

MINUTES OF THE TOWN OF BINGHAMTON ZONING BOARD OF APPEALS MEETING JULY 12, 2021 AT 6:30 PM IN THE TOWN HALL, 279 PARK AVENUE, BINGHAMTON, NY.

Members Present: Theresa Taro, Mark Bordeau, Sara Reifler

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 Chairman Christopher Streno, Planning Board Members Bill McGowan, Dave West, Ray Mastin, Kathy Kiekel (via Zoom)

Planning Board Chairman Christopher Streno 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 Use Variances.

The Planning Board would first look at an application, and then determine if a Use Variance is needed. The Planning Board does not grant Use Variances, that may only be granted by the Zoning Board.

A Use Variance is the most difficult in the state of NY to obtain, as all four factors of Unnecessary Hardship must be met.

Under Article 78, if the applicant does not agree with the decision made by the Zoning Board, they may go to the NYS Supreme Court within 30 days. At the Court, the Judge cannot change the decision based off his view, but only off case law. He would look at the quality of the evidence that was provided and may look at additional evidence. Once the Judge decides, this may not be changed.

The four factors of the Unnecessary Hardship Test:

- 1) Lack of Reasonable Return
 - Ex: If there was an existing two-family home the applicant wants to change to a four-family home, would be difficult as they already had a reasonable return with the two units
- 2) Unique Hardship
 - Ex: Semi-landlocked parcel by a highway or cliff that would be obstructing a plan
- 3) Essential Character of the Neighborhood
 - Ex: An applicant trying to establish a 24/7 towing and impound yard in a quieter area would be difficult vs. an applicant trying to establish a horse farm in a quieter area would be easier
- 4) Self-Created Hardship
 - Ex: If someone buys a property already knowing there was an issue and didn't put a condition in their contract

Expanding Use: must come back to the Zoning Board if there is a change in the request.

- Ex: An existing Machine Shop in a garage at the back of a property wants to double the size for use

If the Use Variance is granted, it stays with the property.

- Ex: changing a property from residential to commercial, the property will then remain commercial in the future

If the Use Variance is granted by the Zoning Board, the Planning Board must abide by that decision.

Once the Legal Corner concluded, Rose Pope spoke about an email she received from Dave Brennan, which referred to the Rosenberg Public Utility Variance (PUV) Standard. Atlas Renewables is a company that is looking to install a Solar Farm at 57 Powers Rd in the Town of Binghamton and would like to under a PUV. Rose stated she needed to investigate this to determine if that is a means for the applicant.

Bill McGowan asked what the definition is for a Public Utility. Rose Pope advised that it would be an entity that provides an essential public service and is not determined by how much of a service that is provided. Elizabeth Rounds asked that if NYSEG is available and already providing the service, then would a new provider be considered essential. Rose stated that she would need to look into case law.

Alan Pope stated that it would need to be determined if they are a Public Utility and would be able to apply for a Public Utility Variance, or it a Use Variance would be needed.

Christopher Streno raised a potential issue, asking if the land that would be in use was cleared by Atlas or the property owner, and how long ago the trees were cleared from the property. Elizabeth Rounds stated that it would need to be at least one year prior to the date of use and that they would look into the date of clearance.

Elizabeth Rounds stated that she would be meeting with Chairman Tagliaferri of the Zoning Board in the coming week to discuss the potential case and that once the application is received a date will be chosen for some time in September for the Hearing.

Elizabeth stated that as the case at hand would be a very important one, that she and Chairman Tagliaferri agree that all members of the Zoning Board will need to be in attendance rather than a quorum. Sara Reifler advised that she will have to recuse herself from the Hearing as the property in question affects her, so Tim Cooper will need to be available for the meeting.

Planning Board Chairman Chris Streno concluded the meeting at 7:25 pm.

Respectfully submitted,

Chelsea Mozley
Zoning Board of Appeals Secretary