



TOWN OF SOUTHPORT

1139 Pennsylvania Avenue
Elmira, NY 14904

*Minutes Approved
To include Amendment-Page 5
by Board of Appeals
2/27/2018*

ZONING BOARD OF APPEALS

ORGANIZATIONAL MEETING

6:30 pm

PUBLIC HEARING

MARTIN DIPETTA

7:00 pm

INFORMATIONAL HEARING

**MATTHEW KERWIN, BARCLAY DAMON, O/B/O,
UP STATE TOWER CO, LLC & BUFFALO-LAKE ERIE WIRELESS SYSTEMS**

7:45 PM

WEDNESDAY, JANUARY 17, 2018

Minutes of the organizational meeting of the Zoning Board of Appeals, Town of Southport held at the Southport Town Hall, 1139 Pennsylvania Avenue, Elmira, New York on January 17, 2018 at 6:30 p.m. The organizational meeting was held at 6:30 p.m., followed by a public hearing at 7:00 p.m. and an informational hearing at 7:45 p.m.

Item No. 1 - Call to Order

Attendance

Board Members Present: James Gensel
Daniel Williams
John Arikian
Justin Faulkner
Susan Silvers, Alternate Member

Board Member Absent: Deborah Eames

Others Present: Leslie Mauro, Town Attorney
Peter Rocchi, Town Code Enforcement Officer
Bonnie Balok, Secretary-Zoning Board of Appeals

Item No. 2 - Organizational Meeting

Organizational Meeting

The organizational meeting was called to order by Mr. Gensel. The purpose of the organizational meeting was to elect a chairman, vice chairman, secretary and select a meeting day and meeting time.

Resolution No. 1

Appointment of James Gensel, Chairman of the Zoning Board of Appeals, Town of Southport for the year 2018.

Resolution by: Arikian

Seconded by: Williams

Whereas, the Zoning Board of Appeals held an organizational meeting to elect a chairman for the year 2018, and
Whereas, Mr. Arikian made a motion to nominate James Gensel as Chairman. Mr. Williams seconded the motion.
Resolved, James Gensel will serve as Chairman of the Zoning Board of Appeals, Town of Southport for the year 2018.

Ayes: Arikian, Faulkner, Silvers, Williams Abstained: Gensel Noes: None Carried.

Resolution No. 2

Appointment of Daniel Williams, Vice Chairman Zoning Board of Appeals, Town of Southport for the year 2018.

Resolution by: Silvers

Seconded by: Faulkner

Whereas the Zoning Board of Appeals held an organizational meeting to elect a vice chairman for the year 2018, and Whereas, Ms. Silvers made a motion to nominate Daniel Williams. Mr. Faulkner seconded the motion. Resolved, Daniel Williams will serve as Vice Chairman, Zoning Board of Appeals, Town of Southport for the year 2018.

Ayes: Gensel, Arikian, Silvers, Faulkner Abstained: Williams Noes: None Carried.

Resolution No. 3

Appointment of Bonnie Balok, Secretary, Zoning Board of Appeals, Town of Southport for the year 2018.

Resolution by: Gensel

Seconded by: Arikian

Whereas the Zoning Board of Appeals held an organizational meeting to elect a secretary for the year 2018, and Whereas, Mr. Gensel made a motion to nominate Bonnie Balok. Mr. Arikian seconded the motion. Resolved, Bonnie Balok will serve as Secretary, Zoning Board of Appeals, Town of Southport for the year 2018.

Ayes: Gensel, Arikian, Faulkner, Silvers, Williams Noes: None Carried:

Resolution No. 4

Meeting Day for the Zoning Board of Appeals, Town of Southport shall be the third Wednesday of each month.

Resolution by: Gensel

Seconded by: Williams

Whereas the Zoning Board of Appeals held an organizational meeting to select a meeting day for the year 2018, and Whereas, Mr. Gensel made a motion to set the meeting day as the third Wednesday of each month. Mr. Williams seconded the motion. Resolved, the third Wednesday of each month shall be the meeting day for the Zoning Board of Appeals for the year 2018.

Ayes: Gensel, Arikian, Faulkner, Silvers, Williams Noes: None Carried.

Resolution No. 5

Meeting Time for the Zoning Board of Appeals, Town of Southport shall be 7:00 p.m.

Resolution by: Gensel

Seconded by: Williams

Whereas the Zoning Board of Appeals held an organizational meeting to select a meeting time for the year 2018, and Whereas, Mr. Gensel made a motion to set the meeting time as 7:00 pm each month. Mr. Williams seconded the motion. Resolved, 7:00 p.m. shall be the meeting time for the Zoning Board of Appeals for the year 2018.

Ayes: Gensel, Arikian, Faulkner, Silvers, Williams Noes: None Carried.

Organizational Meeting Adjourned: 6:50 pm

Item No. 3 - Approval of Minutes of December 20, 2017.

Mr. Faulkner made a motion to approved the minutes of December 20, 2017; seconded by Mr. Williams. The minutes of December 20, 2017 were unanimously approved.

Item No. 3 – New Business

Public Hearing – Martin DiPetta

Attendance: Applicants Martin DiPetta and Susan DiPetta

Chairman Gensel called the meeting to order and advised this is a public hearing for Martin DiPetta, 80 Pine Hills Drive, Pine City, NY 14871, concerning an area variance on Woodland Park lot, Pine City, NY 14871, Tax Map 118.03-2-38, Zoned AR, to build a thirty foot (30') by sixty foot (60') pole barn within the required side yard setback of twenty feet (20'). Section 525-24 – Bulk and Density Control Schedule.

Mr. Rocchi advised the legal notice was published in the “Star-Gazette” on January 7, 2018 and he has retained a copy of the legal ad. *(Note: Receipt for Paid Legal Ad was not submitted for the permanent file)*

Mr. DiPetta submitted a survey, prepared by Weiler Associates, showing the partial boundary survey of the property owned by the DiPettas. Mr. DiPetta advised he wanted to build a thirty feet (30') by sixty feet (60') pole barn; building would be parallel to the existing barn, the corner of the barn really is close and is actually over, and the fence on Mrs. Powers' land is on Mr. DiPetta's property; sixteen feet (16') goes into her back yard. Mr. DiPetta explained he could change the front to fifty five feet (55') or fifty six feet (56'), move the line in back so his barn is good for the future; four point four feet (4.4') in front with the line wouldn't be parallel to his barn and wouldn't look right.

Discussion took place about the large amount of acreage owned by the DiPettas and the fact the barn could be pushed back which would eliminate the need for a variance. Mr. DiPetta acknowledged the barn could be moved back further, but would cause a view problem for the neighbor and there is a black topped area.

Discussion continued about the size of the building and the land to accommodate the building, as well as the concern that the sign notifying residents of the public hearing was just posted on the property on Tuesday, January 16, 2018 and to be fair the posting should be three (3) to four (4) days before the public hearing and in the winter months it is difficult to see the white sign. Attorney Mauro explained publishing the legal notice should be done within five (5) days and posting the signs should be more in advance than twenty four (24) hours and further the public hearing could continue over to next month to allow public input.

The Board and applicant agreed to continue the meeting tonight to include, the applicant's answers to the five (5) standard area variance questions, opening the meeting to the public for comments and then continuing the meeting on February 27, 2018 at 7:00 pm.

Mr. DiPetta explained the back of the barn would be the same as his neighbors, length forty feet (40'), metal exterior siding, barn would be used for storage of equipment; all equipment would go into the building.

The Board requested Mr. DiPetta have the surveyor put the proposed building on the survey, bring the survey to the February meeting, and Mr. DiPetta provided answers to the five (5) Area Variance questions as follows:

Q1. Whether an undesirable change will be produced in the character of the neighborhood or community or a detriment to nearby properties will be created by the granting of the area variance?

A: *Mr. DiPetta – No; pole barn there now, putting one next to it seems like no change.*

Q2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance?

A: *Mr. DiPetta – No, we discussed this, have places to put equipment, but milling is there now.*

Q3. Whether the requested area variance is substantial?

A: *Mr. DiPetta – No, asking for forty three percent (43%) reduction.*

Q4. Whether the proposed area variance will have an adverse affect or impact on the physical or environmental conditions in the neighborhood or district?

A: *Mr. DiPetta – No, lot prior was all rotted trees; thirty (30) trees were taken out, leveled off the plateau, less run off now.*

Q5. Whether an alleged difficulty of compliance with the zoning requirement was self-created, which is relevant to the decision but shall not necessarily preclude the granting of the area variance?

A. *Mr. DiPetta - Yes, because couldn't build what he wanted to because zoning was changed to agriculture.*

Chairman Gensel opened the Public Hearing portion of the meeting advising this would be for comments only and anyone speaking should provide their name and address.

Mr. Bill Carleton: Adjacent neighbor, 88 Pine Hills Drive; My barn is Caltex and Texture One Eleven (T1-11).

Mr. Nicholas Brown: 34 Woodland Park, Two barns next to each other is an eye sore. Mr. DiPetta has thirty five (35) acres and could put the barn in another area instead of near the side of the road. Also, there was inadequate notice.

Mr. Bill Redder: 67 Woodland Park, The sign was up less than twenty four (24) hours, agenda sparse, sign up one (1) day before meeting doesn't help.

Ms. Janette Nordin: 34 Woodland Park, Concerned about an eighteen hundred square foot (1,800') commercial building in the middle of a residential area.

Chairman Gensel advised the Board had received a letter from Patricia Redder, 67 Woodland Park, listing two (2) concerns with respect to the public hearing. 1. Sign issue – went up a little more than twenty four (24) hours before the hearing. 2. Against proposed structure going up on the street.

After reading Ms. Redder's letter, Chairman Gensel asked if there were any others who might want to comment; no further comments were provided.

Board Member Ms. Silvers made a motion to continue the Public Hearing on February 27, 2018 at 7:00 pm.

January 17, 2018 – DiPetta Public Hearing Adjourned: 7:44 pm.

Item No. 3 – New Business (continued)

**Informational Hearing – Matthew Kerwin, Barclay Damon, O/B/O,
Up State Tower Co, LLC & Buffalo-Lake Erie Wireless Systems
("Upstate") ("Blue Wireless")**

Attendance: Matthew Kerwin, Legal Counsel ("Upstate") ("Blue Wireless").

Chairman Gensel called the meeting to order and advised this is an informational hearing for Matthew Kerwin, Barclay Damon, o/b/o , Up State Tower Co, LLC ("Upstate") and Buffalo-Lake Erie Wireless Systems ("Blue Wireless"), 125 Jefferson Street, Syracuse, NY, 13202, concerning an area variance on Budd Street and Morley Place, Tax Map 109.07-5-45, Zoned Industrial, to construct a one hundred sixty foot (160') telecommunications tower that does not meet the current code in Section 525-109(D)(1)(a)(2)-Setback Requirements and Section 525-109(D)(2) where the maximum allowable height is one hundred twenty foot (120'). *(Amendment: Mr. Arikian recused himself based upon a potential conflict of interest).*

Attorney Kerwin explained the proposed tower height would total one hundred sixty three feet (163'); one hundred sixty feet (160); plus an antenna, and a two foot (2') lightning rod which is not included in the one hundred sixty three feet (163'); setbacks in both directions of approximately eighteen and one-half feet (18 ½') on eastern property line and forty seven and one-half feet (47 ½') on the western property line. The parcel would be leased. Further, Attorney Jeff Davis, Attorney Kerwin's partner, met with the Planning Board and proposed the subdivided lot would run sub servantly with Morley Place taken on by owner of the property, pie shaped parcel runs off Morley, property lot line for southern access off Budd Street. Variances are needed for the side setback; setback on south is sufficient, one hundred eighty feet (180') from north property line. Attorney Kerwin advised the site is owned by Budd Street Properties and the proposed tower would have access off Morley Place, sixty feet (60') by sixty feet (60'), leased area tower within middle of the property, fenced compound, lattice tower, six foot (6') chain link fence with access door to include locks. The tower can accommodate other collocators in the future; three (3) panel antenna for a total of nine (9) and a total of three (3) microwave dishes. Attorney Kerwin further advised "Blue Wireless" is licensed through the FCC, also a public utility in NYS, but not a public utility recognized by the public service commission, and explained "Blue Wireless" came into the area to find a land lord, , accommodate the antenna height, and meet zoning, based on the search area, radio frequency 4G LTE coverage, topography, band width, Attorney Kerwin continued with a detailed description of the tower which would include break points so that only the top portion of the tower would be impacted where a high wind condition occurred, and advised the company already has a seventy foot (70;) tower mounted on the roof of the Southport Fire Department.

Attorney Mauro advised the Planning Board would be the lead agency and Chairman Gensel advised this would be preferable because the ZBA is less concerned with storm water and more concerned with the physical aspects of the tower.

Discussion continued concerning asking other tower companies if "Blue Wireless" could collocate on an existing tower, the need for "Blue Wireless" to provide a list of towers in the vicinity and why they would or why they would not meet the coverage area for "Blue Wireless:" the need for more collocations instead of more towers, already referred to the County, but there is a question as to whether or not DOT would be involved, the need for three (3) variances; one (1) for height and two (2) setback variances, the distinction between vehicle and home coverage being relevant, and the quality of the maps provided showing no streets and being very difficult to read.

The Board requested the following be provided before next month's Public Hearing:

1. Letter from NYS DOT advising whether or not DOT would be involved in this project?
2. Description of Exhibit 6 – new propagation maps, more legible.
3. Alternative locations – why they want to be near Route 14.
4. Evidence "Blue Wireless" made attempts to collocate and were denied.
5. Private houses directly west collocation – location of tower, height and on map.
6. There is a distinction between carriers. What are the reasons these different locations aren't feasible?

Item No. 3 – New Business (continued)

**Informational Hearing – Matthew Kerwin, Barclay Damon, O/B/O,
Up State Tower Co, LLC & Buffalo-Lake Erie Wireless Systems
("Upstate") ("Blue Wireless")**

Attorney Mauro asked if the Board wanted this to be designated as a Coordinated Review or an Uncoordinated Review?

Chairman Gensel advised, it is the Board’s intention to allow the Planning Board to take the position of Lead Agency. This allows the Planning Board to do the environmental review.

Item No. 4 - Old Business

No old business

Item No. 5 - Discussion

No further discussion.

Item No. 6 – Adjournment

Mr. Williams made a motion to adjourn; seconded by Mr. Faulkner. Adjournment unanimously approved.

Meeting Adjourned: 9:00 pm

Original on File:

- C: Town Clerk
- Board of Appeals
- Town Board
- Planning Board
- Town Supervisor
- Town Clerk
- Town Attorney
- Town Assessor
- Town Code Enforcement Officer
- Applicant: Martin DiPetta
- Applicant: Matthew Kerwin, Barclay Damon, o/b/o,
Up State Tower Co, LLC & Buffalo-Lake Erie Wireless Systems

Bonnie Balok, Secretary-
Zoning Board of Appeals,
January 18, 2018

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