

**MINUTES**  
**TOV Zoning Board of Appeals (ZBA)**  
**Special Meeting**  
**October 16, 2024**

**Call to order:** ZBA Chairman John Pavelock called the meeting to order at 6:30 pm with the Pledge.

**Attendance:**

ZBA Members: Michael Taylor, Nathan Juby, John Pavelock, and Amanda Hewitt.

Joshua O'Kay was unable to attend.

Others: Secretary Kathy Pavelock, Liaison Darrin Smith, applicant, and several residents.

**Minutes Approval:**

Amanda Hewitt made a **motion to approve the minutes as distributed for the October 3, 2024 ZBA Special Meeting**. Seconded by Mike Taylor. The board discussed the wording of the motion related to the negative environmental impact for VAR2024-02. Since this was the exact motion, the minutes will stand as written. Poll Vote: Josh O'Kay – Absent, Amanda Hewitt – Aye, John Pavelock – Aye, Mike Taylor - Aye, Nate Juby - Aye. **Motion Carried.**

**Correspondence:** Secretary Pavelock summarized the correspondence since the last ZBA meeting:

- Submitted legal notice for this meeting to the newspaper.
- Submitted 239m review materials to Oneida County, NYS DOT, and NYS DEC for VAR2024-02.
- Communicated with Town Attorney regarding current applications before the ZBA.
- Communicated with VAR2024-02 applicants that 239m review responses have not yet been received and as such the board will not be taking any action at this meeting.

**Unfinished Business:**

**VAR2024-02 Verizon Wireless (Scott Olson/James LaValle);** 2083 NYS Route 49; Owner: Town of Vienna; 217.017-1-1; Zone Hamlet Center (HC); Requesting a Use Variance (unallowed use in Zone HC) and an Area Variance (cell towers require a setback of 1-1/2 times the height of the tower). As of 10/15/2024 the ZBA has not received responses to the 239m review. Agencies have until November 6, 2024 to respond. The 150-day shot clock from “application complete” declared on 10/3/2024 ends on 3/3/2024. No action taken at this meeting on this application.

**Public Hearings: None**

**New Business:**

**VAR2024-03 Richard Mansfield, Interpretation.** SUP2010-01 Airstrip on 4 parcels at 330 Moore Drive. “To bring into question the authority of the C.E.O to reinstate a revoked S.U.P. beyond the legal time-frame & by-pass the authority of the Z.B.A.”

Chairman Pavelock asked if the board had any questions on the application. Mr. Mansfield requested to distribute and read a letter outlining the key points of the discrepancy. The board had no problems accepting the new letter and having Mr. Mansfield read the letter. Mr. Mansfield read the letter with the following highlights:

- Contends that Town Law and Department of State (DOS) only the ZBA has authority to review reinstating a revoked SUP. And Town Attorney letter dated June 11, 2019 letter supported the February 20, 2019 revocation letter.
- Contends that the CEO reinstatement letter dated August 1, 2024 has inaccuracies.
- Additional issues that were not addressed by the CEO.
- Requested to read a letter from a concerned resident.

Chairman Pavelock explained that the letter could be read at a public hearing.

The board then proceeded to comment and ask questions related to this application:

- The application states that the ZBA has the only authority related to special use permits (SUPs). The ZBA does not have the authority to issue SUPs unless specifically given this authority by the Town Council. The Town of Vienna Council has not given this authority to the Town of Vienna ZBA.
- There are several quotes from DOS. The applicant needs to provide section citations for any quotes from DOS and Town Law.
- The applicant clarified he is asking for an interpretation of the action of the CEO. Section 240b Town Zoning Law (ZL).
- Asked for a summary of the research by the former CEO.
- According to DOS, only an aggrieved party may appeal. An aggrieved party must have a negative impact to them. Mr. Mansfield stated he “feels aggrieved” but is not being affected. Mr. Mansfield believes there is a safety issue.
- The ZBA reviewed definitions for SUPs and Zoning Permits. On ZL page 67. Zoning permits expire in one year (not SUP). Only a Zoning Permit can be revoked. CEO could not revoke a SUP, only a Zoning Permit. Generally, the Planning Board provides conditions on SUP whereby the SUP is rendered null and void if any of the conditions are not met.
- Asked about ownership of all parcels. The parcel in question (parcel number 217.000-1-78.1 roadway) has been owned by three parties since at least the early 1990s. Tom Moore was in attendance and provided a history of the properties. At some point in time one of the owners sold their third of this parcel to NYE. Tom Moore retains his third ownership of this parcel.
- The ZBA is questioning if the ZBA should be dealing with this. Specifically asking about who directed the CEO to revoke the SUP.
- ZBA requested copies of the Planning Board minutes (June 11, 2018 and April 18, 2019). Mr. Mansfield indicated this subject was brought up at both meetings. Secretary Pavelock will obtain copies.
- Mr. Mansfield questioned the time it took to reinstate the revoked SUP and thus contends that the allowed time period has expired.
- Mr. Mansfield stated he represents a group of residents, and their intent is to see Mr. Moore reapply for a SUP using the ZL from 2010.
- ZBA is checking with Town Attorney on their authority to act on this application.

ZBA discussed a public hearing for this application. Amanda made a motion to declare the action as Type II and therefore exempt from SEQRA and to schedule a public hearing on November 11 at 6:45 p.m. for VAR2024-03 to determine the validity of the interpretation of the authority of the CEO. The board discussed their lack of readiness to hold a public hearing and if the board has a valid application. Poll Vote: Josh O’Kay – Absent, Amanda Hewitt – Nay, John Pavelock – Nay, Mike Taylor – Nay, Nate Juby – Nay. Motion Failed.

Chairman Pavelock requested that a constable be at the next ZBA meeting. Upon the advice of Councilman Smith, Secretary Pavelock will request a constable through Supervisor Davis.

John Pavelock made a **motion schedule a ZBA meeting for November 11, 2024 at 6:30pm to conduct any business before the ZBA..** Seconded by Mike Taylor. No discussion. Poll Vote: Josh O’Kay – Absent, Amanda Hewitt – Aye, John Pavelock – Aye, Mike Taylor - Aye, Nate Juby - Aye. **Motion Carried.**

The ZBA will begin preparing for the written decision for VAR2024-02. Mike Taylor will contact Town Attorney Evan Rossi regarding aggrieved parties.

Amanda Hewitt **motioned to adjourn.** Seconded by Nate Juby. **Motion Carried at 8:08 pm.**

Minutes Prepared by:

*Kathy M. Pavelock /s/*  
ZBA Secretary