

MINUTES OF THE TOWN OF BINGHAMTON ZONING BOARD OF APPEALS MEETING OCTOBER 18, 2021  
AT 6:30 PM IN THE TOWN HALL, 279 PARK AVENUE, BINGHAMTON, NY.

Members Present: Chairman Gerardo Tagliaferri, Theresa Taro, Mark Bordeau, Sara Reifler, Tom Bensley, Alternate Member Tim Cooper

Others Present: Town Attorneys Alan and Rose Pope, ZBA Secretary Chelsea Mozley, Town Supervisor Elizabeth Rounds, ZBA Liaison Dean Nye, Town Councilman Michael Bensley, Planning Board Liaison Michael Donohue, Planning Board Members Bill McGowan, Dave West, Ray Mastin, Kathy Kiekel

Zoning Board Chairman Gerardo Tagliaferri called the meeting to order at 6:35 pm. He turned the meeting over to Alan Pope to present the Legal Corner, which was about Public Utility Variances.

A Public Utility Variance is a more relaxed use Variance. The Rosenberg Standard is based off of a case from 1993 for a cell tower. When applying for a Public Utility Variance, the applicant needs to prove that they are an essential service and that they are a Public Utility. They essential service must be provided to 1 or more persons and subject to public service commissions. If there is an alternative source of energy, then they might not be considered a Public Utility.

For the Zoning Board, the Burden of Proof is on the applicant to prove that they are essential service. Some questions to consider would be:

- Are they regulated by the Public Service Commission?
- Is the energy provided to the grid or directly to the consumer?
- Is it safe and dependable?
- What are the compelling reasons?
- Is it necessary?

Elizabeth Rounds asked about the first question, are solar groups regulated by the Public Service Commission? Alan stated that is a question that should be directed to the applicant.

Rose Pope clarified that in the instance of an applicant applying for a Public Utility Variance that the Zoning Board's role is granting the variance to a company if they can prove that they are deemed essential. She stated that NYS is looking to add more clean energy. She also stated that to date she did not find any legal cases that pertain to solar specifically, like the Rosenberg standard.

Rose stated that when an application is being reviewed to note that the decision does not need to be made at the initial meeting, depending on the information that was provided. Dean Nye asked for clarification if an application was denied, what would the next step be for the applicant. Alan stated that the applicant could apply for an appeal with NYS within 30 days of the decision. He explained how in New York it is difficult to obtain a Use Variance, as all four factors need to be proven, otherwise an applicant would be denied. He also stated that if an application for a variance is denied, the reason cannot be arbitrary or aggressive, as a judge can send it back to the board. He also advised, that like Rose had said, a decision should not be rushed and does not need to be made at the initial hearing.

Chairman Tagliaferri asked for clarification that if a Use Variance was applied for to change a property to commercial that it would remain that way. Rose confirmed, but also stated that if a variance application was approved, like for a Public Utility Variance, it is only approved for what was initially granted. A condition may be applied, like if someone is applying for solar, it could only be solar on the land. She also stated that if the Public Utility Variance is granted, the other Zoning Laws need to be abided by.

Once the Legal Corner concluded, the Zoning Board moved to another meeting room to conclude ZBA business.

Chairman Tagliaferri asked that if there were any changes needed to the July meeting minutes; as there were none, the minutes were approved. He handed out the current training hours to the members and advised that everyone had met the hours needed for the year as of the meeting. He also stated that if there is any additional training completed, that it would be carried over to the next year.

He reminded the members of the two upcoming hearings on 10/25 and 11/8, both at 6:30 pm. He asked about the 239 review that was completed for the 10/25 Soboleski hearing and how the applicant was notified of that information. Alan Pope stated that he believed Nick Pappas was to notify the applicant.

Questions were asked and discussed regarding the county's recommendation to combine the two lots. This can be a condition imposed if the appeal is granted by the ZBA.

Chairman Tagliaferri stated that with any questions about details of applications, the board members may always call and ask Nick Pappas for additional information/clarification. Rose Pope stated that the board should proceed with the 11/8 hearing and that Chelsea should send the case paperwork for their review. Chairman Tagliaferri then stated that the upcoming hearing on 11/8 would most likely not be decided on that date and that an additional meeting date should be decided upon. It was suggested that the second potential hearing date be 12/13/21 at 6:30 pm. All members agreed, and the Chairman concluded the meeting at 7:25 pm.

Respectfully submitted,

Chelsea Mozley  
Zoning Board of Appeals Secretary