



TOWN OF SOUTHPORT

1139 Pennsylvania Avenue
Elmira, NY 14904

*Minutes & SEQR Detail
Approved by Board of Appeals
May 17, 2017
(Correction on Vote—Page 4)*

ZONING BOARD OF APPEALS

PUBLIC HEARING-JOHN BOWER
AND
PUBLIC HEARING-NIXON PEABODY-ROBERT BURGENDORF
AND
INFORMATIONAL HEARING-TODD CURREN

WEDNESDAY, APRIL 19, 2017
7:00 PM

Item No. 1 - Call to Order

Attendance

Board Members Present: James Gensel, Chairman
Daniel Williams, Vice Chairman
John Arikian
Deborah Eames
Justin Faulkner
Susan Silvers, Alternate Member *(Served Only on Hearing for Nixon-Peabody)*

Others Present: Edward F. Premo, II, Town Attorney
Peter Rocchi, Town Code Enforcement Officer
Bonnie Balok, Secretary-Zoning Board of Appeals

Item No. 2 - Approval of Minutes of March 15, 2017

Mr. Williams made a motion to approve the minutes of March 15, 2017; seconded by Mr. Arikian. The minutes of March 15, 2017 were approved. Ms. Eames abstained *(Absent from March meeting)*.

Item No. 3 - New Business

Chairman Gensel welcomed the newly appointed legal representative for the ZBA, Attorney Edward Premo who will be alternating with Attorney Leslie Mauro, from the Law Firm of Harter, Secrest & Emery, Rochester, New York.

Public Hearing – John Bower

Attendance: Applicant -John Bower *Affidavit of Publication and Paid Newspaper Receipt Presented for File*

Chairman Gensel advised this is a continuation of the meeting set for March 15, 2017 regarding the public hearing for John Bower; 172 Old Ithaca Road, Horseheads, New York, 14845, concerning 1801-Pennsylvania Avenue, Pine City, New York, Tax Map 127.00-1-24, zoned AR, 7:10 p.m. considering an area variance to divide the parcel into two (2) lots which is less than the required one hundred fifty foot (150') lot width per Section 525-24-Bulk and Density Control Schedule.

Mr. Bower advised he had completed everything the Board had requested; obtained written approval from the Health Department, Certified Sewer System there now and NYS DOT permission concerning land use.

Chairman Gensel reopened the public hearing portion of the meeting, requesting public comments; no comments were provided. Therefore, the public hearing portion was closed. The Board and Mr. Bower proceeded with the five area variance questions

Minutes of April 19, 2017 – Public Hearing - John Bower
Public Hearing – Nixon Peabody-Robert Burgdorf
Informational Hearing – Todd Curren

Item No. 4 - New Business (continued)

Mr. Bower provided the following responses

Question 1 - Undesirable change . . .No change in way area is being used; strictly residential.

Question 2 - Benefit Sought Didn't see any other way.

Question 3 - Variance Substantial. . Based on 20,000 square feet or 3 acres,
Board of Health advised not of any use, steep grade, with 200 foot setback from road.

Question 4 – Adverse AffectNot that he knew

Question 5 – Self-Created Didn't think he did; property hasn't changed since Mr. Bower purchased it.

Board members provided the following responses.

- Question 1 - Undesirable..... No – 5 Unanimous
- Question 2 - Benefit..... No – 5 Unanimous
- Question 3 - Substantial..... No – 5 Unanimous
- Question 4 - Adverse..... No – 5 Unanimous
- Question 5 – Self-Created..... No – 5 Unanimous

SEQR

Attorney Premo advised SEQR, would be completed as an unlisted action; required before the variance action.

The Board reviewed the EAF and adopted a negative declaration, as there were no moderate to large impacts. A copy of the completed Parts 2 and 3 of the EAF is attached.

Unlisted Action.

Resolution - Motion negative declaration of impact: Mr. Williams
 Seconded: Ms. Eames
 Ayes: Arikian, Eames, Faulkner, Williams, Gensel
 Noes: None
 Carried.

AREA VARIANCE

Resolution - Motion to approve area variance: Mr. Williams
 and thank you to Mr. Bower for his due diligence
 Seconded by: Ms. Eames
 Ayes: Arikian, Eames, Faulkner, Williams, Gensel
 Noes: None
 Carried.

Area variance granted.

Bower Public Hearing Adjourned: 7:19 pm

Item No. 4 - New Business (continued)

Public Hearing – Nixon Peabody-Robert Burgdorf

Attendance: Applicant Robert Burgdorf *Affidavit of Publication and Paid Newspaper Receipt Presented for File*

Chairman Gensel called the meeting to order and advised this is a public hearing for Nixon Peabody – Robert Burgdorf, 1300 Clinton Square, Rochester, New York, 14604, regarding 159 Bartholomew Road, Pine City, New York, York, Tax Map 117.00-1-30-1, zoned AR, concerning an area variance to build a one hundred sixty foot (160') wireless tower which exceeds the maximum allowable height of one hundred twenty feet (120') as per Town Code, Section 525-109 D 2. The public hearing was originally scheduled for March 15, 2017, but was cancelled by the applicant due to inclement weather.

Mr. Arikian recused himself from the hearing based upon a possible conflict; Ms. Silvers served as Board representative in Mr. Arikian's place.

Mr. Burgdorf advised the proposal is for a one hundred sixty foot (160') cell tower on Bartholomew Road and the one hundred and sixty foot (160') would be necessary to provide service at this location. Further, additional information was provided in the March 1 supplement; specifically the Board asked for a map showing all the existing towers and that information was provided in the March 1 supplement.

The Board discussed the materials provided in the supplement and pointed out that not all existing towers were listed; specifically one existing on Holden Road, but not listed; the concern being, could there be other towers not listed. If there were other towers, they might have the potential for co-location, thus reducing the number of towers in the Town, as well as addressing the concern for towers being abandoned in the future leaving a financial burden to the land owner for dismantling the structure and a potential expense to the Town for demolition costs.

Mr. Burgdorf advised the RF engineers at Verizon prepare the maps, the engineers don't look for towers outside the search area, the engineers look in and around the search area as shown in Exhibit B, Page 8; showing the search area which is essentially the target to be too close or too far; engineers not going to look for cells going to look at search area. The company is required to remove any unused tower and restore the area to the original condition, and the Town requires such protection.

Further discussion took place concerning unused towers, specifically if a tower was not in use for a period of six (6) months. Attorney Premo proposed this could be a condition of a variance that Verizon be required to remove the unused tower and restore the area to the original condition.

Mr. Burgdorf advised the company has a removal bond that pays to have the tower removed. Mr. Burgdorf explained he has been with this company for thirty (30) years and has seen only a few towers taken down. The content of needed removal language can be at the discretion of the Town Attorney, a condition of a variance approved based on removal of the tower if not used for six (6) months as approved by Attorney for the Town.

The Board discussed co-location of towers and Mr. Burgdorf advised he would be happy to do propagation of other towers and the complete environmental record. Attorney Premo advised based upon future engineering this could cause a problem agreeing to provide for equity purposes.

Chairman Gensel opened the public hearing portion of the meeting, requesting public comments; no comments were provided. Therefore, the public hearing portion of the meeting was closed.

The Board and Attorney Premo discussed the SEQR on an uncoordinated basis pre-detailed model, the Board resolution and the variance. Attorney Premo advised the issue really becomes have they shown the Board they need the variance, is there something seriously wrong, a lot of the same factors as in the negative declaration, historical significance, no known architectural preservation in the area, no significant impact on any parks or public lands being imposed by the tower.

Minutes of April 19, 2017 – Public Hearing - John Bower
Public Hearing – Nixon Peabody-Robert Burgdorf
Informational Hearing – Todd Curren

Item No. 4 - New Business (continued)

Public Hearing – Nixon Peabody-Robert Burgdorf
(continued)

Chairman Gensel inquired about the use of EAF maps and Mr. Burgdorf advised the engineers could have done the short form, but they usually do the long form.

SEQR

Attorney Premo advised the main issue for the ZBA is height of the tower; The Planning Board did an analysis on surface, air, water, natural resources. The ZBA reviewed the Planning Board’s negative declaration and agreed with its conclusions. A copy of the ZBA’s negative declaration is attached.

Resolution Motion negative declaration of impact: Mr. Williams
Rely on or mirror the Planning Board’s negative declaration impact; uncoordinated review.
Seconded: Ms. Silvers
Ayes: Arikian, Faulkner, Silvers, Williams, Gensel
Noes: None
Carried.

The Board and Mr. Burgdorf proceeded with the five area variance questions
Mr. Burgdorf provided written responses to the following: (See: Exhibit F)
Question 1 - Undesirable change . Will not cause any meaningful detriment to the neighborhood or nearby properties.
Question 2 - Benefit Sought Without height variance, Verizon Wireless could not provide services to Pine City Cell.
Question 3 - Variance Substantial . Waiver of 40’ is minimal given large parcel size, lack of nearby structures and need for height to render service.
Question 4 – Adverse Affect No adverse effects or impacts; project will enhance public health, safety, welfare
Question 5 – Self-Created: Need for height variance is due to technological limitations, not a problem created by Verizon Wireless.

Board members provided the following responses.

Question 1 - Undesirable..... No – 5 Unanimous
Question 2 - Benefit..... No – 5 Unanimous
Question 3 - Substantial..... No – 5 Unanimous
Question 4 - Adverse..... No – 5 Unanimous
Question 5 – Self-Created..... No – 4 Yes – 1 Chairman Gensel

AREA VARIANCE

Resolution - Motion to approve area variance: Mr. Williams
Approve area variance with the condition that the tower be dismantled if not used in six (6) months;
Applicant maintains a removal bond in form approved by the town attorney.
Seconded by: Ms. Eames
Ayes: Eames, Faulkner, Williams, Gensel
Recused from NP-R Burgdorf Public Hearing: Arikian
Noes: None
Carried.

Area variance granted.
Nixon Peabody-Robert Burgdorf Public Hearing Adjourned: 7:55 pm

Item No. 4 - New Business (continued)

Informational Hearing – Todd Curren

Attendance: Applicant Todd Curren

Chairman Gensel called the meeting to order at 7:55 pm and advised this is an informational hearing for Todd Curren, 1113 Bird Creek Road, Gillett, PA 16925, regarding 1365 Pennsylvania Avenue, Pine City, New York, York, Tax Map 108.04-1-13.2, zoned AR, concerning an area variance to build a seventy foot (70’) by one hundred foot (100’) steel building; non-conforming structure as per Town Code, Section 525-2:1 Attachment, minimum front yard.

Mr. Curren explained he wanted to put up a one-hundred foot (100’) by seventy foot (70’) principal structure on the west side of the property twenty foot (20’) and fifteen foot (15’) State right of way. The structure would be strictly for service and a waiting room for customers; looking at this from Pennsylvania Avenue, the building would be on the right.

The Planning Board would be concerned about evaluating the property; ZBA would be concerned about location and the property line. Mr. Curren advised he does not need a variance to use the highway access, doesn’t use highway access because there is a door on the back of the building and a driveway on the side of the building for access.

Discussion took place concerning whether this would be done as a coordinated review versus an uncoordinated review. Attorney Premo advised if following a coordinated review, notices would have to be sent out, there would be a waiting period of thirty (30) days, and the ZBA would be the lead agency.

There was also discussion concerning why this was considered non-conforming and if this would be a variance for front yard setback. During the discussion it was recommended to correct the Town Code Section to 525.2:1 Attachment and further this is a pre-existing, non-conforming use; Planning Board has to grant site plan approval; ZBA would be asked to grant a variance for the non-conforming structure; it was suggested that Mr. Curren get a survey map, foot print laid out and go through the requirements of a site plan, and site plan approval before the ZBA schedules a public hearing. This would accommodate fewer meetings for the applicant if the Planning Board changed something. Planning Board meets May 1; based on this time line, ZBA set a public hearing for June 21, 2017 at 7:00 pm.

Todd Curren Informational Hearing Adjourned: 8:22 pm

Item No. 5 - Old Business

No old business

Item No. 6 - Discussion

No further discussion.

Item No. 7 – Adjournment

Mr. Williams made a motion to adjourn; seconded by Mr. Faulkner. Adjournment unanimously approved.
Meeting Adjourned: 8:25 pm

- Original on File: Town Clerk
- C: Board of Appeals
- Town Board
- Planning Board
- Town Supervisor
- Town Clerk
- Town Attorney
- Town Assessor
- Town Code Enforcement Officer
- Applicants John Bower; Nixon Peabody-Robert Burgdorf, and Todd Curren

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