

TOWN OF ERWIN

Zoning Board of Appeals

MINUTES 10/24/17 MEETING

PRESENT: Frank Thiel, Ruth Fisher McCarthy, Bridget Ackerman, Mariana Huber, Ralph Truitt, Wes Strzegowski (Alternate)

ABSENT: Jay McKendrick

GUESTS: George Martinec, Willis Ford, Delaine Thompson, Brian Thompson, Don Overstrom, R.D. Lenhardt, Colin Fazio, Kevin & Tracey Knapp, Daniel Brennan, Karen Arduini, Rod Dibble, Bill Haynes, Brian Jones, Steph McEnroe, Robert McEnroe, Tom Creath, Pete Bierwiler, Colleen Crogan, Donald Crogan, Ken Morgan, Chris Nitz, Patrick Makubire, Jennifer Rice, Sean King, Teresa Bullock, William J. Rial, Rita McCarthy, Barb Lucas

CALL TO ORDER:

At 7:00 PM, Chairman Thiel called the meeting to order in the meeting room of the Erwin Town Hall, 310 Town Center Road, Painted Post, NY, 14870.

MINUTES:

Minutes of the 09/17/17 meeting were approved by unanimous consent.

2017-16

AREA VARIANCE APPLICATION FROM ALEX MARTINEC TO ALLOW A SOUTH FRONT YARD SETBACK OF 10 FEET AND AN EAST FRONT YARD SETBACK OF 25 FEET AT 46 OAKWOOD DR WHERE 35 FOOT SETBACKS ARE REQUIRED. VARIANCE OF §130-14 AND DENSITY CONTROL SCHEDULE IS REQUESTED. WITH PUBLIC HEARING

Notification of this action was sent to **38** adjacent property owners. Legal notice of this action printed in the Town's official newspaper, the Star Gazette, and in The Leader on October 15, 2017.

This is an Unlisted Action under the State Environmental Quality Review Act. No further SEQR action is required.

The property is located in an R12.5 Residential District.

The applicant seeks to build a new two car garage attached to the existing house. The property is a corner lot and therefore has two front yards. The house location in regard to setbacks is currently a pre-existing, non-conforming structure. The applicant seeks to attach the addition to match the existing structure.

The application was presented by Alex Martinec, builder, and Kenneth Morgan, homeowner. It was noted that the existing two car garage was remodeled into living space and the homeowner would like to build a new wheelchair accessible 2 car garage. The site location is approximately 20-25 feet above street level and there would be no direct view of the garage from either Oakwood Drive or Whispering Pines.

Chairman Thiel asked whether there are any sensible alternatives which would not require variances. In response, it was noted that the property is situated on a steep hill and the only alternatives would require excavating the hillside.

CHAIRMAN THIEL OPENED THE PUBLIC HEARING AT 7:06 PM.

No comments from the public.

CHAIRMAN THIEL CLOSED THE PUBLIC HEARING AT 7:08 PM.

ZBA CONSIDERS AREA VARIANCE APPLICATION 2017-16 AND ANY PUBLIC COMMENT AND MAKES FINDINGS ON EACH OF THE AREA VARIANCE CRITERIA:

RESOLUTION TO APPROVE REQUEST 2017-16 FROM ALEX MARTINEC TO ALLOW A SOUTH FRONT YARD SETBACK OF 10 FEET AND AN EAST FRONT YARD SETBACK OF 25 FEET AT 46 OAKWOOD DR WHERE 35 FOOT SETBACKS ARE REQUIRED.

The requested variance will not produce an undesirable change in the character of the neighborhood.

 5 Board members say the requested variance will not produce an undesirable change.
The location is out of sight.

 0 Board members say the requested variance will produce an undesirable change.

The requested variance will not create a detriment to nearby properties.

 5 Board members say the requested variance will not create a detriment.

 0 Board members say the requested variance will create a detriment.

There is no other feasible method available for the Applicant to pursue to achieve the benefit the Applicant seeks other than the requested variance.

 5 Board members say there is no other feasible method available.
It makes the most sense on the unique property and there are no feasible alternatives as previously noted.

 0 Board members say there are other feasible methods available.

The requested area variance is not substantial.

 2 Board members say the requested variance is not substantial.
There is minimal or no effect.

 3 Board members say the requested variance is substantial.

The variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

 5 Board members say the requested variance will not have an adverse effect or impact.

 0 Board members say the requested variance will have an adverse effect or impact.

The alleged difficulty was not self-created (this consideration shall be relevant but shall not necessarily preclude the grant of the area variance.

 0 Board members say the alleged difficulty was not self-created.

 5 Board members say the alleged difficulty was self-created.
Self-created but necessary.

MOTION: RUTH McCARTHY

SECONDED: MARIANA HUBER

DISPOSITION: 5-0

The applicant was advised that the variance was good for one year.

Chairman Thiel noted that the next four variance requests (2017-17 through 2017-20) are for communication towers. He asked the applicant to present all four applications at one time since they are similar except for the proposed locations.

The applications were presented by Daniel Brennan of Nixon Peabody LLP, Patrick Makubire, RF engineer with Verizon Wireless, and Colin Fazio, project engineer for Verizon Wireless.

Chairman Thiel asked for clarification on whether the applicant proposes placing antennas on existing poles as stated in Exhibit D or proposes to install new poles.

The applicant responded that new 34' – 40' wooden utility poles are proposed.

2017-17

USE VARIANCE APPLICATION FROM BELL ALANTIC MOBILE SYSTEMS OF ALLENTOWN, INC., D/B/A VERIZON WIRELESS FOR A COMMUNICATIONS TOWER IN A RESIDENTIAL DISTRICT AT 12 ERWIN ST WHERE COMMUNICATIONS TOWERS ARE NOT PERMITTED. VARIANCE OF §130-6 AND APPENDIX A USE REGULATION TABLE IS REQUESTED. WITH PUBLIC HEARING

Notification of this action was sent to **73** adjacent property owners. Legal notice of this action printed in the Town's official newspaper, the Star Gazette, and in The Leader on October 15, 2017.

Applicant seeks to erect a cell tower at 12 Erwin St. The applicant proposes a new, 34 ft utility pole to be erected and owned by Empire Telephone, to hold the Verizon antenna with a total height of 38.7 ft.

New communications towers are permitted in Industrial and Rural Districts only. Co-located communications towers are permitted everywhere except B3 and MU Districts.

RESOLUTION TO CLASSIFY THIS AS AN UNLISTED ACTION AND TO DECLARE THE ZONING BOARD OF APPEALS LEAD AGENCY.

MOTION: RUTH McCARTHY

SECONDED: RALPH TRUITT

DISPOSITION: 5 - 0

THE ZONING BOARD REVIEWS THE SHORT EAF

ENVIRONMENTAL ASSESSMENT FORM (EAF) – Part 1 Corrections noted

- Item 5.a. Is the proposed action permitted under the zoning regulations? The answer is marked "YES". It should be marked "No" since a Use Variance is required.
- Item 5.b. Is the proposed action consistent with the adopted comprehensive plan? The answer is marked "YES". It should be marked "No" since Town regulations require utilities to be underground.
- Item 6. Is the proposed action consistent with the character...? The answer is marked "YES". It should be marked "No" since erecting a new tower is not consistent with the suburban character the Town has created with its regulations including the requirement that utilities to be underground.
- Item 8.a. The answer is marked "No". It should be marked "Yes" since there are sidewalks throughout the area.
- Item 9. Is marked that the project exceeds energy codes – unlikely- and it does not describe the features or technologies.
- Item 14. Typical habitat should include "suburban"

ENVIRONMENTAL ASSESSMENT FORM (EAF) – Part 2 – Impact Assessment

- | | |
|---|----|
| 1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?
<i>No because there are already utility poles in existence.</i> | NO |
| 2. Will the proposed action result in a change in use or intensity of use of land? | NO |
| 3. Will the proposed action impair the character or quality of the existing community?
<i>Not a major impact because there are already utility poles in place.</i> | NO |
| 4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)? | NO |
| 5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway? | NO |
| 6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?
<i>Minor use of energy.</i> | NO |
| 7. Will the proposed action impact existing: | |
| a. public / private water supplies? | NO |
| b. public / private wastewater treatment utilities? | NO |
| 8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources? | NO |
| 9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)? | NO |
| 10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems? | NO |
| 11. Will the proposed action create a hazard to environmental resources or human health? | NO |

After completion of the EAF for Case 2017-17 Attorney Brennan presented the application. He began by noting that the macro cells in the existing network have reached or exceeded capacity resulting in declining quality of service. Increased consumer demand for streaming video and data requires increased capacity and the industry is trending away from macro cells to small cells. Small cells have a smaller coverage radius resulting in the need for more cells for the same coverage area however, locating cells closer to the users results in better service quality with fewer dropped calls and less interference.

Attorney Brennan noted the legal considerations specific to public utilities and relevant to locating cell service utilities within communities. Referencing New York State Court of Appeals case “Cellular Tel. Co. v. Rosenberg (1993)” he noted that public utilities must meet a different set of standards than other businesses when seeking a use variance. A public utility must prove:

1. There is a need for the service.
2. The proposal remedies a gap in service.
3. The proposal is reasonable.

Attorney Brennan stated that the first two standards have been met and the installation of wooden utility poles, already common in many residential areas, is considered reasonable and less intrusive than large cell towers.

Chairman Thiel noted that legal decisions call for “minimal intrusion”, which is a stricter standard than “reasonable”.

Zoning Board member Mariana Huber questioned whether additional cells will be necessary and Project Manager Colin Fazio answered that more will probably be required eventually.

Chairman Frank Thiel, noting that a utility pole already exists at 14 Erwin St., asked why another pole would be needed at 12 Erwin St. Project Manager Fazio responded that Verizon Wireless does not currently have a license agreement with NYSEG to co-locate on their poles however, they are in negotiations. He also emphasized that co-location on existing structures, in addition to alternative locations, had been evaluated for each of the four applications before the Board.

Zoning Board member Ralph Truitt asked if any of the proposed sites would be accessible from a large tower. RF Engineer Patrick Makubire noted that additional macro cells, as well as greater bandwidth, better antennas, and more power had all been considered as alternatives when designing the network. He explained that as the distance of a user from a cell increases, the speed and quality of service decreases. He also noted that data streaming was estimated to increase 650% between the years 2013 and 2020 and

macro cells will not work with 5G networks. Verizon Wireless tries to estimate and plan for necessary capacity two years in advance. The individual small cells can be upgraded to increase capacity.

Board Member Truitt noted that one result of 650% growth and the trend toward small cells would be a proliferation of utility poles. He asked what alternatives exist. Responding, RF Engineer Makubire stated the only alternative is macro cells. Engineer Makubire also noted that 1 macro cell provides the same coverage as approximately 9 small cells.

Chairman Thiel questioned which co-location opportunities had been explored. Attorney Brennan responded that Exhibit F of each application shows all the alternatives looked at for that application. He noted that Verizon Wireless is currently in negotiations with NYSEG and co-locating on NYSEG poles may be a possibility in the future. Project Manager Colin Fazio added that not all poles are suitable for co-location because there are minimum vertical distances between services on a pole and a total weight limit for equipment on a pole.

Board Member Huber asked if Verizon Wireless would allow other providers to co-locate on their poles. Attorney Brennan indicated that the utility poles proposed are not tall enough and not capable of supporting the weight of an additional provider's equipment.

Board Member Bridget Ackerman, asked how the proposed poles are upgraded to higher capacity. Engineer Makubire explained that the equipment is upgraded to a higher wattage but there is no difference in the physical appearance of the pole.

Board member Wes Strzegowski questioned if there is electromagnetic leakage from the antennas. Attorney Brennan responded that the proposed design complies with all FCC regulations as noted in Exhibit F of the information provided. He also noted that the Telecommunications Act of 1996 precludes objections to the placement of units based on health effects.

Board member Mariana Huber noted that the FCC research does not relate to smaller systems because small units are not monitored or tested. Engineer Makubire disagreed and noted that all systems, large and small, are independently tested and must demonstrate that they meet FCC regulations when installed.

Member Ralph Truitt stated that a major concern of allowing Verizon Wireless to construct four units is the precedent that would be set. Acknowledging that the Zoning Board is required to evaluate each variance request separately, on a case by case basis, it is noted that it is the first case which sets the precedent. Allowing one wireless provider to construct 4 units, especially units which do not offer other providers the opportunity for co-location, may result in an unstoppable proliferation of new poles. He questioned whether all options had been considered. Larger towers may be preferable. Metal poles rather than wooden poles may be an option not considered. Additional rooftop units may be an option. The preferences of the community must be considered and the priorities of the community may differ from the priorities of Verizon Wireless. The community may consider a small decrease in the quality of the service as an acceptable result of having fewer poles.

Chairman Thiel noted that the Board has indicated a strong desire to limit the proliferation of poles in the landscape.

CHAIRMAN THIEL OPENED THE PUBLIC HEARING AT 8:18 PM.

Pete Bierwiler, 125 Forest Dr., Painted Post:

Mr. Bierwiler noted two concerns with locating a pole by the Fire Department.

- 1) *Communications interference*
- 2) *Danger for helicopters landing*

Bill Rial, 3 Lac Lane, Painted Post:

Mr. Rial noted that he has a pacemaker and is concerned about interference

Attorney Brennan responded that he did not know the answer and will respond in the future.

Willis Ford, 7 New Haven Rd., Painted Post:

Mr. Ford asked why 4 poles are needed when 1 can do the job.

Engineer Makubire noted that small cells have only 1 sector and a range of 1000 feet.

Don Crogan, 24 Erwin St., Painted Post:

Mr. Crogan asked how many small cells have been installed in NY state and how many communities share the same concerns.

Engineer Makubire noted that most communities have the same issues and are concerned with the number of poles however, all previous applications have been approved.

Bob McEnroe, 8 Morningside Dr., Painted Post:

Mr. McEnroe noted that 4 poles cover a very limited geographic area and would serve few users.

Engineer Makubire responded that offloading to 4 towers leaves additional bandwidth available on the macro cell.

Steph McEnroe, 8 Morningside Dr., Painted Post:

Ms. McEnroe asked why a second macro cell was not placed at Corning.

Engineer Makubire noted that Corning was asked and would not allow a second cell.

Pete Bierwiler, 125 Forest Dr., Painted Post:

Mr. Bierwiler asked if Sullivan Park growth is responsible for the current capacity issue.

Engineer Makubire answered that it is.

Tom Creath, 10135 Welch Rd., Corning:

Mr. Creath noted that all utilities were placed underground at great expense and poles would definitely be an eyesore on his property where none are currently located.

Jen Rice, 1 Jacob Dr., Painted Post:

Ms. Rice questioned if the antennas could be located within buildings. She also noted that the four proposed poles would only service 16 houses. Why not locate the poles near apartment buildings with 50 apartments.

Steph McEnroe, 8 Morningside Dr., Painted Post:

Ms. McEnroe stated that one macro tower would be better than multiple small ones.

Engineer Makubire noted that the system was designed to provide the best possible service and that 5G networks do not work with macro towers.

Sean King, 192 Beartown Rd., Painted Post:

Mr. King noted that he uses WIFI and his computer and has no need for a 5G network.

Kevin Knapp, 490 S. Hamilton St., Painted Post:

Mr. Knapp noted that the address of 12 Erwin St. which is given for one of the applications is incorrect. He also said that the NYSEG pole located nearby has been hit three times and Corning Natural Gas has lines where the pole is located.

CHAIRMAN THIEL CLOSED THE PUBLIC HEARING AT 8:53 PM.

Attorney Brennan noted the many questions and concerns expressed and requested that the applications be tabled to allow him the opportunity to respond. He will provide a written agreement to consent to the extension of the shot clock.

RESOLUTION TO TABLE APPLICATIONS 2017-17, 2017-18, 2017-19 AND 2017-20 AT THE REQUEST OF THE APPLICANT.

MOTION: CHAIRMAN THIEL

SECONDED: RALPH TRUITT

DISPOSITION: 5 - 0

2017-18

USE VARIANCE APPLICATION FROM BELL ALANTIC MOBILE SYSTEMS OF ALLENTOWN, INC., D/B/A VERIZON WIRELESS FOR A COMMUNICATIONS TOWER IN A RESIDENTIAL DISTRICT AT 50 CREEKSIDE DR WHERE COMMUNICATIONS TOWERS ARE NOT PERMITTED. VARIANCE OF §130-6 AND APPENDIX A USE REGULATION TABLE IS REQUESTED. WITH PUBLIC HEARING

Notification of this action was sent to **104** adjacent property owners. Legal notice of this action printed in the Town's official newspaper, the Star Gazette, and in The Leader on October 15, 2017.

Applicant seeks to erect a cell tower at 50 Creekside Dr. The applicant proposes a new, 34 ft utility pole to be erected and owned by Empire Telephone, to hold the Verizon antenna with a total height of 38.7 ft.

New communications towers are permitted in Industrial and Rural Districts only. Co-located communications towers are permitted everywhere except B3 and MU Districts.

2017-19

USE VARIANCE APPLICATION FROM BELL ALANTIC MOBILE SYSTEMS OF ALLENTOWN, INC., D/B/A VERIZON WIRELESS FOR A COMMUNICATIONS TOWER IN A RESIDENTIAL DISTRICT AT 188 BEARTOWN RD WHERE COMMUNICATIONS TOWERS ARE NOT PERMITTED. VARIANCE OF §130-6 AND APPENDIX A USE REGULATION TABLE IS REQUESTED. WITH PUBLIC HEARING

Notification of this action was sent to **42** adjacent property owners. Legal notice of this action printed in the Town's official newspaper, the Star Gazette, and in The Leader on October 15, 2017.

Applicant seeks to erect a cell tower at 188 Beartown Rd. The applicant proposes a new, 34 ft utility pole to be erected and owned by Empire Telephone, to hold the Verizon antenna with a total height of 38.7 ft.

New communications towers are permitted in Industrial and Rural Districts only. Co-located communications towers are permitted everywhere except B3 and MU Districts.

2017-20

USE VARIANCE APPLICATION FROM BELL ALANTIC MOBILE SYSTEMS OF ALLENTOWN, INC., D/B/A VERIZON WIRELESS FOR A COMMUNICATIONS TOWER IN A RESIDENTIAL DISTRICT AT 125 FOREST DR WHERE COMMUNICATIONS TOWERS ARE NOT PERMITTED. VARIANCE OF §130-6 AND APPENDIX A USE REGULATION TABLE IS REQUESTED. WITH PUBLIC HEARING

Notification of this action was sent to **59** adjacent property owners. Legal notice of this action printed in the Town's official newspaper, the Star Gazette, and in The Leader on October 15, 2017.

Applicant seeks to erect a cell tower at 125 Forest Dr. The applicant proposes a new, 38.5 ft utility pole to be erected and owned by Empire Telephone, to hold the Verizon antenna with a total height of 43.9 ft. The cover letter and Exhibit B Project Description reference a 34 ft pole.

New communications towers are permitted in Industrial and Rural Districts only. Co-located communications towers are permitted everywhere except B3 and MU Districts.

THE MEETING ADJOURNED AT 8:55 PM BY UNANIMOUS CONSENT.

ATTACHMENTS

October 17, 2017

Dallas and Diane Bennett
15 Meadow Ln
Painted Post NY, 14870

Town of Erwin Zoning Appeals
310 Town Center Rd
Painted Post NY 14870

Re: Property Owners Within 500 ft

Dear Heather Ford,

We are unsure if we can attend the October 24, 2017 Zoning Board of Appeals meeting, therefore we are writing to state we oppose the placement of a cellular communications tower at 12 Erwin Street. It would be right behind our back yard. Now when we look out our sliding glass doors we enjoy looking at wildlife and nice green scenery. We do not want to look out and see a cellular communications tower. We feel this would devalue our home and our neighborhood. We feel cellular communications towers belong on a hill or in the country, not in a residential neighborhood.

Thank you for your time.

Dallas E. Bennett
Diane V Bennett

Dallas Bennett
Diane Bennett

12 Morningside Drive
Painted Post, NY 14870
October 16, 2017

REC'D OCT 17

Ms. Heather Ford
Town Administrative Assistant
Town of Erwin
310 Town Center Road
Painted Post, NY 14870

Dear Ms. Ford:

Please accept the following comments as a response to your letter dated October 10, 2017. I do not want any tower close to where I live. I am close to 50 Creekside Drive, 188 Beartown Road, 12 Erwin Street and 125 Forest Drive. I am not familiar with 46 Oakwood Drive. The others are close enough to cause serious health issues.

There is strong evidence that electromagnetic radiation from cell phone towers is damaging to human (and animal) health, including the environment.

A human study (Kempton West) in 2007 measured blood levels of serotonin and melatonin (important hormones involved in brain messaging, mood, sleep regulation and immune system function) both before, and five months after, the activation of a new cell site.

Twenty-five participants lived within 300 meters of the site. Substantial unfavorable changes occurred with respect to both hormones, in almost all participants. Think about the unborn baby in the womb.

A study performed by doctors monitored 1000 residents who had lived in an area around two cell phone towers for 10 years. During the last 5 years of the study they found that those living within 400 meters of either tower had a newly-diagnosed cancer rate three times higher than those who lived further away.

Breast cancer topped the list, but cancers of the prostate, pancreas, bowel, skin melanoma, lung and blood cancer were all increased.

Individuals differ in their response to electromagnetic radiation. For some people, short term effects from cell tower radiation exposure may include headaches, sleep disorders, poor memory, mental excitation, confusion, anxiety, depression, appetite disturbance and listlessness.

A small group of doctors from Bamberg, Germany, conducted their own study in 2005. They found increasing levels of both minor and serious health problems in patients exposed to higher radiation levels.

These health problems included tumors, diabetes, heart rhythm disturbances, inflammatory conditions, joint and limb pains, frequent infections, headaches, sleep disturbances, depression and memory problems.

Makes you wonder how much more information would be revealed by a well-designed and well-funded government study!

So don't just worry about cancer. Those doctors found that all kinds of illnesses showed a similar pattern: a higher incidence in patients with higher radiation exposure.

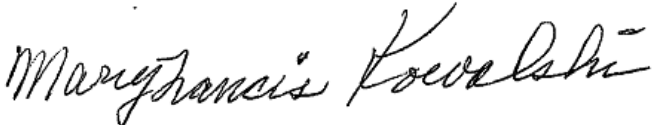
The American Academy of Environmental Medicine reports that studies demonstrate "significant harmful biological effects occur from non-thermal RF exposure", and these effects may include genetic damage, reproductive defects, cancer, neurological degeneration and nervous system dysfunction, immune system dysfunction, cognitive effects, protein and peptide damage, kidney damage, and developmental effects – all of which have been reported in peer-reviewed scientific literature.

I googled the health hazards of living close to cell phone towers. Listed above is my research.

No doubt they will offer money but, to me, no amount of money is worth destroying a person's quality of life.

Thank you for forwarding my comments to the Zoning Board of Appeals for the meeting on Tuesday, October 24, 2017. I regret that I cannot attend but I have prior commitments.

Respectfully,

A handwritten signature in black ink, reading "Mary Francis Kowalski". The signature is written in a cursive style with a large, stylized 'M' and 'K'.

MaryFrancis Kowalski