

**MINUTES OF THE REGULAR MEETING OF THE TOWN OF ELLICOTT  
ZONING BOARD OF APPEALS HELD AT THE ELLICOTT ADMINISTRATION  
BUILDING, 215 SOUTH WORK STREET, FALCONER, NY 14733  
ON APRIL 24, 2017 AT 7:00 P.M.**

**PRESENT:** Chairman Steve Hoglin, Ken Lyon, Ang Cimo, Phil Pratt, William Pentheny, Attorney William Wright, Code Enforcement Officer Dave Rowe and Secretary Valerie Pierce

**ABSENT:** John Merchant and Jean Holton

Chairman Hoglin opened the meeting at 7:00 PM and led in the Pledge of Allegiance. Secretary Pierce called the roll.

**Motion made by William Pentheny, seconded by Ang Cimo to approve the minutes of the March 27, 2017 meeting.**

**Carried.**

**Ayes – 5**

**Noes – 0**

**Absent – 2**

Attorney William Wright swore in everyone that would be giving testimony at this meeting.

**The public hearing for Richard and Anthony Benedetto is still tabled at the request of the applicant. They are waiting for the outcome of the possible rezoning.**

**Chairman Hoglin reopened the public hearing for Timothy Ruch, 580 Fairmount Ave., Jamestown, NY for the renewal of a special use permit for a three unit apartment dwelling.**

Mr. Ruch was present and addressed the Board. He told the Board that he had filled out the application in February and sent in the fee but was not aware that he needed to be present for the renewal of his special use permit. Code Enforcement Officer Dave Rowe had contacted him after the last meeting. Mr. Ruch was timely with his application but not his appearance before the Board. Attorney Wright told the Board that is up to them whether they consider the application timely and to extend it for more than 2 years.

Mr. Ruch addressed Board:

- he still has three apartments and he does not plan to make any changes
- his special use permit was last renewal was in 2015
- he first appeared in October of 2009 for the special use permit for the three apartments

There were no neighbors present for this hearing and the Town had not received any correspondence concerning this application. Code Enforcement Officer Dave Rowe told the Board he had never received any complaints on this

property. Attorney Wright stated that he did not see any issues with this property. The Board has granted up to a 10 year renewal.

**Motion made by Ken Lyon, seconded by William Pentheny to approve the renewal of this special use permit for Timothy Ruch, 580 Fairmount Ave., Jamestown, NY for a period of five years. It will expire in February 2022.**

**Carried.                      Ayes – 5                      Noes – 0                      Absent – 2**

**Chairman Hoglin opened the public hearing for SBA Towers IX, LLC for a special use permit for a telecommunication tower on property owned by Moonbrook County Club., West Oak Hill Rd., Jamestown, NY and variances from the set-back requirement from the residents and the set-back requirement and height requirement for the security fence.**

**Gene Averse, a resident of Topo Lane., Jamestown, NY** asked why this was a public hearing for the special use permit for the telecommunication tower since they had it on the agenda for the February meeting. Attorney Wright said that the special use permit was tabled because it was determined that they were required to have two area variances.

**Attorney Daniel Laub, from Cuddy and Feder, LLC, addressed the Board.**

- they are proposing a 150' cellular telecommunication tower
- it will be a monopine tower – it looks like a pine tree – it has fiberglass branches to conceal the antennas
- this tower is being proposed to serve Verizon but will have the capacity to serve other carriers – if other carriers came into the area they would be mandated to look at this tower before they could propose any other tower
- SBA wants co-locators on this tower
- for Verizon's purposes it is to provide coverage – mostly for capacity

Mr. Laub reviewed the plan with the Board.

- there is an access drive
- they have a 100' by 100' leased area
- within the leased area is a fenced compound – there is an equipment platform within that – as well as the tower
- it is an unmanned facility – but monitored 24/7
- it is visited generally once a month by a technician
- as far as radio frequencies the calculations are less than 1% of what the FCC limits are – that is when the antennas are facing directly down to the ground at full strength and that is not the case because they are facing out and not at full strength all the time – 1% is less than a refrigerator generates which is generally around 4% to 5%
- the tower is approximately 794 feet from West Oak Hill Rd

**Mr. Laub introduced Michael Stuart, SBA's project engineer from Network Building and Consulting and Justin Lad, a radio frequency engineer from Verizon.**

A resident from the area asked if they were aware that there was an airport less than a mile for this site. Mr. Laub said they were. He stated that there is actually a joint data base that is created between the FAA and the FCC and is a process whereby carriers and tower companies go through an analysis to get feedback whether the tower is a hazard to air navigation. They have gone through that process and it not a hazard. The resident asked what guarantee there was that the tower would not be modified down the line because of the airport. If there were any modifications they would have to come before the Zoning Board.

Attorney Wright said that they were going to focus on questions from the Board and then the residents will be able to state their concerns.

Steve Hoglin asked if the tower is going to be lit. It is not.

Attorney Wright said that he could address the questions about the airport. The Town Zoning Code has an airport overlay that was added about 15 years ago that prohibits tall structures and provides for special requirements for structures within the glide paths. This tower is not within those.

**Christopher Tehan, a resident of West Oak Hill Rd., Jamestown, NY, had concerns about:**

- the height – the tallest tree in the area is approximately 60' to 80' – now they would have a 150' tower that is shaped like an artificial tree
- he moved there to live in the country
- the health concerns raising his children in the area
- also concerned allowing this tower would open the door to more expansion

**Nancy Allen, West Oak Hill Rd., Jamestown, NY had concerns:**

- same concerns as Mr. Tehan
- also it will be an eyesore for the area – there is other property on the hill where the tower would be more discrete and also property along Route 60 that could be considered

**Mr. Lad** explained the reason that this site was picked. He said that it does become a part of the environment.

Attorney Wright asked if any of the neighbors went to the balloon flights. They did two different flights up there and one was published in the paper. There were also no neighbors at the first meeting.

**Mr. Leslie Charles, a resident of West Oak Hill Rd., Jamestown, NY had concerns about:**

- this will be in their front yard – concerned about the view
- the airport
- the birds in the area – the area is like a bird preserve

**Suzanne Greenberg, a resident of West Oak Hill Rd. had concerns about:**

- the neighbors that live right next door to the tower – they live a little farther up and won't see it as much
- feels it will destroy the property value

**Gene Aversa, the closest resident to the tower, had concerns about:**

- why they needed a special use permit

Attorney Wright stated that the Town of Ellicott Code has a special code relating to nothing but radio telecommunication towers (Section 146-72) – they had a meeting in February when the Board went through all of the sections of the code and determined they were fully compliant with the exception of a couple of things – first was the setback from a residence and second was the height of the fence – the height of the cell tower also presented an issue in that it was going to be 150' and have antennas on top of that so it would exceed that 150'. The applicant lowered it so the highest part of the tower will be 150' making it code compliant.

- Mr. Aversa asked how long the special use permit would be good for

Attorney Wright stated it was good for 2 years. Mr. Aversa asked if there were problems after the 2 years the Town could mandate that the tower come down. Attorney Wright said that was true or the Board could remediate the issues.

- Mr. Aversa asked if the special use permit deals with adding other antennas to this structure.

Mr. Wright told him that it does require providing the information and an updated RF study. Also with every 2 year renewal they are required to provide a structural inspection, an updated RF study, an updated demolition proposal and are required to post a bond with the Town of Ellicott that would cover the full cost of the demolition of the tower. There would have to be a public hearing.

Attorney Laub stated that SBA also operates another facility in the Town and they have always been in compliance with all of their permits. Attorney Wright agreed.

- Mr. Aversa asked about the setback variance.
- He understands that one of the reasons the Board could deny a special use permit would be if it negatively impacts the neighborhood or significantly changes the personality of the neighborhood. Attorney Wright stated that was in Town Law not the code. Mr. Aversa stated that this tower will negatively impact the personality of his neighborhood.

**Mr. Todd Patrick and Mr. Aversa** also have six other lots for future development and this tower will significantly decrease the value of their property and the lots they want to sell. They are both adamantly against this tower.

Attorney Laub stated that they have done their utmost to mitigate the visual impact of the tower by proposing what they have. He wanted to clarify one thing. The standard in New York for public utilities is a little different. They are considered a public utility for purposes of a variance because of the nature of their infrastructure is developed and the necessity of having multiple facilities. The Town has to operate under the Con Edison standard. Attorney Wright stated that it does supersede the New York State Law.

**Todd Patrick, a resident of Topo Lane, Jamestown, NY** asked about the lots that are for sale near where the tower is going. Mr. Laub said that he did not know.

**Mr. Charles** asked what the elevation of the airport was. Chairman Hoglin stated that where the two runways intersect it was 1723 feet. He said when the fire department put station 2 at the airport they had to go through very strict requirements from the FAA.

**Mrs. Allen** asked if the residents would be compensated if the value of their property went down. Attorney Wright said if the assessor determined that the value of their property goes down their taxes would go down. They would have to make their case with the assessor.

**Mr. Tehan** said he was also speaking on behalf of **Mr. Mark Tarbrake, a resident of Oak Ridge Circle, and Mr. John Short, a resident of Oak Ridge Circle and Michael Corry** who could not make it tonight. **They are all against this tower.** This will change the character of the neighborhood.

**Mr. Allen** asked if there was something else that they could use besides the tower. Mr. Laub said there was not. This is the strongest technology that they have and the cell phone companies need to focus on the liability. Over 70% of all 911 calls are made from cell phones.

Mr. Laub stated that a portion of the coverage area that this tower is in is an area where, if they do not begin to serve soon with a new facility, it will not be reliable at all. You will begin to see times when there is high traffic, when people are using their phones a lot or times of high data usage it will severely affect the usage.

Attorney Wright reviewed section 146-72 for the area variances. The code says no tower shall be located closer than 1000 feet to any residential district boundary (section 146-72 (B) 3. The Board determined at the last meeting that was an incorrect drafting and should say closer than 1000 feet to a residence.

The Board previously interpreted that for the tower on Dow Street. There are three houses within the 1000 foot circle.

**Mrs. Allen** said that she does not think her house is within the 1000 feet but her front yard would be. Attorney Wright said the Board interpreted it to be residences.

The three residences within the 1000 feet are the Swanson, French and Aversa properties. Mr. Tehan told the Board that Mr. French was at the fire department and unable to attend.

**Mr. Allen** asked why they are able to get so much from a satellite dish but need a tower for cell phones. Mr. Stuart explained that the nature of cell phones do not work that way. Satellite dishes shoot in a straight line so it beams from one dish directly to another.

**Mr. Tehan** asked if there is a line worker and he has to service these antennas, is there a time limit as to how long he can stay on top of an active tower. Mr. Lad said that usually they would turn off the sectors but it would be approximately 20 to 30 minutes if they were directly in front of the antennas.

**Mr. Aversa** asked why the 1000 feet and if there were emissions that could occur within the 1000'. Attorney Wright said that the 1000' was put in the code for an aesthetic reason. That is also the reason that the Town notifies neighbors within 1000' (instead of the normal 500' for public hearings) for cell towers.

**Ms. Greenberg** had concerns about more radio waves when more antennas were added. Mr. Laub stated they would have to be in compliance with the Federal standards and they would be required to come back before this board if they added new users or added new antennas. She asked if they were actually generating waves. Mr. Laub said that they were low power radio waves such as a refrigerator or baby monitor would create. He said if someone were directly under the tower (which they will not be) and if they facing directly down (which they are not) and were on full power (which they will not be) they would still be under 1% of what the FCC general public standard would be.

**Mr. Charles** asked what coverage this tower would provide. Attorney Wright stated that there was a coverage map provided in the materials provided to the Town. Mr. Charles asked what kind of wave they would be using. Mr. Lad explained what Verizon uses.

Attorney Wright reviewed section 146-72B (4) (b) of the code for the variance for the enclosed security fence. It states that no tower shall be closer to the base of the tower than the height of the tower plus 20%. Mr. Laub said that they have a 100' by 75' area. They have tried to minimize the size of the variance needed. This code is also considered for guy wire towers and this will be a tower that will

crumble and come straight down and would fall within a 20 foot area. The height of the fence will be 6 feet which is allowed.

The only correspondence that the Town received was from **Gene and Ann Aversa, residents of Topo Lane**, and that was received in February. Secretary Pierce read the letter into the record (see file SBA Towers IX LLC variances for tower on West Oak Hill Rd.) The Aversa's stated that they did not know the impacts but had no problem with the tower being built but wanted some guarantee in writing from SBA Towers that if there were any problems with their services for their phone, TV or computer they would be resolved at the applicants expense within 90 days.

**Mr. Aversa** told the Board that at the time he wrote the letter he did not know the location of the tower. He is certainly opposed to the tower.

Attorney Wright reviewed 267 B of the Town Law for the area variances. He listed the five criteria.

The first area variance is the request for the 1000 foot setback from a residence to be reduced to 665 feet. The second is for the fencing requirement of the height of the cell tower plus 20% be reduced to the current proposed fence of 75' by 100'. The variances can be considered separately. Attorney Laub had stated in the balancing test the benefit to the applicant is presumed under the public utility standards. They have to demonstrate their need. Attorney Wright said that from what the residents in attendance said they would be happier with a smaller fence. The original proposed fence was 50' by 50'. The applicant was willing to use a stockade fence instead of the chain link fence and have the fence 50' by 50'.

The residents said they did not know why the Board would worry about the fence if they did not allow the tower. Attorney Wright explained that the Board is considering the variances first because at the hearing in February it was determined that they could not do this project without the two area variances. The Town also re-notified the public and increased the size of the circle for notification in order to provide people the opportunity to come in.

**Phil Pratt asked if anyone had seen the balloon flight.** None of the neighbors present had seen either of the flights.

**Motion made by Phil Pratt, seconded by William Pentheny to deny the area variance request for the 665 feet instead of the required 1000 foot setback for the fence.**

**Carried.**

**Ayes – 4**

**Noes – 1 (Hoglin)**

**Absent – 2**

**Attorney Wright said that the Board can not act on the special use permit for the tower so that will continue to be tabled in order to see if there are any alternatives.**

**Chairman Hoglin opened the public hearing for ALDI Inc., 930 Fairmount Ave., Jamestown, NY for signage variances pursuant to section 146-67 of the Town of Ellicott Planning and Zoning Code.**

**Mr. Christopher Kamar, PE, representing ALDI Inc., addressed the Board:**

- they are adding an approximately 1500 SF addition to the store
- they want to redo the front canopy to their more modern look
- the store is set back 230' to 240' from the travel lane
- they provided renderings of the signs they are proposing
- there are new "Food Market" wall signs that are 38 SF
- the "Aldi" wall signs are 78 SF
- they are also proposing a new pylon sign – they would like it to be 35' in height - the approved square footage originally was 112 SF – they are proposing 120 SF (12' by 10')
- they are requesting a variance for five signs instead of the allowed one sign
- they are also requesting a variance for the height and square footage of the pylon sign
- the total square footage of the wall signs are 226 SF
- they are not changing the entrances and exits
- the signs will be LED internal lights

**Ken Lyon asked if they would be willing to keep the height of the pylon sign to 30 feet. Mr. Kamar said they would be willing to keep it at 30 feet and would not need that variance.**

Attorney Wright asked what Dave thought the setback for the new pylon sign should be. Dave stated he would not consider this a new sign. The code (section 146-67.3 b) states no sign shall be located nearer than 10 feet to any property or roadway boundary line. They will not need any variance for that. Mr. Kamar said that there are no other setback issues.

Ang Cimo asked if the parking would be changed. Dave Rowe said that is not for the Zoning Board. The Planning Board will address that issue.

Attorney Wright said they need a variance for the number of signs (5 instead of 1) and for the square footage of the ground sign which cannot be larger than 100 SF. The total square footage of the ground and four wall signs would be 346 SF (398 SF would be allowed). Mr. Kamar said that the code also states that no wall sign shall be larger than 32 SF. They are each larger than that even though the total square footage is allowed. Dave Rowe stated that the 32 SF is for

projecting signs so the 32 SF would not apply. The applicant did remove the request for the height of the ground sign.

Attorney Wright said that the applicant needs a variance for the number of signs and for the square footage of the ground sign.

Mr. Hoglin asked if there was any smaller sign package for the ALDI stores. Mr. Kamar told Board that he feels this is a unique situation because the store is set back so far.

Mr. Kamar said that they will keep the store open as long as they can but will shut the store down for about 5 weeks or less,

The criteria for the area variance had been reviewed.

Attorney Wright told Mr. Kamar that area variances under the NYS Town Law are required to be sent to the Chautauqua County Planning Board for review. If that is not done and if it is ever contested and that had not been done the Board's decision would be of zero value. There is no limitation on this requirement. It can not be part of a condition. He asked what their time frame is and if he wanted to take the risk.

Attorney Wright said that Mr. Kamar would not have to come back if the Town gets the referral back from the County as long as the Board has had all of their questions answered.

The Board needed to set a date for the next meeting because the last Monday is a holiday. The Board decided on the 22<sup>nd</sup> of May for the next meeting.

Mr. Kamar asked if a SEQR was required. Attorney Wright said that he will put into the record that a SEQR is not required or the Board will do the short form SEQR after they receive the referral from County Planning.

**Motion made by Steve Hoglin, seconded by Phil Pratt to table this application until the May 22<sup>nd</sup> meeting.**

**Carried.                      Ayes – 5                      Noes – 0                      Absent – 2**

**Motion made by Ang Cimo, seconded by Phil Pratt to adjourn the meeting at 9:10 PM.**

**Carried.                      Ayes – 5                      Noes – 0                      Absent – 2**

---

**Valerie Pierce, Secretary**