

ZONING BOARD OF APPEALS MEETING
TUESDAY – AUGUST 22, 2023
7:00 PM – TOWN HALL
1529 NYS RTE 12
BINGHAMTON, NEW YORK 13901

Present: James Brewster, Chairperson
Aleta Kinne, Vice Chairperson
Scott Smith, Board Member
Jon White, Board Member

Dan Wolters, Alternate Board Member

Also Present: Gavin Stiles, Ordinance Officer
Diane Aurelio, Zoning Secretary

Absent: Ed Miller, Board Member
Nicholas Cortese, Planning/Zoning Attorney

James Brewster: I'm going to bring the August 23, 2023, Town Zoning Board of Appeals meeting to order. We do not have Ed tonight; he did let us know.. So, if I can get a roll call for Board attendance please.

Diane Aurelio: Mr. Wolter: present, Mr. Miller: absent, Mr. White: present, Mr. Smith : present, Ms. Kinne: present, Mr. Brewster: present.

James Brewster: Ok we do have a quorum to conduct our meeting tonight. First order of business is the approval of the minutes from the July 25, 2023, Zoning Board meeting. Does anybody have any comments, questions, suggestions, changes? There being none I'll seek a motion to approve them.

Dan Wolter: They look to be in order.

James Brester: Ok, I'll seek a motion.

Dan Wolters: So, moved.to approve the minutes.

Jon White: I'll second that.

James Brewster: Ok, motion made and seconded, to approve the minutes in July. Roll call please.

Diane Aurelio:	Dan Wolters, Alternate Board Member	Voted: Aye
	Ed Miller, Board Member	Voted: Absent
	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 roll call of
Ayes – 5 Nays - 0

James Brewster: The minutes for July are passed and approved and maybe be posted on the website as soon as possible.
The agenda tonight there are no public hearing one item under new business otherwise we don't have any public hearings. With that we are going to consider the application:

2023-V07, Michael Mastro of 267 Poplar Hill Road, application for an area variance to build a pole barn exceeding the maximum size from 1500 sq ft to 5000 sq ft in a Residential Zone which includes a short EAF. We did receive the application do we have any comments on that?

Aleta Kinne: I do unfortunately.

James Brewster: Ok, go head Ms. Kinne.

Aleta Kinne: About 5:30 tonight I got a phone call from someone.who said your board should be very careful tonight. Because they cannot accept that application. Maybe you can help us Gavin. He said because we turned him down so he cannot come back with a new application and Nick isn't here to ask.

Scott Smith: Who is the person that called?

Aleta Kinne: I'd rather not say. Someone knowledgeable I guess.

James Brewster: We can get Nick on the phone to ask that question. We can try and I'll put him on speaker.

Gavin Stiles: I left my phone in the office; you can call him Jim if you want to.

James Bruster: Is that agreeable with everybody? It is a legal question to some degree.

Aleta Kinne: They reminded me that is why Jay Abbey pulled his application a couple times. He did it because he knew you only get one chance, and he wanted it to be right on the final try. And I could not argue with that. I know he pulled his application a couple times.

Gavin Stiles: I thought Jay pulled his application because he found magic road frontage on Brotzman Road.

James Brewster: Well, that was that time.

Gavin Stiles: I don't know about the other times.

Scott Smith: We will be sure to thank whoever for pointing that out to us.

James Brewster: I don't know, I was under the impression they pay their money and apply..

Jon White: Basically, it comes down to what Nick has to say.

Gavin Stiles: I believe we spoke with Nick, right Diane? He said yes just reapply , see if you can downsize it. I don't think it is a one and done. Nope you're out you can never do anything ever again even if you make it smaller I wasn't aware of anything like that.

Jon White: Let's get Nick on the phone and get his opinion on that. Get some legal counsel Basically, it comes down to what Nick says.

James Brewster: Hello Nick, you are live at the board meeting tonight. We actually have a legal question that has come up within the eleventh hour here.

Nicholas Cortese: Ok, I'm ready.

James Brewster: Aleta came upon this information so I'm going to hand my phone over to her and you can answer her question.

Aleta Kinne: Nick, I got a phone call, and the person said the board should be very careful tonight. Whether we accept the application or not. Because once you have turned him down he can't come back for a second try.

Nicholas Cortese: Well, he is asking for a different variance at this point. He can't come back and ask for the same variance that's true Kind a race to pascal doctrine. This is a subtlety different variance. So, it's not the same application. It is entirely a new application.

Aleta Kinne: Ok, thank you.

Nicholas Cortese: Sure of course.

James Brewster: Thank you Nick.

Nicholas Cortese: Is there anything else I can do for you guys?

James Brewster: Everybody is good, thank you very much.

Nicholas Cortese: Have a good evening everybody, bye.

James Brewster: Alrighty then, ultimately is what you guys said and agreed on.

Dan Wolters: Never a bad idea to check.

Aleta Kinne: Diane you have been here a long time so I figured you would know.. He is not asking for the height.

James Brewster: Correct.

Gavin Stiles: He already received a height variance. Tried to go bigger than that but he decided to stick with the variance he had. I'm going to come down to 5000 sq ft and here is my new application. If you guys shoot that one down, he will ask about 3500 sq ft. Whatever he wants to do.

Aleta Kinne: It would be better.

James Brewster: Well, we are only at phase one right now whether or not if this application is complete or not to move through the process. I'll take any kind of discussion on that from you all.

Jon White: Other than the question on number three of the short EAF form not having the acreage and the amount of disruption noted on the form. I think that Diane can get that information easily enough from him.

Gavin Stiles: He will do whatever has to happen, he is very eager to get started.

Jon White: We just need whatever that disruption is, otherwise, everything seems to be complete. Engineer drawings I do not see any other problems with it.

Aletea Kinne: What was his height variance for?

Gavin Stiles: Twenty-four feet. He got a variance to crank it up to twenty-four and that is where he is holding there. He is not happy about it because he has some really tall equipment to put in there. It is what it is.

James Brewster: I can't remember if his variance he has was twenty-four or twenty-six. Is his variance for?

Gavin Stiles: For some reason twenty-four is in my head.

James Brewster: He would have gone twenty-six, but either way that's not a factor now.

Gavin Stiles: He throttled that back; this is what I got the variance for So go smaller and see what shacks out. It will be a whole new building permit, whole new ball game.

James Brewster: Ok I guess we are satisfied with this application. So, someone would like to make a motion to approve this application to go through our process. And I guess we can have a condition on it or just let Diane know to contact him and get a number for question number three of the short EAF. We could probably do that informally because it is on the record .we don't have to codify that. So, anyone like to make a motion to approve it for our process.

Jon White: I make a motion to accept this application and forward to the Planning Board for review and schedule a public hearing.

James Brewster: Can we have a second.

Scott Smith: I'll second that.

James Brewster: Roll call please.

Diane Aurelio: Dan Wolters, Alternate Board Member Voted: Aye
Ed Miller, Board Member Voted: Absent
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 roll call of
Ayes – 5 Nays – 0

James Brewster: Ok, motion passed.

Aleta Kinne: Should we add a date for the public hearing in that motion?

James Brewster: Ok, the next regularly scheduled September meeting.

Diane Aurelio: I think it is the twenty-sixth.

James Brewster: They will have to go through the whole thing, all the channels.

Gavin Stiles: Just out of curiosity, I don't really have any irons in this fire. How long, if this is a guy that keeps coming back how about four thousand how about three-thousand. At what point do you let a guy know. Hey man This isn't going to happen. You can keep coming back, I guess this is something to talk to Nick about. He is just going to keep coming back, what is the threshold. I'm not on the board, just curiosity.

James Brewster: I don't know. I think it is an individual case by case basis. So, we really can't come up with a threshold. The threshold is fifteen hundred that's it.

Gavin Stiles: At what point does he say I went around town and here are a bunch of other ones that are more than fifteen hundred, what about them.

James Brewster: This is a semi-judicial board, so we act on whatever is brought before us. If you come in and answer the five factor questions and they have a lot of evidence we are all going to determine what thresholds are and we will come to a consensus as a board. Some people take words at face value, saying I did this and it's not going to hurt the environment and that's fine. I tend to like more, and we don't

always get more. I feel the more you bring the better chance you have of working with me and my vote.

Gavin Stiles: Right.

James Brewster: That is why we come to a consensus you can not put a threshold on it.

Gavin Stile: I just never seen it happen, and this guy is just going to keep coming back. I'm curious at what point do you say hey man knock it off. I don't know.

Jon White: Part of his thing is he has twelve and a half acres, and he can only put a little building on, and he wants bigger. What do have to lose by coming back and that's his choice.

Aleta Kinne: That comes up with another question, how many times can he come back?

James Brewster: He couldn't, we denied the 7000 square footer last time. You can come back with 6800 you can't come back with the exact figure from last time. 6800 is subsieve I don't know who decides that. He has made a whole new application and a whole new process with the height and everything.

Gavin Stiles: He went back to his architect and had him downsize it.

Jon White: It is a whole new application.

James Brewster: We do not care one way or another. So, that is all we consider until we get the public hearing We just hope the applicant comes prepared that is what I hope for preparation. I don't know.

Jon White: We have seen as a board some will show up and are not really well prepared. Whether it's been a commercial or residential variance. They have come and have not been really prepared for it. Like you say you can hope they are prepared.

Gavin Stiles: I have a feeling he is going to say how big can I have it and be done with it.

Jon White: You cannot blame him.

Gavin Stiles: He has a big piece of property to be residential, but it is pretty big.

James Brewster: It is not our call. We have to remind ourselves of that. It is not the Zoning Board's call any individually on the side that is where things went sideways multiple years ago .We are a judicial board what comes before us on the night.

Jon White: You can have your opinion about it, but It's got to meet the five factors in order to be granted or denied. So, no matter what your opinion is on it you're feeling on it is whether the five factors have been met as a board. And with legal counsel also.

James Brewster: I think you are right on that. The one thing I have learned about this board is there is no even through all the training you never find a set way, . It's the whim of the board and you have the guidelines. So, as far as people stating president and stuff. President whether it is residential or agricultural there is , but what did there. Well one-hundred-acre plot is we did this, but he has a five-acre lot it is the same zone, and we did not do this. It is all different.

Gavin Stiles: Keegan, over the years when I have used president he would be the first one to say, just because you did something wrong for three or four years or thirty years in a row doesn't mean you have to keep doing it wrong. . That is his argument on precedent. I hate precedent because you did it wrong for a long time and because of that you have to keep doing it wrong. So, Keegan hates precedent It makes good sense to me, that is just straight talk. What about all these other ones. It is like when I give someone an appearance ticket because they have fifteen unlicensed vehicles on their property. I'm going to drive around the town and find all the unlicensed vehicles. I just say ok. That is how it roles. Or I'm going to find every other boat trailer, ok I'm dealing with this one right here. Keegan makes good sense if you did something wrong for a long time doesn't mean you have to keep doing it wrong for ever and ever.

Aleta Kinne: I kept thinking on what the county warned us about. We do not residential areas filled up with warehouses.

James Brewster: That is all part of the consideration, sure.

Aleta Kinne: Would we be better off if we met and came to a consensus as to what size we felt would be acceptable, like Gavin says. Cannot do it that way?

James Brewster: No.

Jon White: That is boarder line collusion.

James Brewster: Well, that is out of our scope. That is the town board, and the town board does meet on what is appropriate, and that is in the town law.

Jon White: He could have approached the town board to have that possibly changed to Agricultural.

James Brewster: This is true.

Gavin Stiles: He will rise above or go over this board if you wanted to.

James Brewster: There are options for applicants.

Jon White: It does not behoove him to do that because it is 1500 square feet in Agricultural Area for the size of the building. Either way he would have to get a variance.

James Brewster: Correct.

Jon White: Maybe it is looked upon differently because of his situation and the uniqueness of it.

Gavin Stiles: He is residential that is where the hook is.

Jon White: You go back to the uniqueness of the property with the residential around him would change to Agricultural. It is not like he is doing something for Agricultural uses either We would have to look at that as a board also.

James Brewster: We have to not get too specific on this case but, generality purposes are good. That is fine just to understand these things and these types of questions. So that is going through we are good there. I have one thing as a reminder we are getting late in the year and I'm part of it. If you have not done so already schedule your training for four hours . They are good at sending notices from the State and Broome County on trainings.

Aleta Kinne: I have done the trainings, but I have not received the certificates. I don't know how to get the certificates on my computer. From Laura at Conell. I took two agricultural suppose to have four credits.

Gavin Stiles: Another one came in today for you guys, I got it. I think Diane sent that out.

Diane Aurelio: I sent that out already.

Aleta Kinne: They were excellent classes.

Jon White: As of two moths ago I had sixteen credits.

James Brewster: for the year?

Jon White: Sixteen since I started. I still should be good for this year. And I will hit it hard again this fall. . I like the stuff DOS has to offer.

Aleta Kinne: They have some good ones in the fall.

James Brewster: I 'm thinking of going to the one outside of Albany, Sand Lake, or something. The one she just sent to us. Procedure wise there is a budget for training right?

Diane Aurelio: Yes.

James Brewster: I just book it do it and submit the invoice.

Gavin Stiles: It comes out of our budget?

Diane Aurelio: No, Zoning and Planning budget line.

Gavin Stiles: Go ahead I'll pay for it.

James Brewster: There is money in the budget line for that.

Aleta Kinne: You get paid to go?

James Brewster: Yes.

Aleta Kinne: I was not aware of that.

Jon White: They pay the hotel and for the training.

James Brewster: I'm not staying but the town will reimburse you.

Gavin Stiles: Anything you pay for just get a voucher and you will get paid back, check or voucher.

James Brewster: Like for the registration fee.

Aleta Kinne: I only do the Zoom meetings.

James Brewster: This one is in person on Saturday.

Gavin Stiles: There is one in Las Vegas you don't want to go?

James Brewster: It is a small budget.

Aleta Kinne: I knew they paid when you went to New York City. Didn't know the rest of the year you can get reimbursed.

Jon White: I know they pay for the registration, if it is a multiple day they will pay for the hotel as well. The one on Saturday is a four-hour class.

James Brewster: You would have to turn and burn.

Gavin Stiles: I never had any trouble with the town as far as gasoline, stop and get a sandwich. Just turn in your receipts and you get paid for it.

James Brewster: The chunk is large enough if you did want to go to New York City, you could there is plenty for that. But if is not touched there is plenty for registration fees.

Gavin Stiles: Yes use it up before it goes for a salt truck.

Jon White: Use it or lose it.

James Brewster: Is there anything else? It is good to talk about logistics with our board. That was a fine conversation.

Aleta Kinne: If there is a way when we take a class come back and share it .

James Brewster: We can, a night like this I'll put it on the agenda depending on what everyone wants to do. A little presentation.

Aleta Kinne: The last one was excellent. The municipalities are going to have to start protecting their agricultural land.

Jon White: That is the one they had on the seventh of this month.

Aleta Kinne: Did you take it.

Jon White: No, it did interest me, but work got a little busy.

James Brewster: All set, without any objections I'll adjourn this meeting at 7:28 p.m.. All in favor of adjournment the board unanimously agreed with no objections to adjourn the meeting.

Respectfully submitted,



Diane Aurelio
Ordinance Secretary