



SHERMAN CRAIG
Chairman

TERRY MARTINO
Executive Director

Draft Minutes
Regulatory Programs Committee
June 9, 2016 Agency Meeting

MINUTES OF THE REGULATORY PROGRAMS COMMITTEE MEETING JUNE 9, 2016

The Committee meeting convened at approximately 9:15 a.m.

Regulatory Programs Committee Members Present

Sherman Craig, Richard Booth, Daniel Wilt, Dierdre Scozzafava, and Karen Feldman.

Other Members and Designees Present

Arthur Lussi, Karyn Richards, Bradley Austin, William Thomas and Lani Ulrich.

Local Government Review Board

Fred Monroe.

Agency Staff Present

Kathleen Regan, James Townsend, Richard Weber, Colleen Parker, Virginia Yamrick, Ariel Lynch, Shaun LaLonde and Sarah Reynolds.

Approval of Draft Committee Minutes for May 2016

A motion to approve the draft committee minutes was made by Mr. Wilt and was seconded by Mr. Craig. All were in favor.

Deputy Director Report

Mr. Weber reviewed the division report. He discussed upcoming projects such as timber harvesting proposals which will be forthcoming to the Board. He also noted several variances that will be coming forward for Board review. He discussed the pre application report and high profile report items.

Ms. Ulrich inquired about the recent rise in the issuance of general permits. She noted that perhaps some of the increase may be attributed to the public response to invasive species.

Ms. Feldman stated that stats for the previous year indicate that fewer general permits were issued but perhaps the current year reflects a more average year.

Mr. Craig asked about a hotel project which he recently saw mentioned in local press. Mr. Weber responded that an application has been received and the review process is underway.

Project (V. Yamrick) P2015-0062 Peter Day
 Village of Lake Placid, Town of North Elba, Essex County
 Hamlet Land Use Area

This project is described as a proposal requiring a variance to add a lakeside covered deck and patio onto a preexisting structure within the 50 ft. shoreline setback area.

Ms. Yamrick briefly reviewed the project record. She noted that no public comments were received regarding this variance. She reviewed the respective sections of the statute that apply to the proposal. She stated one person attended the public hearing.

Mr. Booth asked what the shoreline structure to the north shown on the survey was. Ms. Yamrick responded a dock. Mr. Booth noted that the dock he was referring to is closer than the proposed project. Mr. Craig asked if a boathouse was located on the applicant's property. Ms. Yamrick responded affirmatively.

Mr. Lussi noted that the property to the north is a case that has been before the Board at an earlier time. Ms. Ulrich asked why the boathouse on the applicant's property was not included on the survey. Ms. Reynolds responded that the boathouse is not part of the variance request and therefore is not required to be included on the survey. For clarification, Ms. Ulrich asked if the map shown was solely a survey of the property and not a site map showing everything on the applicant's property. Ms. Yamrick responded affirmatively.

Ms. Yamrick reviewed the alternatives that were considered by the applicant. She noted that the current proposal best meets the needs of the existing business tenant. She noted that the granting of the variance will not affect the natural resources of the area.

Staff recommendation is approval of the proposal with stated conditions. Mr. Weber noted that the applicant requested modification of condition 8 to require him to follow only the regulatory and statutory shoreline cutting requirements. Staff believe that conformance with the established shoreline restrictions will adequately protect the aesthetic and aquatic resources. Mr. Booth asked if this is typical language that is added to variance permits. Mr. Weber responded it depends on the proposal.

Mr. Lussi noted that the Agency has deviated from the shoreline restriction regulations based upon individual proposals and have imposed stricter guidelines in some cases. He added that having more severe restrictions than what are already established in the statute is not always practical or reasonable for the applicant. Mr. Weber noted that

there may be additional resource considerations that require additional protective cutting restrictions.

Mr. LaLonde noted that initially the applicant did not propose any cutting. Based on discussions with the applicant, it was noted that some cutting may be required. As a result of those discussions and staff analysis of the impacts, the application of the shoreline cutting restrictions was considered by staff to be sufficient to protect the resources.

Ms. Feldman stated she assumed that this proposal is not precedent setting in that other properties seem to have similar situations that have been done prior to this proposal. Ms. Yamrick responded this variance proposal is site specific and is fact driven. Ms. Feldman then asked if anything is proposed for the area under the proposed covered deck area. Ms. Yamrick responded that at this time the applicant does not have any plans for the lower level area.

Ms. Feldman then referred to page 3, last sentence of paragraph 2 and again on page 4 relating to the covered patio and stated she did not believe the sentence was necessary. Ms. Yamrick responded that the sentence demonstrates that the applicant adjusted his initial proposal to meet the minimum relief necessary for approval of the variance. Mr. Townsend stated that the historical fact was included in the event further proposals come forward. Mr. Lussi stated that he believed Ms. Feldman was saying that it encourages applicants to request more knowing that if they make concessions their chances for variance approval are greater.

Mr. Wilt asked for further clarification of the businesses in the area and the setbacks involved. He asked if any of the other establishments were closer to the mean high water mark. Ms. Yamrick further reviewed the air photo of the existing character of the area. Mr. Wilt then stated that the northern mast of the white roof shown in the photo seems very close to the mean high water mark. She responded that is a lawfully preexisting structure and it very well may be close to the mean high water mark. Ms. Yamrick noted that farther south are commercial buildings as well as residences that are located right on the shoreline. She added that some lots have room and some do not; she restated that each variance is case specific.

Ms. Reynolds stated that the review process and analysis of the minimum requirements for any proposal is done by staff. She believes that staff concluded that this is the minimum relief necessary to meet the applicant's business needs. She noted that every proposal is site specific and the precedent to allow a business to expand into the shoreline area has already been established in this instance.

Mr. Lussi stated that this is a preexisting situation but asked if the applicant would need to seek additional approval for a patio to be placed under the covered deck if desired. Ms. Reynolds reviewed the expansion criteria of the statute and how it would apply to the current proposal and order.

Mr. Booth asked about the precedent that has been set for this area and noted that the precedent is not binding. Ms. Reynolds responded affirmatively as each case is considered site specific. Mr. Craig noted that if the deck was preexisting, the patio underneath would not necessarily require approval if it did not extend the current footprint. Mr. Booth asked if a patio was proposed, would that proposal need additional review. Mr. Weber said the draft order contains a condition that addresses this concern and states that additional review would be necessary if the proposal went beyond the currently approved footprint. Mr. Booth stated he is concerned that the condition may be confusing.

Mr. Craig noted that an addition of a patio may lead to further storm water runoff issues. Mr. LaLonde responded that staff do not believe that the addition of a patio will increase the amount of storm water and added that the impacts of runoff have been addressed within the conditions of the current draft order.

Mr. Booth proposed to add a condition that requires additional review if any expansion is considered. Ms. Feldman responded that if a patio is placed within the current footprint, staff already have stated they feel no additional impacts would occur on the resources.

Mr. Booth stated he believed that if additional proposals come forward, further variance review should occur. He stated that in this instance he is not worried but is concerned with future proposals not being adequately reviewed. Ms. Reynolds noted that this is a unique project and because of the staff analysis, the letter of compliance is allowed.

Mr. Craig suggested that perhaps a specific condition addressing such a patio proposal should be in the order and should require that the applicant come back to the Agency if the proposal exceeds the current footprint.

Chairwoman Ulrich noted that there is no environmental impact if the patio remains in the current footprint area. She also said the proposal is located in a Hamlet area that has been developed and is keeping in the character of the area. She stated that the Agency should not be encouraging a two-step process. Ms. Yamrick noted that staff did review storm water runoff for the area and has reviewed the concern with the applicant. Mr. Weber stated that the applicant felt that he had received advice that a patio would be considered non-jurisdictional if done within the setback area and therefore asked for further clarification of the condition. Mr. Weber reviewed several alternatives and stated the language was drafted to require that any proposal extending past the current footprint would require further Agency review.

Ms. Feldman asked if there was any reason for the applicant to come back to the Agency for approval if a patio proposal fell within the established footprint. Mr. Weber responded that staff does not believe there is. Mr. Townsend responded that staff does not feel that such a proposal would require additional review as long as the proposal

falls within the stated footprint. In addition, he stated, staff does not feel there would be a storm water runoff issue as long as the area under the variance is hardened (impervious) because the runoff is occurring outside of the variance area.

Mr. Booth moved the proposed variance order with changes on page 6, item 3, to strike letter of compliance language. Mr. Wilt seconded. Mr. Booth stated he does not feel applicants should be encouraged to obtain a variance and to expand upon such variance in the future without further amendment.

Ms. Feldman asked what would be involved in an amended Agency order. Mr. Weber responded additional review by staff would be required. Mr. Wilt noted that a prior proposal nearby seemed to have greater cutting restrictions than this proposal does. Mr. Weber reviewed the cutting condition and Mr. LaLonde explained the restriction involved in the case that Mr. Wilt was referring to was necessary to protect resources on-site. Mr. Wilt referred to the cutting restriction of up to 30% which he believes would greatly impact the aesthetics within the proposed area if allowed. Mr. Craig asked that the cutting restriction language be amended.

Mr. Booth withdrew his previous motion.

Mr. Wilt moved to accept the current language in the draft order without the additional staff recommendation to address shoreline cutting. Mr. Booth seconded.

Ms Ulrich noted that current cutting restrictions policy is what it is. She noted that for her as long as the resources are protected, if the applicant does remove a tree, she is not concerned. Ms. Reynolds noted that the shoreline cutting restriction statute should be amended as the 30% requirement is difficult to measure and is therefore difficult to implement. Mr. Booth noted that the statute has been around for a long time.

Mr. Booth moved the proposed variance order with changes on page 6, item 3, to strike letter of compliance language. Mr. Wilt seconded. Mr. Booth, Mr. Wilt, Ms. Feldman and Ms. Scozzafava were in favor. Mr. Craig opposed.

Project (A. Lynch) P2015-0096 Upstate Cellular Network d/b/a Verizon Wireless
Town of Webb, Herkimer County
Rural Use Land Use Area

The project site is described as a material change to Agency Permit 2005-0318 to allow the current tower and antenna heights to remain and to install new panel antennas and remote radio heads on the existing 90 foot tall guyed tower.

Ms Lynch reviewed the applicable statute. She reviewed conditions 4 and 5 which are site specific.

Mr. Lussi noted that the rationale for the 2006 decision was based on the alleged technology of the time.

Ms. Lynch then reviewed the various permits associated with the site. She outlined the project proposal and objectives. Mr. Booth asked for clarification of the existing versus the proposed antenna layout. Ms. Lynch responded that the proposal for the existing tower would replace the outer antennas and the center antennas with new equipment with smaller versions of the same.

Ms. Lynch reviewed the Agency staff request to Verizon Wireless to reduce the height of the tower. Staff agrees with the structural analysis done by Verizon Wireless in December 2015. Mr. Booth asked how a smaller tower is less stable than a taller tower. Ms. Lynch responded that the tower is built in sections with guy wires, and a lower tower could be "top heavy."

Ms. Lynch reviewed the coverage area and the concern of the applicant that service to its customers would be interrupted if the tower were to be reduced in height. She reviewed existing conditions and location of the proposed tower.

Ms. Lynch noted that no comment letters were received and the comment period has concluded. Staff recommendation is to approve the project with conditions. Staff believe the project does meet the conclusions of law and believe that the proposal is consistent with the Agency's tower policy. She noted that there is no discernible difference in visibility of the tower.

Mr. Lussi stated that he appreciates the co-location efforts of the various carriers.

Mr. Booth made a motion to approve the project. Mr. Wilt seconded the motion. Ms. Feldman asked if on page 3, under condition 3, should there be a catch-all phrase to specify compliance with all applicable regulations. Mr. Townsend noted there is a standard provision this would fall under but agreed to look at the language as it might be used in future permits. The vote was unanimous in favor of the project.

Old Business

None

New Business

None

The meeting was adjourned at approximately 11:20 a.m.