



Town of New Paltz Zoning Board of Appeals
Regular Meeting of Wednesday, December 8, 2021
Live-streamed/Recorded Remotely at 7:00 PM

Available on YouTube: <https://www.youtube.com/watch?v=Xc8bROsRAgg>

APPROVED MINUTES

Present: Leonard Loza, Chair
Steven Esposito
John Gotto
Amy Donnelly
Katherine Fuller

Absent: David Brownstein, Town Board Liaison

Also Present: Joe Moriello, Zoning Board Attorney
Stacy Delarede, Building Inspector
Alana Sawchuk, Planning and Zoning Secretary

Welcome

7:00

Chair Loza takes attendance. Ms. Donnelly moves to open the regularly scheduled December 8, 2021 meeting of the Zoning Board. Chair Loza seconds. 5 ayes. Motion carries.

Administrative Business

- *Approval of November 10, 2021 Minutes*

Ms. Donnelly moves to approve the November 10, 2021 Minutes as drafted. Mr. Gotto seconds. 5 ayes. Motion carries.

- *Quorum Check for Wednesday, January 12, 2022 at 7 PM*

All members will be in attendance at the January 12, 2022 meeting.

Application Review

1. Area Variance

ZB21-533: 89 S. Ohioville Road

Applicant: Viking Industries

Zoning District: L-1

SBL: 86.16-1-5.100

7:08-7:26

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Ms. Caren LoBrutto (Chazen Engineering) is in attendance to speak as the consultant for the applicant (Mr. Richard Croce of Viking Industries). Viking Industries is an existing warehouse that manufactures paper products such as cardboard boxes. The applicant is looking to expand their warehouse and their proposed expansion requires (2) area variances. They would like to permit 4 loading docks on the street frontage (loading docks are not permitted on the street frontage) and relief from the parking requirement (looking to provide less).

Ms. LoBrutto reviews the variance balancing test criteria in relation to their application.

Ms. LoBrutto provides a “Parking Demand Analysis” in order to argue that the 85 spaces is more than adequate for the proposed expansion.

Ms. Donnelly asks about the type of roof that will be on the addition.

Ms. LoBrutto explains that the applicant is still finalizing the architecture but offers some possible options.

Ms. Donnelly has asked about the roof because she has concerns about water runoff. If the roof will be high, she would like to ensure that the lights are minimized and pointing towards the parking lot as opposed to the roof.

Ms. LoBrutto clarifies that stormwater and lighting will be further detailed as part of the site plan review process with the Planning Board, and also provides some clarifying details about how these two items will be addressed by the applicant.

Mr. Gotto does not yet have any major concerns and intends to take a visit to the property.

No further questions from Board members.

Attorney Moriello asks Ms. LoBrutto about the proposed addition and why it is located in an area that would require a variance.

Ms. LoBrutto draws the Board’s attention to certain topographic, stormwater, and wetland/residential buffer details that influenced their plans.

Chair Loza moves to set a Public Hearing for January 12, 2022 at 7 PM. Ms. Donnelly seconds, 5 ayes. Motion carries.

2. Use Variance

ZB20-50: 60 Jansen Road

Applicant: Homeland Towers

Zoning District: R-1

SBL: 86.4-2-16

7:26-8:30

Mr. Robert Gaudio (Attorney), Mr. Vincent Xavier (Applicant), Mr. Mike Crosby (Verizon Engineer), and Mr. Matt Allen (Saratoga Associates) are in attendance to speak on behalf of this

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application. The applicant seeks a use variance to construct a wireless communications facility in the R-1 district.

Ms. Donnelly states “The ZBA is unusually dependent on the assertions of the applicant about what kind of coverage is needed and how it can be supplied because this is not a thing that an ordinary citizen, I believe can understand. We don’t know whether there are alternatives to the proposal like whether co-locations might not work perfectly, but perhaps it might work. And 140 feet was a compromise but I’m not sure how that compromise was arrived at. So, I am uncertain whether we can fulfill our responsibilities to evaluate this because we are dealing with rays that people don’t really understand. What ordinary people understand is whether their phone works in that area. So, we are relying on the applicants statements that are supported by an industry consultant, Mr. Musso, whom we did not choose, and we didn’t have an opportunity to question his statements. That was all done before we got there. So, I don’t believe I can make an informed decision that this tower is necessary, given the information I have.”

Attorney Moriello clarifies that Mr. Musso is the technical consultant to the Town of New Paltz Zoning Board of Appeals that they hired to be their consultant on these technical issues.

Mr. Gaudioso clarifies that Mr. Musso does not work for Verizon Wireless nor is he an “industry consultant.” A separate escrow account was established to pay for his services. He was “absolutely independent” and retained by the Town Board, Planning Board, and Zoning Board.

Ms. Donnelly clarifies that Mr. Mike Musso consults in relation to cell phone towers exclusively and historically has appeared to almost always have determined the installation of a new cell phone tower to be necessary.

Mr. Gaudioso further clarifies the role of the Zoning Board and how they are to arrive at their decision (fact-based and determined by the record).

Ms. Donnelly responds that the “substantial evidence” is coming entirely from the applicant and therefore the Town’s consultant would have great difficulty in evaluating it independently.

Attorney Moriello refers to a memo provided by Mr. Musso (9/20/20, pg. 22).

Chair Loza asks if Mr. Musso ran any independent tests to validate the information sent by Verizon, or if he only reviewed the information that Verizon had provided.

Mr. Gaudioso notes that if the Board wanted Mr. Musso to complete a specific scope of work, that is their prerogative. However, it’s not unusual for a consultant to review the materials provided and determine if the proper methodology was used or proper/sufficient information was provided. Mr. Musso asked for multiple copies of reports, data points, maps, additional data, etc.

Chair Loza speaks regarding the “significant gap in service.” Is the significant gap in service rendered only with Verizon?

Mr. Gaudioso notes that federal courts have been clear that the inquiry relates only to Verizon in this case; the applicant does not need to prove that other carriers have a gap in service.

Chair Loza asks Mr. Xavier how they arrived at the profile lines as to where the extent of the gaps in service were.

Mr. Crosby (Verizon) explains that gaps in service generally exist in (2) parts: (1) Coverage is one part; (2) The inability to provide adequate service from a capacity standpoint is another. The existing site is overloaded, and they have exceeded their ability to service the area capacity-wise. Mr. Crosby notes that 50%-60% of Ulster residents use Verizon and refers to the high number of calls to emergency services.

Chair Loza asks for clarification about why they can’t utilize existing sites.

Mr. Crosby reiterates why that would not be possible due to the current towers being overloaded.

Chair Loza asks about why there’s been no response from the college about why this couldn’t be placed on the SUNY New Paltz campus.

Mr. Crosby explains that SUNY area is already being served.

Mr. Gaudioso responds to Chair Loza’s request about why the SUNY New Paltz campus is not feasible. The use of the SUNY campus was never a discussion as part of the administrative record, other than that the existing site on the campus does not provide service to the area as shown in the lower portion of the proposed site. The Board cannot re-open the record a year later and discuss hypothetical sites that were not raised previously. Mr. Gaudioso also notes that the facility cannot be within 500 feet of a school and refers again to the record as it currently exists.

Ms. Donnelly notes that she had mentioned SUNY New Paltz as an alternative site.

Mr. Gaudioso clarifies that Ms. Donnelly’s comment was given after the Public Hearing was closed.

Mr. Gaudioso confirms that Mr. Musso reviewed SUNY New Paltz as an alternative site.

Ms. Donnelly asks Attorney Moriello that if she’s a recent member would it be appropriate for her to vote “no,” after the Public Hearing was closed.

Attorney Moriello explains that even if current members were not on the Board at the time, the record still exists. It is appropriate for all Board members to consider the record and vote. From a
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legal perspective, he would have to concur with Mr. Gaudioso regarding the legitimacy of the record. Attorney Moriello notes that Mr. Musso agreed that there were no alternative sites available to the applicants (9/20/20, pg. 34).

In response to Ms. Donnelly's concerns, Mr. Xavier notes that it would be impossible for Mr. Musso to provide the information that Verizon provides as it's proprietary information.

Mr. Gotto agrees with the argument that they need to rely upon the evidence in the record, however, the question is whether the evidence is "substantial" in support of the applicant's argument. Mr. Gotto does not find the evidence provided to be convincing. The record is certainly substantial in the sense of volume; however, the fundamental flaw is that most of the questions the Board has could be provided by on-the-ground data that could prove a significant gap in coverage. Mr. Gotto remains unconvinced by the data provided by Verizon. Mr. Gotto refers to a memo from Mr. Musso regarding his acceptance of the applicant's assertions. Mr. Gotto refers to another location in the overlay district that could have been proposed on the east side of the thruway. Mr. Gotto notes that the real estate report submitted by the applicant is similarly flawed.

Mr. Gaudioso responds that no alternative site exists in the record that was shown to be a feasible alternative.

Mr. Gotto does not believe that it's up to the Zoning Board to find an alternative site.

Attorney Moriello notes that a Resolution was drafted and circulated to the Board and included a summary of the record. Any decision made needs to be supplemented by written reasoning. Attorney Moriello advises that Board members submit their decisions in writing based on the record. In terms of a final decision, it would not be reasonable for this to go beyond another meeting.

Attorney Moriello recommends that Board members generate their own findings supported by the record and then present them at the next meeting. Those findings cannot be discussed among members in advance of the meeting. They can be submitted to the Attorney separately.

Mr. Gaudioso respectfully requests an approval of the application. The tolling agreement is on a day-to-day basis and if they want to cease the agreement, they have to give the Town notice.

No further comments or questions from Board members.

Adjournment

Chair Loza moves to adopt the 2022 meeting schedule for the Zoning Board of Appeals. Ms. Donnelly seconds. 5 ayes. Motion carries. Mr. Gotto moves to adjourn the December 8, 2021 meeting. Ms. Donnelly seconds. The meeting adjourns at 8:32 PM.

Respectfully submitted by,

Alana Sawchuk
Planning and Zoning Secretary

Amended by Stacy Delarede, as reviewed at the 2/9/2022 meeting.