

TOWN OF GOSHEN
Zoning Board of Appeals
April 18, 2017

Members Present:

Frank Leva, Chairman
Edwin Garling
Robert Farfalla
Philip Canterino (7:46 p.m. arrival)

Also Present:

Richard Golden, ZBA Attorney
Neal Halloran, Building Inspector

Members Absent:

Trino Canton

The ZBA meeting was opened at 7:30 p.m. by Chairman Frank Leva.

APPROVAL OF MINUTES

VOTE BY PROPER MOTION, made by Mr. Farfalla, seconded by Mr. Garling, The Town of Goshen Zoning Board approved the minutes of the March 6, 2017 meeting. Approved unanimously 3-0.

PUBLIC HEARING

New Cingular Wireless PCS, LLC, 4-1-12 on 20.19 +/- acres located on Craigville Rd in the RU districts, and within the AQ-3 district. The applicant is requesting a variance from the tower setback requirement of Section 97-94 B (3).

Representing applicant:

Anthony Morando, Esq.

Mr. Morando introduced himself as an attorney with the law firm of Cuddy & Feder, LLP on behalf of AT&T. He stated he did an extensive presentation the last time he was before the board. He would like to give an update since the last meeting.

Mr. Morando stated all the referrals went out to the required agencies. There was a site visit in early March with the Town's wireless consultant. The building inspector attended the site visit as well. The wireless consultant for the Town issued a memo to the ZBA as well as the Planning Board. He found the facility to have a minimum impact to the surrounding area; the materials submitted by the applicant did justify the height of the tower as proposed; and the wireless consultant did recommend the approvals of the project.

The applicant also had appeared before the Planning Board twice to complete the SEQR process. On April 6, 2017, the Planning Board adopted a Negative Declaration completing SEQR and confirming that the project will not have a significant environmental impact.

To follow up, at the March 6, 2017 meeting the ZBA asked about a house to the northwest of the proposed site on parcel 4-1-13.3. That parcel has been added to the plans. That house is 400 feet

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due west of the tower location. That property owner did not raise any concerns about the project.

Also at the site visit in March, the applicant took photographs to demonstrate that they are unable to move the pole in any way that would alleviate the need for the requested variance. The variance is required because of the pole height, which by the code dictates the setbacks for all the property lines. The project has several property lines as it is a uniquely shaped property. There is the necessity of a setback variance for just one of the property lines out of seven or eight. That setback distance is 275 feet where 364 is required because it is twice the height of the pole.

Chairman Leva opened the public hearing for comment.

There were no comments from the public regarding this application.

Chairman Leva canvassed the board for comment.

All members had no questions and were comfortable with the presentation of the application.

Building inspector Halloran asked the applicant to explain why the setback is 364 feet. Mr. Morando stated that in the RU Zone, and in general residential zones, the code requires twice the height of the tower. In other zones, it is one time the height of the tower. On all the other property lines, the tower is set back very far from the minimum.

VOTE BY PROPER MOTION, made by Mr. Farfalla, seconded by Mr. Leva, The Town of Goshen Zoning Board closed the public hearing. Approved unanimously 3-0.

Attorney Golden stated he would prompt the board on the five-part balancing test at this time.

First to consider is whether this application would cause an undesirable change in the character of the neighborhood or be a detriment to nearby properties. All members present felt the project would not cause an undesirable change or be a detriment.

Second to consider is whether the benefit sought can be achieved by some other method other than the area variance. All members present felt that if the applicant does not get the variance, they cannot put up a tower. If a tower is not put up, a deeper analysis would have to be done with respect to the gap coverage. If the applicant can demonstrate a gap coverage, a different standard would have to be considered and the telecommunications act would be required to grant the variance.

Third to consider is whether the area variance requested is substantial. All members present felt it was substantial, but that doesn't defeat the granting of the variance.

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Fourth to consider is whether the proposed variance will have an adverse effect or impact on the physical or environmental condition of the neighborhood or district. All members felt it would not have an adverse effect or impact. Mr. Garling stated that he thoroughly reviewed the site plan and photos and is very familiar with the proposed site. He stated it is difficult terrain for development and in his many years has never known the site to be an area where development has even been considered or encouraged. The area is remote and sparsely developed.

Fifth to consider is if the area variance is self-created. All members agreed it is a self-created need.

Mr. Golden stated that on balance, given all five factors and the information on the record, whether the board believes that the benefit to the applicant outweighs the detriment to the neighborhood and community. All members present believed that the applicant should receive the area variance.

VOTE BY PROPER MOTION, made by Mr. Leva, seconded by Mr. Garling, The Town of Goshen Zoning Board moved to allow Mr. Golden to draft a decision for the board's consideration. Approved unanimously 3-0.

Board member Philip Canterino arrived at this time (7:46 p.m.)

AGENDA

Lands of VerHage 12-1-19.2 on 17.10 +/- acres located on Hartley Road in I districts, and within the AQ-6, Steam and Reservoir overlay. The applicant is requesting variance from the warehouse setback requirement of Section §97-26 D and §97-14 D (1) (b)

Representing applicant:

Tom DePuy, PE

Mr. DePuy stated the applicant is proposing a 70,000-square foot warehouse adjacent to the Amy's Kitchen site. The SEQR proceedings were covered by the overall Amy's Kitchen process because the warehouse is going to be rented to the Amy's project. This was done to avoid segmentation. Mr. Golden stated he would like to clarify that point.

Mr. Golden stated from a substantive point of view all the SEQR was done for the impacts of a warehouse on this site. There has been no SEQR with respect to the particular variances before the ZBA and what may be an additional variance needed. Mr. Golden stated the board will have to assume lead agency and do an uncoordinated review with respect to the three particular variances.

Mr. Garling stated this board did approve some variances for another warehouse. He asked if there was any overlap of land in what the board did before with this property. Mr. DePuy stated

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no, this is a stand-alone project. Mr. Garling stated that what was reviewed previously was on another piece of property with a common driveway. Mr. DePuy stated this is correct.

Mr. Golden stated there is one overlap in the variance. It dealt with whether a sidewalk in front of Amy's had to be placed along Harley Road, which goes in front of this property. The prior ZBA variance was whether a sidewalk had to go up to the stream. There is a variance in place that says that the sidewalk only had to be put in place up to a particular point, rather than the entirety of the property line.

Mr. DePuy stated the first variance the applicant is seeking is for parking. In this zone the requirement is for parking to be placed along the building line. He stated that the applicant would like to keep the passenger and truck traffic separate. He would like to propose a 10-space lot with two berms and plant evergreens to buffer the lot from the roadway.

The second variance is for a mean high-water line setback. The layout of the warehouse is not 100-feet from the mean high-water line setback.

The third variance discussed was regarding the roof pitch. Mr. Golden stated the applicant has not provided any details with respect to the roof. The only type of roofs that do not need a variance would be a peaked roof with a slope of 8 on 12, except hip roofs with a slope of 4 on 12, and flat roofs that are hidden by a raised cornice. If the applicant chooses one of these a variance will not be needed. Mr. Golden stated now is the time to ask for any alternate roof choice.

Mr. Canterino asked about the building being in the flood plain.

Mr. DePuy stated the building is in the flood plain, but the building has been raised to be protected from the water.

Mr. Golden stated the board can request an opinion from the Town Engineer as to what impacts, if any, there would be by having a variance on the mean high water mark under these particular circumstances.

Mr. Halloran stated he believed the bigger concern is the flood plain itself, which is being compensated for. He stated it would be structured much like QuickChek is in the Village.

Mr. DePuy stated they would be bringing the building up, filling in the flood plain and then carve out an area to make up the difference in volume for compensatory storage.

The board members agreed that the Town Engineer should weigh in on the flood plain.

Mr. DePuy stated that after consultation with his client, they have agreed to build a flat roof with a cornice, so therefore it would eliminate a variance.

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Chairman Leva canvassed the board for questions and comments.

Mr. Canterino stated he looked at the short environmental assessment form which stated this project would be getting public sewer and water and was curious to where it was coming from. Mr. Golden stated this was going to be hooked into the Amy's Kitchen project. The sewage and water needs were calculated as part of Amy's when SEQR was done. Mr. DePuy stated this project was allocated 7000 gallons per day and they need approximately a tenth of that.

Mr. Golden stated a 239 referral will be made to County Planning.

VOTE BY PROPER MOTION, made by Mr. Canterino, seconded by Mr. Farfalla, The Town of Goshen Zoning Board of Appeals moved to set a public hearing date for this application for May 23, 2017 at 7:30 p.m. in Town Hall. Approved unanimously 4-0.

Mr. Golden stated this a narrow review with respect to two variances. One is for parking in the front and the second is for the setback from the mean high water mark. It's an uncoordinated review because SEQR has already been done with respect to the substance at the time it was before the Planning Board.

The Zoning Board of Appeals should assume lead agency.

VOTE BY PROPER MOTION, made by Mr. Garling, seconded by Mr. Canterino, The Town of Goshen Zoning Board of Appeals moved to assume lead agency status on this application. Approved unanimously 4-0.

The action should be typed as an unlisted action.

VOTE BY PROPER MOTION, made by Mr. Canterino, seconded by Mr. Farfalla, The Town of Goshen Zoning Board of Appeals moved to type this application as an unlisted action. Approved unanimously 4-0.

Mr. Golden stated the next step is whether the board feels that they see no significant adverse environmental impacts from the two proposed variances. If the board is comfortable now they can move to issue a Negative Declaration.

Mr. Garling stated he would like to wait for the Town Engineer's opinion on the flood plain. The board agreed with Mr. Garling.

ADJOURNMENT

VOTE BY PROPER MOTION, made by Mr. Leva, seconded by Mr. Farfalla, The Town of Goshen Zoning Board of Appeals adjourned the meeting at 8:18 p.m. Approved unanimously. 4-0.

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The next meeting of the Zoning Board of Appeals will be May 2, 2017 at 7:30 pm.

Frank Leva, Chairman

Notes prepared by Tanya McPhee