



ZONING BOARD OF APPEALS
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October 4, 2021
WebEx Meeting Minutes

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

Also Present: Mike Ivino: Town Board Liaison, Scott Olson: Attorney Young Summer LLC, Kimberly Garrison: Grant & Lyons LLC, Kathy Pomponeo, Verizon Location Manager, John Lyons: Grant & Lyons LLC, Mike Crosby: Verizon Engineer, Steve Matthews: Verizon Engineer, Brett Buggeln: Tarpon Towers, George Redder: ZBA Attorney, Dan Shuster: Town Planner, Ronald Graiff: ZBA Engineer, Sara Coleman: Aerosmith, Brett Buggeln: Tarpon Towers, John Lyon: ZBA Attorney, Kevin Freeman: Zoning Board Secretary

Patti Kelly called the meeting to order at 7:05 pm. She took roll call of ZBA members and announced a quorum was reached. Patti asked Alternate Member Holly to join the board for the Verizon application.

PUBLIC HEARING

KINIRY WEST, LLC

1752 Rt. 212
SBL# 27.2-8-34
File #: 21-006
Application for Interpretation

KANTER/HUTCHISON

SBL# 27.2-8-34
File # 21-007
Application for Interpretation

Both parties are asking for an interpretation of the Building Inspector's letter of June 8th pertaining to a proposed Kiniry West, LLC business at 1752 Rt. 212.

Patti opened the Public Hearing with a request to please focus comments on the issues pertaining to the Building Inspector's June 8th letter which had been posted on the ZBA website and was sent to residents and businesses within 500' of the proposed facility. She also said that all letters that were received would be part of the public record for this application.

The first speaker was Mark Kanter. For twenty-five years, he and his wife, Heather Hutchison, have lived at 24 Adams Rd. behind the Kiniry property atop the rock ledge. He is worried that

that the non-stop noise and dust that that they first experienced in 2019 when the project operated without a permit and finally resulted in a stop work order from the Building Inspector will continue as a processing facility. He has asthma and his wife has a traumatic brain injury, and he said the noise and dust impacted their health and the quality of their lives. He doesn't begrudge the business operating, but industrial level activity should not be allowed.

Chris Andersen, who owns and operates a recording studio across the road from the proposed processing facility, said the noise from the original work mentioned by Mr Kanter interfered with his business. He opposes the industrialization of the Rt. 212 corridor.

Paul Steinberg lives .2 miles from the Kiniry site. His experience in 2019 was intolerable due to noise which he described as being like jackhammers in his house. He participated in the Planning Board meetings and understood that the property next door to the proposed processing facility would be used for storage and office space. Once the Kinirys got that permit for 1740 Rt. 212 all the noise stopped, and it had been quiet since then until recently when the noise again became unbearable.

Gina Kiniry said they were mindful of their neighbors' concerns saying they had agreed not to hammer any more rock. She said there was one stop work order for the commercial rock grinder at the 1752 site. She said they would not hammer away any more of the rock ledge. She said they would leave it to the town to determine what they can do on the property.

Richard Frisbee who lives on Rt. 212 said he had sent his information. Patti said the board received it. He said the Kinirys are lovely people, but they keep pushing and pushing and doing more. He asked if the town would permit the processing operations.

Heather Hutchison sent a video (with audio) and said the sound of the riprap (stones) being processed was like stones in a pillowcase tumbling in a clothes dryer next to your head. She and her husband work from home, and she spoke of the impact the noise and dust had on her day-to-day life, her health and her work as an artist. She said she can't deal with this starting up again,

Eva Melas spoke in support Mr. Kanter's and Ms. Hutchinson's concerns and comments.

Ms. Svenson, attorney for the Kanter/Hutchison appeal, discussed the reasons this proposed processing facility is not an Accessory Use. She said it's larger than the contractor shop next door, and the impacts are exponentially larger. She questioned if it was customary for a construction contractor to have an industrial use for such a property. She asked the ZBA to decide if the use was, indeed, accessory.

Mr. Morello, attorney for Kiniry West, LLC, wanted to clarify if the ZBA could determine Accessory Use. The broader question was up to a discretionary review. Ms. Svenson agreed with that, although still asked if the property/zoning complied with the definition of Accessory Use.

Patti made a motion on the SEQR designation of Type 2 Section 617-5 (c) (37). Henry seconded.

Henry Rua	Yes
Joe Mayone	Yes
Tim Scott	Yes

Randy Ricks Yes
Patti Kelly Yes

Patti asked for a motion to end the public hearing. Tim so moved. Randy seconded.

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

Patti thanked all the participants for their civility.

PUBLIC HEARING
TARPON TOWER II, LLC & VERIZON WIRELESS

17 Industrial Drive.
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 Drive 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.”

Patti said that the Planning Board was the lead agency for the application and the SEQR designation was an unlisted action. She also said that all letters that were received by the ZBA would be part of the public record for this application.

Joe Mayone made a motion to open the public hearing. Henry seconded. The board voted unanimously by voice vote. Patti asked speakers to please focus their comments on the three variances requested by the applicants.

John Greco owns a property adjacent to the Industrial Drive tower site. He discussed the previous Verizon attempts to construct a tower at the Churchland Road site and the Mt Marion firehouse. He said the tower would be silhouetted against the sky from multiple locations. He said it was incumbent on the applicant to prove that there are coverage gaps and this proposed tower will close those gaps with minimal intrusion on the community. He said the proposed tower doesn't come close to meeting the Zoning Law's distance requirements, and it is so close to neighboring properties as to be a significant intrusion. He said the OLI district should be a buffer between the Residential and Industrial Zones. He said the requirement for a search area is two miles, not a half mile. Mr. Greco said the owner of the water tower further north on Kings Highway would welcome a lease, but Tarpon didn't want to pay the requested amount. He said that computer propagation maps can be maneuvered to give you the outcomes you want, and that drive tests should be used to access whether adequate coverage will be provided by the proposed tower. He closed by speaking to the danger of the tower falling on nearby properties.

Julie Desch said her family has lived in the home closest to the proposed tower since the 1940s. One of the variances is up against her property line. She argued against the variances, including a reference to her diminished property value should the tower be built at the proposed location.

Eric Amaral is a realtor from Hurley and backed what Ms. Desch said about reduced property values due to cell towers. He went to her house during the balloon test to assess the impact.

Mike Crocito lives next door to Julie Desch on Kings Highway. He is also a real estate agent and agreed that the market value of his and other homes adjacent to the tower would be severely affected. He sent pictures and video of his property to the ZBA board.

Ms. Turco-Levin, who is about to break ground on a dog training facility on Industrial Drive, said the cell tower would have a negative effect on her business. She questioned why the ZBA suggested where Verizon look for alternative sites. She is worried about the effects high frequencies would have on animals. She's also concerned about the safety of pedestrians who work and walk along Industrial Drive. She called the variances unreasonable and said the site should be in the Industrial Zone.

Ray Smith lives on King Highway close to the proposed tower. He said he is not against cell towers, but the placement so near his and neighbors' homes is the issue. He said the Town of High Falls has an antenna on their water tower, and the cell coverage extends over a huge area.

Robert Berg, attorney for Andi Turco-Levin, said the tower fails the goals of the Comprehensive Plan and the public necessity test. He referenced materials he had sent to the Zoning Board, including emails to Mr. Olson, citing alternative sites. He also spoke to the Rosenberg Test where the applicants must use evidence of gaps in service and minimal impact on the community. He said that Mr. Graiff had not done the full job required as the town's RF consultant because he didn't present alternative sites. He said that Verizon never considered alternatives like using the existing water tower supplemented by small cells near Mt. Marion Park and the Thruway corridor. He said the site selection analysis was disingenuous and 28 other sites were never considered. He claimed the ZBA had previously directed Verizon to consider only Industrial Drive instead of all sites in the Industrial Zone.

Patti Kelly corrected Mr. Berg's assertion about Ron Graiff. She said it was not within the scope of Mr. Graiff's work for the ZBA to find alternative sites. That's Verizon's job. She said Mr. Graiff is a professional RF engineer, and the ZBA relies on his expertise to assess Verizon's propagation maps and RF engineering, and advise the ZBA on these matters.

Ron Graiff said he must adhere to a strict code of ethics. It is not his job to select sites for Verizon as he works for the town. He suggested Industrial Drive to the ZBA only because he saw it on the map, it was just outside the search ring, and he understood it to be zoned industrial. He said his report states that the evidence isn't clear that this is the only appropriate site. He said Verizon has attempted to demonstrate the need for the proposed height which he doesn't agree with and thinks needs more study. Mr. Graiff said a drive test was nearly the gold standard to demonstrate coverage and the coverage at a variety of heights. He said that all he agrees to is that Verizon has demonstrated a need for coverage and capacity.

Patti asked Mr. Olson or Mr. Crosby if they wanted to speak to any of the issues that have been raised. Mr. Olson agreed with the public utility variance standard saying there are only three questions that need to be answered by the ZBA. 1) Are there coverage and capacity gaps or issues? 2) Will this site resolve those issues? 3) Will this provide minimal intrusion? He said the OLI district is appropriate for this use of Type 5 tower with a special use permit. He said property values are not before the ZBA. Henry Rua said he was missing the most important test for the board: is the variance appropriate? He considers the request overwhelming. Henry asked if Mr. Olson had been to the site. He said he had not. Mr. Buggeln said he had been to the site. Henry questioned why nobody noticed the wetlands were on the property until three months ago. Mr. Olson said there were no other property owners on Industrial Drive who entertained leasing land to Verizon. Patti clarified that the board never directed Verizon or Tarpon to a specific location on Industrial Drive.

Mr. Berg said he listened to the October 4, 2020 ZBA recording and Jeanne Goldberg, the previous ZBA Chair, said if Verizon moved to the industrial zone they could apply to have their tower without consulting the ZBA. Patti and Henry said Jeanne was correct. Verizon would only have to go to the Planning Board unless they needed variances. Then they would be required to apply to the ZBA. Mr. Berg also contested Mr. Olson's description of minimal intrusion. He said property values are an appropriate consideration. He also questioned the type and amount of insurance Verizon and Tarpon had for the tower. Patti said that Mr. Olson had addressed insurance coverage in correspondence to the ZBA, and she had forwarded a copy to Mr. Berg. Mr. Olson said he provided the insurance information as a courtesy because Henry had asked about it, but that it was not germane to the zoning process. Henry asked if neighbors would be held harmless in case of property damage. Mr. Olson said Verizon had commercial insurance for the property on which the tower is sited. Patti then asked if a neighbor was injured by a tower failure or if property was damaged, could that neighbor file a claim to Verizon? Joe Mayone asked if a tower fell on a property due to the variance, would the town be held liable. Mr. Lyons, a ZBA attorney, said it was not clear on the town's liability since municipalities enjoy certain freedom from exposure.

Holly Strutt asked Mr. Olson if Verizon would be willing to incorporate a break-point in the tower's construction. Mr. Olson said yes, it was part of the application. He replied it had been done before.

John Kilby who owns 37 Industrial Drive, the property next to the proposed tower site and further away from homes, said he went through the process with Verizon. They finally agreed on a site near the rear of his property, but Verizon didn't agree with John's terms, and the deal went down. He also said that he thought the revised site for the tower is too close to the homes on Kings Highway and it was far too intrusive.

Andi Turco-Levin said she still worried about ice falling from the tower being a hazard, more so than a tower collapsing.

Ms. Garrison said the board had received a lot of information at the meeting and written comments close to the meeting. She suggested that the public hearing be held open for the board to digest the information presented. Mr. Olson said the board could still ask questions even if the public hearing was closed. Mr. Lyons concurred with Ms. Garrison's suggestion. He said that it would not be unusual to extend the hearing due to the public's questions. Mr. Olson and Patti said they would confer about the extending the shot clock.

Henry motioned to keep the public hearing open until the Nov. 4th meeting. Joe seconded.

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

Patti moved to approve the September minutes. Henry seconded. The board approved the minutes unanimously by voice vote.

Tim moved to adjourn. Joe seconded. The motion passed by unanimous voice vote.

The meeting was adjourned at 9:15 pm.

Respectfully Submitted,
Kevin Freeman
ZBA Secretary