

Zoning Board of Appeals

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

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

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

ABSENT was JAMES HANNAN.

ALSO PRESENT was JOHN KREIGER, Code Enforcement Officer.

The members of the Zoning Board reviewed the draft minutes of the November 18, 2013 meeting. Upon motion of Member Trzcinski, seconded by Member Schmidt, the minutes of the November 18, 2013 were unanimously approved without amendment.

The first item of business on the agenda was the area variance application by Monolith Solar on behalf of Kathryn Knipple for property located at 144 Brunswick Road. Chairman Steinbach noted for the record that the public hearing on this area variance application had been held and closed, that certain additional information had been submitted by the Applicant, and that the record on this matter is now complete. Chairman Steinbach further confirmed on the record that the Zoning Board members had previously deliberated on this matter, and that upon consent of the Applicant, the date by which a final determination on this variance application was extended until this December meeting. Attorney Gilchrist then confirmed for the record that the application seeks an area variance for a residential application, and therefore constitutes a Type II action under SEQRA, and no further SEQRA determination is required. Attorney Gilchrist did confirm for the record that the Zoning Board members had reviewed the public comments and evidence in the record, and had previously begun their deliberations on this

application. Chairman Steinbach then directed that the Zoning Board members should review the criteria for the area variance application, and confirm the deliberations on each element. Concerning whether the requested variance would produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties, Chairman Steinbach noted that the neighboring property owners did comment at the public hearing that they can see this solar panel array, and that it does create a visual impact and, in the neighbors' opinion did change the character of the residential neighborhood. Member Schmidt stated that the solar panel array could have been constructed on the lot in compliance with the side yard setback requirements, but the neighbors stated at that public hearing that this would result in a less desirable location because it would create more of a visual impact to them, and that this application is therefore quite unique in that the requested variance would actually result in less of a visual impact on the neighboring properties than constructing the solar panel array in compliance with the side yard setback requirements. With that comment Member Balistreri agreed. As to whether there was a feasible alternative available to the property owner, Member Balistreri commented that the Applicant testified that the location at which the solar panel array was constructed actually is the best location in terms of equipment efficiency, and that if the solar panel array was relocated to be in compliance with the side yard setback requirements then the efficiency of the solar panel system would be reduced. Member Trzcinski noted that the best option for the property owner would have been a roof installation for the solar panels, but that the owner chose not to put it on the roof but rather a ground mount installation in the yard. Chairman Steinbach agreed with Member Trzcinski, but did note that there is evidence in the record that the efficiency of the solar unit would be decreased if it were relocated on the lot. As to whether the requested variance is substantial, Mr. Kreiger repeated for the record that the

required side yard setback is 15', whereas the solar panel array is approximately 5' from the side yard line, and that the Applicant was requesting a 10' variance. Member Schmidt said that while the total variance was substantial, it must be viewed in light of the entire record, which would result in a more significant impact on surrounding properties if the amount of the variance was reduced. Member Schmidt again said that this fact pattern was quite unique. Chairman Steinbach agreed that this fact pattern is unique. As to whether the requested variance resulted in a physical impact or impact to the environment, Chairman Steinbach noted that the visual impact of the solar panel array is an environmental impact, and should be noted on the record. Member Trzcinski stated that if the solar panel array was moved an additional 10' from the side yard line, it would still be visible and possibly increase the visual impact to surrounding properties. Member Schmidt agreed with Member Trzcinski. As to whether the situation was self-created for which the variance was requested, Chairman Steinbach said that the situation was self-created, and that Monolith Solar has much as admitted they made a mistake and violated the local law. Chairman Steinbach noted that he did not find that the company nor the property owner intentionally violated the local law, and that there is evidence that this was an innocent mistake, but that certainly the matter was self-created. All the members generally agreed. Chairman Steinbach inquired of both Mr. Kreiger and the Applicant as to whether there was any additional evidence regarding the location of the septic tank and leach field on the property. Mr. Kreiger reported that neither Rensselaer County nor the property owner retained any record plans, and that the contractor that performed the work on the system approximately one year ago reports that all he did was replace the septic tank in its prior location. Chairman Steinbach asked for any general opinions on this application from the Zoning Board members. Member Balistreri said he was of the opinion that the solar panel array should be left where it is, that it would result

in greater detriment to the surrounding homeowners if it were relocated to come into compliance with the setback requirements, and that the situation is very unique, but that the application should be granted. Members Schmidt and Trzcinski generally agreed with this assessment. Chairman Steinbach did note that this application and the fact situation at issue was unusual, that this was a unique and very individual case, but that the Zoning Board should be mindful of setting precedent. The remaining Zoning Board members concurred, but did emphasize that this fact pattern was quite unique and that the determination on this application should not be considered as setting precedent on future matters. Chairman Steinbach wanted it noted on the record that applicants and builders must be aware of local building rules and setback rules, and should certainly be held accountable for violations. However, Chairman Steinbach did concur that this case does present a unique set of facts which the Zoning Board should be mindful of. Having stated that, Chairman Steinbach inquired whether the Zoning Board members should consider any conditions be imposed on the variance, if granted. The Zoning Board members generally discussed the offer by the Monolith Solar company to work with the neighbors to install landscaping to better buffer the solar panels from adjacent properties. Attorney Gilchrist noted that the record evidence includes a statement by Monolith Solar that the cost for relocation of the solar panel was approximately \$4,300, and that if the variance was granted, such proceeds could be used toward installing landscaping for screening purposes in coordination with the neighbors. Hearing no further proposed conditions, Chairman Steinbach requested a motion be made for action on the area variance application. Member Balistreri made a motion as follows: on the application submitted by Monolith Solar on behalf of Katherine Knipple for an area variance from the side yard setback requirements regarding the placement of a solar panel array at 144 Brunswick Road, the Zoning Board of Appeals finds, based on the evidence in this record,

that the installation of the solar panel array in proximity to the side yard lot line was inadvertent and without ill will, that there was no opposition or objection to the maintenance with the solar panel array in its current location from surrounding property owners, that such surrounding property owners assert that they will be negatively impacted by the relocation of the solar panel array on the property, and that the relocation of the solar panel array on the property may effect its efficiency and operation, and that therefore the Zoning Board of Appeals shall grant the requested area variance upon the express holding that such decision is limited to the unique set of facts of this specific application and this specific fact record with no precedential value, and that such grant of area variance is conditioned on the installation of landscaping to buffer the solar panel ground mount installation from surrounding properties, and that the property owner, Monolith Solar, and the surrounding property owners must coordinate on vegetation type and location with such vegetation being installed no later than May 31, 2014, with notice to the Brunswick Building Department that such vegetation installation has been completed. Member Trczinski seconded the motion as stated. The motion was unanimously approved, and the area variance granted to Monolith Solar and Katherine Knipple subject to the stated condition.

The next item of business on the agenda was the application submitted by Mr. Arthur Durivage for area variances associated with maintaining a carport located at 1009 Cloverlawn Road. Member Balistreri again stated that he owned neighboring property to this location, and therefore was recusing himself from further participation in this application. Member Balistreri left the meeting hall. Chairman Steinbach confirmed that the public hearing on this application has been held and completed, and that the fact record on this matter has been completed. However, Chairman Steinbach noted that the Applicant handed up two letters to the Board at the December 16 meeting, one of which was in the form of an apology to the Zoning Board

members for certain statements that the Applicant made at a prior meeting, and the second being an electrical contractor estimate for performing certain electrical work at this property which would in turn allow National Grid to relocate the electric feeder line to the home in the area of the existing carport. Attorney Gilchrist confirmed for the record that the public hearing has been held and closed in this matter, that the fact record has been completed, that this is an application for an area variance for residential application which is a Type II action under SEQRA and that no further SEQRA determination is therefore required, and that the Zoning Board members had started their deliberations in this matter at the November 18 meeting. Chairman Steinbach then led discussion regarding the criteria for issuance of an area variance, and directed the Zoning Board deliberation on each element. With regard to whether this requested variance would result in an undesirable change in the character of the neighborhood or create a detriment to nearby properties, Chairman Steinbach noted that at least one neighbor stated that the carport is an “eyesore”, and that it was a detriment to the character of the surrounding neighborhood. Member Schmidt also stated that there were statements made at the public hearing that this carport would result in a negative impact on surrounding property values, although no expert report was submitted. Member Schmidt also noted that based on his personal observation, there was no other structure in that general area of the neighborhood that was located this close to the road. Chairman Steinbach agreed with that observation. As to whether there was a feasible alternative to the requested area variance, Chairman Steinbach noted that it would be hard to place a 20’ x 22’ carport anywhere else on the property and have it function as a carport. Member Trczinski stated, however, that a smaller carport could be installed, which would not require such a substantial variance from the front yard and side yard setback requirements. Member Schmidt agreed that it would be hard to locate the 20’ x 22’ carport anywhere else on

the property, but did acknowledge that a smaller carport could have been installed. As to whether the requested variance is substantial, Chairman Steinbach felt that it was a substantial variance, particularly for the front yard setback requirement. Under the Town Code, a 60' front yard setback is required, whereas the carport is only 18' off the front property line. Chairman Steinbach noted that while both area variance requests were substantial, he finds that the placement of this structure so close to the front lot line is significant. Member Schmidt felt that both requested area variances were substantial, and that the side yard setback results in having a carport structure very close, only two feet, from the neighboring property line. As to whether the requested variance will result in an adverse physical impact or impact to the environment, Chairman Steinbach noted that the carport does result in a visual impact since it is so close to the road and so close to the neighboring property line, and that in his opinion this does result in an impact to the environment. Chairman Steinbach noted that while there was a safety issue concerning the proximity of the carport to the overhead power line, that issue could be corrected via the electrical contractor estimate submitted by the Applicant. The remaining Board members generally concurred with those statements. As to whether this condition was self-created, all Board members concurred that this was self-created, and that the Applicant was aware of the setback requirements prior to the installation of this carport. Chairman Steinbach then entertained general discussion. Member Schmidt stated that while he was sympathetic to the Applicant, he was not in favor of granting the area variances because the Applicant had not met the required legal criteria. Chairman Steinbach concurred, stating that the record did not meet necessary fact and legal criteria to grant the area variances. Thereupon, Member Schmidt made a motion to deny the variance application and to prepare a formal written decision based on the Board's deliberation on the fact record and legal criteria. Chairman Steinbach seconded the

motion, and the motion was unanimously approved. The Zoning Board directed Attorney Gilchrist to prepare a formal written decision concerning this matter, which will be reviewed at the Zoning Board meeting to be held January 13.

One item of new business was discussed. Prior to discussing the new business, Member Balistreri returned to the meeting room. An application has been submitted by Peter St. Germain, 490 McChesney Avenue Extension, seeking an area variance for the installation of a garage. Mr. St. Germain was present, and generally reviewed the application with the Zoning Board members. Mr. St. Germain explained that he was seeking to construct a garage in the backyard of his home located at 490 McChesney Avenue Extension, and that the only feasible location to do so was within 16' of a side yard lot line, where the Town Code requires a 25' setback. Mr. St. Germain said the next door property is used as farm land. Mr. St. Germain stated that he had provided a schematic of the lot layout, showing his house location, driveway location, proposed location of the garage, all in relation to his side yard lot line. Mr. St. Germain also said there were septic lines between the driveway and his garage location, and that he could not excavate for a foundation for the garage any closer to the driveway due to the septic lines. The Zoning Board members generally discussed the location of the existing structures, septic and septic lines, and the proposed location of the garage. Chairman Steinbach confirmed that the Zoning Board members had access to the property to review the site, and Mr. St. Germain granted that authorization. Mr. St. Germain also provided information in the application as to the type of garage he was proposing to construct. Chairman Steinbach asked whether there was anything currently located where Mr. St. Germain was looking to locate the new garage. Mr. St. Germain said there was nothing in that location, but that he might have to clear a couple of trees for the garage construction. Mr. St. Germain said he had already prepared a foundation plan

which was filed with the Building Department. Member Schmidt asked the Applicant to provide a more detailed sketch plan showing the location of the septic tank, septic lines, leach fields, all in relation to the existing driveway, existing home, and proposed garage location. The Applicant stated that he would supply that information to the Board prior to the January meeting. Chairman Steinbach stated that the application was complete for purposes of scheduling the public hearing, and the Zoning Board set the public hearing on this application for its meeting to be held on January 13th commencing at 6:00 p.m.

The Zoning Board confirmed that due to the Martin Luther King holiday on January 20, the meeting of the Zoning Board for the month of January, 2014 will be held on Monday, January 13. The Zoning Board members also noted that the regular meeting for February 2014 lands on Presidents Day, and therefore rescheduled the February 2014 meeting to Monday, February 24.

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

1. Monolith Solar (Knipple) – area variance – granted with condition.
2. Durivage – area variances – denial with formal written decision to be reviewed at January 2014 meeting.
3. St. Germain – area variance – 1/13/14 (public hearing to commence at 6:00 p.m.).

The proposed agenda for the January 13, 2014 meeting currently is as follows:

1. St. Germain – area variance (public hearing to commence at 6:00 p.m.).