

ZONING BOARD OF APPEALS MEETING MINUTES - FINAL
WEDNESDAY, OCTOBER 22, 2014

MEMBERS PRESENT:

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

MEMBERS ABSENT:

None

ALSO PRESENT:

None

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

Public Hearings:

- 1. Hunt Area Variance/Special Use Permit – Mr. Zemke** motioned that, as requested by the applicant, the Zoning Board of Appeals adjourn the public hearing for Hunt Area Variance/Special Use Permit until the November 19th ZBA meeting as requested by the applicant. Mr. Otter seconded. All aye. Motion carried 5-0.
- 2. Orange County-Poughkeepsie Limited Partnership d/b/a Verizon Wireless –** Chairman Mancini reopened the public hearing and read the rules of conduct. 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 hearing. Mr. Olson submitted an amended variance dated October 6, 2014 asking for additional variances as follows: increasing the height variance from 100' to 156', from Section 200-5, Definition of Adequate Coverage from -90dBm to -85dBm and from Section 200-21(B)(3)(6) for relief from the definition of adequate coverage. Mr. Olson said this Board has a comprehensive and complete record in front of you. He said we submitted an amended variance application based upon the discussions of the last couple of months. He said he thinks they have provided supporting analysis done by Rick Andras which explains why – 90 dBm is inappropriate. We feel it is a pre-emption issue. There is no way the FCC would ever allow individual towns to make up different signal strengths as that would result in a swiss cheese network. He said he has no case law that has dealt with that issue. Mr. Olson said Ron Graiff addressed FCC regulations that talk about signal strength. One signal strength they use is -84 dBm which is stronger than what we have used and they call that good service when we renew our license. He said in theory, we could have to prove to them we have -84 dBm to renew our license because the FCC says –84 dBm is a standard. We provided an analysis as an alternative that even if you use the -90 dBm standard, we still have need. The gaps may be less but the courts say a quarter of a mile is enough of a gap to fill. We have provided evidence that has not been disputed. There is no evidence that says our analysis is flawed. Mr. Graiff's analysis addressed –90 dBm and concluded the need for a 150 foot tower is still there. Mr. Olson said he

feels their record is complete and the Board could make a decision on it. He said we hope this Board grants the variance and they documented in their submission why they meet the variance test. He said there are certain standards for a public utility under zoning. He suggested the Board apply both tests and then if there is any litigation, this Board is covered.

Public comment: Warren Replansky, an attorney who is present as representation for Howard Zelbo, a resident, said it appears that the Board has before them an amended application for a variance and the applicant has clarified the variance they are seeking. He said we won't weigh in on the issues assuming a public hearing will be held on the amended variance. We will want to weigh in on the amended variance at that time, especially the variance for requirements of a variance. He said he think the Board is precluded by Milan code, and state law from granting a variance from the provisions of the zoning law. However, they will wait to weigh in until the public hearing is held on the amended application. Delmar Hendricks, a resident from Fitzsimmons Road, said at the last meeting he attended regarding the tower, there was talk about two different heights. The lower height would not reach certain areas of Milan. Mr. Hendricks said he hopes that is no longer under consideration because he does not get cell reception. He has lived up here since '86 and it's difficult. He leaves his cell phone in his car. He does not receive messages and can't get them out unless he goes to higher points on his property. If this tower is built at the lower height and will not provide cell service for him, he will be unhappy as will other people. Fitzsimmons Road is a blank spot which is a matter of grave concern and Mr. Hendricks hopes that it is being taken seriously. Frank Plant, Academy Hill Road, said he agrees with Delmar. He was opposed to the tower before but he can't use his cell phone. There is no signal on Academy Hill Road. The closest area he can get a signal is to go up to North Road near Indian Road and that signal is not always there. Mr. Plant said he has no objection to the tower but he doesn't want it to interfere with the natural beauty of the land. Tom White, Turkey Hill Road, said he has no cell phone reception. He said he has said this before, but Verizon is not in the business of building cell phone towers that are not necessary. They are in the business of providing service as cheaply as they can and would not go to the expense of putting up a tower if they didn't have to. Mr. White said not having cell service creates a safety hazard to people who need a cell phone in an emergency. Mr. White said he thinks the Board should grant the Verizon variance for a 150 foot tower. Paul Doherty, owner of the property, said Verizon moved the location of the tower a couple of times and this location gives only a couple of houses a view of the tower. As far as the height of the tower, if the tower is too short, it does not allow for co-locators so you end up getting more towers. The area around Elizaville has little or no service and with a 150 foot tower, they will get service. When the construction manager saw the second location they picked on the property and didn't like it, they moved it down the hill about 15 feet which means if they had left it at the previous location, it would be 15 feet higher than it is going to be now. Mr. Hendricks said he would also like to remind people that there aren't going to be any land line phones in the not so distant future and we will depend upon our cell phones. What will happen at that time to the people who live in areas that have no reception. Tom White said we

have Frontier for internet and telephone and their service is horrendous. Stephanie Plant, Academy Hill Road, said she agrees with Mr. White – they too have Frontier and have horrible service. She likes using the cell phone and thinks this area needs to get into the 21st century. She has to drive two miles to use her cell phone.

Hearing no further public comment, Ms. Fitzpatrick motioned to close the public hearing. Mr. Zemke seconded. All aye. Motion carried 5-0.

Mr. Zemke said we have a motion from the Planning Board with a positive recommendation for a 150 foot tower and this is a type 1 action under SEQRA for which the Planning Board, as lead agency, reviewed and issued a negative declaration at their April 2nd meeting. The town's zoning law gives the ZBA the ability to review and approve a height variance for a cell tower up to 150 feet if we have a letter from an independent engineer that says it is an appropriate height for that application. Mr. Zemke said we have before us an amended application and he does not feel this Board can accept this amended application. The amended application is asking for a variance to 156 feet and a variance for the frequency. He said he does not believe it is in the purview of this Board to vote on a height in excess of 150 feet and a variance cannot be granted for a requirement in the law. A change in a requirement in the law would require the applicant to make application to the Town Board to consider the change. It is not in the purview of the ZBA. Mr. Zemke said in his opinion, this Board can vote on a variance up to 150 feet but not on a change in the frequency – that does not fall in the area or use variance table. This Board has heard testimony from an independent expert that the frequency in our zoning code at -90 dBm is not appropriate; the code is 15 years old and this frequency does not lend itself to a modern design. But, Mr. Zemke said he believes that would have to be changed by application to the Town Board by the applicant seeking the change. As far as height goes, Mr. Zemke said lets do this once – we do not want two towers – and the most efficient tower is at 150 feet. Mr. Schneider agreed and said it is clear from Ronald Graiff's August 20th document that the tower needs to be 150 feet. Ms. Fitzpatrick agreed and said she believes the Board has enough evidence to move forward on a vote for the height variance. Mr. Otter agreed as well.

The Board members completed the Area Variance Findings & Decision to allow the installation and operation of a 150' tall communication tower where a maximum of 100 feet is allowed based on the following factors: An undesirable change would not be produced in the character of the neighborhood or a detriment to nearby property because a Determination of Non-Significance was approved by the Planning Board on April 2, 2014; the benefit sought by the applicant cannot be achieved by a feasible alternative to the variance because another alternative would be multiple towers but that is not a desirable or acceptable solution; the requested variance is substantial; the variance will not have an adverse impact on the physical or environmental conditions in the neighborhood because the applicant submitted a Visual Resource Evaluation which evaluated the visibility of the tower from approximately 27 locations and out of the 27 sites, the tower will only be visible from 5 sites; the alleged difficulty was self-created.

Mr. Zemke motioned that the Zoning Board of Appeals approve the Area Variance Findings and Decision for Orange County-Poughkeepsie Limited Partnership d/b/a Verizon Wireless for the installation and operation of a 150 foot tall communication tower for the reasons stated in the Findings and Decision with the condition that the tower be limited to 150 feet at its highest point and that the ZBA deny the amended application dated 10/6/14 because the ZBA is not authorized to review such a variance request per Section 200-59 of the Town Zoning Code. Ms. Fitzpatrick seconded. Motion carried 5-0.

Applications:

- 1. Lawrence Special Use Permit:** Andrew Willingham, P.E., authorized representative for the applicant, was present for an application for a special use permit for an accessory apartment for George Lawrence on property located at 483 Academy Hill Road, tax grid number 6572-00-579524. Mr. Willingham said this is a 62 acre parcel and Mr. Lawrence lives in the house on the southeast portion of the property. The driveway goes past his house to a barn which was built a year ago and has a Certificate of Occupancy. Mr. Lawrence was going to put an office space in the barn with a bathroom and water so a septic and well plan was created just for the barn and approved by the Department of Health. It was sized for one bedroom so Mr. Lawrence decided to put in a one bedroom accessory apartment which will also be used as his home office. The septic and well have been installed and renovations are currently underway in the barn to add the bathroom. The second floor of the barn is part of a loft. The stairs go up and there is a loft in the center, Mr. Zemke said he would like a better floor plan showing the area devoted to the apartment, what the area is going to be upstairs, how the stairwell will work, and the utility room defined. Mr. Zemke said also, if there is storage and sleeping quarters in the same building, we have to make sure appropriate fire standards are in place.

Mr. Schneider motioned that the Zoning Board of Appeals set the date for the public hearing to be held at the November 19th meeting pending receipt of the requested changes. Ms. Fitzpatrick seconded. All aye. Motion carried 5-0.

Discussion Items:

- 1. Education Requirements:** Chairman Mancini reminded all Board members that four hours of education must be completed for every calendar year.

Administrative Items:

- **Approval of Minutes:** Mr. Zemke motioned that the Zoning Board of Appeals approve the minutes of the September 24, 2014 meeting as presented. Mr. Schneider seconded. All aye. Motion carried 5-0.

Mr. Otter motioned to adjourn the meeting at 7:55 p.m., Ms. Fitzpatrick seconded. All aye. Motion carried 5-0.

The next meeting will be held on Wednesday, November 19, 2014 at 7:00 p.m. at the Town Hall. **This is the third Wednesday of the month due to Thanksgiving.**

Respectfully submitted,

Karen Buechele, Clerk
Planning and Zoning

cc: Catherine Gill, Town Clerk
Town Board