

MINUTES
TOV Zoning Board of Appeals (ZBA)
Special Meeting
November 11, 2024

Call to order: ZBA Chairman John Pavelock called the meeting to order at 6:30 pm with the Pledge. In honor of Veterans Day, Richard Mansfield recognized any veterans in attendance.

Attendance:

ZBA Members: Michael Taylor, Nathan Juby, John Pavelock, and Amanda Hewitt.

Joshua O'Kay was unable to attend.

Others: Secretary Kathy Pavelock, Liaison Darrin Smith, Town Attorney Evan Rossi, Constable James Hite, applicants and several residents.

Chairman Pavelock provided an overview of the purposed of this public meeting, explaining that it is not a Public Hearing. In consulting with the Town Attorney, Chairman Pavelock explained that if the board agrees that we may allow public comment. John Pavelock made the **motion that even though this is not a public hearing that the board allow the public to speak at this meeting with a 5-minute limit and that all conduct will be in accordance with the TOV Code of Conduct on the back of the agenda (Resolution #14 of 2024). Any offenses to the code will be addressed up to and including being escorted from the building by the constable.** Motion was seconded by Amanda Hewitt. No discussion. Poll Vote: Josh O'Kay – Absent, Amanda Hewitt – Aye, John Pavelock – Aye, Mike Taylor - Aye, Nate Juby - Aye. **Motion Carried.**

Minutes Approval:

The board discussed the minutes from October 16, 2024. One change was requested that would better reflect the Town Zoning Law (ZL). The secretary updated the draft minutes accordingly. Mike Taylor made a **motion to approve the minutes as amended for the October 16, 2024 ZBA Special Meeting.** Motion was seconded by Amanda Hewitt. No further discussion. Poll Vote: Josh O'Kay – Absent, Amanda Hewitt – Aye, John Pavelock – Aye, Mike Taylor - Aye, Nate Juby - Aye. **Motion Carried.**

Correspondence: Secretary Pavelock summarized the correspondence since the last ZBA meeting:

- Prepared for this meeting including submitting the legal notice and requesting a constable.
- Distributed memos received from the Town Attorney and copies of past Planning Board meetings requested by the board on October 16, 2024.
- Forwarded agency responses for the 239m review to the Var2024-02 applicant.

Unfinished Business:

VAR2024-02 Verizon Wireless (Scott Olson/James LaValle); 2083 NYS Route 49; Owner: Town of Vienna; 217.017-1-1; Zone Hamlet Center (HC); Requesting a Use Variance (unallowed use in Zone HC) and an Area Variance (cell towers require a setback of 1-1/2 times the height of the tower). As of 11/7/2024, the ZBA has received responses to the 239m review from Oneida County Planning and NYS DEC. Nothing was received from NYS DOT. Copies of the responses were forwarded to the applicant. The board discussed the responses received and determined there was nothing that has not already been reviewed by the ZBA or anything that the ZBA needs to consider in rendering a final decision. The board asked about the need for a minimum approach distance to protect arial fire truck apparatus. The applicant responded that there is nothing on the tower that will render an arch and that the tower is grounded. The board stated they are ready to render a decision. Nathan Juby made the **motion to grant a use variance to construct a 164' cell tower in the Hamlet Center Zone on the property located at 2083 NYS Route 49, tax map # 217.017-1-1 and to grant a setback relief (area variance) from 1 ½ times the height of the tower on the property located at 2083 NYS Route 49, tax map # 217.017-1-1. Any deviations from the site plans provided would require that the applicant reapply for a variance(s).** Motion was seconded by Amanda Hewitt. Discussion included citing the criteria for the variance. Poll Vote: Josh O'Kay – Absent, Amanda Hewitt – Aye, John Pavelock – Aye, Mike Taylor - Aye, Nate Juby - Aye. **Motion Carried.**

Unfinished Business: VAR2024-02 (cont.)

Proof for the use variance is as follows:

1. Applicant cannot realize reasonable rate of return. Allowed uses in HC are single-family/two-family dwellings, accessory apartment and home-based business which none of the uses exist on the parcel and are not something the local municipal owner engages in. Therefore the rate of return for allowed uses is \$0.00.
2. Alleged hardship is unique and does not apply to substantial portions of the zone area. Site selection determined by topography, cell coverage gaps. Unique location on higher elevation and location within the targeted improvement area make location in the HC necessary. Nearby cell towers and other properties were determined to be not viable in remedying the cell service gaps.
3. Use variance will not alter essential character of zone areas. Fixing cell coverage in the Hamlet of North Bay will support development in the HC zone. "It is believed that attracting concentrated development to hamlet areas will relieve some of the development pressures on the remainder of the town..."
4. Alleged hardship has not been self-created. Recognizing that Verizon is a utility looking to safely fix a sizable cell service coverage gap and that local topography largely determines where telecommunication towers should be placed to remedy coverage gaps, the alleged hardship has not been self-created.

Mike Taylor will provide his handwritten proofs to Secretary Pavelock for the written Decision.

The written Decision will be provided in a few days. The written Decision document can be attached to the required Special Use Permit (SUP) application to the Planning Board.

VAR2024-03 Richard Mansfield, Interpretation. SUP2010-01 Airstrip on 4 parcels at 330 Moore Drive. "To bring into question the authority of the C.E.O to reinstate a revoked S.U.P. beyond the legal time-frame & by-pass the authority of the Z.B.A."

The ZBA received advice on this matter from the Town Attorney and reviewed the applicable laws. The board agreed to allow comment from the public at this time.

Briana Hand – commented that she takes issue with the Codes Officer reinstating a SUP revoked a number of years ago. It sets a precedence. Copy of her written comment is attached to the application. The board asked Ms. Hand how far her property is from the SUP2020-01 properties. She stated her property is ½ mile away from the SUP2020-01 properties. The Town Attorney explained the complicated situation at the time of the revocation. Chairman Pavelock read the related information from the April 18, 2019 Planning Board minutes.

Evan Rossi, Town Attorney – Asked an open question, "I would like to know how attorney/client privileged emails got into the application."

Richard Mansfield – Read a "Discussion Summary" that includes a timeline of events. A copy of his written summary is attached to the application.

Having no other persons wishing to speak, the ZBA deliberated on this matter. Having reviewed the application, especially attachment item #12, the board agrees by consensus that the applicant is not aggrieved.

The Town Attorney pointed out that at the October 16, 2024 meeting, ZBA member Mike Taylor asked the applicant how the reinstatement of SUP2010-01 negatively affects the value of the applicant's property. The applicant responded that this action "does not affect my property in any way." The application includes attachment #12 from the Department of State providing the law on who may file an application to the ZBA. This attachment and the statement made on October 16, 2024 by the applicant makes application Var2024-03 defective.

Richard Mansfield asked to speak again. Mr. Mansfield stated that he had done some research on being aggrieved as a 3rd party." He agrees with what the board has said about being aggrieved. He believes that in the case of an interpretation of the Zoning Laws, that any resident could be affected in the future.

John Pavelock made a motion, **based on the review of the application and the statement by the applicant that his property value is “not affected in any way” by the action of the CEO to reinstate revoked SUP2010-01, the application Var2024-03 is defective, no public hearing is required, and the ZBA rejects application Var2024-03.** Motion was seconded by Amanda Hewitt. Poll Vote: Josh O’Kay – Absent, Amanda Hewitt – Aye, John Pavelock – Aye, Mike Taylor - Aye, Nate Juby - Aye. **Motion Carried.**

Public Hearings: None

New Business: None

Other:

Secretary Pavelock reminded the board that all training certificates need to be provided to the secretary before the end of the year.

Amanda Hewitt **motioned to adjourn.** Seconded by Nate Juby. **Motion Carried at 7:28 pm.**

Minutes Prepared by:

Kathy M. Pavelock /s/
ZBA Secretary