

Zoning Board of Appeals
Village of Tarrytown
Regular Meeting
October 10, 2017 7:30 p.m.

PRESENT: Members Maloney, Jolly, Rachlin; Counsel Zalantis, Village Engineer Pennella; Secretary Meszaros

Members Absent: Chairwoman Lawrence and Member Weisel

Mr. Maloney chaired the meeting in Ms. Lawrence's absence and called the meeting to order at 7:38 p.m.

APPROVAL OF THE MINUTES – September 11, 2017

Mr. Maloney moved, seconded by Mr. Jolly, that the minutes of September 11, 2017 be approved as submitted. All in favor. Motion carried.

Mr. Maloney announced that the application by 202 Lexington Group – 29 S. Depot Plaza has been adjourned this evening at the applicant's request and changed the order of applications to be heard.

NEW PUBLIC HEARING – David Barbuti - 28 Mallard Rise

Secretary Meszaros read the Public Hearing notice.

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Village of Tarrytown will hold a public hearing at **7:30 p.m. on Tuesday, October 10, 2017**, in the Municipal Building, One Depot Plaza, Tarrytown, New York to hear and consider an application by:

David A. Barbuti, R.A.
28 Mallard Rise
Irvington, NY 10533

For a variance from Chapter 305 of the Village of Tarrytown Code ("Zoning Code") for the construction of a deck and stairs in the rear yard. The property is located at 28 Mallard Rise, Irvington, NY and is shown on the tax maps as Sheet 1.270, Block 137, Lot 49 and is in the R-10 Zoning District. **The variance sought is as follows:**

Zoning Code Section §305-20 Residential, R-10	Required Side Yard Setback	Reduction Allowed 305-47.B(5)	Proposed	Variance Required
Attachment 5: Column [12]	12 ft.	12 ft. – 6 ft. = 6 ft.	5.25 ft.	0.75 ft./9 Inches

Documents are available for inspection in the Planning and Zoning Office at Tarrytown Village Hall. All interested parties are invited to attend and be heard. Access to the meeting room is available to the elderly and the handicapped. Signing is available for the hearing impaired; request must be made to the Village Clerk at least one week in advance of the meeting.

By Order of the Zoning Board of Appeals

Lizabeth Meszaros
Secretary to the Zoning Board

Dated: September 29, 2017

The mailing receipts were received and the sign was posted. Board members visited the property.

David A. Barbuti, R.A., representing the owners of 28 Mallard Rise, Irvington, NY, appeared before the Board to seek a .75 foot or 9" variance for the construction of a 4 ft. wide upper deck that encroaches 9 inches into the side yard setback. He presented the plan and said the existing house is set at 6 feet and the existing deck and support structure encroaches which triggers a variance to construct another 4 foot deck above. They will use the existing columns for the deck.

Mr. Maloney asked if they are replacing the deck. Mr. Barbuti said a new deck will be constructed on the second level and it will be the same length. The stairs migrate down onto the patio and another set of stairs will go to the rear yard. He pointed to the very last column to show the encroachment.

Mr. Maloney asked if they have spoken to the neighbors. Mr. Barbuti said the mailings were done and he has not heard any objections.

Mr. Jolly asked about improving the path. Mr. Barbuti said presently there is no access from the basement to grade.

Mr. Pennella advised the Board that 3 years ago a variance granted for the chimney on the same side of the house. Mr. Maloney recalled that application.

Mr. Maloney asked if anyone in the public had any comments. No one appeared.

Mr. Jolly moved, seconded by Mr. Maloney, to close the public hearing. All in favor. Motion carried.

Mr. Maloney read through the criteria.

1. That no undesirable change will be produced in the character of the neighborhood nor will a detriment to nearby properties be created by the granting of the area variance. *Mr. Maloney said the new upper deck will be in the same location as the lower existing deck and he sees no undesirable change or detriment to the*

neighborhood or nearby properties and no one has come this evening to raise any concerns.

2. That the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance. *Mr. Maloney feels that the benefit sought by the applicant cannot be achieved by any other method.*
3. That the requested area variance is not substantial. *Mr. Maloney feels that this variance is not substantial.*
4. That the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. *Mr. Maloney feels that the granting of this variance will not adversely affect the physical or environmental conditions in the neighborhood.*
5. That the alleged difficulty was not self-created which consideration shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the variance. *Mr. Maloney feels that while it is self-created, the variance is minimal.*

Mr. Maloney moved, seconded by Mr. Jolly, that this variance be granted and Counsel Zalantis be directed to draft a resolution memorializing the discussion. All in favor. Motion carried.

CONTINUATION OF PUBLIC HEARING -
New Cingular Wireless – AT&T -120 White Plains Road

Kristen Motel, Attorney, of Cuddy & Feder, LLP, on behalf of the applicant AT&T, is requesting a height variance for the installation of a wireless telecommunications facility on an existing rooftop of the building located at 120 White Plains Road. She introduced her team who will address any questions the Board may have. Ms. Motel said they will be installing 3 Sectors with 4 antennae on each, for a total of 12 antennae. Initially, they proposed them on the rooftop with the screening, and then without the screening. They have since explored the feasibility of mounting them to the penthouse, 8 on the southeast and 4 on the southwest. They are trying to direct the signal to Route 287.

Ms. Motel referred to their 9-21-17 submission which provided information on the generator, lighting specifications and photo simulations of the facility on the penthouse and the rooftop without the screening. She showed the antennae without the screening and with the stealth panel screening, which was the initial submission, and noted that a photo of the proposed units on the penthouse is in the application package which was submitted to the Board.

They also provided additional information on the 303 South Broadway site and looked into the feasibility of slanting the screening to match the roof parapet. She said that their

engineers determined this was not feasible because of the amount of space required for screening and the wind load for the weight of the ballasts.

Ms. Motel referred to the Oct. 6, 2017 information submitted regarding the installation of the units on the penthouse. Ms. Motel said they met with the Landlord who does not object to their placement but they will not permit the screening on the penthouse. She referenced the Oct. 9, 2017 letter to the Board and said that they also looked at the feasibility of flush mounting to the penthouse itself and it was determined that the antennae would have to be set back from the roof edge. The signal dissipates the further back you go. She referred to the drawing in the Board submission which shows this effect. She explained that for every 5 feet back you have to go 1 foot up to make up for shadowing so there is not enough space to account for shadowing effect. They are back to proposing mounting the antennae to the roof deck with or without screening. If the Board does not want screening, they can paint them to match the penthouse, the building or a light gray to blend in with the sky.

Ms. Motel stated that per the Telecommunications Act, FCC license carriers have a less stringent standard for granting variances. The public need and necessity has to outweigh the impacts to the community. She submits that there is a public need, since there is a gap in coverage; this is also the only feasible location; and the impact to community is minimal. Since there is a lack of service right now, the community will be benefitting.

Mr. Maloney asked about the other locations. Ms. Motel said, while AT&T prefers to co-locate, this is the only facility available.

Mr. Jolly asked if the antennae will be attached to the penthouse. Ms. Motel said not unless the Board wants them on the top of the penthouse. She said that mounting them on the corners will not work due to shadowing since the penthouse is very far in from the edge of the building.

Joe Hanrahan, PE, of KMB Design Group, the design engineer for the applicant, came up and said the antennae would be 2 feet back from the parapet wall and the parapet is 4 feet off the roof.

Ms. Rachlin asked if they can go farther back. Mr. Hanrahan said the farther back you go, the higher the antennae have to be. For every 5 feet you have to go up 1 foot.

Mr. Jolly asked how the antennae are secured. Mr. Hanrahan said they are ballast mounted and designed per applicable code, which is common. Mr. Pennella commented as long as they can sustain wind loads. Mr. Hanrahan said they will comply with code for wind load which is part of building permit requirement.

Ms. Rachlin asked what the screening was made of. Ms. Motel said it is made of fiberglass. Mr. Maloney asked the Board what they thought about the screening. Mr. Jolly confirmed that it would look like a box.

Ms. Rachlin asked if the building owners have a preference for screening. Ms. Motel said the owners will not allow screening on the penthouse, otherwise they have no objection.

With regard to the need for the facility, Mr. Pennella said that AT&T decommissioned their site at 303 S. Broadway on their own. The village did not put them in that position. Ms. Motel said they were not involved in that process, but can confirm that the 303 S. Broadway facility was a 2G site, which is obsolete technology, and was not really operational. This proposed site will have 4G technology.

Mr. Pennella made reference to his remarks at the last meeting suggesting that the applicant look into placing the antennae on the corners of the penthouse. He did see a loss but not a great loss. He would like the consultant to look into this possibility. He wants to know how far back they can go without having a significant impact on the shadowing.

Mr. Pennella is suggesting that the antenna get pulled up higher to be flush to the top of the penthouse. He just wants to know how much of a loss it is.

Mr. Hanrahan said structurally it is not sound to attach the antennae to light weight framing.

Mr. Pennella said he is not asking them to. What about putting them on ballasts? Mr. Hanrahan said from a wind load standpoint, they would have to look at it.

Mr. Pennella said if you pull them back 5 feet and go up 2 feet you can mitigate the visual impact of the antenna. Mr. Pennella said the farther back you can put them to mitigate the visual impact is what he feels the Board would like to see.

Ms. Motel said they will look into this possibility. Ms. Motel said she is not sure if they will be mitigating any visual impact if you pull them back. Mr. Hanrahan said either way as you pull back you will still see the antenna. Mr. Pennella showed the plan to Mr. Hanrahan. He just wants to know the impact. Mr. Pennella suggested having the village consultant look into this.

Mike Musso, PE, of HDR, the WTF consultant for this project, working on behalf of the village, came up to speak. He advised the Board that he is developing a detailed technical memo for the Planning Board which will also include the information discussed this evening. In addition, it will include a structural and safety analysis, need for site, justification, generator, and visuals, how it could or can't look based upon his recommendations.

He passed out exhibits to the Board and said there is an existing site at 220 White Plains Road. They are all building roof or side mounted. The first photo is the rooftop on the site. The western side of roof looking north to the left is the bridge. You can see the parapet wall and penthouse and the unique geometry of the building.

The second looks southwest and shows the roof surface. He explained that these installations require line of sight technology. It would be great to move the antennae to the middle of the building but with that you lose coverage. You do need line of sight since most of the width of antenna is used for transmitting and receiving.

The first proposal submitted was to mount the antennae to the main roof with screening. The antenna has to be seen over the parapet wall. Although, it is required to be screened by the code, he feels that the screening throws off the symmetry of the building.

There was information provided to have them placed on the top of the penthouse since you clearly have line of sight. This request was to have them placed on the corners of the penthouse. He said that the Board is not interested in putting them on top of the penthouse.

Then can we take these locations and bring them back toward the penthouse. We just received an analysis for the gamma sector. If it was moved back 60 feet toward the penthouse, it shows that it won't work. They may work on the other 2 sectors since there is a much shorter roof surface, with potentially less shadowing, but this will need further review. They have to consider the geometry of the antennae and coverage objectives for mobile uses.

Mr. Musso showed the last photo of the sub-site at 220 White Plains Road to illustrate how the line of sight is necessary. He advised the Board that they will have to explore the last option to determine if it is feasible. He said that the Village Engineer brings up good points, but it may not be feasible.

Counsel Zalantis asked Mr. Musso about the possibility of painting the antennae instead of screening them. She suggested a gray color to match the sky. Mr. Musso suggested a muted gray or a brown in lieu of the screening, which are in the photo simulations that were presented to the Board.

Mr. Maloney asked Mr. Musso if he still has to do some investigation. Mr. Musso said he will explore the feasibility of moving the antennae further away, not on top of the penthouse, what that distance is and if it is even feasible. The other 2 sectors may potentially have less shadowing. He still needs to verify this and see if the shadowing is consistent and if it will work.

Mr. Jolly asked what service the facility will provide and why do we need so many antennas. Mr. Musso said they are providing a coverage footprint to the area which at this time is unacceptable. It is not just coverage, it is also capacity since many people are getting rid of landlines and using devices which require more service and bandwidth. This facility will provide enhanced service to Routes 287 and 9 and also enhance the overall robustness of their system. New frequency will also be introduced

to the area enabling new voice and data services. He looked at a lot of sites and capacity and he feels this site is a good one.

Mr. Jolly asked about facilities in other villages or towns. Mr. Musso said they only work for municipalities. Neighboring Greenburgh has about 20 AT&T facilities. Mr. Jolly asked about any benefit to the village. Mr. Musso said it is not village owned building so there would be no revenue or lease money but the village residents will benefit from the service. Mr. Musso looked at other potential properties and could not find any in the area.

Mr. Pennella raised his concern to Mr. Musso that if the Village does not take precautions now to mitigate the visual impacts, what is the likelihood for others to come in the future and add more bulk to this building.

Mr. Musso said the code requires co-location so this could be a preferential site. Mr. Pennella feels the visual impacts are a major concern. He asked Mr. Musso why he couldn't follow the same slope as the parapet walls at an angle and then set the antennas back beyond it so you have an angular screen and not a perpendicular screen. Mr. Musso said it could be angled but it is not something he recommends based on his experience.

Counsel Zalantis said if they do plan on revising the locations by going back and raising the height, they may have to re-notice. She asked the Board if they would consider a greater variance if the antennae were setback further mitigating the visual impact. The Board said they would consider it granting a larger variance if it will further mitigate the visual impact.

Ms. Motel again reminded the Board that there is a different standard of review for this variance which weighs the need for the facility vs. the impact to the community. There is a balance and we have submitted information to the Board with regard to this. She agreed to look at the feasibility of placing the antennae further back.

Counsel Zalantis advised the applicant that the Board is asking them to consider this feasibility and they would be willing to grant a greater variance if this option could further mitigate the visual impacts. If the applicant comes back and says that it is not feasible, the Board will take that into consideration. Ms. Motel said they will look into the feasibility of moving the antennae further back.

Mr. Maloney moved, seconded by Mr. Jolly, to continue public hearing. All in favor. Motion carried.

ADJOURNMENT - Mr. Maloney moved, seconded by Mr. Jolly, and unanimously carried, that the meeting be adjourned – 8:35 p.m.

Lizabeth Meszaros- Secretary