

Town of Verona  
Zoning Board of Appeals  
6600 Germany Road  
Durhamville, New York 13054

The February 8, 2016 meeting of the Town of Verona Zoning Board of Appeals was called to order at 7:00 pm by Chairman Martin Schaub on a motion made by Henry Gerwig and seconded by Salvatore Sparace. Members present were, Martin Schaub, Henry Gerwig, Salvatore Sparace and James Regan. Patrick Barker was excused/absent. Also present was Secretary Angel Schaub and Codes Officer Chris Childs.

The January 11, 2016 meeting minutes were approved as written with a motion made by Henry Gerwig and seconded by James Regan. All members present voted- Martin Schaub: Aye, James Regan: Aye, Henry Gerwig: Aye and Salvatore Sparace: Aye. All Ayes, No Noes. Motion passed.

**OLD BUSINESS:**

Chairman made mention to the town board at the monthly meeting that he would like know the status of the “new” zoning books. He was informed that there is no new information.

A training brochure was handed out for the Tug Hill Conference on March 31, 2016. Chairman requested permission to have all zoning members attend the training if they are available. The town board approved them to attend. Any members interested will need to send in their payments and will be reimbursed no more than fifty dollars a person after they receive their certificate of completion.

The town board passed a resolution # 01252016 on 1/25/16 to allow David Labrecque to have a grass air strip (runway) at the property located at 2706 Poppleton Rd. The ZBA made them aware that they have to act as the lead agent per DOS.

The ZBA advertised for a vacant position on the board. Interviews were held and the position was appointed to Patrick Barker for term year ending 12/18. Russell Walker was appointed as an alternate when needed.

**NEW BUSINESS:**

All town employees will now be using a town email address to conduct town business. Each employee was given a user name and password along with an email address.

A complaint was made regarding a business being operated at 4203 Senn Rd. Codes will look into this and let the ZBA know at the next meeting.

Kevin Beecher-seeking a renewal of his mining permit. Mr. Beecher has been granted a permit for mining that is to be renewed every four years. He asked the ZBA for another permit. Henry Gerwig made a motion to extend the mining permit for another four years with the same stipulations being, Must have any and all approvals from the DEC and continue to renew every four years. Salvatore Sparace was second to approve this motion. All members present voted- Martin Schaub: Aye, James Regan: Aye, Henry Gerwig: Aye and Salvatore Sparace: Aye. All Ayes, No Noes. Motion passed.

Robert Pawlowski-requesting date change for approved snow races. The weather prevented the races on the scheduled date and he would like to hold them on February 27, 2016. James Regan made a motion to approve the change in date for the special permit granted with one other "cancellation date" another date beyond the February 27th date in case there isn't snow again. Henry Gerwig was second to approve this motion. All members present voted- Martin Schaub: Aye, James Regan: Aye, Henry Gerwig: Aye and Salvatore Sparace: Aye. All Ayes, No Noes. Motion passed. Chairman stated that he is looking into the possibility of setting up a training with the DOS to give the ZBA some education on solar farms or other new activities that are starting to pop up in nearby towns.

#### **PUBLIC CONCERNS:**

No public concerns.

#### **PUBLIC HEARING:**

The public hearing for James Betro of 6711 Lakeshore Rd N opened at 7:18 pm by motion of Henry Gerwig and seconded by Salvatore Sparace. Members from the audience were invited to speak. No one spoke for or against. Henry Gerwig expressed concerns about maintenance of the building if it was only one foot from the property line. The ZBA questioned the size of the building and expressed they would like to see at least two feet off the property line. The ZBA reviewed the survey and held a discussion. It was mentioned that the lot size limits the ability to reconfigure the building location. The requestor stated that he was willing to go two feet from the property line if he could but he would have to check with the builder to see what options are available. The size of the lot limits what can be done. Between the corner of the garage in its current proposed location and the fence on the property line only leaves about 16 feet to get in and out of the garage. It was mentioned that in a 22 foot garage, a full size pick up like the owner has would barely fit. The public hearing was closed at 7:35 pm by motion of Henry Gerwig and seconded by James Regan. Henry

Gerwig made a motion to grant a nine foot North side yard variance, no closer than one foot from the property line but if the design can allow they want to see if further from the property line. Salvatore Sparace was second to approve this motion. All members present voted- Martin Schaub: Aye, James Regan: Aye, Henry Gerwig: Aye and Salvatore Sparace: Aye. All Ayes, No Noes. Motion passed. This property is located in a hamlet zoned district.

The public hearing for Leigh Ballard and Billy Rocker opened at 7:40 pm by motion of Salvatore Sparace and seconded by James Regan. The requestors are seeking a special permit to operate a towing business on their property located at 5023 Spring Rd. The ZBA determined a two foot variance would not be needed because it's a fence, not a structure. Members from the audience were invited to speak. Several members had questions for the requestor. Below are the Q and A's.

Q-Is it a junk yard?

A-No, it's a storage facility that the vehicle sit at when we get called to tow them. They only stay there a short period of time.

Q-Will there be vehicles all over the property?

A-No, the towed vehicles will only be stored inside the coral/privacy fence.

Q-What about leaking fluids?

A-Drip pans will be placed under any vehicle that may be leaking.

Q-How many vehicles?

A-No more than ten.

Q-What about pollution of wells?

A-Drip pans will be used and no fluids will contaminate the ground or water.

Q-What about possibility of accidents if backing into the driveway?

A-We can drive in and turn around there. We will not back in as we think it's not safe.

Q-How large is the coral/fenced area?

A-32x40

Q-What material will the ground where the vehicles are being parked be made of?

A-crusher run with #2 on top.

A lengthy discussion followed. A resident asked the zoning board if they mailed letters to the neighbors. The zoning board responded that letters were mailed. The resident asked why we were using a PO Box. The ZBA responded that they do not use a PO Box. They then asked if the letter they had was the one that the ZBA sent out. After reviewing the letter the ZBA stated that the letter presented was not from the ZBA even though it had the town information on top of the letter. The members of the audience accused Mr. Dennis Mills of Sun Towing of creating a letter to resemble town letter head and mailing it all neighbors. The letter stated that the project was going to be a junk yard and have leaking fluids that will cause possible harm to the ones around it. Mr. Mills agreed he mailed the letters but said he didn't sign them because he didn't feel he needed to. He supplied the PO Box instead. Several members from the audience stated that after they spoke to the requestors and found out that the project was not for a junk yard but only housing towed in vehicles for a short period of time and that there would be no leaking fluids, they were fine with allowing the towing business in their neighborhood. Mr. Mills stated that he had difficulties with the town when he wanted to open his towing

business and thinks that this one shouldn't be allowed. That he wasn't allowed to have any vehicles stored outside and the same should apply with this proposal. Chairman stated that he was part of the ZBA when Mr. Mills came in front of the board. He reminded him that he couldn't put up a fence to store them in and that the ZBA would not approve a light so close to residences. The proposed property already has a fence to hide any potential eye sore. He also reminded Mr. Mills that the ZBA granted him permission to operate his business because the zoning laws allowed it to operate and the same considerations will be granted to the requestor. If it's an allowed use then the ZBA will be following the zoning laws. The ZBA held a discussion. The business was running for the past eight months without permits. They never came to obtain any until the codes officer shut them down and informed them that they needed to get permits from the ZBA. Mr. Rocker stated that 80% of the vehicles he deals with are repos, or funder benders being towed through accident clubs or insurance companies. They only sit at the property for a few days. The other 20% are car wrecks and they typically go straight to the dealerships or garage for repair because he doesn't do any repairing of vehicles. Only towing. Henry Gerwig made a motion to grant a special permit to operate a towing business at the above location with the following stipulations decided upon by the ZBA members and contingent on the chairman checking the EAF mapper site and DEC if required..

- 1-The business can ONLY stay within the 32x40 foot fence that currently exists.
- 2-NO wrecked vehicles that have potential of leaking ANY fluids can be parked on the property. Any that are MUST be stored at an alternate location.
- 3-NO more than 5 vehicles can be stored / towed to the location at any given time.
- 4-If there is any chance something that's parked at the property has potential of leaking, drip pans MUST be used to prevent contamination of soils or waters.
- 5-ZBA chair will review EAF Mapper on line tool. If any wetlands are on or near the property per the mapper, he will contact the DEC for next steps.
- 6-NO backing tow trucks into the driveway. This will prevent potential accidents from happening. MUST drive in and then turn around.
- 7-NO persons are allowed to pick up repossessed vehicles from this location. This will reduce extra traffic to the neighborhood.
- 8-The coral/fence is not allowed to be enlarged. It's to stay no larger than 32x40.
- 9-NO vehicles are allowed to stay at the location for any longer than 30 days.
- 10-IF any of the listed stipulation are not met then the permit to operate can and may be revoked by the ZBA at any time. James Regan was second to approve this motion with the listed stipulations. All members present voted- Martin Schaub: Aye, James Regan: Aye, Henry Gerwig: Aye and Salvatore Sparace: Aye. All Ayes, No Noes. Motion passed. This property is located in a RD district.

The public hearing for Evolution Site Services was opened at 8:15 pm by motion of Henry Gerwig and seconded by James Regan. The requestor is seeking a 130 ft variance to construct a cell tower on Foster St, Durhamville. All members of the public were invited to speak. Mr. DeCarr stated that allowing the variance would ultimately cause a tower to dominate the skyline. Henry Gerwig asked about why the height variance was needed for only 130 feet and why it is an issue with the neighbors. Chairman stated that the town attorney as well as the DOS informed him that prior to

voting on the cell tower application that a hearing was needed for a height variance because the town zoning doesn't specify anything specific to towers. The tower is proposed for 160 feet plus a 5 foot lightning rod. This is a total of 165 feet. The zoning makes mention of 35 feet which means a variance for 130 feet is needed. Chairman stated that he wanted to clarify that the tower is only 160 feet with a 5 foot lightning rod and that the newspaper has quoted it larger and is incorrect. Ms. Shampine asked that her seven year old daughter be allowed to read a letter she wrote to the ZBA with her concerns for the tower. ZBA allowed Ms. Shampine's daughter to read her letter. Mr. Calpeter stated he didn't want to look at the tower. Why is the need for a variance now coming into play? The ZBA stated again that it was advised by both the DOS and the town attorney to hold a public hearing for the height variance to make sure all procedures are being followed. A question was asked what the town attorney's opinion on the cell tower was. Chairman stated he couldn't speak for the town attorney. The DOS feels our ordinance is fairly open in regards to special permits and cell towers. Chairman stated that DOS said it's the carrier's responsibility to prove the public need. Case law suggests that you can't distinguish a difference in coverage between data coverage and voice coverage. The FCC does that, not the ZBA. Neighbors pooling together to complete their own dropped call logs is not reliable to use as documentation of accuracy. Ms. Dattmore stated that she agrees there may be a need but wants the location to be elsewhere. She stated that the ZBA can force an alternate location. Mr. Ciolfi stated that they are only building a tower that will fulfill the needs of coverage. He stated that they are keeping it as small as possible. He also stated that there is only one other tower in this town that is smaller than the proposed tower would be. A resident stated that the requestor will continue to add to the tower every time a new carrier comes in. Mr. Ciolfi stated that was untrue. The height of the tower will never change. Mr. Uli Aserian stated that the town of Pompey found an alternate site and turned down the applicant, not allowing the tower to be built. Why can't Verona do the same thing? Chairman stated that each Zoning Ordinance is different, and if he read into that case further he would see that they all ended up in court and that the decision was over ruled not in favor of the town. The cell tower was ultimately approved if it is the same case we know about. Chairman stated that the ZBA would be acting within the confines of the law and what's allowed when making their decision. He also stated that the tower must be within the search ring and that the town ordinance doesn't state they can restrict a tower and force them to place it in another location. Chairman stated repeatedly that this hearing was to discuss the height variance only and that the decision for a variance was what they were voting on for this particular hearing. A resident asked what the next step would be if the decision is to vote yes. What can the people do? Chairman stated the only procedure the residents can do if the tower is approved is to file an Article 78. Mr. DeCarr stated that he plans to file an Article 78 against the town. Ms. Shampine stated that the town ordinance only allows a cell tower to be 35 feet high and that the ZBA should deny the application because it doesn't fit within that allowed height. Chairman stated that DOS and case law states that if it's an allowed use you cannot deny on a variance alone because it is considered a public utility. A question was brought up about power input; will it be regulated per carrier or tower? Mr. Ciolfi answered that's regulated by the FCC. A question about where the lowest antenna will be placed. Mr. Ciolfi stated that

they would go no lower than approximately 90 feet. Question about total number of carriers? Ciolfi stated this tower is built only for 5 carriers max. A resident asked if the decision can be delayed until the next ZBA meeting. Chairman stated No, the time limit is up and a decision needs to be made. No new information has been supplied from opposition and there for we need to move ahead. He stated that the opposition's attorney as well as Mr. Ciolfi were asked to supply requested information specific to claims made at the last meeting to the town attorney for review. Chairman stated that the only one that responded was Mr. Ciolfi. Mr. Byrnes submitted testimony in letter form dated February 8, 2016. The ZBA all reviewed the testimony. Henry Gerwig stated he read all documents more than once and feels that it's an allowed use. Henry Gerwig made a motion to close the public hearing at 8:47 pm. Salvatore Sparace was second to approve this motion. Henry Gerwig made a motion to grant a 130 foot height variance for the proposed cell tower if the tower is approved. Salvatore Sparace was second to approve this motion. A roll call vote was completed as follows: Henry Gerwig; Aye, James Regan; Aye, Salvatore Sparace; Aye and Martin Schaub; Aye. All Ayes no Noes. Motion passed.

The cell tower application was reopened for discussion between the ZBA members and to rule on a decision. A member of the public asked why the ZBA won't make the tower company construct on the French property instead. Chairman stated that in the ZBA members information there is an email from the DEC that states "if there are two proposed sites for a project, one of which poses no impacts to natural resources, the DEC would most likely not issue a permit for the site that would result in impacts to resources" and "the J. Kazlauskas property (as of 2013), Tax ID 297.001-1-2.8, has nationally mapped wetlands along the stream but is otherwise clear. Army Corps of Engineers regulates those wetlands." Chairman stated that the parcel owned by French has too many impacts to be considered in light of the email from the DEC confirming what was already known in regards to SEQR approvals. Mr. DeCarr stated that the ZBA has the right to deny this application. A resident (Cody) stated that "less intrusive" is wide open for interpretation. The ZBA needs to turn down applicant until they have a better definition. The ZBA should place a moratorium to prevent the tower. Chairman stated that even if the town placed a moratorium on cell towers today, this tower will not be included in it because they applied previously for the approval. If the residents want to have a moratorium on cell towers then it needs to be requested to the town board to set one. Once they do there will be a certain amount of time for the boards to work together to update the zoning ordinance. They cannot ban towers but they can decide if they only want them in certain zoned districts and what the allowed heights may be. They can also state in zoning what the requirements for closing them in, disguising them or what materials, trees may be required.

SEQRA section 2 and 3 were completed by the ZBA, line by line.

1-Will the proposed action create a material conflict with an adopted land use plan or zoning regulation?

VOTE; HG- No , SS- No, JR- No, MS- No

2-Will the proposed action result in a change in the use or intensity of use of land?

VOTE; HG- No , SS- No, JR- No, MS- No

3-Will the proposed action result in a change in the character or quality of the existing community?

VOTE; HG- No , SS- Yes, JR- Yes, MS- No

4- Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?

VOTE; HG- No , SS- No, JR- No, MS- No

5-Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?

VOTE; HG- No , SS- No, JR- No, MS- No

6-Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?

VOTE; HG- No , SS- No, JR- No, MS- No

7-Will the proposed action impact existing: public / private water supplies?

VOTE; HG- No , SS- No, JR- No, MS- No

Public / private wastewater treatment utilities?

VOTE; HG- No , SS- No, JR- No, MS- No

8-Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetics resources?

VOTE; HG- No , SS- No, JR- No, MS- No

9-Will the proposed action result in an adverse change to natural resources (e.g., wetlands, water bodies, groundwater, air quality, flora and fauna)?

VOTE; HG- No , SS- No, JR- No, MS- No

10-Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?

VOTE; HG- No , SS- No, JR- No, MS- No

11-Will the proposed action create a hazard to environmental resources or human health? VOTE; HG- No , SS- No, JR- Yes (if ice fell and hit someone), MS- No

The ZBA issued a negative declaration based on the SEQRA.

Although not required due to it being a negative declaration, the ZBA accepted the draft EIS as the final EIS. Salvatore Sparace made a motion to accept the draft EIS as the final EIS with visual impact statement. Henry Gerwig was second to approve this motion. A roll call vote was completed as follows: Henry Gerwig; Aye, James Regan; Aye, Salvatore Sparace; Aye and Martin Schaub; Aye. All Ayes no Noes. Motion passed.

Area variance-if proven a need then you can't say no.

A roll call vote was completed as follows: Henry Gerwig; Aye, James Regan; Aye, Salvatore Sparace; Aye and Martin Schaub; Aye. All Ayes no Noes. Motion passed.

Height Variance for 130 feet was granted.

Chairman asked the ZBA members if they had any future questions or concerns to be asked prior to voting to approve or not approve the special permit for Evolution Site

Services to erect a 160 foot cell tower. Henry Gerwig stated: No, I wish there was a better site to make the residents happier. James Regan: No questions. Salvatore Sparace stated he wished there was a better site that made more residents happier. Henry Gerwig made a motion to allow Evolution Site Services a special permit to erect a 160 foot cell tower with a 5 foot lightning rod at the site requested in the application with the following stipulations:

1-Evolution must pay an independent company to run random testing up to 2 times a year when requested by the ZBA. If one test fails the allowed FCC regulations then up to 2 more independent tests must be requested within that year. Evolution will be responsible for normal and reasonable costs for the testing.

2-The site MUST be screened in at the bottom. A 4-5 foot high and 8-10 feet wide berm will be placed and then a variety of trees, hybrid poplars, white pine and arborvitaes will be planted on top of the berm and around the site.

3- If the project causes any drainage concerns or issues Codes Officer will notify Evolution and they must repair them.

4-Evolution must work with the codes officer to reconfigure the entrance to the tower so the berm and trees will cover most if the eye sore. This request was made by the public.

5-Evolution must obtain any required permits from both the town and highway department. Residents were concerned about crane driving over the road and damaging it.

6-Evolution is responsible for all cost of damages associated with the roads or surrounding properties during the construction phase.

7-Evolution is required to work out a bond deal with the town board for the off chance the tower will go defunct and needs to be torn down. Mr. Ciolfi stated he has spoken to the supervisor.

8-Evolution must keep tower in good working and visual repair at all times.

9-If there is no antenna up for the first year nor a signed contract to have one up within the next six months after (total of 18 months) then the tower will have to come down.

James Regan was second to approve this motion.

A roll call vote was completed as follows: Henry Gerwig; Aye, James Regan; Aye, Salvatore Sparace; Aye and Martin Schaub; Aye. All Ayes no Noes. Motion passed.

Chairman suggested no trespassing signs be placed on the property which will insure no one would get injured if by some off chance something was dysfunctional. The owner stated that there already are no trespassing signs and that no one has permission to be on the property other than the farmer that has it.

## **ADJOURNMENT:**

The meeting of the Zoning board of Appeals was adjourned at 9:45 pm on a motion made by Salvatore Sparace and seconded by Henry Gerwig. All members present voted- Martin Schaub: Aye, James Regan: Aye, Henry Gerwig: Aye and Salvatore Sparace: Aye. All Ayes, No Noes. Motion passed.



**APPROVAL OF MINUTES:**

Chairman: Martin Schaub : \_\_\_\_\_

Board Member: Henry Gerwig : \_\_\_\_\_

Board Member: Salvatore Sparace : \_\_\_\_\_

Board Member: James Regan : \_\_\_\_\_

Board Member: Patrick Barker : \_\_\_\_\_

Secretary, Angel Schaub : \_\_\_\_\_

This document is unapproved unless signed by all ZBA members.