

**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 JULY 31, 2017 AT 7:00 P.M.**

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

The Town had received a letter of resignation from 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 John Merchant, seconded by Ken Lyon to approve the minutes of the June 26, 2017 meeting.

Carried. Ayes – 6 Noes – 0 Absent – 0

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

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 Daniel Laub, representing SBA Towers, addressed the Board:

- he reminded the Board that the variance for the setback of less than 1000' was denied
- they are still requesting the variance for the security fence and the special use permit for the tower
- they did search out alternate locations for the tower on the property and have been able to arrange with the Country Club to move the location of the tower which will be more than 1000 feet from the nearest residential structures
- overall the site is basically the same – they have a 50' by 50' compound – the fence will be 83 feet from the property lines – the tower will be 108 feet from the property lines
- they have also been able to secure from the engineers an assurance that the tower will be designed in such a way that it will collapse within 25 feet of the center – it will buckle rather than fall over
- the road will be approximately 750 feet longer – utilities will still be underground from West Oak Hill Rd
- the tower still is a proposed 145 foot monopine structure with a lighting rod on top (total of 150 feet)

Attorney Wright reviewed the process up to this point. The applicant has been to two different meetings. At the first meeting the Board reviewed the cell tower provisions of the code. They flew a second balloon at the request of the Board since they did not publish the date and time of the first flight. The Town code requires that they publish the date and time of the balloon flight.

Mr. Wright asked with the moving of the tower if there were any change to the RF impact. Mr. Laub stated there was not because the height remained the same. The coverage is largely the same.

It was determined there were two area variances required:

- the first was the 1000 foot setback variance from the nearest residence. **They have moved the tower so that variance is no longer required.**
- the second variance they needed was for the size of the fence. Attorney Laub said the distance of the fencing was an issue under the same provision. They are now further from the property lines than they were before.

Attorney Laub continued and told the Board:

- there has been no change in the noise
- the access parking is adequate.
- the site is visited once a month and is an unmanned tower that is monitored remotely.

Attorney Wright asked if the original materials included a demolition cost. In reviewing the material provided to the Town, one was not found. The Board will have to determine how they want to handle that. Mr. Wright would be willing to propose that they provide the Town with an engineering estimate and commit to post a bond in accordance with 146-72 (8) of the code.

Attorney Wright stated that this is subjected to SEQR as an unlisted action. Attorney Laub said Part I of the long-form SEQR was provided with the materials. Dave went to make copies of Parts II and III of the SEQR for the Board to complete.

William Pentheny asked if the gravel road would be a drainage issue. Both Mr. Laub and Dave Rowe said that it would not create any drainage issues.

The Board filled out Part II of the SEQR using the answers to Part I that the applicant had completed and determined that this project would not result in any significant adverse environmental impacts. (See SBA Tower IX, LLC on West Oak Hill Rd., Jamestown, NY file)

Motion made by Steve Hoglin, seconded by William Pentheny that the Board determined that this project would not result in any significant

adverse environmental impacts and that Chairman Hoglin would check Box 3 on Part III of the environmental assessment form.

Carried. Ayes – 6 Noes – 0 Absent – 0

Attorney Wright explained the first required area variance was under section 146-72 (4) B. The security fence should be placed no closer then 100 feet to any property line. The fence will be 83 feet from the east and west property lines.

Motion made by Ken Lyon, seconded by Ang Cimo to grant the variance of 17 feet for the security fence on the east and west boundary lines.

Carried. Ayes – 6 Noes – 0 Absent – 0

Mr. Wright stated that the second area variance is also from section 146-72 (4) B of the code. No tower shall be constructed that is not completely enclosed by an adequate security fence. Security fence shall be placed no closer to the base of the tower than the height of the tower plus 20%. The area variance is to reduce the size to 50' by 50'.

Motion made by Steve Hoglin, seconded by John Merchant to approve the area variance for the security fence based on the information received from the engineer that the tower if it fell would fall within the 50' by 50' area.

Carried. Ayes – 6 Noes – 0 Absent – 0

Attorney Wright said that the Board can do a conditional approval pending the engineer's calculation of the cost of full removal and the corresponding bond or equivalent security prior to the building permit being issued.

Secretary Pierce stated there was no correspondence since the last meeting concerning this application.

Motion made by Ken Lyon, seconded by Steve Hoglin to approve the special use permit for a telecommunication tower on property owned by Moonbrook Country Club on West Oak Hill Rd., Jamestown, NY for two years with the condition:

- **the applicant provide to the code enforcement officer the engineer's calculation of the full replacement cost and the bond or equivalent security being provided before the building permit is issued.**

Carried. Ayes – 6 Noes – 0 Absent – 0

Chairman Hoglin reopened the public hearing for Bell Atlantic Mobile Systems of Allentown Inc., d/b/a Verizon Wireless for the continuance of

the public hearing for their special use permit for a telecommunication tower at Idlewood and Orchard Roads.

Attorney Wright reported that he had a call from their attorney last week saying after the meeting he went up there with the Town Highway Superintendent. He stated there clearly are water issues. It is been complicated by the fact that Verizon has sold all of these towers. The tower is now owned by another company so at this point they are responsible for the storm water management. He requested a one month adjournment and may need additional time. He spoke to the Highway Superintendent Mr. Pickett was happy with the acknowledgment of the issues.. Mr. Wright does not think that any action is needed. The Board needs to know what the structure of ownership is. He thinks that the tower owner is responsible. Dave said that he did get a contact for the new owner and gave that information to the Highway Superintendent.

Chairman Hoglin reopened the continuance of the public hearing for Joseph Scholeno, 56 Frederick Blvd., Jamestown, NY for a sideline setback to construct a garage.

Secretary Pierce reported that she talked to Mr. Scholeno and he was not comfortable going to his neighbor for the maintenance easement requested by the Board at the last meeting. He would reduce the size of the garage and come to see Dave Rowe for a building permit. This application will come off the agenda.

Chairman Hoglin opened the public hearing for Michael Smith, 3363 Bonita Drive, Jamestown, NY for setback variances to construct a second floor to their cottage.

Mr. Michael Smith addressed the Board:

- he had been before the Board in September of 2015 but because of personal reasons he did not pursue the request and asked to be taken off the agenda
- he owns the cottage with two of his brothers
- he provided photos of the cottage
- he explained what they wanted to do – they would like to extend the width on the back part of the house – basically they would square it off
- in essences the second floor will be substantially wider than the first floor in that area
- he retained another survey company – they retained Rodgers Surveying Company in Jamestown
- there was a difference in the two surveys – Mr. Smith tried to explain the differences in the survey but the copies were very small so Dave made new copies that were larger
- Ang asked if Mr. Smith had done work on the cottage since he had been in before – Mr. Smith stated that he had not - some work had been done

- after the purchase of the property but prior to Attorney Wright's request that they would not perform any additional renovations to the property after he was before the Board in 2015 – they purchased the property in July of 2013
- Mr. Smith said that he is only asking to stay within the framework of the existing cottage– he wants to expand it to match the existing section of the cottage
 - Mr. Smith provided a copy of the original Erickson survey
 - Attorney Wright asked if they had made any progress on having his brother-in-law deed back some of the property – his brother-in-law had retained 5 feet when deeded the property to them – there was talk about deeding that back to eliminate that area variance on that side – Mr. Smith said they did not pursue that because of the expense and feels that the expansion is within the framework of the existing house
 - Bill Pentheny had spoke to the neighbor when Mr. Smith was in before and they had no problem with the expansion
 - Attorney Wright said that they will run into the same situation that they cannot maintain it without being on the neighbor's property – he should have a maintenance agreement with both neighbors
 - Attorney Wright said that these properties are 10 feet or less from each other – in Chautauqua they require certain fire rated siding to prevent the spread of fire – the Town has no code on that but under area variance there are safety criteria and the State law clearly allows the Board to impose reasonable conditions – there is cement board siding (Hardie Board) available
 - Ken Lyon said that Mr. Smith has over 10 feet on the east side – and has 9 ½ feet on the west side
 - what would be done on the other part of the house – Mr. Wright stated they could require Hardie Board on that part also
 - Dave asked if that would be a reasonable condition considering the cost

Attorney Wright asked if the Board is inclined to deal with this if Mr. Smith can get the maintenance easements or deal with it if he cannot get maintenance easements. Mr. Smith did not feel it would be a problem to get maintenance easements from either neighbor. Dave stated that if the variance is granted Mr. Smith had to maintain it regardless.

John Merchant said that during construction time they would also need some kind of agreement. Attorney Wright told Mr. Smith that maintenance easement agreements are fairly easy. The recording fee is approximately \$50. The Town has a couple of models that have been used in the past. It could increase the value of the cottage. At the same time he could give his neighbors one which would solve a problem in a neighborhood that is way too tight.

Ken said that he feels that the fire safety is contained because he has over 10 feet on one side and 9 ½ feet on the other. Steve asked Mr. Smith how painful

would it be to do the “Hardie Board” siding? Mr. Smith said it would be much more than they would have to spend given that they would not be using the cottage only a few months out of the year. The current siding is vinyl.

The Board cannot vote on this now but if they are against it they should speak about it. Ang asked if the Board has ever required the special siding. Dave said he was not an attorney but he did not know if financial hardship would get past a reasonable condition because with the siding and labor it could be three or four times as expensive. It does not exist in the code book and he could not enforce it. Attorney Wright stated that he does think it is a reasonable condition under 267 B of the Town code.

Mr. Smith asked if maintenance easements could be done in a month’s time. Attorney Wright stated they can. Ang and Mr. Wright will get copies to Dave and then Mr. Smith can get them from Dave.

Dave asked if they needed to be recorded before he would get approval. Attorney Wright said he should but if he wanted to get them and not record them after he receives the area variance that would be fine. The Board would make a condition that the building permit could not be issued until the easements were recorded and proof is provided.

Motion made by Jean Holton, seconded by William Pentheny to table this application for Michael Smith, 3363 Bonita Drive, Jamestown, NY for his area variances until he provides the maintenance agreements.

Carried. Ayes – 6 Noes – 0 Absent – 0

Motion made by Ang Cimo, seconded by Ken Lyon to adjourn the meeting at 8:55 PM.

Carried. Ayes – 6 Noes – 0 Absent – 0

Valerie Pierce, Secretary