MINUTES

Town of Wappinger
Zoning Board of Appeals
September 25, 2018
Time: 7:00PM

Town Hall
20 Middlebush Road
Wappinger Falls, NY

Summarized Minutes

Members:

Mr. Prager  Chairman  Present
Mr. Casella  Co-Chair  Present
Tom DellaCorte  Member  Present
Mr. Bob Haas  Member  Present
Mr. Galotti  Member  Present

Others Present:

Mr. Horan  Town Attorney
Mrs. Roberti  Zoning Administrator
Mrs. Ogunti  Secretary

SUMMARY

Public Hearing:

Jose Maldonado  Variance granted
Wireless Edge Towers, LLC  Variances granted
Mr. Galotti: Motion to accept the Minutes as amended from September 11, 2018.

Mr. Haas: Second the Motion.

Vote: All present voted Aye.

Public Hearing:

Appeal No. 18-7655 (Area Variance)

Jose Maldonado: Seeking an area variance Section 240-37 of District Regulations in an R40 Zoning District.
- Where 25 feet to the side yard property is required, the applicant can only provide 15 feet, thus requesting a variance of 10 feet for the installation of a 12’ x 20’ shed.

The property is located at 62 Pye Lane and is identified as Tax Grid No. 6358-03-148074 in the Town of Wappinger.

Mr. Prager: Bea, are all of the mailings in order?

Mrs. Ogunti: Yes, they are.

Mr. Casella: Motion to open the Public Hearing.

Mr. Haas: Second the Motion.

Vote: All present voted Aye.

Mr. Prager: Good evening. Please tell us a little bit about what you want and why you want it. I know we did a site inspection at your house but there may be someone in the audience who might be interested and also for the record.

Mr. Maldonado: My name is Jose Maldonado. I know the ordinance is 25 feet and I only have 15 feet and I don’t want to put it too close to the septic tank and drain fields. I’m moving the shed from one side and putting it on the other side and getting rid of the old shed and putting a new one in. That’s why I’m asking for a variance.

Mr. Prager: The variance is for that new shed?

Mr. Maldonado: Yes.

Mr. Prager: Anybody up here has any questions? Is there anybody in the audience who would like to ask any questions? If not, I will entertain a motion to close the public hearing.
Mr. Casella:  Motion to close the Public Hearing.
Mr. Haas:  Second the Motion.
Vote:  All present voted Aye.

Mr. Galotti:  Motion to grant the applicant the variance.  I do not believe the benefit can be achieved by any other feasible means.  It does not create any undesirable change to the neighborhood.  The request is substantial however there will be no adverse physical or environmental effects to the character of the neighborhood.

Mr. Casella:  Second the Motion.
Roll Call Vote:  
Mr. Casella  YES
Mr. Galotti  YES
Mr. DellaCorte  YES
Mr. Haas:  YES
Mr. Prager  YES

Appeal No. 18-7656 (Area Variance)
Wireless Edge Towers, LLC:  Seeking an area variance Section 240-37 and 240-81(G) (4) (c)(2) of the District Regulations in an R40 Zoning District.
-Where 750 feet is required to the nearest dwelling unit, the applicant can provide 531 feet for the installation of the facility, thus requesting a variance of 219 feet.
-Where 750 feet is required to the nearest dwelling unit, the applicant can provide 566 feet to the tower, thus requesting a variance of 184 feet.
The property is located at 30 Soccerfield Drive and is identified as Tax Grid No. 6357-01-114590 in the Town of Wappinger.

Present:  Robert Gaudioso – Snyder & Snyder, LLP
          Jordan Fry – Snyder & Snyder, LLP
          John Arthur – Verizonwireless

Mr. Prager:  Bea, are all of the mailings in order?
Mrs. Ogunti:  Yes, they are.

Mr. Haas:  Motion to open the Public Hearing.
Mr. Galotti:  Second the Motion.
Vote:  All present voted Aye.

Mr. Prager:  Good evening.
Mr. Fry:  Good evening honorable Chairman and members of the board.  My name is Jordan Fry with the law firm of Snyder & Snyder, LLP, 94 White Plains Road, Tarrytown, NY.  Here on behalf of the applicant
Wireless Edge Towers and Verizonwireless in connection their joint application for a public utility wireless communication facility at 30 Soccerfield Drive in the Town of Wappinger. The facility consists of 120 feet monopole which is being designed to resemble a tree and when it tippers at the top it’s 125 feet. As supported by the documents presented to this board, Verizonwireless has a gap in service area as well as a capacity issue with other facilities in the surrounding area. That’s the reasoning for the proposed site. The applicant conducted a balloon test with a crane and a balloon showing the height of the proposed facility. In addition we submitted the health report showing that the facility will comply with the FCC requirements. Otherwise we will be happy to answer any questions you might have. John Arthur from Verizonwireless is here and will be happy to answer any questions as well.

Mr. Prager: Could you explain where the pole is actually going and about the foundation.

Mr. Arthur: Sure. Good evening John Arthur from Verizonwireless Edge. The property was originally a water treatment for the town. Where the towers are being proposed were the holding tanks for the treatment facilities. So if you can imagine something that basically looks like a square with a cross in the middle. There are four containers with no bottoms and it is just soil. That was subsequently filled in by the town.

Mr. Prager: I noticed in Fig. 3 of your visual assessment you are talking about the tree and I see something like white limbs.

Mr. Arthur: A lot of the extra appearance depends on the manufacturer of the tree.

Mr. Prager: I’m looking at the sketch so that answers that question.

Mr. Galotti: How far down is the foliage? I see you proposed 120 feet.

Mr. Arthur: The foliage would come down below the tree count that exists which is around 65 feet but we have that overlapped a bit.
Mr. Prager: Looking at Exhibit C it looks a little bit higher than Fig. 3.

Mr. Haas: I have a question about the fall zone. How far out of the property is the fall zone? The fall zone would be the height of the tower.

Mr. Arthur: Traditionally yes however the way we typically designed these towers particularly when they are close to the property line we design it so the top half will come down first. If you can imagine it is 120 feet high and we design it so that it’s a weaker section and if there’s a stress at the top at 60. So the bottom section is beefier.

Mr. Galotti: Like a break away.

Mr. Arthur: It doesn’t really break away if you are measuring a curtain rod it just would kink at anything and that’s really the value of it.

Mr. DellaCorte: I know you said there’s a lack of coverage. Is there any map that shows the overlay of other towers in the nearby?

Mr. Fry: Yes, Verizonwireless provided a report showing the existing proposed coverage in the area. It’s the radio signal justification report that was submitted. It shows the Fishkill site and Fishkill Plains site that verizonwireless site is going to offload to and provide additional coverage. There’s also an explanation of wireless capacity and the requirement to offload existing sites. Explaining the need for that as well as maps showing the existing and proposed coverage those are in Pages 12 through 17. More specifically the one that has the 21 megahertz frequency which is the weakest as a gap in coverage Pages 16 through 17 the gap gets filled in significantly by way of the proposed facility.

Mr. DellaCorte: Thank you.

Mr. Casella: The only other question I have and I think Bea already answered it was as far as reaching out to the residents that are nearby. Did we make sure all of the residents got notified?

Mr. Horan: We sent out an extensive distribution.
Mrs. Roberti: When Bea and I went over this we looked at each lot being Town of Wappinger and we did an extensive circle around any abutting to any of the three properties and they mailed that list out. Not only were Wappinger residents notified but East Fishkill as well.

Mr. Casella: Approximately how many were mailed to?

Mr. Horan: There were 31 residents that were notified not including the Town of Wappinger which is the abutting property line.

Mr. Casella: Okay, thank you.

Mrs. Roberti: Also the Town of East Fishkill.

Mr. Casella: I just wanted to make sure it got out to everyone on the distribution list and people had the opportunity to speak.

Mr. Prager: Now, is there anyone in the audience who would like to speak for or against this variance please come up.

Mr. Petanick: My name is Mitchell Petanick and I reside at 25 Regency Drive. We are talking about getting two cell towers here because there are two variances?

Mr. Horan: One is for a shed on the property and the other is for the tower.

Mr. Petanick: The variance is saying a certain amount of feet from the residence? Which residence is that?

Mr. Horan: It’s the property that’s on Regency Drive.

Mr. Petanick: Where is this exactly?

Discussion continues.

Mr. Prager: Just keep in mind that we have a recorder going here so when everyone is talking it’s hard to pick up so if we could all speak one at a time would be helpful.

Mr. Fry: Would the board prefer for us to wait for questions simultaneously or how do you want to do this?

Mr. Prager: You can go on.
Mr. Fry shows on the map where the tower will be located.

Ms. Petanick: My house is right there.

Mr. Petanick: To tell you the truth I don’t want a cell tower by my house.

Mr. Prager: When we were down there it looked like it had trees around it and it looks like it will not be seen easily.

Mr. Petanick: Is it on the other side of the creek or where the soccer field is?

Mr. Arthur: It’s on the soccer field side of the creek but it is the other side of the creek that surrounds the plant.

Mr. Petanick: You are talking about that water rod treatment facility where that’s fenced in?

Mr. Arthur: Here’s the water treatment facility and there’s a gate over here and there are trees that go around.

Mr. Petanick: What’s the reasoning to have a certain amount of feet from the cell tower anyway? It says 750 feet is required from any dwelling. Why is there a certain amount of footage?

Mr. Fry: That’s what is required in the town’s code.

Mr. Petanick: For what reason?

Mr. Fry: The reason is that’s how the Town Board adopted the requirement.

Mr. Horan: That number was adopted in 1998 and since that number was adopted the federal government has enacted certain changes to the Telecommunications Act. One of which is that the town no longer has any jurisdictions regarding the health effects of cell towers. This is subject to FCC Federal Communication Standards to the extent that the federal communications has granted a permit for the facility in that the Town of Wappinger is not permitted to look at the health effects associated with the cell tower installation. Basically
what we are looking at are issues with respect to setbacks for visual purposes and things of that nature.

Ms. Petanick: Cosmetics.

Mr. Horan: Yes. Under federal law that’s all we are allowed to look at.

Mr. Petanick: Even with a variance?

Mr. Horan: Yes, with respect to a variance it’s the same thing. The only thing is this is considered to be a public utility and under the Public Utility Law in the State of New York this is considered to be a beneficial use presumed to be there. As far as the variance goes you have to look at this as a powerline or things of that nature which are benefits to the public as a whole. Unless we can show there is a threat to the health and safety to the Town of Wappinger the town is not permitted to deny the variance.

Mr. Petanick: That’s what I was concerned about the EMF pollution with cell towers.

Mr. Horan: The EMF field, the electronic field, the radio field decreases as to the fourth tower distance.

Mr. Arthur: It is proportion to the square.

Mr. Horan: Basically, every time you go 2 feet away the signal decreases by 4 times. It drops off very rapidly and with respect to the signal from the cell tower since it’s so much closer to your head. The RF field off the cell phone magnitude is probably hundreds of time higher than the actual tower.

Mr. Petanick: I understand that where the cell tower is it’s going constantly.

Mr. Horan: So is your phone. Your phone is constantly in contact with the towers because it’s looking for the cell service. It’s more or less on all of the time.

Mr. Petanick: I am also concerned about my property value. It is my understanding that it has the tendency to decrease up to 20% in the neighborhood of a cell tower.
Ms. Petanick: How do you determine it is a health hazards? You wait until there’s a cluster of cancer or something like that? That’s where children also play.

Mr. Horan: Under federal law the town is prohibited from looking at the health hazards.

Ms. Petanick: So who looks at it?

Mr. Horan: The FCC.

Mr. Petanick: Has the FCC looked into it?

Mr. Horan: Yes.

Mr. Fry: With respect to health hazards we submitted a health report to the town. The health report demonstrates that the proposed facility is less than 3% of what would be allowed near the FCC limits. Certain consumer devices such as microwaves, vape devices are way higher than these emissions. Again, it’s been documented and submitted and we have complied with the FCC limits. Although the board does not have jurisdiction we did supply them with the proper documentation. With respect to the property value we found that the towers do not change the property values for homes in the area. Especially for millennials home buyers, it actually increases the home value because millennials don’t want to buy a home and doesn’t have cell services.

Mr. Fry continues.

Ms. Petanick: I have cell phone service so I don’t understand it.

Mr. Fry: Fortunately or unfortunately and because everyone is relying on their cell phones these days the wireless network cannot continue to keep up. We submitted to the board the towers in the surrounding area cannot keep up and they are going to exhaust. So unless a new tower is placed in the vicinity of the area and eventually you won’t be able to use your telephone for lack of service. From a public safety standpoint this is very beneficial for the local emergency response service because they do rely on Verizon services for 911 services.
Mr. Petanick: This is the first time I’ve heard that cell phone towers increases the property values. There’s a study that says it decreases my property value up to 20% not to mention the aesthetic value of my property and a cell tower right in my backyard.

Mr. Fry: The tower was designed to blend in with the existing vegetation.

Ms. Petanick: It’s not going to blend in and everyone is going to know that it’s a cell tower.

Mr. Fry: To lessen the impact and to the community as well as creating the benefit of the public utility use. We are here for the proposed variances.

Mr. Petanick: Which residence are you getting the variance for? Who are the nearest properties you taking these measurements from?

Mr. Fry: That would be Lot 05167 and I just want to line that up and that 19 Regency Drive for the 531 feet variance.

Ms. Petanick: Across the street?

Mr. Prager: That would be for the building?

Mr. Fry: Yes, that’s for the building.

Mr. Prager: So 566 feet would be for the tower.

Mr. Fry: Correct.

Mr. Petanick: You have 750 feet in the paperwork.

Mr. Haas: It’s whatever is within the 750 feet setback.

Mr. Fry: Correct and that’s the closest.

Mr. Horan: Is that the measurement to the property line or is that the measurement to the house?

Mr. Fry: That’s to the dwelling because that’s what the code requires.

Mr. Horan: Is there a generator on the site?
Mr. Fry:  Yes, there is an emergency powered generator. We submitted to the board a noise control report confirming compliance.

Mr. Horan:  Okay.

Ms. Petanick:  I don’t think so and may I look at this again?

Mr. Horan:  We had outages out in May and one of the issues was some of the sites didn’t have backup generators.

Discussion continues.

Ms. Petanick:  Thank you.

Mr. Prager:  All set?

Mr. Petanick:  Yes, I still don’t want that in my backyard. Thank you.

Ms. Petanick:  We understand the need for 911 but we don’t get the service part.

Mr. Petanick:  Are there other town properties that are close to any residences that won’t have any other problems?

Mr. Prager:  I don’t know. Unfortunately, the only one we can talk about tonight is this one.

Ms. Petanick:  Thank you.

Mr. Prager:  No thank you and hopefully we were able to answer some of your questions. If there are no other questions then I will ask for a motion to close the public hearing.

Mr. Galotti:  **Motion to close the Public Hearing.**

Mr. Haas:  Second the Motion.

Vote:  All present voted Aye.

Mr. Horan:  What I think would be appropriate is to adjourn this for the next meeting and I’ll prepare a written decision. We will do a Neg. Dec and a written decision.

Mr. Fry:  We plan on going back to the Planning Board on October 1st and because the season is changing and the
construction schedule is very important for us to stick to the schedule.

Mr. Horan: Okay.

Mr. DellaCorte: Jim, I'm sorry I didn't hear what you were trying to propose. Can you please repeat everything you said?

Mr. Prager: He wants to adjourn it.

Mr. Horan: Barbara, do you have a Neg. Dec. on this?

Mrs. Roberti: No.

Mr. Horan: Not from the application itself.

Mrs. Roberti: From the Planning Board?

Mr. Horan: So the first motion that would be required would be a motion to issue a Negative Declaration. This is a full EAF which describes the potential impacts of the project. Why don't we take a 5 minutes break and I will go and print out a form.

Mr. Prager: Sure. Is there some reason we might want to have an executive session?

Mr. Horan: Do you want to have an executive session?

Mr. Prager: It is up to you. Do you feel that we need one?

Mr. Horan: Does the board have any questions?

Mr. Prager: I don't have any questions but is there something you want to discuss?

Mr. Petanick: Are all of the people who play soccer on the field been notified of this?

Mr. Prager: No, just the land owners.

Mr. Casella: Only the surrounding properties.

Mr. Horan: Okay, let's take a 5 minutes break.

Mr. Prager: Okay.
Mr. Horan: Is this a Part 1 because it’s next to a park? Let’s not mess it up so let me check. Barbara, do you have a SEQRA book with you?

Mrs. Roberti: Let me go and grab it.

Mr. Prager: Jim, is there something you want us to discuss?

Mr. Horan: There are three types of reviews. Type 2 meaning there are no reviews and if it’s a Type 1 action it is presumed to have an effect on the environment. An Unlisted Action doesn’t meet the threshold of Type 1. The only way it might be a Type 1 is because it is next to a park. That doesn’t really change the calculation it just changes what the Type 1 issue is. If this was a construction project that has some impact to the park and that would be something that you look at. While it’s next to the park it has a separate entrance. The applicant has suggested that this is an unlisted action. Barbara has the regulations so we will find out momentarily.

Mr. Horan recites the Negative Declaration.

Mr. Horan: Based on that I would ask if the board would vote to issue the Negative Declaration.

**Mr. Casella:** *Motion to issue a Negative Declaration.*

Mr. Galotti: Second the Motion.

Vote: All present voted Aye.

Mr. Horan: Based on the issuance of the Negative Declaration, it is now appropriate for the board to issue its decision with respect to the variances that are requested here. There are two variance requested. They are requested according to Section 240-81 (G) (4) (c) (2) which requires that any wireless facility or tower not be located within the setback distance of 750 because of the conjunctive use of facility or tower. The zoning administration made the determination that two variances are required so one for the tower and the other for the facility.

Mr. Prager: So we will do each separately.

Mr. Horan: In this case it is appropriate to do them together for the record, the standard of review for this in addition to the
criteria that's granted that the ZBA typically reviews. This is somewhat of a lesser burden of review because it’s a public utility stand. Under the Public Utility Standards a threat to the public health safety and welfare of the community the variance should be granted.

Mr. Haas:

Motion to grant the variance for Appeal No. 18-7656 Wireless Edge Towers, LLC Seeking an area variance Section 240-37 and 240-81(G) (4) (c)(2) of the District Regulations in an R40 Zoning District. Where 750 feet is required to the nearest dwelling unit, the applicant can provide 531 feet for the installation of the facility, thus requesting a variance of 219 feet.

-Where 750 feet is required to the nearest dwelling unit, the applicant can provide 566 feet to the tower, thus requesting a variance of 184 feet.

The property is located at 30 Soccerfield Drive and is identified as Tax Grid No. 6357-01-114590 in the Town of Wappinger. The benefit cannot be achieved by any other feasible means. I would have to say that it is an undesirable change to the neighborhood but not particularly a detriment to the value of nearby properties. The request is substantial however the request will not have an adverse physical or environment effects. The difficulty is not self-created.

Mr. Casella:

Second the Motion.

Roll Call Vote:

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<td>Mr. DellaCorte</td>
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Mr. Galotti:

Motion to adjourn.

Mr. Casella:

Second the Motion.

Vote:

All present voted Aye.

Respectfully Submitted,
Adjourned: 7:55 pm

Bea Ogunti
Secretary
Zoning Board of Appeals