

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 JANUARY 27, 2025

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 December 16, 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 December 16, 2024 regular meeting without correction, which was seconded by Member Curran. The motion was unanimously approved and the minutes of the December 16, 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. Chairperson Clemente noted that the public hearing on the application had been opened at the Zoning Board's November 18, 2024 meeting, had remained open at its December 16, 2024 meeting, and currently remains open. Chairperson Clemente asked for any additional public comments. There were no public comments on the application. Chairperson Clemente stated that the Zoning Board had received responses to previous public comments from the applicant. 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. 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 Mainello. The motion was unanimously approved, and the public hearing was closed. Chairperson Clemente asked Ms. Clark to briefly reviewed the current status of the application. Ms. Clark stated that the proposed pole sign had been modified, with a pole that has a reduced width, and the 9-1-1 address listed horizontally on the sign. Chairperson Clemente asked how many and what specific variances were being sought, asking if the sign on the side of building was one of the variances. Ms. Clark stated that the sign on the side of the building, which would have required a variance, had been eliminated from the plans, reducing the number of signs on the site from three to two. Ms. Clark stated that two variances were needed for the freestanding sign: 150 feet of frontage for the sign is required where 125 feet of frontage is provided, requiring a 25-foot variance, and a setback from Hoosick Road of 11 feet is requested when 50 feet of setback is required, requiring a 39-foot variance. Chairperson Clemente stated that a short Environmental Assessment Form (EAF) had been submitted by the applicant and that there would be no adverse environmental impacts from the project. Chairperson Clemente 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. 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 variances requested in the application. As to whether the requested variances would result in an undesirable change in the character of the neighborhood or create a detriment to nearby

properties, Member Mainello stated that the proposed monopole sign would be consistent with signs in front of other businesses along the Hoosick Road corridor. As to whether a feasible alternative was available, Chairperson Clemente stated that other design proposals were considered, and that the current proposal was the best option available. As to whether the requested variances were substantial, Chairperson Clemente stated that the applicant was proposing a freestanding sign, that 150 feet of frontage along Hoosick Road for the parcel was required where 125.46 feet was being proposed, and that the sign was required to have 50 feet of setback from Hoosick Road where 11 feet was being proposed. Chairperson Clemente stated that both the 125.46 feet of frontage and 11 feet of setback did not result in substantial variances given the facts on this application. As to whether the variances would create an adverse environmental impact, Chairperson Clemente stated that the Zoning Board had made a Negative Declaration on the project under SEQRA. Member Mainello stated that there would be no environmental impacts to the site and no impacts at all to sight lines on the site. As to whether the difficulty giving rise to the need for the variances was self-created, Member Lockrow stated that it was, but that being self-created was not determinative in this case. Member Curran agreed and also stated that the business previously at the site had operated without a monopole sign, making the action self-created, and that that section of Hoosick Road has a 30 miles per hour speed limit, but due to the level of traffic along Hoosick Road, it is rare for cars to be able to get that fast. Chairperson Clemente stated that the Zoning Board needed to balance the benefit to the applicant with any potential detriment to the surrounding neighborhood, and asked if there were any further questions or comments from the Zoning Board members. Member Lockrow noted that the applicant did address resident concerns made at the public hearing, and that due to Leonard Avenue being downhill from Hoosick Road, cars already needed to pull up into the crosswalk across Leonard

Avenue to see oncoming traffic on Hoosick Road, and that the pole sign would not change that. Chairperson Clemente asked the Zoning Board members if there were any further questions or comments, and there was not. Attorney Gilchrist clarified that the application being voted upon was the most recent revision dated December 17, 2024. Member Lockrow made a motion to grant the area variances, which was seconded by Member Schmidt. The motion was unanimously approved and the area variances were granted. Chairperson Clemente directed Ms. Clark to continue working with the Town Building Department on this matter.

Chairperson Clemente stated that the second item on the agenda, an appeal submitted by Zachary Froio for property located at 502 Pinewoods Avenue, would be moved to the end of the meeting.

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, of Atlas Renewables, and Allyson Phillips, Esq., were present to review the application. Ron Laberge, of Laberge Group, the Town-designated review engineer for the project, was also present. Ms. Phillips stated that since the last Zoning Board meeting on December 16, a legal decision had been issued by the Appellate Division of the Third Department of New York State Supreme Court stating that the public utility use variance standard is applicable for large scale solar projects. Ms. Phillips stated that the case was an appeal of a Greene County Supreme Court case, which the applicant had previously submitted to the Zoning Board, and reviewed the recent decision for the Zoning Board members. Ms. Phillips stated that the applicant was prepared to re-package the submission materials with a focus on meeting the public utility use variance standard. Ms. Phillips stated that once the materials were resubmitted, the applicant would be looking for a determination that the

application was complete and for the Zoning Board to schedule a public hearing. Attorney Gilchrist reviewed the recent Third Department decision, confirming that the decision stated that the public utility use variance standard was applicable to utility-scale solar projects. Attorney Gilchrist also stated that the decision stated that the Court reviewed the “public need” element, and also stated that a utility-scale solar project cannot have a large impact to the surrounding neighborhood and community. Chairperson Clemente asked Mr. Laberge if he had any comments at this time. Mr. Laberge stated that he would like to wait for the re-packaged materials before making any specific comments, but did note that visual impacts from the project would be a critical issue, that while a full stormwater plan was not required at this point, stormwater should be addressed, and that the Fire Department should review the plans. Member Mainello agreed that the Fire Department should review the plans. Attorney Gilchrist stated that while he could provide legal counsel on the public utility use variance standard and the recent Third Department decision, the Zoning Board ultimately needed to make the decision on what standard to use. Member Mainello stated that the Zoning Board was bound by the recent Third Department decision and should use the public utility use variance standard. The other Zoning Board members agreed, and determined to use the public utility use variance standard. This matter is placed on the February 24, 2025 agenda for further deliberation.

The fourth item of business on the agenda was an area variance 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 it was determined at the last Zoning Board meeting on December 16, 2024 that an area variance would be required for the work he was proposing to do on the house on the site, and that the application had been revised to indicate he was seeking an area variance. Mr. Keefer reviewed the updated plans, detailing how

he was planning to remove a severely broken-down section of the back of the house and rebuild it. Chairperson Clemente asked if there were any other viable options for the property other than removing and rebuilding the back of the house. Mr. Keefer stated that there were no other viable options since the back of the house was so broken down and needed to be replaced. Member Curran asked what the front setbacks for the house would be after construction was completed on the front porch. Mr. Keefer stated that he had already removed the existing porch at the front of the house and that he would replace it with a new porch of the same width that also wrapped around the side of the house. Mr. Keefer clarified that the new porch section would only extend to the side, not outward toward the road, so the front setback from Grange Road would not be changing. Chairperson Clemente stated that the application was complete for the purpose of holding a public hearing. Chairperson Clemente asked the applicant if the Zoning Board members had permission to visit the site. Mr. Keefer confirmed that the Zoning Board members had permission to visit his property. A public hearing on this application is scheduled for February 24, 2025 at 6:00pm.

The Zoning Board discussed one item of old business.

The one item of old business was an application for area variances submitted by Maries Muse, LLC for property located at 727-737 Hoosick Road and 4 Mohawk Avenue. Tim Freitag, from Bohler Engineering, and Colton Hill were present to review the application. Chairperson Clemente noted that the most recent submission from the applicant was dated January 22, 2025. Mr. Freitag stated that the initial application submitted in July 2023 had been significantly revised and detailed the revised application. Mr. Freitag briefly reviewed the initial application from 2023 and stated that the proposed Chick-fil-A restaurant on the western portion of the site had been replaced with a quick-serve convenience store with gas pumps, while the proposal for the eastern portion of the site, a retail mattress store and Chipotle restaurant, remained the same. Mr. Freitag

stated that the applicant was working with NYS Department of Transportation (DOT), Rensselaer County, and that Town on traffic impacts from the project and upgrades to McChesney Avenue and the traffic signal at the intersection of Hoosick Road and McChesney Avenue. Mr. Freitag then listed off the eight variances the applicant was seeking: a variance for the square footage of the canopy, which was considered an accessory structure, on the site; a variance for having the canopy in front of the building on the western portion of the site; a front setback variance for the canopy; a variance for the height of the fuel station building being greater than 30 feet; a side setback variance for the trash enclosure on the site; a variance for having one of the parking spaces within 20 feet of a residential property line; a rear yard setback variance for the trash enclosure; and a side setback variance for the gas pumps. Mr. Freitag stated that the next step in the process was for the Planning Board to make a SEQRA determination, after which a public hearing on the applications before it could be scheduled. Mr. Freitag also stated that the applicant and Planning Board had discussed a possible joint public hearing with the Zoning Board at its last meeting to be held at the Planning Board's first meeting in March. Member Mainello asked why the applicant was proposing merging the existing parcels on the site into two lots and not one, as the proposed new internal lot line would be responsible for two of the requested variances. Mr. Freitag stated that two lots were necessary for financing and property ownership issues, and that having an internal lot line did not change the project. Member Mainello asked if there would be two signs on the site, one for each proposed building. Mr. Freitag confirmed that two signs were proposed, that the construction and maintenance of the signs would be responsibility of the tenants, and that the tenants would pursue the signage at a later date. Member Mainello asked if the square footage of the building on the western portion of the site would change due to Chick-fil-A leaving the project and being replaced with a convenience store with gas pumps. Mr. Freitag confirmed that the square

footage of the building on the western portion of the site would be increasing, from approximately 5,200 square feet when Chick-fil-A was proposed to approximately 6,700 square feet with the convenience store with gas pumps. Chairperson Clemente asked how many fuel dispensers were proposed. Mr. Freitag stated that six fuel dispensers were proposed, with a gas pump on both sides of each dispenser. Member Mainello asked if the Planning Board had any issues with the number of fuel dispensers and if the Planning Board had requested fewer. Mr. Freitag stated that the Planning Board had asked if fewer fuel dispensers could be proposed and the applicant asked the tenant if four fuel dispensers would be acceptable, but the tenant was insisting on six fuel dispensers in order to make the project economically viable. Member Lockrow asked if the fuel dispensers would have diesel fuel. Mr. Freitag confirmed that the dispensers would have diesel fuel. Member Lockrow stated that offering diesel fuel would bring in bigger vehicles. Mr. Freitag stated that the applicant was aware and was accounting for bigger vehicles entering the site for fuel. Member Lockrow asked if there was a specific entrance for trucks making deliveries. Mr. Freitag confirmed that there was a specific entrance for trucks, then reviewed pedestrian and truck circulation on the site. Member Lockrow asked for details on the proposed mattress store on the eastern portion of the site. Mr. Freitag stated that the mattress store would primarily be a showroom for mattresses and that people could purchase mattresses at the store and either pick them up at a warehouse or have the mattresses delivered to their house. Chairperson Clemente asked when the Planning Board's first meeting in March would be. Attorney Gilchrist stated that the Planning Board's first March meeting would be on March 6. Chairperson Clemente stated that she was in favor of scheduling a special meeting for the Zoning Board on that date for the purpose of a joint public hearing with the Planning Board, and the other Zoning Board members agreed. Chairperson Clemente asked Mr. Freitag if the applicant wanted to be on the agenda for the February Zoning

Board meeting. Mr. Freitag stated that it would not be necessary. A special meeting of the Zoning Board will be held on March 6, 2025 at 7:00pm, which will be held simultaneously with the Planning Board regular meeting, for the purpose of holding a joint public hearing in this project.

The Zoning Board then returned to the second item of business on the agenda, which was an appeal submitted by Zachary Froio for property located at 502 Pinewoods Avenue. No one was present for the appellant. Chairperson Clemente stated that what the Town Zoning Law allows and does not allow at 502 Pinewoods Avenue was the main question facing the Zoning Board. Chairperson Clemente stated that the Building Department had made a zoning determination that the proposed use by the appellant was not compliant with the Town Zoning Law, specifically that home occupation does not allow retail sales, that bringing customers to the appellant's house would result in retail sales, and that the appellant's proposal is therefore not in compliance with the Town Zoning Law. Attorney Gilchrist briefly reviewed the history of the appeal, stating that the Building Department had made its determination, the appellant had filed his appeal, and that a public hearing on the appeal was held on November 18, 2024. Attorney Gilchrist advised that the issue facing the Zoning Board was whether the determination by the Building Department was correct pursuant to the Town Zoning Law. Attorney Gilchrist also advised that the Town Zoning Law states that retail sales are not allowed in a home occupation, but that the Zoning Law does not define "retail sales" and that a dictionary definition may be considered. Member Schmidt stated that there were two types of sales: wholesale and retail. Member Schmidt stated that while the Town Zoning Law states that retail sales are not allowed in a home occupation, the prior Building Department determination in 2021 and the previous special use permit granted to the appellant by the Planning Board in 2021 allowed a home occupation business that met the definition of retail sales. Member Schmidt stated that in his opinion, the appellant was not asking for retail sales to be allowed, as

retail sales were already allowed as part of his home occupation. Member Schmidt clarified that the dictionary definition of “retail sales” includes online sales, which are already occurring at the appellant’s home and are allowed under the 2021 Building Department determination and the 2021 special use permit, and that adding customers coming to the appellant’s home did not change whether retail sales were happening. Member Curran stated that the definition of “home occupation” in the Town Zoning Law did not address customers or restrict customers from coming to the home. Member Curran stated that in her opinion, customers coming to the appellant’s home was not determinative, and noted that other home occupations in the Town allowed customers to come to the house. Chairperson Clemente stated that the definition of “home occupation” in the Town Zoning Law does not allow retail sales. Member Schmidt agreed, but again noted that the Building Department determination made in 2021 and special use permit granted in 2021 allowed a home occupation business that met the definition of retail sales. Chairperson Clemente asked if people coming to the house in traditional home occupations were considered customers. Member Curran stated that if someone were going to a house for a music lesson, then the person would be considered a student, not a customer, even though the homeowner would be providing a service and the person would be coming to the house. Member Curran then stated that the definition of retail sales that she researched included sales of goods and services to a consumer, meaning that providing a service to someone coming to the house would qualify as retail sales. Member Curran also stated that selling goods is considered retail, which includes internet sales, that a determination was made a few years ago by the Building Department allowing internet sales, and the appellant was now only asking for a limited number of customers to come to his house to pick up products ordered online. Member Curran also stated that the definition of “home occupation” in the Town Zoning Law does not limit people coming to the house to pick up products. Member Schmidt

reiterated that retail sales were already allowed on the site based on the 2021 special use permit approval, and that allowing customers to come to his home to pick up products would not change his business to retail as it was already retail. Chairperson Clemente asked whether what the appellant was proposing was different from using Facebook Marketplace, where sales occur online, but the customer must physically pick up the product at a site, and asked if anything in the Town Zoning Law addressed this difference. Member Mainello stated that in the case of Facebook Marketplace, the difference was an individual selling products, as opposed to a business, and noted that the appellant would be operating as a business, rather than as an individual. Member Curran again reviewed the definition of “retail sales” that she had researched, stating that purchasing from a wholesaler and then selling that product at retail for profit as a business did meet the definition of retail. Member Schmidt stated that the appellant may not supposed to be able to have retail sales as part of a home occupation under the Town Zoning Law, but that the Building Department determination in 2021 had allowed it, and the Planning Board special use permit allows the appellant to legally have retail sales as part of a home occupation, and that having customers at his house did not change whether there were retail sales on the site. Member Mainello stated that the appellant was fully aware that he was prohibited from having customers at his home as part of his business when the special use permit was granted in 2021. Attorney Gilchrist confirmed that the appellant was aware, and noted that having no customers at his home was a condition of the approval of that special use permit, but advised that the appellant applied to amend that condition and that the Building Department determination regarding the proposed amendment is what is before the Zoning Board on this appeal. Member Mainello asked if the appellant would have other options to pursue if the appeal was denied. Attorney Gilchrist advised that there would be other options, including that he could seek a use variance from the Zoning Board or petition the Town

Board to amend the zoning regulations for his parcel. Member Schmidt asked if the appellant would need to go back before the Planning Board if the Zoning Board granted his appeal. Attorney Gilchrist confirmed that, stating that the Zoning Board was only determining zoning compliance in this case, and that the Planning Board would still need to review the proposed amendment to the special use permit. Member Schmidt stated that the Building Department's determination in 2021 was in the record and that the Town was stuck with it. Chairperson Clemente agreed that retail sales were allowed at the site due to the 2021 Building Department determination. Member Curran asked if the prior Building Department determination and special use permit approval should be considered in this case. Attorney Gilchrist advised that the prior 2021 Building Department determination and special use permit approval were relevant and should be considered. Chairperson Clemente reiterated that the language of the Town Zoning Law did not allow retail sales in home occupations, but that the 2021 Building Department determination allowed retail sales as a component of a home occupation. Member Schmidt stated that retail sales were allowed on the site, regardless of the number of customers, and that the Zoning Law does not address the number of customers allowed in retail sales. Member Curran asked what the procedure was if the Zoning Board believes a prior determination by the Building Department was not correct. Attorney Gilchrist advised that the 2024 determination made the Building Department was being appealed, that a 2021 determination was also made by the Building Department, that the 2021 determination was not appealed by the appellant and was not reviewed by a Court, and that the 2021 determination must be considered as part of the record in making a determination on the appeal of the 2024 determination. Member Curran again stated that customers coming to the house could result in retail sales. Member Schmidt again stated that customers coming to the house did not change the use to retail sales as retail sales were already occurring at the house. Member Mainello

stated that he agreed with Member Schmidt in that the Building Department had already determined in 2021 that retail sales were allowed on the site as part of a home occupation, and that the Planning Board should decide if they want to change the conditions of the 2021 special use permit approval. Member Curran agreed with Members Schmidt and Mainello, stating that the definition of “home occupation” in the Town Zoning Law does not prohibit customers from coming to the house. Member Mainello noted that the definition of “home occupation” in the Town Zoning Law referenced parking, so onsite customers were to be expected. Attorney Gilchrist addressed the issue of timing, stating that the Zoning Board had allowed a written comment period after the public hearing, which ran for three weeks and ended on December 9, 2024. Attorney Gilchrist stated that the Zoning Board had 62 days from the end of the written comment period to make a determination, and that 62 days after December 9, 2024 was February 9, 2025. Attorney Gilchrist stated that the Zoning Board had the option of scheduling a special meeting before February 9 as its next regular meeting was February 24. Chairperson Clemente asked if the Zoning Board could request an extension from the appellant in order to avoid holding a special meeting. Attorney Gilchrist stated that an extension could be requested, and that he would reach out to the appellant’s attorney to request one. Member Schmidt stated that the Zoning Board should schedule a tentative special meeting in case the request for an extension was denied. The Zoning Board agreed to tentatively schedule a special meeting, which would only have the Froio appeal on the agenda, on February 4, 2025 at 6:00pm if the extension was not granted. Otherwise, this matter is placed on the February 24, 2025 agenda for further deliberation.

There was no new business to discuss.

The index for the January 27, 2025 regular meeting is as follows:

1. AJ Signs – sign variances (approved).
2. Atlas Renewables (Brunswick & Sycaway Solar) – use variances (February 24, 2025).
3. Keefer – area variance (February 24, 2025).
4. Maries Muse, LLC – area variances (March 6, 2025).
5. Froio – appeal (February 24, 2025).

The proposed agenda for the February 24, 2025 regular meeting is currently as follows:

1. Keefer – area variance (public hearing to commence at 6:00pm).
2. Atlas Renewables (Brunswick & Sycaway Solar) – use variances.
3. Froio – appeal.

The proposed agenda for the March 6, 2025 special meeting is currently as follows:

1. Maries Muse, LLC – area variances.