



ZONING BOARD OF APPEALS
4 High Street Saugerties, NY 12477
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August 1, 2022
WebEx Meeting Minutes

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

Also Present: Scott Olson: Attorney Young Summer LLC, Kimberly Garrison: Grant & Lyons

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

Patti asked Bill to stand in on the Parisio and Martinez applications.

PUBLIC HEARING

JOHN AND LIZ PARISO

17 Mary Ann Ave.
Saugerties, NY
SBL# 17.1-2-25
File # 22-002

The property is located in the MD Residential Zone. The applicants seek to build an extension onto their home and are requesting a 10' area variance from the required 30' setback

Tim moved to open the Parisio public hearing, Bill seconded. Kevin reported no input from the public on the matter. Patti moved to close the hearing with Henry seconded. The motion passed.

NEW BUSINESS

LYNN & MORRIS ALMELEH

921 & 625 Glasco Turnpike
Saugerties, NY 12477
SBL # 28.3 – 7 – 1/23/24
File #- 22-004

Referral from the Planning Board

The properties are located within the MDR zoning district. The applicants are seeking a lot line revision with the Town of Saugerties Planning Board which will require a side yard area variance of 2-foot from the required 25 side yard setback.

Patti asked who would be the presenter for the application. Dan McCarthy of Praetorius and Conrad said he would. He explained the process of moving the lot line and combining two of the three lots to bring them into compliance.

Randy moved to set a public hearing for the September ZBA meeting. Tim seconded and the motion passed.

OLD BUSINESS

TARPON TOWERS 11, LLC/VERIZON WIRELSS - CONTINUED PUBLIC HEARING

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 proposing 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.

Henry moved to open the public hearing, Joe seconded and the motion passed.

Patti noted the board had previously voted to rescind the NegDec. Kim added that Grant & Lyon had worked on the PosDec. Patti asked for a re-affirmation vote and it was unanimously passed.

Patti noted some additions to the PosDec including item 9, the creation of a material conflict with the community's goals and the town's comprehensive plan. Also, in article 10, the impairment of the character and quality of existing neighborhood character.

She quoted a statement that outlined the possibility of alternative designs to lessen the visual impact.

She also noted the possibility of hazard to human health, especially the fall zone and the lack of design plans for a break-point construction.

Then Tim and Patti read the following Resolution:

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, where Type 5 telecommunications facilities (new commercial telecommunications towers on new sites) are not a permitted use. Consequently, the Applicant has applied to this Board for a use variance and area variances. 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 would be 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. The *Monroe* "balancing of interests" test was designed to apply to situations where the interests of two governmental entities come into conflict regarding compliance with local land use regulation. The purpose of this balancing test is to determine "which governmental interest should prevail when there is a conflict between the zoning ordinance of one political unit and the statutory authority of another unit to perform a designated public function." As the proposed MMFD Property was owned by a volunteer fire company, the Applicant had asked the ZBA to make a determination as to whether the Proposed Action was immune from compliance with the Zoning Law pursuant to the "balancing of the interests" test set forth in *Monroe*.

7. Part 3 of the SEQRA Environmental Assessment Form (EAF), dated June 1, 2020, which sets forth the Board's Negative Declaration, incorrectly assumed that the current application would be immune from the Zoning Law based on the "balancing of interests test" established by *Monroe*. However, at the time the Negative Declaration was issued, the ZBA had not yet made its determination pursuant to *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.

8. 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.
9. This assumption that the application would be 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.
10. Realizing the error, the ZBA took steps to correct the error.
11. 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.
12. 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.
13. 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.
14. 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. The

ZBA's *Monroe* decision was not a denial of the Proposed Action. It merely ruled that the Proposed Action had to comply with the Zoning Law. Thus, the Proposed Action would require both use and area variances before a telecommunications facility could be constructed on the MMFD Property.

15. 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."
16. 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.
17. 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, finding that the proposed tower did not present a minimal intrusion on the community.
18. 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.
19. 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.
20. On March 7, 2022, the ZBA issued a Positive Declaration as its SEQRA Determination of Significance. The ZBA cited inconsistency with community plans, as well as adjoining properties and structures located within the fall zone of the property facility, as moderate to large potential adverse environmental impacts which supported the issuance of a Positive Declaration.
21. Although 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, the Applicant offered no objections or comments to the ZBA on its decision to rescind the Negative Declaration until the issuance of the Positive Declaration.
22. The Applicant 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.

23. 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 wanted to assure that the Applicant was heard and that it felt it has been provided the opportunity to respond.
24. On May 2, 2022, the ZBA sought to undo the previous actions it has taken heretofore regarding its SEQRA Determination of Significance to provide full opportunity for the Applicant to provide comment before the ZBA issued its determination of significance. The ZBA rescinded its October 5, 2020 rescission of the June 1, 2020 Negative Declaration, and it also rescinded its Positive Declaration issued on March 7, 2022. As a result, the application was procedurally brought the SEQRA review back to its beginning and reinstated the Negative Declaration issued June 1, 2020.
25. On May 9, 2022, a Notice of Intent to Rescind the Negative Declaration was provided to the Applicant, the Town of Saugerties Planning Board, Ulster County Planning Board, New York State Department of Environmental Conservation, Ulster County Department of Public Works, and the Town of Saugerties Highway Department. Responses and comments were requested by May 20, 2022.
26. On May 18, 2022, the Applicant requested additional time to respond to the ZBA's intention to rescind the Negative Declaration.
27. On June 22, 2022, the Applicant provided written comments in opposition to the ZBA's intention to rescind the Negative Declaration.
28. On July 11, 2022, upon review and discussion of the comment letter received from the Applicant, the ZBA made a motion to rescind the June 1, 2020 Negative Declaration. The motion was seconded, discussed and adopted.
29. On August 1, 2022, the ZBA reviewed and reconsidered the criteria set forth in the Environmental Assessment Form Part 2.

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 hereby determines that there may be significant adverse environmental impacts, particularly with respect to the creation of a hazard human health and consistency with the community's current plans or goals as officially approved or adopted.
- Section 2. The ZBA hereby adopts EAF Part 3, stating that the proposed action described below may have a significant effect on the environment and a Draft Environmental Impact Statement (EIS) will be required
- Section 3. The ZBA hereby issues a Positive Declaration as its determination of significance. The ZBA hereby directs its consultants to file the Positive Declaration on the Environmental Notice Bulletin (ENB).
- Section 4. Having found that the proposed action may have a significant adverse impact on the environment, pursuant to 6 NYCRR Part 617.6 (4), coordinated review is hereby initiated with other involved agencies, New York State Department of Environmental Conservation and the Town of Saugerties Planning Board.
- Section 5. The Applicant is directed to submit a draft scope, pursuant to 6 NYCRR 617.8, addressing the potential significant adverse impacts as identified in EAF Part 3 to the Town of Saugerties ZBA Determination of Significance. The Town of Saugerties ZBA anticipates continuing with its SEQRA review at the September 6, 2022 meeting. The Applicant is therefore requested to provide its draft scope to the Saugerties ZBA by August 24, 2022 in order to be on the September 6, 2022 ZBA agenda.

Patti moved that the board approve the resolution and Henry seconded. Kim interjected that there was another draft with additional procedural points for sections 3, 4 and 5. Her additions to the sections are reflected above.

Roll Call Vote	In favor	Against	Abstain
Patti Kelly	✓		
Henry Rua	✓		
Joe Mayone	✓		

Timothy Scott, Jr. ✓

Randy Ricks ✓

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

The PosDec is approved. The ZBA will wait for the applicant's scoping document response.

Patti moved to keep the public hearing open, Henry seconded. The motion passed unanimously.

BOARD DISCUSSION

Discussion and Decision:

Parisio application

Introduce undesirable change in neighborhood?

All agreed it would not.

Can benefit be achieved by other means?

No member objected.

Is the variance request substantial?

It was not considered substantial.

Will the variance have an adverse effect?

Agreed it would not.

Is the difficulty self-created?

Bill noted it was self-created, but did not object.

Bill moved to approve the application. Tim seconded.

Roll Call Vote	In favor	Against	Abstain
Patti Kelly	✓		
Henry Rua	✓		
Joe Mayone	✓		
Timothy Scott, Jr.	✓		
Randy Ricks	✓		

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

Discussion and Decision:

Martinez application

Introduce undesirable change in neighborhood or detriment to nearby properties?

Henry noted it would improve the neighborhood. Patti noted it would bring the property into compliance.

Can benefit be achieved by other means?

It was agreed and Patti noted the new property maintenance law that required vehicles to be moved to another structure.

Is the variance request substantial?

Henry said it was substantial, but to meet the requirements of the law, it did not infringe on other properties. Randy agreed it would be contained by the fence and the garage was not that sizable. Bill said the configuration of the lot lessened the impact. Tim noted the fence.

Will the variance have an adverse physical or environmental effect?

All said no.

Is the difficulty self-created?

Patti said it was self-created but the applicant's motivation was to make peace with the neighbors and in compliance with the law. Henry agreed as did Bill, who added it would be for the better. Tim said it was self-created but the applicant was trying to do the right thing.

Henry moved to approve the application. Randy seconded.

Roll Call Vote	In favor	Against	Abstain
Patti Kelly	✓		
Henry Rua	✓		
Joe Mayone	✓		
Timothy Scott, Jr.	✓		
Randy Ricks	✓		

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

Tim moved to approve the June minutes and Joe seconded. The motion passed.

Patti moved to adjourn, Bill seconded and the motion passed.

Meeting adjourned 7:50pm

Respectfully submitted,

Kevin Freeman

DRAFT