

Town of Union Planning Board Minutes

Tuesday, October 10, 2017

A regular meeting of the Town of Union Planning Board was held Tuesday, October 10, 2017, at the Town of Union Office Building, 3111 East Main Street, Endwell, New York.

Members present: L. Miller, L. Cicciarelli, S. McLain, A. Elwood, S. Forster,
S. Daglio

Members absent: T. Crowley

Others present: Marina Lane, Kurt Schrader, Jimmy Anastos, Steve Anastos, Diane Erle, Brenda Blask-Lewis, Jared Lusk, Brian Weisz, Shalisa Weisz, Chris Stanis, David McDonough, Andrew DeNardis, Roberto Jensen, Debra O'Donovan, Deborah O'Riordan, and Declan O'Riordan

A. CALL TO ORDER

Chairman Miller opened the meeting of the Planning Board at 7:00 pm.

B. MEETING MINUTES

1. Acceptance of September 9, 2017 Meeting Minutes

Chairman Miller asked for a motion to accept the September 12, 2017, Meeting Minutes, as written.

Motion Made: L. Cicciarelli
Motion Seconded: S. McLain
MOTION: Acceptance of the September 12, 2017, Meeting Minutes, as written.
VOTE: **In Favor:** L. Miller, L. Cicciarelli, S. McLain, A. Elwood, S. Forster
Opposed: None
Abstained: S. Daglio
Motion Carried

2. Acceptance of September 12, 2017 Public Hearing Transcript – Home Depot Special Permit for Auto Rentals

Chairman Miller asked for a motion to accept the September 12, 2017, Public Hearing Transcript for Home Depot Special Permit for Auto Rentals, as written.

Motion Made: S. McLain
Motion Seconded: S. Forster
MOTION: Acceptance of the September 12, 2017, Public Hearing Transcript for Home Depot Special Permit for Auto Rentals, as written.
VOTE: **In Favor:** L. Miller, S. McLain, A. Elwood, S. Forster, L. Cicciarelli
Opposed: None
Abstained: S. Daglio
Motion Carried

3. Acceptance of September 12, 2017 Public Hearing Transcript – DG Equipment Special Permit for Outdoor Storage

Chairman Miller asked for a motion to accept the September 12, 2017, Public Hearing Transcript for DG Equipment Special Permit for Outdoor Storage, as written.

Motion Made: S. Forster
Motion Seconded: L. Cicciarelli
MOTION: Acceptance of the September 12, 2017, Public Hearing Transcript for DG Equipment Special Permit for Outdoor Storage, as written.
VOTE: **In Favor:** L. Miller, S. McLain, A. Elwood, S. Forster, L. Cicciarelli
Opposed: None
Abstained: S. Daglio
Motion Carried

C. Tarpon Towers II / Verizon Wireless, 11 Frey Avenue: J. Lusk

1. Declare Lead Agency

Chairman Miller asked for a motion to declare the Planning Board Lead Agency.

Motion Made: A. Elwood
Motion Seconded: S. Daglio
MOTION: Declare the Planning Board Lead Agency.
VOTE: **In Favor:** L. Miller, A. Elwood, S. McLain, S. Forster, S. Daglio, L. Cicciarelli
Opposed: None
Abstained: None
Motion Carried

2. Declare Project a Type 1 Action under SEQRA

Chairman Miller asked for a motion to declare the project a Type 1 Action under SEQRA.

Motion Made: S. McLain
Motion Seconded: S. Daglio
MOTION: Declare the project a Type 1 Action under SEQRA.
VOTE: **In Favor:** A. Elwood, S. McLain, L. Miller, S. Forster, S. Daglio, L. Cicciarelli
Opposed: None
Abstained: None
Motion Carried

3. Call for a Public Hearing for a Cellular Tower to be held November 21, 2017, at 7:00 PM

Motion Made: S. McLain
Motion Seconded: A. Elwood
MOTION: Approval of the Public Hearing for a Cellular Tower to be held on November 21, 2017, at 7:00 p.m.

VOTE:

In Favor: L. Miller, S. McLain, A. Elwood,
S. Forster, S. Daglio, L. Cicciarelli

Opposed: None

Abstained: None

Motion Carried

Mr. Jared Lusk, an attorney from Nixon Peabody representing Tarpon Towers II and Verizon Wireless, gave a short presentation about the proposal for a new telecommunications tower. Mr. Lusk noted that Exhibits F and G formed the basis for Verizon Wireless's need for the tower. Exhibit F describes the main issue as a lack of sufficient capacity, with the number of users increasing, and more users sending data. Propagation maps show the areas of existing coverage per the two different band widths that Verizon is authorized to use. The propagation maps help radio frequency (RF) engineers pinpoint areas of poor coverage in order to determine the search ring for locations for siting a new tower. Exhibit G details potential properties that were available within the search ring. Mr. Lusk noted there were twenty-one properties that were reviewed for the project. Some of the properties were municipal properties within the Village of Endicott, but following correspondence to the Village, Tarpon Towers II did not receive any response from the Village.

Currently the three antennas per side of an array on a tower can handle 1200 texts, calls or downloads (400 per antenna) at any one time, and when there is too much traffic on the antennas, the result is poor service. Verizon Wireless operates four separate networks and the two nearest facilities, the Vestal and Endwell networks, are at capacity. The new tower would increase coverage and add capacity to Verizon Wireless's existing networks. The new site is evenly spaced between the two sites that are operating now, so that some of the traffic from the adjoining sites can be diverted to the proposed tower to better serve in that area.

Ms. Lane noted that the name of the site has been changed to West Endicott from Crestview Heights, and this change will be reflected on the revised site plan at the next Planning Board meeting. Mr. Lusk also noted that a balloon float had been done for the site, and photos would be available for the public to view at the Public Hearing on November 21, 2017.

**D. Riverdale Banquet Hall, 2901 Watson Boulevard, Sign Variance: J. Anastos
Advisory Opinion to the Zoning Board**

Spathis Group LLC recently opened the Riverdale Banquet Hall in the former Brothers II restaurant. They plan to have a monument sign, which is permitted. Mr. James Anastos explained that they would like to have an internally illuminated sign rather than shining spotlights up on the monument sign. Mr. Anastos said there would be a six-inch wide box containing LED lights inside the structure.

Ms. Lane then read her staff report to the Planning Board. The property is located in a Neighborhood Commercial zoning district and a monument sign is permitted, but Code permits external illumination only for a monument sign. Therefore, they are seeking a variance for an internally illuminated monument sign.

The Planning Department staff recommends that the Planning Board recommend approval of the variance for an internally lit monument sign to the ZBA. The Planning staff notes that wall signs permitted in Neighborhood Commercial zoning districts may be internally illuminated. The proposed monument sign fits the design of the building, and as the business stays open until late at night, it is beneficial to have it illuminated. The external lights that are permitted for monument signs are easily covered by snow in the winter. Staff also recommends that if the ZBA grants the variance, it be clearly stipulated that digital signs be expressly prohibited.

Mr. Forster asked Mr. Anastos to explain the illumination design on the sign. Mr. Anastos answered that the sign was a black vinyl with white cutouts so that the name of the business shines through. Mr. Forster noted that allowing Mr. Anastos to have an illuminated monument sign opened the door for other businesses to follow suit. Ms. Lane noted that the location of this particular business was in a commercial area and that no residential properties would be impacted by the sign. Mr. Anastos also stated that there had been an internally lit sign on the business prior to his purchase of the business.

Chairman Miller then called for a motion to recommend the ZBA approve the variance for an internally lit monument sign at 2901 Watson Boulevard.

Motion Made:	S. Daglio
Motion Seconded:	L. Cicciarelli
MOTION:	Recommend the ZBA approve the variance for an internally lit monument sign located at 2901 Watson Boulevard.
VOTE	In Favor: L. Miller, L. Cicciarelli, S. McLain, A. Elwood, S. Daglio Opposed: S. Forster Abstained: None Motion Carried

E. Appeal of the Code Officer Determination, Country Pines Outdoor Concerts, 1660 Union Center-Maine Highway: D. McDonough
Advisory Opinion to the Zoning Board

Mr. McDonough submitted an application to the Zoning Board of Appeals (ZBA), appealing a decision by the Code Enforcement Officer (Ms. Golazeski) that expanding the numbers of concerts, the hours of the concerts, and construction of additional buildings would constitute an expansion of a legal, non-conforming use. Ms. Lane had emailed the entire contents of the substantial application to the Planning Board, in addition to mailing the most significant pages. These included the letter to Mr. McDonough from Ms. Golazeski, Mr. McDonough's response, and paperwork which gave a short history of the disputes surrounding the issue of whether Mr. McDonough had expanded the nonconforming use of his outdoor concerts.

Although outdoor recreation as permitted under the previous code, Ms. Lane explained that the current use of the property is not permitted under the existing code, and it is therefore a legal, nonconforming use. By appealing Ms. Golazeski's interpretation,

that will allow Mr. McDonough to either have approval to increase the number of concerts from the six noted in the Town Board minutes of 1998, expand hours of operation beyond 11 pm, and increase the number of buildings that could accommodate more attendees; or to appeal to be able to expand the nonconforming use. Mr. McDonough responded that he doesn't need to apply to expand his use.

Mr. Daglio asked for clarification of how the number of concerts was determined to have been held to only six. Ms. Lane responded that minutes from a meeting in 1998 stated that Mr. McDonough had agreed to six concerts, to end at 11 pm. Mr. McDonough explained that he had not committed to only six concerts a year, but rather had stated that during the year (1998), he would have only six concerts more, not including those that had already occurred. He also referred to a different concert venue proposed in that same year which was required to provide a significant number of details, and that his outdoor venue had never been provided any requirements. He referenced a meeting in that May with Town Board member Arcangeli, and felt that Mr. Arcangeli had misrepresented the verbal agreement during his statement at the meeting.

Mr. Forster asked for clarification of the Planning Board's role. Ms. Miller explained that the Planning Board is only making an advisory opinion to the ZBA. Mr. Forster asks that then, if the Planning Board recommends that the parameters do not constitute and expansion of the nonconforming use, and the ZBA agrees, then would Mr. McDonough be able to do as he wishes. Ms. Lane responded that that would depend on what Mr. McDonough wanted to do, and that would fall under Code enforcement. The Planning Department doesn't determine what is permitted. It was asked from the audience whether that determination is made by only Ms. Golazeski, and Ms. Lane replied that yes, the Code Enforcement Officer is the only person with the authority to interpret the Code. The only body who can overrule the Code Enforcement Officer is the Zoning Board of Appeals. In addition, even if the Planning Board were to recommend the ZBA rule that the appeal is an expansion, it does not necessarily mean that the Planning Board feels he shouldn't be allowed to expand; it is just a clarification of the action.

Mr. McDonough explained that the subject property was originally built in 1956 as an indoor bar and outdoor recreation facility. In 1997, he purchased the property and was given a building permit to build an outdoor concert stage. Over time, the concerts got bigger and louder, and some neighbors became upset and started calling the news and coming to Town Board meetings. All pertinent agencies, such as the police and Liquor Board, were contacted, and told the Town that once the building permit for the stage was issued, in essence, the use was allowed. Mr. McDonough further elaborated that he had attended meetings with the Town Board, and it was agreed that he could have concerts Friday and Saturdays, including a fire pit. The concerts grew, ending at 2 am in the morning. Mr. McDonough stated that yes, they were loud and obnoxious, and that it had been a big mistake on his part. Therefore, at that time in 1998, he met with Town Board members again, and agreed to keep the bands indoors. Mr. McDonough further explained that when he had agreed to six concerts, it was for the remainder of that year, and wasn't meant to include fund raisers, weddings, etc. Therefore, Mr. McDonough feels that Code Enforcement is misconstruing what the six concerts included. His definition of a concert event entails a "full-blown" band with a professional sound system, not a birthday party or local bands with a small PA system.

Mr. McDonough proceeded to state that two-years ago, Ms. Golazeski contacted the DEC, the DOT, B.C. Health Department and the ABC Liquor Board, and that all stated that he was compliant. Now he feels that it's become personal. Ms. Miller asked whether Ms. Golazeski's inquiries were due to complaints from residents.

Ms. Lane noted that Mr. McDonough was not the target of the Code Department inquiries, which he contends. While investigating another project, the Code Department had noticed a fence in the floodway which is not permitted. The DEC was contacted to inquire as to what type of fence would be permitted in order to also comply with the Liquor Board's requirement that a fenced area has to be installed in order to serve hard liquor. In addition, the Code Office was contacted by residents about the noise coming from the outdoor concerts, and when she went to investigate the noise complaints at one of his concerts, Ms. Golazeski had nearly hit a concert attendee in the road. She contacted the NYS DOT to find out what the requirements are for having an event on a state road (SR 26). Ms. Lane also stated that it was she who contacted the Broome County Health Department as a part of investigating the requirements for adding restroom facilities, for which Mr. McDonough had applied. This is a normal inquiry due to the existing septic system being located in the floodway. The Liquor Board may have been contacted to find out what they require for fencing. Ms. Lane stated that these agencies had been contacted to investigate these legitimate questions. Mr. McDonough stated that a fence was never required, and that it was his former partner who had installed the fence, without Mr. McDonough's knowledge.

Ms. Miller referenced a client of a local attorney, and suggested that part of the investigation was as a result of the formal complaint.

Mr. McDonough has removed the fence and no longer plans to expand his buildings. A chicken-roasting fire pit under a roof that was unsafe has been taken down, and he has been told he can't rebuild it because a fire must be 16 feet away from a structure. Upon going to court for noncompliance, Mr. McDonough stated that the attorney "threw out" all to the violations. He also noted that when he purchased the property, the Town did not have a noise ordinance so that the noise level and number of concerts should be grandfathered in. Mr. Kurt Schrader, the town attorney, noted that certain uses and areas could be grandfathered, but that a town can adopt other regulations regarding parking, signs and noise restrictions that would not be grandfathered. Mr. McDonough feels that he has always done outside concerts and that Mr. McDonough stated that he is not expanding anymore, and that he is in compliance with NYS law, and can operate until 3 am in the morning. Ms. Lane pointed out that the 3 am deadline is specifically for serving alcohol, and that no one was trying to stop that. Mr. McDonough said again that he feels there is a personal vendetta against him from Dee. Ms. Miller stated that such feelings are not under the purview of the Planning Board.

Ms. Lane then read her report for the benefit of the audience. Dave McDonough, of Country Pines Pavilion, has submitted a request to appeal an interpretation by Daria Golazeski, the Code Official for the Town of Union, regarding Mr. McDonough's legal, non-conforming use of outdoor events. Ms. Golazeski's interpretation is that increasing the number of concerts or similar outdoor events (now limited to six per calendar year), in addition to increasing the hours of operation beyond 11 pm, and construction of additional structures would constitute an expansion of a non-conforming use.

This interpretation stems from an historical review of prior Town of Union Town Board meetings, Town of Union Planning Board meetings, and applications for food service and liquor licenses. No letter of approval has been issued for the outdoor concert use, but minutes from prior meetings do state a limit of six concerts per year, and hours of operation being restricted to 11 pm.

An expansion of a non-conforming use can only be granted by the Zoning Board of Appeals. This application pertains only to whether expanding the above-described parameters would constitute an expansion of a non-conforming use.

Planning Department staff recommends that the Planning Board recommend the ZBA rule that increasing the parameters of number of concerts, hours of operation, and construction of buildings that would accommodate an increased number of attendees would constitute an expansion of a non-conforming use.

Mr. McDonough no longer plans to construct additional buildings on his property.

Mr. Foster then made a motion that increasing the parameters of the number of concerts, hours of operation, and construction of buildings would not constitute an expansion of a non-conforming use.

Motion Made:	S. Forster
Motion Seconded:	S. Daglio
MOTION:	Recommendation to the ZBA that increasing the parameters of the number of concerts, hours of operation, and construction of buildings would not constitute an expansion of a non-conforming use.
VOTE:	In Favor: A. Elwood, S. Forster, S. Daglio Opposed: L. Miller, L. Cicciarelli, S. McLain Abstained: None Motion Failed.

F. Stanis / Weisz Two-Family Use, 712 Carl Street: C. Stanis

Mr. Stanis noted he purchase the property at 712 Carl Street last year with the intention to rehabilitate it to sell it to someone who would take pride in home ownership. As the property is located in an Urban Single Family zoning district, a special permit would be required to change the house to a two-family use. Mr. Stanis plans to sell the house to Brian and Shalisa Weisz, since his business in Pennsylvania is taking up more of his time. Ms. Lane noted that the property exceeds all the zoning requirements for a two-family house and the driveway can accommodate at least six vehicles, which is two more than is required by code. If the Planning Board grants Mr. Stanis a Special Permit for the two-family use, Mr. Stanis will ask to be able to transfer the two-family use to Brian and Shalisa Weisz.

1. Declare Lead Agency

Chairman Miller asked for a motion to declare the Planning Board Lead Agency.

Motion Made:	L. Cicciarelli
Motion Seconded:	S. McLain
MOTION:	Declare the Planning Board Lead Agency
VOTE:	In Favor: L. Miller, L. Cicciarelli, A. Elwood,

S. McLain, S. Forster, S. Daglio

Opposed: None

Abstained: None

Motion Carried

2. Declare Project an Unlisted Action

Chairman Miller asked for a motion to declare the project an Unlisted Action under SEQRA.

Motion Made: S. McLain

Motion Seconded: A. Elwood

MOTION: Declare the project an Unlisted Action.

VOTE: **In Favor:** L. Miller, L. Cicciarelli, S. McLain, A. Elwood, S. Forster, S. Daglio

Opposed: None

Abstained: None

Motion Carried

3. Call for a Public Hearing for Two-Family Use to be held November 21, 2017, at 7:05 PM

Chairman Miller asked for a motion to call for a Public Hearing for Two-family Use to be held November 21, 2017, at 7:05 p.m.

Motion Made: S. McLain

Motion Seconded: A. Elwood

MOTION: Approval of the Public Hearing for Two-Family Use to be held on November 21, 2017, at 7:05 p.m.

VOTE: **In Favor:** L. Miller, L. Cicciarelli, S. McLain, A. Elwood, S. Forster, S. Daglio

Opposed: None

Abstained: None

Ms. Lane requested that Mr. Stanis send her an email requesting the transfer of the Special Permit for a two-family house to Brian and Shalisa Weisz so that she could include it on the agenda for the next Planning Board meeting.

G. Up State Tower / Blue Wireless, 1209 Taft Avenue: M. Kerwin

1. Close the Public Hearing, per Special Permit Review

As the public hearing continued from the previous Planning Board meeting on September 12, 2017, Mr. DeNardis requested that the public hearing transcript from the September 18, 2017, Zoning Board meeting be included with the statements from the public, as many had attended that meeting and could not be in attendance at this meeting. There was a short discussion, and Mr. Kurt Schrader, the town attorney, noted that since the ZBA public hearing was held prior to the closing of the tonight's public hearing, the ZBA transcript could be added to the public hearing for the Special Permit for the cell tower.

Chairman Miller then asked for a motion to close the September 12, 2017, Public Hearing for a new cellular tower at 1209 Taft Avenue at 8:06 p.m. and add the September 18, 2017, ZBA transcript as part of the Public Hearing comments.

Motion Made: L. Cicciarelli
Motion Seconded: S. McLain
MOTION: To close the Public Hearing for a new cellular tower at 1209 Taft Avenue at 8:06 p.m., and add the September 18, 2017, ZBA transcript as part of the Public Hearing comments.

VOTE: **In Favor:** L. Miller, S. McLain, A. Elwood, S. Forster, S. Daglio, L. Cicciarelli
Opposed: None
Abstained: None
Motion Carried

H. Other Such Matters as May Properly Come Before the Board
There were no pending matters.

I Adjournment

Chairman Miller asked for a motion to adjourn the meeting at 8:15 p.m.

Motion Made: S. Daglio
Motion Seconded: L. Cicciarelli
MOTION: Adjourning the meeting.
VOTE: **In Favor:** S. McLain, L. Miller, L. Cicciarelli, A. Elwood, S. Forster, S. Daglio
Opposed: None
Abstained: None
Motion Carried

Next Meeting Date

The next meeting of the Planning Board is tentatively scheduled for Tuesday, November 21, 2017 at 7:00 PM

Respectfully Submitted,
Carol Krawczyk