

## **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 AUGUST 19, 2019**

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

ABSENT was WILLIAM SHOVER.

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 Zoning Board members reviewed the draft minutes of the July 15, 2019 meeting. Upon motion of Chairperson Clemente, seconded by Member Steinbach, the minutes of the July 15, 2019 meeting were unanimously approved without amendment.

The first item of business on the agenda was an area variance application submitted by Mike and Jennifer Darling for property located at 74 Colehamer Avenue. Jennifer Darling was present for the applicant. Chairperson Clemente requested Ms. Darling to briefly review the proposal, and state whether there have been any changes to the proposal or application since the July meeting. Ms. Darling first stated that there were no changes to the application. Ms. Darling stated that she and her husband own 75 Colehamer Avenue and 74 Colehamer Avenue, and that they are proposing to build a new single-family home on the parcel at 74 Colehamer Avenue, but that there is a pre-existing three-car garage that they would like to maintain but would be closer to the front lot line of the parcel than the proposed location for the new single-family home, and that

this is not permitted under the current Brunswick Zoning Law, and so they seek an area variance from the Zoning Board of Appeals to allow the existing three-car accessory garage to be closer to the front lot line on this parcel than the proposed single-family residence. The Zoning Board then opened a public hearing on the application. The notice of public hearing was read into the record, noting that the public hearing notice was 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. Chairperson Clemente opened the floor for receipt of public comment. No members of the public wished to provide any comment. Chairperson Clemente asked whether any written comments had been received on the application. Mr. Golden confirmed that there were no written comments received. Chairperson Clemente asked whether any members of the Zoning Board had any questions for the applicant. The Zoning Board members had no further questions for the applicant. Thereupon, Member Steinbach made a motion to close the public hearing on the Darling area variance application, which motion was seconded by Member Schmidt. The motion was unanimously approved, and the public hearing closed. The Zoning Board members then proceeded to deliberate on the application. Chairperson Clemente noted that this application seeks an area variance in connection with a residential project, and constitutes a Type 2 action under SEQRA, and no further SEQRA determination is required. The Zoning Board members then discussed the elements to be considered in connection with the requested area variance. 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 noted that there will be no change in the character as the three-car garage is an existing structure that has been there for several years so it would not be out of place, that the new proposed single-family residence would be consistent with the neighborhood as well, and that this would not create any detriment

to nearby properties; Member Steinbach agreed, noting that the proposed location of the new residence and the existing garage is at the end of a dead end road and is out of the way, and is well-screened by vegetation, and does not have any effect on the neighborhood. As to whether there is a feasible alternative available to the applicant, Member Steinbach noted that this was an existing three-car garage, and that the only alternative to using the existing garage would be to move it to another location on the lot, which did not seem feasible to him; Chairperson Clemente agreed, and stated another alternative would be to demolish the existing three-car garage, but that is not feasible as the existing garage is a sound structure and demolition would be a waste of capital, time, and effort. In light of the fact that this was an existing three-car garage, the Zoning Board determined that the requested variance is not substantial. As to whether the requested variance would have an adverse effect on the physical or environmental conditions in the neighborhood, Member Schmidt stated that the three-car garage has been there for a long time and no changes are proposed for the garage, and that there would be no impact to the environment; Chairperson Clemente noted that demolition of the three-car garage would have a greater environmental impact than granting the variance. As to whether the need for the variance is self-created, Chairperson Clemente noted that the need could be considered self-created as the current owners purchased the lots with the existing three-car garage in that location, but again stated that this factor is relevant but not determinative, and in her opinion should not bar the grant of the variance. The Zoning Board members concurred. Chairperson Clemente reiterated the balancing test, which balances the benefit to the applicant in granting the variance as opposed to any detriment to the Town in general and neighborhood in particular. Based on these deliberations, Member Schmidt made a motion to grant the requested area variance for the maintenance of the existing three-car garage on 74 Colehamer Avenue, which will be closer to the front lot line than the proposed single-family residential structure. That motion

was seconded by Member Steinbach. The motion was unanimously approved, and the area variance granted. Chairperson Clemente directed the applicants to continue to coordinate with the Brunswick Building Department on this project.

The next item of business on the agenda was the use variance application submitted by Blue Sky Towers II, LLC and Cellco Partnership d/b/a Verizon Wireless. Attorney David Brennan was present for the applicant. Attorney Brennan stated that the purpose for appearing at this meeting was to confirm the date for the balloon test, which is August 24, 2019; to confirm that the balloon test notifications had been sent to neighboring property owners within 750 of the project site, as well as published in the Troy Record; that he had likewise appeared before the Brunswick Planning Board at its meeting held August 15 to discuss the balloon test and notifications, at which meeting he responded to several questions by neighbors; that he sees some of the same neighbors at this Zoning Board meeting, and is happy to again answer any questions; that several neighbors had granted permission to his client to access their property during the balloon test for taking photographs from their vantage points, and that he took names and addresses and had forwarded them to the consultant conducting the balloon test for purpose of accessing those locations to take photographs; raised the issue of an alternative balloon test date in the event there was bad weather the entire weekend of August 24–25, and suggested either the third weekend or fourth weekend in September as options, in which case the balloon test would be re-noticed; that his client will be providing information to both the Planning Board and the Zoning Board of Appeals regarding impact of the project on surrounding property values; that he anticipates having a draft report in his possession regarding the balloon test by September 6, and anticipates submitting a report on the balloon test to the Town during the early part of the week of September 9; accordingly, Attorney Brennan requested that the Zoning Board keep this project on its agenda for its September

16 meeting, and anticipates being on the Planning Board agenda for its meeting on September 19; that upon submission of the balloon test report as well as full response to the Town's consulting engineer's comments, both the Planning Board and Zoning Board of Appeals can review that information and then proceed to discuss setting a public hearing on the application, but wanted to make sure that both Boards had adequate time to review all of the information prior to scheduling the public hearing. Chairperson Clemente had a question concerning notification to neighbors in the event the balloon test for August 24–25 needed to be cancelled due to weather. Attorney Gilchrist stated that in addition to the balloon test notification having been mailed by the applicant to surrounding property owners and published in the Troy Record, the Town had placed the balloon test notification on the Town signboard and on the Town website, and suggested that the Town put any notice of cancellation of the balloon test on its website for people to access. Mark Collins, 44 Colehamer Avenue, said that he would make the same offer for Verizon to access 44 Colehamer Avenue to take photographs during the balloon test, and that the property was owned by his father, John Collins, but that he also resided at that location. Christopher O'Brien, 10 Sandcherry Hill Lane, also offered access to his property to take photographs during the balloon test, as well as any members of the Planning Board and Zoning Board of Appeals to access his property to see any visual impacts during the balloon test. This matter is adjourned and placed on the September 16 agenda for further discussion.

The next item of business on the agenda was the area variance application submitted by Borrego Solar for property located at the end of Dusenberry Lane. Gregory Gibbons, P.E., was present for the applicant. Mr. Gibbons stated that he had staked out the location of the proposed above-ground utility poles, and that Borrego Solar had provided access to the project site for members of the Zoning Board of Appeals. Mr. Gibbons also reviewed a photosimulation of the

above-ground utility pole installation at the site. Chairperson Clemente asked about the procedural status of this project. Attorney Gilchrist stated that the applicant had last appeared at the Brunswick Planning Board on August 15, at which time the project was discussed and determined to be complete except for the submission of a full photosimulation of the area of the proposed panels, depicting the panel installation from various viewsheds; that the Brunswick Planning Board had discussed tentatively scheduling a public hearing for September 19, and also indicated that it was proposing a joint public hearing with the Zoning Board of Appeals, subject to concurrence by the Zoning Board of Appeals; in addition, the Zoning Board of Appeals must be satisfied that its application for area variance is complete for public hearing as well. Chairperson Clemente then stated that the service list of names for this project should include all of the residents on Dusenberry Lane from the project site down to NYS Route 142, as these property owners could be impacted by trucks during construction of the project. Mr. Gibbons stated that all property owners will be added to the service list. The Zoning Board inquired as to the existence of several dilapidated buildings and also abandoned boats and cars near the project site. Mr. Gibbons stated that the old buildings and boats and cars were not on the parcel proposed for the solar farm, that they were on an adjacent parcel that was owned by a different party, and that Borrego had no authority to address the abandoned buildings and equipment. Mr. Gibbons also stated that it was his understanding there may be an easement for access between the owner of the property on which the solar panels are proposed and this adjacent property owner, but had no further information on that point. Mr. Gibbons also stated that in the event the access road to the proposed solar farm needed to be widened, the work would be done the Borrego Solar side to the east and there would be no work proposed on the adjacent parcel. Mr. Gibbons did comment that the State Historic Preservation Office had required some additional information on a building on the adjacent parcel, but has

concluded that the building is in such a state of disrepair that there is no historic significance. Chairperson Clemente raised the point of requiring repair to Dusenberry Lane in the event it is damaged during construction of the solar farm, and asked how a repair requirement could be implemented given the fact that Dusenberry Lane is not in great shape to begin with. Attorney Gilchrist stated that this issue should be coordinated with the Brunswick Highway Department. Mr. Gibbons suggested that the Town require a pre-construction and post-construction road survey, which would be prepared by a third-party engineer according to NYSDOT standard; in this way, Mr. Gibbons stated that a baseline on current conditions could be established prior to construction, which then could be compared with the post-construction road survey to determine any repair requirements. The Zoning Board stated this would be considered as a condition to any action on the project. Chairperson Clemente had additional questions concerning the above-ground utility pole installation, and specifically regarding any base equipment or bollards that would be installed. Chairperson Clemente noted that the Borrego Solar facility being constructed on Brick Church Road included a fairly large box or cabinet at the base of the utility poles, with yellow bollards constructed in front of the cabinet, and inquired whether this type of structure is proposed for the Dusenberry Lane project. Mr. Gibbons stated that there is equipment proposed to be installed at the top end of the utility poles, but that no ground box or cabinet is being proposed in the location of the above-ground utility poles; Mr. Gibbons reviewed the location of ground equipment or boxes that will be constructed within the solar farm area, but confirmed that there was no utility box on the ground being proposed in the area of the above-ground utility poles for the Dusenberry Lane project. Mr. Gibbons stated that he would get more information concerning the Brick Church Road project, and that this box may have been required given the crossing of a NYS highway (NYS Route 142) with the power, but that he would get more information on the

Brick Church Road project and provide that to the Zoning Board. Chairperson Clemente confirmed that the photosimulation of the solar panel installation from various viewsheds would be submitted to the Zoning Board of Appeals. Mr. Gibbons confirmed the photosimulation will be provided to both the Planning Board and Zoning Board of Appeals, and that the submission would be made shortly. The option of having a joint public hearing with the Planning Board on September 19 was discussed. The Zoning Board members concurred that it was agreeable to holding a special meeting on September 19 for the purpose of conducting a joint public hearing with the Planning Board on this project. It was confirmed that the matter will be discussed and confirmed at the Planning Board September 5 meeting, presuming the photosimulation of the solar panel installations has been submitted by that date.

One item of new business was discussed.

An application for area variance has been submitted by Alexander Brown on behalf of Trifocal Brewing, Inc. for property located at 138 Brick Church Road. Mr. Brown was in attendance. Chairperson Clemente requested Mr. Brown to present a brief overview of the project. Mr. Brown stated that he and his brother are proposing to operate a small-scale craft brewery at 138 Brick Church Road within an existing garage structure, at which beer manufacturing would occur as well as limited tastings and sale of growlers; that the existing structure in which the brewing would take place is 30 feet by 60 feet, but that its existing location encroaches on the 75-foot setback required for the Business Light Overlay District, and is located closer to the front property line than the primary structure on the lot, which is a single-family residence. Chairperson Clemente noted that the area variance application appeared complete. Attorney Gilchrist stated that while the area variance application looks complete, the applicant had last appeared at the Brunswick Planning Board with a concept plan for the project, but that a full application to the



Planning Board is required, and asked the applicant whether a full application had been submitted to the Planning Board. Mr. Brown confirmed that a full application had not yet been submitted. Attorney Gilchrist recommended that the Zoning Board hold on scheduling any public hearing until such time as the applicant has made the full application to the Planning Board, which will then provide the Zoning Board as well as the Planning Board with additional information on the project that would be relevant on the determination of the both the area variance application as well as the site plan review by the Planning Board. The full Planning Board application will also include an environmental assessment form. The Zoning Board members concurred, and tentatively placed this matter on the September 16 agenda for further discussion, pending the submission of the full application with the Brunswick Planning Board.

The index for the August 19, 2019 meeting is as follows:

1. Darling - Area variance - Granted;
2. Blue Sky Towers II, LLC and Cellco Partnership d/b/a Verizon Wireless - Use variance - 9/16/2019;
3. Borrego Solar - Area variance - Adjourned pending possible joint public hearing with Brunswick Planning Board on 9/19/2019;
4. Brown/Trifocal Brewing Inc. - Area variance - 9/16/2019.

The proposed agenda for the September 16, 2019 meeting currently is as follows:

1. Blue Sky Towers II, LLC and Cellco Partnership d/b/a Verizon Wireless - Use variance;
2. Brown/Trifocal Brewing Inc. - Area variance.