asked if a variance was needed for the building’s parking lot, either for the size of the parking lot or for setback. Mr. Golden stated that no variance was needed for the parking lot. Chairperson Clemente asked the applicant if he could give more details on the banked parking. Mr. Green stated that the Brunswick Zoning Law requires a certain number of parking spots for a building the size of the proposed medical building, but the applicant’s experience has shown that the number of parking spaces required under the Zoning Law will not be needed. Mr. Green stated that banked parking refers to an area on the project site where parking spaces are identified that will meet the total number of spaces required under the Zoning Law that could be built if needed, and that the banked parking will remain greenspace unless the additional parking is needed. Chairperson Clemente noted that rock would be removed from the back of the site and asked how long that would take. Mr. Green stated that the rock removal would likely take two weeks, that it would be done at the start of construction, and that the material removed from the ground would stay and be used on the site. Member Lockrow asked how the removed material would be used on the site. Mr. Green stated that the material would be moved to the west side of

the site and be used as fill material. Chairperson Clemente asked for confirmation that the rock was to be ripped from the ground, not blasted. Mr. Green stated that was correct. Chairperson Clemente asked if the material being used as fill on the site required a specific amount of time to settle. Mr. Green stated that there was no required time for the fill to settle as long as the fill is properly compacted during the fill process. Chairperson Clemente asked if the applicant had signed tenants for the medical building yet. Mr. Green stated that there are three tenant spaces in the building, that the entire first floor would be an endoscopy center, that the second floor would be an orthopedic clinic and medical office space, and that the applicant is currently in discussions with an ophthalmologist for the remaining clinic space on the second floor. Chairperson Clemente stated that she was concerned with having vacant tenant spaces in a new building when existing buildings in the area have vacancies. Mr. Holmes asked to speak again, stating that there is solid shale two feet below ground-level on the project site, that he does not want to be forced to hear a very loud machine ripping shale out of the ground for two weeks. Mr. Holmes also discussed the increased traffic and noise from both the construction and operation of the medical building, and stated that the Zoning Board's decisions affect people, even if it's only one person. Member 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. Chairperson Clemente stated that the Zoning Board could take no further action as the Planning Board had not completed the SEQRA process. Attorney Gilchrist confirmed that the SEQRA process was not complete, and that the Planning Board was in the process of coordinating SEQRA lead agency on the project. Chairperson Clemente stated that the applicant must address all comments from the public hearing in writing. This matter is placed on the October 17, 2022 agenda for further discussion.

The second 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. Ronald Laberge, P.E., of Laberge Group, the technical consultant to the Zoning Board on this project, was also present. Chairperson Clemente stated that the Zoning Board members, Mr. Laberge, and the applicant had done site visits to both project sites since the last Zoning Board meeting, during which the sites were observed, and that no deliberation was held or action taken during the site visits. Mr. Torrent handed out topographical maps of sites requested by the Zoning Board members at the site visits, and reviewed them for the Zoning Board. Mr. Torrent also reviewed the proposed National Grid interconnection points for the two sites. Chairperson Clemente asked if there was a cross-section for the Brunswick Road site. Mr. Torrent stated that he would produce a cross-section for the site, then further discussed the location of the solar panels on the site and the existing trees that would screen the panels from surrounding properties. Chairperson Clemente asked where the trees that would screen the solar panels were located. Mr. Torrent stated that he could supply information about the location of screening trees. Member Mainello asked if visual simulations of the sites during leaf-off conditions were available. Mr. Torrent stated that he would supply those simulations. Member Mainello further discussed the visibility of the panels, specifically asking if the panels would be visible from the existing home at the Brunswick Road project site. Mr. Torrent stated that the panels would not be visible from that house. Member Curran asked how many utility poles would be at the Brunswick Road location. Mr. Torrent stated that 4-6 utility poles would be installed, with National Grid also installing utility poles to the location. Chairperson Clemente asked if the utility poles would be above-ground. Mr. Torrent confirmed that they would be above-

ground, and that Atlas Renewables was planning to upgrade existing utility poles at the location at its expense. Member Lockrow asked what direction the solar panels would be facing at their lowest elevation point. Mr. Torrent discussed the direction of the solar panels, the efficiency of the panels, and the time of day affecting solar power production. Member Mainello asked what the capacity was of the Brunswick Road solar project. Mr. Torrent stated that it was a 4-megawatt AC solar project. Chairperson Clemente noted that since the last Zoning Board meeting on August 15, the applicant had submitted a Greene County Supreme Court decision regarding the legal review standard for use variance applications for solar energy. Attorney Gilchrist recommended that the Zoning Board seek the advice of counsel in private session after the regular meeting to discuss the legal standard for use variance applications for solar facilities. Attorney Gilchrist also recommended that Mr. Laberge attend that private session as well. Chairperson Clemente adjourned the Sycaway Solar and Brunswick Solar use variance applications in order to seek advice of counsel in private session, and invited Mr. Laberge to attend that private session. Mr. Laberge agreed to attend the private session. Attorney Gilchrist stated that the Zoning Board could consider a special meeting before its next regular meeting to discuss and deliberate upon the use variance applications. Chairperson Clemente stated that while the Zoning Board has held special meetings in the past, but that those special meetings were held when the projects being discussed were closer to a decision being made, and that she was not inclined to hold a special meeting for these applications. The Zoning Board members concurred on not holding a special meeting. This matter is placed on the October 17, 2022 agenda for further discussion.

The third item of business on the agenda was an area variance application submitted by North Troy Solar, LLC, a subsidiary of Atlas Renewables, LLC, for property located off Oakwood Avenue and Farrell Road. Lluís Torrent and John Watson, both of Atlas Renewables, were present

to review the application. Chairperson Clemente noted that a joint public hearing was held by the Planning Board and Zoning Board on July 7, 2022 concerning the applications submitted by Atlas Renewables for the North Troy Solar project, that written responses were submitted by the applicant in a letter dated August 2, and that the Zoning Board members had received and reviewed those responses. Mr. Torrent then reviewed the responses to public comments. Chairperson Clemente asked if there were leaf-off visual assessments for a number of viewpoints near the project site. Mr. Torrent reviewed photos of the site from various viewpoints as screened by deciduous trees and evergreen trees, stated that leaf-off simulations of the project site had previously been provided, and stated that if any in-fill tree plantings are required due to screening issues, then Atlas would plant the additional trees at the Town's request. Mr. Torrent also stated that if additional tree plantings were required, then the applicant would discuss the issue with the neighbors who are able to see the project, and that berms, trees, or fencing would be possible options for screening. Mr. Torrent reviewed leaf-off conditions of the project site from various viewpoints, and at elevations varying from 150 feet in the air to ground-level. Mr. Torrent reviewed the sound impact on surrounding properties from the inverter on the site, and data on the potential impact to property values. Mr. Torrent then reviewed the project's stormwater pollution prevention plan (SWPPP) and the plan's review status in front of Planning Board Review Engineer Wayne Bonesteel. Member Mainello asked about sound impact and distances from the project site, and Mr. Torrent reviewed the sound impact data. Attorney Gilchrist then noted that procedural issues involving SEQRA had been identified since the last Planning Board meeting. Attorney Gilchrist explained that the project is actually the second solar project proposed by Atlas Renewables along Oakwood Avenue near the former incinerator site, with the first proposing solar panels on the former incinerator site itself, while the current project is adjacent to the incinerator site and also

proposes to partially cross the incinerator site. Attorney Gilchrist stated that the SEQRA lead agency coordination process had been completed for the first project, but not the second. Attorney Gilchrist stated that even though the two projects are at substantially the same site, the second project is a separate application and that a new SEQRA lead agency coordination notice needed to be sent to all involved agencies, which had been done the previous Friday, September 16. Chairperson Clemente stated she had no objection to the Planning Board serving as lead agency under SEQRA for the project, and the other Zoning Board members agreed. David Brennan, Esq., who was still present, stated that even though he was not involved with the North Troy Solar project, it was his legal position that the public utility standard applicable to the use variance applications for the Sycaway Solar and Brunswick Solar projects should also apply to the area variance for the North Troy Solar project. Mr. Brennan also opined that the North Troy Solar project would also meet the legal standards for general area variance applications. Mr. Torrent also stated that the project site would have nine above-ground utility poles, three across the former incinerator site and six to the National Grid connection point on Oakwood Avenue. Chairperson Clemente asked what the height of the poles would be. Mr. Torrent stated that they would be 35-39 feet tall. This matter is placed on the October 17, 2022 agenda for further discussion.

The fourth item of business on the agenda 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. Chairperson Clemente stated that at the last Zoning Board meeting, the application was only briefly discussed due to a noncompliance issue and asked if that issue had been addressed. Mr. Golden stated that the applicant had previously applied for two area variances to build the garage on the property, but that the total square footage for the garage did not match what the Zoning Board had previously approved. Mr. Golden stated that after doing a

subsequent site visit after the Zoning Board's last meeting, that the garage is currently 2,946 square feet, while the Zoning Board had approved plans for a 2,978.4 square foot garage. Mr. Golden stated that since the garage has less square footage than what was previously approved, the garage is currently in compliance for its square footage. Member Curran asked if the applicant was currently seeking an additional 880 square feet for the garage. Mr. Golden confirmed the applicant was looking for an additional 880 square feet of footage for a lean-to and deck. Mr. Golden stated that since the garage is currently 2,946 square feet, and the applicant is requesting an additional 880 square feet, the structure would be a total of 3,826 square feet, and accessory structures are only allowed to be 1,500 square feet under the Brunswick Zoning Code. Chairperson Clemente asked if the value chart included with the application was correct. Mr. Golden confirmed that it was. The Zoning Board members discussed the application and whether or not it was complete for the purpose of holding a public hearing. Mr. Golden stated that he had received plans for the lean-to and deck from the applicant and would provide them to the Zoning Board members. Chairperson Clemente stated that with the additional information provided by Mr. Golden, the application was complete for purposes of holding a public hearing. A public hearing on this application was scheduled for October 17, 2022 at 6:00pm.

There was no new business to discuss.

The Zoning Board members, Mr. Golden, Attorney Gilchrist, and Mr. Laberge then went into a private session.

The index for the September 19, 2022 regular meeting is as follows:

1. Paulsen Development – area variance (October 17, 2022).
2. Atlas Renewables (Brunswick & Sycaway Solar) – use variances (October 17, 2022).
3. Atlas Renewables (North Troy Solar) – area variance (October 17, 2022).
4. Phung – area variance (October 17, 2022).

The proposed agenda for the October 17, 2022 regular meeting is currently as follows:

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