

ZONING BOARD MEETING  
TUESDAY – JANUARY 27, 2015  
ZONING BOARD  
7:00 P.M. – TOWN HALL – 1529 NYS RTE 12  
BINGHAMTON – NEW YORK – 13901

PRESENT: Mr. Donald Phillips, Chairman  
Messrs. Ruston, Waskie, Doolittle, & Grannis  
Ms. Kinne, Alternate

ALSO PRESENT: Jim DiMascio, Councilperson  
Donald G. Walls, Esq. - Town Attorney  
Thomas Geisenhof, Assessor

The meeting convened at 7:00 p.m. at which time Mr. Phillips called the meeting to order and welcomed the audience. Mr. Ruston read a statement which explained how the Zoning Board members are appointed, along with the Board's functions, limitations and duties. Mr. Ruston noted that the reading of this statement not only informs the audience about the Zoning Board of Appeals, but it also reminds the Board members of their responsibilities. Mr. Ruston also read the Notices of Publication for each case, which was duly published, as required by law, and as evidenced by Affidavits of Publication received and placed on file.

APPROVAL OF THE MINUTES

- Approval of the Minutes for December 16, 2014, Zoning Board Meeting.

A motion was made by Mr. Doolittle, seconded by Mr. Grannis, to approve the Minutes of the December 16, 2014 Regular Meeting.

ROLL CALL: AYES – 5 NAYS – 0

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Mr. Phillips welcomed Ms. Aleta Kinne to the Zoning Board of Appels as an alternate. The Board looks forward to working with her.

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PUBLIC HEARINGS

- JAY ABBEY – Phelps St. Corp – 9 Thomas St. – TM#095.18-1-14 – Application for a Use Variance to allow storage of concrete precast products in a residential area.

Mr. Walls conducted the Public Hearing.

Mr. Walls – the change of title – the application is Phelps St. Corp. which will then lease to Binghamton Precast; is that correct?

Mr. Abbey explained that was correct.

Mr. Walls – is the parcel located at 9 Thomas Rd. and does your company also own an adjacent parcel at 17 Thomas Rd.?

Mr. Abbey explained that was correct.

Mr. Walls – you’re asking for a variance so you can store certain products that are made by Binghamton Precast on the 17 Thomas Rd. property. Tell us what type of materials and products you intend to store there.

Mr. Abbey explained the products are typically made from concrete. They make highway barriers – temporary as well as permanent – box culverts, bridge slabs and arch culvert units. There are a large variety of custom made – specific to order type products.

Mr. Walls – are these products all made by Binghamton Precast.

Mr. Abbey explained that was correct.

Mr. Walls – are there any products that come in from the outside – other than those made by Binghamton Precast.

Mr. Abbey explained no.

Mr. Walls – the property in its present state has a house and garage on it which is dilapidated.

Mr. Abbey explained that the house is in pretty sufficient disrepair.

Mr. Walls – if the Board grants this variance what changes will be made to the property.

Mr. Abbey explained they intend to tear down the house – cut the standing trees on the property. Leave trees that are alive that are within ten feet of the road (there are very few). The ones that are technically alive are not offering much of a buffer. There are some on the west side of Thomas (not sure where the transition from Thomas to Woodland is). There are some live trees that will stay. We intend to build a berm – once the trees are removed we’ll push up the topsoil creating a berm about 3’ to 4’ high. We’ll plant evergreens – a variety of Blue and Norway Spruce. If there’s a tree in the berm area we will be careful not to bury it in soil – we’ll excavate around any trees. We will also plant grass on the berm. The property will be leveled – crushed stone type material will be laid down.

Mr. Walls will you be accessing Thomas Rd. from that particular lot?

Mr. Abbey explained they would not.

Mr. Walls – will the berm be located along Thomas Rd.

Mr. Abbey explained that was correct.

Mr. Walls wanted to know if the property had any value to him if he didn't demolish the house. Could he rehab the house?

Mr. Abbey explained the property had no value to them in its current condition.

Mr. Walls – what if any change to the character of the neighborhood would result.

Mr. Abbey – we believe any change at all is positive as they are going to clean up the property. They will get rid of the garage as that is falling down. The house is also in bad shape. By putting up the berm with evergreens it will create a buffer so you won't see the concrete products.

Mr. Walls – I understand the house is not occupied at this time. Can you tell me what financial hardship would you have if this variance is denied.

Mr. Abbey – there would be no financial hardship to Phelps St. Corp. or Binghamton Precast, but there would be since we're doing this application on behalf of the Turna family. They would have financial harm to them because they've tried to sell this parcel for a number of years. No one wants to buy it – no way would they be able to sell it for a reasonable amount of money. It wouldn't be worth the money for someone trying to refurbish this property. Someone would have to tear it down and then build new – extensive cost associated with that. The property value as it is now for us to purchase is very low.

Mr. Walls – do you have any alternate location or any place on your existing property where you can store your product?

Mr. Abbey – we're pretty maxed out to store product where we currently are.

Mr. Walls – is there anything else you'd like to tell the Board?

Mr. Abbey – believe we're going to improve the site from what its current condition is. Not going to increase any business activity from the existing business – won't decrease current business activity either. Just provides us more room and the ability to move around.

Mr. Jeff McCollough, 22 Thomas Rd. – doesn't by any means begrudge the cement factory to have the space or to do something with it. Don't begrudge the family (Turna) to sell the property. When he first moved in the area – 15 years ago – there was a small factory there – wasn't much activity. In 2007 they (McCollough) built an addition – quiet neighborhood. Since then there has been a change in ownership and now it's much larger than it had been. There's quite a good sized new building that's been put up so originally there was one building and now there's two. There's been a definite increase in noise in the neighborhood. Not only from the buildings but also from the trucks that come in and out. He walks his dogs about 5:45 every day and can hear them. That's the cost of doing business and it's zoned for that. Some things that have changed – when he looks across the street he sees large cement fences (partitions) between the neighbor's yard and the factory. Has seen some neighbors property being damaged – mailboxes down and brick walk hit by trucks. During the summer and since it's a wide open area when it's a windy day it's a dust storm. Dust and fine grit are on the houses and cars. Understand the Turna's house is falling down. This property currently has a lot of trees and bushes. It's more landscaped than to have a 3' or 4' berm. Mr. Abby indicated we would not see the product from the road but he finds that hard to believe as some of the products are 3, 4, or 6 feet tall. Over the last several years he's noticed encroachment from the cement factor – noise, forklifts beeping all day long when they are backing up and environmental encroachment as well. He doesn't begrudge them running a business or the Turna's wanting to sell the land but to tear down all the trees to store more cement blocks truly doesn't make sense. Thank you for your time.

Mr. Walls closed the Public Hearing

Mr. Geisenhof, Ordinance Office, recommends approval with a demolition permit and a compliance inspection being required.

Mr. Waskie, ZBA Member – double edge sword mixing commercial within a residential area. While visiting the site he found kids on bikes, play yards etc. One of his questions is the berm only going across 9 Thomas and stop? The plantings on the berm will they be maintained so any dead trees be replaced. Will the grass be maintained – wood chips on the berm? Will it be residential appealing as this is a residential area. Secondly like the Endicott issue with the pipe company – beeping going on until 6 or 7 p.m. That beeping can be very annoying. Does it happen on Saturday and if so for the whole day or half a day. Saturday's families are home and they don't want to hear that. The biggest problem is this is the best place for kids to play – hide n seek, dump your friend in a concrete culvert. .... Is there some type of security – fencing provided? Those are my concerns.

Mr. Abbey – regarding the berm. It is his intention for it to be along Thomas – the current driveway will not have the berm. They do plan on putting trees up not just a single row but staggered alternating Blue and Norway Spruce. The grass will be a fescue grass which grows thick and not real high. Doesn't require mowing and it's a more natural look. If trees die in the

berm we'll replace them. Doesn't matter if they die the first year or later we'll replace them and we'll maintain the berm.

It's already a problem with people occasionally coming on the property with motocross motorcycles – doing donuts, breaking windows, variety of damage to the building. We are in the process of upgrading the security system – cameras on sensors etc. Catch and deter. What's going on there it's not in our best interest from a liability stand point as well as the damage being done. We do intend to enforce that by all means necessary.

The noise – Jeff is right – it was quiet as it was small. We took it over and have turned it into a successful business. No question it's a lot more active than it ever was. The hazards you recognize are there and we'll work hard to try to reduce them. Whether you approve this variance or not we're working on the security. Don't believe we're going to detract from the neighborhood and we're certainly not going to increase the activity as a result of the possible approval of this variance. It won't decrease the activity if you don't approve it. This will only add some elbow room. The owner's came to me a while ago – this isn't much value to me – negotiated a price – they thought it was worth more so they held off for several years – approached me again.

Mr. Waskie – what about the hours of operation within the yard?

Mr. Abbey – we seldom start before 6 am. With that said he received a phone call Monday and Tuesday from a female neighbor, she calls periodically to complain, truck noise early in the morning. Our deliveries are usually 8 a.m. or later. We do back the forklifts out in the morning and they are then shut down. As a general rule the first couple of hours we work inside. I'm not saying we never go outside. We typically start at 7 a.m. and end around 3:30 p.m. That's not to say a truck doesn't come in later or gets started earlier in the summer.

Mr. Waskie – the trucks are they self-contained or do they need a forklift.

Mr. Abbey explained we usually load trailers during the day and then a tractor making a delivery drops off that trailer and hooks up to another. Occasionally they might come earlier in the morning drop off and hookup. The other trucks are supply trucks – mostly sand and stone. Sometimes a van trailer or flatbed makes a delivery. He uses Lopke for the sand and stone – they don't start until 7 a.m. and they are located out in Loundsberry so by the time they make a deliver it's 8 a.m.

Mr. Phillips, Chairman ZBA, how about weekends?

Mr. Abbey generally we've been working half days on Saturday. Again it's almost totally contained inside especially because of winter. We don't work many Saturdays. If we have a product that was poured on Friday and needs to get off the mold we'd do that on Saturday. Saturdays are not a full blown work day.

Mr. Ruston, ZBA Member – the height of the berm you said 3 or 4 feet high. Is that high enough to limit the view from across the street?

Mr. Abbey – probably not the berm by itself but when you put the trees in and grass. When you build a berm it starts out 3 to 4 feet but then it settles.

Mr. Doolittle, ZBA Member – what's the length of the berm? Will it go along Thomas where the land drops off to where the driveway is?

Mr. Abbey – it will stop pretty abruptly at the driveway. Not sure where the boundary is but when it gets to the other end we won't be able to fill so it will taper down and blends in.

Mr. Doolittle will that make it more difficult for the kids to get in or out?

Mr. Abbey at that point it would be more difficult. We're not eliminating the driveway as it's generally used by our employees. We don't run trucks out of that. Mr. Geisenhof has suggested possibly changing the truck traffic onto Woodland. This is worth considering as the impact would affect less people on Woodland than Highland. There is an S turn on Woodland that needs to be dealt with. We also have to submit a final site plan but we need to see if this variance is approved.

Mr. Doolittle is looking to keep the kids out.

Mr. Abbey the berm is not going to keep the kids completely out. They always find a way.

Mr. Geisenhof, Ordinance Office recommends approval with a demolition permit and compliance inspection being required.

Mr. Phillips, Chairman ZBA, read the following correspondence.

Broome County Planning has reviewed the above cited case and makes no determination in regards to whether the project meets the four tests of a use variance. The project site is located partially within the existing FEMA 100 year floodplain and partially within the preliminary new FEMA 100 year floodplain. Applicant should be informed of the risks of placing the project in the 100 year floodplain.

BMTS has reviewed the above cited case and does not see any issues with site access or traffic impact.

Town Planning recommends a favorable advisory and to consider utilizing Woodland Rd. for site access for minimal residential disturbance.

Drainage Coordinator recommends approval.

Urda Engineering recommends a favorable advisory with the following concerns –

- Stamped site plan is required and needs to be submitted for Planning Board review.
- Board should establish that trees remain & landscape berm remain in place and be maintained.
- Any additional storage of materials proposed on 15 Thomas St. may require approval & landscape buffering to 19 Thomas St. on the east.
- No ingress/egress directly from/onto Thomas St.
- No lighting, signage, or parking is provided nor required by code.
- No buildings proposed.
- Project parcel is within an Aquifer Protection Zone 1 “Wellhead Protection Zone.” No disposal of construction and demolition debris, including use as fill is allowed onsite.
- Westerly portion of this is bordered by Federal & NYSDEC regulated wetlands. NYSDEC wetland has a 100’ buffer that shall not be impacted by use of this property (fill, grading, etc.). It is also within a FEMA 100 year floodplain and shall not be modified (cut, fill, construction within) without prior approval by the Town Ordinance.
- Applicant might consider utilizing Woodland Rd. for site access to minimize residential disturbance as compared to the current use of Highland Rd.

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- MICHAEL LUMSDEN – 965 Brotzman Rd. – Portion of TM#066.02-1-4.121 – Application for an Area Variance to create a parcel with less than required road frontage from 240’ to 75’ in an agricultural zone.

Mr. Walls conducted the Public Hearing.

Mr. Walls – the frontage on Brotzman Rd. is 75’ and you want to share an existing easement with Mr. Watkins which will be used by your relatives. Does that summarize it?

Mr. Lumsden that is correct.

Mr. Walls – is there any other access to this parcel except by this easement?

Mr. Lumsden no. Only by the easement.

Mr. Walls will this variance have any negative impact on the neighborhood?

Mr. Lumsden none.

Mr. Walls maintenance of the easement – do you have private formal agreements?

Mr. Lumsden that is correct.

Mr. Walls so the Town is under no obligation for this easement. Is that correct?

Mr. Lumsden no obligation.

Mr. Walls is there anything else you'd like to tell the Board at this time?

Mr. Lumsden would just like my daughter to build her home.

Mr. Gary Blackman, 1 N. Brotzman Rd. owns the property next to Mike's. Mike has always been a good neighbor – responsible person regarding his property. I have no problem with Mike's variance.

Mr. Walls has one more question for Mr. Lumsden. Did he file a map with his application and does it depict where the lot will be located?

Mr. Lumsden explained yes a map was submitted and it does show where the lot is located.

Mrs. Carol O'Brien, 409 East Hill Rd. – Mike is a fantastic neighbor – always helpful. It's great he's trying to keep his kids in the area. This will increase our tax base.

Mr. Jim O'Brien, 409 East Hill Rd. – has about 55 acres and was asked if he wanted his property in an agricultural district. He didn't see any reason to – would he have to go to the Zoning Board to have cows? He would also like to give his grandchildren the opportunity to build a house on his property. If you can't build regardless of the road frontage; well, that shouldn't be a problem. Have been paying taxes for years (15 years) would be very disappointed if he wasn't allowed to build on that property. He's really looking forward to having his grandchildren stay in the area.

Mr. Walls in answer to your question yes you can have cows.

Mr. Walls closed the Public Hearing

Mr. Geisenhof, Ordinance Office, recommends approval with a building permit being required.

Mr. Phillips explained that this Board does not make zoning law but can grant relief. The Town Board makes the zoning law and if a circumstance comes up such as this we can give relief.

Mr. Phillips, Chairman ZBA, read the following correspondence.

Drainage coordinator recommends approval.

Urda Engineering recommends a favorable advisory with the condition that the access and utility easements' language clearly indicate who is responsible for access road and

utility construction and maintenance and timing of such actions among the entities. Legal descriptions and mapping for the revised principal parcel, proposed new parcel and easement shall be filed at the County Clerk’s office. A building permit and highway work permit maybe required.

Town Planning recommends a favorable advisory with a building permit being required.

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NEW BUSINESS

- MOHAMMAD A. MAJEED – 36 Clark Ave. – TM#112.06-3-14.2 – Application for a Use Variance to allow a two family (apartment above the garage) in a residential zone.

RECOMMENDATION

The Ordinance Office finds this application to be complete and would recommend the Board accept and schedule the Public Hearing for February 24, 2015.

A motion was made by Mr. Waskie, seconded by Mr. Doolittle, and unanimously carried to accept this application for Use Variance to allow a two family (apartment above the garage) in a residential zone.

ROLL CALL:           AYES -   5                   NAYS – 0

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- GREENMAN-PEDERSEN, INC. – Patrick Kenneally – 108 Theresa Blvd. – TM#112.22-1-6 – Special Permit to operate a professional business out of a residential townhouse unit in a PDD-RII Zone.

RECOMMENDATION

The Ordinance Office finds this application to be complete and would recommend the Board accept and schedule the Public Hearing for February 24, 2015.

A motion was made by Mr. Ruston, seconded by Mr. Waskie, and unanimously carried to accept this application for a Special Permit to operate a professional business out of a residential townhouse unit in a PDD-RII Zone.

ROLL CALL:           AYES -   5                   NAYS – 0

Mr. Waskie this is existing so nothing has changed. Appears it's an arbitrary decision on DOT that a Special Permit is required.

Mr. Doolittle this is so a person can use this as an office? May or may not be living there but wants to use this as an office.

Mr. Phillips he is living there and this business has been in operation for years.

Mr. Andrew LaPolt, PE explained he lives at the property. He is the construction inspector for the Prospect Mountain Project – he's the Project Manager. When proposing for work it's to his company's advantage to have an office. He moved here three years ago in a management position for the project. There are other projects in Region 9. Recently the criteria for having a local office changed from having someone housed in the area. DOT wants someone to live local as there's day to day contact with people. They changed the criteria from just simply being located in the area but we have to abide by all local, federal, and state ordinances. One of our competitors has said we're not in compliance so we're here to ask for compliance. We have 20 people employed on Prospect Mountain. Next year we'll have 50 employed within the six counties that Region 9 encompasses.

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#### VOTES ON PUBLIC HEARING

- JAY ABBEY – Phelps St. Corp – 9 Thomas St. – TM#095.18-1-14 – Application for a Use Variance to allow storage of concrete precast products in a residential area.

Mr. Grannis let the Board know he is recusing himself from this vote as he has a relationship with the seller.

A motion was made by Mr. Ruston, seconded by Mr. Waskie, and unanimously carried to approve this application for a Use Variance to allow storage of concrete precast products in a residential area with the conditions that the berm is maintained – grass planted and mowed when necessary, trees planted and when dead replaced and hours of operation for the storage lot is from 7:00 a.m. until 5:00 p.m.

ROLL CALL:           AYES - 5           NAYS - 0

Mr. Doolittle wanted to know the length of the berm – along all of Thomas?

Mr. Abbey explained that was correct the berm will run the full length of Thomas.

Mr. Waskie – all of his questions were answered but he feels there needs to be consideration for

the neighbors as to the hours of operation within the storage area so they don't hear beeping. Say starting 7 a.m. and ending at 5 p.m. This would make good neighbor relations but that's his opinion.

Mr. Abbey explained the lady that wrote the letter regarding the noise – he feels a lot of the noise comes from the County Highway especially the last couple of days.

Mr. Waskie wanted to make sure the times of operation of 7 a.m. until 5 p.m. were reasonable for Mr. Abbey.

Mr. Abbey so you're saying not before 7 a.m. or after 5 p.m. that is reasonable. By the time we start up we probably won't be in there until 7:30 a.m. It's not going to be a busy spot.

Mr. Phillips would hate to put the Town as "watch dog". Whose noise – County or Abbey and whose checking on it – the Ordinance Office?

Mr. Abbey we did conduct a decibel reading for one of the loudest operations we have – blowing cement up and the reading was within the tolerance level.

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- MICHAEL LUMSDEN – 965 Brotzman Rd. – Portion of TM#066.02-1-4.121 – Application for an Area Variance to create a parcel with less than required road frontage from 240' to 75' in an agricultural zone.

A motion was made by Mr. Grannis, seconded by Mr. Ruston, and unanimously carried to approve this application for an Area Variance to create a parcel with less than required road frontage from 240' to 75' in an agricultural zone.

ROLL CALL:            AYES -    5                    NAYS – 0

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ADJOURNMENT

There being no further business before the Board, a motion was made by Mr. Waskie, seconded by Mr. Ruston, to adjourn the meeting at 8:00 p.m.

Respectfully submitted,

Nancy Schnurbusch,  
Recording Secretary