



ZONING BOARD OF APPEALS

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January 6th 2022 ZBA Meeting VIA WEBEX

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, Brett Buggeln: Tarpon Towers, Kevin Brown: Building Inspector, Kevin Freeman: Zoning Board Secretary, Dan Shuster: Planner, George Redder: ZBA Attorney

Patti called the meeting to order at 7:08 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, and Holly agreed.

Old Business

ANTHONY & JEANETTE APRILE

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

The property at 69 Red Maple Rd. is located in a High-Density Residential Zoning District. Applicants are requesting 10 1/2-foot side yard variance from the required 15-foot requirement.

Patti Kelly made the following motion.

Anthony and Jeanette Aprile are the owners of 69 Red Maple Road which is in the HD residential zoning district. They are seeking a 10 and a half -foot side yard variance from the 15-foot required setback for a shed on the side of their townhouse in the Twin Maples complex. I move that the variance be granted by the ZBA for the following reasons:

The benefit cannot be achieved by any other means because the backyard slope and the underground spring prevent adequate drainage during heavy rain events.

The shed which has been on the property since 1996 does not introduce an undesirable change in the neighborhood character or a detriment to nearby properties. Many of those properties also have sheds.

The change is not substantial.

The change will not have any adverse, physical or environmental effects.

The difficulty was self-created because Mr. and Mrs. Aprile built the shed without first checking the required setbacks. This variance request seeks to bring the shed into compliance with the Zoning Code.

The motion was seconded by Tim Scott. There was no discussion. Patti asked for a roll call vote. Patti, yes; Henry, yes; Joe, yes; Tim, yes; and Randy, yes. The motion passed.

Public Hearing:

HONORLAND LLC

Deo Celaya and Josh Pulver represented Honorland. Patti said that Honorland is seeking to build a two-story waterfront residence on River Road in Malden-on-Hudson and is requesting a 25-foot variance to the 50-foot setback requirement in the Waterfront Overlay Zoning District.

Patti made a motion to declare SEQRA as Type 2 617.5 (c17) for area variances. Henry Rua seconded and the motion passed unanimously.

Randy Ricks moved to open the public hearing with Tim seconding. The motion passed unanimously.

Isabel Soffer, who lives in Malden, asked for clarity as to what was considered the front yard and where the variance was being requested. Patti said the application indicated the application was from the waterfront side which may be considered a front yard. Ms. Soffer spoke to the sensitive environment of the waterfront and concerns about flooding. She thought the project would change the character of Malden and set a bad precedent.

Jamie Fine, Malden resident, said hurricanes Irene and Sandy caused considerable flooding in to the neighborhood. One of the homeowners on River Road had to have his house renovated after Hurricane Irne, and another home was so badly damaged after Hurricane Sandy that it had to be taken down and re-built. She said she understands that pre-existing waterfront homes do not have to comply with the setbacks, but she thinks new construction certainly should comply.

Mr. Pulver said the river shifts west in front of the property, and the 50' setback would make the site unbuildable.

Henry said the applicant knew what the setbacks were before the property was purchased. Mr. Celaya asked that the site plan be put up on the screen and said they had been working with an outdated survey.

Patti asked for public input. Mr. Pettis made 3 points: Increased hardscape would increase flooding. The foundation is built at the foot of a steep hill. There's a historic structure across the road that increased flooding could damage.

Jesse Halliburton, the owner of the property, joined the meeting. He explained that the foundation for the house on the adjacent property was built with floodgates so water would pass through. Patti asked if Mr. Halliburton was going to be living there. He indicated he would use the home, but it would also be rented out. Randy asked Mr. Halliburton if the property was subdivided when he bought it. He said it was, and he thought it was two buildable lots. Mr. Halliburton said that the high-water mark changed after Praetorius & Conrad made a new survey.

Rich Walker asked if all the trees were pre-existing. Mr. Halliburton said he was preserving the trees and brush. Asked if the home could be smaller to fit the site, Mr. Halliburton said that the proposed house is only 750 square feet.

Henry asked if the applicant had asked Praetorius & Conrad when the sites were approved and why the original survey was inaccurate. Mr. Halliburton said he assumed the lots were approved by the previous owner who wanted to build a much larger house. The updated survey and the 50' setbacks make the lot unbuildable, and that's why he asked for a variance.

Ms. Mietus lives across the street from the proposed development and asked how many bedrooms the house would have, and Mr. Halliburton said the house would have three bedrooms. Henry Rua said the questions pertaining to the house were not material to this discussion since the only concern the ZBA has is the request for a variance. Site review would be handled by the Planning Board.

Ms. Petis asked how the mean high-water mark was determined.

Ms. Soffer asked that the river be taken into consideration. She went on record as opposed to the variance.

Henry said Mr. Halliburton should address Praetorius & Conrad about the survey issues.

After determining that there were no more public comments, Patti moved to close the public hearing. Henry seconded. It passed with the following vote: Patti, yes; Henry, yes; Joe, yes; Tim, yes; Randy, yes.

New Business

CEDAR GROVE AND CENTERVILLE FIRE DEPARTMENTS.

Patti Kelly explained they the Centerville Fire Company got a non-compliance notice from Kevin Brown, the Zoning Enforcement Officer, because they put up an LED sign and failed to remove the

wooden sign as had been agreed. Only one free-standing sign is permitted in the Town's Zoning Law. The fire companies are asking for different variances. Both are asking for a total of 54.4 sq ft signage, 22.4 above the allowable limit. Cedar Grove also has a right of way violation.

ZBA board member Randy Ricks said that as a board member for Centerville FD he would recuse himself from the application. Mr. Swart spoke as the President of the Centerville Fire Department. Mr. Ivino, who submitted the variance applications for both fire departments was not present. Mr. Swart was unfamiliar with the details of the variance application since he had just been elected President of the Centerville Fire Department. He had not seen the submitted variance requests or the letter from the Zoning Enforcement Officer.

Mr. Brown, the town's Zoning enforcement Officer, explained that the original wood sign was not compliant. Henry Rua told Mr. Swart that to be in compliance the wood sign would have to come down.

Patti said that by wanting to keep both sign and adding to the square footage, Centerville is essentially asking for a waiver from the law, not a variance. The ZBA does not have the authority to do that. It would also set a precedent for others to ignore the law.

Mr. Brown clarified his permit denial letter to the Cedar Grove. He said the digital sign is right on the edge of the ROW, not in it, but the height is 8-feet 8-inches high, an overage of 3.2 feet.

Patti asked Mr. Swart if he needed more time to figure out how best to come into compliance with the law. Henry reminded him that the law allows a single free-standing sign, no more than 32 square feet.

Patti said the ZBA would ordinarily schedule the public hearing on these applications for the next meeting, but given the fact need that there is no consensus on how the fire companies want to proceed, she'd recommend postponing that action until the departments either request reasonable variances and/or work out with Kevin Brown what they need to do to bring the signs into compliance and let us know before the next meeting.

Patti asked the board, by voice vote, if they were agreeable to postponing action at this time. All agreed.

Old Business:

TARPON TOWER II, LLC & VERIZON WIRELESS

Patti said that she and Holly would read the draft Decision and Determination for 17 Industrial Drive.

Resolution

WHEREAS

Part 1

Project Background and Procedural History

1. Tarpon Towers II, LLC ("Tarpon") and Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless") propose to install and operate a new Commercial Telecommunications Facility. Installation of this facility involves the construction of a tower upon which the telecommunications equipment will be mounted. This facility is proposed to be constructed on land owned by Kidco Realty Corporation, and located at 17 Industrial Drive, in the Town of Saugerties, and bearing the Tax Map Parcel Number Section 28.4, Block 2, Lot 38.600 (the "Property"). For convenience, Tarpon and Verizon Wireless shall be referred to collectively in this resolution as the "Applicant."
2. The Applicant currently proposes to install and operate a new wireless communication facility, a Type 5 facility under the Town of Saugerties Zoning Law §245-11(P)(4)(b). The proposed facility will be a tower which would be 159' high¹ (155', plus a 4' lightning rod), related mounted antennas, and ground equipment. The facility is proposed to be located on a 50' x 50' footprint within the Property, which area is proposed to be fenced-in. In addition to the tower structure, the facility is also proposed to include: (1) antennae at the antenna centerline height (ACL) of 146'; and (2) equipment on the ground within the fenced area. Two WHIP antennas would be installed at the top to accommodate potential emergency service needs.
3. Initially, the Applicant proposed to install and operate a new 120' high monopole tower structure and related antennae and equipment on certain real property located at 766 Kings Highway in the Town of Saugerties, which property is owned by the Mt. Marion Fire Department, Inc., and which property bears the Tax Map Parcel Number Section 28.4, Block 11, Lot 13.1. This property shall be referred to as the "MMFD Property." The MMFD Property is located in the Town's Residential Hamlet (RH) Zoning District, and a commercial telecommunications facility is not an allowed use in that district. Consequently, the Applicant had applied to this Board for a use variance and an area variance in connection with the facility which it proposed for that property.
4. As the proposed MMFD Property was owned by a volunteer fire company, the Applicant had asked our Board to make a determination as to whether the facility proposed for the MMFD Property was immune from compliance with the Saugerties Zoning Law pursuant

¹ Numbers followed by an apostrophe are intended to indicate the number of linear feet in measurement. For example, 159' means 159 feet in measurement.

to the "balancing of the interests" test set forth in *Matter of County of Monroe*, 72 N.Y. 2d 338 (1988).

5. The *Monroe* "balancing of interests" test was designed to apply to situations where the interests of two governmental entities came into conflict regarding compliance with local land use regulation. The purpose of this balancing test is to determine "which governmental interest should prevail when there is a conflict between the zoning ordinance of one political unit and the statutory authority of another unit to perform a designated public function."²
6. The ZBA held several meetings and public hearings in an effort to resolve issues regarding siting, radio frequency ("RF") engineering, safety, and alternatives. In conducting the *Monroe* "balancing of interests" test to determine whether the Applicant should be granted immunity from review under the Saugerties Zoning Law, of particular interest was whether there were potential alternative sites for the facility in the nearby Office/Light Industrial (OLI) Zoning District, a zoning district, which allows the siting of telecommunications facilities subject to a special use permit.
7. After much persistence by the Board in imploring the Applicant to explore and consider potential alternative sites, the Applicant finally provided the ZBA with information about two (2) possible alternative sites, both located in the OLI Zoning District. The sites are located at 17 Industrial Drive and 37 Industrial Drive. Although the information that was submitted was preliminary in depth, it was sufficient to demonstrate that these sites were technically feasible alternative sites, despite not being the Applicant's preferred locations.
8. On January 7, 2021, the ZBA found that a majority of the factors of the *Monroe* test favored a decision that the application to install a telecommunications facility on the MMFD Property should be subject to compliance with Zoning Law. In other words, the application was not immune from compliance with the Zoning Law. In light of that decision by the ZBA, the next step in the review process was to continue the Board's review of the Applicant's application for a use and area variance to allow installation of the facility on the MMFD Property, including holding public hearings for the requested area and use variances. By a vote of five ZBA members in favor, and one member abstaining, the ZBA voted that same night to adopt a written decision embodying its decision on the outcome of the *Monroe* test.
9. Key to that decision was the fact that there may be technically feasible alternative sites in the nearby OLI zoning district where this facility could be located. As such facilities are permitted in the OLI district with the issuance of a special use permit, a proposed facility may be more in harmony with Saugerties' Zoning Law because that law

considers those facilities in the OLI District as opposed to the RH Zoning District.

10. The ZBA found that the Applicant should not be immune from the Town of Saugerties Zoning Law, particularly as the Applicant had not met its burden to consider alternative sites since the OLI District was so close by where telecommunication facilities could be

² 72 N.Y. 2d 338 (1988).

sited with the issuance of a special use permit. The Applicant was able to continue with its application at the MMFD for a use and area variance (subject to the Town of Saugerties Zoning Law), or could have pursued a site within the OLI Zoning District.

However, it was noted that the ZBA had not formally reviewed any proposed sites within the OLI Zoning District, and requested that if the Applicant wanted to pursue such sites within the OLI District, the Applicant would have to formally submit an application if any area variances were requested so the ZBA could fully evaluate the requested variances for proposed sites within the OLI District.

11. The ZBA's *Monroe* decision was not a denial of the application. It merely ruled that the Applicant had to comply with the Zoning Law, and thus, would require both a use and area variance to construct a telecommunications facility on the MMFD Property.
12. In response to the ZBA's *Monroe* decision, the Applicant requested that the Mount Marion Fire Department application be tabled and placed on hold, tolling the application of the Federal Communications Commission's "shot clock" provision³, as it reviewed potential alternative sites in the OLI Zoning District.⁴
13. On February 16, 2021, the Applicant submitted a new application for a proposed wireless communication facility. As mentioned previously, the proposed facility would be 159' high (155' plus a 4' lightning rod), and include related mounted antennas, and ground equipment. It would be located on a 50' x 50' footprint within a fenced-in area. Included in the installation would be: (1) antennae at the antenna centerline height (ACL) of 146'; and (2) equipment located on the ground lying within the fenced area. Two WHIP antennas would be at the top to accommodate potential emergency service needs.
14. The facility proposed in the "new" application was proposed to be a new tower constructed on land located at 17 Industrial Drive in the Town. This property is located in the Town's OLI Zoning District.
15. Like the facility the Applicant had proposed for the MMFD Property⁵, the facility proposed

³ The Federal Communications Commission ("FCC") "shot-clock" is described by Thomas A. Shepardson in his article entitled "*Federal Communications Commission - Shot Clocks*," as follows. "Shot clocks are intended to spur action on the part of opposing entities. For example, the National Basketball Association has the 24-second shot clock, and college basketball opted for a shot clock following the University of North Carolina's four-corners "offense." Even in chess, players must stop the clock after they make a move. The Federal Communications Commission took this to heart and applied the shot clock concept to approval of personal wireless facilities, thereby turning time frames for municipal review and approval or disapproval of applications to deploy wireless facilities into a possible federal claim, if not met. Shepardson, "*Federal Communications Commission - Shot Clocks*," New York Zoning Law & Practice Report, September/October 2019,

⁴ Pursuant to the Telecommunication Act (TCA) § 332 (C)(7)(B)(ii), a state or local government must act within a reasonable time upon any request to place, construct or modify a wireless telecommunications tower, which takes into account the nature and scope of the application. According to guidance from the FCC, the presumptive shot clock period for receiving approval is 150 days.

⁵ During the review of the MMDF, the Applicant insisted on categorizing the proposed MMDF tower as Type 4 facility because there is currently an old 80' communications tower at the firehouse property. The ZBA corrected this statement several times on the record. Under the Saugerties Zoning Law, a Type 4 is defined as: "New commercial telecommunications towers located on the same site as a similar tower previously approved." The MMDF proposed tower was not a Type 4 tower. The existing MMDF tower pre-dates the Zoning Law, and never received a permit, and is not similar to what has been proposed by the Applicant. Type

to be located at 17 Industrial Drive is a Type 5 facility under the Town of Saugerties Zoning Law §245-11(P)(4)(b).

16. The Saugerties Zoning Law §245-11(P)(4)(b) establishes a hierarchy of the priority amongst five types of telecommunications facilities. The list of types is a spectrum of preference, with the most preferred type of facility being Type 1 facilities (those incorporated into the design of new or existing structures), progressing to the least preferred type of facility being Type 5 (new commercial telecommunications towers on new sites).
17. Pursuant to the Zoning Law, Type 4 and Type 5 telecommunication facilities are permitted in the OLI Zoning District, subject to the issuance of a special use permit by the Town of Saugerties Planning Board.
18. As initially presented to the ZBA, the application for the facility proposed for 17 Industrial Drive was setback from the property lines in the following dimensions:
 - G setback from the front yard property line, 159';
 - G setback from the rear yard property line, 262';
 - G setback from one side yard property line, 188'; and
 - G setback from the other side yard property line, 165'.
19. Saugerties Zoning Law §245-11(P)(4)(c)[9][a] requires that all tower bases must be located at a minimum setback of 1.5 times the tower height from any property line. In this case, the proposed facility is 159' high. Thus, pursuant to the Zoning Law formula, it must be setback at least 238.5 feet from any property line.
20. The Applicant's facility proposed for 17 Industrial Drive did not meet the setback requirement of Zoning Law §245-11(P)(4)(c)[9][a]. Hence, the Applicant initially⁶ applied to this Board for the following variances from the setback requirements initially requested the following variances:
 - G a variance of 79.5' from the front yard property line;
 - G a variance of 50.5' from the left-side side yard property line; and
 - G a variance of 73.5' from the right-side side yard.
21. On February 22, 2021, then-ZBA-Chairwoman Jeanne Goldberg sent a letter to the Applicant on behalf of the ZBA advising the Applicant that the application was

incomplete. The letter stated that the initial application fee had not been paid and that the application did not include a copy of a “denial letter” to the Applicant from the Town of Saugerties Zoning Enforcement Officer (“ZEO”) denying Applicant’s application for a

5 is defined in the Zoning Law as: “New commercial telecommunications towers on new sites,” and is the least desirable type of telecommunication tower that may be placed in Saugerties. Both proposed towers, at MMFD and 17 Industrial Drive are Type 5 towers.

⁶ Applicant’s proposal to construct a facility at 17 Industrial Drive would subsequently be amended to place the tower in a different location on the property. Thus, the setback variances sought were subsequently amended.

building permit.⁷ This written notice by the ZBA to the Applicant that the application was incomplete had the effect of tolling the FCC “shot clock” for the current application.

22. On March 15, 2021, the denial letter was issued by Town of Saugerties ZEO. The denial letter stated that area variances were required for the height and setbacks. Upon submission of the denial letter to the ZBA, the tolling of the FCC “shot clock” time period was ended.

23. On April 5, 2021, the ZBA held its regular meeting and the Applicant presented its proposed application for the facility proposed for the 17 Industrial Drive site to the ZBA and the public for the first time. During the course of that meeting, discussions were had between the ZBA, the ZBA’s consultants, and the Applicant’s representatives. During the RF map presentation, the ZBA’s consulting RF engineer, Ronald E. Graiff, PE, asked Michael Crosby, PE, the Applicant’s RF engineer, about the comparison of the tower height that had been proposed for the MMFD Property, and tower height being proposed at the 17 Industrial Drive site. Mr. Graiff observed that there was only a 4' difference in ground elevation between the two locations. Mr. Graiff commented that the ground elevation difference between the two sites was insignificant, and he went on to ask Mr. Crosby why the height of the tower proposed for the 17 Industrial Drive site was 159', a significant increase from the 120' tower that had been proposed for the MMFD Property. Although the difference in ground elevation between the two sites was only 4', the tower proposed for 17 Industrial Drive was 39' higher than the tower proposed for the MMFD site. Mr. Crosby agreed with Mr. Graiff about the difference in ground elevation between the two properties. But he asserted that was not a factor in the height of the tower. Daniel Shuster, the ZBA’s Planning Consultant, also asked the Applicant’s representatives to provide a justification for the increase in height at 17 Industrial Drive. Mr. Shuster noted that the application materials did not justify the specific height for the tower. He also noted that there were no simulations for coverage utilizing a smaller tower. The Applicant was advised that a height justification analysis would be required. Mr. Crosby said he was working on those results and they would be provided to the ZBA as part of a supplemental submission prior to the next ZBA meeting. In addition to justification for the tower height, additional information was also requested of the Applicant at that meeting, including confirmation of the actual variance measurements, and amending maps to clearly mark points of reference.

24. On April 14, 2021, the Applicant conducted a visual impact analysis through a “balloon test.” Photographs were taken during “leaf-off” foliage conditions from certain locations within a five-mile radius of the tower location. Photographs were taken from sites considered to be sensitive visual receptors due to historic or cultural resources or scenic views. Photos were also taken from location viewpoints accessible to the general public as well as from viewpoints from major roads and from receptor locations recommended by the ZBA.

⁷ The ZBA's jurisdiction as regards area variances is appellate only. Therefore, appeals to the ZBA must be preceded by an application for a building permit to the Town ZEO. When such application is denied by the ZEO for due to the failure of the proposed project to conform with the dimensional requirements of the Zoning Law, the ZEO's determination may be appealed to the ZBA and variances from the dimensional sought. The letter from the ZEO to the applicant denying the application should be presented to the ZBA as part of the appeal application.

25. On May 3, 2021, the ZBA discussed the revised submissions received from the Applicant, including the “balloon test” analysis. ZBA Chair Kelly noted that numerous viewpoint receptor locations the ZBA had asked be included in the visual analysis had not been included. These locations included:

- G 801 King's Highway (1840 Brick home);
- G 1032 Kings Highway (Myer Homestead);
- G 694 Kings Highway (Levi Myer House 1792);
- G 198 Dussol Road (Winne House 1773);
- G 347 Old Powder Mill Road (the 1730 York House);
- G 807 Kings Highway;
- G 810 Kings Highway;
- G 775 Kings Highway;
- G 793 Kings Highway;
- G 783 Kings Highway; and
- G 600 Glasco Turnpike.

26. The Applicant acknowledged that those properties had been inadvertently omitted from the analysis, and advised the ZBA that another “balloon test” would be conducted which would include the above-mentioned properties.

27. On May 7, 2021, the Applicant conducted a second “balloon test,” although because the Spring season was advancing, the foliage conditions were now partially leaf-on.

28. On May 18, 2021, the Applicant submitted materials to supplement its application. These materials included: (1) a revised survey and site plans; (2) an RF analysis; (3) a supplemental visual resource impact evaluation; and (4) a revised area variance application based on the revised survey. Several photographs in the supplemental visual resource impact evaluation demonstrated that, at the 159' height proposed, facility would be visible from viewpoints over 1,000 feet away from the tower.

29. Town of Saugerties Zoning Law, §245-11(P)(4)(c)[3][c] provides:

“No facility shall be silhouetted against the sky as seen from any viewpoint located 1,000 feet or more from the base of the facility.”

30. The photos taken from the visual resource impact evaluation demonstrated that the

proposed tower did not meet this standard. Hence, a further area variance from this requirement would be necessary in order for the proposed facility to qualify for a special use permit. The Applicant has stated that the proposed tower will be approximately 30 to 40 feet above the treeline and, therefore, silhouetted against the sky as seen from points more than 1,000' from the tower.

31. On June 7, 2021, the ZBA continued its review of the supplemental materials. The Applicant presented the photographs from the second balloon test. The differences between the visual impact of the tower as depicted in the photographs of from the first balloon test taken in leaf-off foliage conditions, and the photographs from the second balloon test where the photos were taken in partial leaf-on foliage conditions were obvious and noted by ZBA members. Mr. Shuster provided an analysis of the visual

assessment and noted that there were few, if any, significant adverse effects on the designated aesthetic resources in the project area, based on policy guidelines established by NYS DEC. At the same meeting, the ZBA determined that the application was deemed to be complete for the purpose of scheduling a public hearing, and the Board scheduled the public hearing for July 12, 2021. The Board also classified the application as an "Unlisted Action" pursuant to the State Environmental Quality Review Act ("SEQRA"). The ZBA then directed that a Notice of Intent to act as lead agency be circulated to the Town of Saugerties Planning Board, as the Planning Board had special use permit approval authority over the project. The ZBA recommended the Planning Board act as lead agency. The Planning Board was declared Lead Agency, and, adopted a Negative Declaration as its Determination of Significance pursuant to SEQRA on October 18, 2021.

32. On June 23, 2021, ZBA Chair Kelly received an email from the Applicant's attorney, which said the following:

As part of its continued due diligence under the National Environmental Protection Act ("NEPA"), Tarpon Towers has recently been informed by its environmental consultant, Trileaf, that a portion of the property contains wetlands. According to Trileaf, the location of the tower as currently shown on the site plans is within the identified wetland area. Because of this, Tarpon Towers is proposing to relocate the proposed facility approximately 41' to the south to ensure that the wetlands are not encroached. Tarpon Towers is working with Trileaf and its surveyor to revise the plans accordingly.

We believe it is appropriate to postpone the public hearing currently scheduled for July 12, 2021 to allow us to complete the plan revisions and submit the revised plans to the ZBA for its continued review.

33. The agenda for the July 7, 2021 ZBA meeting stated that the public hearing was postponed at the Applicant's request. The ZBA also made an announcement to that effect at the July 7, 2021 ZBA meeting. In doing so, the ZBA noted that the Applicant is proposing to relocate the proposed facility approximately 41' to the south to avoid encroachment upon wetlands, and that a revised site plan would be forthcoming.
34. On August 5, 2021, the Applicant and the ZBA mutually agreed to extend the FCC "shot clock," which was set to expire on or about August 6, 2021. The ZBA and Applicant agreed to extend the "shot clock" to November 8, 2021, particularly in light of the news about a revised tower location and site plan. In a letter by the ZBA to the Applicant addressing the extension of the "shot clock," the ZBA noted that, although the ZBA had agreed to extend the "shot clock," the ZBA had to review and consider the impacts flowing from the change of the tower location and determine if this change

impacted additional off-site properties whether any additional studies would be required. The ZBA reserved the right to ask for an additional extension of the “shot clock” in order to conduct a proper and complete review of the application as revised with the new tower location.

35. On August 25, 2021, the Applicant submitted its revised application to the ZBA. In therevised application, the location of the proposed tower location was shifted

approximately 40 feet to the south from its originally proposed location in order to avoid encroaching upon federal wetlands.

36. The revised tower location eliminated the need for one of the side yard variances. But the revised location increased the substantiality of the remaining area variance requests.
37. Based on the new location of the tower upon the site in the revised plans, the tower was setback from the property lines in the following dimensions:
 - G setback from the front yard property line, 153';
 - G setback from the rear yard property line, 272';
 - G setback from one side yard property line, 239'; and
 - G setback from the other side yard property line, 148'.
38. In the revised site plan, the proposed height of the tower continued to be 159'. Thus, the required minimum setback from any property line was unchanged. Since Saugerties Zoning Law §245-11(P)(4)(c)[9][a] requires that all tower bases must be located at a minimum setback of 1.5 times the tower height from any property line, the required minimum setback for this tower from any property line continued to be at least 238.5' from any property line.
39. Because the new location of the tower on the site changed dimensions of the variance required, the Application was amended to request the following variances from the setback requirements of the Zoning Law:
 - G a variance of 86' from the front yard property line; and
 - G a variance of 91' from the right-side side yard property line.
40. On September 7, 2021, the ZBA discussed the latest submission from the Applicant. Mr. Graiff, the ZBA's consulting RF engineer, was still troubled by the height differential between the proposed Mt. Marion firehouse tower and the proposed 17 Industrial Road tower, and did not see a justification for the proposed 17 Industrial Drive tower being 39' feet taller. ZBA members also expressed concern about the height of the tower particularly because the change in tower location had shifted the proposed tower closer to the property boundaries thereby increasing the potential danger to off-site properties should the tower fall. ZBA Chair Kelly noted the problematic nature of the shifted location of the tower because it placed at least one neighboring residential

property in the fall zone of the tower. The ZBA accepted the revised application as complete and scheduled a public hearing for October 4, 2021.

41. A public hearing on the revised application was advertised and held on October 4, 2021. Because of the Covid-19 Pandemic, the public hearing was held virtually.⁸ The public was afforded the opportunity to remotely view the public hearing and also participate remotely in the hearing. During this time, members of the public, and attorneys represented some members of the public, provided written and oral comments to the

⁸ This was authorized pursuant to New York State ("NYS") Legislation S.50001/A.40001, which suspended certain provisions of the Open Meetings Law to allow a municipal board to convene meetings during the current pandemic via videoconferencing and/or telephone conferencing.

ZBA. Many of the comments received were in opposition of the proposed tower based on:

- G objections to the height of the proposed tower;
- G safety concerns about the proximity of the proposed tower to neighboring structures and roads;
- G potential depreciation in the real estate value of nearby homes;
- G the limited range of the alternative site search area and lack of alternatives reviewed by the Applicant; and
- G the appropriateness of the proposed tower in the OLI Zoning District.

42. The public hearing was continued to November 4, 2021, where additional comments were received from the public. Additionally, discussions were had between attorneys for the ZBA, the Applicant and some members of the public regarding the proper standard for reviewing area variances for public utility use. The ZBA's counsel asked the respective attorneys to brief their positions as to the proper test for reviewing area variances for public utility uses. The attorneys were asked to provide those comments to the ZBA within the 10 days following the meeting. The ZBA closed the public hearing on November 4, 2021, with the caveat of the additional 10 days granted to the attorneys to provide written briefing on the area variance test for public utilities.
43. At the November 4, 2021 ZBA meeting, the ZBA requested that the Applicant extend the "shot clock" to January 6, 2022. The Applicant did not commit to an extension at that time, and instead suggested that the ZBA issue its decision at the November 4 ZBA meeting. The ZBA was not in a position to evaluate all the comments received at the public hearing that night and issue a decision at the November 4 meeting. Subsequently, on November 22, 2021, the Applicant agreed to extend the "shot clock" to January 6, 2022, for a decision on both the MMFD application and the current application. However, this was not a viable solution to the ZBA, as the public hearing on the use and area variance for the MMFD have not been conducted, per the request by the Applicant to table the MMFD as it pursued the current application.
44. On November 15, 2021, Robert Berg and David Gordon, two attorneys representing different members of the public, and the Applicant's attorney, Scott Olson, provided written comments to the ZBA addressing the test to apply for area variances for public utilities. The attorneys' comments addressed the area variance test to be used for telecommunication facilities. Those comments also asserted some factual arguments about whether the Applicant in this case did, or did not, meet the public utility exemption test. Upon the expiration of the period to submit written comment, the public hearing was completely closed.

45. On November 19, 2021, the Applicant's attorney, Mr. Olson, submitted another letter to the ZBA. In that letter, Mr. Olson asserted that "material misrepresentations" had been made to the ZBA during the public hearing by John Greco, an adjoining neighbor to the project, regarding a potential alternative antenna site on a water tank structure. Then, on November 24, 2021, the Planning Board forwarded to the ZBA a letter by John Kilby, another adjoining neighbor. Addressed to the Planning Board, that letter discussed alleged representations made by Mr. Olson about 37 Industrial Drive as an alternative site location.

46. The courts have held that a new public hearing should be held if the ZBA receives information subsequent to the close of the initial public hearing in order to afford all interested parties the opportunity to comment or rebut the factual information that may ultimately impact a ZBA's decision on a matter.⁹ Given the nature, context and potential significance of this information, and its receipt by the ZBA after the close of the public hearing, the ZBA deemed it necessary to afford all interested parties the right to review and comment on this new information.
47. As such, a public hearing on this application was re-advertised and the public hearing was re-opened at a special meeting of the ZBA held on December 14, 2021, for the purpose of affording all interested parties the opportunity to comment on the post-hearing submissions received by the ZBA. Members of the public and all interested parties were provided the opportunity to speak on the post-hearing submissions. Comment was received during the re-opened hearing, and then the public hearing was closed on December 14, 2021.
48. On January 5, 2022, the ZBA referred the application to the Ulster County Planning Board ("UCPB") for review pursuant to NYS General Municipal Law §239-m. On January 6, 2022, the UCPB responded to the referral. The UCPB response indicated there would be no County impact from this project and no further comment was provided.

Part 2

Findings of Fact & Conclusions of Law

49. The Applicant is a "public utility" for purposes of zoning pursuant to the case *Cellular Telephone Company v. Rosenberg*.¹⁰
50. In contrast to the typical area variance applicant, a "public utility" applicant must demonstrate three factors in order to meet the public utility area variance test.¹¹ An applicant must demonstrate:
 - (1) that there are gaps in the service that need to be remedied;
 - (2) that the proposed facility will remedy those gaps; and
 - (3) that the facility presents a minimal intrusion on the community. The basis and rationale for establishing this test are "where the intrusion or burden on the community is minimal, the showing required by the utility should be

⁹ *Cilla v. Mansi*, 2002 WL 1275122 (sup ct, Suffolk County, March 5, 2002). Terry Rice commentary (2016). New York State Town Law §267-a. *Stein v. Board of Appeals of Town of Islip*, 100 A.D.2d 590 (2d Dept., 1984); *Sunset Sanitation Service Corp., v. Board of Appeals of the Town of Smithtown*, 172 A.D.2d 755 (2d Dept., 1991).

¹⁰ 82 N.Y.2d 364 (1993).

¹¹ *Lloyd v. Town of Greece Zoning Board of Appeals*, 292 A.D.2d 818 (4th Dept., 2002); *Decarr v. Zoning Bd. of Appeals for Town of Verona*, 154 A.D.3d 1311 (4th Dept., 2017).

correspondingly reduced.”¹²

Area Variance Test Factor 1 of 3 : Gaps in the Service.

51. The Applicant states in its application that there needs to be new coverage (i.e. relieve significant coverage gap) in the surrounding area and additional capacity for the existing network, which is currently capacity-exhausted in the immediate area.
52. As stated by the Applicant, the ultimate objective of this proposed project is to close significant gaps in service and relieve substantial network capacity issues related to increased demand for wireless services.
53. According to the Applicant, Saugerties is currently served by two macro telecommunications tower sites (Kingston and Saugerties). At present, these sites are overloaded, requiring capacity relief. The primary objective for this project is to increase capacity and improve coverage throughout the south-central portion of Saugerties (Mt. Marion/Mt Marion Park), including service to a portion of the New York State Thruway, Glasco Turnpike/Route 32, Kings Highway, Churchland Road, and portions of the adjacent residential and commercial areas.
54. The Applicant has provided RF analysis to demonstrate the gap in service in the area based on both coverage and capacity.
55. The ZBA’s consulting RF engineer, Ronald E. Graiff, PE, has agreed that there is a gap in service in Saugerties, and that there is a need for relief of the two sites.
56. We agree that it has been shown that there are gaps in the service that need to be remedied.

Area Variance Test Factor 2 of 3: Remedy the Gaps.

57. The Applicant proposes that the facility will result in closing the gaps in service and relieve network capacity issues.
58. The RF analysis submitted by the Applicant has demonstrated that coverage will be improved by the proposed facility. This has been demonstrated by the RF maps

¹² *Matter of Consolidated Edison Co. of N.Y. v. Hoffman*, 43 N.Y.2d 598 (1978).

provided in the application which show the improved coverage based on the proposed facility.

59. Mr. Graiff has reviewed the RF maps submitted to the ZBA by the Applicant, and has agreed that the facility will remedy the gaps.
60. However, throughout the course of the ZBA's review, Mr. Graiff has repeatedly expressed doubt that the tower height proposed by the Applicant is the minimum tower height necessary to close such gaps and improve coverage.

¹² *Matter of Consolidated Edison Co. of N.Y. v. Hoffman*, 43 N.Y.2d 598 (1978).

61. Mr. Graiff has also expressed concerns about the small size of the search area radius used by the Applicant. The Zoning Law requires that applicants provide a 2-mile radius search area for other potential sites in which it can locate a proposed tower (or collocate). The Zoning Law says that an Applicant should provide:

A description of the siting criteria and the process by which other possibilities were considered and eliminated, including but not limited to real estate search areas, accessibility to roads and utilities, distances and bearings to other system sites, acceptable radio signal levels and radio coverage areas, and/or microwave interconnection path requirements. The applicant shall support this statement with the submission of a study comparing all potential host sites within an approximate two-mile radius of the subject site. This study should include a description of the surrounding sites and a discussion of the ability or inability to host a facility [emphasis added]. Town of Saugerties Zoning Law §245-11(P)(7)(c)(2).

62. The search area ring provided by the Applicant is approximately ½ mile to 1/3 mile, and falls significantly short of a 2-mile radius in area. In fact, the search ring provided in this application is actually based on the MMFD Property, and has not been adjusted or reevaluated for the current application for the 17 Industrial Drive site.
63. This shortcoming has been frequently commented upon by the ZBA members, the Board’s consultants, and also by members of the public. However, the Applicant has not provided a wider search area.

Area Variance Test Factor 3 of 3: Minimal Intrusion on the Community

64. As is stated by the NYS Court of Appeals in addressing the public utility test for area variances, “a zoning board may not exclude a utility from a community where the utility has shown a need for its facilities. However, this has never meant that a utility may place a facility wherever it chooses within the community.”¹³
65. Although telecommunications towers are regulated under federal law by the Federal Telecommunications Act of 1996 (“TCA”), local municipalities are permitted to

¹³ *Matter of Consolidated Edison Co. of N.Y. v. Hoffman*, 43 N.Y.2d 598 (1978).

regulate the siting of these towers in their communities, as Saugerties has done through its Zoning Law.

66. In order to protect the interests of the community, Saugerties Zoning Law §245-11(P), which establishes the special use permit standards for commercial telecommunications facilities, provides extensive and detailed guidance (spanning 15 pages) as to where telecommunication facilities may be located, how they should be sited, and how the towers should be designed.

¹³ *Matter of Consolidated Edison Co. of N.Y. v. Hoffman*, 43 N.Y.2d 598 (1978).

Significant Variances for the Required Setback are a Significant
Intrusion on the Community

67. Section 245-11(P) of the Zoning Law specifically regulates the kind of commercial communication facilities proposed here.
68. Of relevant concern for this particular proposed facility, the Saugerties Zoning Law requires a minimum setback of 1.5 times the total height of the proposed tower. As stated in Saugerties Zoning Law §245-11(P)(4)(c)(9), the purpose of this requirement is to protect abutting residential parcels, public property and street lines from the dangers of “ice-fall or debris in case of tower failure, as well as to protect residential privacy.”
69. It should be noted that, despite the street name “17 Industrial Drive” and the Zoning District name “Office/Light Industrial (OLI)” Zoning District, the reality is that the area around this proposed project is a mix of both commercial and residential uses. There are a significant number of residential homes in the area and that was reflected by the number of residential neighbors who participated in the public hearing. This is also documented in the visual impact analysis that was prepared as part of this review.
70. Here, the proposed tower height is 159'. Thus, the Zoning Law requires that the tower be setback a minimum of 238.5 feet from any property boundary. Initially, the Applicant proposed to have the proposed facility set back 159' from the front yard property line, setback 188' from one side-yard property line, set back 165' from the other side-yard property line, and set back 262' from the rear yard property line.
71. Although that initially proposed siting plan still required three variances from the front, side and rear yard boundaries, at 159' to the closest boundary line, the distance between the tower and boundary lines were at least the height of the tower or greater.
72. However, when the location of the proposed facility was subsequently shifted to avoid encroaching upon a wetland, that shift in location moved the tower closer to some of the property boundaries. And importantly, this caused the tower to be located at a distance from the property boundaries and from nearby residences and adjoining properties that was less than the height of the tower. Thus, the substantiality of the variance sought increased, and the margin of safety in case of a tower failure was significantly diminished.
73. The substantiality of the setback variances under the revised site plan are significant

enough to compromise the margin of safety and privacy that the Zoning Law's setback requirement of 1.5 times the height of the tower is meant to provide.

74. The Applicant's revised plan to shift the proposed facility 40 feet is not a "minor adjustment," but a severe impact and material change that has created a public safety and danger to nearby neighboring properties and other nearby structures. The Applicant did not attempt to mitigate these dangers either, as the Applicant, upon learning of the existence of the wetlands on the property, simply opted to move the proposed facility out of the wetlands but failed to: (a) lower the height of the tower; (b) attempt to obtain the necessary permit to disturb the wetlands so the tower could remain in the same location on the site; or (c) to search for any additional properties that would allow for a greater

setback between the proposed tower and the nearby property boundaries.

75. We determine that, as proposed, the close proximity of the proposed facility to neighboring property boundaries presents a potential threat to the safety, welfare and privacy of neighboring properties and their owners, and as such, represents a significant intrusion upon the community and one that cannot be characterized as minimal.

Significant Height to be Silhouetted Against the Sky is a Significant
Intrusion on the Community.

76. The height of the proposed tower is also a significant intrusion to the community.
77. Throughout the course of our review of this application, despite repeated urging, the Applicant failed to enter evidence into the record to demonstrate that proposed tower height of 159' was the minimum height necessary to close the gap in coverage. Especially, since the tower that had been proposed at the MMFD Property, a short distance away, was only 120' in height.
78. The Applicant proposes a 159' tower in the OLI Zoning District. In addition to requiring that telecommunication towers be set back at least 1.5 times the height of the tower to protect neighboring properties, the Saugerties Zoning Law §245-11(P)(4) entitled "*Design standards*," states that:

No facility shall be silhouetted against the sky as seen from any viewpoint located 1,000 feet or more from the base of the facility.
Saugerties Zoning Law §245-11(P)(4)(c)[3][c].

79. Here again the Zoning Law provides important guidance to the ZBA as the Town of Saugerties' vision for how it wants commercial telecommunications facilities sited. This definitive guidance defines the degree of intrusion caused by tower height that is considered to be minimal by Saugerties as a community.
80. Over the course of this review, ZBA consultants Mr. Graiff, Mr. Shuster, as well as ZBA members themselves, have repeatedly questioned whether the proposed height of the tower is the minimum height necessary to close the gap in coverage. The Applicant was asked numerous times during the course of the review to provide an analysis or justification for the 159' tower height, and to explain why this tower had to be so much higher than the 120' tower that had been proposed for the Mount Marion Fire Department Property.

81. Here, the Applicant has failed to answer this question or to address this issue. And in failure, the Applicant has failed in its burden of proof in demonstrating that its application meets the area variance test for a public utility use that the proposed facility is a minimum intrusion on the community.

82. Although it has been demonstrated that, at the 159' height proposed, this facility will resolve the gaps in service coverage, it has not been demonstrated that 159' is the minimum height necessary to close the gaps.

83. Neither has it been demonstrated nor has an explanation been given as to why the proposed tower is 39 feet higher than the 120-foot tower that had been proposed nearby at the Mount Marion Fire Department site.
84. As discussed by both Mr. Graiff and Mr. Shuster, the record contains evidence that the difference in ground elevation between the Mount Marion Fire Department site and the 17 Industrial Drive site is 2.3 feet. The above-mean sea level ground elevation at the Mount Marion Fire Department site was certified for the Applicant by Tectonic at 175 feet. The above-mean sea level elevation at 17 Industrial Drive was certified by the Applicant by Tectonic at 172.7 feet. The linear distance between both sites is approximately 1,100 feet.
85. As was stated by Mr. Graiff during the September 7, 2021 ZBA meeting, there is legitimate concern about the justification difference in the tower heights for the fire department site and the Industrial Drive site when there is otherwise not significant difference between the two sites.
86. The Applicant's RF engineer did provide some RF mapping to demonstrate different RF analyses at different tower heights for the proposed tower at 17 Industrial Drive. This included one at 126'. About a tower at that height, the RF engineer summarily concluded that the 126' ACL is:
- too low and unacceptable (compared to the Fire Department at 116 feet ACL and the currently proposed 17 Industrial Drive site at 146 feet ACL.
87. An unelaborated contention that a 126' tower is "too low and unacceptable" does not address the variance test. The key is whether the gaps in service would be remedied by a 126' tower, even if that remedy is not the applicant's desired and preferred tower height level.¹⁴ We find that the Applicant has failed its burden of proof.
88. In addition, in discussing his analysis of the visual impact reports, Mr. Shuster pointed out that in many of the photographs and corresponding simulations where the tower is visible, those depictions show only the upper portion of the tower above screening vegetation. According to Mr. Shuster, it is apparent that if the tower height was 30 feet shorter, similar to the height of the tower previously proposed at the Mt. Marion Fire Department site, the tower would be obscured from most of the viewpoints, including those in excess of 1,000 feet which require an area variance.
89. We find that the Applicant has not shown substantial evidence to justify the need for

the proposed 159' tower at 17 Industrial Drive, particularly when the applicant had proposed 120' tower height at the Mount Marion Fire Department site that was only 1,100 feet and less than three feet difference in elevation. The ZBA asked for evidentiary justification for the 159' tower height from the Applicant, and the Applicant had ample opportunities to provide that evidence. But it was never provided.

¹⁴ *Sprint Spectrum L.P. v. Willoth*, 176 F.3d 630 (2d Cir. 1999)

90. We consider that to be a failure by the Applicant to demonstrate that the tower height is the minimum necessary to close the gap and a failure by the Applicant to meet its burden of providing evidence for the record to show this tower height as proposed the facility presents a minimal intrusion on the community.

Failure to Consider Alternatives
is a Significant Intrusion on the Community.

91. In addition to failing to justify the 159' height requested for the proposed facility, the Applicant also failed to justify scope of its search area for alternative sites.

92. The Town of Saugerties Zoning Law requires that the applicant for telecommunication facilities provide a:

description of the siting criteria and the process by which other possibilities were considered and eliminated, including but not limited to real estate search areas, accessibility to roads and utilities, distances and bearings to other system sites, acceptable radio signal levels and radio coverage areas, and/or microwave interconnection path requirements. The applicant shall support this statement with the submission of a study comparing all potential host sites within an approximate two-mile radius of the subject site. This study should include a description of the surrounding sites and a discussion of the ability or inability to host a facility.¹⁵

93. The Applicant has never provided an alternatives analysis for available sites within a two-mile radius.

94. Instead, the Applicant has provided a radius of approximately ½ to 1/3 of a mile. This unusually limited search area has raised another concern that has been repeatedly stated over the course of the review by ZBA members, the ZBA's consultants, and members of the public. And as was the case with the tower height justification issue, the Applicant has failed to provide to the Board substantial evidence to support the search area ring that does not meet the Saugerties Zoning Law requirement.

95. The Applicant claims the search radius ring is small due to the capacity issue. The Applicant also asserts further that the reason for this is that the radio frequencies to be utilized at this site will be higher, and thus cannot travel as far, so that the practical distance for workable alternative locations to fill the coverage gap in this case is less than two miles. But these are conclusory statements, and the Applicant has never

provided to the Board a formal analysis or report discussing other alternative sites within a 2-mile radius of the proposed tower.¹⁶

¹⁵ Town of Saugerties Zoning Law §245-11(P)(7)(c)(2).

¹⁶ *Omnipoint Communications, Inc v. City of White Plains*, 430 F.3d 529 (2d Cir 2005)

96. What is troubling about this search area discrepancy is that having such a small search area severely limits our consideration of appropriate alternatives that may exist for potential facilities.
97. The current application came before this Board as a result of the Applicant looking outside the search area it proposed for the Mount Marion Fire Department property. In fact, the application before us for the 17 Industrial Drive site states that the search area being utilized in this application has not been amended or adjusted since the Mount Marion Fire Department application.
98. In the application for 17 Industrial Drive, the Applicant says:
- Search Area - As part of the review of the original candidate (the Mt. Marion Fire Department property), the Saugerties Zoning Board of Appeals expressed "a strong interest" in having Tarpon and Verizon Wireless pursue a new site in the Office/Light Industrial zoning district, just outside the boundaries of the Search Area. Although Verizon Wireless and Tarpon have agreed to pursue such new location, the Search Area remains the same to preserve the Record [emphasis added].
99. Thus, no additional search area, and therefore no additional alternatives, have been reviewed by the applicant outside of the site for 17 Industrial Drive location.
100. Although the Applicant has detailed its attempts to contact the owners of nearby properties to ascertain whether there is interest in leasing space for a telecommunications facility, there isn't any evidence in the record supporting why the initial search area was so far below the required 2-mile radius required by the Saugerties Zoning Law, and why a new search area was not formulated for the 17 Industrial Drive site.
101. In our minds, this raises doubt about whether viable alternatives may exist outside the Applicant's small search ring, but within the 2-mile radius standard set in the Zoning Law, that would present a minimal intrusion on the community. These doubts are exacerbated by the fact that the 17 Industrial Drive site is a property located outside the initial search area for the Mount Marion Fire Department application.

In Conclusion.

102. The currently proposed siting of the facility does not present a minimum intrusion on the community.
103. We find that the proposed facility is not a minimal intrusion on the community. Although the facility was initially proposed to be sited less than the required setback of 238.5 feet, it was at least the distance of the tower height away from the property boundaries and away from nearby residential properties. However, upon having to move the proposed site 40 feet to avoid wetlands, the proposed tower is now located at a distance that is less than its height from nearby properties and streets. This is a danger to the community, as the purpose of the

setbacks is to protect abutting residential parcels, public property and street lines from the dangers of ice-fall or debris in case of tower failure, as well as to protect residential privacy. Under these circumstances we cannot find that, as proposed, this facility presents a minimal intrusion upon the community.

104. The proposed tower is also much taller than the tower was previously proposed on a nearby site. The different sites are similar in ground elevation and are near each other. However, the height proposed at one site was 120', and height proposed in the application before us is 159'. No substantial evidence has been entered into the record to establish that a 159' tower is the minimum height needed to remedy the gaps in service. Consequently, there is no evidence in the record that would support a finding by this Board that a 159' tower is the minimum height necessary, and therefore presents the minimal intrusion on the community.
105. The Applicant has failed to conduct an alternative site analysis within the required 2-mile radius, despite the fact that the current application was outside the initial search area the applicant reviewed.
106. The Applicant argues that the proposed tower is a minimal intrusion on the community because it is located in the OLI Zoning District, and commercial telecommunications facilities are a permitted use in the OLI Zone subject to the issuance of a special use permit. While it is true that a Type 5 facility is permitted in the OLI Zoning District, the burden remains with the Applicant to demonstrate that it can meet the special use permit criteria. In this case, portions of the special use permit criteria quantify and provide guidance as to how these facilities should be sited so as to present a minimal intrusion on the community. Saugerties has acknowledged the need for these facilities and has therefore allowed them in certain zoning districts. But in going to great lengths in the Zoning Law to provide extensive and detailed limits on facility siting, the Town has defined for us and for potential applicants exactly how these facilities can be sited so as to present a minimal intrusion on the Saugerties community. Here, the application does not meet key elements of the special use permit criteria for Type 5 telecommunications towers.
107. Overall, we find that there is a lack of substantial and credible evidence in the record to demonstrate that the Applicant met its burden of proving that it meets the minimal intrusion criteria of the area variance test.

NOW, THEREFORE BE IT RESOLVED, based upon the evidence in the record before us, upon all of the findings of fact and conclusions of law described above, and upon the reasoning described above, as follows:

- Section A. We determine that the facility proposed by the Applicant has met the first two elements of the variance test, specifically, that: (1) there are gaps in the service that need to be remedied; (2) that the proposed facility will remedy those gaps.
- Section B. We determine that the Applicant has failed to demonstrate with substantial evidence in the record that the facility, as proposed, presents a minimal intrusion on the community.

Section C. We determine that, based upon the evidence in the record before us, upon all of the findings of fact and conclusions of law described above, and upon the reasoning described above, the Applicant's application for variances is denied.

Motion to approve this resolution by: Patti Kelly. Seconded by Henry Rua.

Roll Call Vote	In favor	Against	Abstain
Patti Kelly	<u>yes</u>	_____	_____
Henry Rua	<u>yes</u>	_____	_____
Joe Mayone	<u>yes</u>	_____	_____
Timothy Scott, Jr.	<u>yes</u>	_____	_____
Holly Strutt	<u>yes</u>	_____	_____

Result: Motion passes by the following margin: 5-0

Dated: January 6, 2022

Filing: A copy of this Resolution was filed in the office of the Town of Saugerties Town Clerk on January 7, 2022 by Kevin Freeman, Secretary to the ZBA.

Kevin Freeman, ZBA Secretary

Result: Motion passes by the following margin: 5-0

Dated: January 6, 2022

Filing: A copy of this Resolution was filed in the office of the Town of Saugerties Town Clerk on January 7, 2022 by Kevin Freeman, Secretary to the ZBA.

Kevin Freeman, ZBA Secretary

In discussion, Joe said the added height variance was always problematic for him as well as the limited search zone and safety issues. Patti noted that she was proud of the town's Zoning Law, saying it gave us clear direction and a framework for reaching this decision. She added that she hopes this applicant and future applicants understand that following the guidelines in the Zoning Law are essential to a successful application. She said it is possible to site cell towers if you do your homework with site selection and make sure you comply with the law.

Henry said Mr. Olson charged that the ZBA had only 3 responsibilities. Henry added a fourth, the actual variance requests. He said the biggest concern was the potential safety impacts on adjacent property owners.

Holly said that she recognized the need for a cell tower in the Mt Marion area and was hoping to find a way to approve a tower. She added that it's been frustrating and sad that what we've been given by the applicant is so out of line with the Zoning Law.

Joe said that if companies follow the Zoning Law they will succeed. Tim said that he found the lack of site selection research to be troubling. He hopes next time that will change.

Patti called for the vote to deny the variances:

Henry Rua	Yes
Joe Mayone	Yes
Tim Scott	Yes
Holly Strutt	Yes
Patti Kelli	Yes

Other Business

Patti asked for a motion to accept the December 6th and December 14th minutes. Joe so moved and Tim seconded. The motion was approved unanimously.

Patti reminded the group that it was Holly's last meeting as a board member, and she was thanked by all for the expertise she brought to the ZBA. Patti welcomed Bill Schirmer who will join the ZBA as Alternate at the Feb. Meeting.

Mr. Olson asked if there was to be a discussion about the Mt Marion Fire House application.

Patti moved to have the Mt. Marion Firehouse application put on the February 7th agenda. Joe seconded. Patti added it should be a public hearing. Mr. Olson's position is that the public hearing portion was closed for Mt Marion in the January meeting of 2021. Ms. Garrison said she believed the public hearing was left open when the application was tabled.

The original motion to put the Mt. Marion Firehouse application I the Feb. 7 agenda was approved unanimously. Henry moved to make it a public hearing. Randy seconded. It was unanimously passed.

Patti moved to adjourn the meeting. Tim seconded the motion, and it was approved unanimously.

