

TOWN OF MINA
ZONING BOARD OF APPEALS MINUTES

November 17, 2021

**** DRAFT****

ZBA Members Present: John Shifler (Chairman), Chuck Carter, Joe DeBoe, Lori Wagner, Brian Sullivan

ZBA Members Absent: None

Others Present: Jesse Farnham, Cara Farnham, Sherrie Tanner, Art Tanner, Bradley Russell, Rich Ries (E21/Buffalo Solar), Mark Overall (E21/Buffalo Solar); Rebecca Brumagin (Mina Town Supervisor); Ellen Shifler (Code Secretary)

Call to Order: The meeting was called to order at 7:04 PM by John Shifler, Chairman.

Public Notice of the meeting was acknowledged (Post-Journal 11/2/21).

Approval of Minutes:

The meeting minutes of September 15,* 2021 were approved as **presented**.

Motion was made by Chuck Carter, with a second by Joe DeBoe, to approve the minutes as PRESENTED. Motion carried.

Approved: Ayes (unanimous) – Shifler, Sullivan, DeBoe, Wagner, Carter

* No applications were presented for the scheduled October 2021 meeting; the meeting was cancelled.

ZONING BOARD OF APPEALS HEARING REQUEST:

1. Applicant – E2I Ventures/Buffalo Solar ON BEHALF OF Darren Benjamin Padd

Type of Request: SPECIAL USE PERMIT to install a 625-kW(AC) ground mounted solar energy project at **3040 Tanner Road, Sherman**, on the lot known on the tax maps of the Town of Mina as 343.00-1-51.2, owned by Darren Benjamin Padd.

Motion: John Shifler moved, and Chuck Carter seconded, a motion to **TABLE** the request for Special Use Permit to install a 625-kW(AC) ground mounted solar energy project at 3040 Tanner Road, Sherman, on the lot known on the tax maps of the Town of Mina as 343.00-1-51.2, owned by Darren Benjamin Padd. The Mina Town Board is currently reviewing recommendations for a Town of Mina Solar Energy Law and will vote at its upcoming 12/16/21

meeting. The ZBA requests guidance from the Town Board in rendering its decision on the Special Use Permit application.

Decision: *Special Use Permit application **TABLED**, unanimous.*

Old Business: Gary McEnery (2665 Shadyside Road, Findley Lake) is dissatisfied with the ZBA's 9/15/21 approval for Area Variances granted to neighbor Mike Cully (2661 Shadyside Road). Mr. McEnery has written two letters addressed to the ZBA (dated 9/24/21 and 11/15/21). Copies of these letters were printed and distributed to the Board. Mr. McEnery requests that the hearing for Area Variances be reopened. The matter has been ruled upon and is concluded with the Town of Mina Zoning Board of Appeals. No further action is required from the Zoning Board of Appeals.

New Business: Town Supervisor Rebecca Brumagin gave an overview of New York State's "Open Meetings Law," which is effective 11/18/21. Documents used in the course of a public meeting and made available to board members in advance of the meeting must also be made available to the public at least 24 hours prior to the meeting date. Draft minutes, applications, agendas, and other pertinent documents will be sent to the Town Clerk in advance of future meetings for posting on the Town of Mina website.

Next meeting is December 22, 2021 at 7:00 PM. Applications for hearings are due to the Code Officer by Friday, 12/3/21 at 11:00 AM.

Adjournment: The meeting was adjourned at 8:37 PM upon motion by John Shifler and second by Joe DeBoe.

Recorded by: Ellen Shifler
Code Secretary, Town of Mina

Attachment: #1 - E21/Buffalo Solar SPECIAL USE PERMIT

Attachment to Zoning Board of Appeals Minutes – #1

Town of Mina
Zoning Board of Appeals

SPECIAL USE PERMIT

November 17, 2021

Applicant: E2I Ventures/Buffalo Solar ON BEHALF OF Darren Benjamin Padd

DESCRIPTION OF REQUEST:

SPECIAL USE PERMIT to install a 625-kW(AC) ground mounted solar energy project at **3040 Tanner Road, Sherman**, on the lot known on the tax maps of the Town of Mina as 343.00-1-51.2, owned by Darren Benjamin Padd.

DISCUSSION AND QUESTIONS FROM THE ZONING BOARD OF APPEALS:

Property is zoned **A1** (Agricultural).

- The Town of Mina enacted a 6-month moratorium on all solar energy projects while the Town of Mina Planning Board conducted research and drafted local laws for consideration by the Town Board. The moratorium has since lapsed. E2I Ventures has applied to erect a Tier 3 “solar farm” (625-kW) solar installation on the Padd agricultural property. E2I Ventures was represented by Rich Ries and Mark Overall. The property owner was not present.
- Mr. Overall clarified the names and titles: E2I will operate and oversee the solar installation once built; Buffalo Solar is the developer; Chautauqua Farms Solar is the local project.
- The ZBA needs to review a lease agreement or other documentation whereby the property owner, Mr. Padd, agrees that E2I/Buffalo Solar may represent him in these proceedings. Mr. Overall will provide this document.
- Mark Overall presented an overview of the proposed project, which will include 1,701 solar panels, each approximately 3’ x 5’. Panels will be placed 18 inches from the ground with an overall height of 24 inches. Total area consumed will be 1.8 acres of the 94-acre property. Overhead wires will connect the solar array to the utility pole. Other lines will be underground. A metal fence will surround the area, with small trees for screening. The installation will be unobtrusive and not visible from the road.
- Mr. Overall and Chairman Shifler answered questions from the ZBA and meeting attendees:

(continued)

[Attachment # 1 – E2I/BUFFALO SOLAR Special Use Permit]

- E2I owns the equipment and will be responsible for its maintenance.
 - The installation will not infringe on nearby wetlands.
 - The panels will lose generation when covered with snow.
 - A solar installation does not change the zoning district designation for this property or the area.
 - A Special Use Permit, if granted, applies to this installation only. It does not allow the developer to expand the project beyond this site.
 - The system is monitored by computer 24/7. Any issues create automatic alerts.
 - The local fire department would be instructed on the operation of the cut-off switch.
 - Power generated goes to the local grid, which has capacity issues due to its age.
 - There will be no solar battery storage at the site.
- Chairman Shifler: The *Town of Mina Zoning Law (Rev. 7/11/20)*, addresses residential solar structures only and does not cover Tier 3 (solar “farms”). As it is not specifically allowed in the zoning law, a solar farm is not an allowable use in the A1 (Agricultural) district. The applicants may need a Use Variance before a Special Use Permit may be granted.
 - The ZBA consulted pages **45**, Section 404 (A1), **49** (“Solar Structure”) and **28** (Definition) of the *Town of Mina Zoning Law, Rev. 7/11/20*. The intent of solar as defined is for household use. The Board also consulted page **87**, Section 617 (Solar Systems as personal, household installations); page **139** (prohibited if not listed as allowable use); and page **138**, Section 904/B2 (the ZBA may not amend the Zoning Law).
 - Chairman Shifler also directed the Board to page **140**, Section 905C (Referral to Town Board). He cited reasons for a referral and postponement of the decision on Special Use Permit:
 - The Town of Mina Planning Board has done extensive study of solar energy laws in other similar municipalities and NYSERDA: New York State Energy Research and Development Agency’s “Solar Guidelines for Local Governments.”
 - The Planning Board has made recommendations to the Town Board, which have not yet been enacted in the form of municipal law or amendments to the Zoning Law.
 - The State of New York governs Tier 3 (solar farms) installations.
 - Open questions and risk considerations (*Ex.* evaluation of site plans and complex electrical specifications, surety bond, environmental concerns) remain.
 - The Town Board will conduct public hearings on 11/23/21, per Rebecca Brumagin.

(continued)

[Attachment # 1 – BUFFALO SOLAR Special Use Permit]

PUBLIC COMMENT: Attendees raised questions (see Attachment notes). Jess Farnham and Cara Farnham raised concerns about the view from their property and potential impacts to their property value and assessment.

The Zoning Board of Appeals considered the following for the Special Use Permit:

1. The location and size of the use, the nature and intensity of the operations involved, the size of the site in relation to it, and the location of the site with respect to the existing or future streets giving access to it, shall be such that it will be in harmony with the orderly development of the district and the location, nature and height of buildings, walls and fences will not discourage the appropriate development and use of adjacent land and buildings or impair the value thereof. **Shifler, DeBoe, Sullivan, Carter, Wagner – No. The land is not being farmed.**
2. The operations in connection with any special use shall not be more objectionable to nearby properties by reason of noise, fumes, vibrations, or lights than would be the operations of any permitted use. **All ZBA members agreed – Yes. There will be no lights.**
3. **Conditions:**
 - a. The Zoning Board of Appeals has referred to General Conditions in the Zoning Law. **All ZBA members agreed – Yes. (See Attachment notes.)**
 - b. A plan for the proposed development of a site for designated special use was submitted with the application and shows the location of all buildings, lots, parking areas, traffic access and circulation drives, open spaces, landscaping and any other pertinent information that the Permitting Board deems necessary. **All ZBA members agreed – Yes. Applicant provided a construction plan, scope of work, timetable/project schedule, operation and maintenance plan, and a site plan.**
 - c. There are no existing violations of the zoning law on the property where the Special Use Permit is being requested. **All ZBA members agreed – Yes.**

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Decision: Special Use Permit application TABLED, unanimous.

Ayes: Shifler, DeBoe, Carter, Sullivan, Wagner

Nays: None