



ZONING BOARD OF APPEALS
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May 2, 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 was reached.

PUBLIC HEARING

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.

Patti announced a reduction in the requested setback variance from 34 to 25 feet per a new plan submitted by the applicant. There were no public comments by way of letters or email. Patti made a motion to declare SEQRA for this project to be Type 2 617.5(c) 17. Henry seconded. The vote passed. Henry moved to open the public hearing with Joe seconding. Patti asked if any of the public were online to make comments. Hearing none, Tim motioned to close the public hearing with Randy seconding. The vote passed by voice. Patti asked if the board was prepared to take a vote on the matter. Henry suggested comments and a vote might be taken at the end of the meeting and the board agreed. Patti dismissed the applicants.

CONTINUED 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 lightning 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.

Patti asked Kim if there needed to be a vote to continue the public hearing. Patti so moved, Henry seconded. It passed by voice vote.

Patti asked for public comments limited to the Mt Marion Firehouse application. Mr. Olson was called on and indicated his correspondence in regards to a request for further information. He called attention to a structural engineering comment on the design of the tower to include a breakpoint. He emphasized that the engineer claimed such towers "never fall". He provided an updated site selection analysis, the conclusion being that the alternative location East of the Thruway was unavailable. Additionally Mr. Crosby submitted an updated RF analysis including addressing the search radius criteria. Mr. Olson said a 2-mile radius is only applicable for a special use permit. Patti reminded him this was a use variance instead as the tower is not allowed in this zone.

Patti said that the potential lessor of the property East of the Thruway had backed out of the agreement due to restrictions on the use that she found objectionable. Patti asked what the terms were. Mr. Olson said that the lease would be a legal encumbrance with 24-hour access to the tower. Ms. Colman agreed.

Patti inquired about the maintenance of the tower, especially concerning the breakpoint technology. She asked Mr. Buggeln about scheduled maintenance and he replied that monopoles is inspected every 5 to 7 years to be inspected for rust and structural deficiencies. He said there have been no instances of towers failing inspection. Patti asked about the maintenance schedule, not just inspections. He replied that 1 to 2 times per year is specified as considered proper maintenance. Patti asked for clarification on this matter from the engineer.

Patti moved to continue the public hearing open. Henry seconded. Passed by voice vote.

The Patti read a Resolution considering the SEQRA declaration. Before she read it Mr. Olson said he was concerned that Grant & Lyons took liberty with the facts. Patti responded that she didn't believe there was any misunderstanding. Mr. Olson referred to the October, 2020 meeting when the ZBA voted to rescind the negative declaration. He contended that the only reason was

it was because of new information as opposed to the Grant & Lyons position that it was due to new information that was never produced. Kim responded that the May 2020 negative declaration was issued prematurely, before the board had considered the 9 factors of the Monroe decision. After the balancing of factors the application was not immune to zoning law, especially community character. Mr. Olson argued that the change in circumstances was deceptive. Kim responded that the position was the assumption was that governmental immunity was implied and then reconsidered. Mr. Olson said that elected local politicians has told him that the ZBA's actions on the 17 Industrial Drive location had political implications. Henry asked for clarification on this but none was forthcoming.

Prior to reading the resolution, Kim reminded that the applicant felt like the declaration was improper and so this is an attempt to provide them with an opportunity to address the situation as it stands.

Patti read the declaration as follows:

**Zoning Board of
Appeals Town of
Saugerties**

Resolution

**Intent to Provide Notice to Rescind Negative Declaration Issued by the Zoning Board
of Appeals in the Matter of the Application of Tarpon Towers II, LLC and Cellco
Partnership, d/b/a Verizon Wireless**

WHEREAS:

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. This facility is proposed to be constructed on land owned by the Mt. Marion Fire Department, Inc. ("MMFD"), and located at 766 Kings Highway, in the Town of Saugerties. For convenience, Tarpon and Verizon Wireless shall be referred to in this resolution collectively as "the Applicant."
2. The proposed facility includes the installation of a new 120-foot monopole tower structure and related antennae and equipment necessary to close existing gaps in service in the local area, and to relieve substantial capacity issues related to the increased demand and use of Verizon Wireless' wireless network in the Town.
3. The MMFD Property is located in the Town's Residential Hamlet (RH) Zoning District. A telecommunications facility is not a permitted use in that Zoning District. Consequently, the Applicant has applied to this Board for a use variance and an area variance. No decisions have yet been rendered on those variance applications.

4. On June 1, 2020, the ZBA issued a Negative Declaration as its Determination of Significance pursuant to its review under the State Environmental Quality Review Act (SEQRA).
5. At that time, the Negative Declaration was based on the premature assumption that the application was immune from the Town of Saugerties Zoning Law pursuant to the “balancing of interests test” established in *Matter of Monroe v. City of Rochester* (herein after referred as “*Monroe*”).
6. Part 3 of the Environmental Assessment Form (EAF), which sets forth the Board’s Negative Declaration, assumed that the current application would be immune from the Town of Saugerties Zoning Law (“Zoning Law”) based on the “balancing of interests test” established by *Monroe*. As is stated in Part 3:

The ZBA has further determined that the proposed action is immune from the provisions of the Town of Saugerties Zoning Law based on its evaluation of the “balancing of interest test” established in the New York State Court of Appeals *Matter of Monroe v. City of Rochester*, 72 N.Y.2d 338.

7. The Negative Declaration erroneously stated that immunity from the Zoning Law under *Monroe* has already been determined, when in fact, that determination had not been formally made as of June 1, 2020, when the Negative Declaration was issued.
8. This assumption that the application was immune from the Town of Saugerties Zoning Law impacted the ZBA’s initial rationale regarding potential impacts to the community’s current plans or goals.
9. Question 17 on the EAF Part 2, entitled “*Consistency with Community Plans*,” asks the lead agency to determine whether the proposed action is inconsistent with adopted land use plans. As noted above, the proposed action was not a permitted in the zoning district in which it was proposed to be located, making it inconsistent with the community land use plan as expressed through the Zoning Law. But the ZBA’s assumption that the proposed action would be immune from the Zoning Law led the ZBA to conclude in the Negative Declaration (EAF Part 3) that the proposed action was not inconsistent due to its immunity.
10. As of June 1, 2020, when the Negative Declaration was issued, the ZBA had not yet made its determination on the “balancing of interests test” established in *Monroe*. Thus, the presumption of immunity from zoning upon which the Negative Declaration was partially based, was premature and was issued in error.

11. Realizing the error, the ZBA took steps to correct the error.
12. At its October 5, 2020 meeting, a motion was made to rescind the June 1, 2020 Negative Declaration. The motion was seconded, discussed and adopted.
13. The ZBA adopted its resolution rescinding the Negative Declaration at an open, regular meeting held on October 5, 2020. The Applicant and its representatives were present at this time. No objection or question was raised during this meeting.
14. On January 7, 2021, the ZBA concluded its review of the “balancing of interests test” established in *Monroe*. The ZBA applied the balancing test from the *Monroe* case, and found that the majority of the *Monroe* test factors compelled the determination that the proposed action was not immune from the Saugerties Zoning Law.
15. This decision meant that the proposed action, which proposed a use not allowed in the zoning district where the project is located, was inconsistent with the Zoning Law and therefore inconsistent with a community plan.
16. In reaction to the ZBA’s *Monroe* decision, the Applicant asked the ZBA to table the MMFD application and place it on hold. The Applicant stated that it wished to review potential alternative sites in the nearby OLI Zoning District. The tabling of the application tolled the running of the Federal Communications Commission (“FCC”) “shot clock.”
17. On February 16, 2021, the Applicant submitted a new application for a proposed wireless communication facility located at 17 Industrial Drive, located within the OLI Zoning District.
18. On January 6, 2022, the ZBA concluded its review of the 17 Industrial Drive site application and issued its decision denying area variances requested by the Applicant for that site.
19. By letter dated November 22, 2021, the Applicant asked to reactivate the MMFD site application. Hence, the ZBA re-opened its review upon its completion of the 17 Industrial Drive site application.
20. In continuing the review of the reactivated MMFD application, the ZBA returned to its SEQRA review and proceeded to complete the Full EAF Part 2 as part of the process of making a Determination of Significance for the proposed action.
21. In completing Question 17 of the Full EAF Part 2, the ZBA determined that the proposed action was inconsistent with a community plan, specifically the Zoning Law, because the proposed action was not allowed in the Residential Hamlet (RH) Zoning

District where the project was located. The ZBA identified this as a moderate to large potential adverse environmental impact. This answer to Question 17 represented a significant change from the rescinded June 1, 2020 Negative Declaration which had not found any inconsistency with community plans due to the erroneous presumption that the project was immune from compliance with the Zoning Law under *Monroe*.

22. On March 7, 2022, the ZBA issued a Positive Declaration as its SEQRA Determination of Significance. The ZBA cited inconsistency with community plans as one of the moderate to large potential adverse environmental impacts which supported the issuance of a Positive Declaration.
23. More than a year elapsed between the rescission of the June 1, 2020 Negative Declaration and the issuance of the Positive Declaration on March 7, 2022. During that time, the Applicant offered no objections or comments to the ZBA on its decision to rescind the Negative Declaration.
24. However, subsequent to the issuance of the Positive Declaration, the Applicant suddenly became very interested in the rescission of the Negative Declaration. By letters dated March 07, 2022, March 15, 2022, and April 04, 2002, the Applicant has objected to the issuance of a Positive Declaration, and in doing so, alleged that the Negative Declaration was improperly rescinded by the ZBA because it failed to provide the Applicant with advance notice of ZBA intention to rescind the Negative Declaration.
25. Although the ZBA believes that the Applicant was informed of the rescission of the Negative Declaration, and was provided reasonable opportunity to respond, the ZBA wants to assure that the Applicant is heard and that it feels that it has been provided the opportunity to respond.
26. Consequently, it is the intention of the ZBA to undo the previous actions it has taken heretofore regarding its SEQRA Determination of Significance. Hence, it will rescind its October 5, 2020 rescission of the June 1, 2020 Negative Declaration, and it will also rescind its Positive Declaration issued on March 7, 2022. This resolution will accomplish that and procedurally bring the SEQRA review back to its beginning.
27. Although the ZBA denies the Applicant's allegation that the October 5, 2020 rescission of the June 1, 2020 Negative Declaration was improper, the ZBA will take a conservative course and provide the Applicant of notice of the ZBA's intention to rescind the June 1, 2020 Negative Declaration and provide the Applicant with an opportunity to comment in advance of once again taking up a motion to rescind the June 1, 2020 Negative Declaration.

NOW, THEREFORE BE IT RESOLVED, based on all of the findings of facts and conclusions of law described above, and upon the reasoning described above, as follows:

- Section 1. The ZBA rescinds the Positive Declaration issued on March 07, 2022, as its Determination of Significance for the MMFD Application.

- Section 2. The ZBA rescinds the resolution adopted at its October 5, 2020 meeting to rescind the SEQRA designation of Negative Declaration for this project.

- Section 3. The Negative Declaration issued June 1, 2020, is now reinstated as the Determination of Significance for this project.

- Section 4. The ZBA directs its attorneys, Grant & Lyons, LLP, to inform the Applicant, the Town of Saugerties Planning Board, and the Ulster County Planning Board of its intention to take action at its meeting scheduled for June 6, 2022 to rescind the June 1, 2020 Negative Declaration.

Motion to approve this resolution by Patti Kelly

Seconded by Henry Rua

Roll Call Vote	In favor	Against	Abstain
Patti Kelly	<u>X</u> _____	_____	_____
Henry Rua	<u>X</u> _____	_____	_____
Joe Mayone	<u>X</u> _____	_____	_____
Timothy Scott, Jr.	<u>X</u> _____	_____	_____
Randy Ricks	<u>X</u> _____	_____	_____

Result: Motion passes/fails by the following margin: 5-0___

Kim said Grant & Lyons would work on the notice as instructed and would provide it to the board.

Patti asked for further comments from the board. Henry said he took exception to Mr. Olson’s characterization of the board being at the service of unnamed political entities. Mr. Olson asked

for documentation on the reasoning for the negative declaration. Kim replied it would be in the notice forthcoming to the applicant.

There was no motion to close the public hearing as the hearing would continue next month.

New Business

Henry asked Kim to stay on the call to discuss the Red Onion application. He said he didn't have an issue with it but wanted to address the five questions set forth in the balancing test. Patti brought up the questions:

Can the benefit be achieved by any other means? It was agreed that this was not an issue.

Does this introduce undesirable changes in the neighborhood? Again, this was not considered material. Patti asked Randy if he had done the site visit and he replied that he took pictures and he thought there would be plenty of room even with the variance.

Is the request substantial? Patti thought the original 34 foot variance was more substantial, but the 25 foot was a reasonable compromise.

Will the request have an adverse physical or environmental effect? The consensus was it would not.

Is the alleged difficulty self-created? This was Henry's question. Patti commented that the kitchen needed updating. Kim reminded that there could be a 'yes' answer in a balancing test and that most variance requests have a self-created component. Henry agreed.

Randy moved the 25 foot variance be granted and Joe seconded. Roll Call vote was Henry Yes, Joe Yes, Tim Yes, Randy Yes and Patti Yes.

Tim moved to accept the April minutes. Henry seconded. It unanimously passed by voice vote.

Joe moved to adjourn. Henry seconded. Passed by voice vote.

The meeting was adjourned at 7:45pm.

Respectfully Submitted,
Kevin Freeman
ZBA Secretary