

Zoning Board of Appeals January 11, 2017 Public Hearing and Regular Meeting Minutes

The meeting was held at the Aurora Firehouse meeting room at 7:00 pm

Present: Chairperson Karen Hindenlang, Laura Holland, and Ann Tobey

Absent: Jeri Vargo

Others Present: Village Clerk Ann Balloni, Planning Board member Pat Foser, APC Tower/Verizon representatives Jeffrey Davis and Robert Willson

Call to Order: Ms. Hindenlang called the meeting to order at 7:00 pm and acknowledged that a quorum of the ZBA was present.

Changes to the Agenda: No changes.

Approval of Minutes: On motion by Ms. Tobey, seconded by Ms. Holland, the ZBA voted to approve the November 9, 2016 minutes.

AYES: Hindenlang, Holland, and Tobey

NAYS: None

Motion carried unanimously.

Announcements: No announcements

Public Hearing

Application #16-52 from APC Towers, LLC and Verizon Wireless for construction of a cell phone tower on Wells College Campus at 170 Main St (Tax Map #193.5-1-1)

Ms. Hindenlang noted that the public hearing is continued from the November 9, 2016 ZBA meeting.

Ms. Hindenlang referenced correspondence received from the following (all attached):

- Sims & Associates, LLC to the Village Planning Board requesting Historic District information, dated October 7, 2016
- Village Historian, Dr. Linda Schwab's response to Sims letter, dated October 28, 2016
- Jeffrey Davis letter confirming the cell tower design has been modified so that it could later be extended, if requested and approved, dated December 14, 2016
- Revised Full Environmental Assessment Form, dated December 31, 2016
- Village Planning Board State Environmental Quality Review (SEQR) negative declaration on January 4, 2017
- Dr. Linda Schwab's letter regarding the New York State Office of Historic Preservation (SHPO) request for information on visual impacts of the project within the historic district, dated January 11, 2017

Jeffrey Davis, attorney for APC Towers LLC, explained that the information requested by SHPO was supplied in early December and SHPO has not yet made a final determination though, per SHPO discussions with the applicant, no impacts of concern are expected. Mr. Davis further added that all information requested was received and uploaded on the FCC 106 Filings website on November 1, 2016 and SHPO was also notified.

Mr. Davis then explained that the federal level of historic preservation through the ongoing Section 106 Review has ultimate decision making, even if the applicant receives approvals at the State and Local level. For example, they can request mitigation regarding the design to make the tower blend in with the scenery/other structures.

Mr. Davis then gave a brief overview of the project including two options for the access road. Village Engineer, Ken Teter, at a Planning Board meeting had suggested an alternate route to the original plan stating concerns regarding tree removal. However, Mr. Davis supplied a tree removal survey that indicated more trees would have to be removed with the alternate plan. Mr. Davis stated that the applicant did not have a preference for the original or the alternate plan.

Addressing Dr. Schwab's suggestion to move the site closer to the parking lot, Mr. Davis noted that because the site would be 20' lower in elevation, the height would then need to be 145'. In that situation, the taller tower would appear to be the same level of elevation or height in the sky, but more of it would be exposed to view, because the tree coverage would end about 20' lower down on the taller monopole.

Mr. Davis confirmed that the request for 109' height variance for an accessory structure and referred to Exhibit "4" of Application 16-52 noting that the application receives a "lesser" review as the project is for a public utility. Mr. Davis also referenced the applicant responses to the 5 Area Variance criteria that the ZBA must consider.

Ms. Hindenlang remarked that she and Ms. Holland visited the site, as well as the vantage point from Pumpkin Hill (south of the village on State Rt. 90) and noted that, when the leaves are on the trees, the water tower is barely visible, but acknowledged that the cell tower, due to its height, will be more noticeable.

Mr. Davis remarked that having the minimum number of board members present is a challenge for the applicant, in that a split vote would result in an automatic denial of the variance. He asked to reserve the right to ask that we postpone our vote, after listening to our deliberations. Ms. Hindenlang remarked that the ZBA public hearing has been open since November 9, 2016 and, once the hearing is closed, the ZBA has 62 days to render a decision. However, Ms. Hindenlang explained that the deadline imposed by the FCC for all board decisions is 150 days from the date of the application and that deadline is February 23, 2017.

Ms. Hindenlang confirmed with Mr. Davis that the Planning Board can make their approval contingent on ZBA granting a variance if the ZBA decided to continue the public hearing or postpone the vote on the variance to their next meeting. Ms. Hindenlang then questioned her board if they were comfortable closing the public hearing and Ms. Holland and Ms. Tobey stated that they were comfortable with the information received.

On motion by Ms. Holland, seconded by Ms. Tobey, the ZBA voted to close the public hearing for Application #16-52 at 7:40 pm.

AYES: Hindenlang, Holland, and Tobey

NAYS: None

Motion carried unanimously.

The ZBA discussed the 5 criteria for considering an area variance, weighing the pros and cons of each in terms of the health, safety and welfare of the community, as well as benefit to the applicant.

Ms. Hindenlang observed, and Board members present agreed, that this request was different from those that usually come before the ZBA because the board was not only considering potential benefit to an individual applicant, but also potential benefit to the entire community through the services that could be provided by the proposed cell tower.

After the discussion, Ms. Hindenlang asked the members present if they felt the Board could move towards a vote on a resolution based on our findings, and she asked Mr. Davis if he were comfortable with a vote by the three-member quorum present; all agreed to move forward. Further discussion resulted in the following regarding:

Tax Parcel Number: 193.05-1-1

ZBA RESOLUTION #17-01--DECISION ON HEIGHT VARIANCE

At a regular meeting of the Zoning Board of Appeals of the Village of Aurora, in Cayuga County, held at the Village Meeting Room in said Village on the 11th day of January, 2017, at 7:00 P.M., prevailing time, the meeting was called to order by the Chair and upon roll being called, the following were

PRESENT: Karen Hindenlang, Laura Holland, and Ann Tobey

ABSENT: Jeri Vargo

The following resolution was offered by Board Member Laura Holland who moved its adoption, and seconded by Board Member Ann Tobey, to wit:

WHEREAS, the Zoning Board of Appeals of the Village of Aurora received Application #16-52 from APC Towers, LLC and Verizon Wireless for an area variance (height) of Section 405.P1.A.3d of the Zoning Law of the Village of Aurora to permit construction of a public utility monopole telecommunications facility (cell tower) at 170 Main Street in the Village of Aurora; and

WHEREAS the Zoning Board of Appeals previously agreed to the Planning Board of the Village of Aurora acting as lead agency in a coordinated SEQRA review; and

WHEREAS the Zoning Board of Appeals received and reviewed the Planning Board's Negative Declaration on the SEQRA review of January 4, 2017; and

WHEREAS, in connection with Application #16-52, the Zoning Board has received and reviewed the application with supporting materials, conducted a site visit on November 7, 2016, opened a public hearing on November 9, 2016, and heard evidence from code enforcement officer Patrick Doyle and applicant representatives Jeff Davis and Robert Willson while receiving no public comment; and later resumed the previously adjourned public hearing on January 11, 2017, considered the revised EAF from the applicant and the SEQRA determination of the Village Planning Board, accepted a Letter of Intent (dated December 14, 2016) from the applicant regarding a design modification, reviewed written comments by Village Historian Linda Schwab dated October 28, 2016 and January 11, 2017, heard oral comment from Pat Foser, and closed the public hearing on January 11, 2017; and

WHEREAS, after review, the Zoning Board has weighed the benefit to the applicant and the community of the requested height variance against the effects on health, safety, and welfare of the neighborhood, and made the following findings:

A. The requested variance is substantial in that the proposed 125' cell tower will exceed the 16' height allowed for an accessory structure by 109 feet; however the substantiality is mitigated because the proposed height is the minimum required to provide the necessary public telecommunications service as described in Section 7 of the application and it will provide the significant and highly desirable public benefit of improved communication capabilities for residents and businesses and will enhance public safety greatly by enabling the local identification of our Village 911 calls so they are no longer routed through Seneca County; and

B. The requested variance will not create a undesirable change in the character of the neighborhood overall or a detriment to nearby properties in that the balloon fly test reports and photo simulations documented in Section 13 of the application show that the cell tower will have minimal impact on distant views in the surrounding landscape, the tower's immediate placement will be buffered by a stand of mature trees, and its location on undeveloped land in an institutional zone is removed from residential areas and most street views, while the cell tower, once operational, will enhance the area by providing reliable wireless service to individuals living, working, and traveling in the area, including emergency services providers; and

C. The requested variance will not have an adverse effect on the physical and environmental conditions of the neighborhood, as it will not generate noise or odors, or significantly increase traffic with routine facility

maintenance, and the radio frequency emissions of the proposed facility will comply with the regulations set forth in the Telecommunications Act of 1996; and

D. The alleged difficulty was not self-created because in order to provide its public utility to the service area within the given topography, Verizon Wireless, an essential service provider, requires the 125' minimum height to achieve the necessary coverage and fit within the existing network; and

E. The benefit sought by the applicant cannot be achieved by some other feasible means in that no other possible locations were found adequate to meet the coverage objectives to provide enhanced communications services to the area.

NOW, THEREFORE, BE IT RESOLVED that Application #16-52 of APC Towers, LLC and Verizon Wireless for an area variance for height of 109' from Section 405.P1.A.3d of the Zoning Law of the Village of Aurora to permit construction of a cell tower at 170 Main Street in the Village of Aurora as detailed in the application on file (dated September 23, 2016) is hereby granted for the reasons stated above. The question of the foregoing resolution was duly put to a vote as follows:

Karen Hindenlang Yes

Laura Holland Yes

Ann Tobey Yes

Dated: January 11, 2017

By order of the Zoning Board of Appeals of the Village of Aurora, NY

_____, Chair, Zoning Board of Appeals

Karen A. Hindenlang

Adjournment: On motion by Ms. Tobey, seconded by Ms. Holland, the ZBA voted to adjourn the meeting at 8:25 pm.

AYES: Hindenlang, Holland, and Tobey

NAYS: None

Motion carried unanimously.

Respectfully submitted,

Ann Balloni

Village Clerk