

Zoning Board of Appeals

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

MINUTES OF THE ZONING BOARD OF APPEALS MEETING HELD October 21, 2013

PRESENT were CHAIRMAN MARTIN STEINBACH, JAMES HANNAN, E. JOHN SCHMIDT and CAROLINE TRZCINSKI.

ABSENT was MARK BALISTRERI.

ALSO PRESENT was JOHN KREIGER, Code Enforcement Officer.

The Zoning Board of Appeals members reviewed the draft minutes of the September 16, 2013 meeting. Upon motion of Member Trzcinski, seconded by Member Hannan, the minutes of the September 16, 2013 were unanimously approved without amendment.

The first item of business on the agenda was the area variance application submitted by Dolores Coblisch for property located at 10 Petticoat Lane. Based upon the application materials, comments received by the Zoning Board at the public hearing held September 16, 2013, and deliberations by the Zoning Board members, a draft determination had been prepared at the direction of the Zoning Board members and read into the record, as follows:

An application has been submitted by Dolores Coblisch (hereinafter "Applicant") seeking two (2) area variances for property located at 10 Petticoat Lane in order to allow the continued placement and location of a shed utilized as a chicken coop on that parcel. The Applicant requests a variance from the front yard setback requirement and side yard setback requirement contained in the Brunswick Code.

Specifically, the Applicant seeks an area variance from the front yard setback requirements as follows: the application requests a 25 foot front yard setback¹, where the Brunswick Town Code requires a 60 foot front yard setback. The Applicant further seeks an area variance from the right side yard setback requirements as follows: the application requests a

¹ The Applicant stated on the record at the August 19, 2013 Zoning Board of Appeals meeting that a 20 foot front yard setback was requested. The Zoning Board will consider this to be an amendment to the application form, and will make its determination on a request for a variance seeking a 20 foot front yard setback.

10 foot right side setback, where the Brunswick Town Code requires a 15 foot right side yard setback.

This application was initially reviewed by the Zoning Board of Appeals at its meeting held August 19, 2013. Thereafter, the Zoning Board of Appeals held a public hearing on this application at its meeting held September 16, 2013. The public hearing on this application was closed by the Zoning Board of Appeals at the September 16, 2013 meeting. Thereafter, at its September 16, 2013 meeting, the Zoning Board members deliberated on the application documents, evidence submitted in the record by the Applicant, as well as all public comments received during the public hearing. Based on the record and deliberations of the Zoning Board members, the Zoning Board of Appeals hereby adopts the following determinations:

FACT FINDINGS

Based on the record and deliberations of the Zoning Board members, the Zoning Board of Appeals makes the following findings of fact:

1. A shed used as a chicken coop is situated in the front yard of the property located at 10 Petticoat Lane in a location that is approximately 20 feet from the front yard property line, and approximately 10 feet from the right side yard property line.
2. Petticoat Lane is a residential neighborhood, with residential lots of similar size (approximately 0.5 acre), and which was originally part of a subdivision known as “Cotswold Village”.
3. Approximately 6-10 chickens are housed in the chicken coop located at 10 Petticoat Lane.
4. The chicken coop structure located at 10 Petticoat Lane is movable, is currently setting on the ground surface without foundation, and is capable of being relocated on that lot.
5. The three sides of the chicken coop facing the front yard property line (adjacent to Petticoat Lane), the left yard property line (the house located at 10 Petticoat Lane), and the rear yard property line (backyard) are painted green, whereas the fourth side of the chicken coop facing the right side property line (abutting the neighboring property) is painted orange.
6. A pool or other vessel for holding water is used in the chicken coop, and is periodically dumped directly onto the ground surface.
7. The use of the shed as a chicken coop presents the potential for noise, odor, and attraction of vermin in this residential neighborhood.
8. There is evidence of restrictions of record that were created as part of the “Cotswold Village” subdivision, which prohibit chickens or other fowls from being maintained, allowed, or harbored on any of the lots contained in the

“Cotswold Village” subdivision. Property owners have provided to the Zoning Board of Appeals copies of the recorded subdivision restrictions, including restrictions recorded in the Rensselaer County Clerk’s Office at Book 1033, Page 121. These restrictions, in part, define the character of the Petticoat Lane neighborhood.

9. The Applicant has stated on the record that the chicken coop structure could be relocated on the lot at 10 Petticoat Lane so that there is compliance with the 60 foot front yard setback requirements of the Brunswick Town Code.
10. The size of the lot at 10 Petticoat Lane is approximately 0.5 acre, and there currently exists a house, deck, pool, and shed situated on that lot in addition to the subject chicken coop.

ANALYSIS

1. The Zoning Board determines that the requested area variances, including both the front yard setback variance and side yard setback variance, will result in an undesirable change in the character of the neighbor and create a potential detriment to nearby properties. The Zoning Board determines that the placement of the shed used as a chicken coop in the current location in the front yard at 10 Petticoat Lane does change the residential character of the neighborhood, in which there are no other existing structures on the surrounding properties located in close proximity to the public road nor adjacent to the front yard of a neighboring property. The Zoning Board members also have considered the restriction of record which had been created as part of the “Cotswold Village” subdivision, and while acknowledging that this represents a private restriction for this neighborhood, it is a relevant consideration with respect to the character of that neighborhood. Potential impact to the character of the surrounding neighborhood is an important consideration in determining whether to grant or deny an area variance. In this regard, this restriction has, in part, defined the residential nature of this neighborhood, and the Zoning Board finds that the placement of the shed used as a chicken coop in the requested location is not consistent with the surrounding character of the neighborhood.
2. The Zoning Board determines that there exists a feasible alternative available to the Applicant other than the requested area variances. In this regard, the Applicant has conceded on the record that the chicken coop structure could be relocated on the lot at 10 Petticoat Lane to comply with the front yard setback requirements. With regard to the side yard setback requirements, the Zoning Board members find that while the chicken coop structure could not meet the side yard setback requirement when it is located parallel to the house, in light of the additional restriction that such structure must be located at least 10 feet from the house, there is available area in the rear yard which could be utilized for placement of this chicken coop structure and meet the side yard setback requirements.

3. The Zoning Board determines that the requested variance from the front yard setback requirements is substantial, requesting a variance reducing the required 60 foot front yard setback by 40 feet, or 66% from the required setback footage. With regard to the side yard setback requirements, the requested variance reducing the required 15 foot setback to 10 feet represents 33% from the side yard setback requirement, and is exacerbated given the small size of the lots in the Petticoat Lane neighborhood, and therefore is also a substantial variance.
4. The Zoning Board determines that the requested location of the chicken coop does result in a potential adverse effect on the physical and environmental conditions of the neighborhood. In this regard, the Zoning Board members find that the physical location as well as the colors of the shed/chicken coop structure presents a visual impact to the Petticoat Lane neighborhood, and the use of the structure in proximity to adjacent homes presents a potential noise impact. The Zoning Board members are cognizant of the Brunswick Zoning Code which permits the use of a chicken coop in this Zoning District, but also take notice of the character of this residential neighborhood and the restriction of record for the "Cotswold Village" subdivision when that neighborhood was first subdivided and created. On this issue, the Zoning Board members also find that the location of the chicken coop in the front yard is a potential attraction for rodents and other vermin, and dumping the standing water from the pool or vessel used in the chicken coop directly onto the ground surface has the potential to effect the physical environment.
5. The Applicant has conceded that the shed structure which is used for the chicken coop was obtained after the Applicant purchased the property approximately 2 years ago, and was simply placed on the ground surface at its current location at the convenience of the Applicant. In this regard, the Zoning Board members find that the difficulty and need for the area variances is self-created.

DETERMINATION

Based on the findings of fact and analysis stated above, and upon the review of the evidence in the record and all comments received during the public hearing, and in balancing the benefit to the Applicant if the variances are granted as weighed against the detriment to the health, safety and welfare of the neighborhood by such grant, the Zoning Board of Appeals hereby denies the requested area variances in this matter.

Chairman Steinbach discussed the draft decision with the Zoning Board members. The Zoning Board members had no additional comments or proposed changes to the draft decision. Chairman Steinbach then entertained a motion to adopt a resolution approving the written decision on the Coblish area variance application. Such motion was made by Member Schmidt

and seconded by Member Hannan, and was unanimously approved, thereby adopting the written decision on the area variance application by Dolores Coblisch as the final determination in this matter.

The second item of business on the agenda was the area variance application submitted by Monolith Solar on behalf of Kathryn Knipple for property located at 144 Brunswick Road. Greg Crawford of Monolith Solar was present for the Applicant. Chairman Steinbach inquired whether there was any additional information which Monolith Solar sought to hand up to the Zoning Board in connection with its determination in this matter. Mr. Crawford handed to the Zoning Board members additional information regarding the costs of relocating the solar panel array and also the impact on efficiency of the solar panel array system if relocated. The information provided by Mr. Crawford states that the cost for relocating the solar panel array on this property totals \$4,300. Mr. Crawford also stated that relocating the solar panel array to 15 feet from the side property line would result in a 1.63% reduction in efficiency of the system and production of energy. Chairman Steinbach noted that denial of the variance request could result in a minor reduction in efficiency and overall energy production, but that the solar panel array would still be functional and produce energy at a new location on this parcel. Mr. Crawford confirmed this. Member Schmidt noted for the record that additional legal research has been undertaken by the Zoning Board on the issue of whether available alternative locations are feasible in light of impact to system efficiency. Member Trczinski inquired for the record whether Monolith Solar had originally applied to the Town Building Department for a building permit to install the solar panel array 15 feet from the side yard property line. Mr. Crawford confirmed that the building permit was issued for installation of the solar panel array 15 feet from the property line. Member Trczinski also inquired for the record whether it was the owner,

Katherine Knipple, who wanted the solar panel array moved closer to the property line, rather than the location sought pursuant to the building permit application. Mr. Crawford confirmed that the owner did seek to have the solar panel array moved closer to the property line, but suggested that she did receive permission from the adjoining neighbor to do so. Mr. Crawford confirmed for the record that in the event the area variance is granted, Monolith Solar would work with the property owner and neighboring owners to do whatever it could in terms of vegetative screening so that the solar panel array was not as visible to the neighboring property owners. Member Hannan inquired of Mr. Crawford that if Monolith Solar knew it required an initial building permit and was aware of the Town Regulations, why did Monolith Solar not continue to comply with those regulations on the location of the solar panel array installation. Mr. Crawford explained that he was not fully aware of the set back requirements until the piers for the solar panel array had already been installed. Member Hannan stated that Monolith Solar is not a new company to the industry, and that if a ground mount solar panel array installation is sought, the company should know better and should check with the Town requirements before starting the installation. Mr. Crawford conceded that he was new to the position at Monolith Solar, and was not fully aware of the Town requirements. Member Hannan stated that he understood that solar panels and ground mounted solar panel installations will continue, but that the Town should insist on having the installations comply with Town Code requirements. Chairman Hannan asked whether Monolith Solar would absorb the costs of relocating this solar panel array if the area variance was denied. Mr. Crawford confirmed that Monolith Solar would absorb the costs. Ryan Guay, a project manager with Monolith Solar was also present at the meeting, and also confirmed on the record that he was new to the position, and that unfortunately, this matter had fallen through the cracks. Member Hannan stated that he was

aware that both Mr. Crawford and Mr. Guay may be new to Monolith Solar, and that this matter may have arisen as a result of a mistake, but he was concerned regarding the precedential nature of a decision in this matter. In the event the area variance was denied, Member Hannan stated that this was not to be viewed as a punishment for a mistake having been made, but rather a concern on the part of the Town that its code requirements are followed and that this matter does not create a negative precedent. The Zoning Board members then generally deliberated that it appeared on the information contained in the application and during the public hearing that an alternative was available to the Applicant, but that the issue of whether this alternative was feasible given costs and impact to equipment efficiency should be considered. The Zoning Board members generally concurred that this difficulty had been self-created. Member Trczinski noted for the record that Monolith Solar has stated if the area variance is granted, it would have the economic resources to work with the neighboring property owners to plant trees or bushes to help screen the solar panels from the neighboring properties, but if the solar panel array must be relocated, the costs of relocation may impact the ability to have vegetation for screening purposes. One of the neighboring property owners, Chris Brown, was present at the meeting, and Chairman Steinbach allowed him to speak. Mr. Brown stated that he was generally aware of the location of the septic and leach field on the Knipple property, and he raises the issue of whether the proposed relocated position would impact the leach field. The Zoning Board members generally discussed that issue, and ultimately determined that this information would be relevant to the application, and directed Monolith Solar to provide such information to the Board members for consideration. Attorney Gilchrist stated that unless the timeframe is extended by the Applicant, the Zoning Board must render a decision on this area variance application within 62 days of the close of the public hearing, which would require the Zoning

Board to render its final determination no later than its November meeting. There was general discussion on the timeframe needed to supply information concerning the leach field on the Knipple property, and in this regard, the Zoning Board members inquired of the Applicant whether it would consent to extend the time period in which the Zoning Board must render its decision on this application until the Zoning Board's December meeting. Monolith Solar, on behalf of the property owner Katherine Knipple, granted that extension to the Zoning Board, which now permits the Zoning Board to render its final determination on this application through and including its December 2013 meeting. Concerning the information on the leach field, Chairman Steinbach directed that Monolith Solar supply more than simply a concept plan, but rather the Zoning Board was looking for specific information in the nature of an as-built plan for the septic and leach field, which should also locate the current location of the solar panel array. The Zoning Board directed that Monolith Solar supply the information concerning the septic and leach field on the Knipple property on or before November 12, 2013, and that this matter is placed on the November 18 agenda for further deliberation.

One item of new business was discussed.

An area variance application has been submitted by Arthur Durivage, 1009 Cloverlawn Road, seeking both a front yard and side yard setback variance concerning a 20' x 22' carport which had been installed at this location approximately 10 months ago. Mr. Kreiger reports to the Zoning Board that this matter arises out of an enforcement process concerning installation of the carport. Mr. Kreiger explained the application to the Zoning Board members, and indicated that some additional information is required to be submitted by the Applicant on the application. The Zoning Board members generally understood the content and intent of the area variance application, and tentatively scheduled a public hearing on this matter for its November 18

meeting, subject to the submission of the additional information which Mr. Kreiger is requiring from the Applicant. Mr. Kreiger will confirm the receipt of this additional information to the Zoning Board members and Attorney Gilchrist.

The index for the October 21, 2013 meeting of the Zoning Board of Appeals is as follows:

1. Coblish – area variance – denied.
2. Monolith Solar – area variance – 11/18/13.
3. Durivage – area variance – 11/18/13 (public hearing to commence at 6:00 p.m.).

The proposed agenda for the November 18, 2013 meeting currently is as follows:

1. Monolith Solar – area variance.
2. Durivage – area variance – public hearing.