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Town of Binghamton Planning Board

Monday July 12, 2021 | 6:30pm

In attendance: Bill McGowan – Planning Board | Dave West – Planning Board | Ray Mastin – Planning Board | Christopher Streno – Planning Board | Michael Donahue – Town Board Liaison | Alan Pope – Attorney | Rose Pope – Attorney

Attending via Zoom: Kathy Kiekel – Planning Board

The meeting was called to order at 6:30pm and attendance was taken. Four Planning Board Members were present in the Board Room (McGowan/West/Mastin/Streno) along with Town Board Liaison Donahue. Planning Board Member Kiekel attended remotely via Zoom. Several members of the Zoning Board of Appeals were in attendance along with several Town Board Members.

The meeting was recorded through Zoom.

Attorney Alan Pope presented a Legal Corner regarding USE VARIANCE and provided some paperwork for those in attendance to follow along. He explained the definition of a Use Variance; the applicant asks to use their land in a manner that is not allowed in the particular zoning district. He further explained that the applicant must establish an “Unnecessary Hardship” as a part of the Use Variance request. The applicant must satisfy a 4-part test to establish the hardship.

To prove “Unnecessary Hardship” the applicant must demonstrate to the ZBA that for each and every permitted use under the zoning regulations for the particular district where the property is located, **(1) LACK OF REASONABLE RETURN** - the applicant cannot realize a reasonable return, provided that the lack of return is substantial as demonstrated by competent financial evidence; **(2) UNIQUE HARDSHIP** - that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; **(3) ESSENTIAL CHARACTER OF THE NEIGHBORHOOD** - that the requested use variance, if granted, will not alter the essential character of the neighborhood; and **(4) SELF-CREATED HARDSHIP** - that the alleged hardship has not been self-created. Mr. Pope gave examples of each of these requirements as he presented them.

Attorney Rose Pope spoke about receiving an email today from Attorney Dave Brennan who represents Atlas Renewables. Atlas is working with a town resident who wants to



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install a Solar Farm that may require a Use Variance. Mr. Brennan's correspondence referenced some legal precedence in an effort to show that their project could be considered an "essential service" and therefore entitled to a "relaxed test" for the Use Variance. This relaxed test is known as the "Rosenberg Standard". Ms. Pope explained that there was a good amount of case law and case information referenced in the letter and that she would be reviewing it soon. She was just notifying the Board of the correspondence.

Chairperson Streno spoke about attending a meeting with members of Atlas Renewables on Thursday July 8th at the Town Hall. The meeting was attended by Nick Pappas and Zach Soboleski from Code Enforcement, Town Councilperson Bensley and 2 Atlas representatives; John Watson and Lluís Torrent. Mr. Watson was attending in person and Mr. Torrent was connected via Zoom audio.

Streno spoke about the following take-a-ways he had from the meeting;

- Atlas Renewables is working with the land owner of 57 Powers Road to construct a Solar Farm on a site of approximately 20 acres. Maps were provided of the proposed project area.
- The need for a Use Variance was explained since the address is zoned as residential.
- Mr. Torrent expressed that he felt this project could be described as a Public Utility and believed that if so, it would meet the use requirements and not need a variance. He referenced the Town of Owego, claiming that they have recently accepted this determination.
- According to Torrent, the resident at 57 Powers Road has reportedly cleared the mature or old trees from a 20+ acre lot that he wants ATLAS to build the Solar Farm on. ATLAS claims this was done by the landowner to take advantage of the rising timber value and had no coordination with ATLAS. They feel that as a result of this previous clearing of old trees that they are not bound by the town's Solar Law requirement of waiting a year after clearing "Mature Trees". Streno referenced Town Solar Law Part II – Section 6(a)xii which states that it is a goal of the Town to preserve, to the maximum extent practicable, Mature Forests. Land that was a Mature Forest, must be cleared for a minimum of one (1) year prior to the submission of an application for a large-scale solar energy system.



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There was some question regarding the time frame of when these trees were harvested and it was agreed that if it had already been at least 1 year then the point was moot.

Councilperson Bensley spoke specifically about that section of the Town Law noting that the intent of that section was to prevent the clear cutting of land for the installation of solar farms. He further questioned the environmental impact of such a decision and feels that cutting down trees in order to install solar seems to contradict the environmental intent of clean energy.

There was some general discussion between the attendees that involved the general procedures of applying for a use variance. With no further discussion of the Atlas project the ZBA Members were excused.

Prior to excusing the ZBA, Streno mentioned that he had been contacted by an individual who was interested in purchasing the property at the corner of Hawleyton Road near Hance Rd. where the former Vosburg's Gas Station was located. The caller was inquiring about zoning procedures because he was interested in using the location to sell a few automobiles. Streno told him that it wasn't a Planning Board issue but believed that the location was already zoned for that use and that he shouldn't have any issues with zoning. Nonetheless he was referred to the Code Department for the proper procedures.

The meeting Planning Board meeting Minutes from April 19, 2021 were recognized and it was noted that they had been previously approved by the Board via email.

The training status of Members was updated. Mr Mastin provided a record of some additional online training that will be added to the training record.

The floor was opened to the members and Mr. McGowan discussed Battery Storage Systems. He made a motion that the Planning Board request the Town Board to undertake a study of battery Energy Storage Systems for the purpose of regulating and permitting such systems in the Town of Binghamton. The motion was seconded by Mr. West and there was some minor discussion of the pros and cons of these systems which included the personal and commercial use of the systems, the town's ability to tax and assess as well as some safety and decommission concerns. A vote was taken and unanimously passed. Streno will make an official notice to the Town Board.



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Town Board Liaison Donahue notified the Board that the permit fee for solar projects was going to be set by acreage and not size of project, output, etc. he also expressed some concern regarding the proposed project at 57 Powers Road, specifically the access that may be used to move heavy equipment and/or vehicles onto the property. The map provided by Atlas shows a 12 foot wide access road extending from the end of Forest Hill Road onto the resident's property. There was some discussion on the access from this dead-end road because it does not appear to connect directly to the property owner.

The floor was opened to the public and the Board heard from James Cadden who expressed some concern that some Board Members may have their minds made up about projects before hearing all of the information. Mr. Cadden's concerns were noted. He spoke generally and did not specify if he was referring to any specific project, Board or Member.

The next regular meeting of the Planning Board is scheduled for October 19, 2021 at 6:30pm.

There was no further discussion by the Members, Attorney, Town Board Liaison or members of the public and the meeting was adjourned 7:35pm.

Respectfully submitted,

Christopher Streno -Planning Board Chairperson