PLANNING BOARD MEETING MINUTES

MAY 23, 2013
The Planning Board met at 6:30 PM local time Thursday, May 23, 2013 in the Auditorium to discuss, in a meeting open to the public, tabled matters and other business that was before it.

I. CALL TO ORDER:

PRESENT: Arsen Markarian  
Bill Bastian  
Allyn Hetzke, Jr.  
Doug McCord  
Terry Tydings

ABSENT: Jim Burton  
Zach Nerzinger

ALSO PRESENT: Linda Cummings, Secretary  
Katie Evans, Planning Board Clerk  
Mark Valentine, Planning Department Head  
Pete Weishaar, Legal Counsel

II. APPROVAL OF MINUTES: May 9, 2013

The Board approved the minutes of May 9, 2013

Vote: Moved by: Hetzke  
Seconded by: Bastian

Chairperson Markarian- Aye  
Bastian- Aye  
Burton – Absent  
Hetzke - Aye

McCord - Aye  
Tydings - Aye

Motion was carried.

III. TABLED:

1. John H Sciarabba, LandTech Surveying & Planning, 3708 Saint Paul Boulevard, Rochester, New York 14617/Ryan J. Morse requests under Articles IX-9-2 and X-10-2 of the Code Preliminary and Final Site Plan and Conditional Use Permit to allow the construction of a 1,200 +/- sq ft garage and associated improvements on 0.51 +/- acres located at 1513 Empire Boulevard to be known as 1513 Empire Boulevard. The property is now or formerly owned by Ryan J. Morse and is zoned LB. Appl# 13P-0015. SBL# 108.06-1-6.

The application was CONTINUED TABLED pending submission and review of the items requested within the May 9, 2013 tabling resolution.
Vote: Moved by: McCord Seconded by: Hetzke
Chairperson Markarian – Aye Bastian – Aye Burton – Absent Hetzke – Aye
McCord – Aye Tydings – Aye

Motion was carried.

2. Jonathan Morris, AIA, Carmina Wood Morris, P.C., 487 Main Street, Suite 600, Buffalo, NY 14203/Vision Dodge/Chrysler/Jeep/Ram requests under Articles IX-9-2, and X-10-2 of the Code Preliminary and Final Site Plan and Conditional Use Permit to allow the construction of a 2,900 sq. ft. expansion with additional site improvements and an expansion to a Conditional Use permit on 6.53 +/- acres located at 920 Panorama Trail South to be known as Vision Dodge/Chrysler/Jeep/Ram. The property is now or formerly owned by 920 Panorama Trail South, LLC and is zoned GB and LI. Appl# 13P-0016 SBL# 139.09-1-60.21.

The Board discussed the application and reviewed the written responses to the May 9, 2013 tabling resolution. The Board reviewed the Part II Environmental Assessment Form and the draft Approval Resolution.

The Board AUTHORIZED Chairperson Markarian to sign the Part II EAF
Vote: Moved by: Bastian Seconded by: Hetzke
Chairperson Markarian – Aye Bastian – Aye Burton – Absent Hetzke – Aye
McCord – Aye Tydings – Aye

Motion was carried.

The application was APPROVED with conditions
Vote: Moved by: Bastian Seconded by: Hetzke
Chairperson Markarian – Aye Bastian – Aye Burton – Absent Hetzke – Aye
McCord – Aye Tydings – Aye

Motion was carried.

V. MISCELLANEOUS:

1. Mark Valentine gave a brief review of the new applications on the June 13th Planning Board agenda:
   • 950 Panorama Trail (Hotel)
     Lead Reviewer: Burton
2. Jared Lusk, Nixon Peabody, LLP, 1300 Clinton Square, Rochester, NY 14604/Bell Atlantic Mobile of Rochester, L.P. (dba Verizon Wireless) requests under Articles IX-9-2, and XI-11-7 of the Code Preliminary and Final Site Plan and Special Permit approval to allow the construction of a 120’ +/- telecommunications facility with associated site improvements on 2.29 +/- acres located at 1843 Empire Boulevard to be known as 1843 Empire Boulevard. The property is now or formerly owned by Jeffrey C. Riedel and is zoned GB. Appl# 13P-0010 SBL# 093.15-1-63. – The Board received a letter from Jared Lust dated May 17, 2013 itemizing questions regarding the Board’s approval resolution dated April 24, 2013. The Board directed staff to provide the following responses:

3. **Compliance with the comments concerning this application from the Development Review Committee as contained in Monroe County Department of Planning’s Referral #PN13-5Z, dated February 6, 2013 and February 11, 2013, except as otherwise provided herein.**

While Condition #3 references comments of the Monroe County Department of Planning (“County Planning”) dated February 6, 2013 and February 11, 2013, our records indicate that the County Planning comments regarding the project were actually dated February 11, 2013 and April 5, 2013. If there are County Planning comments dated February 6, 2013 Verizon Wireless has not received them. Alternatively, if the County Planning comments referenced in Condition 3 are those dated February 11 and April 5, 2013, the Condition should be revised to reflect the accurate date.

*Two sets of comments were issued by the Monroe County Planning Department in the month of February. A copy of the February 6, 2013 Monroe County comments that you were missing were subsequently provided to you in an e-mail dated May 23, 2013*

4. **Compliance with all requirements of the Town of Penfield Design and Construction Specifications, revised April 14, 2010.**

It is not clear whether the requirements of the Penfield Design and Construction Specifications are applicable to the Verizon Wireless project. They appear to be more applicable to residential and/or commercial type construction, rather than public utility structures, particularly given the limited amount of construction.

*This is a standard condition in all Planning Board resolutions. While many of the specifications and requirements do apply to residential home construction, there are some details and standards that apply to all construction within this document. Some of these items include but are not limited to: erosion control standards and details, stabilized construction entrances, stormwater handling during construction, etc.*
5. The applicant shall submit a Property Maintenance Agreement in recordable form, subject to review and approval of the Town Attorney, and accompanied by appropriate filing fees. The Agreement shall specifically address maintenance and care of lawn, landscaping, drainage channels, pipes and facilities, as well as roads and parking areas. Additionally, the agreement shall include maintenance responsibilities associated with this use and all appurtenances. Obtaining the signature of the Planning Department Head shall indicate compliance with this requirement.

Verizon Wireless has no objection to a condition of the special use permit that requires Verizon Wireless to maintain the approved facility in a proper manner. However, since the wireless telecommunications facility project does not include a new lawn, additional landscaping/drainage channels, underground pipes or facilities, we are unclear what particular concern the Planning Board has regarding the maintenance of the property. As such, Verizon Wireless respectfully requests that the Planning Board remove the requirement for a property maintenance agreement and simply impose a condition on the special use permit that requires Verizon Wireless to keep the facility in good working order and maintained, and require Verizon Wireless to post a bond to secure the obligation (see Condition 8 below).

The Property Maintenance agreement is for the whole 1843 Empire Boulevard property not just the tenant. This is a standard condition for all commercial properties that come before the Planning Board. This agreement helps to ensure compliance with our building codes and routine property maintenance is done.

8. Furnishing the Town with a letter of credit, if required, in an amount to be approved by the Town Engineer. Said letter of credit shall insure that projects are constructed in accordance with the approved plan and the standards and specifications of the Town of Penfield; and shall cover the maintenance of the tower during its lifetime and provide for its removal, or other financial guarantee as approved by the Town of Penfield.

Customarily, Verizon Wireless posts a bond to secure its obligation to maintain and/or demolish the proposed tower. Based on the language of Condition 8 requiring a letter of credit, Verizon Wireless respectfully requests the Planning Board to authorize the posting of a bond rather than a letter of credit.

A bond is perfectly acceptable to the Town and to the Engineering Department. Please work with Geoff Benway (585) 340-8683 to establish the amount necessary for the bond. Inspection fees will also need to be coordinated with him for this project.

10. The applicant shall execute an agreement indemnifying and holding the Town harmless from any and all liabilities, claims of personal injury or property damage arising out of or in any way related to the installation of and operation of the tower
and its accessory structures and facilities. Said agreement shall be subject to the approval of the Town Attorney.

As stated in its January 8, 2013 application (See p. 11 of Exhibit D) the condition requiring Verizon Wireless to enter into an indemnification agreement with the Town of Penfield is beyond the lawful authority of the Planning Board. It is unclear what exactly the Town is seeking indemnification from and other than exercising its planning jurisdiction pursuant to Town law, it is unclear what potential liability the Town would incur as a result of the Planning Board granting the requested approvals. As such, Verizon Wireless respectfully requests that this condition be removed from the Approval Conditions.

While the Planning Board did add this statement as a condition in their approval resolution, it was based off of the Town Code. The indemnification clause is a requirement of the Town Code in section 11.7.8-G of the Zoning Code.

The Board directed staff to issue a response letter

Vote: Moved by: Markarian Seconded by: Hetzke

Chairperson Markarian – Aye Bastian – Aye Burton – Absent Hetzke - Aye
McCord - Aye Tydings - Aye

Motion was carried.

There being no further business to come before the Board, this meeting was adjourned at 7:15 p.m., Thursday, May 23, 2013.

These minutes were adopted by the Planning Board on June 13, 2013.