



**ZONING BOARD OF APPEALS**  
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**November 4, 2021**  
**WebEx Meeting Minutes**

**Present:** Patti Kelly (Chair), Henry Rua (Vice-Chair), Joe Mayone, Tim Scott, Randy Ricks & Holly Strutt, Alternate

**Also Present:** Scott Olson: Attorney Young Summer LLC, Kimberly Garrison: Grant & Lyons LLC, Mike Crosby: Verizon Engineer, Brett Buggeln: Tarpon Towers, Kevin Freeman: Zoning Board Secretary

Patti called the meeting to order at 7:02 pm. She took roll call of ZBA members and announced a quorum was reached. Patti asked Holly to join the board for the Verizon application.

**NEW BUSINESS**

**ANTHONY & JEANETTE APRILE**

69 Red Maple Rd.  
Saugerties, NY  
File #: 21-08

The property is in the HD residential zoning district. The Building Inspector sent them a notice of violation for a side yard setback for a storage shed. Applicants are seeking a 10 and a half -foot variance for a shed on the side of their townhouse in the Twin Maples complex.

Patti asked if there is a Homeowner Association. Mr. Aprile said that the Association is only for condominiums, not the townhouses. She then asked when the shed was built. He said he installed the shed in 1996.

Mr. Aprile said the shed was 10' x 14'. He said his is one of only three townhomes that are built on a slab foundation and doesn't offer a basement for storage. He explained that there is an embankment behind his home, and it's not possible to put a shed in that location. That's why the shed had to be located on the side yard. He said it is completely fenced in, and his new neighbor has no issue with the shed's location.

There were no questions from the board. Henry made a motion to set a public hearing for Dec. 6<sup>th</sup>. Tim seconded. Patti did a roll call vote.

Henry Rua	Yes
Joe Mayone	Yes
Tim Scott	Yes

Randy Ricks            Yes  
Patti Kelly             Yes

Kevin explained the procedure for sending out the certified mail notices to surrounding property owners.

## **PUBLIC HEARING**

### **TARPON TOWER II, LLC & VERIZON WIRELESS**

17 Industrial Rd.  
SBL #: 28.4-2-38.600  
File #: 21-0080

This property is zoned Office Light Industrial (OLI). The applicants want to install a new commercial tower/wireless facility on property owned by Kidco Realty at 17 Industrial Rd. in Mt. Marion. The applicants are proposing to construct a 159' mono pole (including antenna) commercial telecommunication facility and have applied for area variances.

- The initial request was denied by the Town Building Inspector because the proposed setbacks don't to comply with the requirement that setbacks be one and ½ times the height of the tower, in this case 238.5'.
- The revised appeal states that due to the configuration of the property, the tower is not able to meet the 238.5' setback required. The proposed tower location is 153' from the front property line and 148' from the side property line.
- The applicants request an 86' front yard area variance and a 91' side area variance. The applicants also request a variance from Sect. 245-11(P)(4)(c)[3]c of the Saugerties Zoning Law which states that "No facility shall be silhouetted against the sky from any viewpoint located 1,000 feet or more from the base of the facility."

Ms. Garrison, a ZBA attorney for this application, said that it was her understanding that the shot clock had been extended only to November 8. Patti said that she had written to Mr. Olson asking for an extension of the shot-clock until Jan. 6, and he indicated he would check with his client. She did not hear back from him. Patti asked Mr. Olson if he had a decision on the shot clock, and he didn't see any reason to extend it because he and his client think the board could vote on the variances tonight. Ms. Garrison said that the board needs to consider the comments and issues that arise from tonight's public hearing, and it would need time to digest the extensive material that was submitted from attorneys just hours before tonight's hearing. She explained there would be no decision tonight and reiterated that the Jan. 6<sup>th</sup> date was a reasonable date for a decision.

Patti told Mr. Olson that the ZBA had waited 2 months for the change in location from the firehouse application and had to wait again while he and his client revised the site plan this summer for the Industrial Drive application. She said the ZBA has acted expeditiously, and it is disappointing that Mr. Olson was not agreeable to the reasonable request for the shot-clock

extension. Holly commented that the change of the tower's location in the revised site plan was a material change. Mr. Olson respectfully disagreed. He said it was hard for him to consider extending the shot clock if the ZBA wouldn't commit to closing the public hearing tonight. If the ZBA did close the public hearing tonight, he would consider extending the shot clock to Dec. 6.

Patti opened up the floor to public comments.

Mr. Martin spoke first saying he was there on behalf of Mr. Greco. He said he sent a letter to the board and went on to highlight the document's contents. He referenced the town's Comprehensive Plan, especially goal #10 which he felt was foundational enough to warrant a denial of this application because it dealt with the responsibility of development (including utilities) without detracting from the scenic beauty of Saugerties. He cited town Municipal Law Sect. 272 (a) sub-section 11 stating that all zoning should reflect the comprehensive plan. He said the proposed application from Tarpon Towers and Verizon fails to do that.

Mr. Crocitto asked about the Zoning Law's section pertaining to minimum buffers when something was built next to an MDR zone. He cited section 245-28 (c)1.

Ms. Shafty from Rhinebeck spoke in support of Ms. Turco-Levin's dog training business on Industrial Drive. She asked about the safety of the tower and the alarms on towers, noting that alarms could impact the dogs. Mr. Olson said Verizon facilities are connected to an off-site operations center, and that's where any alarms would be sounded. He also said that any other cell company that leased space on the tower would be responsible for its own policies.

Ms. Turco-Levin said that Mr. Olson's comments about the alarms were contradicted by a video she saw and to which she could provide the link. She called on the ZBA to end discussion and to reject the application.

Mr. Olson stated that the ZBA pushed Verizon to the OLI location after the Mt Marion firehouse was rejected. Ms. Garrison stated that as part of the balancing of interests test the ZBA said that OLI zone offered alternative locations that would be easier to approve. Mr. Olson agreed but quoted the ZBA January minutes which said that an OLI location would be more in line with Saugerties vision and zoning. Holly said the reason for this hearing is not because of the OLI district, it's because Tarpon Towers and Verizon are not compliant with the required setbacks in the Zoning Law. Ms. Garrison agreed.

Mr. Crocitto asked about allowable noise levels. He also asked for confirmation that the tower would not have lights and that any lighting on the ground equipment would be shielded from residences. Mr. Olson agreed that no lighting would be seen beyond the boundaries of the leased property.

Mr. Kilby, who owns #37 Industrial Drive, referred to his written submission asking how this tower siting could be considered a minimum intrusion. He said the planting of trees for screening is only planned on one side, leaving neighbors affected. He also quoted a section of the Zoning Law that no facility will be silhouetted against the sky, when this tower clearly will be. Patti asked Mr. Kilby if he had walked two sites at his #37 Industrial Rd. property with someone from Tarpon Towers, if Tarpon had found an acceptable site on his property, but that he and Tarpon

couldn't come to terms on the lease amount. Mr. Kilby confirmed this. He also said although variances would be needed on his property at #37 Industrial Drive, the Kings Highway neighbors would be 835' away and the Thruway is much closer. He thinks it is much more important to reduce the impact to neighboring homes than to businesses in the OLI.

Ms. Desch also objected to Mr. Olson's reference to the tower's impact on the general public as minimal. She said that the neighbors are not just the general public, it is very specific to us. She added that they we will be dealing with the impact of this tower for as long as we continue to live here.

Ms. Turco-Levin added to Mr. Kilby's comments saying how close the tower will be to her business. Mr. Olson responded that the setbacks from the proposed tower at #17 Industrial Drive will have less impact than those from the Kilby property at #37.

Mr. Berg referenced his written submissions, emphasizing Tarpon Towers/Verizon was supposed to use a two-mile search radius. He contends they never did an exhaustive search analysis. He cited a Second Circuit decision that said they are required to do a comprehensive search analysis. Mr. Olson said that the two-mile radius only applied to co-locations and that Mr. Berg is ignoring the capacity issues. Mr. Berg said he offered alternatives such as smaller tower options along the Thruway. Mr. Olson cited Subdivision 7, site selection report, "Outlining opportunities for shared use.". He said that they couldn't co-locate on the water tower which is too far away. Mr. Olson reminded Mr. Berg that he is not an RF engineer. He said that Mr. Graiff had agreed that Verizon needed more capacity.

Mr. Martin spoke to the buffer requirement, citing in his letter, Section 245-28c, Article 6, which requires a buffer of 150' in the OLI zone, furthermore, requiring an additional 5 foot of setback for every foot of building height over 20 feet.

Mr. Greco said it was important that statements were accurate, and Mr. Olson was cherry-picking the Zoning Law. He objected to Mr. Olson's reference to the search radius as only applicable to co-location while omitting the section of law below—Sec. 245-11 7(c)2 citing other criteria for an application comparing all alternative sites within two miles. He said if the purpose of this tower was to serve Mt. Marion, he knew of a 16-acre parcel of land adjacent to Mt. Marion Park and owned by the Town of Saugerties. The SBL# is 40.1.1-18.220. Mr. Olson said he was in compliance with the Section cited my Mr. Greco. Henry asked Mr. Olson why not explore the 16-acre parcel referenced by Mr. Greco? Mr. Olson said that Mr. Greco's proposed alternative site next to Mt. Marion Park probably wasn't zoned I or OLI.

Patti asked Mr. Greco about the conversation he mentioned at the last meeting about the owner of the Kings Highway water tower meeting with a representative from Tarpon Towers who was interested in the water tower, but they couldn't reach a deal because of money. Mr. Greco said that's what he was told. Mr. Buggeln and Mr. Olson said that never happened, and they had an analysis saying that the water tower was not acceptable.

Mr. Gordon spoke in his capacity as an attorney for Mr. Greco and others. He spoke to the letter he sent the day of the meeting, highlighting the following points: He agreed that the applicant has not been transparent in following the law. He cited some case law that dealt with area variances. He said that according to the balancing test, safety and size of variance are factors. He

asked the board to examine the height issue, saying the applicant has not demonstrated the need for the height of the tower. . He said the public safety standards are most important, and in this application those setback standards are substantial and a safety risk.

Patti asked Mr. Olson if her understanding was correct that if the ZBA approved the variance and the Planning Board gave a special use permit, Verizon could add up to 10% but not more than 20 feet to the height to the tower without getting approval from either the ZB or the Planning Board. Mr. Olson said that was somewhat correct in allowable co-locations. Patti asked if the proposed tower on Industrial Drive was planning to have another cell company co-locate on it. Mr. Olson said yes, and that was already built into the current height calculations. Patti asked if there was consideration given to adding height to this tower in the future. Mr. Buggeln said it had never been discussed. Ms. Garrison asked if Tarpon would apply for the special use in the future. Her understanding of the Spectrum Act meant a board couldn't deny applications. Patti asked if Tarpon has ever added height to any of its towers. Mr. Buggeln said he did so in Georgia around 8 years ago when they added ten feet.

Mr. Olson read a portion of a response in from Ron Graiff, the ZBA's RF consultant, saying Mr. Crosby showed the need for the additional height, although the 159-foot height was not completely demonstrated.

Ms. Garrison said the minimum height has been a matter of discussion. She asked Mr. Olson to cite Mr. Crosby's supplemental materials including propagation maps.

Mr. Smith asked if there were any studies done as to whether or not the RF signals from the tower might interfere with any other electronic devices. Mr. Crosby said that Verizon was ruled by the FCC, and that they have a non-interference letter registered.

Patti asked Mr. Crosby if capacity issues, not coverage issues, were the cause of such a small search area and the need for more and more towers closer together. She asked if that was the future of cellular communications. Mr. Crosby said site selection was dependent on many variables, comparing the Town of Ulster which had 5 towers as compared to only two towers along the Thruway.

Patti asked Mr. Olson and Mr. Buggeln if, after they discovered the wetlands and decided to re-site the tower so close to homes, was there ever any consideration of looking for another site even if it would cost them more money. Mr. Olson said no, because selection was based on the RF science. Henry asked why the tower couldn't have been pushed to the West. Mr. Olson said that moving only 1,100' from the original site at the firehouse required the additional height. Ms. Desch added that poor planning on Verizon's part didn't make it a priority for the residents.

Henry asked Mr. Olson why he wouldn't commit to the shot-clock extension. Mr. Buggeln indicated that they would be willing to extend the shot clock if the public hearing was closed at this meeting. Ms. Garrison added that the board has moved at a reasonable rate. Henry pointed to correspondence from Mr. Olson about the variance criteria in which Mr. Olson stated that the traditional variance criteria should not be considered given the public utility standards. Henry contended that Verizon did not appear to be concerned with public safety. Mr. Olson replied that the board should just apply the law according to the public utility standard.

Tim Scott questioned Mr. Olson about the possibility of extending height to the tower and if it was a common occurrence. Mr. Buggeln replied that extension would be for co-location. He said Verizon, for example, wouldn't be able to extend the height themselves.

Ms. Garrison asked Mr. Gordon about his letter, asking him to specify cases as they apply to area variances. He replied that the applicant cites the Rosenberg case for a utility exception, which was a use variance case because most utilities don't attempt to build when it goes against zoning requirements. Use variances usually end up in court, but the test is typically defined by minimal impact. He said the issue was violation of safety standards. He asked if the applicants were being prohibited, but that wouldn't apply if there were no other parcels available to them that didn't require the variances. He said the typical considerations given to an area variance would be applied here, balancing the equities. He said there were two cases applied on area variances that he would discuss with the board's legal representatives. Mr. Greco brought up a relevant case, Cellular Communication company v zoning board 24fsub2 259 1998 case.

Mr. Gordon said that considerations such as the fall zone do apply. Mr. Olson said he argued a case using the Rosenberg standard as it applies to area variances. Mr. Berg brought up Omnipoint v town of LaGrange, pointing to similar zoning codes between that town and Saugerties. He cited 658f2 539. Mr. Gordon emphasized this was not just a bulk or area variance, but also a safety standard regarding the fall zone. Ms. Garrison asked if the attorneys involved would submit briefs on the applicable standards for her and the board within 10 days. All agreed to do so.

Mr. Conybeare, who owns property at 12 Industrial Drive, spoke up giving context on the future potential of undeveloped properties in the area. He said the setback standards gave human scale to architectural construction. He said the cell tower would have a tremendous negative impact on the human scale of the local environment, saying it "monsters" the neighboring residential and business properties.

Joe Mayone asked Mr. Olson if they could share the design of the tower's breakaway construction. Mr. Olson said they didn't have any designs, but the system was described in a letter sent to the ZBA.

Patti asked if there were any more comments. Hearing none, she thanked everyone for their participation. Henry moved to close the public hearing with the addition of the attorney's briefs which were to be submitted within 10 days. Holly seconded. Ms. Garrison said the 10 days would represent the definitive end of the public hearing.

Roll call vote was:

Henry Rua	Yes
Joe Mayone	Yes
Tim Scott	Yes
Randy Ricks	Yes
Patti Kelly	Yes

Patti asked the board to discuss briefly some of the issues that are foremost in their minds as they begin to sort through and re-read the many documents and letters pertaining to the 17 Industrial

Drive application and start to prioritize the those that merit careful consideration in our decision making. She said people have come to rely on the Zoning Law because it offers a degree of certainty and protection in terms of their own properties and businesses and of their neighborhoods, as well. On the other hand, telecommunications companies like Verizon are considered utilities under Federal Law, and, as such, have been granted a lot of power to site towers where they are needed. Finding the balance between the two and following the Zoning Law is our task. Holly said she had been struck by how close to homes the tower would be and how those people would be impacted. Yet, people and businesses use cell phones, and the need for reliable cell service is needed in the Mt. Marion area. Patti said the minimal search area is problematic.

Henry said the substantial setbacks and public safety issue are very important, and Joe also said he was concerned about the safety of the residents and what the tower would do to the aesthetic qualities of the neighborhood. He agreed that the search level was inadequate and added that the reason for the tower height still wasn't completely understood.

Patti reminded the board to stay in touch with each other if they had any questions or needed information during their review. Ms. Garrison added that Grant & Lyons said they would be available for legal support.

Patti asked for a motion to accept the October minutes. Tim so moved. Joe seconded. By voice vote the minutes were accepted unanimously.

Henry moved to adjourn; Randy seconded. The motion passed by voice vote unanimously.

The meeting was adjourned at 9:53 pm.

Respectfully Submitted,  
Kevin Freeman  
ZBA Secretary