



# City of Binghamton Planning Department

SUMMARY OF MINUTES CITY OF BINGHAMTON ZONING BOARD OF APPEALS	
<b>MEETING DATE:</b> May 14, 2024	<b>LOCATION:</b> City Council Chambers, City Hall
<b>CALLED TO ORDER:</b> 5:15PM	<b>RECORDER OF MINUTES:</b> Shalin Patel

ROLL CALL		
ZONING BOARD OF APPEALS MEMBERS:	PRESENT	ABSENT
J. Kelly Donovan (chair)	X	
Susan Bucci	X	
John Matzo	X	
Ernest Landers	X	
Marina Resciniti		X
<b>STAFF MEMBERS PRESENT:</b>	<b>TITLE &amp; DEPARTMENT:</b>	
Tito Martinez	Assistant Director, Planning Department	
Shalin Patel	Planner, Planning Department	
Elisabeth Rossow	Corporation Counsel	

APPROVAL OF MINUTES		
<b>MOTION</b> to approve the February 13, 2024 meeting minutes as written.		
<b>FIRST:</b> Matzo	<b>SECOND:</b> Bucci	<b>VOTE:</b> Carried (4-0-0)
<b>AYE(S):</b> Bucci, Donovan, Matzo, Landers	<b>NAY(S):</b>	<b>ABSTENTION(S):</b>

PUBLIC HEARINGS & FINAL DELIBERATIONS	
<b>ADDRESS:</b> 30 Brown St	<b>CASE NUMBER:</b> ZBA-2024-
<b>APPLICATION FOR:</b> Area Variance for the construction of a 110' tall telecommunications tower where 65' is the maximum height, with a 59' setback from the nearest property line where a minimum of 110' is required in the I-2 Light and Medium Industrial District.	
<b>REPRESENTATIVE(S):</b> Jeffrey Twitty (Attorney, Nixon Peabody), Brenda Blask-Lewis (Site Acquisition, Centerline Communications)	
<b>DISCUSSION POINTS:</b>	
<ul style="list-style-type: none"> <li>▪ Additional information about the fall zone was submitted to the city – how it would work including a diagram and a revised site plan showing that the fall zone with 60' break point incorporated into the tower would only be approximately 50' and would stay out of the railroad right of way (<i>Twitty</i>)</li> <li>▪ <i>Chair (Donovan) asked</i> applicant to address questions/concerns about power output and if there are any health effects from this setup. Will there be interference with pacemakers and/or other communications devices, etc.?</li> <li>• <i>Representative (Twitty) commented,</i> no, there would not be any health impact from the electromagnetic energy emitted from this project. The FCC sets very strict guidelines, AT&amp;T's license hinges on them to follow those specific guidelines. There would be no interference with pacemakers and any other devices.</li> </ul>	

- **Board member (Bucci) asked** if the applicant had considered other sites for this project. Why was such a small space considered for this project when going 0.25-mile up Glenwood Road would have provided much larger space?
- **Representative (Twitty) replied**, there was a site selection analysis – showed different locations that were considered for this project. It cannot be moved to a different location, because when looking for a placement for project, there is a specific search ring that AT&T looks for, so any specific location outside of the search ring would not achieve the goal of providing to West Binghamton cell here.
- **Representative (Blask-Lewis) commented**, in addition, for this particular site it is a capacity site, which means it has to be strategically placed to offload data coming from other towers in the network. That is why it gets pinpointed to.
- **Board member (Bucci) asked**, despite knowing the Zoning Ordinance does not allow the applicant to carry out their project as it stands, why would the applicant try to push it through anyway?
- **Representative (Twitty) replied**, it comes down to the technology of the tower itself. Binghamton’s topography makes things complex, as waves are traveling over the air, so if there is a building or a hill blocking transmission of a wave, it makes it, so the tower has to be up even higher. So, the height variance and the setback tie together because the setback is needed due to height of the tower, and this tower has to be placed in a specific location to relieve capacity issues faced by the AT&T network. There are houses located on and in close proximity to Brown St, so it should be a viable piece of land to put housing on it.
- **Staff (Martinez) commented**, as far as development of residential use goes, the zoning district is industrial; therefore, residential use is not allowed. The houses that are present are legal non-conforming, meaning they are grandfathered in, new residential development would not be allowed.
- **Board member (Bucci) asked** about the public safety aspect of this tower being so close to the street. What is going to stop kids, vandals from climbing up on the tower? How high is the fence?
- **Representative (Twitty) commented**, the compound will be fenced, it will be clear that there should be no trespassing on the property; typically, with these types of towers there are no climbing pegs for about 10-15 feet of the base of the tower.
- **Staff (Martinez) commented**, 7-foot-tall chain-link fence 1-inch tall, barbed wire top.
- **Board member (Bucci) asked** how far does the chain-link fence have to be from the base of the tower? The setback is from based of the tower and not fencing.
- **Representative (Blask-Lewis) commented**, the fence compound is 60x60’, but the tower would be in the center, the reason for additional spaces is for if additional carriers wanted installation on the tower. The tower is probably put in further into the fence compound than closer to the street, it is central. Correct, it is from base of the tower.
- **Staff (Martinez) commented**, the code says it has to be at least the height of the tower, is how far the setback has to be from nearest property line. They are proposing 59’ from the nearest property line, whereas the tower is 110’. The variance is the difference between 110’ and 59’.
- **Chair (Donovan) asked** if there will be lighting on the tower or the compound.
  - **Representative (Twitty) replied**, no, the compound itself will have no lighting, there is a typical time to light, and it is done so during maintenance time for the tower. The condition to turn on lighting could be changed depending on activity in the neighborhood, as AT&T would like to keep trouble off of the property.

**PUBLIC COMMENT:**

- **Jim Spear (Owns multiple properties on Brown St) spoke in opposition of the project.** Mr. Spear had following concerns: Mr. Spear says he captured couple pictures of similar towers from around the area. The Ansco Camera building is 60’ high, this tower is going to be twice as high as it is supposed to be, and the setback is half of what it is supposed to be. On this street, there is room for sidewalks, but at present there are no sidewalks on either side of the street, the proposed project side would be the logical side to put a sidewalk on. The property is vacant on the left-hand side and is a good development side for residence. The tower does not match in anyway with the character of the neighborhood.
- **Peg Smith (neighbor at 40 Brown St; directly next to 30 Brown St) spoke in opposition of the project.** Ms. Smith had following to say about the project: have driven by the tower located on Court St and taken several pictures; that tower is a lot further back from the street than what is being proposed on Brown St. She is concerned about people who live and/or work in the area. If anything does happen, what are our options, what do we do?
- **Staff (Martinez) commented,** the Zoning Board of Appeals (ZBA) has some discretion with the variance. Planning Commission had less discretion because the applicant is proposing a tower in an industrial area, which is the preferred zone, according to the Zoning Code. The applicant could challenge the decision made by the ZBA and go from there, but there is some discretion available.
- **Staff (Martinez) asked,** is there a reason why the tower cannot be moved further back from Brown St, was that what the railroad allowed? Did the railroad want a certain distance from the tracks?
  - **Representative (Blask-Lewis) replied,** there may be a minimum setback from the railroad tracks themselves, so that may have been the reason for the base of the tower being where it was proposed in the plans.

**VOTING**

**MOTION** to close the public hearing

<b>FIRST:</b> Donovan	<b>SECOND:</b> Matzo	<b>VOTE:</b> Carried (4-0-0)
<b>AYE(S):</b> Donovan, Matzo, Bucci, Landers	<b>NAY(S):</b>	<b>ABSTENTION(S):</b>

**MOTION** that the ZBA is lead agency in SEQR review and that the action is unlisted

<b>FIRST:</b> Donovan	<b>SECOND:</b> Landers	<b>VOTE:</b> Carried (4-0-0)
<b>AYE(S):</b> Donovan, Matzo, Bucci, Landers	<b>NAY(S):</b>	<b>ABSTENTION(S):</b>

**SEQR Deliberations:**

1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?
  - It is a conflict with the Zoning regulation, the project is in I-2 Light & Medium Industrial Zoning District; so, it is not the type of activity so much out of the place, it is the size, the layout, and the way it is put together (**Donovan**). Environmentally, it appears to be a small impact, though visually it is going to be more than a small impact for the neighbors. (**Donovan, Matzo, Landers**)
2. Will the proposed action result in a change in the use or intensity of use of land?
  - Not really, it is going to be about same intensity of land use. Once the construction is over, there will be very little activity. (Donovan). (Bucci) thinks it will not be safe for the neighborhood. No or small impact may occur.
3. Will the proposed action impair the character or quality of the existing community?

- “I think it is a moderate impact at least, because this project would invite danger, a 7’ chain link fence with barbwire would challenge some of the people that lived in that neighborhood. It will both affect the neighborhood in a negative manner and be a detriment to the neighborhood” (**Bucci**) \*\*It was hard to hear Board member Bucci due to mic not picking up her voice\*\*. 3 members (**Donovan, Matzo and Landers**) voting for small to no impact, 1 member (**Bucci**) voting for moderate to high impact.
- 4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?
  - No, there does not appear to be any critical environmental area in the neighborhood (**Donovan**). No or small impact may occur.
- 5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking, or walkway?
  - It should not have any affect there (**Donovan**). No or small impact may occur.
- 6. Will the proposed action cause an increase in the use of energy, and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?
  - It should not impact that at all (**Donovan**). No or small impact may occur.
- 7. Will the proposed action impact existing:
  - A. public / private water supplies?
  - B. public / private wastewater treatment utilities?
  - It will not have any tie in there at all (**Donovan**). No or small impact may occur.
- 8. Will the proposed action impair the character or quality of important historic, archaeological, architectural, or aesthetic resources?
  - It does not appear it will (**Donovan**). No or small impact may occur.
- 9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora, and fauna)?
  - No, it should not impact any of those items (**Donovan**). No or small impact may occur.
- 10. Will the proposed action result in an increase in the potential for erosion, flooding, or drainage Problems?
  - It should not affect those, there should be a plan for the slope of the small site (**Donovan**). No or small impact may occur.
- 11. Will the proposed action create a hazard to environmental resources or human health?
  - No or small impact may occur, as agreed upon by all members (**Donovan, Bucci, Landers, Matzo**).

**MOTION** to issue a negative declaration under SEQR

**FIRST:** Donovan

**SECOND:** Landers

**VOTE:** Carried (4-0-0)

**AYE(S):** Donovan, Matzo, Bucci, Landers

**NAY(S):**

**ABSTENTION(S):**

**DELIBERATION:**

1. The Zoning Board of Appeals determined that the granting of the variance would not result in an undesirable change in the neighborhood. Donovan and Matzo found that, although the immediate neighbors do not desire this development, it does seem to present itself as undesirable for the entire area. Bucci believes that this project may be a detriment to future sale of nearby properties, although this is an industrial area. Landers states that when passing by the site, one would only see part of the base of the tower, and much of it would be screened by plantings. Matzo states that the lot is currently vacant and unmaintained, and he would consider it blight in its current state. Matzo,

Landers, and Donovan do not find that the granting of the variance would result in an undesirable change.

2. The Zoning Board of Appeals concluded that under applicable zoning regulations, there is not a reasonable alternative. Donovan noted that the applicant provided adequate documentation of the site location analysis that resulted in 30 Brown St being chosen. Landers noted that the Board’s questions about the height were answered satisfactorily by the applicant and that the large tower on Upper Court St is located in a similar site adjacent to a railroad. Matzo noted another tower is located in a similar location by “the Brandywine.” Bucci stated that the location is too small of a property to support such a large tower. Donovan stated that the focus of this questions should be whether alternatives were considered. Matzo noted that the proposed location is odd.
3. The Zoning Board of Appeals did not find that the requested variance was so substantial as to require a denial of the variance. Bucci noted the close proximity to neighboring properties and the street. Landers stated that it could be considered substantial, but noted that the tower has a breaking point and is designed to fall within its own compound, so the height/fall zone is less of an issue. Donovan noted that it is substantial, but there was explanation and reasoning given for required height and setback variance. Matzo did not speak to whether the variance is substantial, but reiterated that the location seems odd.
4. The Zoning Board of Appeals determined that the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Donovan, Matzo and Landers were in agreement, while Bucci was not.
5. The Zoning Board of Appeals determined that the alleged hardship was not self-created because in theory it is in public’s best interest/good to get complete cell coverage.

**MOTION** to approve the requested variance(s).

<b>FIRST:</b> Donovan	<b>SECOND:</b> Landers	<b>VOTE:</b> Carried (3-1-0)
<b>AYE(S):</b> Donovan, Landers, Matzo	<b>NAY(S):</b> Bucci	<b>ABSTENTION(S):</b>

**Board member (Bucci) voted against approving the requested variance(s) because she thinks the parcel of land is too small for the size of the tower and the variance request is too large for the area.**

**PUBLIC HEARINGS & FINAL DELIBERATIONS**

**ADDRESS:** 181, 185, 187 & 205 Clinton St; 2 & 7 Hudson St; 9 Slauson Ave

**CASE NUMBER:** ZBA-2024-83

**APPLICATION FOR:** Area Variances for the construction of a 60’ tall building where 45’ is the maximum and 0’ of commercial space along a portion of the ground floor where 30’ are required along all street frontages.

**REPRESENTATIVE(S):** Robert McKertich (Attorney, Coughlin & Gerhart LLP), Steven Sanyshyn (Project Engineer, Delta Engineers), Dustin Welch (Project Architect, Passero Architects and Engineers)

**DISCUSSION POINTS:**

- [2] five story structures located along Clinton, Jarvis, and Hudson streets connected by an outdoor courtyard along Clinton St
- 288 total units – mix of 1-, 2-, and 3-bedroom apartments with entirety of the ground floor on Clinton St reserved for commercial use
- It includes an outdoor playground area on the rear of the buildings, indoor fitness center for residents, community room for functions, common laundry area, storage (bicycle storage on site),

charging stations, courtyard area, sizeable amount of green space, approximately 300 parking spaces behind the structures for residents and guests.

- Under the Zoning code, there is a maximum building height of 45' in this zoning district – a variance of up to 15' equaling to 60' in total building height is being requested
- 2<sup>nd</sup> variance being requested is dealing with the provision of “residential uses shall not be located within the first 30' of a ground floor of a building”, - there will be commercial uses provided all along Clinton St, but requesting to allow residential uses on ground floor along Hudson and Jarvis Streets
- Breaking down the 5-part variance test from the applicants' perspective:
  - Undesirable change – this project is a direct result of the Clinton St Neighborhood Business District plan that was approved by the city last year. That plan seeks to revitalize the Clinton St corridor with transformational projects aimed at economic development, additional housing, and shovel ready projects. Merely adding 15' to the height of a structure will not be a detriment to the character of the neighborhood. Typically, the height restrictions are intended to mitigate for loss of views or light from properties behind the structure – the only thing behind this structure is railroad lines. Both Hudson and Jarvis streets have residential use on the ground floor, so putting residential use on ground floor facing those streets will not create an undesirable change.
  - Reasonable alternative – the intension of this project is to be an anchor, to revitalize commercial activity along Clinton Street, the only way that happens is if a project drawn enough people to the area. Because of the size of the lot, the only way to achieve the density is by building up. Same goes for side streets of Hudson and Jarvis to allow for residential than commercial.
  - Substantial request – is it more than 50% change in the requirement. Adding additional 15' (going from 45' to 60') is a small percentage of change, it is not a substantial difference from what the Zoning code allows. Similar to the side streets of Jarvis and Hudson, in which neither offer significant commercial activities, as they are much more suited for residential activities.
  - Impact on the physical/environmental conditions in the neighborhood – this is not an undeveloped site, it has been developed before and contains contamination on site; it has been an eyesore for a long time, the new developer is looking to remediate the environmental conditions on the site and build a very attractive structure. This project will not have a negative impact on the physical/environmental conditions of the neighborhood, it will be the opposite; will be cleaning up a dilapidated site and presenting an aesthetically pleasing structure.
  - Self-created hardship – the prior owners of the property contributed to the conditions on the site (contamination on the property). The new developer is coming into save the site, to remediate it and redevelop the site. The project of this level requires a certain level of remediation, which adds to the expense of the project. This sort of triggers the need to maximize the residential units by building up and out on the side streets on ground floor, so it can be an economically viable project.
- Intentional efforts were made in the design phase to mitigate the verticality of the building. There is a setback on the upper floor, there is coreness as you transition from floor 4 to 5 as well as a material change to help mitigate the height factor (Welch).
- Phase 1 building (corner of Clinton and Hudson St) will be built first, while 2nd building will be in phase 2 (Clinton and Jarvis St, U shaped). All of the parking will be likely completed (along with site cleaning, soil remediation) in phase 1 of the project (Sanyshyn).

- Two main entrances in/out of the property, one on Jarvis St and 2nd one coming off of Crandall St, which will come through parking lot on Slauson Ave into back of the property for all the apartment traffic. A separate ingress/egress will be provided for the retail space, which will come out on Clinton St.
- All items regarding the storm water and such will be mentioned during the Planning Commission's review of the SEQR
- **Board member (Bucci) asked**, with the step back on the 5<sup>th</sup> floor, is there same number of units on 5<sup>th</sup> floor as there would be on the 4<sup>th</sup> floor? And are they same size as others or smaller?
  - **Representative (Welch) commented**, yes, there is same number of units on both floors, but the units on 5<sup>th</sup> floor are little bit smaller just to accommodate the step back.
- **Board member (Bucci) asked**, how many residential units are located on side streets of Hudson and Jarvis Street?
  - **Representative (Welch) replied**, we are showing 4 units along Jarvis Street and 8 units along Hudson Street.
- **Board member (Bucci) asked** about the projected end time for phase 1 and phase 2.
  - **Representative (McKertich) replied**, it is a multi-year project; phase 1 would around 2026 time period and phase 2 will be around 2029, subject to change moving forward.
- **Board member (Landers) asked** about the accessibility of residential units located on the ground floor facing Hudson and Jarvis Streets. The access to these units will only be from the interior of the building and not be able to access from outside, correct?
  - **Representative (Welch) replied**, that is correct. One thing to note is the grade difference on Jarvis St, based on where the building will be, and the actual roadway is.
- **Chair (Donovan) asked** about window security for the residential units on the ground floor
  - **Representative (Welch) answered**, there will be additional lightning provided on the site and offer landscape areas that will buffer residential windows from sidewalks, so all of those facts should help.

**PUBLIC COMMENT:**

- **Patricia Garroway (resident at 27 Crandall St) spoke about the project.** Ms. Garroway asked the following questions: at the completion of construction of the 2 buildings, will it increase foot traffic to cross over the train tracks to Thorp St? There are already few stragglers that are going over the tracks as it is now, but it with increased foot traffic it could potentially elevate that issue. Will the underpass now be renewed to avoid accidents from people illegally crossing the train tracks? They said that the traffic opening into the parking lot would be from Slauson Ave; not sure if they (the representatives) are aware that there is an existing manufacturing business located on Crandall St, off of Slauson Ave. The business has a lot of tractor trailers that are on that block and how it will possibly impede with more traffic on the street? Final thought, with first floor commercial with Clinton St, with sides of Jarvis and Hudson Streets to be residential, I disagree with that idea, I think the whole first floor should be commercial space, based on the safety for the tenants in the building.

**APPLICANT RESPONSE TO THE PUBLIC COMMENT:**

- **Steve Sanyshyn (Project Engineer, Delta Engineers) commented**, the project is proposing for a minimum 6' tall chain-link fence along the whole back edge of the property, to keep people from going over into the tracks as well as plantings. So, there will be a presence of a little barrier there, it will not be as open as it is now where you can just walk over. The fence will go around the whole back side of the property, along the residential area and Slauson Ave portion.

- **Robert McKertich (Attorney, Coughlin & Gerhart LLP) commented**, typically when there is an undeveloped, dilapidated type of a parcel, it leads to activities that are not permitted. But when you have a well-developed parcel, where there are people around, it looks like its cared for, with a manager on site to take care of the property, that will tend to lead to less criminal activity or activity that is now allowed. It will lead to a more advanced and well-developed neighborhood and help improve the character.

**VOTING**

**MOTION** to recognize Planning Commission as the lead agency in SEQR review

<b>FIRST:</b> Donovan	<b>SECOND:</b> Matzo	<b>VOTE:</b> Carried (4-0-0)
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<b>AYE(S):</b> Donovan, Matzo, Bucci, Landers	<b>NAY(S):</b>	<b>ABSTENTION(S):</b>
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**MOTION** to TABLE the project to June 11 Zoning Board of Appeals Meeting:

<b>FIRST:</b> Donovan	<b>SECOND:</b> Landers	<b>VOTE:</b> Carried (4-0-0)
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<b>AYE(S):</b> Donovan, Matzo, Bucci, Landers	<b>NAY(S):</b>	<b>ABSTENTION(S):</b>
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**ADJOURNMENT**

<b>MOTION</b> to adjourn	<b>TIME:</b> 6:54 PM
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<b>FIRST:</b> Donovan	<b>SECOND:</b> Matzo	<b>VOTE:</b> Carried (4-0-0)
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<b>AYE(S):</b> Donovan, Matzo, Bucci, Landers	<b>NAY(S):</b>	<b>ABSTENTION(S):</b>
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