

TOWN OF THORNTON

Zoning Board of Adjustment

Approved on: 28 Oct 21
ZBA Initials: Am m
Rec'd by Town Clerk on: 10-29-2021
Town Clerk Initials: pdw

ZONING BOARD OF ADJUSTMENT MEETING MINUTES

June 28, 2021

WELCOME:

Chairman Joe Monti welcomed the members.

CALL TO ORDER BY CHAIR:

Mr. Monti called the meeting to order at 6:00 p.m. with the Pledge of Allegiance.

ROLL CALL BY CHAIRMAN:

Mr. Monti completed the roll call.

The following members were present:

Chairman Joe Monti, Joan Marshall, Alan Rawson, Jerry Sobolewski

The following members were present via teleconference: None

The following members were absent: Vice-Chairman Ken Miller

Present via teleconference: Chris Boldt, David Kelley, Deborah Brownstein, Elaine Scholtz, Francis Parisi, Jeremy Duffield, Cher Duffield, Jeremy Barnaby, Jim, Marcia King, Sally Davis, Michael Sununu

Also Present: Kerrin Randall, Board Assistant

UNFINISHED BUSINESS:

CONTINUED DELIBERATION: SMA Realty Trust, Michael C. Sununu and James G. Sununu, Trustees [Tax Map 17, Map 5-21] via APPLICANT VERTEX TOWER ASSETS, LLC for an APPEAL OF ADMINISTRATIVE DECISION of the THORNTON PLANNING BOARD'S interpretation of the provisions of the Thornton Telecommunications Ordinance in the Planning Board's denial of the Applicant's Site Plan Review Application.

Mr. Monti wanted to remind those in attendance that this is a public meeting, not a public hearing. He stated the only item on the agenda is to continue deliberation from the June 24, 2021 meeting.

Mr. Monti stated Ms. Randall and Mr. Boldt collaborated on the wording that the Board will be sending in its notice of decision to the applicant; this was done using notes from the June 24, 2021 meeting. He asked the Board to review.

Mr. Monti asked if there was anything that was discussed last week that is missing from the proposed language. The Board stated there was not.

The Board reviewed the proposed language for the notice of decision that was distributed. Mr. Monti asked for Board comments.

Ms. Marshall stated she has had issue with the ZBA acting on the site plan specific items being questioned. She stated she does not think the ZBA has authority over site plan review or regulations.

Ms. Marshall stated the environmental concerns cited as a reason for denial is a more general concern not

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site plan specific. She stated the Planning Board cited flooding concerns, but no evidence of flooding was shown. Ms. Marshall suggested the Planning Board reevaluate the context of Chief Defosse's April 14, 2021 letter and the affidavit of Jesse Moreno, P.E.

Mr. Monti stated the applicant asked the ZBA to overrule the Planning Board and give the applicant the go ahead to get permits and the ZBA is not granting that.

Mr. Monti stated when the ZBA granted waivers and variances, it was with the condition that the access road be moved. He stated as the ZBA cannot grant site plan approval, it is part of the Board's due diligence to point out things that were heard at the hearing that need to be brought to the Planning Board.

Ms. Marshall agreed that the ZBA has no authority over site plan approval. Mr. Monti stated the ZBA was able to relook at facts and data that may or may not have been presented to the Planning Board. He stated what the ZBA is saying, is that the Planning Board may want to look at the facts and data again; the ZBA is not passing judgement on the decision.

Mr. Sobolewski stated the ZBA is basically adding some comments to what they feel as a board, as the application was reviewed extensively in order to approve the waiver and variances; the ZBA is not making any judgement on the site plan but are allowing some comments.

Mr. Rawson stated he concurs with Ms. Marshall; the Telecommunication Facility Ordinance (TFO) certainly references a site plan approval has to be done. He stated that the road grade concern was raised as a safety issue, and the TFO does give the ZBA jurisdiction over safety issues.

Mr. Monti reiterated that the Planning Board took their time, looked at the facts and data presented to them, and came to decision; that was questioned by the applicant which is why an appeal from administrative decision is in front of the ZBA. He stated the ZBA looked at all data that was available from the applicant and Planning Board, as well as documents referenced by the Planning Board meeting minutes. Mr. Monti stated it has been established that the ZBA does not have authority to approve site plan. He stated the application is going to be remanded back to the Planning Board.

Mr. Monti stated the notice of decision lists items the ZBA has uncovered so that when this application goes to the Planning Board, they can look at the items a little closer to see if any of it will change their decision. He stated the ZBA is doing their due diligence in having the Planning Board look at the items listed; the items are very specific and the ZBA is in no way making a judgement, but asks that the Planning Board review.

MOTION: "To approve the ZBA Notice of Decision to the Planning Board as follows:
The Zoning Board of Adjustment finds the Planning Board's decision to deny the Site Plan Review of SMA Realty Trust, Francis Parisi – Vertex Tower Assets LLC (collectively "Vertex") made at the April 15, 2021 Meeting (with written decision issued on or about April 22, 2021) to be unreasonable and that the Planning Board's interpretation of the Telecommunications Facility Ordinance ("TFO"), and the waiver and variances granted by the Zoning Board of Adjustment associated with this Site Plan to be incorrect.

Accordingly, the Zoning Board hereby grants, in part, Vertex's Appeal of Administrative Decision and remands the Site Plan back to the Planning Board to follow the express provisions of the TFO, and the waiver and variances granted by the Zoning Board and with the following express concerns of the Zoning Board to be addressed:

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Re: Reasoning for Denial Statement 1

The proposal does not comply with Article VI (A) of the Thornton Site Plan Regulations, in that it presents significant life safety concerns arising from the proposed driveway. Specifically, the evidence in the record shows that the driveway will have areas that are at a 20% grade, and that emergency and safety vehicles will not be able to respond to the site in the event of an emergency.

1. Is there a definitive public life safety issue present in this Site Plan in light of the terms of the TFO and the waiver and variances granted by the Zoning Board?
 - The driveway will be private, with trained professionals accessing it, and a gate prohibiting public access.
 - The Zoning Board required this driveway to be used as a condition of approval.
 - A letter submitted on April 14, 2021 by Fire Chief Defosse to the Planning Board indicates the grade of the road does not show evidence of a significant life safety issue.
 - The Affidavit of Jesse M. Moreno, P.E. further clarifies the issue of emergency site access.
2. Specifically, what fire safety issues does the Planning Board have regarding the equipment containers and gravel pad site for this Project?
 - A plan for how fire concerns are addressed was submitted by Vertex to the Planning Board and seems to have been ignored by the Planning Board.
 - The provisions of the TFO acknowledge limited concerns with these types of projects.
 - The Zoning Board's variances included a provision allowing for vegetation to be kept away from the fenced pad site for this Cell Tower further mitigating fire issues.
3. Why is it important that the access driveway have year-round access to emergency vehicles?
 - The provisions of the TFO acknowledge existing driveways are to be used and do not contain a slope or access requirement with these types of projects.

Re: Reasoning for Denial Statement 2

The proposal poses significant environmental concerns, in that the project, as proposed, does not properly address storm water drainage and mitigation. The evidence presented to the Board shows that there is a heightened risk of flooding using the storm water mitigation currently being proposed, which will negatively impact the Mad River watershed. Although the proposal does attempt to account for a 25-year event, this is the minimum requirement under the Site Plan Regulations, and the Board has the right, and indeed the obligation, to require a greater level of storm water mitigation depending upon the property under review.

1. Why will environmental reviews and reports from NHDES and EPA not be sufficient?
 - Permits from NHDES and EPA will need to be obtained by the applicant before any construction can begin and were agreed upon by Vertex as conditions of approval.
2. Why was Vertex not asked for a 50-year storm event road plan prior to the meeting on April 15, 2021?
3. Where will flooding be a concern?
 - There was no evidence submitted to indicate if flooding would occur.
 - The Site Plan Regulations (pages 12 & 13) appear to only require designs for 25-year storm events and for "flows at the property line".

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4. Would the Planning Board reconsider their stance on the driveway being rated for a 25-year storm event if any stormwater basins shown on the Site Plan are rated higher?
 - An affidavit submitted on June 16, 2021 from Jesse M. Moreno, P.E., states that the stormwater basins on the final site plan are designed for 50-year storm event. This affidavit should be reviewed for consideration.
5. The report from Myrtle Lewis, Chair of the Thornton Conservation Commission, including the statement that the Conservation Commission was “duly impressed” by the Site Plan, should be re-evaluated.
6. Why were conditions of approval drafted for but not discussed at the April 15, 2021 meeting?

The Planning Board should take this remanded Site Plan up at the Planning Board’s next available meeting and should avoid any dilatory tactics to prolong the process of the potential approval of this Site Plan.

The Zoning Board otherwise denies Vertex’s Appeal of Administrative Decision to the extent that the Appeal calls for the Zoning Board to grant the Site Plan Approval. The Zoning Board does not believe that it has the authority to issue a Site Plan Approval.

Motion: J. Marshall

Second: J. Sobolewski

Discussion: None

Roll Call Vote: 4 - YES, 0- NO, 0- ABSTAIN

Motion passes.

NEW BUSINESS: None

COMMUNICATIONS AND MISCELLANEOUS: None

OTHER BUSINESS: None

ADJOURNMENT:

MOTION: “To adjourn at 7:12 p.m.”

Motion: J. Sobolewski

Second: J. Marshall

Roll Call Vote: 4- YES, 0- NO, 0- ABSTAIN

Discussion: None

Motion Passes.

Respectfully submitted,

Kerrin Randall
Zoning Board Assistant