

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 SEPTEMBER 18, 2017

PRESENT were MARTIN STEINBACH, CHAIRMAN, ANN CLEMENTE, E. JOHN SCHMIDT, and WILLIAM SHOVER.

ABSENT was CANDACE SCLAFANI.

ALSO PRESENT was CHARLES GOLDEN, Brunswick Building Department.

The Zoning Board members reviewed the draft minutes of the August 21, 2017 meeting. Upon motion of Chairman Steinbach, seconded by Member Shover, the minutes of the August 21, 2017 meeting were unanimously approved without amendment.

The first item of business on the agenda was the continuation of public hearing with respect to the area variance application submitted by Jeff Stannard for property located at 303/307 Town Office Road. Chairman Steinbach inquired whether there were any changes to the application. Mr. Stannard, who was present for the applicant, stated that there were no changes. Chairman Steinbach stated that the issue discussed at the August 21 meeting was the determination as to the location of the septic system on 307 Town Office Road, so that the Zoning Board could consider the proposed lot line and requested variances in relation to the location of the septic tank and leach field. Chairman Steinbach confirmed that there were no records of this system at the Rensselaer County Health Department after investigation by the Brunswick Building Department. Mr. Stannard stated that he had contacted several septic service companies, and none of them had any interest in locating the septic field. Mr. Stannard did retain a contractor to locate and expose both

the septic tank and the junction box as part of the septic system, and has identified the location of the leach field and its approximate length. Mr. Stannard did state that the full extent of the septic system leach field cannot be identified in the field without excavating the field itself, which would then require replacement of the field. Mr. Stannard handed to the Board the survey map prepared in connection with this project, with his hand-drawn notations on the map identifying the location of the septic tank, junction box, and projected location of the leach field, which Mr. Stannard has added to the survey. Mr. Stannard did state that the septic system on 307 Town Office Road could not extend onto 303 Town Office Road since there is a significant grade change between the lots. The members of the Zoning Board reviewed the information provided by Mr. Stannard. Member Clemente inquired whether any documentation as to the septic system location needs to be filed with the Rensselaer County Health Department. Member Shover stated that he did not feel the map needed to be filed with the Rensselaer County Health Department, but should be maintained at the Town and provided to any subsequent owner of the property. Attorney Gilchrist noted that Mr. Stannard had placed information as well as map notes on the survey map, and inquired whether Mr. Stannard had contacted the surveyor concerning change to the survey map since the map had been stamped and sealed by the surveyor. Mr. Stannard stated that he had discussed the additional information with his surveyor, and that his surveyor could update the map with the septic system information and appropriate map note indicating the source of that information. Attorney Gilchrist also inquired whether the slope information between 307 Town Office Road and 303 Town Office Road, as described by Mr. Stannard, could likewise be placed on the survey map. Mr. Stannard stated that his surveyor could add that information to the survey map. Member Shover also noted that the map is in connection with the proposed subdivision between 307 Town Office Road and 303 Town Office Road, and that the information concerning the septic system would also be

included on the filed map with the Rensselaer County Clerk's office. The Zoning Board members inquired whether action could be taken on the variance application. Attorney Gilchrist stated that the Zoning Board members should receive the updated survey map, which would then be stamped and sealed by the surveyor, prior to acting on this application. Attorney Gilchrist stated that the Zoning Board should not be taking action on a map which has the stamp and seal of a licensed land surveyor but which also included hand-written notes after the survey date. Mr. Stannard understood, and indicated he would have his surveyor update the survey plat and have that filed with the Zoning Board. The Zoning Board members did determine to close the public hearing on the application. Member Clemente made a motion to close the public hearing on the Stannard area variance application, which motion was seconded by Member Shover. The motion was unanimously approved, and the public hearing closed. This matter is placed on the October 16 agenda for possible action on the variance application, pending receipt of the updated survey map.

The next item of business on the agenda was the area variance application submitted by Shawn Duffey for property located at 485 Garfield Road. The applicant is seeking a side yard setback variance in connection with installation of a storage shed at that property. Shawn Duffey was present for the applicant. Chairman Steinbach inquired whether there were any changes or additions to the application materials. Mr. Duffey stated there were no changes or additions to the application. The Zoning Board then opened a public hearing on the application. The notice of public hearing was read into the record, with the public hearing notice having been published in the Troy Record, placed on the Town signboard, posted on the Town website, and mailed to owners of all properties within 300 feet of the project site. Chairman Steinbach asked whether any members of the Zoning Board had questions for the applicant. Member Schmidt stated that the application narrative stated that the septic system on this property was located between the house

and the proposed shed location, but the septic system had not been shown on the map filed with the application. Mr. Duffey explained that the septic system is located between the existing house and where the new shed location is shown on the map. The Zoning Board asked about the height of the proposed shed. Mr. Duffey stated that the height would be approximately 10 feet and would be below the height of existing vegetation which is along his property line. Also, Mr. Duffey stated that the owner of the adjacent property, Clancy, has filed a letter in support of the variance application. Mr. Duffey also stated that an existing garage is located on the Clancy parcel approximately 3 feet off the property line, which has been there since the early 1950's. Mr. Duffey confirmed that the shed is proposed to be 10 feet by 20 feet, with 7-foot walls, and a total height of approximately 10 feet. The Zoning Board members had no further questions. Chairman Steinbach opened the floor for receipt of public comment. No members of the public wished to comment on the application. Thereupon, Member Clemente made a motion to close the public hearing on the Duffey area variance application, which motion was seconded by Member Shover. The motion was unanimously approved, and the public hearing closed. The Zoning Board members determined to proceed with deliberation on the application. Attorney Gilchrist stated that an environmental assessment form had been filed in connection with the application, and that the Zoning Board could proceed to make a determination of environmental significance under SEQRA. Chairman Steinbach stated that, upon review of the application materials and the information in the environmental assessment form, he proposed a motion to adopt a negative declaration under SEQRA as he felt no potential significant adverse environmental impact would result from this action. Member Clemente seconded the motion. The motion was unanimously approved, and a SEQRA negative declaration adopted. Thereupon, the Zoning Board members proceeded to deliberate on the variance application. The Zoning Board members found that the

requested variance would not result in a change in the character of the neighborhood, nor result in a detriment to nearby properties. On this factor, Member Clemente noted that the Garfield Road area is a residential neighborhood in a rural setting, with a number of single-family structures with accessory structures to benefit each property owner; that there are several existing sheds on surrounding residential lots; that the record did include a letter from the adjacent property owner supporting the variance application; and that the proposed shed would be an attractive building to this residential lot based on the literature on this shed submitted in connection with the application. The Zoning Board members concurred in these observations. The Zoning Board members also determined that there was not a feasible alternative location for the shed on this residential lot since there are elevation issues on the remainder of the lot, and that the location of the septic system also had to be considered. The Zoning Board members also concurred in this observation. As to whether the proposed variance is substantial, the Zoning Board members did note that the side yard setback in this Zoning District requires 25 feet, and that the proposed shed would be located 18 feet from the side lot line, resulting in a variance of 7 feet. Chairman Steinbach noted that, simply based on the numbers, this could be viewed as a substantial variance. But, in this case—in light of the limitations on the lot in relation to elevation and septic system location, and no objection from the adjacent property owner—the variance should not be viewed as substantial. Member Clemente did note there was existing vegetation along the lot line which also mitigated the variance. Member Shover also noted that the garage on the Clancy lot, adjacent to the proposed shed location, is only 3 feet off of the lot line, also mitigating this variance. As to whether the requested variance would result in an adverse effect on the physical or environmental conditions in the neighborhood, Member Clemente stated that there would not be any significant adverse physical or environmental impact, that there would be no visual impact, no adverse noise impact,

and no adverse stormwater runoff from the proposed shed installation. The Zoning Board members also noted for the record that a SEQRA negative declaration had been adopted. As to whether the difficulty requiring the variance is self-created, the Zoning Board members concluded that the need for the variance is self-created, but this factor did not preclude the granting of the requested area variance. When considering these factors, the Zoning Board members then weighed the benefit in granting the variance to the applicant as opposed to any detriment to the neighborhood in particular or the Town in general, and determined that granting the requested side yard setback variance was appropriate. Member Schmidt made a motion to grant the requested area variance, which motion was seconded by Chairman Steinbach. Chairman Steinbach did note that he would condition the motion on applicant coordination with the Building Department with regard to the shed installation. The Zoning Board members concurred in that condition, and unanimously approved the motion to grant the area variance subject to the condition of coordination with the Brunswick Building Department on the shed installation.

The third item of business on the agenda was the area variance application submitted by PV Engineers, P.C. on behalf of Borrego Solar for property located at 138 Brick Church Road. Edward Fitzgerald, Esq., project attorney, and Rob Garrity, of Borrego Solar, project designer, were present for the applicant. Attorney Fitzgerald stated that the applicant had appeared before the Brunswick Planning Board at its September 7 meeting; that the Planning Board deemed the special permit, site plan, and subdivision applications to be complete; and that a public hearing was set on those applications for the Planning Board meeting to be held October 5, 2017 at 7:00pm. Attorney Fitzgerald also stated that the Planning Board determined to coordinate SEQRA lead agency, and should be sending out a lead agency coordination request. Attorney Gilchrist confirmed the Planning Board application status. Mr. Garrity reviewed the issue of the electric

interconnection with National Grid, and specifically the issue of bringing the electric line from Route 278 into the project site. In connection with that issue, Mr. Garrity reviewed the proposed subdivision lines, which is required pursuant to Public Service Commission Regulations that mandate each solar farm facility up to 2 megawatts must be on a separate independent lot. The Zoning Board members reviewed the proposed subdivided lots, and also reviewed the proposed panel locations on the subdivided lots as well as the electric interconnection location. Mr. Garrity reviewed the National Grid interconnection, stating that for the first time in his experience, National Grid has agreed to limit the poles going into the project site to 2–3 poles per 2-megawatt facility, whereas at other locations National Grid had routinely required up to 6 poles for each 2-megawatt facility. Mr. Garrity explained that a series of 2–3 standard telephone poles would be installed into the project site for each 2-megawatt facility, with the poles being approximately 40 feet apart from each other. Attorney Fitzgerald did note that the Building Department had not yet made its formal determination as to whether all electric facilities bringing electricity into the project site for interconnection need to be underground under the Brunswick Zoning Law standards, or whether the new Brunswick Zoning Law is interpreted to require only visual mitigation for the poles. Attorney Gilchrist stated that it is his understanding the Brunswick Building Department will be completing its determination on that issue. Attorney Fitzgerald stated that the current variance application before the Zoning Board of Appeals does include a request for an area variance in connection with the above-ground poles bringing electricity into the site for interconnection with the Borrego system in the event the Building Department determines that underground facilities are required under the Brunswick Zoning Law. The Zoning Board then entertained discussion regarding the proposed pole locations, pole height, pole description, and the interconnection location with the Borrego Solar facilities. The Zoning Board members reviewed

the location of existing utility poles on Route 278, and how the power would be brought into the project site by National Grid. The Zoning Board members also discussed the requested area variance for setback from lot lines in relation to the proposed interior lot line between the 2-megawatt systems. The Zoning Board members then discussed review procedure. Attorney Gilchrist stated that the Planning Board had discussed the option of a joint meeting with the Zoning Board of Appeals, and a joint public hearing on this solar farm application. Attorney Gilchrist stated that pending before the Planning Board were applications for special permit, site plan, and subdivision, and that the Planning Board will be opening a public hearing on the Planning Board applications at the October 5 Planning Board meeting at 7:00pm. Attorney Gilchrist stated that an option for the Zoning Board to consider would be to join that public hearing for purposes of hearing comments from the public on the solar farm facility as a whole, although the only applications pending before the Zoning Board at this time are the area variances in relation to setback from lot line and above-ground poles bringing electric to the site for interconnection to the solar facility. Attorney Gilchrist stated that in his opinion, it would be advantageous for the Zoning Board members to hear general public comments on the application, although it will be limited to consideration of the two variance requests only. The Zoning Board members concurred that it would be their preference to be able to hear all of the comments from the public on this solar farm, even though their jurisdiction is limited to the variance applications, particularly since this was the first solar farm application pending in the Town of Brunswick. In that regard, the Zoning Board members concurred that the Zoning Board would hold a special meeting on October 5, and participate in a joint public hearing with the Planning Board at 7:00pm on that date, which would likewise constitute the public hearing requirement in connection with the two variance applications before the Zoning Board. All members of the Zoning Board concurred in this procedure.

Accordingly, the Zoning Board of Appeals will hold a special meeting on October 5 at 7:00pm, and will participate in a joint public hearing with the Brunswick Planning Board, which public hearing will include receipt of comments on the two variance applications pending before the Zoning Board. The Zoning Board members directed Attorney Gilchrist to prepare a notice of special meeting and joint public hearing notice with the Planning Board on this matter.

There were no items of new business.

The index for the September 18, 2017 meeting is as follows:

1. Stannard - Area variances - 10/16/2017;
2. Duffey - Area variance - granted with condition;
3. PV Engineers/Borrego Solar - Area variances - special meeting for October 5, 2017 and joint public hearing with the Brunswick Planning Board (public hearing on area variance applications to be held jointly with Planning Board public hearing on special permit, site plan, and subdivision applications, to commence on October 5, 2017 at 7:00pm);

The proposed agenda for the October 5, 2017 special meeting currently is as follows:

1. PV Engineers/Borrego Solar - Area variances (joint public hearing to open at 7:00pm).

The proposed agenda for the October 16, 2017 meeting currently is as follows:

1. Stannard - Area variances.