

Town of Binghamton
Zoning Board of Appeals Meeting Minutes
September 12, 2022, 6:30 pm

Present:

Mark Bordeau, Chairperson
Tom Bensley
Kevin Olds
Meggan Olds, Secretary/Processor
Alan Pope, Attorney
Theresa Taro

Other Town Officials:

Elizabeth Rounds, Town Supervisor
Nick Pappas, Code Enforcement Officer

Approximately 33 guests

Welcome New ZBA Board Members

1. Meggan Olds - Member/ZBA Processor Secretary
2. Kevin Olds - Member

Minutes

1. Approval of Zoning Board of Appeals Minutes - July 11, 2022
 - a. Motion: Teresa Taro
 - b. Second: Mike Bensley
 - c. Approved unanimously
2. New Procedures of Minutes Going Forward
 - a. Sent by Meggan Olds
 - b. Reviewed by Board, then posted more timely to website

ZBA Application Area Variance for 429 Park Ave

1. Presentation by Allan Fernandez, Property Owner
 - a. Request to build a carport attached to home
 - b. Close to property line
 - c. Wants another area to store a vehicle and garbage cans
 - d. Was previously approved before COVID, and is now reapplying - pillars are already in place
 - e. Kevin Olds: clarification about the pillars that are in place: Mr. Fernandez would like to use the pillars in place but the carport will be closer to the line than originally planned
2. Voice of the Public: Neighbors are present and have no objections
3. Alan Pope: review of Area Variance Criteria. Mr. Fernandez explained how he met the criteria, and explained that this will not be a metal temporary structure. He wants something more sound.
4. Board Discussion
5. Vote
 - a. Motion: Tom Bensley

- b. Second: Kevin Olds
- c. Approved by role call - all in favor: Tom Bensley, Kevin Olds, Meggan Olds, Theresa Taro, Mark Bordeau. No opposition or abstentions.

ZBA Application Use Variance for 930 Powderhouse Rd

1. Guidelines for public voice and when a vote may take place were shared by Attorney Pope
2. Guidelines for a NYS Use Variance were presented by Attorney Pope
 - a. A use variance applicant must meet ALL of the criteria
 - i. The applicant cannot realize a reasonable return - substantial as shown by competent financial evidence
 - ii. Alleged hardship is unique and does not apply to substantial portion of district or neighborhood
 - iii. Requested variance will not alter essential character of the neighborhood
 - iv. Alleged hardship has not been self-created
3. Presentation by Sigma Solar, LLC
 - a. Presenters: Aerie Goldberg - project attorney, Matt McHaley and Andrew Day, Danny Inish (Hunt engineers)
 - b. Assuring the public that they are not asking the Board to make a decision tonight
 - c. Recognizes that this must be presented to Vestal as well. He stated that the TOB must send the public notice to Vestal.
 - d. Purpose this evening is to introduce the project and to listen to questions
 - e. 5-megawatt solar project at 930 Powderhouse Rd.
 - f. Access via Ingraham Hill road - impervious gravel-surface road
 - g. Mr. Goldberg described that the Atlas decision was made using the Utility Variance standard, but stated that Mr. Pope explained the Use Variance standard at the start of the meeting. Mr. Goldberg stated that the Atlas decision utilized the Public Utility Use Standard, which he described as a relaxed use standard, which was outlined in the Rosenberg case in 1992. He states this has become commonly used since for solar projects since. He then cited court cases regarding the standards. He then stated that the application was submitted using the assumption that the town would view it under relaxed Use Variance criteria.
 - h. Mr. Goldberg again stated that the application is being made under the assumption that this will be taken as a Utility Variance application and stated that this is the standard the Board used for the Atlas decision.
 - i. Attorney Pope - the difference is that Atlas spelled out that they were submitting under a public utility use variance; Mr. Goldberg states that supplemental materials were filed today, and that this is part of the reason a decision is not requested tonight - he expects this to be 6-7 meetings, or what the process dictates, before a decision can be made.
 - ii. The Board was given a copy of this supplemental material in the moment as Mr. Goldberg stated that the firm requests the project to be looked at in the same standard of a similar project (the Atlas project). Mr. Goldberg stated that the group is willing to wait for the Board to review the documents, commence the SEQR process, and to make the needed referrals.
 - iii. A member of the public asked if the public could have access to the application. Mr. Goldberg stated that this information could be made available. Mr. Bordeau stated that due to the supplemental material handed out this evening, material and information will be sent out again, and public will be allowed to comment at the next meeting. In addition, the public may request copies via email or in person from the Town Clerk.

- iv. Concern was expressed by a community member that the notice of this evening's hearing was not received by enough neighbors. Mr. Bordeau stated that the committee expanded to a 500 foot notification radius from the required 100 foot. There was discussion that the town posts to their site and sends the notice to the Country Courier. Residents in the Vestal Stair Tract asked to be notified, and Mr. Bordeau stated he would have to speak to the attorney and supervisor regarding this. Mrs. Rounds stated the information will be posted to the Town's website.
 - v. Mr. Goldberg stated that while Attorney Pope outlined the four criteria for the Use Variance, the public utility test is only two criteria: relief is required to render safe and adequate service, and there are compelling reasons, economic or otherwise, to seek this location over another. He then stated that the site is nearly ready for the project due to clearing and transmission line presence and that the property is available for lease, and there is no wetland.
 - vi. Mr. Goldberg stated there is a threshold question regarding what is a Public Utility standard, and that since the Rosenberg decision, the description has been expanded to other public utility projects including wind and solar because the energy is placed onto the grid where it can be accessed by the neighbors.
 - vii. With respect to the two criteria Mr. Goldberg stated above, he stated:
 - 1. In regards to relief being required to render safe and adequate service; without the use variance the project cannot exist, and rezoning instead is inappropriate as it could open the land up to other use.
 - 2. Regarding compelling reasons, there was an intense site selection process. The site is nearly ready to go due to clearing, the presence of the transmission line and therefore very little infrastructure would affect the views of neighbors. There would also be only a small amount of trees taken, he stated.
 - 3. As part of Seeker, wetlands, critical environmental areas, and similar concerns would be fully vetted, and the supplement includes a full environmental assessment form.
 - viii. Mr. Bensley asked Mr. Goldberg to clarify whether he said this will impede the neighbors' view out of their back windows, to which Mr. Goldberg stated that he did not believe that was what he said. He stated that his statement was in regards to the overhead transmission line view compared to other solar. Mr. Goldberg then spoke briefly about landscaping.
 - ix. Mr. Goldberg referred to the state goals for renewable energy and stated that this project was in line with these goals.
 - x. Mr. Bordeau stated it is very difficult for the Board to discuss with so little time to review the materials.
4. Voice of Public: Mr. Bordeau reviewed the guidelines for short comments
- a. Ed Grenchus: 1601 Campus Drive, Vestal, NY
 - i. Concerned about alerting neighbors
 - ii. He referred to page 31 of the 2017 Comprehensive Plan - protecting agriculture open space was a main priority of residence. He then referred to additional parts of the plan that stated that residents want to maintain the rural character. If a plan was built based on residential input, why would a solar farm be placed in an open space?
 - b. Bill Webb - 55 Foland Rd., Binghamton, NY
 - i. Mr. Webb asked who owns the land according to the deed, as Jeff Maculy wasn't present? Mr. Goldberg stated it was Southhill Land Conservancy LLC, and that the current owner was considering a conservation easement on part of the land.

- ii. Mr. Webb questioned the names on the deeds, as the last deed that he had read stated that Jeff had turned the land over to Louis.
 - iii. Mr. Webb states that there is an agricultural exemption/assessment on this property between the McAuley Estate and Mr. Webb. He has been haying the land for 54 years. The town assessor is aware of this. Mr. Webb did not receive an invite to the meeting.
 - iv. Jeff McAuley had told Mr. Webb that the panels would not be visible from the front, and that the panels would only be in the backfield. Mr. Webb stated that where the ponds are is the back, and the Ingraham Hill road area is the front.
- c. Jenna Cook - 1704 Campus Drive
- i. Ms. Cook asked if an environmental assessment had been done? Mr. Bordeau stated that this is the SEQR that Mr. Goldberg was referring to.
 - ii. Ms. Cook asked if this makes any changes to the runoff and groundwater? Mr. Bordeau stated that this is part of the SEQR process as well.
 - iii. Mr. Pope asked Mr. Goldberg if the project will be doing a SWPPP (Storm Water Pollution Prevention Plan)? Mr. Goldberg answered yes - this is beyond Nick (Pappas). Mr. Pope stated that Atlas provided this from the beginning. Mr. Goldberg stated they will present this.
 - iv. Mr. Bensley asked if the applicant hires their own engineer and pays for the SWPPP? Mr. Pope stated yes. Mr. Bensley asked if the town has the ability to do one as well if needed? Mr. Pope answered yes, and that the town's engineer was a part of the Atlas process.
 - v. Mr. Goldberg and Mr. Pope commented on how this is an ongoing conversation. Mr. Pope stated that in the Atlas progress, the Board put together a list of the Board and community questions and posted them to the site. This can be done with the current process to allow the Board to zero in on the important issues.
- d. Don Makers - 1504 Campus Dr. Vestal
- i. First concern was optics and changing the neighborhood. He asked if there be a set of views/perspectives of the project? What will the project look like from different areas and during different seasons? Mr. Goldberg stated that photos will be taken from around the site, then the array will be photoshopped into the site. The Board can ask for specific site points to be mapped.
 - ii. Mr. Makers - will existing trees be shown? Mr. Goldberg: yes.
 - iii. Mr. Makers asked if these be made available for the community? Mr. Goldberg: yes.
- e. Jim Willis - 1609 Campus Drive, Vestal, NY
- i. Mr. Willis asked if the existing tree line is going to change at all? If so, how much?
 - ii. Response by Mr. Goldberg - just in one corner and a few that need to be trimmed back. Some in the middle. Nothing towards the property line.
 - iii. A member of the public asked for the roads to be pointed out, as they were difficult to see at this point.
 - iv. Another resident asked for clarification about the row of oak trees that are in the center of the array, and the representative stated they will be removed.
- f. Adam Flint - 1006 Powderhouse Rd. Vestal
- i. Works for Network for a Sustainable Tomorrow as well as being a resident, and expressed his greatest concern for Mr. Webb's interest.
 - ii. Mr. Flint asked why the project is listed with a Powderhouse Rd. address when the access will be on Ingraham Hill Rd.? Mr. Goldberg stated that this is just the assigned address.
 - iii. Mr. Flint asked if the project already has interconnection approval? A representative stated that the study was done, but the application had to be withdrawn and resubmitted

- due to a \$600,000 interconnection cautionary upgrade. It was resubmitted after the Atlas project approval. NYSEG was studying and gave an approval. There was a \$600,000 change due to policy updates. Due to timing, it made sense for them to withdraw the application. Within the process, there were no changes; it was just procedural.
- iv. Mr. Flint asked the presenters to talk more about Sigma Solar and Source Renewables. He was confused about the use of the two names within the application. Mr. Goldberg stated that Source Renewables develops a projects - Sigma Solar is a project entity owned by them
 - v. Mr. Flint requested that the presenters discuss their strategies for storm water mitigation because this property has been heavily logged. He also offered the suggestion of using pollinators instead of turf grass. The response included discussion of the following:
 - 1. The solar panels are raised off the ground, so the vegetative surface is maintained.
 - 2. The impervious service that will generate runoff will be about 200-400 square feet for equipment pads.
 - 3. The access road will use an open graded stone surface to allow storm water infiltration.
 - 4. Additional mitigation will be added as required by the DEC to reduce the storm water. Once the SWPPP calculations are received, they will justify the storm water and show the runoff, making adjustments.
 - 5. Pollinator seed mix is the standard of their company.
 - vi. Mr. Flint asked if the impact on Mr. Webb's farm was considered in terms of it being a multigenerational operation? Mr. Goldberg stated that the Department of Agriculture and Markets of NYS will be an involved agency under the SEQR, and will be contacted for comment due to the impact on agriculture.
 - vii. Mr. Flint then asked the group to speak on the community solar concept and impact. He stated that there are incentives for the project to benefit low and moderate income community members. A representative responded that this is a community solar project that creates bill credits. If you live in the town with the project you can subscribe to the project and get credits on your bill. Community solar allows more people to benefit from utility savings. There are state and federal incentives for the project to focus on low and moderate income subscribers.
 - viii. A community member asked what discount is traditionally offered. The representative responded that it is 10% off the credit value. You are in essence buying a dollar bill for 90 cents.
 - ix. Mrs. Rounds stated the Atlas project is expected to assist about 1200 homes and asked how many this might assist. A representative responded that subscriptions can be opened early to help many. .
 - x. Mr. Bensley asked how many people would be able to get the discount. The representative responded that generally speaking this size project can help about 1200-1300 residents. Mr. Bensley asked how large the array is, and the representative responded that the field is 28.42 acres.
 - xi. Mr. Bordeau requested a map with roads, access roads, and trees clearly delineated at the next meeting, and the representatives agreed to provide this.
- g. Diane Campbell - 900 Powderhouse Rd.
- i. Mr. Campbell spoke instead, asking if pesticides will be used under and around panels to keep the growth in check?

- ii. The representative responded that pesticides won't be used. The area would be mowed as needed 2-3 times per season. Pollinators planted would be low-growing. Sheep are also an option to maintain the vegetation.
- h. Robert Krummenacker - representative from Gray media and WBNG TV, whose land borders both on the TOB and Vestal sides of the property
 - i. Engineers at Gray Media feel most of their equipment will be fine, but have concerns regarding interference with WNBC radio (this is an AM station and is a tenant of Gray Media).
 - ii. There is also concern about interference with other tenants on the tower - there is concern of interference with 911 for people like the Webbs and for emergency services.
 - iii. Mr. Krummenacker is aware that these projects can cause problems and detuning. A plan to manage this will need to be addressed by the applicant.
 - iv. Mr. Bordeau asked if the SEQR will address this? Mr. Pope stated that it will be placed on the master list. Mr. Goldberg recognizes that the FCC may need to be involved. Mr. Krummenacker agrees that FCC will need to be contacted. Mr. Krummenacker reiterated that there is concern, including about Broome County Emergency Services. He does not know if Broome County has been contacted.
 - v. Mr. Bordeau asked if there is a cost factor in having to complete retuning? Mr. Krummenacker stated that this would incur a cost, and he can investigate the cost of this.
 - vi. Mr. Flint mentioned that the developers would need to look into the frequencies that the inverters will operate at in relation to the high-tension power lines. Mr. Goldberg stated they would be looking into this.
- i. Wayne Ross - 355 Ingraham Hill Rd
 - i. Mr. Ross' property borders 180 degrees of the field.
 - ii. Mr. Ross directed his question to the Board, and asked, if there have ever been any studies done about home value post placement of the solar farm? He does not want his view obstructed by pine trees when he built his home in this location specifically for the view.
 - iii. He then asked if they have enough room to create a commercial access to get the equipment through the road between Tokos and Newby properties? He states there is not. He also discussed not wanting changes in regards to vegetation in his view, and discussed concerns regarding the recouping of the cost of the project.
 - iv. Mr. Bordeau asked Mr. Ross if the Board could visit his property. Mr. Ross said yes, and stated that he wanted to see what the model of the project would look like in 10 years.
- j. Mick Tullemellow - 1006 Powderhouse Rd.
 - i. Ms. Tullemellow's concern is erosion and flooding. She stepped forward to point out map features due to the poor quality of the map.
 - ii. She continued by stating that view and property value are important, as is Mr. Webb's family - this is a family farm (his mother was an Ingraham). This is about a 200-year contribution to the community. This is a family with a heritage. The town Board should be heavily considering the agricultural contribution of this family.
- k. Mr. Webb
 - i. Mr. Webb asked how many acres would be occupied? A representative responded that it would be approximately 28 acres. Mr. Webb pointed out that the site is 185. The representative stated that the whole area is owned by one person, but they are only leasing the 28.

- ii. Mr. Webb then discussed that when the agriculture exception went on the land 5 to 6 years ago, the school taxes reduced. They have suddenly reduced again recently, and he wanted to know why.
5. Board Discussion
 - a. Kevin Olds asked about the contingency plan for not using the access road off Ingraham Hill. The representative stated that they have had a (unintelligible statement) survey, which shows an approximately 50 foot wide driveway that is usable. Community members stated it is not 50 feet, and that the area is very wet and unusable. The representative stated they will have a sealed survey showing this 50 foot wide driveway.
 - b. Mr. Bensley and Mr. Flint asked the representatives to discuss traffic when there will be 6 months of construction when there will be heavy traffic. A representative discussed the difference between construction traffic and post-construction traffic. Mr. Ross expressed concern that there are at least 9 small children in the vicinity.
 - c. Meggan Olds questioned if any members of the team present had visited the Ingraham Hill road access? One member of the team of representatives had. She also questioned how the children would be protected and asked why Mr. Ross and other community members who met with the rep from the project were told the access was being moved to Powderhouse Road. The representatives stated that the address given on the application was Powderhouse.
 - d. Theresa Taro stated that she could not find 930 Powderhouse Rd. Is there a home there? A community member stated that there is a for sale sign in a ditch.
 - e. Ms. Taro then asked which substation would be tied into? No representatives were able to answer this. Mr. Bensley stated their lack of response is concerning, and Mr. Goldberg stated it was not a lack of concern; it was a lack of memory.
 - f. Elizabeth Rounds asked where people should send concerns?
supervisor@townofbinghamton.com
 - g. Mr. Bordeau asked the representatives what information will be received by the Board before the next meeting. Can this be provided by October 3 (2 weeks before the meeting date)? The representative stated that this would be done as much as possible. Items requested include but are not limited to:
 - i. Agricultural district
 - ii. SEQR responsibilities
 - iii. Substation
 - iv. Map
 - v. They will also create a supplemental letter to answer questions Mr. Goldberg, Mrs. Olds, and Mr. Pope have noted.
 - h. A letter was presented to the Board members from Mr. and Mrs. Newby of 329 Ingraham Hill Rd. This will be entered into public record, but not read tonight due to time.
6. Mr. Bordeau stated that a vote will not be taken at this time, and reiterated that the goal of the Board is transparency

Training Hours Reminder

1. Hand out latest Training Hour Sheet
2. Discussion of available training through Broome County

Adjournment

1. Motion: Bensley
2. Second: Kevin Old

3. Unanimous vote to adjourn at 8:17pm

Looking Ahead: Joint session with Planning Board - Monday, October 17, 2022, 6:30 pm