



ZONING BOARD OF APPEALS
4 High Street Saugerties, NY 12477
Tel: (845) 246-2800, ext. 358
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August 7, 2023

PRESENT: Bill Schirmer (Chair), Tim Scott Jr, Randy Ricks, Joe Mayone & Patti Kelly (Alternate)

ABSENT: Henry Rua (Vice-Chair)

ALSO PRESENT: Becky Bertorelli (Zoning Board Secretary), Mike Ivino (Town Board Liaison), Alvah Weeks (Code Enforcement Officer) and Sean Weaver (Building Inspector)

Schirmer called the meeting to order at 7:00 pm. Schirmer-asked Kelly to serve as a full member and announced that a quorum was reached.

PLEDGE

PUBLIC HEARING

NONE

NEW APPEAL

NIKO & STEPHANIE MARAGOUKIS: APPLICATION FOR A 3' SIDE YARD AREA VARIANCE TO CONSTRUCT A DETACHED GARAGE

7 Donna's Way
Saugerties, NY 12477
File#: 23-005
SBL#: 28.4-13-8

The property is located in the High Density Residential (HDR) zoning district. The applicant is requesting a 3' side yard area variance to construct a detached garage. The family has a handicapped child and the garage will help to ensure that the child can safely be transferred in and out of the car without having to worry about inclement weather. The applicant would not like to move the proposed garage closer to the existing home due to the significant cost that the family would incur to ensure that the house and garage conform with building fire code. The land adjacent to that side yard lot line is owned by the Town, therefore will not be developed. A silo is located on the adjacent parcel along with stormwater provisions. Schirmer-it is worth noting that this will not be close to any homes, or any home that will be built in the future due to the land being owned by the Town.

A motion was made by Kelly, seconded by Scott, to declare this a Type II Action under SEQR. Board vote: Scott-Aye, Ricks-Aye, Mayone-Aye, Kelly-Aye, Schirmer-Aye. Motion carried. A motion was made by Kelly, seconded by Ricks, to set the public hearing for the September 5,

2023 meeting. Board vote: Scott-Aye, Ricks-Aye, Mayone-Aye, Kelly-Aye, Schirmer-Aye.
Motion carried.

OLD BUSINESS

At this point in the meeting Schirmer turned authority over to the former Chair, Patti Kelly, due to her experience on the agenda item to be discussed. Kelly-the item agenda involves:

CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS AND TARPON TOWERS II, LLC
(Plaintiff) v. TOWN OF SAUGERTIES, NEW YORK, THE ZONING BOARD OF APPEALS
OF THE TOWN OF SAUGERTIES, NEW YORK, THE PLANNING BOARD OF THE TOWN
OF SAUGERTIES, NEW YORK (Defendants), Civil Action No. 1:22-cv-00107.

A motion was made by Kelly, seconded by Schirmer, to go into an Executive Session pursuant to the NY Public Officers Law Sec. 105 for discussion regarding the pending litigation.. Board vote: Scott-Aye, Ricks-Aye, Mayone-Aye, Kelly-Aye, Schirmer-Aye. Motion carried. The Board began an Executive Session at 7:08 pm.

A motion was made by Kelly, seconded by Scott, to end the Executive Session and resume the normal Board meeting. Board vote: Scott-Aye, Ricks-Aye, Mayone-Aye, Kelly-Aye, Schirmer-Aye. Motion carried, the normal Board meeting resumed at 7:14pm.

A resolution accepting the terms of the Settlement Stipulation and Order in the lawsuit was read aloud by Kelly, copy attached. The Board was asked by Kelly if anyone had any questions, comments or concerns. None. A motion was made by Kelly, seconded by Ricks, to approve the resolution as read. Board vote: Scott-Nay, Mayone-Nay, Schirmer-Aye, Ricks-Aye, Kelly-Aye. Motion carried by a count of 3-2 in favor. A copy will be submitted to the Town of Saugerties Town Clerk.

Kelly turned the meeting back over to Schirmer for the remainder of the meeting.

BOARD DISCUSSION

- A motion was made by Ricks, seconded by Mayone, to approve the April 3, 2023 ZBA minutes. Board vote: Scott-Aye, Ricks-Aye, Mayone-Aye, Kelly-Aye, Schirmer-Aye. Motion carried
- Planning Board meeting minutes were received.

ADJOURNMENT

A motion was made by Mayone, seconded by Scott, to adjourn the meeting as there are no further items to discuss. Board vote: Scott-Aye, Ricks-Aye, Mayone-Aye, Kelly-Aye, Schirmer-Aye. Motion carried Meeting adjourned 7:24pm

Respectfully submitted,

Becky Bertorelli
Secretary
Zoning Board of Appeals

Zoning Board of Appeals Town of Saugerties

Resolution Accepting Settlement in the matter 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") proposed 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 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. To date, no decisions have yet been rendered on those variance applications.
3. As the proposed MMFD Property was owned by a volunteer fire company, the Applicant had asked our Board to make a determination as to whether the facility proposed for the MMFD Property was immune from compliance with the Saugerties Zoning Law pursuant to the "balancing of the interests" test set forth in *Matter of County of Monroe*, 72 N.Y. 2d 338 (1988).
4. 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.
5. 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.
6. 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.
7. 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.
8. By letter dated November 22, 2021, the Applicant asked to reactivate the MMFD site application, and the ZBA re-opened its review upon its completion of the 17 Industrial Drive site application.
9. On August 1, 2022, the ZBA issued a Positive Declaration as its determination of significance pursuant to the New York State Environmental Quality Review Act (SEQRA), and directed the Applicant to submit a draft scope pursuant to 6-DRAFT NYCRR 617.8, addressing the potential significant adverse impacts as identified in EAF Part 3 to the Town of Saugerties ZBA Determination of Significance.

10. Subsequently, the Applicant challenged the ZBA's decisions regarding both the denial of the variance for the 17 Industrial Drive site, and its SEQRA determination regarding the MMFD in the United States District Court for the Northern District of New York in a case entitled "*Cellco Partnership d/b/a Verizon Wireless and Tarpon Towers II, LLC, against, Town of Saugerties and the Town of Saugerties Zoning Board of Appeals et. al.*" bearing the Court's Civil Action No. 1:22-cv-00107 (the "Litigation"). The ZBA and the Town Board have opposed the Applicant's claims in that action and the litigation is ongoing.
11. All parties to the Litigation have been in negotiation to discuss a settlement. After considerable discussions with the benefit of counsel from their respective attorneys, the parties have reached a set of settlement terms upon which all can agree. Those terms have been set forth in a settlement Stipulation and Order.
12. The members of the ZBA have had the opportunity to review the terms of the settlement Stipulation and Order, and upon due consideration, and agree with its terms.

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

Section 1. The ZBA hereby approves the terms of the settlement Stipulation and Order which was circulated among the parties on August 1, 2023, and to which all parties to the Litigation have agreed.

Section 2. By this resolution, the ZBA authorizes its attorney in the Litigation matter, Jeffrey Hurd, Esq., of Burke, Scolamiero & Hurd, LLP, to sign the settlement Stipulation and Order on behalf of the ZBA.

Section 3. The settlement Stipulation and Order shall remain confidential until such time as it has been signed by the attorneys for all parties by the Judge of the District Court. Upon signing by the Judge, and entry into the official record of the Court, the ZBA hereby directs the ZBA Secretary to make available to the public the settlement Stipulation and Order.

Motion to approve this resolution by: **Patti Kelly**

Seconded by: **Randy Ricks**

| Roll Call Vote | In favor | Against | Abstain | Absent |
|-------------------------|--------------|--------------|---------|--------------|
| William Schirmer | <u> X </u> | _____ | _____ | _____ |
| Henry Rua | _____ | _____ | _____ | <u> X </u> |
| Joe Mayone | _____ | <u> X </u> | _____ | _____ |
| Timothy Scott, Jr. | _____ | <u> X </u> | _____ | _____ |
| Randy Ricks | <u> X </u> | _____ | _____ | _____ |
| Patti Kelly (Alternate) | <u> X </u> | _____ | _____ | _____ |

Result: Motion passes/fails by the following margin: **3-2 Pass**

Dated: August 7, 2023

Filing: A copy of this Resolution was filed in the office of the Town of Saugerties Town Clerk on August 8, 2023 by Becky Bertorelli, Secretary to the ZBA.

Becky Bertorelli, ZBA Secretary