

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 NOVEMBER 18, 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 October 21, 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 October 21, 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 October 21, 2024 regular meeting were approved.

The first item of business on the agenda was an application for sign variances submitted by AJ Signs for property located at 625 Hoosick Road. Carly Clark, of AJ Signs, 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. Clark to briefly review the application. Ms. Clark stated that the applicant had originally applied for variances for the number of signs on the project site and a sign on the side of the building, both those two variances

had been withdrawn. Ms. Clark stated that the applicant was seeking three variances: for front setback of the building, on which a sign was proposed to be placed, from the front lot line; for the amount of road frontage of the existing parcel; and for front setback of a proposed freestanding sign. Chairperson Clemente opened the public hearing on the application. Pam Harbour, of 14 Leonard Avenue, stated that she had no objection the initial proposed sign on the side of the building that had now been withdrawn, but that she did object to the proposed freestanding sign. Ms. Harbour stated that if that sign were approved, then cars would need to pull up to the very end of Leonard Avenue and through a crosswalk to see onto Hoosick Road. Ms. Harbour stated that bushes on the opposite corner on Leonard Avenue have caused visual safety problems and should be cut lower. Ms. Harbour stated that the freestanding sign was proposed to be lit and asked how late the sign would be lit and that she was concerned with additional lighting. Ms. Harbour also stated that Leonard Avenue is a dead-end road, that people living on Leonard Avenue have no alternate routes onto Hoosick Road, and that she was concerned with the intersection of Leonard Avenue and Hoosick Road becoming even less safe. Ernie Berkart, of 9 Leonard Avenue, stated that he had the same concerns with Ms. Harbour, that the proposed freestanding sign would be a hindrance for cars trying to pull onto Hoosick Road, and that the sign would create safety issues for pedestrians walking on the sidewalk along Hoosick Road and for drivers on Hoosick Road. Mr. Berkart stated that he also had no issues with the proposed sign on the side of the building that had been withdrawn. Member Lockrow asked Ms. Clark about the lighting of the proposed freestanding sign, specifically if it would be on a timer. Ms. Clark stated that the lighting within the freestanding sign could be put on a timer if necessary. Chairperson Clemente stated that the Zoning Board generally asked applicants with lit signs to only have the signs be lit during operating hours and to turn off the sign when the business closed. Ms. Clark stated that she would was open

to that and would discuss the issue with her client. Member Lockrow asked if the applicant would consider a suspended sign, such as a pylon sign, that would not obstruct the view of Hoosick Road from Leonard Avenue. Ms. Clark stated that she was open to replacing the proposed freestanding sign with a suspended sign. Chairperson Clemente asked what the dimensions of the proposed monument sign would be. Ms. Clark stated that the sign would be 98 inches tall by 96 inches wide with the base, and that the sign itself would be 42 inches tall by 92 inches wide. Ms. Clark asked if there was a height requirement for signs. Mr. McDonald stated that signs were allowed to be a maximum of 30 feet tall. Ms. Harbour spoke again, asking why the sign proposed for the side of the building was withdrawn. Ms. Clark stated that the applicant was originally sought three signs (for the front of the building, side of the building, and the freestanding sign), but chose to eliminate the sign for the side of the building to decrease the number of variances being sought from five to three, eliminating variances for having a sign on the side of the building and overall square footage of all signs. Mr. Berkart spoke again, asking if freestanding signs were required to be a certain distance away from fire hydrants. Mr. McDonald stated that he would research that issue. Mr. Berkart also stated that snowbanks usually form near where the freestanding sign is proposed to be. Member Mainello stated that a pylon sign would be elevated about 10 feet off the ground, which would address the concerns about the view of Hoosick Road from Leonard Avenue and snowbanks forming there. Lisa Berkart, also of 9 Leonard Avenue, stated that her mother had an accident when pulling out of Leonard Avenue onto Hoosick Road and that there does not need to be more obstacles at that intersection. Chairperson Clemente asked Ms. Clark if she would like to move forward with the current application or speak with her client and possibly amend the application. Ms. Clark asked what would happen if it was decided to amend the application. Attorney Gilchrist stated that the applicant would need to submit revised application materials in

the nature of a response to public comment and work with the Building Department to amend the application. Ms. Clark stated that she would speak with her client and likely amend the application. Chairperson Clemente made a motion to keep the public hearing open, which was seconded by Member Mainello. The motion was unanimously approved and the public hearing was kept open. This matter is placed on the December 16, 2024 agenda for continuation of the public hearing.

The second item of business on the agenda was an appeal submitted by Zachary Froio for property located at 502 Pinewoods Avenue. Amy Bellantoni, Esq., attorney for the appellant, and Zachary Froio were present. 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. Ms. Bellantoni stated that a written appeal had been submitted on September 13, 2024, which provided background on the matter, including that the appellant was engaged in the online sale of firearms, that it was not his full-time business, that the business was licensed by the Bureau of Alcohol, Tobacco, and Firearms (ATF), and that all current sales done online were done under an existing permit. Ms. Bellantoni stated that the appellant had filed an application for an amendment to his existing special use permit and that the Building Department's determination that the proposed use was not in compliance with the Town Zoning Law was not correct as the appellant's business was not retail. Ms. Bellantoni stated that in 2023, NYS enacted new laws requiring more in-depth background checks of every firearms purchase, and clarified that the background check and pickup for firearms are services, not retail, as the sale of the firearm would have already been conducted by that point. Ms. Bellantoni stated that the appellant was having issues with the distributors he had previously worked with regarding background checks and firearms delivery, and needed to modify the existing special use permit to

allow his business to exist at all. Ms. Bellantoni stated that “retail” is not defined in the Brunswick Zoning Law, which creates an issue. Ms. Bellantoni stated that the appellant had proposed one customer per week coming to his home to go through a background check and pickup a purchased firearm, and that the Planning Board had suggested three customers per week, but no more than one customer per day. Ms. Bellantoni stated that three potential customers per week, with no more than one per day, would not create a significant increase in traffic on Pinewoods Avenue. Ms. Bellantoni stated that dog kennels and bed and breakfasts are allowed in residential zoning districts, yet the appellant’s proposed use was not, despite having less impact to the surrounding neighborhood. Ms. Bellantoni stated that the appellant’s proposed amendment was more in line with an accounting or tax office due to having limited customers at the site. Ms. Bellantoni stated that while “retail” was not defined in the Brunswick Zoning Law, “retail establishment” was, but that it was not applicable in this case. Ms. Bellantoni stated that the appellant did not list his home address on his website and that customers could only come to his home by appointment only, meaning that there would be no unannounced foot traffic like traditional retail. Thomas Cioffi, Esq., Brunswick Town Attorney, then spoke on behalf of the Brunswick Building Department. Mr. Cioffi handed out a memorandum in opposition to the appeal to the Zoning Board members and Ms. Bellantoni. Mr. Cioffi stated that he was the Town Attorney and that he was present representing the Building Department, not the Zoning Board, that he was not submitting legal advice to the Zoning Board, that he was submitting the legal position of the Building Department, and that the Zoning Board had separate counsel. Mr. Cioffi then reviewed his memorandum summarizing the Building Department’s position, stating that the appellant’s property is located in an R-40 residential zoning district, which is not zoned for commercial sales directly to consumers. Mr. Cioffi reviewed the definition of “home occupation” in the Brunswick Zoning Law, noting

that “no retail sales” was included as part of that definition, and that a home occupation now required a special use permit. Mr. Cioffi reviewed the appellant’s 2021 application for a special use permit and Building Department determination, dated November 18, 2021, which stated that the appellant was proposing internet sales only with the purchased firearms arriving at the appellant’s home, after which he would ship them to the customer or another firearms distributor, and that his proposal did not qualify as retail. Mr. Cioffi stated that the appellant’s first special use permit application had been approved by the Brunswick Planning Board at its meeting on December 2, 2021 with conditions, one of which was that “firearms that are delivered to Mr. Froio’s residence are not to be directly delivered by Mr. Froio to the end user at his residence.” Mr. Cioffi stated that in 2024, the appellant had applied for an amendment to that special use permit due to a change in circumstances: new NYS laws passed in 2023 requiring more in-depth background checks, and brick-and-mortar firearms stores no longer allowing background checks and transfers of firearms from other distributors/competitors. Mr. Cioffi stated that the Building Department had issued a determination on the amendment application, dated July 16, 2024, which stated that the appellant’s proposal would qualify as retail, and that the determination is what was being appealed. Mr. Cioffi then reviewed the issues addressed in the memorandum in opposition to the appeal. The Zoning Board had no questions for Ms. Bellantoni or Mr. Cioffi at that time. Chairperson Clemente opened the public hearing on the application. Alex Cooley, of 12 West Road, stated that he was in support of the appellant, that the appellant was just trying to comply with new NYS laws, that the appellant was of upstanding character, and that there would be minimal impact to the surrounding neighborhood due to how few customers were being proposed. Rebecca Fisher, of 46 Carroll Hill Road in Troy, stated that she was also in support of the appellant, that three total customers a week with a maximum of one per day, all by appointment only, was

not excessive, that Amazon makes far more deliveries per day and per week than the appellant was proposing, that there were many residents in Brunswick already running businesses from their homes and none of them had to go through such scrutiny, and that the process should not be impacted by politics and must be objective. Jim Tkacik, of 387 Brunswick Road, stated that the Building Department's 2021 determination concluded that the appellant's initial application was not retail due to not having customers at his home. Mr. Tkacik reiterated Mr. Cioffi's point that a condition on the 2021 special use permit approval was that there could be no direct sale or delivery to the customer at the appellant's home. Mr. Tkacik stated that the proposed amendment would, however, meet the definition of "retail establishment" due to delivering goods directly to the customer at his home, and that direct delivery to the customer qualifies as retail. Mr. Tkacik stated that the definitions of "retail establishment" and "home occupation" are both clearly defined in the Brunswick Zoning Law, and that the Use Table in the Zoning Law reinforces those rules. Mr. Tkacik stated that Ms. Bellantoni was wrong and that kennels and bed and breakfasts are not allowed in all residential zoning districts. Mr. Tkacik stated that the Zoning Board should uphold the Building Department's determination and that it would set a very bad precedent to reverse that determination and allow the retail use. Mr. Tkacik also stated that reversing the Building Department's determination would negatively affect many neighborhoods in the Town as it would lead to many more home businesses with walk-up customers throughout the Town. Mr. Cooley spoke again, stating that if he sold firewood or vegetables at the end of his driveway, it would be an allowable use despite resulting in far more walk-up customers, and that it did not make sense that those could be allowed while the appellant's proposal might not be. Ms. Bellantoni stated that she had only received Mr. Cioffi's memorandum when he handed it out to the Zoning Board members and would like the opportunity to respond to it. Chairperson Clemente confirmed that

she would have an opportunity to respond to the memorandum. Ms. Bellantoni reiterated that the appellant's home address was not listed on his business's website, that no walk-ins were allowed, that the Town Zoning Law was intended to preserve a residential feeling for the area, and that the appellant's proposed use would do nothing to change that residential feeling for the neighborhood. Ms. Bellantoni stated that "retail establishment" was defined in the Brunswick Zoning Law, and that examples were given, but that the appellant's proposed use did not meet that definition due to the sale of the firearms taking place entirely online or by phone, that the sale was complete upon payment, and that the customer coming to his house was merely for a background check, which was now required under NYS law, and picking up the firearm by hand. Ms. Bellantoni stated that if this use were not allowed, then no home occupation uses should be allowed in the Town, and it would raise the question as to whether the appellant was being targeted due to the nature of his business. Mr. Cioffi stated that he had no objection to Ms. Bellantoni replying to his memorandum, noting that he had only finished the memorandum that day and that handing out his memorandum in defense of the Building Department's position at the meeting where the appeal was being heard had been done with previous appeals. Mr. Cioffi made it clear that there was nothing in the record to support a conclusion that the Building Department's determination was in any way political, and that the Building Department was only enforcing the Brunswick Zoning Law. Mr. Cioffi stated that even if there would be no impacts to the surrounding neighborhood due to the appellant's proposed amendment, such impacts to the surrounding neighborhood could only be reviewed if the proposed use itself was in compliance with the Brunswick Zoning Law, which was the issue at hand. Mr. Cioffi also requested the opportunity to submit reply papers as well. The Zoning Board asked what the timeline should be for Ms. Bellantoni and Mr. Cioffi's response. Attorney Gilchrist stated that the Zoning Board's past practice was to allow one written response from both

parties to be submitted to the Zoning Board, as well as any additional written comments from the public. Member Schmidt reminded the Zoning Board that it must be wary of the 62-day period after the closing of the public hearing in which to make a determination. Chairperson Clemente asked how long the written comment period should be. A two-week written comment period was proposed, but after determining that a two-week comment period would end on the first Monday after the Thanksgiving holiday, it was decided to establish a three-week written comment period ending December 9, 2024. Chairperson Clemente made a motion to close the public hearing and establish a three-week written comment period, which was seconded by Member Mainello. The motion was unanimously approved and the public hearing was closed and a three-week written comment period was established. The 62-day period for rendering a determination on the appeal will commence following the close of the written comment period. This matter is placed on the December 16, 2024 agenda for further deliberation.

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. Lluis Torrent, of Atlas Renewables, and David Brennan, Esq. were present to review the application. Mr. Brennan stated that he had handed out a review memorandum regarding the public utility use variance standard in New York and how that standard applied to solar applications at the last Zoning Board meeting on October 21. Mr. Brennan reviewed the memorandum, specifically two NYS cases: a Greene County Supreme Court case that was on-point, but did not set a binding precedent due to being in a different County, and that it was instructive, but not binding; and a Town of Beekman case that dealt with an application for a wind power farm, not a solar farm, in which the Court ruled that it was bound by the provisions of the municipality's Zoning Law. Mr. Brennan cited the definition of "utility, public"

in the Brunswick Zoning Law, stating that it covered what Atlas Renewables was proposing to do. Mr. Brennan cited the definition of “utility scale” in the Brunswick Zoning Law, stating that a community solar collector system met that definition due to producing energy and selling it to consumers. Member Curran asked if Atlas Renewables was actually selling power directly to consumers or to another entity that served as a middle man that then sold the energy to consumers. Mr. Torrent stated that Atlas Renewables would harvest the solar energy, transfer that energy to National Grid, and then National Grid would provide that energy to customers, and clarified that customers would be invoiced by National Grid, not Atlas Renewables. Member Mainello asked if a homeowner qualified as a public utility if they had solar panels on their roof. Mr. Brennan stated that a homeowner would not qualify as a public utility in that case as they were generating power for their own home, not selling electricity to the public. Mr. Brennan stated that the key issue at this point was to get a determination from the Zoning Board as to what legal standard to use, the public utility use variance standard or the more general use variance standard, at which point the applicant could submit further proof supporting its position, as it would be a waste of time and resources to generate and submit proof for both standards. Chairperson Clemente asked who regulated solar energy generation if the use qualified as a public utility. Mr. Brennan stated that in New York, the Public Service Commission (PSC) regulated solar energy generation and distribution. Chairperson Clemente asked what else the PSC regulated. Mr. Brennan stated that PSC regulated water, sewer, electricity, telecommunications, gas, and cable, among other things. Chairperson Clemente asked if PSC, or a similar department, regulated solar energy in other states. Mr. Brennan stated that he was not certain of other state regulations. Member Mainello asked who regulated solar energy at the federal level. Mr. Torrent stated that the Federal Energy Regulatory Commission (FERC) regulated solar energy at the federal level. Chairperson Clemente stated that

if the Zoning Board determined that a solar energy facility was a public utility, then it might give carte blanche to place any solar facility anywhere in Town, and asked who would regulate solar in the Town at that point if the Town could not. Mr. Brennan generally discussed the Brunswick Zoning Law, and stated that traditional zoning did not fit with current electrical grid infrastructure. Mr. Brennan also stated that if the Zoning Board determined that a solar energy facility was a public utility, then solar applicants would still need to meet the public utility use variance standard, would not automatically have their application approved just by submitting it, and that further Planning Board review would be required. Member Mainello noted that the applicant actually could build its solar facilities elsewhere in Town, but that it would require upgrading a National Grid substation at significant cost to the applicant. Member Mainello asked how someone could know if and when a substation was near or at capacity, and asked what would happen if the Town approved a solar project, but there was no capacity at the nearest substation for it. Mr. Torrent clarified that Atlas Renewables had already reserved and paid for capacity at the substation nearest to the project. Mr. Torrent also stated that there could be more capacity at that substation in the future if another applicant chose to pay to upgrade it, but there was no way to know when or if that would happen at this time. Member Curran asked how the substation being full would impact other development round that substation, and asked if new construction and development around the substation would now be prohibited since the substation was at full capacity. Mr. Torrent stated that there was a difference between generation, injection, and use of electrical power, stating that solar energy generators collect and inject energy into the substation, while homes and other buildings take energy from the substation, so new development around the substation would not be prohibited by the substation being at full capacity. Member Mainello asked to confirm that if a substation required upgrades, specifically the extension of transmission lines, that National Grid

required the applicant to pay for it. Mr. Torrent confirmed that was correct. Chairperson Clemente asked what the implications would be if the Zoning Board decided to apply the public utility use variance standard in this case. Mr. Brennan stated that the applicant would still need to meet the legal standards of such a variance, go through State Environmental Quality Review Act (SEQRA) review, and consider the visibility and aesthetic concerns. Mr. Torrent also stated that if the public utility use variance standard were applied, the applicant would need to go before the Planning Board for review as well. Attorney Gilchrist stated that in this case, the issue of whether the energy produced by Atlas Renewables would be sold directly to consumers is relevant, and who the customer/subscriber would be is important for the Zoning Board's determination on what standard to apply, and asked Mr. Brennan to submit further information on that topic. Mr. Brennan confirmed that he would submit additional information on that topic by December 9 so the Zoning Board had time to review it before its next meeting. This matter is placed on the December 16, 2024 agenda for further deliberation.

The Zoning Board discussed one item of new business.

The one item of new business was an application submitted by William Keefer for property located at 22 Grange Road. William Keefer and his son, Andrew Keefer, were present to review the application. William Keefer stated that he purchased the property in late 2023 and was in the process of restoring the house on the property to a single-family home for his son and son's family to live in. Mr. Keefer stated that the property had previously been converted into a two-unit rental property, but had not been well-maintained before he bought it, leading to the rear of the house being severely dilapidated and needing significant work, for which he required a building permit. Mr. Keefer stated that he needed a variance due to the property being re-zoned into a Business Light zoning district when the current Brunswick Zoning Law was enacted in 2017, in which

single-family properties are not an allowable use. Mr. McDonald stated that the house was an existing nonconforming use due to the 2017 zoning district change and that while it could continue as a two-unit rental property due to being an existing nonconforming use, a variance was required since the applicant was proposing to expand the house in order to change the use to a single-family residence. The Zoning Board discussed the differences between nonconforming uses, nonconforming structures, and nonconforming lots, and stated that sometimes more than one can apply. The Zoning Board also discussed whether an area variance or use variance should be sought by the applicant, noting that the applicant had checked both variances on the application. Mr. McDonald stated that the Building Department had determined that an area variance is what would be required. Multiple Zoning Board members questioned if an area variance was required when the use of the house was what was changing. Attorney Gilchrist made it clear that the Zoning Board could not interpret the Brunswick Zoning Law, as that was the jurisdiction of the Building Department. Attorney Gilchrist stated that the record and application must be clarified before the matter could move forward before the Zoning Board. This matter is placed on the December 16, 2024 agenda for further deliberation.

The index for the November 18, 2024 regular meeting is as follows:

1. AJ Signs – sign variances (December 16, 2024).
2. Froio – appeal (December 16, 2024).
3. Atlas Renewables (Brunswick & Sycaway Solar) – use variances (December 16, 2024).
4. Keefer – variance (December 16, 2024).

The proposed agenda for the December 16, 2024 regular meeting is currently as follows:

1. AJ Signs – sign variances (public hearing to continue at 6:00pm).
2. Froio – appeal.
3. Atlas Renewables (Brunswick & Sycaway Solar) – use variances.
4. Keefer – variance.