Zoning Board of Appeals

TOWN OF BRUNSWICK
336 Town Office Road
Troy, New York 12180

MINUTES OF THE ZONING BOARD OF APPEALS MEETING HELD September 16, 2013

PRESENT were MARTIN STEINBACH, CHAIRMAN, E. JOHN SCHMIDT, CAROLINE TRZCINSKI and MARK BALISTRERI.

ABSENT was JAMES HANNAN.

ALSO PRESENT was JOHN KREIGER, Code Enforcement Officer.

The Zoning Board of Appeals members reviewed the draft minutes of the August 19, 2013 meeting. Upon motion of Member Trzcinski, seconded by Member Schmidt, the minutes of the August 19, 2013 were unanimously approved without amendment.

The first item of business on the agenda were the area variance applications submitted by Dolores Coblish for property located at 10 Petticoat Lane. The matter was scheduled for public hearing. The notice of public hearing was read into the record, with that public hearing being published in the Troy Record, placed on the Town sign board, placed on the Town website, and mailed to owners of all adjacent property. Chairman Steinbach requested the Applicant to make a brief presentation concerning the requested area variances, and whether there have been any changes to the application since the last meeting. Mrs. Coblish stated that there were no changes to the application, that she cannot meet the setback requirements in the Brunswick Code for the chicken coop on her property, and has requested that the Town issue area variances both from the side yard setback requirements and the front yard setback requirements for the placement of the chicken coop. Chairman Steinbach then opened the meeting for receipt of public comment, and inquired whether there was anyone present at the meeting to speak in favor of the project.

No members of the public wished to speak in favor of the project. Chairman Steinbach then inquired whether there were any parties wishing to speak in opposition to the application. Dave Shields, 8 Petticoat Lane, stated that he was against the application, that the chickens create a very loud noise in the morning, that the chickens created a stench in the hot summer, that the shed used for the chicken coop was an eye soar for the neighborhood, that there was a deed restriction for this neighborhood which prohibited chickens, that the Applicant could not state exactly where the property line was and therefore could not state the full extent of the variances that are required, that the shed used for the chicken coop could be put in the backyard behind an existing 6' stockade fence, that he did not like the fact that the side of the shed facing the neighboring property was painted orange while the rest of the shed was painted green, that there was some kind of bath or pool in the chicken coop and that the water from that pool was routinely dumped on the ground and was killing vegetation on the Shield's property, that the shed was also used for ducks and rabbits as well, and that part of the stockade fence located on 10 Petticoat Lane may in fact be on his property as well. Mr. Shields handed up to the Zoning Board members a copy of the deed restriction which he referenced in his comments, and a series of photographs for the record. Mr. Kreiger noted that he had received two email communications in opposition to the application, one from Paul Macari, who lives at 14 Petticoat Lane, and one from Erin Macari, also residing at 14 Petticoat Lane. Chairman Steinbach generally reviewed these email submittals, noting that certain portions of the emails were not relevant to the issues to be determined by the Zoning Board. Additional members of the public then arrived at the meeting. Tammy Fanfa, 12 Banbury Lane, stated that she was here to speak in favor of the application, that the Coblish family took good care of the chickens and maintained the chicken coop well, that Mrs. Coblish's daughter was participating in 4H and trying to learn

appropriate care for the chickens, and that generally the community needs more people involved in agriculture. Philip Herrington, 748 Tamarac Road, stated that he was not speaking as Supervisor of the Town but in his individual capacity, and was not speaking either in favor or opposed to the application, but was curious and wanted to know why the chicken coop was painted green on three sides but painted orange on the side facing the neighbor's house. No answer was provided by the Applicant. Chairman Steinbach then inquired whether there were any more members of the public wishing to offer comment on the application. Hearing none, the Zoning Board unanimously approved a motion to close the public hearing. The Zoning Board members then proceeded to deliberate on the information submitted by the Applicant as well as the comments received during the public hearing. Initially, Chairman Steinbach offered general comments that he feels the chicken coop does have a negative effect on the character of the Petticoat Lane neighborhood, that the property owners had created this situation by placing the chicken coop in its current location, and that there was an alternative location on the property for this chicken coop which would be in compliance with the setback requirements for the Town. Member Schmidt stated that in his experience, chickens do smell and draw rats and other vermin, and that he would not want a chicken coop within 100' of his house. Member Schmidt felt that the chicken coop could be moved into the backyard, and also inquired with Mr. Kreiger whether another existing shed in the backyard met the setback requirements for the property line. Mr. Kreiger stated that he would look into that situation. Member Schmidt stated that the lot at 10 Petticoat Lane was no bigger than 0.5 acre, and that there was already a house, deck, pool, and shed on that lot, and now an additional shed used as a chicken coop had been placed on that lot, and that the lot was not big enough to accommodate all of these structures. Mrs. Coblish responded that she could meet the front yard setback by moving the chicken coop deeper into the

lot, but that she could not get the chicken coop into the backyard. Member Schmidt questioned why the chicken coop could not be placed in the backyard. Attorney Gilchrist then stated that the Zoning Board should review the application for compliance with the elements for area variance. Initially, Attorney Gilchrist stated that an area variance for residential purposes is a Type II action under SEQRA, and no further SEQRA determination is required pursuant to the SEQRA regulations. Attorney Gilchrist then reviewed the required elements for the grant of an area variance with the Zoning Board, and the Zoning Board members discussed each element. First, as to the element of whether the area variances would result in an undesirable change in the character of the neighborhood or create a detriment to nearby properties, Chairman Steinbach reiterated his earlier comments that he felt the placement of the chicken coop in the requested location in the front yard of 10 Petticoat Lane did result in an undesirable change in the character of the neighborhood and created a detriment to nearby properties. The Zoning Board members generally inquired as to the effect of the deed restriction which was provided to the Board during the public hearing. Attorney Gilchrist stated that the Town is not in the position of enforcing a private deed restriction, but that such a deed restriction is relevant on the issue of the character of the neighborhood. Attorney Gilchrist explained that in the event the deed restriction was included in the deeds to this neighborhood, so that a general plan or scheme of development was created where certain uses, including the housing of chickens, was prohibited, that information should be considered by the Zoning Board members in relation of the character of the neighborhood. The Zoning Board members generally requested a copy of the Coblish deed from the Applicant. The remaining Zoning Board members also concurred that, in their opinion, the location of this chicken coop in the front yard of this lot did create an undesirable change in the character of the neighborhood. Attorney Gilchrist then reviewed the second necessary element

for the area variance, which is whether the Applicant can achieve the benefits sought through the area variance by some other feasible method. On this element, all of the Zoning Board members generally concurred that there was an alternate location available on the lot to place the chicken coop so that it is in compliance with the setback requirements. The Zoning Board next reviewed the third element, which is whether the requested area variances are substantial. Member Balistreri stated that he felt the requested side yard variance was not substantial, but that the front yard variance request was substantial. Mrs. Coblish responded that she could meet the front yard setback requirements and move the shed deeper into the lot so that it is in front of the stockade fence to the side of the house, but that she could not meet the side yard setback. Chairman Steinbach agreed that the chicken coop could be relocated deeper into the lot near the existing stockade fence and meet the front yard setbacks, and questioned whether the coop could then be moved closer to the house to meet the side yard setbacks. Mr. Kreiger stated that the coop must also be at least 10' from the house in order to meet Code requirements. Member Schmidt stated that in his opinion, even with respect to the side yard setback, whether the amount of that setback was substantial was relative given the size of the lot. In his opinion, a request to reduce a 15' side yard setback to 10' is substantial given the relatively small size of the lot. The Zoning Board then reviewed the fourth element for the area variances, which requires the Board to consider whether the area variances will have an adverse effect on the physical or environmental conditions in the neighborhood. On this element, Member Schmidt again stated that in his opinion, a chicken coop has an odor and attracts rats and other vermin. Mrs. Coblish disputed this opinion, stated that she keeps the chicken coop very clean, and that they have never seen any rats or vermin. Member Trzcinski stated that it was the feed for the chickens which drew rats. Mrs. Coblish stated that they keep all feed for the chickens in sealed cans, and they have never

seen any rodents. The Zoning Board members also found that the bath or pool water maintained in the chicken coop and then being dumped on the ground did present a potential adverse effect on the physical and environmental condition in the neighborhood. The Zoning Board then discussed the fifth element, which is whether the difficulty and need for the area variance is self-created. All of the members concurred that this difficulty was self-created when Mrs. Coblish had the shed used for the chicken coop placed in the front yard very near the front lot line and side yard lot line. Attorney Gilchrist then stated that since this matter had come before the Zoning Board as part of an enforcement effort by the Building Department, it would be advisable to have the Zoning Board's deliberation and conclusions drawn up into a formal written decision, which could then be reviewed at the October 21 meeting. The Zoning Board members then generally concurred. The Zoning Board then unanimously approved a motion to keep this matter open and adjourned to the October 21 meeting for review of a proposed written decision.

The next item of business on the agenda was the area variance application submitted by Monolith Solar on behalf of Kathryn Knipple. This matter was before the Board for public hearing. 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 sign board, placed on the Town website, and mailed to owners of all adjacent properties. Chairman Steinbach requested the Applicant to make a brief presentation, and state whether there had been any changes to the application since last month's meeting. Chris Hall of Monolith Solar made a general presentation, noting there had been no changes since the last Zoning Board meeting. Mr. Hall stated that Mrs. Knipple told Monolith Solar that the ground mount solar panel array could be constructed 5' off the side yard property line because the neighbor had agreed. Mr. Hall stated that the current location for the solar panel array provides the maximum solar energy production,

and is least visible from both the front and side yard. Mr. Hall stated that if the area variance is denied by the Zoning Board, Monolith Solar will relocate the ground mount solar array system in the back yard to meet the setback requirements. Mr. Hall did state that if the Zoning Board did approve the side yard area variance, the current location of the solar array system provides the best location from a solar energy production viewpoint and visibility viewpoint. Member Balistreri asked whether the company will agree to relocate the solar array to meet the side yard setback requirements. Mr. Hall confirmed that the company would relocate the solar array if required. Member Schmidt asked whether the relocation of the solar array system would change the effectiveness of the system. Mr. Hall did confirm that relocating the solar array system would reduce its effectiveness. Chairman Steinbach then opened the floor for receipt of public comment. Chairman Steinbach first inquired whether anyone was present to speak in favor of the application. No public comments in favor of the application were made. Chairman Steinbach then inquired whether there were any comments in opposition to the area variance application. Chris Brown, 1 Kenworth Avenue, stated that his property was directly adjacent to the Knipple property, and that he was friends with Mrs. Knipple and that she was a good neighbor, but that he did have a problem with Monolith Solar. Mr. Brown stated that the neighbor's approval to have the solar panel array 5' from the side lot line was not obtained until after the ground mount solar panel array system was installed. Further, Mr. Brown stated that while Monolith Solar argues the ground mount system is only viewable from 144 Brunswick Road, that is not true since he can clearly see the solar array system from his property. Mr. Brown stated that the solar unit, which approximately 14' x 40', is only 65 yards from his front door, and that it is clearly visible from his home. Mr. Brown stated that the neighbors knew nothing about this solar panel installation until the installation was complete. Mr. Brown stated

that he wants Monolith Solar and Mrs. Knipple to comply with the Town requirements, since he needed to comply with the Town requirements and obtain all necessary approvals to install a pool and shed on his property. Mr. Brown stated that he was not against solar panels or generation of solar power, but that he was against the visual impact of this solar panel location. Mr. Brown stated that he felt the ground mount solar panel array at this property was like having a billboard 65 yards from your front door, and that this did not fit in with the character of the neighborhood. Mr. Brown stated that the roof solar panel installations did not present any issue, and inquired why a ground mounted system was installed at 144 Brunswick Road. Mr. Brown stated that this project may in fact reduce the value of surrounding properties. Mr. Brown did hand up pictures of the solar panel array from the vantage point of his property. Mr. Brown concluded that this project did affect his property. David English, 142 Brunswick Road, stated that he was the first house directly to the west of 144 Brunswick Road and the solar panel installation location. Mr. English also stated that he was in full support of solar power generation and hydro power generation, and all forms of alternative green energy production. However, Mr. English stated that his property at 142 Brunswick Road was one of the original homes in that area, and was at least 100 years old. Mr. English stated since 1996, he was in the process of restoring the house to the original look, including period colors, shutters, windows, interior woodwork, historic furnishings, and that he had the porches rebuilt and the garden shed all done for purposes of period compliance. Mr. English stated that historic homes should be maintained, and not impacted by surrounding land uses. Mr. English stated that he has made a significant investment in his house. Mr. English stated that he had learned of the solar panel installations at 144 Brunswick Road only after the installation was complete. Mr. English feels that the ground mount solar panel at 144 Brunswick Road does not fit into the character of the

neighborhood. Mr. English felt that the ground mount solar panel array has an industrial look and is not appropriate for a residential area. Mr. English felt that this had a significant visual impact, and was like a billboard sitting next to your property. Mr. English stated that the size of the panels were significant, and were clearly visible from other properties. Mr. English stated that he did not know if the solar panel installation decreased surrounding property values, but he was clearly of the opinion that the surrounding property values would not increase. Mr. English stated that one major drawback to properties on Brunswick Road was the traffic, and that extra effort should be made on maintaining and renovating properties to detract from the traffic impact, and that the solar panel array impaired those efforts. Mr. English was of the opinion that we must do everything to avoid reduction in property values. Mr. English also stated that the fact that Monolith Solar was now applying for a permit after having already violated the Town Code requirements resulted in a difficult situation, and should be avoided in the future. Mr. English stated that it was particularly irksome when rules are not followed, particularly for a project which is government subsidized, which this project will be through tax incentives. Chairman Steinbach asked whether Mr. English could see the solar panel array from his property. Mr. English stated that he could view the supporting superstructure for the solar panel array from inside his house, and that he could see the entire solar panel array from his yard outside the house. Gerald Vien, 146 Brunswick Road, stated that he lives next door to Mrs. Knipple and that his property borders the Knipple parcel. Mr. Vien reiterated the comments of Mr. Brown, stating that he had no notice before the completion of the solar panel array 5’ from his property line. Mr. Vien did state that he had no complaint regarding the location of the solar panel array 5’ from his property line, and that he doesn’t care whether the solar panels are 5’ or 15’ from his side yard line. Mr. Vien stated that he had constructed his own shed on his own

property close to the property line in the past, and that Mrs. Knipple had agreed to the location of his shed. Member Schmidt wanted to confirm that he did not have any complaint regarding the solar panel array being 5' from his side yard lot line. Mr. Vien repeated that he did not have any objection to the location of the solar panel 5' from his property line. Dennis Ludlum, 1 Glenkill Road, stated that he lived next to Mr. Vien, that he was new to the neighborhood, and that he was shocked at the size of the solar panel installation and that he had no prior notice of the installation, that he had no problem with solar panels and solar energy generally, but that the size of this array in relation to other residential properties was a problem, and the fact that this was installed without all Town Code compliance and that Monolith Solar was now seeking a permit after the fact was not right. Margaret Ludlum, 1 Glenkill Road, asked why the solar panel array at this location was a ground mount, and why wasn't it placed on the roof. Mr. Hall of Monolith Solar responded by saying that he apologized to the neighbors, that Monolith Solar wanted to put the system on the roof in the first instance but that Mrs. Knipple refused and wanted a ground mount system, that Monolith Solar had thought Mrs. Knipple would speak to her neighbors before the installation, that the installation 5' from the side yard lot line was the responsibility of Monolith Solar, but indicated that if the system is moved 10' further off the side lot line it will actually be moved closer to Mr. Brown's property, and further away from Mr. Vien's property who has no problem with the location. Chairman Steinbach inquired whether there were any further public comment. Carol Brown, 1 Kenworth Avenue, stated that every time she went out her front door she can see the solar panel array, and wanted to know if trees could be planted to shield the system from her view. Chris Brown, 1 Kenworth Avenue, asked whether any of the Zoning Board members have driven down Kenworth Avenue and looked at this location. All of the Zoning Board members confirmed that they had visited this site, including Kenworth

Avenue, and Member Balistreri stated that there were several photographs of the site in the file materials. Mr. Hall of Monolith Solar concluded by stating he understood the comments of the neighbors, and would be willing to do whatever the neighbors and the Town wanted in this situation. Chairman Steinbach then entertained a motion to close the public hearing. A motion was made by Member Trczinski to close the public hearing, which motion was seconded by Member Schmidt. The motion was unanimously approved and the public hearing on the Monolith Solar area variance application was closed. Attorney Gilchrist repeated that this was an area variance application for a residential use, and that the action qualified as a Type II action under SEQRA, and that no further SEQRA determination was required. The Zoning Board members then began to deliberate concerning the elements of the area variance. On the issue of whether the area variance would result in an undesirable change in the character of the neighborhood or create a detriment to nearby properties, Member Schmidt stated that the difference between the solar panel array being 15' from the side yard lot line and 5' from the side yard lot line did not result in a significant difference in the character of the neighborhood. Member Balistreri confirmed that the solar panel array would continue to be located in the yard of the Knipple property, and that the only issue before the Zoning Board was whether to grant a variance to allow the array to stay 5' from the side yard lot line, or to deny the variance and require the solar panel array to be relocated on the Knipple property so that it is in compliance with the 15' setback. Member Balistreri wanted to confirm that the size of the solar panel array system was not relevant, and that the only issue that the Zoning Board was dealing with was the amount of the setback from the side lot line. Chairman Steinbach allowed the neighbors to comment. Mr. Vien stated that he was not in opposition to having the solar panel array system 5' from his property line. Mr. Brown stated that he was in opposition to having the solar panel

array system moved closer to his house. Member Balistreri said that in some respect, moving the solar panel array so that it was in compliance with the 15' side yard setback requirement would actually create more of a detriment to the properties located on Kenworth Avenue. As to the second element, the Zoning Board members generally discussed whether the benefit sought by the Applicant could be achieved by some other feasible method. While the Zoning Board members generally concurred that Monolith Solar stated they could move the solar panel array, there was also a comment in the record that relocating the solar panel array to comply with the side yard setbacks would affect the efficiency and solar power production of the unit. As to the third element, the Zoning Board members generally concurred that the requested variance from a 15' yard setback to a 5' yard setback for the side lot line was not substantial given the neighborhood, and particularly in light of the closest neighbor having no objection to the location of the solar panels 5' from his property line. As to the fourth element of whether the variance would have an adverse affect on the physical or environmental conditions of the neighborhood, Chairman Steinbach did state that a visual impact issue had been raised, but that the visual impact would result whether the solar array was located 5' from the side yard lot line or 15' from the side yard lot line. On the fifth element of whether the difficultly was self-created, the Zoning Board members generally concurred that the difficultly was self-created, but that this was not determinative of the application. After further deliberation, the Zoning Board members wanted to focus on the second element as to whether a feasible alternative existed on the property, and directed Attorney Gilchrist to further investigate and research the issue of feasibility with respect to the reduced effectiveness and efficiency of the solar system if it were relocated on the property. Attorney Gilchrist stated that any additional factual information which Monolith Solar could supply on that issue would be beneficial for the record. The Zoning Board members

concurred to keep this matter open and adjourn the matter to the October 21 meeting. Member Balistreri made a motion to adjourn this matter and to carry it over to the October 21 meeting, which motion was seconded by Member Schmidt. The motion was unanimously approved, and the matter held over to the October 21 meeting for further deliberation.

There were no new items of business to discuss.

The index for the September 16, 2013 meeting is as follows:

1. Coblish – area variance – 10/21/13.

2. Monolith Solar – area variance – 10/21/13.

The proposed agenda for the October 21, 2013 meeting currently is as follows:

1. Coblish – area variance.

2. Monolith Solar – area variance.