



ZONING BOARD OF APPEALS
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February 7, 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 LLC, Mike Crosby: Verizon Engineer, Brett Buggeln: Tarpon Towers, Sara Coleman: Aerosmith, Brett Buggeln: Tarpon Towers

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

OLD BUSINESS

HONORLAND, LLC
RESOLUTION AND DECISION
TBD River Road
Malden, NY
File#: 21-09
Referral from the Planning Board

Patti made the motion:

Whereas, Honorland, LLC, the owner of residential property (SBL: 18.10-3-20.130) on River Road in the Waterfront Overlay District located in Malden-On-Hudson, requested a 25-foot variance from the required 50-foot setback from the High Water Mean mark; and

Whereas, unbeknownst to the ZBA the Planning Board had, in 2004, approved the subdivision of this property, including the delineation of the setbacks applicable at the time of approval;

Therefore, be it resolved, that the Honorland property on River Road was approved by the Planning Board on January 1, 2004 making it a pre-existing and nonconforming site plan; Be it further resolved, that since the Waterfront Overlay was not adopted and made part of the Saugerties Zoning Law until 2006, the applicant's variance request is not necessary, and the applicant may pursue construction as long as it is within the setback boundaries set forth in the 2004 subdivision approved by the Planning Board.

Henry seconded.

During discussion Patti mentioned that it was unfortunate that sometimes applicants do not provide all the necessary information to the ZBA. It would've saved a lot of time and energy to have the 2004 approval as a matter of record.

<u>ZBA Vote</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>
Patti Kelly	X		
Henry Rua	X		
Joe Mayone	X		
Tim Scott	X		
Randy Ricks	X		

PUBLIC HEARING

**TARPON TOWERS 11, LLC/VERIZON WIRELSS
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 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.

Patti made a motion to send the application to the Ulster County Planning Board for review. Henry seconded. The motion passed unanimously. She also noted that the Part 2 and Part 3 of the SEQRA application were still underway, but with our Planner, Dan Schuster, unavailable because of the electricity outage, it would be addressed at a later date. It was still considered an unlisted action under SEQRA.

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Patti indicated the application for the Fire House location was a previous matter considered under the Monroe Decision's balance of public interests criteria to determine if the application could be exempt from the Zoning Law. It was now being reviewed in the context of both a use and area variance under the Zoning Law.

Patti recapped the application for the public and new ZBA members who were not involved in the original application. She also said there are new neighbors in the Mt. Marion community who may not even know about the application. She asked Mr. Olson if he had anything to add to the summary.

Mr. Olson said he would respectfully disagree on the public hearing status, stating there were four public hearings on the substance of the application starting back on July 6th and going through 2020. He asked the ZBA to look at the June 2020 meeting when the public hearing on government immunity was discussed; it also addressed the application itself. He wanted to be on record that this was not the first public hearing. Patti agreed with Mr. Olson that this was not the first public hearing. However, she said that while the ZBA was dealing with Monroe, the use variance was never discussed because it was not part of the Monroe balancing of interests.

She added that public accountability and having the public participate to ask questions was not a bad thing. She also mentioned that a year has passed since this the firehouse application was before the board, and the ZBA has two new board members who never heard any of the discussions about the Mt. Maron firehouse proposed cell tower from the applicant, the board or the public.

Mr. Olson said he was not suggesting that the public should not have an opportunity to comment. He said the ZBA had encouraged Tarpon to go to the Industrial Zone which they did. When that application was denied, Tarpon went back to the fire department because that application was never fully considered.

He summarized some previous statements made by Mr. Graiff, the ZBA's radio engineer, including saying the Mount Marion location absolutely addressed gaps in coverage. He quoted Mr. Graiff's assertion that the project was "ideally located" at the fire house. When Mr. Graiff and the ZBA suggested the Industrial Zoning District, Verizon had pushed back stating it would require a taller tower.

Patti clarified that the Industrial Zone and Light Industrial Zone were not the problem. The ZBA was pleased that the applicant went to the Light Industrial Zone. It was where the tower was sited within the zone that was the problem. It was sited too close to residents' homes and properties. Mr. Olson said they only had two viable properties that were potential sites.

Patti said that, although Mr. Graiff might've concluded that the site was "ideal", using Mr. Olson's term, Mr. Graiff's comments were only in the context of the site offering the needed coverage and capacity. The 1,500 sq. ft. site itself was not ideal given the applicable zoning laws.

Patti asked Mr. Olson to clarify a question she had asked last year and had received no answer. Why does the application say the tower will have twelve antennae, whereas the Millennium Engineering Report in the same application states that there will be six? This is a contradiction that has not been resolved. Mr. Crosby replied that originally it was for 6 but that didn't account

for future leasing which could bring the total to 12. Patti asked about increased radiation from additional antennae. Mr. Crosby said that the previously submitted safety report was still accurate.

Patti then asked Mr. Olson about an issue that she had brought up previously from last year, the classification of the proposed Mt. Marion tower being a type 4 tower. She reminded him that he had said he would fix that, yet he did not. And the application still refers to the proposed Mt. Marion tower as type 4, and that is incorrect. She said that, for the record, the tower should be listed as Type 5. She said that the reason this is so important is because so many of the alternative sites were dismissed out of hand by Tarpon/Verizon because they would have been type 5 towers.

Patti asked Kevin to put up the graphic of the search zone so the new members of the board and members of the public could see it. She said one of the arguments against the application was the search area was too small.

Patti moved to open the public hearing and Joe seconded. It passed unanimously by voice vote.

Mr. Zinni, who owns the property right behind the firehouse, said it sounded like the man talking about type 4 or type 5 towers and 6 or 12 antenna was just trying to push something that meets the minimum, but that's going to keep growing. He said the tower would be basically in his back yard. It's confusing, and he thinks it belongs in the Industrial Zone. If the ZBA approves this, then other commercial projects will follow.

Patti asked Drew Wood of the Mt. Marion fire department if Tarpon/Verizon still had an active lease. He indicated yes. Kim Garrison asked that the record reflect that Mr. Wood gave a thumbs up to that indicating yes, not a verbal response.

Joe asked about the duration of the lease. Mr. Buggeln said it was for over 30 years, and renewed every five years.

Mr. DelVillano spoke next, asking if Verizon would be able to add more antennae in the future. Patti said they could have that right. He also asked why this application was up for consideration again. Patti explained that it was now being viewed on the basis of the use and area variances requested as per the Zoning criteria, whereas previously it was deemed not immune to the zoning law. He then asked if Verizon had plans for future towers and, if so, why not move this tower in anticipation of additional towers? He asked why the search radius was not bigger, up to 3 miles. He also asked if only simulations were used in forecasting usage and capacity. He said you need real tests to know what's going on.

Patti brought up the search zone and she mentioned that the town of Gardner had a 5-mile search zone. Mr. Crosby said that the Gardner radius was a third of a mile. Patti reiterated that the subject of the search zone for this application will continue to come up because it's so small and seems to be predeterminate to the choice that had already been made. Patti said if Tarpon/Verizon and other cell companies would follow the Zoning Law and citing criteria, particularly not citing towers near homes where they'd be in the fall zone of the tower, then we'd all have success in getting applications successfully completed. We don't want to deny applications, but is very frustrating to us that we keep getting applications with towers being

sited near residential properties and ignoring the fall zone specifications in the law. She referenced what Joe Mayone said at the last meeting, that, if cell companies follow the zoning criteria, they will be successful.

Mr. Olson said that he was aware of where the Industrial Zones and OLI Zones are, but those are not applicable to the modern technology. He said there's no way to provide cell coverage to the town using just those zones. He said the law was written 20 years ago, and it no longer works with the new technology. Patti inquired about smaller technology used in urban settings. Mr. Crosby said the infrastructure was not robust enough to support satellite transmitters. Patti said that the newer technology was forcing cell tower presence into residential areas. Mr. Crosby said Verizon doesn't have the infrastructure to support what Patti asked about. Patti said the technology is getting ahead of what people are willing to tolerate.

Patti said that Mr. Olson had previously agreed that the lease area of 1,500 sq ft was small. Mr. Olson said it was big enough to accomplish his goals.

Mr. DelVecchio asked about liability if the tower were to fall. Mr. Olson said that the tower owner would be responsible. Both Henry and Patti said that's not what Mr. Olson said last time, which was if a car or a person or a home gets damaged or injured by a falling tower or antenna, not on the firehouse property, they would have to file a claim. They are not covered outside the firehouse property.

Mr. Kimble from the Daily Freeman asked about the number of carriers that the tower would be capable of carrying. Mr. Buggeln said that was not determined yet. He said he would like to put on three of four carriers and would design it for three. Patti said that the difference between 6 and 12 antennae was an important visual aspect to the public.

Joe asked if the tower were approved at Mt. Marion would the next tower be within 2 miles. Mr. Crosby replied that there was already an existing tower within 2 miles of the Mt. Marion site, the Ulster Travel Plaza site in Ruby. Mr. Crosby said that the antennae configuration was fluid and not completely known at this point.

Julie Desch called to support the neighbors of the fire house. She asked what was the northernmost point of the search area for a tower was. She said if she was someone hoping to get a project off the ground, she wouldn't just send a letter. She would do a site visit, talk to management, negotiate price, and do the leg work needed to site a tower. She questioned why sites along the Thruway were not considered. Mr. Olson asked if the Solite property was one she mentioned in her letter. He said that they had sent a letter, and Solite refused Verizon's lease request.

Patti recalled something in the Telecommunications Act of 1996 that referenced utilities cooperating with one another. She had in mind the large Central Hudson property, and asked if there was any outreach to them about that property. Mr. Olson didn't recall any requirement for cooperation. Patti said it wasn't a requirement. Mr. Crosby gave his take on the 1996 Act where telecom companies were not allowed to operate on the same towers. The Act promoted collocation to make it easier for utilities to share towers.

Henry asked if the Fehr Brothers were approached. Mr. Crosby was not familiar with Fehr Brothers, but since it was outside the search area, he deferred to site acquisition as it is not his call. Ms. Desch pointed out how Mr. Crosby and Mr. Olson don't know the properties in the area and can't even identify the northern most property in their search area. They are not familiar with the actual properties involved. Mr. Olson said they had identified all appropriate properties in the search area, saying the fire department made the most sense. He said the site was defined by available science and technology.

Mr. and Mrs. Pierson, who live across from the fire house and the proposed tower, spoke saying they also sent a letter. Patti confirmed the bard's receipt. He said that his home is in the fall zone and referenced the recent ice storm. He said that the objections raised in the Industrial Drive application were applicable to the fire house as well. He said that the ZBA received a letter from Andrew Campanelli last year with 30 neighbor signatures pointing out why this tower should not be built.

Joe asked if physics and science might apply to the Central Hudson property. Patti said that Verizon's explanations ring hollow when told that sites won't work outside the search area when Verizon themselves had found viable sites outside the search zone on Industrial Drive. Mr. Olson said the only way to make the tower work inside the Industrial Zone was to increase the tower height, and it was actually 30 feet lower than the one Mike Crosby proposed. He said before the politics were involved, the ZBA wanted the site on Industrial Drive. Patti and Henry questioned what politics Mr. Olson was referring to. He retracted the comment. Mr. Crosby said each site required calculations that determine tower height. He said that they had researched every property offered by the ZBA, and they needed to address the area without coverage. Patti said the tower height was not as crucial if the tower was not close to residences and the fall zone.

Ms. Desch asked Mr. Crosby about alternative sites that were not analyzed because of the tower types. Mr. Crosby said the process is that the RF team issues the search area, then the site acquisition teams looks for locations regardless of zoning. Once sites are available, they are submitted for review. Patti said that 21 viable sites were rejected out of hand and dismissed as residential areas that would require type 5 towers. Mr. Crosby said the interest in the fire department was in using their tower and construction of a type 4 tower.

Patti said that reviewing those originally dismissed properties would be something Tarpon/Verizon might want to do.

Ms. Colman said to clarify the 21 properties were discounted not only because they would be type 5 towers, but also because they were small, residential properties. Ms. Desch thought some properties were discounted because of Type 5, and the fire department as a Type 4 was preferred.

Kim Garrison said her recollection was that 4 or 5 of those properties were not small, and we dismissed because they would have been type 5. Patti concurred.

Tim asked Mr. Crosby about the definition of a non-viable site; what were the minute criteria that made a site borderline. Mr. Crosby said there was a long list of objectionable conditions to define viable properties. The criteria are most associated with real estate constraints.

Randy asked about the present 80' tower at the fire house and why couldn't the proposed tower be closer to the firehouse where the current one is.

Patti asked Mr. Olson if the stakes indicating where the tower would be were still on the property. She was told they are not.

Patti suggested that because the ZBA's Planner and others were not able to attend because of the ice storm, the public hearing be extended. Henry agreed. Kim recommended a motion, Henry did so. Randy seconded. It was approved by voice vote.

New Business

Patti moved to accept the January minutes. Henry seconded. It unanimously passed by voice vote.

Patti said she had expected to hear back from the fire departments on the matter of their signs, but they had not contacted the Zoning Board with revised variance requests. She said they had also not contacted Kevin Brown, the Code Enforcement Officer, to work out a plan for coming into compliance. The options are to refer the fire companies for enforcement or try to get back in touch with them. Henry said there was no other option than to refer them back to the building department. Henry made a motion to refer the issue back to the building department for enforcement. Tim seconded. Motion passed with Randy abstaining. Patti said she would draft a letter to Kevin Brown about the noncompliance.

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

The meeting was adjourned at 8:25 pm.

Respectfully Submitted,
Kevin Freeman
ZBA Secretary