

**Zoning Board of Appeals**

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

**MINUTES OF THE BRUNSWICK ZONING BOARD OF APPEALS  
SPECIAL MEETING  
HELD FEBRUARY 8, 2021**

PRESENT were ANN CLEMENTE, CHAIRPERSON, PATRICIA CURRAN, ANDY MORIN.

ABSENT was E. JOHN SCHMIDT and JOHN MAINELLO III.

ALSO PRESENT was CHARLES GOLDEN, Brunswick Building Department.

The first item of business on the agenda was a use variance and area variance application submitted by Blue Sky Towers III, LLC/Cellco Partnership d/b/a Verizon Wireless for property located on Creek Road. Dave Brennan, Esq. was present for the applicant. Mr. Brennan stated that the application had been pending before the Zoning Board for some time and that since it had been introduced, it had undergone significant technical review, a joint public hearing with the Planning Board had been held, and a negative declaration had been adopted by the Planning Board. Attorney Gilchrist stated that based on the prior Zoning Board deliberation and direction to prepare a Resolution determining the variance requests, he had drafted a Resolution to determine the use variance and area variance applications and reviewed the draft Resolution with the Zoning Board members. Chairperson Clemente asked the Zoning Board members if they had any questions or comments on the draft Resolution, and no member had any further question or comment. Member Morin offered the Resolution to grant the requested use variance and area variance, which was seconded by Member Curran. The Resolution was unanimously approved and the use variance and area variance were granted. A copy of the Resolution is included in these minutes.

The second item of business on the agenda was a use variance application submitted by Peter and Bonny Lupe for property located at 4112 NYS Route 2. Peter and Bonny Lupe were present to review the application. Chairperson Clemente briefly reviewed the project, stating that the application was received in late November 2020 and deemed complete at the Zoning Board's December 21, 2020 meeting. Chairperson Clemente noted that two assessment reports concerning the economic hardship to the owners should they pursue any allowable use on their property had been submitted to the Zoning Board earlier that day. Chairperson Clemente stated that the Zoning Board members would need time to review the reports, so no action would be taken on the application at the current meeting. The author of the first report, Melissa Currier of C.T. Male Associates, was present and briefly reviewed her report. Ms. Currier also reviewed the history of the site ownership and use, the Town Zoning Law, the Town's use variance criteria, and the Town's Comprehensive Plan. Member Morin said that in briefly reviewing the report, specifically Appendix E, it did not appear that lost rent was included in the report, which could be useful in helping the Board make a determination. Ms. Currier confirmed that the lost rent was not included in her report, only reconstruction costs were included. Amy Kiley, the previous tenant of building, was present and she stated that she was licensed for a daycare, but served preschool-age children. Member Curran asked if education and/or instruction was provided when she was the tenant. Ms. Kiley said that her New York State daycare license was for ages 3-5. Chairperson Clemente asked if the new tenant would be licensed the same. Ms. Kiley said that the new owner would be licensed the same, but that she would be expanding the ages of children she would be seeing to include younger children. Ms. Kiley reiterated that the new tenant would have the same license she had, for a daycare facility, given by the New York State Office of Family and Child Services. Ms. Kiley then reviewed the difference between a daycare and a preschool, stating that the distinction is

primarily with the ages of the children that attend the facility. Attorney Gilchrist stated that under the Town Zoning Law, the operation being proposed does not meet the definition of a private school, but does appear to meet the definition of a daycare center. Mr. Lupe stated that the author of the second assessment report, Charles Bulson, was also present and asked the Zoning Board if they would like to hear from him as well. The Zoning Board said they would and Mr. Bulson reviewed his report, stating that it dealt specifically with the economic hardship that exists if operation as a veterinary or kennel is required, and further that the site of the building on NYS Route 2 was not a good fit for a kennel, and that the building was not constructed for kennel use, so it would need to be demolished and rebuilt for that purpose, which would be extremely costly. No action was taken by the Zoning Board. This matter is placed on the February 22 agenda for further discussion.

The index for the February 8, 2021 special meeting is as follows:

1. Blue Sky Towers III, LLC/Cellco Partnership d/b/a Verizon Wireless – use variance and area variance (approved subject to conditions).
2. Lupe – use variance (February 22, 2021).

The proposed agenda for the February 22, 2021 meeting is currently as follows:

1. Laiacona – area variance (public hearing to commence at 6:00 pm).
2. Laiacona – area variance (public hearing to continue).
3. Cardinuto – area variance (public hearing to commence at 6:15 pm).
4. Lupe – use variance.

**TOWN OF BRUNSWICK ZONING BOARD OF APPEALS  
SPECIAL MEETING**

**February 8, 2021**

**RESOLUTION DETERMINING USE VARIANCE AND AREA VARIANCE  
APPLICATIONS FOR BLUE SKY TOWERS III, LLC AND CELLCO PARTNERSHIP  
d/b/a VERIZON WIRELESS TELECOMMUNICATIONS TOWER**

**WHEREAS**, the Town of Brunswick initially received an application on May 9, 2019 for special use permit, site plan approval, use variance, and area variance for a major wireless telecommunications tower from Blue Sky Towers III, LLC and Cellco Partnership d/b/a Verizon Wireless (hereinafter “Blue Sky”), to be located on two parcels off Creek Road in the Town of Brunswick; and

**WHEREAS**, the application sought approval for the construction of an unmanned public utility/personal wireless service facility, primarily consisting of one approximately 150 ft. monopole tower and related equipment, on an approximately 10,000 sq. ft. portion of lands owned by Mary Alice Zouky located off Creek Road in the Town of Brunswick, with two (2) alternate locations on the project site with various facility heights identified for consideration; and

**WHEREAS**, Article 9 of the Brunswick Zoning Law requires special use permit and site plan review by the Brunswick Planning Board for major wireless telecommunication service facilities; and

**WHEREAS**, the proposed project site is located in the R-25 and agricultural overlay zoning districts under the Brunswick Zoning Law; and

**WHEREAS**, a major wireless telecommunication service facility is not a permitted use in the R-25 or agricultural overlay zoning districts; and

**WHEREAS**, the Brunswick Zoning Law further requires a setback of 750’ for a major wireless telecommunication service facility from the nearest residential single-family or two-family dwelling; and

**WHEREAS**, the application was first presented to the Town of Brunswick Planning Board (hereinafter “Planning Board”) at its meeting on May 16, 2019; and

**WHEREAS**, the Planning Board reviewed and considered the application at the May 16, 2019 meeting and placed it on the agenda for its next meeting on June 6 for further deliberation; and

**WHEREAS**, the application was first presented to the Town of Brunswick Zoning Board of Appeals (hereinafter “Zoning Board”) at its meeting on May 20, 2019; and

**WHEREAS**, the Zoning Board reviewed and considered the application at the May 20, 2019 meeting, and placed it on the agenda for its next meeting on June 17 for further deliberation; and

**WHEREAS**, both the Planning Board and Zoning Board determined to retain Laberge Group, Ronald J. Laberge, PE, as the Town's designated review engineer on the Blue Sky applications; and

**WHEREAS**, the Planning Board and Zoning Board both received a letter from Laberge Group on June 6, 2019, providing its initial review of the application materials submitted by Blue Sky; and

**WHEREAS**, the Planning Board reviewed and considered the application at its June 6, 2019 meeting; and

**WHEREAS**, the Planning Board commenced lead agency designation for this application, indicating that it sought to be appointed lead agency under the State Environmental Quality Review Act (hereinafter "SEQRA"); and

**WHEREAS**, the Planning Board placed the application on the agenda for its next meeting on June 20, 2019 for further deliberation; and

**WHEREAS**, the Zoning Board reviewed and considered the application at its June 17, 2019 meeting; and

**WHEREAS**, the Zoning Board stated it had no objection to the Planning Board serving as SEQRA lead agency on this application; and

**WHEREAS**, the Zoning Board placed the application on the agenda for its next meeting on July 15 for further deliberation; and

**WHEREAS**, the Planning Board reviewed and considered the application at its June 20, 2019 meeting and placed it on the agenda for its next meeting on July 18 for further deliberation; and

**WHEREAS**, the Planning Board received a letter from the New York State Department of Environmental Conservation on June 25, 2019 stating it had no objections to the Planning Board assuming SEQRA lead agency for the application; and

**WHEREAS**, the Planning Board did not receive any further letters from any involved agency objecting to the Planning Board serving as SEQRA lead agency on the Blue Sky application, and all lead agency coordination timeframes were completed; and

**WHEREAS**, the Zoning Board reviewed and considered the application at its July 15, 2019 meeting; and

**WHEREAS**, the Zoning Board opined that it preferred the date for Blue Sky to perform a required balloon test to be August 24, 2019, with a replacement date of August 25 due to bad weather; and

**WHEREAS**, the Zoning Board placed the application on the agenda for its next meeting on August 19 for further deliberation; and

**WHEREAS**, the Planning Board reviewed and considered the application at its July 18, 2019 meeting; and

**WHEREAS**, the Planning Board confirmed the August 24, 2019 date for the required balloon test, with a replacement date of August 25 due to bad weather; and

**WHEREAS**, the Planning Board placed the application on the agenda for its next two meetings on August 1 and August 15; and

**WHEREAS**, the Planning Board noted at its August 1, 2019 meeting that the application had been tabled and placed the application on the agenda for its next meeting on August 15, 2019; and

**WHEREAS**, public notice of the required balloon test, to be held on August 24, was given by the applicant on August 5, 2019; and

**WHEREAS**, the Planning Board reviewed and considered the application at its August 15, 2019 meeting, where the applicant answered questions from the public, and placed it on the agenda for its meeting on September 19 for further deliberation; and

**WHEREAS**, the Zoning Board reviewed and considered the application at its August 19, 2019 meeting, where the applicant confirmed the date of the required balloon test to be August 24, and placed it on the agenda for its next meeting on September 16 for further deliberation; and

**WHEREAS**, the required balloon test scheduled for August 24, 2019 was cancelled due to the inability to access the existing farm field for the balloon installation; and

**WHEREAS**, the balloon test was ultimately rescheduled for October 19, 2019; and

**WHEREAS**, public notice of the balloon test to be held October 19, 2019 was duly given by the applicant, and the balloon test was held on October 19, 2019; and

**WHEREAS**, the applicant conducted the required balloon test on October 19, 2019, with balloons being flown at the 150' tower location plus the two (2) alternate tower locations; and

**WHEREAS**, the substantive review of the Blue Sky application was thereafter adjourned until a balloon test visual resource evaluation report was submitted by Blue Sky; and

**WHEREAS**, Blue Sky thereafter submitted the balloon test visual resource evaluation report; and

**WHEREAS**, the Zoning Board reviewed and considered the application at its November 18, 2019 meeting; and

**WHEREAS**, the applicant discussed the balloon test visual resource evaluation report in general terms, suggested the possibility of a joint public hearing between the Planning Board and Zoning Board so that both Boards could hear all comments simultaneously, and requested the application be placed on the agenda for the next Zoning Board meeting in December; and

**WHEREAS**, the Zoning Board placed the application on the agenda for its next meeting on December 16 for further deliberation; and

**WHEREAS**, the Planning Board reviewed and considered the application at its November 21, 2019 meeting, including review of the balloon test visual resource evaluation report; and

**WHEREAS**, the Planning Board agreed with the suggestion of holding a joint public hearing with the Zoning Board on the application; and

**WHEREAS**, the Planning Board placed the application on the agenda for its next meeting on December 5 for further deliberation; and

**WHEREAS**, the Planning Board reviewed and considered the application at its December 5, 2019 meeting; and

**WHEREAS**, the Planning Board confirmed its desire to hold a joint public hearing with the Zoning Board on the application and placed the application on the agenda for its next meeting on December 19 for further deliberation; and

**WHEREAS**, the Zoning Board reviewed and considered the application at its December 16, 2019 meeting; and

**WHEREAS**, the Zoning Board agreed to schedule a joint public hearing on the application with the Planning Board for January 16, 2020 at the regular Planning Board meeting; and

**WHEREAS**, the Planning Board reviewed and considered the application at its December 19, 2019 meeting and scheduled a joint public hearing on the application with the Zoning Board for January 16, 2020 at 7:00 PM; and

**WHEREAS**, public notice of the joint public hearing, to be held on January 16, 2020, was duly published, posted, and mailed by the Planning Board and Zoning Board in compliance with the Brunswick Zoning Law; and

**WHEREAS**, the Blue Sky application was referred to the Rensselaer County Department of Economic Development and Planning in compliance with General Municipal Law 239-m; and

**WHEREAS**, a Notification of Zoning Review Action was received from the Rensselaer County Planning Department dated January 9, 2020 stating that the County had determined, after thorough review, that the application would not have a major impact on County plans and that “local consideration shall prevail”; and

**WHEREAS**, the Planning Board and the Zoning Board held a joint public hearing on the Blue Sky application at the Planning Board’s January 16, 2020 meeting; and

**WHEREAS**, the Planning Board and Zoning Board both kept their public hearings open for purposes of receipt of public written comments for an additional fourteen (14) day period; and

**WHEREAS**, all written public comments received by the Planning Board and Zoning Board were provided to Blue Sky; and

**WHEREAS**, substantive review of the Blue Sky application was adjourned until Blue Sky submitted written responses to all public hearing and public written comments; and

**WHEREAS**, Blue Sky thereafter conducted a drone flyover of the proposed project site and took video; and

**WHEREAS**, the Town received a letter dated May 5, 2020 from Blue Sky detailing the drone flyover of the proposed project site and the results from the flyover, including electronic video links of the drone flyover on the site; and

**WHEREAS**, the Town received a letter dated June 8, 2020 from Blue Sky responding to public comments made at the joint public hearing between the Planning Board and Zoning Board on January 16, 2020, and all written comments received by the Boards; and

**WHEREAS**, the Town thereafter received a letter dated July 13, 2020 from Blue Sky and a set of photograph simulations of a proposed stealth monopole tree design to be used on the project site; and

**WHEREAS**, the Town thereafter received a supplemental market study update on July 22, 2020 from Blue Sky, providing additional information on local property impact assessment, concluding that the proposed project will not significantly impair surrounding property values; and

**WHEREAS**, the Town thereafter received an updated Environmental Assessment Form, noise assessment information, cultural resource impact information, and a set of updated drawings, responsive to comments of the Town’s designated review engineers; and

**WHEREAS**, the Town thereafter received additional information relative to the Environmental Assessment Form, noise impacts, the lease for the project site, and updated drawings on October 21, 2020; and



**WHEREAS**, the Planning Board considered the Blue Sky application and supplemental written submissions at meetings held in May, June, July, August, September, October, November, and December 2020; and

**WHEREAS**, the Zoning Board considered the Blue Sky application and supplemental written submissions at meetings held in May, June, July, August, November, and December 2020; and

**WHEREAS**, at its meeting held January 7, 2021, the Planning Board, serving as SEQRA lead agency, adopted a Negative Declaration, determining that no significant adverse environmental impacts would result from this action, which Negative Declaration was thereafter served upon all involved agencies; and

**WHEREAS**, such Negative Declaration identified all application materials, including supplemental applicant submissions; all Town designated review engineer memoranda; and all public comments received by the Boards; and

**WHEREAS**, the Zoning Board further reviewed the Blue Sky application at its meeting held January 25, 2021, and deliberated on the use variance and area variance standards; and

**WHEREAS**, the Zoning Board, based on its review of the record documents and its deliberations, and upon the review memoranda and comments of the Town designated review engineer, Laberge Group, makes the following findings with respect to the use variance application:

1. The proposed telecommunications facility constitutes a public utility as set forth in *Cellular Telephone Co. v. Rosenberg*, 82 NY2d 364 (1993) (hereinafter “*Rosenberg*”).
2. That there is a demonstrated public need for the proposed telecommunications facility based upon a review of the RF Analysis and all supplementary information thereto, submitted by Blue Sky and reviewed by the Town’s designated review Engineer, Laberge Group.
3. That a number of alternative off-site telecommunication facility locations were studied by Blue Sky, and based upon site availability and technical performance standards, no other feasible alternative location exists to meet the demonstrated gap in telecommunications coverage and the demonstrated public need for this facility.
4. That a number of alternative locations on the project site were reviewed, at various facility heights, with the same being analyzed through balloon study, drone visuals, and photograph simulations, resulting in a preferred alternative of a monopole pine tree specification (hereinafter “monopine”) at a height of 80 feet (plus five (5) feet for the top of the tree structure) which does not result in a significant adverse visual impact on the neighboring properties.

5. That the noise impact analysis submitted by Blue Sky on the operation of generators at the base of the monopine pole location shows that the facility will not have a significant noise impact on neighboring properties.
6. That the access road location on the project site will result in a large area of the project site capable of remaining an agricultural production.
7. That the use of the monopine specification and design reduces any visual impact to neighboring properties, particularly with respect to the specification requiring branches starting at 30 feet above grade to the top of the facility structure and the requirement that all panels are to be located within pine branches.
8. That based on the project final design and location, the facility will provide safe and adequate telecommunications service to meet a demonstrated gap in coverage, with minimal intrusion on neighboring properties or burden to the community; and

**WHEREAS**, the Zoning Board, based on its review of the record documents and its deliberations, and upon the review memoranda and comments of the Town designated review engineer, Laberge Group, makes the following findings with respect to the area variance application:

1. That there is a demonstrated public need for the proposed telecommunications facility based upon a review of the RF Analysis and all supplementary information thereto, submitted by Blue Sky and reviewed by the Town's designated review Engineer, Laberge Group.
2. That a number of alternative off-site telecommunication facility locations were studied by Blue Sky, and based upon site availability and technical performance standards, no other feasible alternative location exists to meet the demonstrated gap in telecommunications coverage and the demonstrated public need for this facility.
3. That a number of alternative locations on the project site were reviewed, at various facility heights, with the same being analyzed through balloon study, drone visuals, and photograph simulations, resulting in a preferred alternative of a monopole pine tree specification (hereinafter "monopine") at a height of 80 feet (plus five (5) feet for the top of the tree structure) which does not result in a significant adverse visual impact on the neighboring properties.

4. That the noise impact analysis submitted by Blue Sky on the operation of generators at the base of the monopine pole location shows that the facility will not have a significant noise impact on neighboring properties.
5. That the access road location on the project site will result in a large area of the project site capable of remaining an agricultural production.
6. That the use of the monopine specification and design reduces any visual impact to neighboring properties, particularly with respect to the specification requiring branches starting at 30 feet above grade to the top of the facility structure and the requirement that all panels are to be located within pine branches.
7. That the location of the 85' monopine facility is located within 750' of the nearest off-site residence, and would be approximately 296' from the nearest residential property line and approximately 480' from the nearest off-site residence.
8. The alternate tower locations on the project site that would comply with the 750' setback requirement that were reviewed and considered would result in increased adverse visual impact from off-site visual receptors.
9. That based on such findings, an area variance allowing the monopine tower to be located closer than 750' to the nearest off-site residence, and which would be located approximately 480' from such off-site residence, will not result in a change in the character of the neighborhood or create a detriment to nearby properties; rather, the final monopine location will reduce visual impacts that will result from alternate on-site tower locations that will comply with such 750' setback.
10. That based upon such findings, no feasible off-site or on-site location exists for the proposed telecommunications tower meeting technical requirements and reducing visual impacts.
11. That based upon such findings, the extent of the area variance may be considered substantial; however, such factor must be weighed and balanced against other visual impacts to such neighboring properties that would result from positioning the tower in a location meeting the 750' setback requirement.
12. That based on such findings, in addition to the findings and determinations set forth in the SEQRA Negative Declaration, no adverse physical or environmental impacts are likely to result from the proposed monopine location.

13. That based on such findings, the need for the area variance may be considered self-created; however, it is noted that the alternate on-site locations for the tower meeting the 750' setback were reviewed and would result in adverse visual impacts for off-site receptors, and further that this factor is relevant but not determinative on the area variance consideration; and

**WHEREAS**, the Zoning Board has fully reviewed the application record, and has duly deliberated on the applications for use variance and area variance as described hereinabove;

**NOW, THEREFORE, BE IT RESOLVED** by the Zoning Board of Appeals of the Town of Brunswick in special session duly convened as follows:

1. The findings set forth in the recital clauses set forth hereinabove are fully incorporated herein.
2. The Use Variance is **GRANTED** under the *Rosenberg* standard of review, subject to the conditions set forth in Paragraph 4.
3. The Area Variance is **GRANTED**, subject to the conditions set forth in Paragraph 4.
4. The use variance and area variance granted herein are subject to the following conditions:
  - a. No building permit shall be issued nor any site work commenced until such time as the applicant provides proof of compliance with both State and Federal agencies regarding cultural resources.
  - b. In the event any aspect of the approved plan must be modified to avoid impact to cultural resources that may be discovered on site, any such modification must be approved by the Planning Board and Zoning Board.
  - c. In the event the actual tower location must be relocated more than 10 feet from its proposed location, an amended plan must be submitted to both the Planning Board and Zoning Board for approval.
  - d. No building permit shall be issued nor site work commenced until such time as the required removal guarantee is submitted in a form acceptable to the Town.
  - e. In that the plans presented identify the monopine structure to be designed by others, no building permit shall be issued until such time as the plans are submitted and approved by the Building Department to be sure they are in compliance with this approval. The specifications for the monopine design for the tower must be consistent with the plans submitted on the application and consistent with the photo-simulations of the monopine tower submitted on the application and part of this application record.

- f. A structural design analysis shall be submitted to the Town for review as part of the building permit application.
- g. Generators may only be scheduled to exercise no more than one hour per week for each generator. Exercise periods shall be between the hours of 9AM and 4PM Monday through Friday and stagger such that only one generator exercises at any given time.
- h. Maintenance work shall be performed during daylight periods on Monday through Friday with exception of emergency repair.
- i. Any damage to or degradation of the colors of the monpine branch structure shall be promptly remedied using commercially reasonable efforts.
- j. The tower is approved for only two carrier arrays; any additional arrays proposed in the future shall require an application to amend the special use permit and site plan before the Planning Board.

The foregoing Resolution, offered by Member Morin and seconded by Member Curran, was duly put to a roll call vote as follows:

<b>CHAIRPERSON CLEMENTE</b>	<b>VOTING <u>aye</u></b>
<b>MEMBER MAINELLO</b>	<b>VOTING <u>absent</u></b>
<b>MEMBER CURRAN</b>	<b>VOTING <u>aye</u></b>
<b>MEMBER SCHMIDT</b>	<b>VOTING <u>absent</u></b>
<b>MEMBER MORIN</b>	<b>VOTING <u>aye</u></b>

The foregoing Resolution was thereupon declared duly adopted.

February 8, 2021