

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 OCTOBER 17, 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 September 19, 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 September 19, 2022 regular meeting without correction, which motion was seconded by Member Curran. The motion was unanimously approved, and the minutes of the September 19, 2022 regular meeting were approved.

Chairperson Clemente noted that the first item of business on the agenda, a public hearing on the area variance application submitted by Van Phung for property located at 42 Humiston Avenue, had been tabled prior to the meeting. Chairperson Clemente stated that the public hearing would need to be re-noticed, and could be held either at the Zoning Board's next regular meeting on November 21, or the Zoning Board could schedule a special meeting to hold the public hearing. Attorney Gilchrist reviewed the timeframes required for noticing a public hearing and stated that a special meeting could be held on November 7 or November 14 if the Zoning Board desired to do so. The Zoning Board deliberated as to whether or not to hold a special meeting for the purpose of holding the public hearing. Member Schmidt noted that the delay in holding the public hearing

was not the applicant's fault and that he would support holding a special meeting so the applicant did not have to wait a full month. The other Zoning Board members agreed. A special meeting will be noticed for November 7, 2022. The Phung public hearing will be re-noticed and held at the Zoning Board's November 7, 2022 special meeting at 6:00pm.

The second 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. Mr. Green noted that a Negative Declaration under SEQRA had been made by the Planning Board at its last meeting on October 6, and requested that a determination be made on the area variance. Chairperson Clemente noted that a traffic study had been submitted by the applicant and asked Mr. Green to briefly review the study. Mr. Green reviewed the traffic study, which concluded that there would be no significant increase in traffic due to the medical building. Chairperson Clemente stated that banked parking had previously been brought up, noting that the applicant had stated that the banked parking area would remain greenspace unless needed for additional parking spaces, and asked if the applicant would need to return to the Planning Board and/or Zoning Board if banked parking is to be built. Attorney Gilchrist stated that no further review by the Planning Board or Zoning Board would be necessary, as the project's current site plan review allows for the applicant to construct the additional parking without further review. Chairperson Clemente asked if the sidewalk issue brought up at several Planning Board meetings had been addressed. Mr. Green stated that the applicant was only before the Zoning Board for a variance for the height of the building, and that sidewalks were not relevant to that area variance. Chairperson Clemente disagreed, stating that the size of the medical building was relevant to pedestrian access to the building, meaning that the issue of sidewalks was relevant to the Zoning Board. Mr. Green stated

that the applicant would build a sidewalk in front of the building if required by the Planning Board as a condition on the site plan application. Mr. Green also stated that while some employees working at the building may use mass transit to get there, most anticipated patients going to the medical building would not likely use public transportation, and would more likely be driven to the building and dropped off. Chairperson Clemente stated that the building could hold other non-medical tenants in the future, which is why the sidewalk issue is relevant to consider now. Chairperson Clemente also stated that the potential commercial buildout along McChesney Avenue made the sidewalk issue relevant. Chairperson Clemente stated that the public hearing on the application had been held, the applicant had responded to public comments in a written letter, and that a SEQRA determination had been made. Attorney Gilchrist stated that the Town had received a letter from the Rensselaer County Bureau of Economic Development and Planning stating that the project would not have a major impact on County plans and that local consideration shall prevail. Attorney Gilchrist also stated that the sidewalk issue, and specifically the option of setting up an escrow account to be funded by the applicant for the future construction of a sidewalk, was to be discussed at the next Planning Board meeting on October 20. Chairperson Clemente asked who would decide when to build sidewalks in the future. Attorney Gilchrist stated that the Town Board would make that decision after coordinating with Rensselaer County. Chairperson Clemente asked if there were any further questions or comments from the Zoning Board members, and there were none. 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 it would not as the applicant is proposing a well-designed and attractive building. Chairperson Clemente also noted that the area variance is for the height of the building being

proposed to be 36 feet when a maximum height of 30 feet is allowed, and that a six-foot height difference would not be out of place in the McChesney Avenue neighborhood. As to whether a feasible alternative is available, Chairperson Clemente noted that the applicant had explored other options, and that the area variance was being sought in order to hide equipment on the roof of the building, effectively mitigating the view of the rooftop equipment from surrounding properties. As to whether the requested variance is substantial, Member Mainello noted that the height of the building would only be six feet taller than the maximum allowable height, and stated that it is not substantial. As to whether the variance would create an adverse environmental or physical impact, Chairperson Clemente stated that there would be some impacts from the building, but they would not be significant or detrimental. As to whether the difficulty giving rise to the need for the variance is self-created, Member Lockrow stated that it was, but that it was done to hide the equipment on the roof of the building. Chairperson Clemente also noted that whether or not the need for the variance was self-created was relevant, but not determinative. Chairperson Clemente again asked if there were any further questions or comments from the Zoning Board members. Member Schmidt noted Chairperson Clemente's previous comment about the building potentially having a different purpose in the future, and asked if there should be a condition that if the use of the building changed, that it would trigger the construction of sidewalks outside the building if they had not already been constructed by that point. Attorney Gilchrist stated that the schedule for sidewalk installation was primarily a Town Board matter in coordination with Rensselaer County, and that such a condition would not be necessary. Chairperson Clemente stated that if the sidewalk issue could not be included as a condition, then she would like the Zoning Board to recommend to the Planning Board that a sidewalk escrow be set up as a condition on the site plan application before it, and the other Zoning Board members agreed. Chairperson Clemente asked if there should

be any conditions on the application. Attorney Gilchrist stated that one condition to consider would be action by the Planning Board on the site plan application, while the Zoning Board was also recommending the establishment of an escrow for the sidewalk issue. Member Curran made a motion to grant the area variance subject to the stated condition and recommendation, which was seconded by Member Schmidt. The motion was unanimously approved and the area variance was granted subject to the stated condition and recommendation.

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, of Atlas Renewables, and David Brennan, Esq. were present for the applicant. Mr. Torrent reviewed the history of the project and the site map. Mr. Torrent reviewed that the area variance application was for nine above-ground utility poles, stating that it was based on requirements from National Grid, and a NYS DEC recommendation on utility pole location due to the project being located in proximity to the former incinerator site, which remains a NYS DEC-listed hazardous waste site. Mr. Torrent stated that a Negative Declaration had been made under SEQRA at the last Planning Board meeting on October 6, and requested that a determination on the area variance be made. Chairperson Clemente stated that the solar project is proposed to be close to both high-density housing along Oakwood Avenue and the Field of Horrors attraction, that there is additional high-density housing to the north of the project site, and that it does not make sense for a solar facility to be included among such a mix of uses. Chairperson Clemente also noted that most other solar projects in Rensselaer County are located more remotely, usually near or on farmland, and have a significant visual buffer. Chairperson Clemente also stated that she had an issue with the project's proximity to high density residential development, stating that it would have an impact on the Brunswick Meadows development. Mr. Torrent stated that

while the adjacent parcel is zoned residential, the parcel the solar project is located on is zoned industrial, and that solar is an allowable use on the parcel. Chairperson Clemente noted that the applicant had stated at previous meetings that additional trees would be planted to act as an additional buffer for surrounding properties. Member Curran asked why nine utility poles were necessary. Mr. Torrent stated that he had been working with National Grid on the issue of the number of poles, and that National Grid was stating nine poles were necessary and were not agreeable to change that number. Mr. Torrent also stated that he had again discussed the issue with National Grid earlier that day, that he had requested the number of poles be reduced, but that National Grid again denied the request. Chairperson Clemente asked if the utility poles to be used would all be between 35-45 feet tall. Mr. Torrent confirmed that they would be. Attorney Gilchrist asked what the utility poles would be made from. Mr. Torrent stated that the poles would be made of wood. Chairperson Clemente asked what visual buffering there would be on the site. Mr. Torrent stated that berms, trees, or fencing would be installed as screening, and that the Planning Board, Planning Board engineer Wayne Bonesteel, and Brunswick Building Department would have input on the required screening. Chairperson Clemente asked if there were any further questions or comments from the Zoning Board members, and there were none. Attorney Gilchrist noted for the record that the Brunswick Zoning Law requires utilities to be underground, so the area variance is for both the total number of utility poles and for the utilities being above-ground. 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 asked what the greatest number of utility poles the Town had allowed on a previous solar project. Attorney Gilchrist and Mr. Golden stated that a previous solar project on Dusenberry Lane was approved for 6 or 7 utility poles,

meaning this project would have the maximum number of utility poles of any solar project in Brunswick. Member Curran stated that the parcel is zoned industrial and that utility pole location was not a detriment in this case. As to whether a feasible alternative is available, Member Curran stated that nine above-ground utility poles was a requirement of National Grid, meaning that there is no other feasible option. Chairperson Clemente agreed, noting that the applicant had met with National Grid earlier that day and that National Grid was still requiring nine above-ground utility poles. As to whether the requested variance is substantial, Member Curran stated that it was, but it was what was required by National Grid. As to whether the variance would create an adverse environmental or physical impact, Chairperson Clemente stated that the Planning Board had made a Negative Declaration on the project under SEQRA, meaning that there was not a significant adverse impact. As to whether the difficulty giving rise to the need for the variance is self-created, Member Curran stated that it was not due to being a requirement of National Grid. Member Mainello disagreed, stating that it could be viewed as self-created due to the applicant being the one wanting to build the solar facility. Chairperson Clemente again asked if there were any further questions or comments from the Zoning Board members. Member Lockrow asked if there were any New York State standards for fencing around a solar facility. Attorney Gilchrist stated that he did not know of any New York State standards for fencing. The Zoning Board discussed fence specifications. Chairperson Clemente asked if there should be any conditions on the application. Attorney Gilchrist stated that two conditions to consider would be: the maintaining of the tree buffer to the north of the site to screen the project from Brunswick Meadows, and that the applicant would install berms, trees, and fencing subject to Planning Board review; and installing secure fencing around the project site for safety. Chairperson Clemente asked what type of fencing would be used. Mr. Brennan stated that camouflage or screening would be installed between the solar

facility and the nearby paintball facility. Mr. Brennan stated that the National Electric Code requires fencing around the equipment that will be present in the solar facility, so fencing will be installed. Mr. Brennan also offered to install barbed wire along the top of the fencing if the Zoning Board wanted it and if it was allowed by regulatory agencies. Mr. Torrent stated that deer/pasture fencing was currently proposed to be built around the solar facility, and that there was no issue with installing barbed wire on the fencing if the Town requested it and it complied with all regulatory agencies. Attorney Gilchrist reviewed the Brunswick Zoning Law, and stated that the Zoning Law requires 8-foot-tall fencing for security. Attorney Gilchrist also noted comments had been made by DEC on the project, which stated that the project should be subject to any DEC regulatory requirements for work on a NYS Superfund site, that the New York State Historical Preservation Office (SHPO) sign off on the project, and that no trees be cut that are 3 inches or greater in diameter at breast height except between November 1 and March 31. Attorney Gilchrist then reviewed the two conditions for the Zoning Board to consider: no removal of trees to the north of the project site in order to maintain a vegetative buffer with Brunswick Meadows; and Planning Board action on the special use permit and site plan applications. Attorney Gilchrist also reviewed the four recommendations to the Planning Board for the Zoning Board to consider: that appropriate security fencing be considered for the site plan application; that all DEC regulatory requirements for work on a NYS Superfund site be adhered to; that no trees be cut that are 3 inches or greater in diameter at breast height except between November 1 and March 31; and more robust screening in the area north of the project site through in-fill planting and/or berming. Member Curran made a motion to grant the area variance for up to nine above-ground utility poles subject to the stated conditions and recommendations, which was seconded by Member Schmidt. The Zoning Board

voted 4-1, with Chairperson Clemente opposed, and the area variance for up to nine above-ground utility poles subject to the stated conditions and recommendations was granted.

The fourth 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 for the applicant. Chairperson Clemente stated that more data had been requested at the Zoning Board's last meeting on September 19. Mr. Torrent presented cross-sections from East Road for the Brunswick Solar site, which had been submitted to the Zoning Board of September 23, and stated that a row of evergreen trees on the site would be maintained by the applicant as a visual buffer. Chairperson Clemente asked where the row of trees was located on the site map. Mr. Torrent reviewed the site map and pointed out where the evergreen trees were on the map. Chairperson Clemente stated that Member Schmidt had asked about the visual impact of the project during leaf-off conditions at a previous meeting and asked if the information presented was satisfactory. Member Schmidt stated that it was. Member Lockrow stated that there were other sites on East Road that could have a visual impact from the project, especially at different elevations and angles than the perspective shown on the most recent cross-sections. Mr. Torrent reviewed previously-submitted visual assessments from much higher elevations on East Road, showing that there would still not be a visual impact from those heights, meaning that the houses on East Road would not have a visual impact. Chairperson Clemente asked if the Zoning Board should use the public utility standard or the regular variance standard for assessing the project. Mr. Brennan stated that the Zoning Board should continue using the public utility standard because if the regular variance standard were to be used, it would be difficult for any applicant to meet the economic proof test where it would need to be shown that no other

potential use on the project site would result in as great an economic return. Mr. Brennan discussed his position on the applicability of the public utility use variance and location requirement due to the interconnection requirement. Chairperson Clemente stated that the Zoning Board had used the standard use variance elements previously in other cases. Attorney Gilchrist stated that no determination has been made by the Zoning Board on the applicable use variance review standard. Attorney Gilchrist stated that the Zoning Board should allow the applicant the opportunity to submit proof on the standard use variance elements, and if the applicant declines to do so, the applicant would need to confirm that in writing for the record, and then the Zoning Board should consider whether the application is complete for a public hearing, which would be the next procedural step. The Zoning Board then discussed the procedure moving forward. Chairperson Clemente stated that the applicant should be allowed the opportunity to submit proof on the standard use variance elements and that if the applicant declined, then the Zoning Board would consider holding a public hearing. Mr. Brennan stated that the standard use variance elements were a “non-starter” for solar projects as an applicant cannot meet those standards. Mr. Brennan then brought up the solar moratorium pending before the Brunswick Town Board, and the Zoning Board and Attorney Gilchrist discussed the moratorium. Mr. Brennan noted that the pending solar moratorium would be applicable to the Brunswick Solar and Sycaway Solar projects. Mr. Brennan stated that the moratorium would also apply to the North Troy Solar project, but that since the project was now before the Planning Board for final approval, there was a chance it might move forward before the moratorium took effect. Mr. Brennan stated that the Town Board would be holding a public hearing on the moratorium in November, which he planned to attend to discuss the zoning and economic issues regarding solar projects. This matter is tentatively placed on the

November 21, 2022 agenda for further discussion subject to Town Board action on the solar moratorium.

There was no new business to discuss.

The index for the October 17, 2022 regular meeting is as follows:

1. Phung – area variance (November 7, 2022).
2. Paulsen Development – area variance (approved subject to condition and recommendation).
3. Atlas Renewables (North Troy Solar) – area variance (approved subject to conditions and recommendations).
4. Atlas Renewables (Brunswick & Sycaway Solar) – use variances (November 21, 2022).

The proposed agenda for the November 7, 2022 special meeting is currently as follows:

1. Phung – area variance (public hearing to commence at 6:00pm).

The proposed agenda for the November 21, 2022 regular meeting is currently as follows:

1. Atlas Renewables (Brunswick & Sycaway Solar) – use variances (tentative).