

ZONING BOARD OF APPEALS ~ MINUTES OF SEPTEMBER 21, 2009

(This meeting began as a coordinated review with the Planning Board and the Zoning Board of Appeals combined, on an application of Cellco Partnership d/b/a Verizon Wireless, to construct and operate a Wireless Telecommunications Facility on property located off State Route 9, tax parcel #36.-1-20, in the Town of Chester).

ZONING BOARD ATTENDANCE: Ken Marcheselli, Bill Oliver, Arnold Jensen, John Grady, and John MacMillen. Absent were Elizabeth Morris and Mary Jane Dower.

In the absence of Chairman Ken Raisner, Mr. Paul Little chaired the meeting.

SPR2009-05 & SD2009-03 ~ Cellco Partnership, d/b/a Verizon Wireless. Jared Lusk of Nixon Peabody LLP out of Rochester, was in attendance on behalf of Verizon Wireless. Verizon's objective is to construct a wireless telecommunications facility on property adjacent to NYS Route 9, in order to provide seamless coverage from I-87 through New York, up to Montreal, and down to Albany. The Site for the telecommunications facility consists of a 0.13+/- leased portion of the land owned by Word of Life Fellowship located on tax parcel #36.-1-20. The facility will consist of the construction of an 80 foot monopole tower and wireless telecommunications antennas with a 10 foot lightening rod, an 11' x 30' x 6' equipment shelter, together with other site improvements, in a Moderate Intensity Land Use Area.

Mr. Lusk explained the line of site technology that travels from the phone to the antenna and back to the phone. Wireless telephone use has burgeoned since the technology was introduced in the mid 1980's. There are currently more than 118 million wireless telephone users in the U.S., with approximately 28,000 more being added each day. Wireless technology provides a critical link for emergency services, such as ambulances, which use such service to transmit vital signs and medical information via medical telemetry. Increasingly, police and other emergency service providers are relying on wireless telephones to communicate with dispatch and receive calls for assistance. Additionally, many businesses heavily rely on wireless telephone service, and individuals use it not only for their own convenience, but for safety reasons, as well.

The project, as designed, will not pollute, will not create noise or vibration, will not create any significant increase in traffic, will not create any environmental problems, will not increase population density, and will not create any demand on governmental facilities. Instead, the project will promote the public welfare by providing a modern, more efficient system of communications for police, fire and other emergency services, as well as to provide modern wireless telephone service to business, industry and individuals.

There is a report on file, reviewed by Mr. Lutz, that describes how the proposed Pottersville facility was located. It includes a description of the need for and development of the "search area," a summary of the locations evaluated as alternative sites, the site selection process utilizing the Adirondack Park Agency Tower Siting Guidelines, and describes why the Word of Life parcel is best suited to satisfy coverage objectives. The goal is to maximize the amount of power available in critical target

areas, such as highways and towns. Wireless telecommunication transmissions are broadcast at a very low power level (compared to radio and TV), and any obstructions, whether manmade or natural between the transmit/receive antennas and target reception area significantly reduce the amount of power available for the mobile device user. Hills, mountains or buildings, and even foliage can block a significant portion, if not all, of the transmitted signal before it reaches the end user (the customer). Due to these factors, not all locations within a cell will provide adequate coverage, and the search rings are typically designed and placed in or as close to the critical target area as possible. As such, sites planned to cover the Adirondack Northway Interstate 87 (I-87) must be positioned close to the highway to minimize signal loss through the trees lining the highway, and, assuming terrain and local clutter allow, as close to the center of the target area as possible. The ideal site would be placed to cover 2.5 miles in each direction, and be as close to the highway as possible. There is a Real Estate Team that looks for potential sites within the search area that are both technically appropriate and sensible from a zoning and land use perspective. Radio Frequency Engineering then uses computer modeling and simulation to analyze each potential site, approving or rejecting candidates accordingly, and ranks the qualified candidates based on how well they satisfy the RF requirements. When potential candidates are identified that appear feasible to all parties, leases are negotiated, final design plans formulated, and the sites are submitted to the appropriate governmental bodies for approval. Unlike typical expansion areas, the Adirondack Park presents significant complexity in design and site selection, particularly the need to meet the APA's Tower Siting Guidelines requiring substantial invisibility. With that in mind, Verizon Wireless typically targets candidates at locations where tower height can be kept to a minimum, off of the crest of hilltops, so there is ample natural tree cover and/or hills and mountains behind the tower, and which also requires the minimum amount of tree clearing and access road distance to preserve as many trees as possible. The proposed Pottersville site is critical in Verizon's plan to provide safe and uninterrupted coverage along Interstate 87 through the Adirondack Park to the Canadian Border. The Pottersville site is one of ten new sites proposed to complete I-87 Adirondack Park coverage from Lake George to Keeseville. On September 28th or 29th, balloons will be flown at the proposed tower site, and pictures will be taken from surrounding locations to determine any obvious visibility from major highways or the surrounding community. It was asked by the board members whether the tower could actually be raised above the proposed 80 feet, in order to expand the coverage even further into the community. The flying of the balloons will significantly impact that decision, based on the findings of the Adirondack Park Agency. After the balloon flying, dates will be considered for a Public Hearing with coordinated review by both the Planning Board, for Site Plan Review as well as Subdivision, and the Zoning Board of Appeals for a height Variance.

MINUTES OF MEETING ~ SEPTEMBER 22, 2009

ATTENDANCE: John Grady, Elizabeth Morris, Ken Marcheselli, John MacMillen, Bill Oliver, Arnold Jensen, and Secretary Pat Smith. Also in attendance was Zoning Administrator Walt Tennyson. Absent was Mary Jane Dower.

MINUTES: Mr. Grady proposed an amendment on page 7 of the August 25th Minutes, Paragraph 3, 2nd sentence: "... shall be assigned or transferred to another by the **holder** thereof...". (Original Minutes were written as "hold", instead of holder). Mr. Oliver then made a motion to accept the Minutes, as amended, of the August 25th, 2009 meeting. Motion seconded by Mrs. Morris and carried 5/0.

CORRESPONDENCE: ZBA Minutes of August 25th, 2009; Planning Board Minutes of August 17th, 2009; Zoning Administrator's Activity Report for August 2009; and blank Appeal Application Form to be reviewed and revised/amended.

PUBLIC HEARING: Having been duly advertised, the Public Hearing was opened at 6:05 p.m. by Chairman Marcheselli.

#390-V ~ Mary Ollmann Rohde proposed relief from front and rear setbacks. Applicant was present along with James Hutchins, Engineer, acting as agent for Mrs. Rohde. The original subdivision was known as the "Jones Subdivision", and was configured in 1924. The map that was supplied with the application, done by James Nestor, last revised 8/21/05, shows lot configurations from the original subdivision, which caused some confusion at the outset. Application makes reference to two lots, both in Mrs. Rohde's ownership, #86.10-1-20 (now marked as Lot C, made up of 3 - 50' parcels, labeled originally as lots 28, 29, and 30.), and #86.10-1-26 (now marked as Lot B, to be made up of originally designated lot #'s 41-49). Lot 20 (or Lot C), has no principal building rights associated with it, and is not a suitable building site by Adirondack Park Agency standards. The slope of the site is greater than the allowable 15%, and there is a small stream running through the lot that would not allow for meeting the 100' setback for a leaching component of a wastewater treatment system. Applicant stated that the first 50' of lot #20, on the north side, also has deed restrictions associated with it, as it has a spring on it that everyone can use to dip water from with pails or dippers. The properties are located off Jones Road, and the two lots in particular are located along a road known as Third Avenue, which is not finished, and does not, at this time, extend to the lots in question. Lot B and Lot C are separated by this non-existent road, and applicant wishes to combine Lot C and a portion of Lot B, consisting of old lot #'s 41-46, so that Lot B, the buildable lot, would have additional land associated with it. Lot B is 100' +/- wide, and would require a variance for a dwelling to be erected. Property is located in a Moderate Intensity Land Use Area, and a principal structure is required to be setback from the front lot line a minimum of 60 feet, and from the rear, 50 feet. Each sideline setback must be 25 feet. The sideline setbacks are a non-issue with this lot, but applicant seeks relief for front and rear, requesting a 20 foot front setback, which equates to a 40 foot variance, and a 25 foot rear setback, which is equivalent to a 25 foot variance. Applicant explained that a dwelling constructed thereon would sit at an angle, and Mr. Hutchins felt that a typical 35 ft. by 70 ft. dwelling, including decks and porches, could easily occupy the lot, given the requested setback variances, and also accommodate water and septic treatment system required separation distances. Third Avenue, such as it is, would be further constructed from the existing driveway to serve entry into Lot B. It is unclear who owns the roadway between Lots B and C, as ownership seems to belong to Jordan and Marie Jones, original developers in 1924 & 1925, now deceased, and it is unclear what will happen to original Lots #47-49, which continue on past Lot B, and would have no principal building rights associated with

them. Applicant wishes to sell the parcel (combined Lots B & C), but it is difficult to grant a variance for setbacks to a phantom dwelling for which there is not yet a plan, that a proposed buyer may not want to erect in that designated location, with no guarantee that they will build within the stipulated parameters, should a variance be granted. There was also some question with regard to unmentioned accessibility of the Lots located below Lots B & C, and others, as well.

Following extended discussion, Mr. Marcheselli asked that the stakes be made more visible on the parcel, as he had been unable to locate them before the meeting. There was also some question as to the actual, accurate setbacks, with regard to the stakes, and Mr. Hutchins agreed to check them. Mr. Marcheselli then made a motion to table the public hearing to the October 27th meeting, at 6:00 p.m. Motion was seconded by Mr. MacMillen, and carried 5/0.

OLD BUSINESS: #A-18 ~ Appeal by June Maxam regarding determination of the Zoning Local Law by the Zoning Administrator with regard to issuance of sign permits and related issues pertaining to property of Charles W. Redmond, 6229 State Route 9, tax map parcel #104.14-1-44.31.

Chairman Marcheselli explained that some things had occurred since the last meeting. One of them was the changes that Mr. Redmond had referred to in his letter of June 28th. These changes had all been made, a new application had been filed, sign has been inspected, and a permit has been issued. Mr. Tennyson agreed. Mr. Marcheselli stated that, in his opinion, these actions made the sign more legal than before and less in question. Therefore, he felt that the application, referring to the prior permit which has now been replaced, in accordance with the new sign, is now, basically, moot. Mr. Marcheselli then made a motion that no further action be taken on this appeal. Motion was seconded by Mr. MacMillen, and carried 5/0.

Mr. Marcheselli then made mention that correspondence and an appeal application with regard to Zoning Certificate #S2009-08, of September 28th, 2009, had been received from June Maxam. This is in regard to the sign that has just been put up. He stated that it is not on the agenda, but he brings it up because it has been received.

Mr. Marcheselli stated that he was unable to read the application, and stated that the bottom line on his copy had been cut off, (did not show up on the paper), so he was unable to read that, as well. He continued that, in view of the fact that the appeal application had been requested before the sign was even up, unless he saw anything new and different in it that he had not seen before, he was not sure that it even had to be considered by the board. He added, for the record, that he was not terribly swayed by the first sentence: "this will finally be resolved in State Supreme Court, where Tennyson and Redmond will have to appear under oath under penalty of perjury." This letter and the application had been date stamped as received on September 22nd, 2009.

He added, further, that no action could be taken at this time, anyway. He and the board would review it, and get back to the Secretary with regard to whether or not it would be accepted in the first place.

Mr. Grady made a personal observation that with everything that has been going on with this sign, and for quite some time, he thinks this is beginning to border on harassment, and is way out of line. He feels that review has been done carefully, and at great expense and lots of other people's time, in addition to the board, and he cannot comprehend how this can reasonably continue, and be viewed as anything other than harassment.

Mr. Marcheselli feels that if they are dealing with something new, then a hearing will be held. However, he stated, "this is based on a Zoning Certificate that was issued in response to the changes to the sign, which had been recommended, to make it more legal than it was. The fact that the sign is red, or blue, or green or somebody doesn't like what the handwriting is in, is a subjective complaint, and we could hear these forever. In that respect, John (Grady) is right. It gives even more ammunition to our planned discussion with the Town Board, because if we are going to do this again, it will cost the town even more money. And it's all over one sign that has been in existence for I don't even know how long."

Mr. Grady stated that the proposal that he had made to approach the Town Board for clarification of the Ordinance, wording wise, definitely does not pertain only to this application. This is a clarification that he believes needs to be made and is long overdue, and can actually apply to any number of fields. He feels that they should be represented at the next Town Board meeting, and make that recommendation.

Mr. Marcheselli mentioned Section 10.06-A under Appeals: Hearing and Decision. "The cost of sending and publishing any notices relating to such appeal, or a reasonable fee relating thereto, shall be borne by the appealing party and shall be paid to the Board of Appeals prior to the hearing of such appeal." He continued, "I suppose the question is, does this sentence relate to the advertising and the publishing of the hearing, or does it relate back to the fee charged by the Town Board for the application?" So, maybe this is another item that needs clarification. He stated that this was all he had on the matter. He then recommends that a legible and original copy be provided, that has all of the words on it, it will be looked over, and if it is not a complete application, it will be returned.

ADJOURNMENT: On a motion by Mr. Grady, seconded by Mrs. Morris, the meeting adjourned at 7:20 p.m.

Respectfully submitted,

Patricia M. Smith
Secretary