

ZONING BOARD MEETING
TUESDAY—MARCH 26, 2024
ZONING BOARD OF APPEALS
7:00 PM—TOWN HALL
1529 NYS RTE 12
BINGHAMTON, NY 13901

Present: James Brewster, Chairperson
Aleta Kinne, Vice Chairperson
Scott Smith, Board Member
Jon White, Board Member
Ed Miller, Board Member
Dan Wolters, Alternate Board Member

Also Present: Nathan VanWhy, Attorney
Gavin Stiles, Ordinance Officer

James Brewster: It's 7:00 so if everybody's ready I'll bring the Town of Chenango Zoning Board of Appeals meeting for March to order. May we have the attendance roll call please?

Adam Donahue: Mr. Wolters; present, Mr Miller; present, Mr. White; present, Mr. Smith; present, Mrs. Kinne; present, Mr. Brewster; present.

James Brewster: We have a quorum so we may continue. I'll just go over some of the rules on the agenda tonight, you see we have four applications that are under new business. Basically, this type of situation we review the applications for completeness and send them through to the future process. All of them require a public hearing so we'll schedule public hearings for April and pass these along through the next phase and then you'll come back in the April meeting to state your case assuming that you're one of the applicants. Nonetheless, that's how we do it. We have no public hearings tonight so we won't be discussing any applications. Next order of business will be the approval of the minutes from February. Everybody ok with those?

Jon White: I'm good.

James Brewster: I'll seek a motion to accept those minutes.

Jon White: So moved, Mr. Chairman.

Aleta Kinne: I'll second.

Adam Donahue:	Ed Miller, Board Member	Voted: Aye
	Jon White, Board Member	Voted: Aye
	Scott Smith, Board Member	Voted: Aye
	Aleta Kinne, Vice Chairperson	Voted: Aye
	James Brewster, Chairperson	Voted: Aye

The motion was thereupon declared adopted by a roll call of:

Ayes – 5 Nays – 0

- James Brewster: Minutes from February are approved and can be posted. On to new business, we have application 2024-V02, Peter Walsh from 100 Chenango Bridge Rd, seeking an application for a zoning interpretation regarding the code official's denial of a building permit application for self-storage. Self-storage is currently not allowed in any zone of the Town of Chenango. Board members, I'll open the floor to whoever wants to take on discussion about the application's completeness.
- Ed Miller: Quick question, we work with a Walsh so should I recuse myself?
- Nathan VanWhy: Are you related in any way to the property at issue here?
- Ed Miller: No, we just do business and stuff together.
- Nathan VanWhy: Ok, so you don't have a prohibitive conflict of interest. I think you have an appearance of impropriety so the decision to recuse yourself is always personal to the board member. I can't tell you to recuse yourself, the Board can't make you recuse yourself. It's going to be on you. If you believe that based on your personal or commercial relationship with the applicant that in the interest of preserving an appearance of not impropriety, the opposite of that, then recusing yourself would be appropriate.
- Ed Miller: Ok, I think I will recuse myself.
- James Brewster: With that, I will ask you to step out. Dan, you'll be up for application 2, and that will carry through to April as well. Anything else on the application here?
- Jon White: It seems to be pretty straightforward, they kind of submitted what they're looking to do and stuff with the property. The rest is kind of listening next month to what they have to say and what the Town's stance is and go from there. I think it's fine to accept, I don't know if anybody else has any other questions.
- Scott Smith: In a way, so he's asking for an interpretation regarding the code official's denial of the building permit. So, are we to give him an interpretation there or are we going to be asked to give him a variance that allows him to build what he wants to build? Because apparently the interpretation is that he cannot build? The code officer says you can't build so are we just going to give him an interpretation or giving him a variance so he can build? Because it's not actually stated there.
- James Brewster: There's no application for a variance at this time. It is an interpretation as to whether or not the code enforcement officer's statements or denial of building permit in this case specifically is untrue, he disagrees with it. So we have to determine how we see that after we hear the various testimony.
- Nathan VanWhy: To sort of help try to clarify it, it's an interpretation. That's what they've asked for. They did not ask for a use variance. The code officer by denying a building permit

has said this is not an allowed use within the zone. So the interpretation is saying, boiling it down, no it is an allowed use. It's on the applicant to show how and why their interpretation of the code in fact allows this in that zoning district is the correct interpretation.

Jon White: And then we get to dissect the thoughts of how the code was originally written.

James Brewster: That's one of the options of doing it, otherwise we have to define the various pieces and parts.

Nathan VanWhy: The way that you do it is you look at the zone that they're in and you would look at the listed uses and then you would look at the definitions under the Town's zoning code to the extent that there are any. If there are no definitions then you would look at common law or just typical usage of the words. What does that word mean and can you see that word being interpreted in a plausible fashion to mean self-storage.

James Brewster: That's what we'll tackle next month and they actually are all in three different zones so we'll have to look at each and every specific type.

Scott Smith: So there's three different zones?

James Brewster: In each application but I got off target there. We don't have to consider the zone right now we just have to say does this look good? And we're doing that. Aleta do you have anything?

Aleta Kinne: Clear as mud.

Dan Wolters: Could be a long meeting next month.

James Brewster: Yeah, four public hearings is usually long.

Nathan VanWhy: I will say that because there's three applications all for interpretations all saying the code should be interpreted to allow self-storage, I think you could almost instead of doing one public hearing and trying to resolve that and then the other and then resolve that, you might say this is just open to everybody. You could ask Mr. Walsh and the other two groups to present first because they are going to be very similar presentations. It'll just be, in my district this is the thing that lets me have self-storage and the other guy will say his reason. Once they finish then the Board will discuss, and actually Mr. Miller's need to recuse himself on the Walsh piece is going to be, it's helpful that they're all in three different zones anyway so he'll just need to not join in the conversation about that particular zone but he can certainly discuss the other two zones.

Jon White: Could we just have the three public hearings quick so that both sides say their piece and then we could determine it as a group for kind of all three?

Nathan VanWhy: I think because some of the uses overlap between the zones, I think it would just be easier to everybody have open the three districts. We will talk about one, just go through the one first but then just immediately go to the next one and then

immediately go to the next one and then you could do resolution, resolution, resolution. I think that will be helpful in keeping the flow of it going. However you want to do it.

James Brewster: I'm a stickler, so I could open them all or open one and close it?

Nathan VanWhy: You could open, close, open the second, close it.

Jon White: And that's what I was getting at was three different public hearings in that part of it just for procedural purposes. At the end of the day we can discuss the different zones.

Aleta Kinne: So how is Ed going to fit into that?

James Brewster: So if we open and close the public hearing for Mr. Walsh he can be excused, he can say his case. Ed comes back in for the other public hearings and then we wrap that all up. It comes back around to Mr. Walsh's application and bye, Ed. Dan comes in, we talk and then we can sort of just put that on the shelf and then bring him in for the other two. We might have to have a little bit of a recap for just general interpretation.

Nathan VanWhy: I know the practice in the Town is that when somebody recuses themselves they completely exit the room. I think that a person could also sit in the audience. A person that recuses themselves is still a member of the public and still able to observe public proceedings. They're not allowed to participate in the discussion and for appearances sake not having them up here is good.

Aleta Kinne: When I first came on the rule was you excused yourself, you could stay in the room, you could take part in the public's discussion but you couldn't have anything to do with voting.

James Brewster: Which in the whole concept of open meetings law probably is the correct way because we are essentially denying him rights to take part in public meetings so we'll move on. We have to iron some of this out, it's unusual for us. Are we going to go on the same plan, send it to Planning? I don't really know why but I think we did with...

Jon White: That's what we did with the storage containers.

James Brewster: We'll go down the road we go down, send it through the whole process.

Scott Smith: But was that a zoning interpretation?

James Brewster: It was.

Nathan VanWhy: The Town Code §73-24 says at least 15 days before the date of the hearing required by law on an application to the Board of Appeals, secretary transmits to the Planning Board and asks for an advisory opinion so that's likely why they did that with the prior one. I haven't double checked whether you have to have a hearing. I don't

have a problem with a hearing if that's what you've done before, I assume that you'll just do it again.

James Brewster: Interpretations do need public hearings.

Nathan VanWhy: The Town Code says 15 days before any hearing you have to do an advisory opinion.

Aleta Kinne: So postcards are sent out?

James Brewster: Postcards will be sent out, according to our Town Code. It's not a legal thing. We've always done it.

Aleta Kinne: They'll have to figure out who gets the postcards.

James Brewster: 500 feet around each property.

Nathan VanWhy: There's two ways to view this because the interpretation applies to the entire district, not just this one parcel, because it's about the uses allowed in the district. It's very different than a site-specific area variance application.

Gavin Stiles: That gets a 500-foot radius but this is...that would be a whole lot of postcards.

Scott Smith: These three are relatively close together so you're going to have a miniscule part of the Town.

Aleta Kinne: It should be the whole town, no postcards.

Nathan VanWhy: The postcard notice is not in the Town Code, Gavin?

Gavin Stiles: We've been told by your colleagues that no, we legally don't have to do this. It's a courtesy that we provide. It just needs to be in the newspaper, right?

Nathan VanWhy: Right. It's not required under state law and I'm not seeing anything about a requirement that you mail postcards for any application so it's got to be this courtesy that you're providing. I don't have an issue with you sending a postcard notice to any number of people you want. I guess the question to you folks would be, and I think it's logical to say that they want to do a specific project at a site anyway, send the postcard notice like you normally do to the people within 500 feet around that site. Then, it's consistent with what you've done in the past. If you want to expand it in this case and send a postcard notice to every property in the three districts that we're talking about you might get more people here.

Jon White: And that would be like two thirds of the town.

James Brewster: What do we want to do?

Jon White: I'd say do it within the 500 feet of the applicant's address and that way if somebody else gets everybody else on the bandwagon and there's standing room only in here we'd then go and spend a lot of time because if you've got an NC district, a PDD-C district and an Ag district, because Adams is in an Ag district...

James Brewster: That one's in Neighborhood Commercial. The property he's looking at is in Neighborhood Commercial.

Jon White: Mr. Walsh's property is which? It is commercial, so you've still got three different zones. You could be 1500-2000 people you would have to send out to.

James Brewster: I think we'd be fine with the radius. The way we fulfill our courtesy, it is a specific tax map but at the same time we're not overburdening the Town's resources. We have the newspaper legality and we have the website. Maybe we should make it a little more prominent on the website since it's a little more of a special case than just an individual property. If everybody's ok with that...

Jon White: I'd be all right with that.

James Brewster: So, standard postcard, newspaper, and website. Do I have a motion anywhere out there to move application V02 along to next month, schedule a public hearing for April and run it through the Planning Board?

Scott Smith: So moved, Mr. Chairman.

Dan Wolters: I'll support that.

Adam Donahue: Dan Wolters, Alternate Board Member Voted: Aye
Jon White, Board Member Voted: Aye
Scott Smith, Board Member Voted: Aye
Aleta Kinne, Vice Chairperson Voted: Aye
James Brewster, Chairperson Voted: Aye

The motion was thereupon declared adopted by a roll call of:
Ayes – 5 Nays – 0 Recused - 1 (Miller)

James Brewster: Ok, we move it on to April. Do you have any questions at this point?

Pete Walsh: No, I'm just concerned about what this room's going to look like at that time.

Nathan VanWhy: More people than this maybe.

James Brewster: We'll see how it goes. The next one is 2024-V03, BEALBE LLC of 115 Prentice Rd, application for a zoning interpretation regarding storage units not being an allowed use in any zone of the Town of Chenango. The Adams' are clearly not here tonight. Does anybody have any concerns with this application that we need to discuss?

Aleta Kinne: I'll move that we accept the application and move to Planning Board and next month's meeting.

Jon White: I'll second it, Mr. Chairman.

Adam Donahue: Ed Miller, Board Member Voted: Aye
Jon White, Board Member Voted: Aye
Scott Smith, Board Member Voted: Aye

Aleta Kinne, Vice Chairperson
James Brewster, Chairperson

Voted: Aye
Voted: Aye

The motion was thereupon declared adopted by a roll call of:
Ayes – 5 Nays – 0

James Brewster: All right, move this through for an interpretation in April and a public hearing. The next one is application 2024-V04, Niles Park LLC, 10-12 Prescott Rd, application for a zoning interpretation regarding storage units not being an allowed use in any zone of the Town of Chenango. Any concerns with this application? They have the appeals form, brief discussion. They have a letter, plans.

Jon White: I think it's pretty good.

Aleta Kinne: This is residential or commercial?

James Brewster: It's PDD-C. We have a PDD-C, Commercial District, and then the Neighborhood Commercial District. Anybody want to move this through or have questions? I'm just questioning if anyone has issues with the application.

Jon White: I motion to move it to Planning Board and then the public hearing.

Scott Smith: I'll second.

Adam Donahue:	Ed Miller, Board Member	Voted: Aye
	Jon White, Board Member	Voted: Aye
	Scott Smith, Board Member	Voted: Aye
	Aleta Kinne, Vice Chairperson	Voted: Aye
	James Brewster, Chairperson	Voted: Aye

The motion was thereupon declared adopted by a roll call of:
Ayes – 5 Nays – 0

Nathan VanWhy: Mr. Chairman, before you move on to the next application one of the things I would ask the Zoning Board to consider and I'm bringing it up now instead of during one of the three discussions because it applies to all three and doesn't stop you from moving forward with everything you've just done. I mentioned earlier that the Zoning code has definitions and your task is to review the list of allowed uses in each of the zones and determine whether the zoning code's definition allows the interpretation to allow self storage units there or is there is no code definition for a specific use, which would not surprise me, then you need to use a common known definition of the word. It's typical to refer to dictionaries when doing that. I'm not necessarily saying figure it out today but give some thought to which dictionary the Town Zoning Board would approve or consider as the appropriate dictionary. I think that you could try to pick one like Merriam-Webster's dictionary or the Scrabble dictionary, some dictionary like that, the Oxford English dictionary of American English. A dictionary has lots of words in it, probably often inclusive of the phrases that we use

in the Zoning Code. You don't have to but that's a thing to be thinking of because you might get somebody who's like well these ten dictionaries and then we just say no we're going to just follow this dictionary as our dictionary of choice for the Zoning Board with making interpretations. You haven't been asked to do a bunch of interpretations before and certainly this is hitting three different zoning districts. There's a lot of different uses to potentially look at so it's just something to think of. You can discuss and decide tonight if you want to, you don't have to discuss it at all. You don't even have to pick a dictionary, it's just something to think about doing as you go into this.

Ed Miller: As a baseline, yeah.

James Brewster: That's a great suggestion.

Nathan VanWhy: A good question to ask Gavin would be, Gavin are you using a dictionary when people ask you if they can do XYZ? A lot of it is often common sense, but are you pulling a dictionary out?

Gavin Stiles: I look to see if there's a use that the umbrella of it is big enough that the thing could live under it and if it says typical of gas station uses, then I can play with that and make a reasonable argument that something else could live under that umbrella.

Nathan VanWhy: When you use a dictionary is it like sitting in your office and you could bring it out here?

Gavin Stiles: I have read Merriam-Webster's Collegiate dictionary.

Nathan VanWhy: I would encourage the Zoning Board to use that dictionary. That's what Gavin is using. I say Gavin, if you can, bring it to the next meeting so that the Zoning Board has it so that they can see what you were also potentially looking at when you were asked to make this same interpretation. I don't have an issue with using the same dictionary Gavin's using.

Gavin Stiles: I will lend it to you.

James Brewster: Bring it to the Zoning Board meeting.

Aleta Kinne: Do you want a motion that we pick that?

Nathan VanWhy: I don't think we need that. It's helpful that Gavin is using a dictionary. It's the practice of the code office to use the Merriam-Webster dictionary. I think you can just go with that because Gavin at the next meeting during the public hearing when the applicant presents their argument or interpretation and you ask Gavin, what's your interpretation? Give us more detail about it, and he can say I used the Merriam-Webster dictionary and whatever else Gavin needs to say about it.

James Brewster: So we'll plan on Merriam-Webster Collegiate.

Gavin Stiles: The reason that we're here is that I couldn't find a place for that puzzle piece to fit and at the bottom of every one of those pages 'every use not expressly permitted is hereby excluded.' So I was like I can't do it, I can't fit this puzzle piece in there.

James Brewster: Ok, thanks for that. 2024-V05, Danielle Wood of 125 Kennedy Rd, it looks like a quintuple area variance to build a home on lot with less than required lot size by 4600 sq ft, less than required side yard setback from 10' to 5', less than required front yard setback from 30' to 15', and less than required house size from 750 sq ft to 500 sq ft in a Residential zone. How does this application look to everybody?

Aleta Kinne: It's pending our decision, the sale.

Scott Smith: Yeah the sale is pending our decision.

Aleta Kinne: All of that looks like it's complete. A lot of reading.

James Brewster: I guess if the sale didn't go through she should withdraw.

Scott Smith: She will buy it if she gets the variance.

James Brewster: Now I understand.

Gavin Stiles: The sale is contingent on this.

Aleta Kinne: She has provided us with all of that reading material.

James Brewster: Anything else?

Jon White: No, I'm good.

James Brewster: I'll seek a motion.

Ed Miller: I'll make a motion.

Aleta Kinne: I'll second.

James Brewster: Motion made and seconded.

Adam Donahue:	Ed Miller, Board Member	Voted: Aye
	Jon White, Board Member	Voted: Aye
	Scott Smith, Board Member	Voted: Aye
	Aleta Kinne, Vice Chairperson	Voted: Aye
	James Brewster, Chairperson	Voted: Aye

The motion was thereupon declared adopted by a roll call of:
Ayes – 5 Nays – 0

James Brewster: We just set ourselves up for quite the month next month. As simple as this seems to me anyway, the last time we had an interpretation it went into the next month because of crafting the resolution.

Nathan VanWhy: Was the interpretation to allow it? What was it last time?

James Brewster: Storage containers and the interpretation was that we said they were permanent structures. I actually missed that meeting, I was out of town.

Nathan VanWhy: Whether a storage container is a permanent structure?

James Brewster: Shipping container. We have to be careful with words here.

Nathan VanWhy: So that one, I can see how an interpretation on that could be potentially not thorny but you want to be well-reasoned because a shipping container by the natural view of it, it's portable. It's not a permanent structure. I can see how somebody would easily arrive at that conclusion.

James Brewster: Apparently you and I are not reading from the same dictionary.

Nathan VanWhy: And so that's why it might take a while to put a well-supported, written out decision together. This particular interpretation, I largely believe, in my opinion of it, is Gavin is correct. But that's what we'll do. The decision itself I think would be fairly simple. The Zoning Board reviewed all of the authorized uses in the particular district, reviewed the definitions within the zoning code, reviewed the common known use of words per the Merriam-Webster dictionary, listened to the interpretation arguments by the applicant, listened to the interpretation arguments by the code officer, listened to public comments and has concluded that none of the listed uses are authorized self-storage units, or that this particular use does allow self-storage units because, and then we'd cite a dictionary definition and say this is clearly encompassed within the common usage of the word and therefore it's allowed. Something like that. And as we're sitting here I would probably be typing that as it's going along so that's an advantage of bringing a laptop with me.

James Brewster: So, that's the process.

Scott Smith: And the good news is there'll be a dictionary right here with your permission we might use it for more than just the initial..

Aleta Kinne: So, we're interpreting the words storage unit?

Nathan VanWhy: I think he applied for self-storage?

James Brewster: We'll have to look at the applications and whatever is in there is what we'll look at.

Jon White: The one thing too is what the third guy brought up for Prescott Rd was a little bit different from Mr. Adams and Mr. Walsh so it's going to be an interesting thing to look at all of them even as a whole because you're still going to have to dissect each individual one for the different zones.

James Brewster: Correct.

Gavin Stiles: Mike Lumsden has the only storage mall in town. Would it be helpful to look when he applied for that use variance to see what he called it?

Scott Smith: Statutes of limitations have expired.

Gavin Stiles: No, just what he called it at the time. Is it storage mall? Is it a self-storage facility? Does it have the word 'self' in it?

Nathan VanWhy: The fact that they granted a use variance suggests it's not allowed, that's why they needed the use variance for it. If he actually got a use variance then self-storage mall, self-storage something or other, it's an indication that the prior Zoning Board at the time believed that in fact self-storage of anything, in this case...?

Gavin Stiles: His is just you rent a garage door from him and you can put your old television set.

Nathan VanWhy: Ok, so it's a typical what I would think of as self-storage.

Gavin Stiles: It's not related to the sled shop. It's just a thing.

James Brewster: If you wanted to introduce that I suppose that could happen.

Gavin Stiles: Just to see, what did they call it then? Just for the sake of argument.

Nathan VanWhy: I think to the Chairman's point you can dig that file out to see what the Board decision was.

Gavin Stiles: No sweat, it might already be out.

Nathan VanWhy: A lot of Zoning Boards when I go do trainings on prior decisions and the precedent that they set, I hear some folks say there's no such thing as precedent. Any one is going to be different but you need to be careful because things can be similar enough that precedent setting does happen so reviewing prior decisions is certainly helpful to understand if they said back then you need to get a use variance that's an indication that...

Scott Smith: And how they came up with that at the time would be useful I guess too.

Gavin Stiles: That use variance is good forever and ever, I'm just wondering about the language that they used when they put it together.

Aleta Kinne: Is this going to residents asking for a self-storage unit on their property then, instead of a shed or a garage? They call it a self-storage unit? I can see our interpretation here might be pretty tricky.

Ed Miller: The big difference would be this is a commercial self-storage area.

James Brewster: I don't want to go too far here.

Nathan VanWhy: A barn is self-storage storage if I own it and put my stuff in it but that's different than a commercial enterprise.

Aleta Kinne: That's what I'm saying, we've got to make that distinction.

James Brewster: We will have a lot of work to do.

Ed Miller: I don't think that has any comparison with my house. I've got a shed out back that I store stuff in.

Jon White: I think where Aleta is going with this is it's defined right now that it doesn't matter whether, in any zone, so could somebody want to put a storage mall on a residential piece of property? Am I understanding you correctly with that, Aleta?

Aleta Kinne: Well, just one unit and they call it self-storage. Not a mall.

James Brewster: I think even though there might be a more general application throughout the Town, we'll focus specifically on the applications we're looking at. If somebody ever wanted to put one in a residential area...

Nathan VanWhy: To me as I recall it was evident that they were proposing what is commonly known as a commercial self-storage unit, right? Multiple units that will rent them out. That is the use that they're asking for, not a standalone single self-storage unit that an individual wants to put in their backyard.

Aleta Kinne: I'm just saying we have to make that distinction.

Nathan VanWhy: It's important.

James Brewster: We can and we should tease that specific question out during the public hearing.

Gavin Stiles: You might poke around at the Town of Union's ecode. They allow them and they have some pretty decent language about those things that we're going to be talking about.

James Brewster: We've concluded our business and then some. If you'd like to move to adjourn I'll definitely accept that.

Aleta Kinne: So moved.

Jon White: I'll second it.

James Brewster: All in favor?

Board: Aye.

Respectfully submitted,



Kari Strabo