

Zoning Board of Appeals

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

MINUTES OF THE ZONING BOARD OF APPEALS MEETING HELD November 18, 2013

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

ALSO PRESENT was JOHN KREIGER, Code Enforcement Officer.

The draft minutes of the October 21, 2013 meeting were reviewed. Upon motion of Member Trzcinski, seconded by Member Hannan, the minutes of the October 21, 2013 were unanimously approved without amendment.

The first 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 noted that at the October 21, 2013 meeting, the Zoning Board had requested that Monolith Solar submit additional information regarding septic and leach field location on the Applicant's property and that a map be submitted showing the location of the septic tank and leach field as well as the location of the ground mount solar array. Chairman Steinbach noted that this information had not been submitted by the Applicant. Mr. Crawford stated that he did have additional information regarding the septic system location, and that it was his understanding from Mrs. Knipple that the septic tank was located just south of the current location of the ground mount solar array, and that the leach field actually existed under the driveway to the property. Mr. Crawford stated that he did not have a map to submit to the Zoning Board, and that this information was from Mrs. Knipple's memory since the septic system was replaced only about

one year ago. Chairman Steinbach inquired whether there was any additional specific information that Mr. Crawford could provide the Zoning Board. Mr. Crawford said there was no map available. Member Hannan commented that the Zoning Board had requested a more specific map, and questioned why no additional documentation had been submitted by the Applicant. Member Hannan also noted that it was unlikely that the driveway to this property was constructed over a leach field, and that he was looking for something more than guess work on the part of the Applicant. Chairman Steinbach reviewed the October 21 minutes, specifically at pages 7-8, and stated that the Applicant had not supplied the requested information to the Zoning Board. Mr. Crawford responded that any additional information would not be supportive of the current variance application since the location of the septic tank and leach field did not interfere with relocating the solar array on the property. Member Hannan stated that while Mr. Crawford may not think this information would assist the application, he did not know for sure since no specific information had been provided, and again inquired why the Zoning Board had not been supplied with a map showing this information when the Applicant had specifically been requested to do so. Member Balistreri noted that if the ground mount solar array needs to be moved on the property, then Mrs. Knipple will need to specifically identify the location of the septic tank and leach field before any relocation could occur. Mr. Crawford agreed. The Zoning Board stated that it would accept a map depicting the location of the septic system on the property through December 2, and thereafter the record will be closed and the Zoning Board will deliberate and make a determination on this application at its December 16 meeting.

The second item of business on the agenda was the area variance application submitted by Mr. Arthur Durivage for property located at 1009 Cloverlawn Road. Member Balistreri stated that he lives next door to Mr. Durivage, and that members of his family also live in close

proximity to Mr. Durivage, and therefore will recuse himself from any participation in the review and determination of this application to avoid even the appearance of bias. Member Balistreri indicated that he had previously reviewed this matter with Attorney Gilchrist. Accordingly, Member Balistreri has recused himself from any further participation in the review and determination of this application. Member Balistreri left the meeting room. Chairman Steinbach noted that 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 noted for the record that this area variance application seeks variances to allow an existing carport to remain in its current location on the property. The Applicant seeks both a front yard setback and side yard setback variance. The Applicant seeks a front yard setback of 18', where a minimum setback of 60' is required; and the Applicant seeks a side yard setback of 2', where a minimum of 15' is required. Mr. Durivage was present. Chairman Steinbach requested Mr. Durivage to present the application. Mr. Durivage handed up additional pictures of the carport structure, which are part of the record. Mr. Durivage stated that he is the owner of 1009 Cloverlawn Road, that he has lived at that property for 25 years, that he does not have a garage and that his car was severely damaged in a hail storm two years ago, and that as a result he researched the installation of a carport, that he purchased the carport which is installed on the property, and described the carport as having two sides but open on both ends, further describing the size of the carport as being able to park two cars, that the carport was made of 12-gauge steel and was movable, that it was installed in November of 2012, that the only way you can see this carport is when driving west off Springbrook Road onto Cloverlawn Road, that the carport and property are well maintained and clean, and that he does not see what the big deal

is in keeping the carport in its current location. Chairman Steinbach asked whether any of the Zoning Board members had questions for Mr. Durivage. Member Trzcinski questioned the statement made by Mr. Durivage that you really can't see the carport, since Member Trzcinski went to the site to view it and she could certainly see it. Mr. Durivage immediately responded that you could not see the carport during the summer when leaves are on the trees. Further, Mr. Durivage commented that even if you can see it, it is still not a problem since it is just a carport. Member Hannan asked whether the contractor who installed the carport was aware of the Town setback requirements. Mr. Durivage then stated he had problems with the company where he purchased the carport, and that the company did not allow him adequate time to get a permit from the Town. Member Hannan asked whether the local dealer from whom Mr. Durivage purchased the carport supervised the installation in any way. Mr. Durivage stated that the local dealer did not supervise the work, that the manufacturer of the carport sent the contractor to install the carport, and that he did not work with the local dealer in any way on the installation. Mr. Durivage stated that he did speak with the local dealer regarding permit requirements, but that the local dealer stated that he is not involved with any local permit requirements. Member Hannan asked Mr. Durivage whether he spoke again with the local dealer after he was told that the carport was installed in violation of the Town setback requirements. Mr. Durivage stated that he did speak with the local dealer again, but that the local dealer again stated he did not have anything to do with local permitting. Mr. Kreiger noted that he is not aware of any other issues regarding carport or shed installations with respect to the local dealer with which Mr. Durivage worked. Member Schmidt wanted to confirm the timeline, and asked Mr. Durivage whether he went to the Town, and specifically Mr. Kreiger, before the carport was installed and whether Mr. Durivage was told he needed a variance. Mr. Durivage did state he had spoken with Mr. Kreiger

prior to the carport construction. Member Schmidt then asked whether Mr. Durivage put up the carport anyway, knowing that he had not obtained the variance. Mr. Durivage stated that the carport was put up, but that he had no choice because the contractor who was installing the carport said it needed to be installed at that time. Chairman Steinbach noted that part of the application shows a bill of sale for the carport dated November 2012, and that the installation of the carport was also in November 2012. Mr. Durivage confirmed that it was during the November 2012 timeframe that he talked to Mr. Kreiger and was told he needed a variance. Chairman Steinbach also noted that the requested variances were significant. Mr. Durivage responded that he could not relocate the carport on his property, and that it would cost too much to do so. Chairman Steinbach confirmed on the record that the carport was closest to adjacent property owned by Shaw, and that there were houses directly across the street from this carport as well. Mr. Durivage confirmed this. Member Trzcinski noted for the record that a letter (email) had been received by the Town on this application, stating that a child's daycare was operated at 1009 Cloverlawn Road, and that children play in the driveway all day and that this could become a safety issue. Mr. Durivage stated that the daycare was fully licensed, and did not want to address any issues concerning the daycare operation and that he was only before the Zoning Board on the variance issue. Attorney Gilchrist commented that among the standards for the requested variance that need to be considered by the Zoning Board is the character of the neighborhood, and that the information concerning the operation of the daycare and children playing on the property may be considered by the Zoning Board. Chairman Steinbach then opened the floor for receipt of public comment. First, Chairman Steinbach inquired whether there was anyone present to speak in favor of the application. No one was present to speak in favor of the application. Chairman Steinbach then inquired whether there was anyone present to

speak in opposition to the application. Ray West, 1010 Cloverlawn Road, directly across the street from this property, stated that the carport was installed on November 28, 2012 with no permit from the Town, that the carport was an eyesore, that the carport results in an undesirable change in the character of the neighborhood since it is in front of the house near the street and that no other house in Springbrook has a structure of this size in front of the house or this close to the road, that approving this would set a very bad precedent and there is potentially a significant number of additional carports that may be installed in Springbrook if the variance is granted, that the color of the carport also does not match the house and is an eyesore, that the carport was a detriment to the neighborhood and potentially decreased property values because of its impact on surrounding properties, the carport obstructs vision and sight lines, that children did play in the driveway as part of the daycare operation and that this carport may obstruct vision and create a safety issue for the children, that the carport was constructed directly underneath electric power lines and that this raised a safety issue as well, that the carport itself may be within the Town-owned 50' right-of-way for Cloverlawn Road, that Mr. Durivage had 3 additional shed structures on this property in addition to the carport and that there is not enough room on this site for all of these structures, and that he would have no objection to a stick built garage attached to the house since that would be consistent with the character of the neighborhood. Jim Doin, 1012 Cloverlawn Road, stated that he had no personal animus toward Mr. Durivage, but that he was opposed to the application, that he agreed with the comments of Mr. West, that the carport was very visible and made the property look poor, that there were already a number of outbuildings on this property and now the carport only adds to it, that the trees around the carport do not hide it from view, and that this may have a negative effect on property values. Chairman Steinbach asked whether there were any additional members of the public wishing to comment. Hearing

none, Chairman Steinbach entertained a motion by Member Hannan to close the public hearing, which motion was seconded by Member Schmidt. The motion was unanimously approved, and the public hearing on the Durivage area variance application was closed. The Zoning Board then proceeded to deliberation on the application. Mr. Durivage requested the opportunity to respond to comments. Chairman Steinbach requested that Mr. Durivage respond to the public comments. Mr. Durivage again stated that he felt the carport was not visible, that he was planning to put new siding on his house that would match the color of the carport, that the additional sheds on the property were not an issue since they were “even with the house” and not out near the front property line, that there was no safety issue since trees have been cut to provide adequate sight lines from the driveway, and that this was not a significant issue. The Zoning Board members then proceeded to deliberate on the application. Attorney Gilchrist noted that an application for area variance for a single family residence is a Type II action under the State Environmental Quality Review Act, and no further SEQRA determination is required. The Zoning Board members then proceeded to address the elements for the requested area variance. First, with regard to whether the requested variances would produce an undesirable change to the character of the neighborhood or create a detriment to nearby properties, Member Hannan commented that the location of the carport is not in character with the neighborhood; Chairman Steinbach concurs that the location of the carport is not consistent with the character of the neighborhood, that the neighborhood has a traditional look and there are no other large carports located in the front yard area close to the road, and that this location of the carport requires significant variances that would impair the character of the neighborhood; Member Schmidt confirmed that no other property in that general location of the Springbrook neighborhood has anything like this large carport in the front of the lot, and that the other homes kept all of the outbuildings or other

structures in the back yard area; and Member Hannan noted that public comments raised the issue of whether this carport would decrease surrounding property values, but that no expert proof had been submitted. Second, regarding whether the Applicant could achieve the benefit it seeks through the variance by some other feasible method, Chairman Steinbach noted that he had driven by this location, and that he thinks there is no alternate location on this property for the placement of a 20' x 22' carport, and that if a smaller carport was installed to meet the setback requirements, it would not be a functional carport since it would need to be so small. All the Zoning members generally concurred with this observation. Third, regarding the issue of whether the requested area variances were substantial, all members concurred that the requested variances were substantial, and that Mr. Durivage, the dealer, and the contractor should have factored in the required setbacks when considering a carport for this location. Fourth, regarding the issue of whether the requested variance would have an adverse affect on the physical or environmental condition in the neighborhood, Member Trzcinski stated that she did not feel there were any significant environmental impacts, but that there was certainly a physical impact with the structure located on the property; Chairman Steinbach agreed, but also stated that he felt the visual impacts were an environmental issue; Chairman Steinbach also said that the Zoning Board should consider the issue of the proximity of this metal carport to the overhead electric power line as a potential environmental and safety issue, and that the Zoning Board should have additional information on this issue. Mr. Kreiger stated that it was his general understanding based on past applications that a minimum 10' separation from a main power line was required, but was not certain as to necessary setbacks for a service line. Mr. Kreiger stated that he would research that issue, and provide the Zoning Board with that information. The Zoning Board also requested Mr. Kreiger to confirm the distance between the carport roof on the Durivage property

and the location of the overhead electric power line. Member Hannan asked Mr. Durivage if he knew how close the peak of the roof of the carport was to the overhead power line. Mr. Durivage thought it was about 4 feet. The Zoning Board will receive additional information on this issue. Fifth, as to whether the difficulty necessitating the need for an area variance was self-created, all of the Zoning Board members concurred that the difficulty was self-created. Member Trzcinski wanted to confirm that the email letter discussed earlier in the meeting concerning the Durivage application, which was received by the Town on November 12, was made part of the record. The Zoning Board members determined that they will continue the deliberation on this application at the December meeting after receipt of the additional information from Mr. Kreiger concerning the overhead power line issue.

Member Balistreri then returned to the Zoning Board meeting.

Mr. Kreiger reported that no new applications had been received, and that there was no new business to discuss.

The index for the November 18, 2013 meeting of the Zoning Board of Appeals is as follows:

1. Monolith Solar – area variance – 12/16/13.
2. Durivage – area variance – 12/16/13.

The proposed agenda for the December 16, 2013 meeting currently is as follows:

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