



ZONING BOARD OF APPEALS
4 High Street Saugerties, NY 12477
Tel: (845) 246-2800, ext. 371
Fax: (845) 246-0461



April 4, 2022
WebEx Meeting Minutes

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

Also Present: Scott Olson: Attorney Young Summer LLC, Kimberly Garrison: Grant & Lyons LLC, Brett Buggeln: Tarpon Towers, Michael Lockwood, Michael Wentland, Kevin Freeman: Zoning Board Secretary

Patti called the meeting to order at 7:00pm. She took roll call of ZBA members and announced a quorum.

NEW BUSINESS

RED ONION (WOODSTOCK PROPERTIES KATZ)

1654 Rt. 212, Saugerties, NY
File #: 22-001

The applicant seeks to expand the restaurant's commercial kitchen and requests an area variance of 34 feet from the required 50-foot rear yard setback. The Zoning District is within the Residential Hamlet which refers to GB (General Business) for nonresidential activities.

Michael Wentland explained that Michael Lockwood was having technical difficulties and would be on shortly. Patti Kelly asked if the property line was defined by the fence at the rear of the property. He said it was. Patti commented on the size of the proposed variance. Mr. Lockwood said they were still in the design phase but were interested in seeing how large they could expand the kitchen. Patti asked how far away the neighboring house was from the property line. Neither knew the answer. Mr. Lockwood explained the constraints of the current kitchen and surrounding area. Patti asked if the design could be changed to reduce the setback. Mr. Wentland said they could use from 20 to 34 feet. Patti asked how far the current kitchen was from the property line. Mr. Lockwood said the current kitchen was already grandfathered into the setback by 7 feet. Patti asked if anyone had spoken to the property owner behind the restaurant. They hadn't. Patti asked if the design was finished or was there any play in the request. Mr. Wentland asked how much of a variance they could get. Patti said they should ask for what they require with the smallest variance possible. Mr. Lockwood said they could do a layout of what they need. Joe Mayone asked why the applicant couldn't ask for what they really need. Patti said if they need the 34 feet, then that should be the variance request. The request should be the smallest amount necessary. Mr. Lockwood said they perhaps could get by with 30 instead of 34 feet. Henry asked if the expansion would affect the parking and was told it would not. Patti told the applicants that if they plan to reduce the size of the variance, they need to let the ZBA

know ASAP so the correct information is sent to the paper and to residents. Kevin Freeman told the applicant what was needed for the public hearing notification.

Randy moved to set the public hearing for May 2nd, Joe seconded. The motion passed unanimously with Kelly, Rua, Mayone, Scott, and Ricks voting aye.

PUBLIC HEARING

TARPON TOWERS 11, LLC/VERIZON WIRELESS PUBLIC HEARING

**Tarpon Towers II, LLC & Verizon Wireless
Mount Marion Fire Department
766 Kings Highway
Mt. Marion, NY 12456
File #: 19-0006
File #: 19-0007
SBL #: 28.4-11-13.100**

The applicant is posing to install and operate a new communications facility, including a 120-ft monopole cell tower and 4-foot lightening rod antenna at the Mt. Marion Firehouse,

The applicant is requesting a use variance because the facility is not permitted in a Residential Hamlet under the Town's Zoning Law.

The applicant is also requesting area variances of 12' for the front yard, 40' for the side yard, and 165' for the rear yard from the required setbacks of 186 feet set forth in the Zoning Law.

The appeal states that due to the configuration of the property the tower is not able to meet the 186' setback required. The proposed tower location is 174' from the front property line; 159' from the side property line; and 19' from the rear property line.

Before the public hearing was opened, Patti Kelly wanted to make, for the record, a few corrections to comments Mr. Olson made at the last meeting. She quoted Mr. Olson saying that the Mt Marion application took three years or close to three years to complete. Patti corrected him saying the application took eight meetings starting in June of 2019, with the next meeting on the application taking place six months later. She noted the initial meeting in 2019 was not productive because the only person representing the application, Hyde Clark, couldn't answer the ZBA's substantive questions. What he did do was submit many, but not all, of our questions to Mr. Olson who produced a supplemental that the ZBA received right before the Jan. 2, 2020 meeting which Mr. Olson attended. The ZBA began its substantive review at that meeting. Mr. Crosby didn't attend a meeting until March, and it was at that meeting that the ZBA board finally had an opportunity to address concerns and questions regarding RF engineering. The application was closed in January 2021 when the ZBA voted on the Monroe Decision. Patti said that Mr. Olson might have worked on the Mt Marion project for 3 years since the applicant signed the firehouse lease in 2018, but the ZBA certainly did not. She said he ZBA did its due diligence in a timely manner, and she wanted the minutes to reflect that.

The second comment from Mr. Olson was that the ZBA ignored the letter he sent about a collapsible tower. The ZBA did no such thing. At the Oct. 4th ZBA meeting, Holly Strutt asked if the applicant would be willing to incorporate a break-point into the Mt. Marion tower construction. That was the first time that subject came up in any of the cell tower applications the ZBA has reviewed. Mr. Olson's response was "Absolutely, and he stated that they do it all the time. Only after that meeting, did Mr. Olson send the ZBA a letter from an engineer about his design for this type of tower. At the very next ZBA meeting, Joe Mayone asked if Mr. Olson or Mr. Buggeln could share information about the design and how it works. He was told no designs were available and the letter should suffice. So, the interest from the ZBA was there. Mr. Olson asked for clarity as to which application Patti was referring. She said board member Strutt asked the question during the Industrial Drive application.

Third, Patti said that Mr. Olson claimed that the ZBA had ignored the Shot Clock. Patti referenced all correspondence on the subject and reported that in November Mr. Olson agreed to extend the Shot Clock to January 6th. A few days later Mr. Olson asked for conditions that both the Industrial Drive and Mt Marion applications be resolved on Jan. 6th. Patti said the ZBA did not agree to that request, and she did not sign the agreement because the ZBA had made its timeline clear in previous correspondence - that we would finish the 17 Industrial Drive application and then take up the Mt. Marion Firehouse application.

Tim moved to open the Public Hearing. Henry seconded. A roll call vote was taken, and the motion passed unanimously.

Patti asked the public for comments. Mr. Kilby read his letter about comments that were made by the tower developer in the Kingston Freeman newspaper about landowners refusing to lease property for the cell tower. He used his example of trying to negotiate a lease agreement with the developer to refute that assertion. He again said he was willing to lease on his 37 Industrial Drive property offering an alternative site to both the Mt. Marion Firehouse and 17 Industrial Drive.

Patti asked for a motion to close the Public Hearing. Mr. Olson asked if he would be afforded the opportunity for a written response that would be provided after the Public Hearing. Kim affirmed that the applicant had requested for a continuation of the Public Hearing in order to respond to questions presented. Patti made a motion to continue the Public Hearing, and it was seconded by Joe Mayone. A roll call vote was taken, and all board members voted yes.

Patti asked about a legal notice in the Daily Freeman newspaper by Tarpon Tower asking the public to contact the FCC about the lighting on the proposed tower at the 17 Industrial Drive location. She asked Mr. Buggeln to explain the purpose of the notice. Mr. Buggeln replied that the notice was part of their due-diligence process but did not apply in this case and apologized for the confusion.

Ms. Turco-Levin thanked the ZBA for staying focused on the task on hand and staying focused on the task at hand, which is the Mt. Marion Firehouse cell tower.

Patti moved to continue the public hearing and Joe seconded. The motion passed unanimously.

Mr. Kilby asked to speak. Kim reminded him that the hearing was about the Mt Marion application, not 37 Industrial Drive. Mr. Kilby said he just wanted to correct the record on what had appeared in the Freeman regarding alternative tower locations.

Patti told the public that applicants had filed a legal action against the ZBA. Kim Garrison said that Mr. Olson had sent a letter saying the applicant did not believe the negative SEQRA declaration had been rescinded properly. Kim said it was their opinion that the ZBA did rescind the declaration properly in June 2020. She explained that it was due to a substantial change in circumstances that wasn't considered previously that could have a significant negative impact. The circumstances were that the ZBA did not consider the application immune from the zoning law based on the Monroe Decision which is why it was rescinded at the October 2020 meeting. She said that the October meeting was open to the public and both the applicant and their representative were present. She noted that no objections were raised and the positive declaration was not issued until March, 2022. Therefore, the ZBA's position is that a reasonable opportunity to respond by the applicant was provided. She added that if the applicant didn't believe they were afforded a reasonable opportunity to respond, she recommended that the ZBA grant such an opportunity, meaning that the applicant be given until April 22nd, 2022 to either continue their objections or not. If the applicant objects it would be addressed at the May meeting. Kim provided a letter to the applicant to that effect.

Patti asked if Mr. Olson had received Kim's letter and he said he had but had not yet had the chance to review it with his client.

Randy moved to accept the March minutes. Tim seconded. It passed unanimously by voice vote.

Patti asked if any board members could make a site visit to the Red Onion. Randy said he would do it.

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

The meeting was adjourned at 7:45pm.

Respectfully Submitted,
Kevin Freeman
ZBA Secretary