



**TOWN OF SAUGERTIES
ZONING BOARD OF APPEALS**

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**January 7, 2021
WebEx Meeting Minutes**

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

Also Present: George Redder: ZBA Attorney, John Lyons, Kimberly Garrison: ZBA Attorneys, Dan Shuster: ZBA Planner, Ronald Graiff: ZBA Engineer; Dan McCarthy: Pretorius and Conrad, Jonathan Delson and Lanny Walter; Scott Olson: Attorney, Young Summer LLC, Mike Crosby: Verizon Engineer, Sara Coleman: Aerosmith, Brett Buggeln: Tarpon Towers, Anthony Campanelli: Attorney, Mike Ivino: Town Board Liaison, Kevin Freeman: Zoning Board Secretary

- Jeanne called the meeting to order at 7:10 pm
- Jeanne took roll call and, with full attendance, announced a quorum was reached

New Business:

**Jonathan Delson
18 Brown's Lane
Saugerties, NY 12477**

File #: 20-0006

SBL #: 17.3-3-8.200 & 17.3-3-8.100

- The house on lot 8.200 is encroaching into lot 8.100 by 4.2'. It is a pre-existing / nonconforming condition. Jon Delson is owner of lots 8.100 and 8.200 and is trying to sell 8.100 but the buyer's title company won't insure it because of the encroachment.
- If the property line was moved enough to give access to the house in lot 8.200 and to minimize the area taking from lot 8.100, the land of 8.100 would be salable.

Jeanne invited Mr. McCarthy to speak on behalf of Mr. Delson. He stated the configuration of the two parcels, each with homes. One parcel of more than one acre has a home that is encroaching on the other parcel. Both parcels are owned by the Delsons. The zoning requires one acre lots and adding a new lot line of 10'. He asked if all board members received the maps. Jeanne indicated that they have.

Lanny Walter spoke on behalf of Mr. Delson showing on the map that the Southern end of Lot parcel 1 is a wooded area. The buyer, with a contract, has no objection to the shift of the lot line.

Jeanne asked if the board had questions or comments. Henry asked about the variance of 1990. Mr. McCarthy said it was an area variance was due to the lots being under 1 acre at the time. The total between the two lots is 1.93 acres. Mr. Delson explained it was surveyed in 1990 to make the lot legal although one parcel was allowed to be less than 1 acre.

Patti asked if the public hearing could be set. Patti motioned, Joe seconded. Passed unanimously. Jeanne explained the routine for setting a public hearing. Mr. Walter asked that the instructions be sent to him on Mr. Delson's behalf.

Public Hearing:

Tarpon Towers II, LLC & Verizon Wireless
RE: Mount Marion Fire Department
766 Kings Highway
Mt. Marion, NY 12456
File #: 19-0006
File #: 19-0007
SBL #: 28.4-11-13.100

Jeanne asked Holly Strutt to participate as a full member for the Public Hearings since she was present for the earlier Verizon meetings. Since Henry Rua was absent for these Verizon meetings, he was replaced for this application.

Jeanne said the first matter before the board was the question of whether the application should be immune from the town's zoning law, referring to the precedent of the case of Monroe vs. the City of Rochester. That case established the test that the ZBA is mandated to apply in answering the question if the immunity is applied due to the application of a governmental agency, the Mount Marion Fire Department, to be referred to as the MMFD. As a telecommunication carrier, Verizon is considered a public utility under the law.

The board has received materials from the applicant's attorney, an attorney representing members of the community and public comments. Jeanne noted that over the past year the board had made several requests of the applicant about potential alternative sites. On or about December 15, 2020, the applicant identified two alternative sites. While Verizon does not feel that these sites are ideal, they are feasible.

Jeanne asked for a motion in the form of a resolution to accept the decision that will be read into the record. She asked Patti to begin reading the resolution as follows:

Zoning Board of Appeals
Town of Saugerties

Resolution

Adopting the Decision of the Zoning Board of Appeals in the Matter of the Application of Tarpon Towers II, LLC and Celco Partnership, d/b/a Verizon Wireless with regard to the applicability of the Town of Saugerties Zoning Law to the proposed project pursuant to §245-38 of the Town of Saugerties Zoning Law and the *Monroe* balancing of interests test.

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 "Verizon."
2. Upon information and belief, the MMFD is a domestic New York State not-for-profit corporation which provides firefighting and emergency response services to the community in the Town of Saugerties. It is proposed that the MMFD will lease a portion of its property upon which the proposed communications facility would be constructed.
3. 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.
4. 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, Verizon has applied to this Board for a use variance and an area variance. No decisions have yet been rendered on those variance applications.
5. By letter to the ZBA from its counsel dated August 21, 2020, Verizon asked our Board to determine whether the proposed action is immune from compliance with the Town Zoning Law.
6. We are authorized to make such determinations pursuant to Zoning Law § 245-38 which states that the ZBA shall decide any question as to the proper application of the Zoning Law to public and quasi-public projects and improvements under the "balancing of the interests" test set forth by the New York State Court of Appeals in a case entitled *Matter of County of Monroe v. City of Rochester*.
7. 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.
8. The test identifies nine (9) separate factors to be considered to determine whether a specific project qualifies for immunity from zoning.

9. In this case, the conflicting governmental interests are those of the MMFD and Verizon Wireless in its role as a public utility, and the interests of the Town of Saugerties.
10. In the case of the MMFD and Verizon Wireless, there is a legitimate governmental interest in filling the gaps in coverage in the area where the facility is proposed. Another governmental interest fostered by MMFD and Verizon Wireless stems from making the proposed communications facility available to the MMFD and local police.
11. The Town of Saugerties has its own interests in connection with this proposed facility. The Town's interest lies in its facilitating the protection of the health, safety and welfare of its citizens, as well as in facilitating the protection and preservation of the Town's environment and community character. The regulation of land uses throughout the Town via the Town's Comprehensive Plan and Zoning Law in one way the Town accomplishes these aims.
12. We have held a public hearing spanning several sessions on the issue presented. We received comments and legal arguments from Verizon and from a group of concerned neighbors to the MMFD site. We have also received comments from other members of the public. The public hearing for the *Monroe* question was closed at our meeting held on October 5, 2020, and held open for written comments until October 13, 2020. We have carefully considered all of the material and comment submitted to the Board relative to the *Monroe* question, and have had assistance from our counsel.
13. Attached to this resolution is a proposed written Decision of the ZBA. This document states our determination on the *Monroe* question and includes detailed reasoning in support of that Decision.

NOW, THEREFORE BE IT RESOLVED, BY THE TOWN OF SAUGERTIES ZBA AS FOLLOWS:

Section 1: We adopt the proposed written Decision in this matter dated January 7, 2021, a copy of which is attached hereto and made a part hereof.

Section 2. Our attached written Decision is a detailed document comprising approximately 16 pages which sets forth an in-depth analysis of the issue presented, states our decision, and explains our reasoning. Copies of this Decision will be made available to Verizon and to the public via posting of the Decision on the Town web site as soon as possible after this ZBA meeting. In order to save time, we will not read our entire decision this evening, but for the reasons set forth in the Decision we determine as follows:

- A. To the best of our ability, we have examined this application and the record before the ZBA and we have applied the nine factors of the *Monroe* “balancing of interests” test to the facts presented in this case. Having done that, it is our determination that the interests of the Town of Saugerties that would be protected by an application of the Town’s Zoning Law to this case should prevail over the governmental interests of the MMFD and Verizon.

As explained fully in our Decision, we find that a majority of the factors of the *Monroe* test favor a decision that this application should be subject to compliance with Zoning Law.

- B. Key to our decision is the fact that, in this particular case, there are technically feasible alternative sites in the nearby Office/Light Industrial (OLI) zoning district where this facility could be located. The potential to locate this proposed facility in one of those alternative sites in that zone would mean that the facility would be much more in harmony with Saugerties’ Zoning Law because that law allows those facilities in the OLI District. This means that siting the facility in that zone would be more in line with Saugerties vision for how it should grow and be developed, and safer for the community.
- C. At the same time, while the alternate sites may not be ideal, the materials submitted by Verizon on the sites in the OLI zone show that these sites have the potential to generate much of the public benefit that would be provided by a facility at the MMFD site in terms of coverage and capacity. And Tarpon has said that the facility will be available to fire and police even if the facility is sited on land other than the MMFD property. Thus, that benefit is not lost if an alternative site were to be utilized. Therefore, even with the application of the Zoning Law to this project, most of the public benefits presented by this project are preserved.
- D. Finally, we determine that there are significant fact differences which distinguish this case significantly from the facts of the Centerville Fire Company/SBA Towers case. Thus, we are not bound in this case by the precedent of that decision.

Section 3. The ZBA further finds and determines that the application for a permit to construct a telecommunications facility at the MMFD site and the applications for use and area variances will be decided following the provisions outlined in the Zoning Law.

Motion to approve resolution adopting this decision: Joe Mayone. Seconded by: Timothy Scott

John Lyons asked that discussion take place prior to the vote.

Patti mentioned factors in her decision that the Industrial Zone was so close. Also, the setbacks were too large to consider. She was glad the fire department would still be granted access to the tower. Joe agreed. Tim also supported Patti's positions. Jeanne said that she was concerned initially about the small size of the search ring. While she supports the tower for emergency services and coverage she is concerned for the neighbors. Kimberly Garrison asked if all the board members had the chance to review the resolution. Holly indicated that she had read it and it addressed their concerns. Joe agreed.

Roll Call as follows:	Jeanne Goldberg	In favor
	Patti Kelly	In favor
	Joe Mayone	In favor
	Tim Scott	In favor
	Holly Strutt	In favor
	Henry Rua	Abstained

The motion to approve the resolution was passed. The decision will be sent to the attorneys involved and posted to the town website as soon as possible.

Jeanne said in light of the decision on the Monroe test, there was still the matter of the existing variance requests, both use and area. She invited Mr. Olson to address. He said it was up to the board to address the pending applications. He cited the information from Mr. Crosby that a tower in the Industrial Zone could be taller and would still require variances. Patti said the board did not have information about the alternative sites. Mr. Olson said that the parcels under consideration, including 17 Industrial which had signed a lease agreement, were sent to the board. The second parcel's landowner has not returned contact.

Jeanne asked if Verizon had DEC approval for encroachment on the wetlands buffer zone. Mr. Olson said that would be addressed if the board granted the variances. He said it was up to the board to consider closing the public hearing on the open applications.

Jeanne asked for clarification about the second alternate site. Mr. Olson said they expressed interest but have not responded to any calls since. Patti said they should not give up on pursuing the second site. Mr. Olson said the lease on parcel 1 has not been completely executed. Jeanne asked for clarification. Ms. Garrison said to be binding a contract must be signed by both parties. Dan said it would be appropriate for the board to proceed on the fire department site and the applicant could abandon that request and instigate a public hearing for the new site. Patti said it would be good for the board to approve or reject the open application regarding the fire department location. Mr. Olson asked if the application could be considered pending. Dan said that could be appropriate if the applicant would waive the time requirements. Ms. Garrison asked if the alternate sites were made available to the public. Jeanne said not yet since there was no information available, no requests for variances. Dan reminded all that the alternate site would have to go before the planning board also, and that the variance was the purview of the ZBA.

Mr. Olson said the alternate sites were provided in light of the Monroe test requirements. There was some confusion on parcel 2. It is believed to be 34 Industrial Drive. Ron asked if information would

be provided for the new sites. Jeanne asked if the new tower would be taller than the proposed fire house location. There was discussion where Mr. Crosby said the height could be 180' or 150'. Patti inquired about the 100' by 100' leased unit. Mr. Olson said that was standard although the fire department lease was reduced by circumstances. Jeanne asked for clarification on the proposed tower height.

Mr. Olson said he would pursue the Industrial Drive site, but he wanted to preserve the work already done on the present application. Patti addresses Ron's concern that the ZBA needs more complete data on the alternate sites to see the coverage maps. Ron said that the maps provided were somewhat confusing even to an engineer. He said that Mr. Crosby's opinion is the fire house location best serves their needs. Ron asked Mr. Crosby to propagate the other sites at different heights to compare to the standard of the fire house location. Henry agreed that there was controversy about the coverage. Patti also said that the board and the public needed easy to understand presentations of the requirements.

Ron asked about the elevation of the tower locations and the distance to the alternate sites from the fire house. Mr. Lyons asked Ron what differences would be significant between the locations. Ron said that it appears Verizon was considering a height less than the 180' maximum. He asked for models at different heights. Mr. Crosby suggested using 30' increments, models for 180', 150' and 120'. Ron asked that the presentations be kept as simple as possible.

Mr. Lyons asked Mr. Olson what his thoughts were regarding the pending applications. Mr. Olson replied that since they don't know the status of the alternate sites, he would prefer to keep the present application open.

Jeanne said there was still an open public hearing on the area and use variance. Jeanne asked to close the public hearing. Mr. Lyons agreed with Mr. Olson's proposal, to keep the public hearing open until the February meeting allowing the public to comment on all the proposed sites. This would allow a better understanding of what is practically possible to inform the decision on the use variance. Holly asked if the hearing was kept open, was the board expected to table the application or accept public comments? Mr. Lyons asked that the hearing be suspended, and the application be kept open on the table while the alternate sites be considered. It was asked how there could be public comments if the alternate sites were not fully presented.

Jeanne said that in non-COVID times the public would be invited to examine records at town hall. She brought up the question how to make the materials available to the public. Mr. Lyons said that other municipalities can put them up on the town website. Patti asked if Verizon was comfortable posting the information on the website as proposed sites even without a confirmed lease. Mr. Olson had no objection since the application was a public document.

Ron asked Mr. Olson to confirm that public safety users co-locate on the tower even if it were not located at the fire house. Mr. Olson said that the Tarpon policy is they allow that to occur. Mr. Buggeln said they made the policy clear in writing that they allow space available for zero dollars to emergency services, but they do not pay for or install 3rd party equipment. He asked if the shot clock could or would be tolled. He referred to the August meeting where the board had asked to consider the alternate sites.

Mr. Ivino asked for clarification about the federal shot clock. Mr. Lyon said he agreed with tolling the shot clock. Mr. Olson would need to send a letter to the board asking that the fire house

application be tabled and the shot clock be tolled. Jeanne asked for a definition of the word ‘tolled’. Mr. Lyon said it was a legal term for setting the application aside to not lose the time and effort put into the present application.

Jeanne asked what the will of the board was. Joe said to allow Verizon to peruse alternate sites and table the present application. Patti asked Mr. Olson to provide the board with their work on the alternate sites. Ron asked what the board could expect in terms of the presentation on the alternate sites. Mr. Olson said that Mr. Crosby could be in direct contact with Ron. Mr. Lyons said the process would be best facilitated by including in communication with the ZBA prior to the February meeting a proposed plan. Mr. Olson said they would move as quickly as possible. Jeanne reminded Mr. Olson that the last date for submissions be set for January 22nd to allow the board time to digest the information for due diligence.

Jeanne took a motion to adjourn. Patti moved, Henry seconded. Passed unanimously.

Meeting closed at 9:00pm

Respectfully Submitted,
Kevin Freeman
ZBA Secretary