

ZONING BOARD OF APPEALS MEETING MINUTES - FINAL
WEDNESDAY, JULY 24, 2013

MEMBERS PRESENT:

Rocco Mancini, Chairman
Martin Otter
Phillip Zemke

MEMBERS ABSENT:

Stephanie Fitzpatrick
John Schneider

ALSO PRESENT:

William Gallagher, Supervisor
Jack Campisi, Town Board Member

Chairman Mancini opened the meeting at 7:00 p.m.

Public Hearings:

1. **Munsch Area Variance** – Chairman Mancini read the legal notice that was posted in the paper and sent to neighboring landowners and then he read the rules of procedure that the Board will follow for the public hearing.

Mark Graminski, P.E./L.S. was present on behalf of the owner, Lauren Munsch, for the public hearing for area variances required to move ahead with their proposed two lot subdivision of property located at 212 Round Lake Road, tax grid number 6370-00-954632. Mr. Graminski said this is an area variance application for four area variances for Lot 1 of a proposed two lot subdivision: to allow minimum lot width at the building line of 192 feet where 300 are required, to allow a 12.3 foot front line setback for the residence where 85 feet are required, and for the garage to allow a front line setback of 31.6 feet where 85 feet are required and a 12.5 foot side line setback where 35 feet are required. He said the applicant, Lauren Munsch, is proposing to subdivide her property on the south side of Round Lake Road. Part of this parcel was also located on the north side of Round Lake Road but they have filed paperwork with the assessor's office to split that section off as a natural subdivision so it is not part of the subdivision application. The parcel is 7.42 acres. Proposed Lot 1 will have the existing residence and garage. Proposed Lot 2 will be for a new dwelling. Mr. Graminski said the lot line configuration is based on the physical features of the property. The existing access for Lot 1 will be relocated as part of the subdivision application and the new location, which is under review by the Department of Public Works, had to optimize the sight line characteristics. There is a roadway that goes to the south on this property located between two rock ledges. The proposed alignment for the driveway to access lot 2 is along that existing roadway. The two variances required due to the subdivision are the minimum lot width at the building line and the side setback for the pre-existing garage. The front yard setback for the house and the garage are for pre-existing conditions.

Mr. Zemke asked about the size of the lots after the subdivision and Mr. Graminski said lot 1 is proposed to be 3.0 acres and lot 2, 4.42 acres. This is in three acre zoning. Mr. Otter asked if it was the intention of Ms. Munsch to sell lot 2 and Mr. Graminski said her intention is to build on lot 2 for herself. Another family member currently lives on lot 1. Mr. Zemke said this is a continuation of a Planning Board action where the public hearing has been opened and adjourned until a decision is made by this board. Mr. Graminski agreed and said the public hearing will be re-opened and continued with ongoing review by the Town Engineer, Dutchess County Department of Public Works and the Dutchess County Department of Health. Mr. Otter asked why the total parcel area is 15.2 acres and Mr. Graminski said that includes the property on both sides of Round Lake. It used to be a single parcel but recently, the applicant broke off the parcel on the north side as they are naturally subdivided by Round Lake Road. Mr. Graminski said he will clarify the acreage on the map. Mr. Graminski said he has done some deep and perc tests and he has plans and profiles for the driveway which were reviewed by the Town Engineer and Fire Department who are basically okay with the concept. There is a ditch along Round Lake Road which directly runs off to a culvert under Round Lake Road which then dumps the water into a pond on the property across the street. There is an outlet for all the run off but it is still under review. Mr. Graminski said he has prepared an erosion and sediment control plan and he has done a sight line analysis for the Dutchess County DPW. Mr. Zemke said so this proposal has been vetted by a number of agencies by the town and county and we are basically looking at the lot line as related to the area variance. He said he does like the shared access for both parcels. Mr. Otter asked about snow removal as the driveway appears to be in a cavern. Mr. Graminski pointed out the area for snow on the map.

Hearing no public comment, Mr. Zemke motioned to close the public hearing. Mr. Otter seconded. All aye. Motion carried 3-0.

Mr. Zemke said the Planning Board has sent a positive recommendation to the ZBA for this action and the layout has been looked at by a number of people with positive results. He said he has no issues with this. Mr. Otter agreed

Chairman Mancini and the Board completed the Findings and Decision as follows: An undesirable change will not be produced in the character of the neighborhood; the benefit sought by the applicant cannot be achieved by a feasible alternative to the variance as the variances are required due to the adjustment of the lot line and for pre-existing buildings; the variance is not substantial as the house and garage are pre-existing; the variance will not have an adverse impact on the physical or environmental conditions in the neighborhood as there were no comments received by neighbors and no one came to the public hearing – any impacts are mitigated by project design; the difficulty is self-created because the applicant chose to subdivide. The Board agreed that the benefit to the applicant does outweigh the detriment to the neighborhood and that there are no conditions to this variance.

Mr. Zemke motioned that the Zoning Board of Appeals accept the Findings and Conditions for the Munsch area variance application. Mr. Otter seconded. All aye. Motion carried 3-0.

2. **Orange County-Poughkeepsie Limited Partnership d/b/a Verizon Wireless**
Scott Olson, Attorney, was present representing the applicant for the public hearing for an area variance to erect a 160 foot communications facility on property located on Academy Hill Road, tax parcel number 6572-00-862990. Chairman Mancini read legal notice that was posted in the paper and sent to neighboring landowners and then he read the rules of procedure that the Board will follow for the public hearing. Mr. Olson said to summarize, Verizon Wireless has submitted an application for an area variance for a 160 foot tower for a proposed new site along Academy Hill Road. We have four half mile gaps along the Taconic State Parkway, a 1.5 mile gap along Jackson Corners Road and several miles of gaps on other secondary roads in town. Mr. Olson said when we first went to the Planning Board in March, we were proposing a 150 foot tower. One member of the Planning Board suggested we go higher, to 160 feet to allow for co-locators. No one on the Board objected and we did not object so we pursued this application for 160 feet. It has been pointed out though that the Zoning Code only allows the ZBA to vary up to 150 feet and we can survive with 150 feet so we will amend this application for a 150 foot tower and he said he will follow up this verbal amendment with a written amendment. So, the variance application is for a 150 foot tower on a 93 acre parcel of property. We meet all setback requirements. Previously, one of the map sheets had an error; that has since been fixed to show that we do meet the fall zone. Section 200-21 does allow for the ZBA to grant a height variance up to 150 feet if an independent radio frequency consultant determines that adequate coverage would not be provided by a tower of lesser height..... Mr. Olson said as part of the variance application, we provided you with exhibit 6, a letter from Ronald Graiff, RF consultant retained by the town, dated April 23, 2013, in which Mr. Graiff finds it is clear that 150 feet above ground is the minimum height necessary to provide some of the relief but not all that Verizon seeks. With that information, we feel there is adequate justification in the record to support the variance by this board. Regarding the visual impacts, we delivered several boards showing enlargements of the photo sims of the balloon test. In some locations, you do see the tower. We do our best to conceal the towers and to find good sites but this is a line of sight technology. If the tower is below tree level, it is not going to work effectively. Mr. Olson said he also believes this application was positively recommended by the Planning Board for approval at 150 feet. We do have to go back for a continued public hearing at the Planning Board. He said an issue came up about the RF report and Mr. Graiff wanted to see some additional information which was provided to him; Mr. Graiff said it shows him exactly that his conclusion is not going to change - 150 is the minimum height necessary. Mr. Zemke said there is an issue regarding the coordinated review with the Planning Board. This will be a classified as a Type 1 action with a coordinated review with

the ZBA. The Planning Board has to declare their intent to be lead agency and circulate but they have not yet commenced that review. Mr. Olson agreed with that.

Public Comment: Chairman Mancini read a letter sent in by Howard Zelbo, 735 Academy Hill Road, opposing the cell tower. Peter Goss, Willow Glen Road, asked about access to the tower and Mr. Olson said they will use the existing logging road as much as possible then veer off of it. Mr. Goss said he would only ask that if this is going to be done, please put this in in the least obtrusive way as possible. Mr. Goss mentioned an application for a tower up on North Road but he does not know what happened to that. Mr. Goss also asked if it would be feasible to put up a monopole tower as opposed to a lattice tower. Mr. Olson said a monopole, which has been discussed with the Planning Board, could be installed at this height. Mr. Goss said he thought that would be less intrusive. Al LoBrutto, Academy Hill Road, said he went to the Planning Board public hearing and said there was a lot of discussion about alternative towers and how they could be used to cover this area. We talked about the possibility of a three tower system with this tower being at a lower height, possibly 80 or 100 feet tall. Mr. LoBrutto said we discussed using the Woody Row Road tower, the Mariner tower and this tower at 110 feet and it showed it would cover the whole parkway area except for two gaps, one mile and $\frac{3}{4}$ miles. That was at 110. Mr. LoBrutto said he would want an analysis done by an independent contractor regarding what kind of coverage we can get from the Near Road tower if that tower was at 150 feet. There is a one half mile gap in proposal. If there was a two or three tower solution, maybe it would cover that gap. He wants the board to look at all these other solutions and ask our engineer to look at these different solutions to find out if we could go with a smaller tower. We have to look at all the options and talk to our consultant. Gordon Oliosi, Academy Hill Road, said he recalls being in this room two years ago when a tower was being discussed on the other side of Academy Hill Road, the opposite side of North Road. They discussed the other two towers and what functionality they now or could have that could impact this. We never heard anything back. Mr. Oliosi said he did not receive any notification of this meeting or the meeting before this. He thinks whole communication process needs to be examined and scrutinized. At the other meeting, there was a lot of discussion about why we need this tower. If there is a gap, so what? Maybe we need bigger gaps, not less. A gap does not concern me. He said he would rather have the beautification than the cell service; it's worth the tradeoff. Kim Kahn said she has nothing to say at this time. Joe Grotto, 140 Fishwoods Road, said he spoke at the July 3rd Planning Board meeting against the tower. Since that time, he made the rounds to talk to as many neighbors as he could. Mr. Grotto said this tower is not doing anything for Milan residents. He said everyone he has spoken to has cell phone reception, even himself. He said people who have a problem with cell service should get the black box that Verizon sold to him a while back. He has reception through that box. He said it comes down to destroying property values, putting a big ugly tower up, not for the benefit of Milan residents, but for people going up and down the parkway to fill a small gap.

Mr. Grotto said our family speaks out highly against this tower. From our hillside, we would be looking directly at this tower. He said he drove around the northern part of Dutchess County and Columbia County and the only place he saw towers is on the Taconic. The one in the next town over is a monopole tower which is much more acceptable than the lattice towers. The reasons that were stated as to why we need another tower should be investigated carefully. Tom Whyte, 1262 Turkey Hill Road, said he has no cell service at his house. He has the box, which is a network extender, and gets cell service when there is a good internet signal and a clear shot at the satellite. If there is cloud cover, no light, or a weak internet signal (he has frontier, no cable, and it constantly drops in and out), then he has no cell service. Mr. Whyte said he thinks this is a safety factor. He had the unfortunate experience of having a fire five years ago in Garrison. It was during a storm so there was no power, no phone lines, and no way to call the Fire Dept. His wife had her cell phone and could call which saved us. Mr. Whyte said he thinks towns need cell service. As far as not caring if there is service on the Taconic, what happens if there is an accident at 3 a.m., a car overturns and is in a ditch, how do they get help? He tried driving on the Taconic late at night and had no bars on his phone. He thinks that should be taken into consideration. Is this one tower the answer? He understands the aesthetics but safety should be a factor. Paul Doherty, property owner of the tower property, agreed it is a safety factor with police and firemen. He said this project started about three years ago. The first site selected on the property was turned down at a second meeting because it was too close to the property line. A second site was identified a year later and the construction manager measured everything and in order to get co locators on the tower, they needed to bring in their equipment and there would not be enough room on the plateau so they asked to have the tower moved downhill 15 feet in elevation which means the tower would be the equivalent of a 165 foot tower if it was a 150 foot tower put in at the second location. This is the site they have chosen. At the public hearing with the Planning Board, many people said Verizon approached them years ago. The town collects good revenue from taxes on a tower and every time a co-locator comes on, the tax revenue goes up. There are studies that show a cell tower has little or no devaluation of property values and, in some cases, values have gone up because that area now has cell service. Most people are getting rid of land lines. The Board should consider those things also. Mr. Olson said he has heard a lot about property values and he does hear this a lot. This Board has to be focused. Property values are not an environmental impact and this board should not consider that. That is more for Planning Board consideration under site plan and special use permit review. We are here for a variance. Public utilities are treated differently. The highest court in New York State has said consistently for the last 20 years that that test does not apply to us. It is a two prong test, prove need and that there is no other economical way to achieve the result. This Board needs to stay focused. As to alternatives, our engineer did provide a supplemental alternative analysis directly to the Planning Board as that is where the issue was raised. He said Mr. Graiff has commented that the information showed what he thought it would show, that essentially, this proposed tower cannot be eliminated to still provide the service

we need. As far as safety and residents not being concerned about the Taconic, two or three years ago, on the Adirondack Northway which is similar to the Taconic, there was a couple coming home from a wedding in Canada who ran off the road in a snowstorm. They were stuck for over 30 hours with no cell service and froze to death. Mr. Olson said he believes safety is a real issue. He does not drive the Taconic often but almost totaled his car with a deer once in an area that did not have cell service. Chairman Mancini asked if, when they are considering parcels for a tower, do they do tests to find the most advantageous spot for the tower? Mr. Olson said we do, it is a science. We take into consideration local zoning regulations. The RF engineer reviews all the sites in an area; topography is a huge issue. These sites are line of sight technology based. Antennas have to be above the tree line. This site was very carefully looked at and documented in analysis. Mr. LoBrutto said as far as the Mariner tower, the only analysis he has seen is at 110 feet. He would like to see an analysis of another 20 or 30 feet to see if Verizon could co-locate. He would like the Board to see the analysis that was done on all three towers. The Board needs to do their due diligence. The Board should see the analysis with Mariner to 150 and Woody Row at 190. Is the convergence of both towers in an area they want covered? If it covers, it would eliminate this tower. Mr. Olson said if we could meet our coverage area with those two towers and save money and time, we would. That analysis has been completed. It is a very comprehensive analysis which included Woody Row Road and Mariner. He does not know if Mariner was at 150. Mr. Tucci said he would look into the Mariner height. We can't eliminate this tower and provide service to the 4 to 5 mile gap. Mr. Zemke said overall, your goal is to provide service to the Taconic. Other people have represented they have coverage. Mr. Olson said without a doubt, the Taconic is a goal, but we also want to cover local roads. People say they have coverage, but is it Verizon, AT&T, we don't know that. Just because they have one bar, does not mean it's adequate for the overall area. Chairman Mancini asked if safety is a big factor, is it possible to rent parts of the tower to other carriers. Mr. Olson said we've designed the tower to accommodate future co-locators. Your law requires us to do that with agreements in place. Ms. Kahn referred to the couple Mr. Olson spoke out in the Adirondacks and said, for this 4.5 mile gap on the Taconic, this area is populated enough that she could not imagine no cars would go by and that no one would stop. We have a great Fire Department, a great Police Department, and great neighbors. She cannot imagine anybody being left out there for 33 hours in this area. Mr. Whyte said he recalls three years ago some guy rolled over into a ditch out of sight on the Taconic and was there overnight. Mr. Otter said he too recalled that but he was found by using triangulation. Mr. Zemke said this is a parallel review going on with the Planning Board. The Planning Board will be reviewing their requested analysis at their August 7th meeting. He suggested ZBA members may want to attend the meeting to hear the discussion. Mr. Oliosi asked what the notification process is for public hearings and Chairman Mancini said it is all neighboring landowners within 200 feet of the property. Mr. LoBrutto said that the next Planning Board meeting on August 7th will be a continuation of the public hearing.

Mr. Zemke motioned that the Zoning Board of Appeals adjourn the Verizon Wireless public hearing until the August 28th ZBA meeting. Mr. Otter seconded. All aye. Motion carried 3-0.

Applications:

1. **Thomas Whyte Area Variance** – Mr. Whyte appeared for his area variance application to construct a garage approximately 30 feet from the side property line where 50 feet are required and to place the garage in front of the main dwelling in variance to Section 200-18.A.(2) of the Zoning Code on property located at 1262 Turkey Hill Road, tax grid number 6573-00-667465. Mr. Whyte said initially, he was told his required side line setback was 35 feet but the property is in the A5A zoning district which requires 50 feet. He has proposed to place the garage in this location due to the terrain of the property and the location of the septic fields. The property is also wooded. The shed has been removed. The house was built in 1991. He is proposing a two car garage. Mr. Zemke thinks a site visit will make this clearer, and Mr. Whyte was agreeable to the Board doing a site visit. He said they can stop by any time and do not need to call ahead first. Mr. Zemke said he would also like a better drawing with clearer dimensions. He does not feel the current drawing is an accurate representation of the proposed location for the garage. Mr. Whyte should submit a better representation drawn to scale on the site plan. Mr. Whyte said he is requesting a variance to 30 feet to allow some wiggle room but they are going to put it as close to 35 feet as they can. Mr. Zemke said it would help if the garage was staked out on the property. Mr. Whyte will notify the Clerk when the garage is staked and then the Board members can go out and take a look.

Mr. Zemke motioned to set the date for the public hearing for the Whyte area variance application for the August 28th ZBA meeting. Mr. Otter seconded. All aye. Motion carried 3-0.

2. **Nicolich Area Variance** – Robert Ihlenburg, L.S., appeared as the authorized representative for Carlo Nicolich for his area variance application to decrease Mr. Nicolich's pre-existing, non-conforming lot from +/- 1.3 acres to +/- 1.1 acres in order for him to proceed with a lot line adjustment with Timothy Welch. Mr. Ihlenburg appeared at the Planning Board meeting on July 3rd and the Planning Board sent a positive recommendation for approval to the ZBA. The property is located on Fitzsimmons Road, tax grid number 6474-00-875110 in the A3A zoning district. Mr. Nicolich owns an additional 18 acres but it is a separate lot. Mr. Nicolich and Mr. Welch are proposing a lot line adjustment where Mr. Nicolich will convey 0.179 acres with 67.5 feet of road frontage to Mr. Welch who is currently using portions of this parcel for driveway access. Mr. Ihlenburg said they believe this minor change to be insignificant. The Nicolich property is vacant land. Mr. Zemke asked what is the benefit to Mr. Nicolich to do this adjustment. Mr. Ihlenburg said Mr. Welch has been using this piece of property

as access and as part of his side yard and he mows it. It looks like it belong to the Welch property naturally. The driveway is very steep when it comes down and was somehow constructed over the property line. It has existed since the early 1900's. Mr. Zemke said he believes the application is complete to set the public hearing.

Mr. Zemke motioned that the ZBA set the date for the Nicolich area variance public hearing for the August 28th ZBA meeting. Mr. Otter seconded. All aye. Motion carried 3-0.

Administrative Items:

Approval of Minutes:

- Mr. Zemke motioned to accept the minutes of June 26, 2013 as presented. Mr. Otter seconded. All aye. Motion carried 3-0.

Mr. Zemke motioned to adjourn the meeting at 8:30 p.m. Mr. Otter seconded. All aye. Motion carried 3-0.

The next meeting will be held on Wednesday, August 28th at 7:00 p.m. at the Town Hall.

Respectfully submitted,

Karen Buechele, Clerk
Planning and Zoning

cc: Catherine Gill, Town Clerk
Town Board