



ZONING BOARD OF APPEALS
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September 7, 2021
Meeting Minutes

Present: Patti Kelly- Chair, Henry Rua- Vice Chair, Joe Mayone, Randy Ricks, Tim Scott & Holly Strutt, Alternate. Henry, Joe and Randy were present by WebEx. Tim, Patti and Holly were physically present at the Senior Center. Scott Olson: Attorney Young Summer LLC, Kimberly Garrison: Young Summer LLC, Mike Crosby: Verizon Engineer, Ronald Graiff: ZBA Engineer, Dan Shuster: Town Planner also attended virtually

Also Present: Kevin Freeman, Zoning Board Secretary

Chairwoman Patti Kelly called the meeting to order at 7:00 pm. She took attendance and announced there was a quorum of members. She asked Holly Strutt, the ZBA alternate, to participate as a full member for the DiSimone and Tarpon Towers/Verizon applications.

Old 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.
- This is a Type 2 Action under SEQRA

Patti asked Kevin if he received the certified mail receipts. He said he had. She asked if there were any members of the public who wanted to participate in the public hearing either in person or on-line. There were none. She asked Kevin if he had received any letters or emails pertaining to this application. He said he had not. Tim made the motion to close the public hearing, seconded by Joe. Patti did a roll call vote, and it passed unanimously.

Holly Strutt moved to approve the variance for a lot line revision along the driveway that infringes on parcel 2 and the 19-foot variance to the required 25-foot side yard setback on parcel 1. The motion was seconded by Tim Scott.

The benefit cannot be achieved by any other means because the properties are pre-existing, non-conforming in size, being less than the one acre required in the Moderate Density Residential Zoning District.

The Plan does not introduce an undesirable change in the neighborhood character or a detriment to nearby properties.

The change is not substantial.

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

The difficulty was self-created when Mr. and Mrs. Disimone divided the property so their daughter and son-in-law could build a house. These variance requests seek to bring the lot lines in compliance with the Zoning Code.

Patti Kelly, Chair:	Yes
Henry Rua, Vice Chair	Yes
Joe Mayone	Yes
Tim Scott	Yes
Holly Strutt	Yes

Patti told the applicants that they would receive a copy of the approved resolution, and it would also be sent to the Planning Board.

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 in Saugerties. This property is in the Highway Business/Gateway Overlay.

After clarifying the correct address of the property in question, Patti asked both parties to address the portions of the letter with which they had issues.

Mr. Moriello, representing Kim and Gina Kiniry, initially disagreed with the Building Inspector's position that this application needed to go to the Town Board for Special Use permit because it was for a construction and demolition facility. Mr. Moriello asserted that this should go to the Planning Board for a special use permit because it's a general contracting business and the site is in a Highway Business Zone. He asked that the board examine his submittals from February 2020 and July 2021. He said it was clear that use as a contractor yard was allowed under the zoning law. When Patti asked him specifically what would take place at the site, he said his clients would process stones, chip trees, process and stockpile soil and rocks. He said contractors and excavators do this all the time. Patti also asked him about the section of his application that stated the Kinirys would also be making mulch and offering that for sale on the site. Mr. Moriello said he didn't know the specifics and would let Gina Kiniry address that. Gina Kiniry said they are an excavating company, and they do site preparation. They will also be putting machinery on the property. Ms. Kiniry said she did not initially understand that land clearing debris processing was included under the description of construction and demolition processing, and she now understands that she will need to go to the Town for a special use permit and get a DEC permit as well. Mr. Moriello also said he has come to agree with the Building Inspector on this

point. Ms. Kiniry said the grinder the company uses is portable and can be used on construction sites if that will help move this process along and that no Stumps would be chipped at the proposed Rt. 212 facility. She also clarified that once the dirt is screened it will be offered for sale. There will be no on-site pick up. Everything will be delivered to customers.

For clarity, Patti asked if Mr. Moriello had issue with the word 'processing' in the letter from the Inspector. He said there no issue with the term processing. Patti noted that C&D processing is not allowed by right in the highway business district. That is why it was recommended his clients go to the town board for a special permit. He said they had no issue with approaching the town board for such a permit. Ms. Kiniry also said she did not object to the process of applying to the town board and the DEC for necessary permitting.

Patti asked about Mr. Moriello's opinion that the proposed business should be considered an accessory use on another property which is not what he Building Inspector said in his June 8th letter where he referred to accessory use on the same property. She asked if he could point to the section of the Zoning Law that cites accessory use on another property. Mr. Moriello said it was in the Building Inspector's Feb. 2020 letter which was an addendum to his application. He said it was Sect.245-56. Holly said she just looked up that section of the law and it reads that accessory use is defined as a use of land or of a building or portion thereof incidental and subordinate to the principal use of the land or building located on the same lot with such principal use. She said it makes no mention of another property.

Patti asked Ms. Svenson to address her concerns on behalf of her clients, Heather Hutchison and Mark Kanter, about the accessory use portion of the Building Inspector's June 8th letter and his changed usage in the subsequent letter referred to by Mr. Moriello. Ms. Svenson said her clients live and work at the home they've lived in for 25 years. She said they only wanted the town to enforce zoning. She said they object to the part of the June 8th interpretation letter that says this debris processing facility can be allowed as an accessory use. She stated that in order for something to be an accessory use, it has to be both incidental and subordinate to the main use. She said debris processing is not incidental to contractor shop. She said that the 1752 Rt. 212 site was actually the larger of the two properties. She said she had offered alternative classifications for the site. One is as a solid waste processing facility. Alternatively, it might be classified as manufacturing use if they were going to make and sell a product. She contended that neither use is part of the highway and gateway overlay use, but suited to the industrial zone. She said the property under discussion has been used without a permit or any review by the Planning Board, for rock screening, and stump grinding, and equipment storage since 2019 while they were undergoing site plan review for their property next door at 1740 Rt. 212. This necessitated a stop-work order by Building Inspector. It was only the prolonged noise and dust that caused her clients to get involved in this application. She said that the noise and dust was disruptive and undermines the intent of the Gateway Overlay. She stated that the proposed use of the property as described by Ms. Kiniry was in no way incidental and subordinate to the building next door.

Patti said the ZBA would need hold a public hearing on this application before making a determination. Kevin explained the process to both attorneys, and they agreed to work together in sending the certified letters.

Holly moved to have a public hearing at the October 4th meeting. Tim seconded.

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

Kevin explained the process. Mr. Moriello asked if he should work together with Ms. Svenson on the letter. Patti explained it only had to be a single letter to each address.

Old Business:

Tarpon Tower II, LLC & Verizon Wireless

17 Industrial Rd.

SBL #: 28.4-2-38.600

File #: 21-0080

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

- The initial request was denied by the Town Building Inspector because the proposed setbacks don't to comply with the requirement that setbacks be one and ½ times the height of the tower, in this case 238.5'.
- The 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 explained that Tarpon Towers/Verizon had submitted a revised application with revised setbacks. Mr. Olson presented the application site plan showing the Federal wetlands and where the tower was moved. He said they worked with the Army Corps of Engineers to confirm that the revised tower site was outside the wetlands. Mr. Olson said they were able to eliminate one of the setbacks, but needed to increase the setback requests on the Kings Highway side and the Industrial Road side.

Patti asked what AMSL meant in the site plan, and Ron Graiff said it is Above Mean Sea Level. Ron said he is still troubled by the height differential between the Mt. Marion firehouse tower and the Industrial Road tower. He doesn't see a justification for a 34-foot heigher tower. Patti said the tower height is important because the applicants are now in a predicament of having the tower higher than the distance to residences. This is problematic because it places at least one residential property in the fall zone of the tower, and that's not even factoring in the additional height requirement in the Zoning Law. Henry asked Mr. Olson about Tarpon Towers' and Verizon's liability if the tower falls on a neighbor's property. Are those people protected? Scott said tower failures are very rare, but they have insurance. He will check with the insurance carrier about protection of neighboring properties.

Mr. Olson mentioned that Tectonic estimated that there would be no further visual impact moving the tower 40'. Patti brought up the fact that the ZBA had been unable to make a site visit because the area is so overgrown, and Mr. Olson had told her in an email that he would not be able guarantee our safety. She stressed how important it was to get an on-the-ground perspective of the tower's proximity to neighbors rather than to

rely on a dot on a map. She said that between Verizon and Tarpon Towers they should be able to figure out how to clear a path. Mr. Olson agreed to get that done.

Patti also noted that the application has several references to Mt Marion as a Type 4 tower. She said it was never a Type 4 tower. It was always a Type 5 tower, and she wanted the public record to reflect that. She also asked when Tri-Leaf did their archeological assessment since the area has been overgrown all summer. Mr. Olson said it had been done in May. He also said he would find out what the Pedestrian Survey was.

Ms. Garrison asked Mr. Olson about the height above the tree line measurement. Mr. Olson said he would find out.

Dan asked for an explanation for the height difference between the present site and that of the firehouse in Mt Marion. Mr. Crosby spoke to the numbers that came from the surveys. He spoke to the height and position for coverage objective. He explained LOS, Line of Sight, as possible obstructions.

Patti said she asked for, but didn't receive, new RF maps so the ZBA could compare them with the former site. Mr. Crosby said the maps would be the same because the distance is so minimal. Ron expressed concern that the site was only 1,100' from the Mt Marion site. His problem is the insignificance of differences between the sites, yet the Industrial Road tower is so much higher. He spoke to reliability of drive tests as the best way to assess signal strength. He did say that those tests are expensive and take time to complete.

Mr. Olson asked Ron if drive tests calculate the need for coverage and capacity. Ron said a drive test would not test capacity.

Henry said he had no issue with the move because, if Mt Marion Park was a coverage objective, the move put the tower maybe 800' farther West. Mr. Crosby said it was actually moving farther East. Henry disagreed, saying he could stand in front of John Greco's house and look straight down Kings Highway to the stop light with the firehouse to the east. Mr. Crosby said the maps show it differently.

Ron asked to go back to Page 13 of the original application where Mr. Crosby spoke to obstacles to coverage. Mr. Crosby explained that although the ground elevation is about the same, the distance, terrain, and line of sight are what make the difference between the firehouse tower and the one at Industrial Rd. He said the Industrial Rd. is farther away from target locations like Mt. Marion Park, and there is a ridge in that location. Ron said the Height Above Average Terrain maps and drive tests are more accurate than relying on the insignificant distance between the firehouse tower and the Industrial Rd. tower in his view. Patti asked if there was a way to lessen the setbacks, and Scott said he would speak with Brett from Tarpon Towers about our concerns, and he would respond before the next meeting.

Patti asked the board if they consider the application complete. She made a motion to that effect. Holly seconded. Henry noted that all issues discussed in the meeting be answered before the next meeting. Mr. Olson said he would talk with Tarpon to assure all questions were satisfied.

Patti did a roll call vote:

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

Tim motioned to set a public hearing for October 4th, Joe seconded.

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

Holly added clarifications to the minutes. Joe moved by to accept the July and August minutes. Henry seconded.

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

Tim moved to adjourn, Joe seconded. The motion passed unanimously.

The meeting was adjourned at 9:33 pm.

Respectfully Submitted,
Kevin Freeman

ZBA Secretary