

## **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 16, 2024**

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

ALSO PRESENT was MICHAEL McDONALD, 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 19, 2024 regular meeting were reviewed. There were no edits or corrections to be made. Chairperson Clemente made a motion to approve the minutes of the August 19, 2024 regular meeting without correction, which was seconded by Member Curran. The motion was unanimously approved, with Chairperson Clemente abstaining, and the minutes of the August 19, 2024 regular meeting were approved.

The first item of business on the agenda was an area variance application submitted by James Blake for property located at 17 Bott Lane. James Blake 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. Blake to briefly review the application, and if there had been any changes made to the application since the last Zoning Board meeting. Mr. Blake stated that there had been no changes made to the application, and stated that he was

planning to build a detached garage on his property, that the garage would be the same color and have the same roofline as his house, that the garage would be 40 feet by 72 feet, and that the garage would be used, in part, for equipment storage. Chairperson Clemente opened the public hearing on the application. There were no public comments on the application. Chairperson Clemente asked Mr. McDonald 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 to confirm that the parcel the garage was proposed to be built on was 8.85 acres. Mr. Blake confirmed that his parcel was 8.85 acres. Chairperson Clemente asked if there were any alternate options where to place the garage or how to design the garage to avoid requiring a variance. Mr. Blake stated that the garage needed to be bigger than the allowable square footage to hold tractors and equipment. There were no further questions or comments from the Zoning Board members. 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 was 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. The Zoning Board then reviewed the elements for consideration on the area variance requested in the 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 the parcel is in an Agricultural Overlay zoning district, that the garage would not be visible from Bott Lane, and that the color and design of the garage would be consistent with the house, meaning that the garage would not be detrimental to the neighborhood. As to whether a

feasible alternative was available, Member Lockrow stated that the additional space was needed to store the tractors and equipment, so an alternative was not available. As to whether the requested variance was substantial, Chairperson Clemente stated that accessory structures are allowed up to 1,500 square feet and that the applicant was requesting 2,880 square feet, meaning that the variance would be substantial, but that it was mitigated by the size of the lot, that it was in an Agricultural Overlay district, and would not be visible from the road. As to whether the variance would create an adverse environmental impact, Member Lockrow stated that it would not due to the substantial setback from Bott Lane. Chairperson Clemente agreed, and stated that the action was a Type II action under SEQRA, which meant that there would be no significant environmental impacts. As to whether the difficulty giving rise to the need for the variance was self-created, Member Mainello stated that it was, but that it was mitigated by the size of the lot, that the garage would not be seen from the road or by any neighbors, and that the size of the garage was necessary for the equipment storage. Chairperson Clemente stated that the Zoning Board needed to balance the benefit to the applicant with any potential detriments to the surrounding neighborhood. Member 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. Chairperson Clemente directed Mr. Blake to continue working with the Town Building Department on this matter.

The second item of business on the agenda was a sign variance application submitted by Johnston Associates, LLC for property located at 740 Hoosick Road. Paul Engster 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. Engster to briefly

review the application, and if there had been any changes made to the application since the last Zoning Board meeting. Mr. Engster stated that he was proposing to replace the existing pylon sign at the Walmart Plaza, which is 120 square feet, with a sign that is 160 square feet, as the plaza had more tenants now than when it was built and the current sign was approved in 1997. Mr. Engster stated that he had downsized some of the tenant spaces since the Walmart Plaza opened in 1997, that the plaza could now hold 14 tenants, and that extra space was needed on the pylon sign to list all tenants. Mr. Engster also stated that he had submitted a supplemented application with a discussion of the area variance elements since the last meeting. Chairperson Clemente opened the public hearing on the application. There were no public comments on the application. Chairperson Clemente asked Mr. McDonald 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 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 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 application was a non-residential action under SEQRA and that a short Environmental Assessment Form (EAF) had been submitted by the applicant, which needed to be reviewed to determine the environmental significance of the project. Chairperson Clemente stated that based on the information in the EAF and application documents, there was no potential significant adverse environmental impact from the project and made a motion for a negative declaration on the project under SEQRA, 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 requested in the 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 the new pylon sign would be in the same location as the current sign, which is two-sided, and that the new sign would have an additional 20 square feet on each side, creating no undesirable change. As to whether a feasible alternative was available, Member Curran stated that the Walmart Plaza had more tenants than available spaces on the sign, so a new sign was necessary. As to whether the requested variance was substantial, Chairperson Clemente stated that the applicant was requesting a variance of 40 square feet, from 120 to 160 square feet, across both sides of the pylon sign. Member Schmidt asked if the Zoning Board should compare what is being requested to what is allowed under the Brunswick Zoning Law, or to the sign currently on the site. Attorney Gilchrist stated that the Zoning Board should compare what the applicant is requesting to the pylon sign already on the site, as the current sign had already been approved by the Town. Member Lockrow stated that the variance was not substantial compared to the pylon sign currently on the site. As to whether the variance would create an adverse environmental impact, Member Lockrow stated that there were no environmental impacts with the current pylon sign, and that there would not be any environmental impacts from the proposed larger sign. As to whether the difficulty giving rise to the need for the variance was self-created, Member Mainello stated that it was not, as the applicant needed the additional room on the sign for additional tenants. Chairperson Clemente asked what the hours of operation for the lighting within the sign were, and if the current sign was on a timer with the parking lot lights. Mr. Engster stated that Walmart controlled the lights in both the Walmart parking lot and the plaza parking lot as part of the original Planned Development District, that the pylon sign turns on and off at the same time as the parking lot lights, and that the current sign is lit from approximately dusk to dawn. Chairperson Clemente

asked who controlled the lights on the plaza building above the individual businesses. Mr. Engster stated that the tenants controlled the lights above their business. Chairperson Clemente asked what business in the plaza was open the latest and how late it was open. Mr. Engster stated that he was not sure which business was open the latest, but that all businesses in the plaza were closed by 8:00 PM. Chairperson Clemente asked if limiting the lighting of the pylon sign should be considered as a condition. Member Curran stated that it should not be as the lighting is controlled by Walmart, not the applicant. Chairperson Clemente stated that the Zoning Board needed to balance the benefit to the applicant with any potential detriments to the surrounding neighborhood. Member Lockrow made a motion to grant the sign variance, which was seconded by Member Mainello. The motion was unanimously approved and the sign variance was granted. Chairperson Clemente directed Mr. Engster to continue working with the Town Building Department on this matter.

The third item of business on the agenda was an area variance application submitted by CVE North America, Inc. for property located at 511 McChesney Avenue Extension. No one was present for the applicant. Attorney Gilchrist stated that the applicant was present at the last Planning Board meeting on September 5, that the Planning Board members expressed concerns with visual impacts from the solar project, and that the applicant was analyzing visual impacts of the project from several locations in Town. Attorney Gilchrist also stated that the Planning Board was beginning the SEQRA Lead Agency coordination process for the project. This matter is adjourned without date.

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 to review the application. Ronald Laberge, P.E., of Laberge Group, the Town-designated review engineer for this project, was also present. Chairperson Clemente stated that at the last Zoning Board meeting, the applicant had reviewed the status of the record for the project, and that the Zoning Board had asked Mr. Laberge to review the technical status of the application. Mr. Laberge stated that the applicant had resubmitted the same documents that had been presented to the Zoning Board before the Town moratorium on community solar projects, as well as minutes of previous Zoning Board meetings, and review memos. Mr. Laberge stated that there was no substantial change to the application on a technical basis, and that the application was substantially complete from a technical standpoint. Mr. Laberge also stated that the application would require SEQRA review, with which Mr. Laberge would assist the Zoning Board. Attorney Gilchrist stated that the standard of review for the use variance applications must be determined, and that the applicant was asserting that the application should be reviewed under the public utility use variance standard. Attorney Gilchrist reviewed both the general use variance standard and the public utility use variance standard. Attorney Gilchrist stated that while there was one recent NYS Supreme Court case which applied the public utility use standard for a solar project, there was also an Appellate Division case which reviewed a Zoning Board decision which had applied the general use variance standard, and that the NYS law on the applicable standard for use variance review for a solar project was not definitive. Mr. Brennan stated that there had been no changes made to the Town Zoning Law during or after the moratorium on community solar projects. Mr. Brennan stated that in one of the two NYS cases mentioned by Attorney Gilchrist, a Greene County Supreme Court decision, the Town of Athens Zoning Board had applied the public utility use variance standard as required by that Court, but still denied the application. Mr. Brennan then reviewed the history of NYS case law and policy concerning the

public utility use variance standard, specifically comparing it to cases involving building cell towers and how where users are and where the infrastructure is located plays a factor in those cases. Mr. Brennan stated that renewable energy projects, such as solar and wind energy facilities, are now at issue. Mr. Brennan stated that there was a limitation due there only being a few substations in Rensselaer County for a solar energy project to connect to, and that a solar project must be located near where the infrastructure for such a project is located. Mr. Brennan stated that if the regular use variance standard were to be applied to this project, it would be very difficult to meet the evidentiary burden, specifically the economic standard showing that an allowable use on the site would not achieve a reasonable economic return. Mr. Brennan stated that the applicant will focus on the low impact on the surrounding neighborhoods. Mr. Brennan stated that solar power generation was different from the construction of a cell tower, but that the same theory applied as once the equipment is connected to a power grid, then it can be used by the local community. Mr. Brennan stated that he would submit a further written submission concerning the legal review standard for this matter. This matter is placed on the October 21, 2024 agenda for further deliberation.

The Zoning Board discussed two items of new business.

The first item of new business was an area variance application submitted by Zachary Hilton for property located at 74 N Langmore Lane. Zachary Hilton was present to review the application. Mr. Hilton stated that he was requesting one area variance for setback in order to construct a 10-foot by 12-foot playhouse for his children. Chairperson Clemente asked if the application was calling for a rear setback of five feet. Mr. Hilton confirmed he was requesting a rear setback of five feet, where 25 feet of setback is required, causing the need for a rear setback variance. Chairperson Clemente asked why the requested variance was necessary. Mr. Hilton



stated that his property was not level, and that there was no flat area on his property other than the proposed location where the playhouse could be built. Mr. Hilton stated that he had submitted a schematic of the style of the playhouse with the application and reviewed it for the Zoning Board. Chairperson Clemente asked if there were any other possible locations on the lot for the playhouse. Mr. Hilton stated that there were minimal alternate locations due to the topography of the lot, and that he wanted to maintain those few flat areas on his parcel. Chairperson Clemente stated that the application was complete for the purpose of holding a public hearing. Chairperson Clemente asked if the Zoning Board members had permission to visit the property. Mr. Hilton stated that the Zoning Board members had permission to visit his property. A public hearing on this application is scheduled for October 21, 2024 at 6:00pm.

The second item of new business was an application for sign variances submitted by AJ Signs for property located at 625 Hoosick Road. Carly Clark and Tom Wheeler, both of AJ Signs, were present to review the application. Ms. Clark handed out supplementary materials to the Zoning Board members, then reviewed the four variances being sought: for the number of signs on the site (three signs requested, two signs allowed), for having a freestanding sign, for setback of the freestanding sign from the lot line, and for overall square footage of the three signs proposed for the site. Member Curran asked if the applicant had investigated the impact of a freestanding sign on the entrance to Hoosick Road. Ms. Clark stated that the issue had been investigated, and that a freestanding sign was being proposed for the safety of patients entering and exiting the business at the site. Ms. Clark also stated that signs on the front and side of the building were not very visible, and that a monument sign, which was the freestanding sign being proposed, would be better. Chairperson Clemente asked if a fifth variance would be needed for having one of the three proposed signs on the side of the building. Mr. McDonald stated that he would review that

issue, but also that the parcel technically had two front streets since it was at the corner of Hoosick Road and Leonard Avenue. Member Schmidt stated that the Zoning Board had denied a sign in front of the building several years earlier, when it was proposed by a previous tenant of the building, due to the impact of blocking the vision of cars entering and exiting Leonard Avenue from Hoosick Road. Attorney Gilchrist stated that the prior record should be reviewed and that the Zoning Board needed to examine the issue in detail for safety reasons. Member Mainello stated that the existing business on the site had signs on the front and side of the building and asked if the applicant was trying to direct customers to Leonard Avenue with the monument sign. Ms. Clark confirmed that was the reasoning. Member Lockrow stated that the monument sign location as depicted in the application materials was not likely to be a visual safety issue. Chairperson Clemente asked if the applicant could provide additional information concerning the monument sign location setbacks from the lot line and edge of the pavement. Ms. Clark confirmed that she could provide that information. Member Curran asked if the applicant could lose the sign on the side of the building if the monument sign were approved. Ms. Clark confirmed that the sign on the side of the building could potentially be eliminated in that case. Member Mainello asked if the wall signs would be lit. Ms. Clark stated that the writing on the wall signs would be lit, and the monument sign writing would also be lit. Member Mainello stated that the line-of-sight information would be important regarding the monument sign location. Ms. Clark stated that she would submit all requested additional information to the Zoning Board. Chairperson Clemente stated that the requested information should be submitted no later than one week before the next meeting. Member Lockrow suggested that the applicant place stakes in the ground at the site where the monument sign was proposed, and add plywood to simulate the sign, and take photographs and

measurements using that information, which will assist the Zoning Board in its review. This matter is placed on the October 21, 2024 agenda for further deliberation.

The index for the September 16, 2024 regular meeting is as follows:

1. Blake – area variance (approved).
2. Johnston Associates, LLC – sign variance (approved).
3. CVE North America – area variance (adjourned without date).
4. Atlas Renewables (Brunswick & Sycaway Solar) – use variances (October 21, 2024).
5. Hilton – area variance (October 21, 2024).
6. AJ Signs – sign variances (October 21, 2024).

The proposed agenda for the October 21, 2024 regular meeting is as follows:

1. Hilton – area variance (public hearing to commence at 6:00pm).
2. Atlas Renewables (Brunswick & Sycaway Solar) – use variances.
3. AJ Signs – sign variances.