



ZONING BOARD OF APPEALS
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August 2, 2021
Meeting Minutes

Present: Patti Kelly, Henry Rua, Joe Mayone, Tim Scott & Holly Strutt, Alternate

Also Present: Kevin Freeman, Zoning Board Secretary; Dennis Doyle, Director of the U.C. Planning Department

ZBA Chair Patti Kelly called the meeting to order at 7:15 pm. She announced there was a quorum of members in physical attendance and Tim Scott led the committee in the Pledge of Allegiance.

Patti took roll call of ZBA members. Henry and Joe were present by WebEx. Tim, Patti and Holly were physically present.

Old Business

Ulster County Public Safety Radio Tower
35 Quarry Road, Saugerties NY

Patti and Holly read the following proposed motion.

Zoning Board of Appeals
Town of Saugerties, Ulster County, New York

FINDINGS AND DETERMINATION REGARDING IMMUNITY FROM ZONING

In the Matter of the Application:

ULSTER COUNTY PUBLIC SAFETY RADIO TOWER

Lands n/f of the County of Ulster
35 Quarry Road
Town of Saugerties, Ulster County, New York
Section 8.4, Block 2, Lot 1.200

I. SUMMARY of PROPOSED ACTION

The County of Ulster has submitted a proposal to construct a public safety radio tower (PSRT) and associated improvements on a 22.64-acre property it owns at 35 Quarry Road in the Town of Saugerties. The project, as revised during review of the initial application, will include a three-legged, 165-foot-high tower located in the southeast quadrant of the County property. Access to the site will be via an existing road and electrical service will utilize existing service at the site. A fenced enclosure of approximately 60 x 60 feet will protect the equipment and include the tower, equipment shelters and a generator. The project will disturb an area of less than one acre.

The County has projected that the facility will close critical service gaps in the Saugerties area and is part of the modernization of the County's emergency response system as communications transform from analog to simulcast technology. The tower is being designed to accommodate other emergency responders in the Saugerties area, but the County will not allow commercial telecommunications facilities (cell phone service) to use the facility.

The property is located within the Medium Density Residential (MDR) zoning district. However, the Town of Saugerties Zoning Law does not allow a facility, such as that proposed by the County, in any zoning district. To allow it would require a use variance to be granted by the Saugerties Zoning Board of Appeals. Therefore, Ulster County is seeking immunity from requirements of the Town of Saugerties Zoning Law utilizing a "balancing of public interests" test established by the New York State Court of Appeals.

II. STANDARDS AND PROCEDURES

1. County of Monroe Balancing Test

In 1988, the New York State Court of Appeals issued a decision in the case, "*Matter of Monroe v. City of Rochester*", 72 N.Y. 2d 338, in which the Court established a new "balancing of interests" test to allow local municipalities to determine whether a specific project qualified for immunity from local zoning requirements.

The "balancing of interests" test identifies nine (9) separate factors to be considered to determine whether a specific project qualifies for immunity from zoning. Each of the nine (9) factors identified by the *Monroe* Court are discussed in Part III below as they relate to the Ulster County PSRT proposal.

2. Town of Saugerties Zoning Law

The balancing issue is also addressed by the Town of Saugerties Zoning Law in which **§245-38** states that, “The Board (i.e., Zoning Board of Appeals) shall decide any question as to the proper application of this chapter to public and quasi-public projects and improvements under the ‘balancing of interests’ test . . .” (Monroe) referenced above.

III. EVALUATION OF BALANCING OF INTEREST FACTORS

Each of the nine factors established by the Court of Appeals is listed below and evaluated to determine whether it is in the public interest to require Ulster County to comply with the Town’s Zoning Law.

1. The Nature and Scope of the Instrumentality Seeking Immunity.

The County of Ulster is a governmental entity that provides a variety of essential public services to the more than 180,000 residents of the County, including those in the Town of Saugerties. Such services include response to emergencies such as weather disasters, fires, and traffic accidents. Due to its geographic coverage and broad governmental powers, Ulster County is in position to coordinate emergency services among the many local response agencies. The PSRT will provide interconnections to other County towers and neighboring Dutchess County as well.

The project involves installation of a new tower on property currently owned (but not utilized) by the County. The proposed facility will provide a significant public benefit to local emergency services and the public they serve.

2. The Encroaching Government’s Legislative Grant of Authority.

As discussed in 1. above, Ulster County (the “encroaching government”) has extensive legislative authority. However, it is not automatically exempt from the provisions of a Town’s Zoning Law. As cited previously, the NYS Court of Appeals has established a “balancing of interests test” to determine if such exemption, or immunity, is warranted

The Town of Saugerties Zoning Board of Appeals (ZBA) has the power and is the appropriate agency to consider the factors set forth in *County of Monroe* and to make the determination that this application is exempt from local zoning regulations. This is especially so since §245-38 of the Town Zoning Law specifically assigns such authority to the ZBA. Otherwise, Ulster County would require a use variance from the Zoning Board of Appeals, due to the fact that the proposed tower facility is located in a zoning district that prohibits this use. Such a variance involves a stringent test that would be difficult to satisfy.

3. The Kind of Function or Land Use Involved.

The proposed land use is not an intensive use, and the County has asserted it will not require any municipal services as part of its operation. It will not generate any additional traffic or solid waste or public assembly. The site was previously used, illegally, as a tire dumping facility. The site adjoins a sportsman’s club, which has a shooting range, as well as residences on its east and west sides

The construction of the proposed tower will allow for collocation opportunities for other Saugerties public service providers to improve their local communications network. The facility will serve the public interest, in that it will enhance communications for responding to accidents and natural disasters and for reporting medical emergencies and other dangers such as potential criminal activity

4. The Effect Local Land Use Regulation Would Have Upon the Enterprise Concerned.

Town zoning regulations, if strictly applied, would prevent development of the PSRT facility. However, such regulations would not be more protective of Town land use policies or the environment. The project has been designed by qualified radio frequency engineers to confirm that a new facility is necessary to remedy significant service gaps, thereby providing safe and adequate service to the surrounding area. The proposed facility is consistent with the Town's Comprehensive Plan, as updated in 2013, in which Goal #15 is "To ensure that necessary and appropriate actions are taken to protect people and property arising from threats to safety and security due to: natural disasters, accidents, and other dangerous events."

5. Alternative Locations for the Facility in Less Restrictive Zoning Areas.

There are no locations for the PSRT in less restrictive zoning districts as the use is not permitted in any district under the Zoning Law. The County has also conducted an analysis of the gaps in service in determining the proposed location of the PSRT and concluded that the proposed site meets the County's emergency response requirements for service in this portion of the County and interconnection with other County facilities. The County made it clear from the onset of its application that it preferred to build the tower on land it owned, rather than leasing a parcel of land. That was a driving factor in its choice of this site. However, at the request of the ZBA and residents who sought a less intrusive site for the proposed tower, use of an existing tower in the vicinity, known locally as the Mt. Airy tower, was eventually explored as an alternative by the County and determined to be unavailable.

6. The Impact Upon Legitimate Local Interests.

The Applicant has demonstrated a need for this facility to (a) fill significant gaps in service; and (b) provide interconnection to other County towers in the area. The facility has been designed in accordance with the applicable structural requirements of the Building Code of New York State (to the extent applicable), and all other applicable local, state, and federal codes and regulations. It is a legitimate local interest that safe and reliable emergency communication service be maintained within all areas of the Town. The proposed facility will assist with achieving such goal.

Another local interest is the preservation of the historic, scenic visual environment of the Town which is valued by both residents and visitors. The County has identified the viewshed from which the PSRT may be visible and evaluated the visual impact of the proposed tower on recognized, sensitive scenic and aesthetic resources. Such resources may include designated historic sites, parks, natural landmarks, scenic waterways, viewsheds, roadways and similar places. Balloons were flown at the site, at the proposed tower height, and photographs were taken from locations where the tower might be visible. Photo simulations of the tower, where it would be visible, were prepared. Subsequently, drones were flown at the tower height under “leaf off” conditions.

After evaluation of the effect of the tower on the viewshed, the tower location was moved further south on the parcel from the originally proposed site in an effort to be less intrusive, and the height was reduced from 180 to 165 feet. Although the tower was moved further south from the originally proposed tower, it will still be visible from some homes and businesses. It will also be partially visible from two locally designated historic properties in “leaf off” conditions. As lead agency under the State Environmental Quality Review (SEQR) Act, the County will be responsible for rendering a determination of significance and deciding whether any mitigation measures are appropriate to avoid adverse effects.

7. Alternative Methods of Providing the Proposed Improvement.

The proposed location of the project is the most feasible of available alternatives. The site is owned by the County, has relatively flat topography, favorable bedrock to anchor the tower and existing road access and electric service. There are no sensitive development constraints on the site such as wetlands, endangered plant or animal species or archaeological resources. There are no known more viable alternative methods of providing the necessary improvement in emergency communications for this area. A new tower structure is, therefore, necessary.

8. The Extent of the Public Interest to be Served by the Improvements

As demonstrated in the Application, there are significant gaps in emergency service coverage in the Saugerties. The County has predicted that construction of the tower on the Quarry Road site, as proposed, will remedy most of these deficiencies and enhance safe and adequate coverage in the Town of Saugerties. E911 address points will be increased by coverage type: outbound mobile (1,349), outbound portable (6,817) and inbound portable (4,420). The additional area of portable coverage would increase by about 35 square miles which is more than 50% of the entire Town area. The new tower would also provide an important link in the

upgraded County-wide emergency response system. However, because much of the radio frequency data is considered proprietary due to the County's contract with Motorola, the ZBA and its RF Engineering consultant were unable to verify the coverage claims set forth in the proposal.

Statements attesting to the need for improved emergency service communications were received from the Town police department and numerous fire companies and emergency service responders. Even knowing that the analog system the proposed tower will be using will be outdated in five years, all of them said that the communications situation they're currently dealing with is dire, and they don't have the luxury of waiting for a transition to digital technology.

While recognizing the need for improved emergency service communications, neighboring homeowners spoke at public hearings and submitted statements asking the County to explore alternative sites, particularly the Mt. Airy tower, and they opposed the placement of the tower in their residential hamlet due to concerns regarding effects on the viewshed, quality of life, and property values.

9. Intergovernmental Participation in the Project Development Process and an Opportunity to be Heard.

The Town of Saugerties Zoning Board of Appeals has held several meetings and discussions with representatives of the Applicant in an effort to ensure the proper design and location of the proposed facility. The Applicants also had several meetings with the Town of Saugerties Planning Board. A public hearing was convened by the ZBA for several months to receive comments on the proposal. The County has initiated coordinated review under SEQR and intends to serve as lead agency. It will consider all comments by involved agencies and the public prior to making its determination of significance under SEQR.

IV. FINDINGS AND DETERMINATION

1. For the foregoing reasons, the Town of Saugerties Zoning Board of Appeals (ZBA) finds and determines that this application by the County of Ulster is subject to the provisions of §245-38 of the Town of Saugerties Zoning Law and that the *County of Monroe* "balancing of interests test" is applicable to this application.
2. The ZBA further finds that its evaluation of the nine factors established under the balancing of interests test, set forth in Section III above, favors Ulster County's proposal to enhance emergency communications by providing a new radio tower. Therefore, the ZBA determines that the County's application is immune from the provisions of the Town of Saugerties Zoning Law and no variances from the provisions of the Zoning Law are necessary.
3. The ZBA further finds and determines that it is in the public interest and relevant to the balancing of interests that the above determinations are based on the following mutual understandings and agreement by Ulster County and the Town of Saugerties:
 - a. Immunity from the Town's Zoning Law on this site shall apply only to the tower proposed by Ulster County which is the subject of this determination. Such immunity shall not apply to any other public safety towers or commercial telecommunications service facilities.
 - b. The County shall keep the Town advised of its progress on the project by providing copies of submissions and periodic status updates.
 - c. The County shall advise the Town of modifications elsewhere in its County simulcast system (physical facilities, equipment and technology), that would affect coverage in the Town of Saugerties or lead to modification of the proposed tower or facilities in the Town of Saugerties

d. The County shall notify the ZBA should it propose to modify the project, as currently proposed, and provide the ZBA an opportunity to review and comment on such revised plans.

e. The County is solely responsible for the coverage and enhanced communications deliverables detailed in its application.

f. The county will provide free access for and placement of Saugerties fire, police and other first responders equipment on the tower to help such agencies improve their existing communications networks in the area.

g. As per the authority granted to the ZBA in Sect.245-38 of the Zoning Law, the applicant may submit the site plan to the Saugerties Planning Board to ensure standards and procedures under Sect, 245-33 are met as a prerequisite to a building permit.

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APPROVED BY THE TOWN OF SAUGERTIES ZONING BOARD OF APPEALS

Patti Kelly, Chair: _____

Henry Rua, Vice Chair _____

Joe Mayone _____

Tim Scott _____

Holly Strutt _____

Date: ____ August 2, 2021 _____

Holly made the motion to make the determination the consensus of the board. Henry seconded. There was no discussion.

Patti did a roll call vote:

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

Patti thanked everybody involved on behalf of the board. Mr. Doyle thanked the board for its professionalism. He also thanked the first responders and Quarryville residents for their input and consideration.

NEW BUSINESS

Disimone

759 Kings Highway (SBL#: 28.4-11.11) Parcel 1

763 Kings Highway (SBL#: 28.4-11-46) Parcel 2

File #: 210005

Referred by the Building Inspector

- Both parcels are located in the MDR (Moderate Density Residential) Zoning District.
- Both parcels are non-conforming in size, being less than the one acre required in this Zoning District.
- Applicant is requesting variances for lot line revisions.

Patti asked Dan McCarthy of Praetorius & Conrad PC to present materials on behalf of his client, Mr. and Mrs. Disimone. He explained that both parcels in question were pre-existing non-conforming lots side by side. Mr. and Mrs. O'Connor, the owners of 763 Kings Highway, would like to sell the house, but there were issues with the setbacks from the pool. Mr. Disimone, the owner of 759 Kings Highway, wants to resolve the issue with a 6' variance which will result in a 19-foot side yard setback, less than the 25' requirement. He also requests a variance for a lot line change to correct an encroachment of the driveway.

Joe asked if a 6' line adjustment would be better than asking for a variance. Holly answered that both parcels were non-conforming parcels, and so required the variances. The planning board would perform the lot line changes.

Kevin explained the procedure for a public hearing to Mr. McCarthy.

Patti asked if the board had any further questions.

Joe made a motion to set the public hearing at the next ZBA meeting of September 7, 2021. Tim seconded.

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

Patti apologized for not having the July meeting minutes ready for approval.

Holly moved to adjourn. Tim seconded. All voted yes.

The meeting was adjourned at 8:02 pm.

Respectfully Submitted,
Kevin Freeman
ZBA Secretary