

LIVONIA JOINT ZONING BOARD OF APPEALS
November 20th, 2023

Present: Chairman M. Sharman, R. Bergin, D. Major, J. Prato, CEO Adam Backus, Zoning Compliance Assistant Julie Holtje.

Excused: M. Thompson, Attorney J. Campbell.

- AGENDA:** ***(1) Accept and approve the meeting minutes of Sept. 18 & Nov. 6, 2023***
- (2) Mark Sherwood/Livonia Liquor – 3-5 Main Street, Livonia, NY***
- (3) Verizon Wireless/Hemlock Fair – 7370 Fair Street, Hemlock, NY***

Chairman Mike Sharman brought the meeting to order at 7:00 p.m. and opened with the Pledge of Allegiance.

Chairman Mike Sharman asked if everyone reviewed the meeting minutes from September 18th, 2023. The Board agreed they had, and a motion was made to approve the minutes. M/2/C (R. Bergin/M. Sharman) Carried: 4-0.

(2) Mark Sherwood – 3-5 Main Street, Livonia, NY

PLEASE TAKE NOTICE that the LIVONIA JOINT ZONING BOARD OF APPEALS will hold a public hearing on Monday, **November 20, 2023**, at 7 p.m. at the Livonia Town Hall, 35 Commercial Street, Livonia, New York, to consider the application of **Mark Sherwood/Livonia Liquor** for an area variance pursuant to Section 155-17C of the Zoning Code of Livonia. This area variance is requested for a proposed 40' X 100' Storage Building, which will violate the lot coverage per Section 155-34 F (1) & the side and rear setback per Section 155-34 F (2). The properties are located at **3-5 Main Street**, Village of Livonia, New York, and is zoned Gateway Commercial District (GC). The application is on file in the Building Zoning Department in the Livonia Town Hall, 35 Commercial Street, Livonia, New York, for public review. All interested parties will be heard at this time.

ZCA J. Holtje polled the Board for site visits:

Chair M. Sharman:	Yes
R. Bergin:	Yes
D. Major:	Yes
J. Prato	Yes
M. Thompson	Excused

Chairman Mike Sharman asked Mark Sherwood to come forward for the proposed 40' X 100' Storage Building.

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Mark Sherwood explained to the Board that the NAPA store needs more space for cold storage. Approximately 40% of the new space will be for NAPA and the rest will be mini storage. The additional space is needed to make the project viable. The building will be the same height as the existing store. He is working with Frank West to clean up the property and they will improve the road Dollar General uses for deliveries to the back of that building.

Discussion about traffic flow and setbacks: 25' will be the minimum rear setback, 17.5' will be the minimum side setback.

Discussion about stormwater: A. Backus discussed the B&Z Departments concern that the roof runoff and stormwater be managed on site and not directed to neighboring properties. It will be necessary to implement a drywell or similar feature. Future paving will affect runoff and the applicant understands that it will be his responsibility to mitigate that.

With no further comments from the Board, Chairman Mike Sharman opened the Public Hearing. With no comments, the Public Hearing was closed, and the Board went through the variance criteria:

1. Will an undesirable change be produced in the character of the neighborhood, or will a detriment to nearby properties be created by granting the variance? No – Will improve the neighborhood.

2. Can the benefit sought by the applicant be achieved by some feasible method other than a variance? No

3. Is the variance substantial? Yes

4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood? No - If drainage is addressed.

5. Is the alleged difficulty self-created? Yes

Chairman Mike Sharman asked for a motion to accept the Planning Board's findings for a negative declaration for the SEQR environmental form. Motion to approve. M/2/C (D. Major/J. Prato) Carried: 4-0.

** This application was submitted to the Livingston County Planning Board for their review. They determined that it has no significant Countywide or inter-municipal impact. Approval or disapproval of this application is a matter of local option.

Chairman Mike Sharman asked the Board for a motion to approve or disapprove the proposed Area Variance for the proposed Storage building. Doug Major made a motion to approve the application as submitted. Motion to approve. M/2/C (D. Major/R. Bergin) Carried: 4-0.

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(3) Verizon Wireless/Hemlock Fair – 7370 Fair Street, Hemlock, NY

PLEASE TAKE NOTICE that the LIVONIA JOINT ZONING BOARD OF APPEALS will hold a public hearing on Monday, **November 20, 2023**, at 7 p.m. at the Livonia Town Hall, 35 Commercial Street, Livonia, New York, to consider the application of Bell Atlantic Mobile / Verizon Wireless for a Conditional Use Permit pursuant to Section 150-102 A of the Zoning Code of Livonia. The Conditional Use Permit is for the construction of a 95’ wireless communication facility with a 4’ lightning rod per Section 150-33D (2), Public Utility, and to be located **at 7370 Fair Street (Hemlock Fair)**, Tax parcel # 84.14-1-1.1 in the Town of Livonia, NY, and is Zoned Neighborhood Residential Conservation District (ARC-5). This application is on file in the Livonia Building and Zoning Department in the Livonia Town Hall, 35 Commercial Street, Livonia, New York, for public review. All interested parties will be heard at this time.

ZCA J. Holtje polled the Board for site visits:

Chair M. Sharman:	Yes
R. Bergin:	Yes
D. Major:	Yes
J. Prato	Yes
M. Thompson	Excused

Chairman Mike Sharman asked Jeffrey Twitty, Attorney of Nixon Peabody, representing Bell Atlantic/Verizon Wireless, and Dustin Wyman, Site Acquisition specialist, to come forward to discuss the proposed Cell Tower application. Also present was the Town’s RF Engineering Consultant, Steven Ciccarelli.

Jeff Twitty introduced the project, a 95’ monopole with a 4’ lightning rod attached.

D. Major asked for confirmation that by approving 95’, they are actually approving a 120’ tower. J. Twitty: Explained the FCC Regulation for an eligible facilities request. This allows existing towers to extend the height by 20’ or 10%, whichever is greater, for the purpose of co-location. In this case, they could extend from 95’ to 115’ without requiring additional review by the Town.

R. Bergin initiated discussion about coverage and access. J. Twitty and RF engineer D. Wyman explained and consultant S. Ciccarelli agreed that the applicant is fulfilling a capacity need and coverage gaps that exists in that area. The elevation of a tower at the alternate site locations would need to be higher.

The need was confirmed by the Board and the Board agreed that this was the best choice for location as it appears to have the least visual impact.

Chairman M. Sharman opened the Public Hearing and asked the Fair Board representative Dave Gilbert for comments.

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Dave Gilbert explained that they have been working with the applicant for quite some time to get coverage for Fair week and at other times. They are working on features such as fencing details.

Holly Holevinski: expressed concerns:

- during Fair week the location might interfere with parking
- concern that coverage would be insufficient with height at only 95'
- if the tower fell, the fall zone would include cars and people
- DEC land or the Fire Department would be a better choice for location

CEO A. Backus explained that our Code measures fall zone to property line.
Consultant S. Ciccarelli answered coverage concerns with discussion about frequencies, propagation plots, mass calling events, and sectors.

Discussion: location, fall zones and responsibility.

Applicants' response: Towers are all over in cities, parking lots. They are structurally engineered, and Verizon has insurance.

CEO A. Backus noted that ice is an issue that affects towers, but the Fairgrounds are typically not occupied during the winter, which lessens hazard to people and cars.

More discussion about emergency calling and capacity.

Board summary: this tower increases reception, capacity and need for service in this area.

CEO A. Backus: it is a public utility and with clear evidence and proof of need, they have the right to put it in. We cannot deny, but only make it the best we can for the Town.

Doug Major clarified to H. Holevinski that they are talking about the placement of the tower, not the competency.

Consultant S. Ciccarelli explained that making the tower higher expands the coverage area but will not expand the number of customers that can connect to the tower at any given time. For the people in the vicinity of the tower, the height proposed has been determined to be the lowest elevation to meet the need.

Chairman Mike Sharman reviewed the letter from D. Gilbert, president of the Hemlock Fair. The letter expressed concerns about the type of fence, chain link vs. solid vinyl. Bollard location and weed control around them- being able to be low maintenance around them.

CEO A. Backus: referred to Town Code about barbed wire on fencing. This is private property open to the public. A taller, solid vinyl fence would not be climbable as it would not allow a toe hold, satisfying both safety and aesthetic concerns. Code for rungs on the tower are higher so that if someone does get it, they can't climb the tower.

Verizon will be responsible for maintenance of the fence.

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This application was determined to require a long form SEQR, which will be completed with the Livonia Joint Planning Board, as they have petitioned to be Lead Agency. Motion to accept the Livonia Joint Planning Board as the Lead Agency. M/2/C (J. Prato/R. Bergin) Carried:4-0.

Chairman Mike Sharman and the Board went through the Conditional Use Permit criteria. No significant impacts were identified. A removal bond shall be approved by the Town Attorney and require 30 days' notice to the Planning Board if ever changed or withdrawn, so that another bond can be established.

This application was submitted to the Livingston County Planning Board for their review. The Planning Board voted to recommend "Approval" of the proposed action with advisory comments.

CEO A. Backus asked how the access will be maintained and kept accessible to the tower. D. Gilbert responded that Verizon will have an easement from Fair Street all the way to the tower, perform all maintenance during the winter, and have a key to the locked gate.

The Public Hearing was closed. M/2/C (M. Sharman/J. Prato) Carried: 4-0.

D. Major made a motion to approve the Conditional Use Permit for the 95' Cell tower with a 4' lightning rod and related equipment subject to Planning Board SEQR and site plan approval, and with the following recommendations:

1. minimum 10'solid vinyl fence
2. bollards on the outside
3. access ladder on the tower to Town Code
4. the appropriate bond being issued

M/2/C (D. Major/J. Prato) Carried: 4-0.

Chairman Mike Sharman asked for a motion to adjourn the Livonia Joint Zoning Board Meeting at 8:17 p.m. M/2/C (D. Major/R. Bergin). Motion carried: 4-0

Respectfully submitted,
Julie Holtje