

Planning Board

TOWN OF BRUNSWICK
336 Town Office Road
Troy, New York 12180

MINUTES OF THE PLANNING BOARD MEETING HELD APRIL 20, 2023

PRESENT were RUSSELL OSTER, CHAIRMAN, DONALD HENDERSON, J. EMIL KREIGER, LINDA STANCLIFFE, DAVID TARBOX, and KEVIN MAINELLO.

ABSENT was ANDREW PETERSEN.

ALSO PRESENT were CHARLES GOLDEN, Brunswick Building Department, and WAYNE BONESTEEL, P.E., Review Engineer to the Planning Board.

Chairman Oster reviewed the agenda for the meeting, as posted on the Town sign board and Town website.

The Planning Board opened a public hearing on an amendment to a site plan and special use permit submitted by Blue Sky Towers III, LLC for property located off Creek Road. Jared Lusk, Esq., and Jeff Twitty, Esq., from Nixon Peabody, LLP, were present for the applicant. Chairman Oster read the procedure for a public hearing held by the Planning Board. Attorney Gilchrist reviewed the procedural history of the project, including prior proceedings on the site plan and special use permit approval and the current application, and also Section 6409 of the Federal Spectrum Act. Attorney Gilchrist read the Notice of Public Hearing into the record, with the Notice having been published in the Eastwick Press, placed on the Town sign board, and posted on the Town website. Attorney Gilchrist also stated that the applicant mailed the public hearing notice to the owners of all properties within 750 feet of the project site. Chairman Oster asked Mr. Lusk to briefly review the project for the public. Mr. Lusk reviewed the application, including the

date of application, the request to the extend the tower height by 20 feet, the location of the tower, and the addition of monopine branches to the additional 20 feet, concluding that the project is ultimately very simple under Section 6409 of the Federal Spectrum Act. Mr. Lusk reviewed the Eligible Facility Request under the Federal Spectrum Act, stating that it allows for either a 10% increase in the height of the tower or a 20-foot height increase, whichever is greater; that there will still only be standard equipment installed at the base of the cell tower; that it will not entail any excavation outside the existing compound; that the antenna would not be any higher than the 20-foot extension being proposed; and that the application does not defeat the concealment element due to continuing the monopine branching. Mr. Lusk also stated that the project does qualify as an eligible facility, so the application must be approved as a matter of federal law. Chairman Oster then opened the public hearing on the application. Todd McDonald, of 11 Eagle Ridge Drive, stated that he and his wife lived closest to the cell tower, that he did not care about the quality of cell service in the area, and that he cared much more about the view of the surrounding area from his house. Mr. McDonald stated that the application would accommodate a non-taxpayer under the federal law; that the application was a “fait accompli,” meaning it had already been decided; that he did not like that an approval was required; and that there must be some rights under federal law for him to challenge the Planning Board. Mr. McDonald stated that the project would impact the view from his property, that the Planning Board should appeal to reason on the application, and that he would pursue legal action and not be quiet if Planning Board approved the project. Mr. McDonald also asked if the applicant could request and be automatically granted any additional tower height extensions, and that the project was a financial gain to the tower owner and a financial loss to the surrounding property owners. Lisa McDonald, also of 11 Eagle Ridge Drive, handed out pictures of the existing cell tower as seen from her and her husband’s property, which was the

closest property to the tower, stated that it was already clearly visible when the applicant had previously stated that they would only have “partial visibility” of the tower, and that it would become even more visible if the tower height extension was granted. Mrs. McDonald stated that she was concerned about the number of times the applicant could apply for, and be automatically granted, another height extension and asked where the height increases would end. Mrs. McDonald also stated that corporate profits should not get priority over property rights and residential rights, and that she and her husband would seek monetary damages for loss of value and view if the project is approved. Barbara Russo, of 52 Colehamer Avenue, stated that the project felt like a bait-and-switch, that the Planning Board had previously gone through a lengthy review process when the tower was initially proposed, that the Planning Board and public were previously told that the tower would only need to be 85 feet tall to accommodate Verizon and AT&T, that the Planning Board looked at various sites and heights for the tower, that the tower was built, and only now after the lengthy review and approval process, does the applicant want a taller tower. Ms. Russo asked why AT&T did not tell the Planning Board that they would need 20 feet of additional height during the initial review process, and stated that she was against the project and that it should be denied. Eric London, also of 52 Colehamer Avenue, asked how high a cell tower had to be to get a light at the top. Mr. Golden stated that a light was necessary at 200 feet. Mr. London asked how many times the applicant could apply for tower height extensions that would be automatically be granted. Mr. London stated that he believed the applicant knew during the initial application process that they would later apply for a 20-foot height extension, yet provided no notice to the Town or an amendment to the initial application at the time. Mr. London asked if the Planning Board members were aware of the law firm of Nixon Peabody, that it is a world-renowned firm, and asked why the applicant hired such high-profile firm for this matter. Mr.

London also asked how many more times the applicant would be able to apply for a tower height extension and have it be automatically be granted. Chairman Oster asked Mr. Lusk if he would like to respond to the comments made by the public. Mr. Lusk stated that his law office is located in Rochester, New York; that he has been involved in cell tower matters in many upstate New York communities; and that the applicant hired his firm to represent it in this matter and so that was what he was doing. Mr. Lusk stated that there seemed to be some misunderstanding of the Federal Spectrum Act and he wanted to provide clarification, stating that the 20-foot extension that must be granted if the project qualifies as an eligible facility can only be done once under the federal law, and that any request for an additional extension for this tower would be subject to a full review by the Planning Board. Mr. Lusk stated that there were questions about the AT&T array initially being placed at 66 feet on the tower and noted that Verizon was the main tenant during the initial application, which was addressed in previous correspondence with the Town. Mr. Lusk also agreed with Mr. Golden that a light at the top of the tower was only necessary at 200 feet, which the proposed height extension for this tower would not be close to. Chairman Oster asked if there were any additional questions or comments from the public. Mrs. McDonald asked if the Planning Board could deny the application specifically to AT&T. Mr. Lusk stated that under the federal law, there was to be no distinction between the owner of the cell tower and carriers on the cell tower, and that the only issue before the Planning Board was whether this application constitutes an eligible facilities request. Mrs. McDonald asked why AT&T wanted to extend the tower. Mr. Lusk stated that the need for an array at a certain height on a cell tower is not relevant under the federal law, that there are limits on inquiry and issues pertinent to this application under the federal law, and that the Planning Board can only consider whether this constitutes an eligible facilities request. Ms. Russo asked why the AT&T array could not simply go higher on the existing

tower, since it is only at 66 feet on the tower now. Mr. Lusk stated that the AT&T array has not been placed on the tower yet, and that it would be placed at 95 feet on the extended 105-foot tower. Ms. Russo asked why the AT&T array could not just be placed at 85 feet on the existing tower. Attorney Gilchrist stated that it was his understanding that Verizon was already located at the tower's highest array elevation, and that there was not enough room on the tower for two arrays to be placed at the same height. Mr. Lusk agreed. Ms. Russo asked where specifically the additional 20 feet of height would be measured from. Attorney Gilchrist stated that under federal law, the additional 20 feet would be added to the top of the existing tower. Mr. Lusk agreed, stating that 20 feet of additional height from the top of the existing tower was reflected in the application documents. Chairman Oster asked if there were any further questions or comments from the public, and there were none. Chairman Oster asked the Planning Board members if the public hearing should be extended, and it was agreed that it should not be extended. Chairman Oster made a motion to close the public hearing, which was seconded by Member Tarbox. The motion was unanimously approved and the public hearing was closed.

The draft minutes of the March 30, 2023 special meeting were reviewed. Upon motion of Chairman Oster, seconded by Member Krieger, the draft minutes of the March 30, 2023 special meeting were unanimously approved without amendment.

The draft minutes of the April 6, 2023 regular meeting were reviewed. Upon motion of Chairman Oster, seconded by Member Stancliffe, the draft minutes for the April 6, 2023 regular meeting were unanimously approved without amendment.

The first item of business on the agenda was an application for an amendment to a site plan and special use permit submitted by Blue Sky Towers III, LLC for property located off Creek Road. Jared Lusk, Esq., and Jeff Twitty, Esq., from Nixon Peabody, LLP, were present for the

applicant. Chairman Oster noted that the public hearing was held and questions and comments were accepted from the public. Chairman Oster stated that the Planning Board went through a very extensive review of the project during the initial application process, that alternate sites for the cell tower were considered and reviewed at the time, and that he was not happy that this amendment has been proposed. Chairman Oster stated that he had visited the project site recently and stated that the view of the cell tower was tolerable, but that he was not sure that an additional 20 feet of height with monopine branches would make it look any better. Member Mainello stated that the Planning Board had previously reviewed the monopine branches to make sure the antennas were inside the branches, and that it must be required on any tower height increase as well. Mr. Lusk confirmed that the antennas being inside the monopine branches was the proposed design for the additional 20 feet of height. Member Mainello also agreed with Chairman Oster that the Planning Board did research all options for the location of the tower during the initial review, that the tower's location was the preferred location, and that he was also not happy with the current application and situation, stating that he felt "bamboozled." Member Stancliffe asked if the new antenna and 20 feet of height would be the same color as the existing tower. Mr. Lusk stated that the new antenna and 20 feet of height will match the existing tower. There was discussion on the color of the antenna array, and Mr. Lusk stated the applicant would work with the Town on the color of the equipment to the extent it was technically feasible. Member Stancliffe asked if the applicant would be required to respond to public comments in writing. The Planning Board discussed the issue, noting that the general practice of the Planning Board is to require an applicant to respond to all comments made at a public hearing in writing, but that the next Planning Board meeting would be after the federally-mandated 60-day period for approval of the application. Mr. Lusk stated that the applicant was trying to cooperate with the Planning Board in good faith, and after further

discussion, stated that the applicant was willing to extend the 60-day timeframe through the next Planning Board meeting on May 4. Attorney Gilchrist stated that the public comments would be provided in the minutes of the meeting, and that the minutes would be available early the following week. Mr. Lusk asked when the written responses to comments should be submitted by, and Mr. Golden stated that they should be submitted by the end of the week prior to the meeting. Member Tarbox stated that the top of the tower extension should not be a knob, but some kind of topper that looks tapered. This matter is placed on the May 4, 2023 agenda for further deliberation.

The second item of business on the agenda was a site plan application and special use permit application submitted by Lynn Currier for property located at 215 Oakwood Avenue. Mr. Golden stated that the applicant had contacted him before the meeting stating that she did not have the additional information requested at the last Planning Board meeting on April 6, and asking to be placed on the agenda for the next meeting. This matter is placed on the May 4, 2023 agenda for further deliberation.

The third item of business on the agenda was a waiver of subdivision application submitted by Tammy Otis and Richard Otis for property located at 10 Charl Lane. Brian Holbriiter, LLS was present for the applicants. Mr. Holbriiter reviewed the application, stating that the applicants owned lots 5 and 6 on the subdivision on Charl Lane, and had recently purchased 12 acres behind those lots. Mr. Holbriiter stated that the application is more in line with a lot line adjustment, that the applicants are proposing a boundary line adjustment to provide legal frontage onto Charl Lane for the 12 acres, and that the applicants plan to sell and existing house on lot 6 and likely build a new house for themselves and possibly a house for their child on the 12 acres, which is why the applicants were seeking the legal frontage on a public road for the 12-acre area. Member Henderson asked where the septic system was on lot 6, and Mr. Holbriiter reviewed it on the site

map. Attorney Gilchrist asked if the 12 acres would have enough frontage for two driveways. Mr. Holbriiter stated that there would be over 100 feet of frontage for the 12 acres as a result of the proposed lot line adjustment. Mr. Bonesteel asked if the lot line adjustment would meet all setback requirements. Mr. Golden stated that the property is in an A-40 zoning district and that 20 feet of side setback was required. Mr. Bonesteel noted that the setback requirements were met. There were no further questions from the Planning Board. Member Tarbox made a motion for a negative declaration under SEQRA on the project, which was seconded by Member Mainello. The Planning Board voted unanimously to declare a negative declaration on the project under SEQRA. Member Henderson made a motion to approve the waiver of subdivision, which was seconded by Member Stancliffe. The Planning Board voted unanimously to approve the waiver of subdivision application.

The Planning Board discussed one item of new business.

The one item of new business was a waiver of subdivision application submitted by Brianne Galipeau and Noah Cipperly for property located across from 428 Dater Hill Road. Brianne Galipeau and Noah Cipperly were present to review the application. Ms. Galipeau stated that the application seeks approval to subdivide an approximately 7.29-acre parcel, to create a 3.60-acre lot that she will acquire. Ms. Galipeau stated that she intends to keep the 3.60 acres wooded, but could build a house on it in the future. Mr. Bonesteel asked that the applicants have their surveyor add a potential driveway location and sight distances to the site map, as well as identify the location of a culvert pipe. This matter is placed on the May 4, 2023 agenda for further deliberation.

The index for the April 20, 2023 regular meeting is as follows:

1. Blue Sky Towers III, LLC – amendment to site plan and special use permit (May 4, 2023).
2. Carrier – site plan and special use permit (May 4, 2023).
3. Otis – waiver of subdivision (approved).
4. Galipeau & Cipperly – waiver of subdivision (May 4, 2023).

The proposed agenda for the May 4, 2023 regular meeting is currently as follows:

1. Gardner – special use permit (public hearing to commence at 7:00pm).
2. Blue Sky Towers III, LLC – amendment to site plan and special use permit.
3. Carrier – site plan and special use permit.
4. Galipeau & Cipperly – waiver of subdivision.