



# TOWN OF SOUTHPORT

1139 Pennsylvania Avenue  
Elmira, NY 14904

*Minutes Approved  
by Board of Appeals  
9/19/2018*

## ZONING BOARD OF APPEALS

Wednesday, August 15, 2018

7:00 PM

### PUBLIC HEARING

**Horvath Communications a/k/a Horvath Towers, LLC**

**312 West Colfax Avenue, South Bend, IN 46601**

Legal Counsel - Nixon Peabody, 1300 Clinton Square, Rochester, NY 14604

*Re: Cell Tower, 159 Bartholomew Road Pine City, NY 14871 (Verizon)*

### INFORMATIONAL HEARING

**Kevin Youngs**

**94 Peacefield Road, Pine City, NY 14871**

Minutes of the Zoning Board of Appeals, Town of Southport held at the Southport Town Hall, 1139 Pennsylvania Avenue, Elmira, New York on August 15, 2018 at 7:00 p.m.

#### Item No. 1 - Call to Order

#### **Attendance**

Board Members Present: James Gensel  
Justin Faulkner  
Deborah Eames  
Susan Silvers

Board Member Absent: John Arikian

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

#### Item No. 2 – Approval of Minutes of July 18, 2018

Chairman Gensel advised the first item on the Agenda is the Minutes of July 18, 2018 and asked if there were any changes or corrections. Ms. Eames made a motion to approve the minutes; seconded by Ms. Silvers. Minutes of July 18, 2018 were approved; Mr. Gensel abstained.

Minutes of August 15, 2018 – Public Hearing – Horvath Communication, a/k/a Horvath Towers, LLC

312 West Colfax Avenue, South Bend, IN 46601

Legal Counsel - Nixon Peabody, 1300 Clinton Square, Rochester, NY 14604

Re: Cell Tower, 159 Bartholomew Road Pine City, NY 14871 (Verizon)

Item No. 3 – New Business

**Public Hearing– Horvath Communications, a/k/a Horvath Towers, LLC**

Legal Counsel - Nixon Peabody, 1300 Clinton Square, Rochester, NY 14604

Present: Daniel M. Schweigard, Planning and Development Services, Coppervine, 461 Saddlemire Hill Road, Sloansville, NY 12160, o/b/o Verizon and Horvath.

Chairman Gensel called the meeting to order and advised this is a public hearing for Horvath Communications and Nixon Peabody concerning a cell tower area variance granted previously at 159 Bartholomew Road, Pine City, NY; the property is zoned AR.

Attorney Mauro advised the previously approved area variance approval expired, the work was not completed within the one (1) year period and there is nothing in the Code to extend the variance.

Mr. Schweigard advised he is representing Horvath Towers and that nothing had changed on the project. Mr. Schweigard further explained that budget and priority concerns required this project to be placed on a new schedule, but the work on this project should be completed within the next year.

Chairman Gensel opened up the public hearing for comments advising anyone wanting to speak should give their name and address.

Attorney Mauro advised the affidavit from Horvath is needed to provide proof of publication. Mr. Schweigard did not have that affidavit. *(A brief time was spent attempting to search for the published legal ad on line. During that time, the public hearing was suspended temporarily and the informational hearing for Kevin Youngs, 94 Peacefield Road, Pine City, NY was conducted).* Upon the conclusion of the Youngs' hearing, it was established by Donna Powell, who was in attendance at the hearing, that the legal ad was published in the "Star-Gazette" as she and Rick Powell were attending the meeting based upon the fact they read the legal ad in that publication. *(Verbal confirmation of the legal ad publication provided by Donna Powell, Rufus Tanner House, 60 Sagetown Road, Pine City, NY 14871).*

Mr. Schweigard explained Horvath Communications is the owner and Verizon is the service provider. He further explained budget reasons forced the delay.

Chairman Gensel advised lots of times applicants seek approval of a project and budget priorities cause only of a section of an area to be completed, then they fill in the gaps or have weather problems and have to reset priorities or the government comes in with different regulations.

Chairman Gensel requested Mr. Schweigard provide 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. Schweigard - No.

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. Schweigard – No. One hundred sixty four feet (164') including lightning rod.

Q3. Whether the requested area variance is substantial?

A. Mr. Schweigard – No. This is only a little bit over what is allowed.

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. Schweigard – No.

Minutes of August 15, 2018 – Public Hearing – Horvath Communication, a/k/a Horvath Towers, LLC

312 West Colfax Avenue, South Bend, IN 46601

Legal Counsel - Nixon Peabody, 1300 Clinton Square, Rochester, NY 14604

Re: Cell Tower, 159 Bartholomew Road Pine City, NY 14871 (Verizon)

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. Schweigard – No.

Chairman Gensel advised the original variance was granted April 19, 2017 and had expired because work was not completed within one (1) year. Chairman Gensel asked the Board members to provide their answers to the five (5) area variance questions.

The Board reviewed 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: No – 4 Yes - 0

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. No – 4 Yes - 0

Q3. Whether the requested area variance is substantial?

A. No – 0 Yes- 4

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. No – 4 Yes - 0

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. No – 0 Yes - 4

Mr. Faulkner made a resolution to reapprove consideration of the height variance of one hundred sixty feet (160’), based on no changes to the drawings and approval based on the original approval of the original conditions.

Mr. Schweigard advised the lightning rod is four feet (4’) and the structure is one hundred sixty feet (160’).

Ms. Silvers seconded the resolution.

Area variance unanimously approved based upon listed original conditions.

Horvath Public Hearing Adjourned: 7:39 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
Applicant:	Horvath Communication, a/k/a Horvath Towers, LLC
	312 West Colfax Avenue, South Bend, IN 46601
Legal Counsel:	Nixon Peabody
	1300 Clinton Square, Rochester, NY 14604

Bonnie Balok, Secretary  
Zoning Board of Appeals,  
August 17, 2018

Item No. 3 – New Business (continued)

**Informational Hearing– Kevin Youngs**

Present: Kevin Youngs and Mrs. Youngs

Chairman Gensel called the meeting to order and advised this is an informational hearing for Kevin Youngs, 94 Peacefield Road, Pine City, NY concerning an area variance to allow for an accessory structure to be erected within the front yard setback as per Chapter 525-26 (B)(3). *[Note: 525-26 was corrected, by the Mr. Rocchi, to cover (B)(3) instead of the original listed 525-26 (C)(3)].*

Mr. Youngs advised he wanted to build a garage up to the side of the house, the structure would look better because it would be in line with rest of the structures, it would be placed on the right of the house close to the road, and he has a two (2) car garage there; the building would be twenty (20) by forty (40).

Chairman Gensel advised Mr. Youngs he had to show the existing zoning was putting a hindrance on what he wanted to do and Mr. Youngs explained the best location for the garage would be behind his house. Chairman Gensel explained with the information he had provided, the Board can't tell how far the property line is and advised the Board would need a lot survey. Chairman Gensel further explained Mr. Youngs would be required to provide answers to five (5) area variance questions and that is how the Board would review his request. Mr. Youngs advised he could obtain the answers to the questions and a blue print.

Chairman Gensel explained the next step would be a public hearing and reviewed the process. The public hearing was scheduled for Wednesday, September 19, 2018 at 7:00 pm.

Youngs Informational Hearing Adjourned: 7:25 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  
Applicant: Kevin Youngs  
94 Peacefield Road, Pine City, NY 14871

Bonnie Balok, Secretary  
Zoning Board of Appeals,  
August 17, 2018

Item No. 3 – New Business (continued)

**Review and Discussion of Résumé Submitted for Alternate Board Member Position**

The Board discussed the qualifications and interest of the one applicant applying for the alternate Board member position. The Board voted to recommend to the Town Board of the Town of Southport the name of Edward Steinhauer, 1485 Pennsylvania Avenue, Pine City, NY 14871.

Item No. 4 – Old Business

No old business to discuss.

Item No. 5 – Discussion

No other items to discuss.

No. 6 – Adjournment

Motion to adjourn was made by Mr. Faulkner; motion seconded by Ms. Silvers. Board voted unanimously to adjourn. Meeting adjourned: 7:50 pm.

Original on File:

Town Clerk

C:

Board of Appeals, Town Board, Planning Board

Town Supervisor, Town Attorney, Town Assessor, Town Code Enforcement Officer

Kevin Youngs, 94 Peacefield Rd, Pine City, NY 14871

Horvath Communication, a/k/a Horvath Towers, LLC

312 West Colfax Avenue, South Bend, IN 46601

Nixon Peabody

1300 Clinton Sq., Rochester, NY 14604

Bonnie Balok

Secretary-Zoning Board of Appeals

August 17, 2018

*Minutes Approved  
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9/19/2018*

**ZONING BOARD OF APPEALS  
TOWN OF SOUTHPORT, COUNTY OF CHEMUNG, STATE OF NEW YORK**

**RESOLUTIONS  
2018**

**RESOLUTION NO. 11**

**AREA VARIANCE APPROVED**

PROPERTY: TAX MAP 117.00-1-30.1, ZONED AR  
COMMONLY KNOWN AS  
159 BARTHOLOMEW ROAD PINE CITY, NY 14871

APPLICANT: HORVATH TOWERS, LLC  
A/K/A HORVATH COMMUNICATIONS  
312 WEST COLFAX AVENUE SOUTH BEND, IN 46601  
LEGAL COUNSEL-NIXON PEABODY  
1300 CLINTON SQUARE ROCHESTER, NY 14604

OWNER: HORVATH TOWERS, LLC  
A/K/A HORVATH COMMUNICATIONS  
312 WEST COLFAX AVENUE SOUTH BEND, IN 466

LAND OWNER: SOUTH VIEW HUNTING CLUB, LLC  
159 BARTHOLOMEW ROAD PINE CITY, NY 14871

RESOLUTION: FAULKNER SECONDED: SILVERS

WHEREAS, Horvath Towers, LLC, a/k/a Horvath Communications, 312 West Colfax Avenue, South Bend, IN 46601 applied for an area variance at 159 Bartholomew Road, Pine City, NY 14871 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 D2 Town Code, Town of Southport, County of Chemung. The property is located in a AR zone and is commonly known as 159 Bartholomew Road, Pine City, New York, 14871, Tax Parcel, 117.00-1-30.1, and

WHEREAS, the Town of Southport Board of Appeals held a public hearing on August 15, 2018 at 7:00 p.m., or as soon thereafter as it could be heard, at the Southport Town Hall, 1139 Pennsylvania Avenue, Elmira, New York, with one individual voicing a question concerning the proposal, and Horvath's representative being present to answer questions, that the cell tower structure will be one hundred sixty feet (160'); the lightning rod will be four feet (4'), and

WHEREAS, this matter was submitted to the Chemung County Planning Board and thirty (30) days has expired with the Board taking no action on the matter, and

WHEREAS, upon deliberation, consideration and discussion, and following inspection of the property, the members of the Board of Appeals, were of the opinion that an area variance could be granted, to allow for an area variance to build a one hundred sixty foot (160') wireless tower which exceeds maximum allowable height of one hundred twenty foot (120') as per Town Code Chapter 525-109 D2 with the condition that the tower be dismantled if not used in six (6) months; and applicant maintains a removal bond in the form approved by the town attorney.

NOW THEREFORE BE IT RESOLVED, that an area variance be granted to Horvath Towers, LLC, a/k/a Horvath Communications, 312 West Colfax Avenue, South Bend, IN 46601 with respect to 159 Bartholomew Road, Pine City, New York, 14871 to build a one hundred sixty foot (160') wireless tower which exceeds the maximum allowable height of one hundred twenty feet (120') and the Building Inspector of the Town of Southport be and hereby is authorized to issue a permit for said use, and that failure to complete the project within one (1) year from the granting of this variance will render the variance null and void.

Ayes: Eames, Faulkner, Silvers, Gensel Noes: None  
Carried. Area variance granted. August 15, 2018

*Resolution Approved by the Board of Appeals – 9/19/2018*