

## **Zoning Board of Appeals**

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

### **MINUTES OF THE BRUNSWICK ZONING BOARD OF APPEALS MEETING HELD JULY 15, 2019**

PRESENT were ANN CLEMENTE, CHAIRPERSON, E. JOHN SCHMIDT, WILLIAM SHOVER, MARTIN STEINBACH and PATRICIA CURRAN.

ALSO PRESENT was CHARLES GOLDEN, Brunswick Building Department.

Chairperson Clemente reviewed the agenda for the meeting as posted on the Town signboard and Town website.

The draft minutes of the June 17, 2019 meeting were reviewed. Upon motion of Chairperson Clemente, seconded by Member Schmidt, the minutes of the June 17, 2019 meeting were unanimously approved without amendment.

The first item of business on the agenda was an area variance application submitted by Frank and Debbie Malone for property located at 137 Bald Mountain Road. The applicants were present, together with their architect, Mark Besse. Chairperson Clemente requested Mr. Malone to give a brief presentation of the proposal. Mr. Malone gave a very brief presentation, indicating that there were no changes to the application from the June meeting. The Zoning Board then opened a public hearing on the area variance application. The notice of public hearing was read into the record, with the notice having been published in the Troy Record, placed on the Town signboard, posted on the Town website, and mailed to owners of all properties located within 300 feet of the project site. At this point, the applicant's architect, Mr. Besse, gave a further description of the proposal, which he described as being located on a parcel at the intersection of Bald

Mountain Road and Charl Lane, constituting a corner lot; that the existing house on the lot had been built several years ago and likewise does not meet the front yard setback requirements for this corner lot; that the addition being proposed to the back of the existing residence would be located 48.4 feet from the front lot line along Charl Lane, requiring a 1.6 foot variance; that the addition could not be located in any other area due to the location of a septic system as well as an existing access way to the house which would be impacted by relocating the structure farther away from Charl Lane; that the proposed addition was visually buffered from surrounding areas; that the applicants were asking for as limited a variance as possible in connection with the proposed addition; and that the applicants are not proposing to change anything further on the lot other than putting the addition onto the home. Chairperson Clemente then opened the floor for receipt of public comment. No members of the public wished to provide any comment on the application. Chairperson Clemente inquired whether any members of the Zoning Board had questions for the applicant. Member Shover inquired why the proposed addition could not be slightly relocated, eliminating the need for an area variance. Mr. Besse stated that the septic system constrains the location of the proposed addition, and relocating the proposed addition would impact the existing door and ventilation to the existing house. Member Shover asked how the calculation for the setback of 48.4 feet was achieved. Mr. Besse explained that he used an existing older survey; that as an architect, he routinely interprets surveys as to property line locations and calculates setbacks for the locations of proposed additions. Member Shover stated that there was no monumentation noted on the plan stamped by Mr. Besse, that this new map was created from calculations based on offsets of the existing house survey, and that no new survey had been prepared. Mr. Besse confirmed no new survey had been prepared. Chairperson Clemente inquired whether there were any further questions or comments from the Zoning Board members. Hearing none, Member

Shover made a motion to close the public hearing on the Malone area variance application, which motion was seconded by Member Schmidt. The motion was unanimously approved, and the public hearing closed. The Zoning Board then proceeded to deliberate on the application. Chairperson Clemente noted that this action seeks an area variance for residential use, and constitutes a Type 2 action under SEQRA. Chairperson Clemente then led the Board into discussion of the standards to be considered for area variance applications. As to whether the proposed variance would create an undesirable change in the character of the area, or create an impact to off-site properties, Chairperson Clemente noted that this addition is proposed on a primary residence located in a residential neighborhood, that she saw no resulting detriment to the character of the area nor any impact to off-site properties; all Zoning Board members concurred. As to whether there was a feasible alternative available to the applicant, other than the requested area variance, Member Schmidt noted that while the proposed addition to the house could be moved, it would impact the location of an existing septic system and would impact a door and ventilation area to the existing home; Chairperson Clemente also noted that the topography on the north side of this lot was a slope, further constraining the location of the proposed addition. As to whether the requested area variance is substantial, the Zoning Board members noted that a 50-foot front yard setback is required, and a 48.4-foot setback is proposed, resulting in a request for a 1.6-foot area variance; Member Shover noted that this was not a substantial variance, and all Zoning Board members concurred. As to whether the requested area variance would result in an adverse environmental or physical impact to the area, Member Schmidt felt that there would be no environmental or physical impact whatsoever, that there were no existing homes anywhere near the proposed addition to the Malone house, and that there would be no visual impact; all Zoning Board members concurred. As to whether the need for the variance is self-created, Chairperson Clemente noted that the need

for the variance could be considered self-created, as the proposed addition is located to accommodate this property owner and his existing home; Chairperson Clemente also noted that this could be viewed as not being self-created, as the prior Zoning Ordinance would allow the extension of a non-conforming structure along the same building line, whereas the new Brunswick Zoning Law does not allow that non-conforming structure extension and requires an area variance, stating that the need for the variance is a result of the Zoning Law change; all members concurred with these points, and stated that this factor is relevant but not determinative of the application. Chairperson Clemente then stated the Zoning Board needed to consider these factors in connection with balancing the benefit to the applicant in granting the area variance as opposed to any detriment to the neighborhood and the Town at large. Based upon these findings and deliberations, Member Shover made a motion to grant the requested area variance, subject to the condition that once the foundation for this addition is constructed, a licensed land surveyor must measure the setback of the foundation from Charl Lane and accurately reflect the surveyed distance to the front property line and provide an up to date survey to the Building Department for the Town record, with this survey map being filed with the Building Department prior to the issuance of any certificate of occupancy. Member Schmidt seconded the motion subject to the stated condition. There was extended discussion with the applicant concerning whether the Zoning Board could grant any additional area on the variance, in the event the survey showed the setback was less than 48.4 feet. The Zoning Board members and Attorney Gilchrist discussed this issue, and Attorney Gilchrist advised the applicant that in the event the Zoning Board approved the pending motion to grant the 1.6-foot front yard setback variance, that was the extent of the variance allowed, and if the setback was anything less than 48.4 feet upon the survey being completed, the applicant would need to apply to the Town for an amendment to the area variance to allow the increased size of the

requested front yard setback variance; alternatively, Attorney Gilchrist stated that the matter could be adjourned to allow time for the applicant to perform the survey now before the Board acted, since an application to amend an existing variance in the future would require full process and procedure, including the application fee, completeness determination, public hearing, Zoning Board deliberation, and Zoning Board action, all of which could delay the issuance of a certificate of occupancy. Upon further consideration, the applicant wished to have the Zoning Board act upon the motion to approve the 1.6-foot front yard setback variance. Chairperson Clemente brought the motion to a vote, and the Zoning Board approved the motion subject to the stated condition by a vote of 5–0. It is noted for the record that this matter must proceed to the Planning Board for consideration of a special use permit for the use of the proposed addition as an accessory apartment.

The next item of business on the agenda was the use variance application submitted by Blue Sky Towers II LLC/Cellco Partnership d/b/a Verizon Wireless for installation of a monopole tower at property located on Creek Road (Tax Map Nos. 113.-5-7.1 and 113.-5-10.11). Attorney David Brennan of the law firm Young Sommer was present for the applicant. Attorney Brennan stated that the issue to discuss at this meeting was the proposed balloon test notice and protocol. Attorney Brennan first noted that the proposal, which includes an application for use variance in front of the Brunswick Zoning Board of Appeals and an application for special use permit and site plan approval pending before the Brunswick Planning Board, was the subject of an open review comment letter from Laberge Engineers; that his office was continuing to put together a full response to the Laberge comment letter, and anticipated the submission of a full response letter during this week; and that he was waiting to make the submission of the response to the Laberge comment letter after all items had been addressed through one submission, rather than a series of

separate submissions responding to parts of the Laberge comment letter. Attorney Brennan did state that one issue raised in the Laberge comment letter, as well as had been discussed in the prior application submitted under the prior Brunswick Zoning Ordinance for this site, was conducting a balloon test to further evaluate potential visual impacts. Attorney Brennan stated that he had prepared a proposed notice and protocol for the balloon test, and had provided that proposed notice to the Town consulting review engineer, Mr. Laberge, and Town Planning Board and Zoning Board attorney, Attorney Gilchrist, for review. Attorney Brennan stated that in general, the notice is sent out to owners of properties located within 750 feet of the proposed tower site, and also published in the official newspaper for the Town both 14 days before the balloon test and again 7 days before the balloon test. Chairperson Clemente wanted to confirm that both Laberge Engineers and Attorney Gilchrist had the opportunity to review the proposed notice and provide comments. Attorney Gilchrist noted that he had reviewed the proposed notice with Mr. Laberge, and that they had worked on revisions to the notice which had been provided back to Attorney Brennan, and that the notice being reviewed by the Zoning Board tonight did include the comments of both Mr. Laberge and Attorney Gilchrist. There was discussion about the applicant completing the required mailings to the surrounding property owners for the balloon test notice as well as for the subsequent public hearing notice, and thereafter filing an affidavit of mailing for the record. Chairperson Clemente had questions regarding the topography of the site, and Attorney Brennan explained the topography in relation to Creek Road and Sandcherry Hill Road. The Zoning Board members then discussed potential dates for the balloon test, identifying potential dates of August 10 and August 24. Chairperson Clemente felt that August 24 would be a better date, since this would allow any members of the public that had questions about the balloon test to attend the Zoning Board meeting on August 19, and have their questions answered before the balloon test was actually conducted.

Attorney Brennan concurred with this approach. Following further deliberation of the Zoning Board members, it was determined that the preferred date for the balloon test from the Zoning Board's perspective is August 24, noting that this matter will also be discussed by the Planning Board at its meeting to be held July 18. It is noted that an alternative date based on poor weather conditions would be August 25, which would be indicated in the notice of the balloon test. This matter is placed on the August 19 agenda for further discussion.

Two items of new business were discussed.

The first item of new business discussed was an area variance application submitted by Mike and Jennifer Darling for property located at 74 Colehammer Avenue. The applicants were present. Chairperson Clemente requested the applicant to provide a general overview of the application. Jennifer Darling stated that she and her husband had purchased the property approximately one year ago, and that the property was actually a number of old separate lots, and that they had combined the lots through deed transfers, resulting in a total of two lots. Ms. Darling then described the remaining two lots, one of which is identified as 75 Colehammer Avenue, on which there is an existing house and well located on 1.5± acres. The second lot which is now identified as 74 Colehammer Avenue is 3.88 acres, on which there is an existing three-car garage that the Darlings seek to maintain. It is on the 3.88-acre lot that the Darlings are seeking to build a new home, but the location of the existing three-car garage would be closer to the front property line than the proposed house location, which is not allowed under the Brunswick Zoning Law, and requires the area variance. The Brunswick Zoning Law provides that accessory structures shall not be closer to the front lot line than the front building line of the primary structure. Chairperson Clemente asked whether the Darlings would continue to use the three-car garage. Ms. Darling stated that they will continue to use it as it is in good shape. The Zoning Board members reviewed

the application materials, and deemed them complete for purposes of scheduling the public hearing. This matter is placed on the August 19, 2019 agenda, with a public hearing to commence at 6:00pm.

The second item of new business discussed was an area variance application submitted by Borrego Solar for a proposed solar farm at the end of Dusenberry Lane. Gregory Gibbons, P.E. was present for the applicant. Chairperson Clemente requested Mr. Gibbons to present a general overview of the project. Mr. Gibbons stated that the applicant had appeared at the Brunswick Planning Board meeting held in June, and anticipated further discussing the project before the Brunswick Planning Board at the July 18 meeting. Mr. Gibbons also confirmed that the Planning Board had retained Laberge Engineers for purposes of engineering review, and that Laberge Engineers had prepared an initial comment letter which had been received by Borrego Solar on today's date. Mr. Gibbons described the location at the end of Dusenberry Lane, and presented a general overview of the project. Mr. Gibbons explained that the area variance request addressed the need for installation of six above-ground utility poles for the utility interconnection for the proposed solar farm, and that the above-ground poles were a National Grid requirement. Mr. Gibbons stated that a total of six poles were being proposed, 40–45 feet in height, 35 feet on center, and provided the general location on the sketch plan map. Mr. Gibbons stated that there were existing utility poles on and along Dusenberry Lane, and that the installation of the proposed six above-ground utility poles would be in character with the surrounding area, and were typical for the installation of this type of solar farm system. Chairperson Clemente confirmed that there were no setback variances being sought, and that the only variance was for the above-ground utility pole installation. Mr. Gibbons confirmed this. Chairperson Clemente confirmed that the Brunswick Zoning Law does not allow any above-ground utility pole installations, and that this would be



requesting a total of six poles. The Zoning Board discussed the use of Dusenberry Lane for construction truck use in connection with the buildout of the solar farm, and had discussions with Mr. Gibbons concerning the current structure of Dusenberry Lane and the need for Borrego Solar to repair Dusenberry Lane in the event of any damage due to construction vehicle use during the solar farm buildout. Member Shover asked about the total area proposed to be used for solar panels. Mr. Gibbons stated that the total parcel size is 70± acres, and the fence line surrounding the solar panel area was approximately 50 acres. Chairperson Clemente noted that Mr. Gibbons had stated the utility pole installation was needed for potential emergency shut off of the solar farm system, and inquired as to what types of emergencies could occur. Mr. Gibbons generally discussed potential release of oil materials in the converters from DC to AC current, potential electricity surges, and potential trespass/vandalism issues. Chairperson Clemente asked how the Zoning Board members would know the proposed pole locations if they intended to do a site visit on their own. Mr. Gibbons stated that he could locate the proposed pole locations in the field. The Zoning Board members also requested the preparation of photosimulations of the site with the proposed installations superimposed. Mr. Gibbons stated that this will be prepared by the applicant. Attorney Gilchrist then discussed general procedural issues on this application, and coordination between the Planning Board and Zoning Board of Appeals, including SEQRA lead agency coordination and the potential for a joint public hearing on the applications. The Zoning Board did not have any objection to conducting a joint public hearing on the application with the Planning Board, and this option will be discussed with the Planning Board. This matter is placed on the August 19 agenda for further discussion.

The index for the July 15, 2019 meeting is as follows:

1. Malone - Area variance - Approved with condition;

2. Blue Sky Towers II and Cellco Partnership d/b/a Verizon Wireless - Use variance - August 19, 2019;
3. Darling - Area variance - August 19, 2019 (public hearing to commence at 6:00pm);
4. Borrego Solar - Area variance - August 19, 2019.

The proposed agenda for the August 19, 2019 meeting currently is as follows:

1. Darling - Area variance (public hearing to commence at 6:00pm);
2. Blue Sky Towers II and Cellco Partnership d/b/a Verizon Wireless - Use variance;
3. Borrego Solar - Area variance.