

ZONING BOARD OF APPEALS MEETING MINUTES - FINAL
WEDNESDAY, AUGUST 27, 2014

MEMBERS PRESENT:

Rocco Mancini, Chairman
Stephanie Fitzpatrick
Martin Otter
John Schneider
Phillip Zemke

MEMBERS ABSENT:

None

ALSO PRESENT:

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

Public Hearings:

- 1. Hunt Area Variance/Special Use Permit** – Chairman Mancini motioned that the Zoning Board of Appeals adjourn the public hearing for Hunt Area Variance/Special Use Permit application until the September 24th ZBA meeting as requested by the applicant. Mr. Otter seconded. All aye. Motion carried 5-0.
- 2. Lang Area Variance** – Jeremy Lang was present for the public hearing regarding his area variance application to re-locate his stand-by generator and propane tank to 21 feet and 12 feet respectively from the road and in front of the dwelling on property located at 1110 Willow Brook Road, tax grid number 6570-00-548706. Mr. Lang said he owns the property across the street so visibility won't be an issue from that property. He submitted pictures showing the proposed location and said the tank will be located behind the foliage shown in the pictures. Mr. Otter asked why he chose a vertical tank versus a horizontal, smaller propane tank. Mr. Lang said that is the tank Freedom Propane gave me but he said he would not be averse to swapping it for a smaller tank if it is possible.

Chairman Mancini read the public notice that was sent to neighboring landowners and published in the paper. Ken Kreminik, a neighbor, submitted a statement dated August 14, 2014 that he had no objection whatsoever to this proposal. There was no additional public comment. Ms. Fitzpatrick motioned to close the public hearing. Mr. Otter seconded. All aye. Motion carried 5-0.

Mr. Zemke said this variance request is utilitarian in nature, and in this area, it is wise to have a generator. This is the most appropriate place to locate it on this property and they are well-screened.

Chairman Mancini completed the Findings and Decision with the Board which state that 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, the requested variance is not substantial, the variance will not have an adverse impact on the physical or environmental conditions in the neighborhood, the alleged difficulty is self-created as the applicant chose to put it in this spot but is not self-created in that this spot is the best location for it, and the benefit to the applicant does outweigh the detriment to the neighborhood or community.

Mr. Zemke motioned that the Zoning Board of Appeals approve the Findings and Decision for the Lang area variance. Mr. Schneider seconded. All aye. Motion carried 5-0. The applicant can now apply for the building permit for the generator and propane tank.

- 3. Orange County-Poughkeepsie Limited Partnership d/b/a Verizon Wireless –** Scott Olson, Attorney for the Applicant, and Rick Andras, Engineer for Verizon, were present for the continuation of the public hearing for their area variance application to allow the installation and operation of a 150' tall communication tower in variance to Section 200-21B(3) of the Town of Milan zoning ordinance on property located on Academy Hill Road in the A5A zoning district, tax grid number 6572-00-862990. Chairman Mancini read the rules of conduct for a public comment. Mr. Olson submitted a document dated August 12, 2014 in response to questions asked in a ZBA letter dated June 2, 2014 and comments raised at the ZBA's May 28th meeting. Mr. Olson said most of the package was prepared by Rick Andras. A key issue is signal strength relative to the zoning code's definition of adequate coverage of -90 dBm. As stated in the August 12th correspondence, Mr. Olson maintains that the federal government preempts municipalities from regulating signal strength, that it is the sole and exclusive jurisdiction of the FCC. Mr. Olson provided a history of the Telecommunications Act of 1996 and said that he believes that language in previous court cases will confirm this is a preemption issue. Mr. Olson said that if towns and municipalities were able to regulate radio frequency, the wireless industry would crumble due to inconsistency. Milan adopted the -90 dBm standard in 2001 when the infrastructure was analog in nature but was gearing up to the transition to digital. There is a big difference in the two systems in terms of power and the devices being used. In the early 2000's, the cell phones were large and could use a -90 dBm threshold to establish links. Now, phones are tiny and digital and have about 1/20th the power of those larger phones. At -90 dBm, you can establish a connection but not a reliable, robust threshold that we design our sites to. Mr. Olson said the FCC allows the carriers to choose what frequency to use within a certain range, believing the carriers know their own systems best and will design a system that works properly. However, even if the federal government does not preempt this, we have provided plots at -90 dBm threshold which shows we still have a huge need for a site in this area and provides justification for a new tower at the height proposed. Mr. Olson referenced a Clarkstown case which used a signal strength of -84 dBm which is much stronger than -90. Verizon provided their information at -85 dBm which is their standard. There were references from the FCC that the signal strength used in the Clarkstown case was an appropriate signal strength. Mr. Olson said -90 dBm is not an appropriate design standard. Mr. Gordon retained a consultant who agreed -85 dBm is a reasonable and appropriate standard when reviewing our material because it is one of the industry standards for an area such as this. So, as to where are we now, the Planning Board issued a negative declaration in April of 2014 which was done as a coordinated review with this Board and they issued findings which could apply here. The Planning Board based their decision on a 156 foot tree tower with an antenna center line of 146 feet. Our most recent plans in front of this

Board show a 150 foot tree tower with a center line of 135 feet. We are aware the Planning Board strongly thought the minimum height of the antennas should be 146 feet. We wanted to lower the tower height to 150 feet based on the zoning law. Mr. Zemke asked Mr. Olson to confirm that the tower being proposed to this Board is 150 feet total height with antennas at a center line of 135 feet. Mr. Olson said that depends on the -90 dBm analysis – a center line of 135 feet is supported by the -90 dBm threshold. The -85 dBm analysis supports a center line of 146 feet. Mr. Zemke asked Mr. Olson what he is proposing to this Board. Mr. Olson said it depends on whether or not the Board imposes the -90 dBm standard. If the Board imposes the -90 dBm standard, we would not agree with it but would live with a 135 foot center line but are committed to keeping the total tower height at 150 feet. Mr. Zemke asked to see a rendition of the proposed tree tower. Liz Axelson, Planner retained by the Board, showed a rendition of a 150 steel tower with the top antenna array at a center line of 135 feet. Mr. Olson said the branches are intended to come out behind the antenna, to camouflage them so you don't see them. The antennas are also wrapped with material that matches the branches. The antennas are at 135 feet so the finished tower has a nice shape. Ms. Axelson said when the Planning Board looked at this, they felt that with an overall top of steel height of 150 feet, the top of the tree could be loped off, the center line of the antennas could be at 146 feet, and the camouflage design remains essentially the same. Mr. Zemke said so in front of us is 150 foot tower with an antenna center line at 135. Mr. Olson said if you impose the -90 dBm, the 135 center line is justifiable but we do not agree with that threshold but are willing to live with that if that is what the Board wants to impose. Chairman Mancini asked if Verizon keeps the center line of 135 feet, would another tower be required? Mr. Olson said there is a three tower solution that has been discussed for this area. Verizon is already on the tower that is located on Near Road which will provide service to the north part of town. This tower will provide 3.5 to 5 miles of service along the Taconic. The Woody Row Road tower owned by the Town would help provide service to the southern part of town. So, point being, even at a 135 foot center line, Verizon is not going to look for another tower to make up the difference – down the road, it will be the Woody Row Road tower. Mr. Andras added that there is still a half mile gap with all three towers. Mr. Zemke said he is concerned that as the antennas get closer to the top, the tower looks less like a tree – can you pull the arms in? Mr. Olson said instead of 12 foot booms, there might be 8 foot booms, but they would definitely be retracted to give us more height. Mr. Zemke said looking at a 135 foot center line, you might want to go higher. Mr. Olson said that depends on this board. -90 dBm or -85 dBm would determine what configuration we use. If the board goes to -85 dBm, it's a stronger signal but we are still left with a 1/3 mile gap along the Taconic, even with Woody Row Road. At -90 dBm, it is a quarter mile. It is more coverage, but the coverage is not as good with a weaker signal and possibly more dropped calls. Mr. Zemke asked what is the optimum with keeping this at 150 feet in height in terms of operation and camouflage system. Mr. Olson said Verizon's optimum is to be at 146 feet antenna height give or take a foot or two - we can make that work with antennas that don't stick out and not have a top heavy tree. Mr. Otter said it looks like if you do not do camouflage, you could shorten the height considerably. Mr. Olson said at 146 antennas center

line, that's why we have 156 feet to the top of the tower – it is due to the cone shape. Mr. Otter asked without camo altogether, if you used a monopole design, what is the maximum required to get results. Mr. Olson said it depends on how this board approaches this. At -90 dBm, you are looking at 140. All the engineering you have seen shows you that -85 dBm is the standard that is appropriate and that would work the best at the minimum height necessary. Mr. Schneider said the tower will be least intrusive in the summer time when leaves are up but in the winter a green tree will stick out. He asked about the style of the camouflage. Ms. Axelson showed photo simulations that were done using this design with the camo wrapped around the antennas. The sims were based at 156 feet. She said the most visible viewpoints were viewpoint 7 and 10. Mr. Olson said they are not located on the Woody Row Road tower as yet and documents that have been submitted have proven that Woody Row alone would not provide service to this area. Mr. Olson said there are two standards that can be used as findings for an area variance for a cell tower – the traditional variance standards or the public utility standard. He said he would not have an argument if the Board uses the traditional variance standards and went through the list. As far as an undesirable change or a detriment being produced in the neighborhood, Mr. Olson said we are proposing a stealth tower which mitigates by camouflage and the Planning Board has issued a negative declaration so the answer is no. The benefit cannot be achieved by a feasible alternative to the variance as we have submitted evidence that countless other scenarios will not work so the answer is no. Also, the zoning law allows the ZBA to grant a variance up to 150 feet if certain criteria are met which they have been so the answer is no. As far as adverse impacts, he believes the answer is no. The development is small. They developed an extensive SWPPP which has been approved by an independent town consultant. As far as self-created, the height is topography based, not self-imposed but even if it were, that is not necessarily determinative. Mr. Zemke said at the end of the last meeting, this Board had four questions which he believes have been addressed except he is still unclear on the coverage area – how is that defined? Rick Andras, Verizon engineer, showed the stretch of the Taconic from the town line down and said this tower will cover well over 10 miles on linear coverage over a non-Taconic area. As far as the 146 feet center line versus 135, at a height of 130 which is not a significant difference from 135, they are down to a one third to half mile gap. Verizon agreed to live that that just to get the project rolling along, keeping the tower at 150. The gap would have to be addressed down the road though. Mr. Zemke asked how that would be addressed. Mr. Andras said it is hard to tell at this point. Mr. Zemke asked the applicant to provide an answer to Mr. Grotto's letter and Mr. Olson said Verizon is now located on the Near Road tower and documents have been submitted which prove the Near Road tower cannot cover this area alone.

Ronald Graiff, P.E., was present as a radio frequency consulting engineer for the Town. He said he has been reviewing cell applications for many years and stated he is not an advocate for Verizon but has been working for the Town of Milan to ensure the facility placed meets the requirements of the carrier and limits additional towers in the Town. He said he has been involved in this process since the first days with the Planning Board. Mr. Graiff submitted a report dated

August 20, 2014. As far as the Board's question, what are the FCC rules and do they supersede the decibel levels in the zoning code, Mr. Graiff said in cellular, the FCC leaves signal strength up to the carriers because it is dependent on system design and technology. There are two references to signal strength in the FCC regulations. 47 CFR 22.911 states that the CGSA area, the area that is protected for each carrier operating in a specific market, be calculated with a formula that states: the cellular service is considered to be provided in all areas including 'dead spots' between the transmitter location and the locus of points where the predicted or measured median field strength finally drops to 32 dBuV/m.... If one were to convert 32 dBuV/m to dBm, as we are referencing in this application, the result would be -84 dBm. Also, 47 CFR 22.940 states in comparative cellular renewal proceedings, one of the criteria is: The renewal applicant has provided "substantial" service during its past license term. "Substantial" service is defined as service which is sound, favorable and substantially above a level of mediocre service which just might minimally warrant renewal.... Verizon has to renew their license every 10 years. They have a franchise for Dutchess, Ulster, and Orange counties. Mr. Graiff said the ordinance points to -90 dBm and intended coverage. What is the intended coverage? Can you draw a line around the intended coverage? They need coverage where it is missing but what about the rest of the area? Is intended coverage the coverage the cell site will give? How do you determine 80%? There is no evidence as to how that was determined. Mr. Graiff suggested the Town may want to revisit that ordinance at some point regarding intended coverage and -90 dBm. He said -90 dBm is left over from analog days. When a carrier shows a coverage level and says they need -85 dBm, the cell site talks out. A cell phone has half a watt of power. The tower can talk out but the cell phone has a hard time talking back. Verizon is looking for a minimum strength to make it a balanced path. This number is a method to use so boards can understand that. In the old days with a cell phone of 3 watts at -90 dBm, that cell phone was nearly as effective as the tower itself. Mr. Graiff said on the tree itself, no matter what they do, the monopole will be 150 feet tall to the top of the steel. That mast will be 150 feet above ground. The antenna is 8 feet long to get the required gain to send a signal. You mount at 146 feet and 4 feet up brings it to the top of the pole, 4 feet down you go to 142. The steel is 150 feet. Verizon fought for 146 in front of the Planning Board. In numerous propagation sites, even with the three site solution, this site, Near Road, and Woody Row Rd. or JNS, JNS left a gap, Woody Row Road filled in the gaps. You are allowed to go to 150 by your law. The arms are at 12 feet with a distance of 15 feet. The branches would have to be 15 feet. Verizon offered to lower the antennas which would allow them to achieve a tapered camouflaged tower with a tree shape. But at 135 feet, it leaves gaps and the dropped call data shows where no calls can be made or a call is made and dropped. When the areas of successful calls are compared to the calculated coverage of the existing system, it indicates a good nexus between successful calls and the -85 dBm coverage footprint that exists today. The dropped call areas and failed calls follow along with the purported gap, especially along the Taconic. This data supports -85 dBm is a good number. Mr. Graiff said there are two alternatives since the height is limited to 150. (1) cut the arm length down to 8 feet from 12 feet with the distance between end of arms to 10 feet which gives them room to taper the tree. Center line would still be

at 146 and the tree could look like a tree. (2) close mount the antennas which means the antennas are glued to the sides of the monopole. This works in a more urban environment but would not work well in a suburban area. Mr. Graiff said his previous conclusion remains unchanged: The documentation supplied by Verizon and as a result of this critical review demonstrates that 146 centerline (that is a 150 foot structure) at the proposed Academy Hill Road site is the minimum height necessary to provide seamless coverage along the TSP as well as significant portions of the Town of Milan. Please note, however, that this finding is based on the use of the Mariner tower in the Town of Gallatin as well as the Town owned Woody Row Road site at 180 feet. The only areas of town that remain uncovered are to the north and west. Other towers in those towns could provide that coverage. You could use six foot antennas or four foot antennas. It does affect coverage, coverage starts reducing. Still, it is a technical way to ameliorate the impact of this tower if that is what you want. Mr. Graiff said he feels closer mounted antennas will work. Also, he pointed out that the Planning Board will weigh in as to how the tree is designed. Mr. Graiff said the design shows dishes but Mr. Andras said they have dropped the dishes. At 150 feet with antennas close mounted, if they get approval, there will be another carrier in here to co-locate on the next level down. You might get additional carriers which is good for the Town. Finally, Mr. Graiff said all of the documentation was based upon 800 mega hertz system, which he explained. The higher the mega hertz, the worse the coverage is. Mr. Graiff said the concept of a terrestrial base won't go away. This tower won't go away because of satellite. Terrestrial based communications facilities will be here for many years. In cities, they will provide other methods to provide hot spots but in rural areas, this is the only way to go.

Public comments: Gordon Oliosi asked why is this tower not put on public property so the Town of Milan can get the income? Mr. Olson said there is no public property in the area that would fit our needs. Ms. Axelson said they did a search for Town of Milan properties near this site and they are all too far south. Mr. Zemke said as a Zoning Board, we have no input at all as far as location. Warren Replansky, Attorney, said he is present as a representative for some Town residents. He said he just got the new materials today but has submitted a memo dated August 27, 2014. He said the zoning law in the State of New York is clear – ZBA's have the power to interpret and apply zoning laws to specific cases, they don't have legislative authority. They have no power to ignore or rewrite or declare unconstitutional zoning ordinances. Mr. Replansky cited case law supporting that. For better or worse, the standards in your zoning law with regard to area variances, -90 dBm and adequate coverage are binding. This Board can't declare these standards unconstitutional and can't say they are not state of the art. The only Board in this Town that has the power to change the law is the Town Board. If and until that is done, the ZBA is bound to apply the - 90 dBm standard. The law is clear, even if these standards are outmoded, they are the standards in the law and must be applied until a court declares them to be unconstitutional so you are bound to apply them. David Gordon, Attorney, said he represents local property owners and just received the new submittal by Verizon today. He said he would like to request the public hearing be extended or that the Board allow for a period of time to submit written comments. He said he

needs time to write up a memo but will provide commentary. Mr. Gordon said his first point is that this Board is governed by the standards in the town code. He said a lot of what we have heard tonight is essentially both the applicant and the consultant trying to walk around the town code, making excuses. He said that Mr. Graiff has said he is working for the Town of Milan to establish seamless coverage for the town on a tower that is camouflaged to look like a tree. Mr. Gordon said this is not going to look like a tree. The trees in the area are, at best, 80 feet high. As proposed, this tree tower will stick up 60 feet above the tree line and will be very obvious, more obvious during the winter months. Mr. Gordon said his second point is that the ZBA is governed by the law. The law does not tell you to provide seamless coverage. You need to look at the standard. There are two operative provisions in the variance standards. First, if a tower of lesser height would not provide adequate coverage. Adequate coverage is defined as “to be adequate within that area surrounding a base station where the predicted or measured median field strength of the transmitted signal is greater than -90 dBm for at least 80% of the intended coverage area. It is acceptable for there to be holes within the area of adequate coverage where the signal strength declines further away from the base station (e.g. -95 dBm rather than -90 dBm).....” Secondly, “that off-site views of the facility will be de minimis”. There are two things to observe. A 70 foot extension above the tree line is not de minimis. Second, whether or not there has been determination whether adequate coverage would exist. This board cannot abandon the rules governing this decision. What is the intended coverage area? The applicant could not answer that. That is not a point for the applicant. This is their application. The law is on books. The fact is they can’t answer what their intended coverage area is. They have technical and computer generated answers for questions they want to answer but can’t answer this. The Board should start by looking at the chart where the green area shows the coverage from this tower. Are they getting 80% coverage from the 130 foot tower, from the 146 foot tower? Is the intended area something different from the green area? Another question is whether or not you can look at the -90 dBm standard. The applicant has submitted a legal analysis that only the FCC can regulate these facilities. The short answer is, neither the Town nor the ZBA is regulating this facility at -90 dBm. The -90 dBm exists in the code as a measuring stick to determine adequate coverage. There can be no pre-emption here. Mr. Gordon said there really is no basis whatsoever for diverting from this standard. The applicant has not stated whether they are getting 80 percent coverage or not with the gap and that is the rule. The ZBA does not have the authority to try to complete cell coverage in this town. The basic rule is, can they get adequate coverage at a lower height? Do they get adequate coverage using -90 dBm as a measuring stick. They tried to eliminate your provision saying -90 dBm does not work. Are they getting adequate coverage using -85 dBm at 130 feet. They have not told us that. You have a code and they are walking around it. Mr. Gordon said the applicant has made a legal argument to get you to ignore code. However, if they really believed the code was outmoded due to -90 dBm or adequate coverage at 80%, they should have made application to the Town Board to amend the zoning law. If they thought this code was 20 years out of date due to the extinction of large cell phones, they could have gone to the Town Board asking to change the code to rules using 21st century technology. It is unfair to

the public and this board to bypass the zoning code. They are asking the ZBA to make a constitutional decision regarding dBm's when there is a procedure to this. You don't have the legal authority to vary provisions of the code that were not applied to for a variance. You are required to apply areas of the code regarding 80% of adequate coverage. Mr. Gordon said the discussion of height seems to be sliding based on the last conversation. They said they would go to 135 feet last time, now its 146 or somewhere in between. Mr. Gordon said he is also amazed that Mr. Olson seemed to tell this Board that if you were to adopt the measuring stick of -90 dBm he would go to 135 but if this Board went to -85 dBm, they would go to 146. There is no demonstration that -90 would require a 135 center line. We want a demonstration of what 80% of coverage is. When we go to a 150 foot tower, it will be visible and will not be de minimis and it will impact neighbors. I thought we were moving to a compromise. We have been asking for awhile, what is going to happen in that gap. They did address it, but it's all qualitative. Mr. Gordon said he would like to respectively request additional time to address the new submittal which he just got today and provide a write up. He has not started on the technical analysis yet. Mr. Gordon respectfully requests the ZBA either adjourn the public hearing or extend time for written comment. Mr. Replansky said it is incumbent upon the applicant to come up with a firm application with a variance. It is not incumbent upon the ZBA to design the facility. The applicant has to clearly and concisely indicate what they are proposing and what the variance request is. The public has a right to know that prior to moving forward. There is too much confusion. The ZBA has the responsibility not to grant what is best for the applicant but to grant the least amount of a variance that will alleviate the hardship. That does not mean it will be perfect. It is a standard that is less than that. We need to know the starting point. Mr. Gordon said at the May meeting, Mr. Olson said several times that the -90 dBm standard has been superseded by the FCC, that the FCC has made some finding. This Board asked them to document that. We did not hear anything today about an FCC finding. Instead, Mr. Olson said the Town would be regulating them if you make them go to -90. Mr. Gordon said there is a lot in Mr. Olson's presentation that is not right. Mr. Olson asked Mr. Gordon and Mr. Replansky who their clients were. He said for Boards to make decisions about impacts, they are owed the courtesy of knowing the identity of the clients. He said they have asked several times for this information. Mr. Olson said he takes offense that he has misrepresented information and is playing games, walking around the code. He did present a pre-emption argument to the Board and provided the -90 data. If the Board determines -90 is the appropriate standard, then here is the information. We have provided justification that even at -90 we need the new site. Mr. Gordon was not telling you constitutionally you can't do this. We believe we have submitted sufficient justification to vary that requirement and we will follow up with an amended variance application. We don't believe -90 is appropriate. We know this Board does not have the right to legislate. Mr. Olson requested the Board hold the public hearing open while they amend their application as he wants this done properly. Mr. Olson said the statements by Mr. Gordon are incorrect. There are volumes of information about coverage areas and we have identified coverage areas. Mr. Graiff has reviewed our information. We are not trying to hide anything. Mr. Olson said we have

gone out of our way to compromise for the board. Technically, 146 is the minimum we need but sometimes we need to compromise. Ms. Axelson said while she thinks it is a good idea to hold over the public hearing, she is concerned about amending a variance mid-stream. She would like to review procedure with the Town Attorney. The project seems to be changing. A project can change based on public participation and environmental concerns raised during the SEQRA review. The Planning Board's negative declaration was based on a certain proposal. They looked at a 150 tower with antennas at a centerline 146 feet and the visual simulations were based on that configuration. It is not uncommon as a process moves forward for a proposal to change and mitigate even more the visual impact. Mr. Zemke asked what is the impact if we use adequate coverage as a means of defining tower height and it leaves a 20% gap? What happens to fill that gap? What are the alternatives? If a tower is built and does not provide adequate coverage and there is a push to meet that coverage, what happens? Mr. Graiff said this is a lovely rural town and there is a road running through it that desperately needs coverage. There is no lack of documentation that there are significant gaps in coverage (greater than a half mile). The carrier, to satisfy customers, has to fill the gaps and it is impossible to put a distributed antenna system in along the Taconic – you need high speed fiber to link all these together. The carrier has to look for another macro site. It may not be 150 feet, it may be 110 feet, but it is still another tower and will have an impact on someone. The first tower should be high enough to accommodate themselves and additional carriers. What is adequate coverage? If it works. Minimum signal is always -85 dBm. The FCC rules that coverage is protected to -84 dBm. That means no one can interfere with that carrier inside that line, that -84 dBm line. It is his territory. If that coverage gets moved out to -90 dBm where another carrier could provide interference, like a radio station, once you are outside the station's area, you get interference. You have to consider what is the down side. If they don't get what they want now, they will come back again. Mr. Graiff said also, this proposal is confusing. At 136 feet, it is still a 150 pole. The opposing attorneys seem to want a 136 foot pole or tree. If it is 136 foot tree, the antennas would be at 132 or 128 feet. What is it that they want? No matter what the proposal is, the proposal is for a 150 foot steel pole. You can put the antennas where you want but it is still a 150 foot pole. To have a 136 foot pole and lower antennas would be difficult in this terrain, which is considered remarkable terrain. Remarkable terrain in the cellular business is not good. Mr. Gordon, who represents homeowners on Academy Hill Road, answered Mr. Graiff's question of what is it that they want. He said they want (1) requirements of the town code met and (2) they want an alternative demonstrated at a 130 foot height. They want a comparison of that to look at the adequacy of the coverage. Town Law represents a compromise between town scenery and adequate coverage. Variances can be justified. What is the trade off of adequate coverage and scenery. Mr. Otter asked Mr. Gordon to provide the Board with a list of the homeowners he is representing and he agreed to do that.

Mr. Zemke motioned that the ZBA adjourn the public hearing until the September 24th meeting. Ms. Fitzpatrick seconded. All aye. Motion carried 5-0.

Applications:

1. **Rabadi Area Variance** - Elias Rabadi was present regarding his area variance application pertaining to the removal requirement of Section 200-49C(12) of the Town of Milan zoning ordinance regarding placing a refreshment stand on property located at 1615 Route 199, tax grid number 6571-04-935404 located in the Hamlet zoning district. Mr. Zemke said he does not see where the ZBA can grant a variance on a requirement of a law. It's not in the area variance portion of code or use variance code, it is in the statute. We can't change Town Law. You are looking for a variance for a requirement of the vending law which is to move the vending cart off the property every night. The Board members agreed that the ZBA does not have the authority to grant a variance for that requirement. They suggested Mr. Rabadi petition the Town Board to change the law since this is not an area variance. Mr. Rabadi said he will talk to Steve Cole, the Building Inspector, and see what his options are.

Discussion Items:

- Mr. Zemke and Mr. Schneider's terms are up in December of this year. They need to submit a letter of intent to the Town Supervisor as to whether they will seek re-appointment or not.

Administrative Items:

- **Approval of Minutes:** Mr. Zemke motioned to approve the minutes of the July 23, 2014 meeting as presented. Ms. Fitzpatrick seconded. All aye. Motion carried 5-0.

Ms. Fitzpatrick motioned to adjourn the meeting at 9:45 p.m. Mr. Otter seconded. All aye. Motion carried 5-0.

The next meeting will be held on Wednesday, September 24, 2014 at 7:00 p.m. at the Town Hall.

Respectfully submitted,

Karen Buechele, Clerk
Planning and Zoning

cc: Catherine Gill, Town Clerk
Town Board