

TOWN OF EAST GREENBUSH ZONING BOARD OF APPEALS

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MEMORANDUM

EAST GREENBUSH ZONING BOARD OF APPEALS MEETING MINUTES FEBRUARY 28, 2023

Members

Jeff Pangburn, Chairman
Bob Seward III
Scot Strevell
Matt Ostiguy
Tom Hickey

Also Present:

William Hessney, Attorney
Alison Lovely, Secretary
Kateri Rhatigan, Stenographer

CALL TO ORDER / DETERMINATION OF QUORUM

Chairman Pangburn called the meeting to order and determined a quorum of five (5) members were present. This meeting was held virtually via Zoom.

PUBLIC HEARINGS:

Reconvene ZBA Appeal #2023-01–Verizon– 25 Hampton Inn Drive/I-90/Route 4-Special Use Permit-Wireless Telecommunications Pole for equipment

Chairman Pangburn stated that he is reopening the public hearing. Chairman Pangburn that there was a site meeting on February 24, 2023 in which he, Tom Hickey, Rob Panasci and the Engineer attended, notes were shared with the Board of that meeting. Dave Brennan from Young Sommer stated that he was here tonight to discuss the results of that meeting and to gauge whether the whole board was in favor of what resulted from that meeting. Also present tonight as well are Nico Facey & Rick Andras. Dave Brennan stated that the site meeting was to discuss an alternate location for the proposed small cell tower. Dave Brennan shared his screen about what is proposed and what is being presently being discussed. He first showed the original set of plans submitted and stated that what is proposed is a 34' above ground wooden utility pole with a small antenna on the top for a height of 37', there is an equipment cabinet which is roughly 2' tall by 16" deep by 14" wide and 8' about grade is a meter box with a meter for the electrical services. Dave Brennan stated that this is being proposed to fill an issue with coverage at Route 4 & I-90 lanes in particular the lanes westbound of Route 4. Dave Brennan did show some photo simulations showing south bound on route 4 and northwest of route 4 and coming off the ramp from I-90. Dave Brennan stated that the discussions that were held in the field were sliding the pole south still in DOT property & taking it out of the originally proposed grassy area. Dave Brennan also showed google earth photos showing the new proposed location as opposed to the originally proposed location. Dave Brennan wanted to discuss the new concept with the rest of the Board as they will have to go back to DOT to apply for an amended permit and draw up new plans.

Chairman Pangburn stated while out on the site, they also discussed two other locations, one by Denny's, which Rick Andras confirmed that location had been looked at but that there was no way to access it with maintenance vehicles.

Chairman Pangburn stated that the other location discussed was the other corner north of the I-90 interchange, but it was a preferred next approach to be right where Dave Brennan just showed the Board, near the fence line still in the DOT right away.

Chairman Pangburn stated that the other technical aspect was for Rick Andreas to look into the power source and the needs from National Grid, there was a concern that the electrical out there was only primary and not secondary service and that a transformer might be needed. Chairman Pangburn stated that they wanted to see how National Grid was going to service this pole site with secondary power, because if they need to provide their own additional pole for a transformer, we just want this as part of the record & decision before it goes forward.

Chairman Pangburn asked if any Board members had any questions.

- Tom Hickey asked if the trees are in the DOT right away. Chairman Pangburn stated that the trees appear to be on the other side of the fence in the DOT right away.

- Tom Hickey asked who would be responsible for the height maintenance of those trees to avoid it from getting too high to make up for any growth that may occur in the future. Dave Brennan stated that he supposes that they would have to go back if the tree grew and impeded the signal, but trees don't grow taller every year, eventually they eventually settle into a height, but it is possible, he feels it would be on Verizon to do that trimming, if necessary, by seeking permission from DOT.

Chairman Pangburn stated that there was some discussion on how tall the tree was and that the tree is probably 50 years old already, dating to the 1970ish of the construction of I-90, that tree species looks like it might be topped out as is, so something to consider.

- Matt Ostiguy stated that he doesn't have any questions, he believes that this site is a better one than the previous site. He's supportive of the new site.

- Bob Seward agrees with everything that was said so far and he thinks it's a good balancing act & good approach and is in favor.

- Scot Strevell stated he has nothing to add and is supportive of the new site.

Chairman Pangburn asked if Dave Brennan had anything else to add. He did not.

Chairman Pangburn asked members of the public if they wished to speak.

- Alexander Bentley, the General Manager of the Hampton Inn stated that they have a concern with the potential power draw & any potential issues at the hotel & would like to be included on what the outcome would be. He has no problem with the proposed location but was wondering if this will interfere with other cell phone carriers. Chairman Pangburn stated that the micro cell is Verizon service only, it won't intervene with any other carriers. Dave Brennan confirmed this, as far as the power draw, this will draw a very small amount. Chairman Pangburn asked Dave Brennan in his opinion will the hotel pickup enhanced service from this microcell. Dave Brennan believes it will.

Chairman Pangburn stated that there was a comment in the chat box from a resident: Is there any way to disguise it as an evergreen tree. I've seen that done in other areas of the country without being an impediment to maintenance? I would assume that cherry pickers would be used to reach any of the equipment that would be in need of repair. Dave Brennan stated that because this is a microcell, Verizon typically tries to put these on power poles, usually if it was a huge tower, they would consider that. It's not the right tool for what they're trying to do.

Chairman Pangburn asked if there was anyone else from the public who wanted to speak. There was none.

Chairman Pangburn stated that there is one procedural thing that he wants to address. Chairman Pangburn acknowledged that Dave Brennan is seeking a hand full of waivers regarding this project. Chairman Pangburn stated that the one waiver regarding application fees is relevant tonight. Chairman Pangburn stated that the applicant is asking consideration for a waiver of the application fee which is typically based on a large cell tower structure, they have asked to have it dropped down to a smaller colocation fee, even though this is essentially new location going in. The reduced fee would be \$2,500.00 down from the \$5,000.00. Chairman Pangburn asked if there was any discussion. Dave Brennan discussed his reason for the request of a reduced application fee. Bill Hessney spoke and stated that this particular waiver was part of their application and it is up to the Board to determine whether to grant this waiver of a reduced application fee. The Board was in support of granting this waiver.

•Tom Hickey thought that maybe this should be considered as part of the resolution, instead of now.

Chairman Pangburn stated that they feel it's accurate timing as it's a waiver of the application fee and the fee should've accompanied the application at the time it was submitted. Ann Feltham stated that applications of all types required a fee in advance prior to any kind of opinion, so regardless of any decision, an application fee would be due.

**MOTION FOR WAIVER OF APPLICATION FEE FOR THE
CLASSIFICATION OF NEW CELL TOWER VERSUS COLOCATION**

Whereas, the Applicant, Young Sommer LLC. on behalf of Verizon Wireless has proposed a Special Use Permit in coordination with their proposed utility pole supporting an equipment cabinet and antenna as a small wireless facility.

Whereas, the proposal is located off of Exit 9 from I-90/Route 4 Interchange near the property located at 25 Hampton Inn Drive.

Whereas, the Town of East Greenbush Local Ordinance Number 6 of 2004 classifies the proposal as a tower as determined by Kevin Hitchcock, Code Enforcement Officer in his letter dated December 20, 2022.

Whereas, the applicant is looking for a waiver (consistent with the provisions of the Wireless Code (section 47A-28)) of the new cell tower fee of \$5,000.00 to a reduction of \$2,500.00 (the fee for a colocation), which is more commensurate with the reduced complexity of the wooden pole in lieu of a steel tower typically used.

Therefore, the Town of East Greenbush Zoning Board hereby recommends that the Applicant be granted a Waiver of the Special Use Permit application fee from \$5,000.00 to \$2,500.00.

This resolution was moved by Jeff Pangburn and seconded by Scot Strevell at a meeting duly held on February 28, 2023.

(Discussion)

A vote was taken as follows:

Tom Hickey	<u>Yes</u>
Matt Ostiguy	<u>Yes</u>
Jeff Pangburn	<u>Yes</u>
Bob Seward III	<u>Yes</u>
Scot Strevell	<u>Yes</u>

Motion carried 5-0

Chairman Pangburn made a motion to table the public hearing until the March 28, 2023 meeting.

Seconded by Scott Strevell. Motion carried by a 5-0 vote.

ZBA Appeal #2023-02 Barner-9 Eileen Drive- Area Variance – Garage

Chairman Pangburn referenced the following as being in the record:

- Legal Notice-was read by Chairman Pangburn
- Rensselaer County Recommendation
- Planning Board Recommendation with supplemental report by Robert Jucha
- ZBA Area Variance Application Packet
- Drawing showing location of garage with setbacks

Chairman Pangburn asked the applicant to present his appeal. Harry Barner stated that there is a shed on the property that's been there for quite a while which is only 3' from the edge. Harry Barner stated that's why he wanted to build the garage flush with the shed. Chairman Pangburn asked if the applicant is proposing a concrete slab. Harry Barner stated that he's proposed an alaskan slab. Chairman Panburn asked for clarification that the slab is bigger than the garage proposed. Harry Barner stated that he is doing this to have an apron around the garage. Chairman Pangburn asked if it was 3' in the front and 3' in the rear of the garage. Harry Barner stated that is correct, there is an overhang in the back and wants a little bit in the front, just as an apron in the front of the garage. Chairman Mastin asked if the Board had any questions.

• Bob Seward asked how old the shed was. Harry Barner stated he thinks it's been there since the house was built in 1972.

• Matt Ostiguy asked if he was connecting the garage to the shed. Harry Barner stated that they will be connected.

Chairman Pangburn stated that the shed roof pitches towards the street, so will the garage be the opposite and sheet towards the neighbor's property & the center of his rear yard. Harry Barner stated that is correct.

• Scott Strevell asked if the shed is on a slab and is it movable. Harry Barner stated that it is on a slab.

• Tom Hickey stated he doesn't think that addresses the questions if it's movable or not. Harry Barner stated that it's not, it's anchored to the slab.

• Tom Hickey asked if there was a record of a prior variance request on this parcel. Chairman Pangburn stated that he did not inquire and does not have anything in the record indicating such & doesn't remember anything within the last 10-12 years since he's been on the Board.

• Tom Hickey stated that it doesn't seem like the applicant has a known rear property line, he has a front pin but no rear pin. Harry Barner stated that is correct.

• Tom Hickey stated then the applicant is proposing to put it within 3 feet of an unknown property line. Harry Barner stated that when he ran a pin straight back to the rear from the road, it appeared that it was 3 feet from that.

• Tom Hickey stated that there seemed to be a significant overhand from the existing shed and does that overhang over the property line, from the base of it or the peak of the roof. Harry Barner stated that the slab of the shed is within 3 feet & the peak does come out quite a bit.

•Tom Hickey stated then could the peak of the shed be more than 3 feet. Harry Barner stated that it's not much of a peak, that it sticks out about 2 feet. Chairman Pangburn stated that his sketch shows the shed is 14' x 16' shed but that's interior space and not the roof. Harry Barner stated that he measured from the outside wall.

•Scot Strevell asked other than esthetics and he know the applicant wants to align the new garage and existing shed, if the garage was moved over to comply with the code, what would be the downside of that other than you'd see the shed sticking out from the road. Harry Barner stated that the garage would still fit on the property.

Chairman Pangburn stated that it appears by the first sketch, that there are two side yard neighbors and their property lines meet where this garage is going to be. Harry Barner stated that the Rose property & his brother in-laws property intersect & they both have sheds in that corner.

Chairman Pangburn asked if the applicant approached either of those neighbors. Harry Barner stated that his sister & brother in-law don't have a problem with it but he has not talked to Mr. Rose.

Chairman Pangburn stated that looking at the 2nd sketch it doesn't appear that it will be visible from Mr. Rose's property as it will be tucked in from his auxiliary building as well as your brother in laws. Harry Barner stated that is correct.

Chairman Pangburn asked the applicant if he plans on taking the tree down between the road and the garage. Harry Barner stated that was taken down several years ago.

•Tom Hickey asked what the height of the proposed garage will be. Harry Barner stated he believes it's 24'. Tom Hickey asked if there will be living space above the garage. Harry Barner stated it would be storage space.

•Matt Ostiguy asked at that height and width you really wouldn't see the shed behind it at all. Harry Barner stated that is correct.

•Matt Ostiguy asked if there would be a paved road into the garage. Harry Barner stated that he will eventually be redoing his driveway & have the driveway go to the garage.

Chairman Pangburn asked if there were any other questions from the board. There were no more questions. Chairman Pangburn asked if anyone from the public wished to speak. Chairman Pangburn stated that there was a comment in the chat box from a resident: David Terpening stated that Mr. Barner has made the required process and effort to go through the process of applying for a building permit. Building Inspector Kevin Hitchcock has done his due diligence. Mr. Barner has filed a request for variances. It's highly possible that many people in the Town of East Greenbush go ahead with building projects that don't bother to do so. If there are no neighbors that object to his project and if the boundaries of his properties can be established by a certified survey, I say allow the variance. There are other notable entities in the town that have gone ahead and built major structures without a building permit. One example that comes to mind is the large canopy structure in the back of Martin Electric (in back of the old K-mart Building) that never was approved or permitted by the Town of East Greenbush. David Terpening asked won't his meets and bounds description help determine his property boundaries.

Chairman Pangburn stated it's interesting if we don't know where the applicant's side property line is, is it a gamble or will the code enforcement officer need to know where that property line is. Bill Hessney stated it does create an unknown factor in this application, since there isn't a survey.

Bill Hessney stated he looked up the tax map and it appears that the front & side lines do appear to be right angles but it doesn't show the buildings on the property so it doesn't show where the property line truly lies. The tax map shows the side property line of about 125' long. Chairman Pangburn stated he feels it should be like in the past that it's up to the code enforcement office to determine whether it's in compliance. Chairman Pangburn asked if there were any other questions from the Board. There were none. Chairman Pangburn asked the applicant if he had anything further to add. Harry Barner stated that if he can find the surveyors pin in the rear than that would help as far as with code enforcement. Chairman Pangburn stated that it would.

Bob Seward made a motion to close the public hearing.

Seconded by Tom Hickey. Motion carried by a 5-0 vote.

SEQR DETERMINATIONS & RECOMMENDATIONS:

ZBA Appeal #2023-02 Barner-9 Eileen Drive- Area Variance – Garage

This is a type II Action-there is no further action necessary.

WORKSHOP:

ZBA Appeal #2023-02 Barner-9 Eileen Drive- Area Variance – Garage

Resolved, That the Board of Appeals makes the following findings of fact in regards to the side setback of 3 feet for the proposed 32' x 28' garage attached to an existing shed in the rear yard:

1. There will not be an undesirable change in the character of the neighborhood as there is a preexisting shed located with the same setback that this garage would blend into, as well as neighboring auxiliary structures on the adjacent properties that appear to be close to the property lines.
2. There is no other method available to the applicant in order to hide the rear shed and make it not visible from the street.
3. The requested variance is substantial, as it is a request of 5' from the necessary 8' to equal the 3', however the adjacent structure has a large setback to the side property line and therefore will blend into the character of the neighborhood.
4. The proposed variance will not have an adverse effect on the neighborhood, as it will match the existing shed in the corner of the yard.
5. The alleged difficulty is self-created; however, that shall not necessarily preclude the granting of the area variance.

Resolved, that the application for the proposed 32' x 38' garage attached to an existing shed in the rear yard with a proposed 3-foot side setback be GRANTED with three conditions:

1. That the applicant collect and direct any roof runoff away from the neighboring property and either maintain onsite or through the rear yard or front street drainage.
2. That no portion of the existing shed behind the garage shall extend beyond the side wall of the proposed garage.
3. That the garage be constructed parallel to the property line at a distance no closer than the corner of the existing shed.

This resolution was moved by Jeff Pangburn and seconded by Matt Ostiguy at a meeting duly held on February 28, 2023.

(Discussion)

A vote was taken as follows:

Tom Hickey	<u>No</u>
Matt Ostiguy	<u>Yes</u>
Jeff Pangburn	<u>Yes</u>
Bob Seward III	<u>No</u>
Scot Strevell	<u>No</u>

Motion of 2-3 didn't carry

Resolved, That the Board of Appeals makes the following findings of fact in regards to the side setback of 3 feet for the proposed 32' x 28' garage attached to an existing shed in the rear yard:

1. There will not be an undesirable change in the character of the neighborhood as the shed has been existing for some time and it will continue to be in the exact same place.
2. There are other methods available to the applicant as there is a large area behind the driveway to be able to construct the garage to meet the physical needs of the new structure.
3. The requested variance is substantial as it is only a 3 feet setback instead of an 8-foot setback, which is a variance of 60 percent of the required setback.
4. The proposed variance will not have an adverse effect on the neighborhood.
5. The alleged difficulty is self-created as there are other options for the location of the shed however, that shall not necessarily preclude the granting of the area variance.

Resolved, that the application for the proposed 32' x 28' garage attached to an existing shed in the rear yard with a 3-foot side setback be DENIED.

This resolution was moved by Tom Hickey and seconded by Scot Strevell at a meeting duly held on February 28, 2023.

(Discussion)

A vote was taken as follows:

Tom Hickey	<u>Yes</u>
Matt Ostiguy	<u>No</u>
Jeff Pangburn	<u>No</u>
Bob Seward III	<u>Yes</u>
Scot Strevell	<u>Yes</u>

Motion carried by a 3-2 vote

NEXT MEETING: The next meeting on March 14, 2023 is cancelled due to a quorum issue.

On March 28, 2023 the Board will Reconvene ZBA Appeal #2023-01-Verizon-25 Hampton Inn Drive-I-90/Route 4-SUP-small cell

APPROVAL OF MINUTES:

Motion by Bob Seward to approve the February 14, 2023 meeting minutes. Seconded by Tom Hickey. Motion carried by a 5-0 vote.

Chairman Pangburn stated that there is no business or quorum for the March 14, 2023 meeting so it is hereby cancelled.

Chairman Pangburn stated that Verizon will reconvene on the March 28, 2023 meeting.

Tom Hickey stated that he would be out of Town for the March 28, 2023 meeting.

MOTION TO ADJOURN

There being no further business before the Board, the meeting was adjourned upon a motion by Bob Seward. Seconded by Matt Ostiguy. Motion Carried by a 5-0 vote.

Respectfully Submitted

Alison Lovely
Alison Lovely, ZBA Secretary