

**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 JUNE 26, 2017 AT 7:00 P.M.**

PRESENT: Chairman Steve Hoglin, John Merchant, Jean Holton, Ang Cimo, William Pentheny, Attorney William Wright, Code Enforcement Officer Dave Rowe and Secretary Valerie Pierce

ABSENT: Phil Pratt

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 Jean Holton to approve the minutes of the May 22, 2017 meeting.

Carried. Ayes – 5 Noes – 0 Absent – 2

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

Ang Cimo entered the meeting at 7:03 PM.

Chairman Hoglin reopened the public hearing for SBA Towers IX, LLC for their special use permit for a communication tower on property owned by Moonbrook County Club on West Oak Hill Rd., Jamestown, NY.

Attorney Wright told the Board that he had been in contact with their Attorney. He reminded the Board that their area variance for the separation between residential homes was denied by the Board. They were working with the property owner to see if they can find a location that would meet the setback requirement of 1000 feet from residences and still not interfere with the effectiveness of the tower. They have also filed an action against the Town in federal court and given an indefinite adjournment of the Town's response. Mr. Wright stated that no action is required on this application at this time since the special use renewal has been tabled.

Chairman Hoglin reopened the public hearing for ALDI, Inc., 930 Fairmount Ave., Jamestown, NY for an area variance for the square footage of their pylon sign.

Attorney Wright stated that ALDI was expecting the Board to act on this application tonight. At the meeting last month the engineer for ALDI, because of the number of members present, requested that it be adjourned for one month. They had applied for a couple of area variances. The one that was not heard was for a ground sign. Aldi's agreed to reduce the height of the sign to the allowed 30 feet. The code allows the sign not to exceed 100 SF and they are

requesting 120 SF. Steve told the Board that they had a variance for 112 SF but only used approximately 78 SF. The signage for the building was approved at the May meeting.

Dave Rowe explained that Mr. Kamar was not able to attend but that they would still like to request the additional 8 SF for the pylon sign from what they were approved for last time.

Mr. Kamar had told the Board at the last meeting that it was not cost effective to make a smaller sign because that was the size made for all the ALDI stores.

Attorney Wright reminded the Board that this area variance is covered under section 267 B of the Town Law.

Secretary Pierce stated the Town received no correspondence concerning this application.

Motion made by Jean Holton, seconded by William Pentheny to approve the variance of 8 additional square feet for Aldi, Inc. for their pylon sign.

Carried. Ayes – 5 Noes – 1 (Hoglin) Absent -1

Chairman Hoglin opened the public hearing for Richard and Anthony Benedetto for a variance for a parking lot setback to obtain adequate parking for the proposed building on Dunham Ave., Jamestown, NY.

Richard Benedetto presented plans and photos for the Board to review. The Board and Mr. Benedetto discussed the plans. Mr. Benedetto explained that there are other parking lots closer to the road than this will be. It is the same distance that Dr. Burke's parking is off the road.

Attorney Wright reminded the Board that since the Benedettos' applied the zoning has been changed from neighborhood business to mercantile. They will not need a variance for the building (they are allowed up to 7500 SF) but would still require a setback variance for the parking lot.

Attorney Wright reviewed the bulk requirements in the mercantile zone. They meet all of the setbacks except the front and are requesting a variance of 18 feet.

Jean Holton has some concerns about if there would be any vision impairment. Mr. Benedetto said there would be no vision impairment because there is also green space in the front that will be maintained. Nothing would impair vision in or out of the parking lot.

Mr. Wright told the Board this area variance is covered under section 267B of the Town Law and reviewed the criteria. He stated that this proposed project is exempt from SEQR.

John Merchant had some questions concerning the possible widening of the road with all the new construction in Celoron.

There was discussion on the possibility of sidewalks in the future because of the new development in Celoron. Mr. Benedetto showed on the plans they had proposed space for sidewalks.

Secretary Pierce stated there was no correspondence concerning this application.

Motion made by John Merchant, seconded by Ken Lyon to approve the 12 foot variance for Richard and Anthony Benedetto for a parking lot setback for the proposed building on Dunham Ave., Jamestown, NY.

Carried. Ayes – 5 Noes – 1 (Hoglin) Absent – 1

Chairman Hoglin opened the public hearing for Bell Atlantic Mobile Systems of Allentown Inc., d/b/a Verizon Wireless for the renewal of the special use permit for a telecommunication tower at Idlewood and Orchard Roads, Jamestown, NY.

Attorney Nathan E. Vander Wal from Nixon and Peabody LLP, representing the applicant addressed the Board. He told the Board that all of the items that are required were in the packet that was provided to the Town.

Mr. Vander Wal reviewed the items that were provided with the Board. The special use permit for the 400 foot guyed tower was originally issued in 1991.

He told the Board that there are three requirements for the renewal and each of them have been prepared and submitted to the Town.

- The structural engineer's inspection – the existing tower is still in compliance with all applicable standards
- The radio frequency compliance report states that the tower is fully functional and compliant with the FCC guidelines and far below the FCC mandated emission thresholds
- Steve asked if how many co-locators are on the tower- Mr. Vander Wal did not know except for Verizon – Dave thought that all of the big three are all on it
- Two years ago there was a change out of equipment when the permit was renewed – there have been no new change outs in two years

Robert Pickett, Town of Ellicott Highway Superintendent, stated that there are a lot of water issues due to the tower.

- the water has washed out the road and washed out Idlewood
- it has filled the ditches
- they have had to fill the end of the road a couple of times
- the highway department have cut some trenches right below the gate
- he provided photos – taken at 7 AM after a rain the night before
- it has flooded out a gas house that is there – they built a wall 2 feet high in front of the gas house to try to stop it
- it pushes silt down the road and the Highway Department has to clean it out down below

Mr. Vander Wal said that in reviewing the history of the site there were water issues before. He thought that they were all addressed in 2015. Mr. Pickett said in 2009 the Town put an expansion to a drainage ditch behind the Gerace house. The road to the tower was supposed to have some under drain pipes that brought the majority of the water to the west side. The way the road is ditched now the water cannot get to the west side so it flows out the east side. Dave said it also floods the Hawthorn development. Bob said that now he would guess they need to put about 2 feet of gravel in and crown it.

Mr. Vander Wal asked if the Town had notified anyone prior to this meeting. Bob said that they had not.

When the engineers did a study they said the problem was the Town's 18" pipe. One of the solutions was to build a pond and the cell tower engineers did not think there was any reason to build a pond. The records are not complete in the Highway Superintendent's office. The place they wanted to put the pond is on Media One property. Rex Tolman was the engineer for the Town at that time.

Attorney Wright said that he would like the Board to review the reports that have been submitted and make sure they are comfortable with those. He would like the Board to table this so Attorney Vander Wal could take these concerns back to Bell Atlantic so they can come back and evaluate the situation again. They have been very responsive before. This is the first that the applicant has been made aware of these problems.

Attorney Wright suggested that Mr. Vander Wal, since he was here and so he could report back to Bell Atlantic, go with Bob and look at the situation rather than make another trip. Mr. Vander Wal said he would be happy to.

Attorney Wright said that the only thing he found in the report is that the engineers estimate for the demolition of the tower has increased to \$90,000 and the current bond is \$70,000. They will have to increase the amount of the bond.

Attorney Wright said that he would see no reason that Attorney Vander Wal would have to come back down for the next meeting if the water issues were addressed.

Motion made by Steve Hoglin, seconded by William Pentheny to table the application for Bell Atlantic Mobile Systems of Allentown, Inc. d/b/a Verizon Wireless for the renewal of their special use permit until the next meeting.

Carried. Ayes – 6 Noes – 0 Absent – 1

Chairman Hoglin opened the public hearing for UP STATE TOWER CO., LLC for the renewal of their special use permit for a telecommunication tower at 2209 Allen St. Ext., Jamestown, NY.

Attorney Matthew Kerwin (Barclay Damon LLP) representing Up State Tower Co., LLC, addressed the Board:

- they are requesting the renewal of the special use permit that was granted in 2015 for the tower that was constructed in 2016.
- nothing has changed since it was constructed
- they provided structural analysis, the estimated removal report and the radio frequency audit report
- he also provided a letter dated June 23, 2017 from National Grid, which the Town also received, as well as a letter dated in May of 2016 expressing their concern when the tower was being constructed – Attorney Wright asked the Board members to read the letters – Dave Rowe told the Board that the first letter was received the day the tower was being built – National Grid had been notified of the public hearings by the Town – also one the Board members had reached out to National Grid locally concerning the tower
- Attorney Kerwin commented on National Grid’s position - the tower is brand new and was built to structural standards that probably far surpass what National Grid’s transmission tower is built since they are older - nothing has changed – they had ample notice of the application and process and they choose not to respond – he feels that for the Board to consider their position and possibly revoke or nullify the renewal permit would be misplaced given all of the procedures and processes were followed previously
- He would suspect that they do not have the same inspection requirements that the towers do so concerns about structural integrity are misplaced – if there is concern it should be on Up State’s end with respect with what surrounds them – if there were a significant storm event their tower would be much better position to withstand any kind of high winds or significant storm occurrences compared to what National Grid has in place right now
- they are requesting the permit be renewed and if allowed to extend it beyond the two years – Attorney Wright stated that the code does not allow telecommunication towers to be renewed beyond a two year period

- the tower is designed to accommodate four carriers so it is now over designed – they presently have just the one

Attorney Wright asked that Attorney Kerwin explain to the Board how the tower is designed to fall. Mr. Kerwin explained that the tower was built with a 25 foot break point from the top of the tower. They over designed everything below that 25 foot breaking point. That relieves everything below that point. Mr. Kerwin could not say what the life expectancy of the tower would be. He stated that they would replace anything that would be needed based on the structural analysis report.

Steve asked when National Grid would have been first notified. Secretary Pierce stated that National Grid would have been notified approximately 10 days before the first public hearing and that it is published approximately one week prior to the public hearing. Steve also told the Board that he did reach out to a couple of supervisors for National Grid and they said that they would also notify the home office. Dave said that the first he heard from National Grid at least 6 or 7 months after the public hearing.

The only correspondence received by the Town for this renewal was from National Grid.

Motion made by Ken Lyon, seconded by Ang Cimo to approve the renewal of the special use permit for Up State Tower Co., LLC for their telecommunication tower at 2209 Allen St., Ext., Jamestown, NY for two years.

Carried. Ayes – 6 Noes – 0 Absent - 1

Chairman Hoglin opened the public hearing for Joseph Scholeno, 56 Frederick Blvd., Jamestown, NY for an area variance for a sideline setback to construct a new garage.

Mr. Scholeno addressed the Board:

- he wants to construct a 30' by 26' attached garage
- the actual structure would be approximately 10 inches and with the hangover that would be another 12 inches - the total would be approximately 22 inches into the five foot required setback – all of the other setbacks meet the code
- he just moved in June
- the new garage will not extend pass the width of the driveway that is there now

Steve asked if anyone had discussed a maintenance agreement with him. The Board has in the past required one.

Mr. Scholeno has discussed this proposed addition with his neighbor. His daughter and son-in-law both have approached him on his neighbor's behalf with any concerns he had. His neighbor was initially concerned because he believed that the variance would allow Mr. Scholeno to take 22" of his property. His neighbor's daughters assured him that there should be no issues with it.

John asked why he wanted it 30 feet vs. cutting down the width. Mr. Scholeno explained that was because currently the side door to the house leads right into the kitchen. His objective for the 30 feet is that they have two cars and a motorcycle and they wanted to use a portion as a breezeway. He will use the area of the trusses for storage. There will be no living space in the new structure.

Ang Cimo told Mr. Scholeno that if anyone wanted to call him he would be willing to explain the maintenance agreement because he had went through the process when he put on his carport. Ang has provided copies to others that have been required to have the maintenance agreement.

Dave commented that Mr. Scholeno has more than 3 feet on a one story garage that will require minimal maintenance and will be easily accessible by a step ladder. If he were only a foot off the line there would be no way he could get a ladder beside it but three feet should be plenty of room for a step ladder.

Steve stated that the Board has required a maintenance agreement if it were within the five feet.

Mr. Scholeno said that the neighbor has a row of bushes that may already fall within the five feet.

Jean asked if there were anywhere that might explain this. Attorney Wright stated that it has just been the policy of the Zoning Board. There is nothing in the law but has been one of the factors that have been imposed as a condition by the Zoning Board. The Board is permitted to impose reasonable conditions when granting an area variance. Jean said that since his neighbor is elderly they may not want any restrictions on his property in case he might want to sell.

Mr. Scholeno requested that the Board table this application until next month. He may have to change the plans if he cannot get the easement. Mr. Scholeno said that it might be a problem to get this done before the contractor wants to start. He will have to decide if he can get the easement or if he will have to change his building plan.

Motion made by John Merchant, seconded by Steve Hoglin to table this application for Mr. Scholeno until the next meeting.

Carried.

Ayes – 6

Noes – 0

Absent – 1

Motion made by Ken Lyon, seconded by William Pentheny to adjourn the meeting at 8:38 PM.

Carried.

Ayes – 6

Noes – 0

Absent – 1

Valerie Pierce, Secretary