



# TOWN OF AMENIA

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## Zoning Board of Appeals Minutes 3/16/15

### Present:

Leo Blackman-Chairman  
David Menegat  
Kevin Cassone  
Paula Pelosi

### Absent:

Terry Metcalfe

### Consultant:

David Everett-Town Attorney

Motion to open meeting 7:02- all in favor

### **Smith mobile home**

Chair Leo Blackman gave an overview of the Smith application. Attorney Dave Everett reviewed the standards for obtaining a use variance. Use variances are granted rarely, because it changes the Zoning law. Applicant must meet all of the standards to be granted a use variance. Attorney Everett stated that mobile homes are not permitted in the town outside of mobile home parks unless grandfathered in. The non-conforming use status has been lost due to the non-replacement of the home within the allotted year. If a use variance is granted by the ZBA the applicant must then go to the planning board so that a determination is made to grant a one year extension meeting a new set a guidelines. Attorney Everett again, read in the standards for a Use Variance. The board discussed the standards and how they can relate it to the current applicant. The applicant discussed the timeline of events of when he told the building department of his intentions. Attorney Everett reviewed

with the board that there is no record of those conversations. Attorney Everett stated that the ZBA will be setting precedence by granting a Use Variance. Justification is necessary to show how this application is different, and set apart from any other applicants who may be in search for a Use Variance. Error by the municipality can be corrected no matter what the consequences are. The burden is on the applicant to prove the conditions of whatever approvals they seek have been met. The difference between a modular and a mobile home was reviewed. Attorney Everett stated that if the ZBA chose to grant a use variance he will proceed to write up the approval, noting for the record, it was against the advice of counsel to grant a use variance. Disagreement on timeline, misinformation from building department and negligence of applicants' due diligence to review code was discussed. If there was a mobile home on the property when the code was adopted in 2007 it would have been a non-conforming use. When the use is removed from the property for more than a year it will have expired under the law. Another option is to approach the town board to change the law. The ZBA Chair went through the individual standards with the applicant and attempted to answer each one. The sequence of steps regarding the continuance of this application was stated to the board. It requires: a referral to the county if within 500ft. of Rte 22, review by the planning board to grant a SUP, and a public hearing for a use variance. The applicant noted a neighbor who will dispute the mobile home placement. Attorney Everett reviewed the possibilities of litigation. Evidence will need to be provided by the applicant to prove they meet the standards. The cost of upcoming meetings and hearings were discussed. The applicants at that point decided not to continue in their pursuit for a Use Variance and left the meeting.

### **Bulfamante Compost Site**

Anthony Bulfamante and his attorney Andrew Manggio presented for Bulfamante Compost. Mr. Bulfamante owns the property at 3501 rt. 22. It was previously a nursery bought from the Lopane family as a tree farm. They received a denial for new use from the CEO. Mr. Bulfamante stated that he is a landscape contractor from Westchester County. Mr. Bulfamante would like to compost yard waste. Procedures, material in and out, and scale tickets would be monitored by the DEC. Bagging facility may be introduced and create 8-10 jobs. The DEC will regulate the cubic yards. Mr. Bulfamante stated he was estimating about 80,000 cubic yards and will monitor the facility. This facility wants to make black dirt not mulch. They are located in the OC district. There will not be any clearing of the wooded area. Truck traffic will be at its greatest during the spring and the fall season. He expects approximately 30-40 trucks a week. Mr. Bulfamante noted that the machines that are to be used are considered quiet and he will supply a decibel reading if needed. Mr. Bulfamante explained to the board the process of how the compost facility would run, and how it would be kept screened from the road.

Attorney Everett reviewed the code for granting a Use Variance. The Amenia code states solid waste management facilities defined by the ECL and DEC regulations are prohibited in the Town of Amenia. A yard composting operation is considered a solid waste management facility under the DEC regulations. The only way it's allowed is through a Use Variance, so Bulfamante would need to meet all the standards. Attorney Everett stated that the SEQRA process will need to be done and the town engineer will need to comment on this application, then a public hearing and a referral to the county. A coordination of lead agency under SEQRA will need to be done. Mr. Bulfamante questioned the existence of a nursery clause for this property. He bought the property 7-8 years ago and stated that he has taken out dead trees and planted new ones. Attorney Everett commented that previous files would have to be researched to find the prior use. Name of the previous nursery is Lopane. Mr. Bulfamante would have to provide a valid argument to the ZBA that the previous nursery was once used as a large scale composting facility (if composting allowed under the nursery use), then prove that it has not ceased operation for more than a year, OR prove that he cannot make a reasonable return if he chooses to sell the property. Attorney Everett read in the various options in which the property can be used. Since all uses are permitted in the OC district, economic hardship will be nearly impossible to claim. The zoning code section with regards to this application will be sent to Mr. Bulfamante. Attorney Everett suggested Mr. Bulfamante approach the Town Board for a change in the law, as the ZBA is limited in the relief it can provide.

### **Cell Tower**

Attorney Matthew Kerwin from Hiscock & Barclay Law Firm in Syracuse represented SBA Towers in conjunction with Verizon Wireless. A cell tower is proposed for 67 Kent Road. The parcel is approx. 204 acres. Cell tower will be placed at rear of the property (approx. 1600 ft. back) and will extend the existing access drive. The town's CEO was contacted for a waiver for a height variance. At that time SBA was referred to the ZBA. SBA is seeking an area variance for a 174 ft. monopole with an optional 6ft lightning rod for a total of 180ft. Only 70ft would be allowed by Code. The ZBA asked SBA to consider the Presbyterian Church steeple as an alternative site. Mr. Kerwin addressed the gap in coverage in the area they are proposing the cell tower. He also showed maps that showed how the height of the tower will affect the coverage area. This application was referred to George Janes for a visual evaluation. The ZBA would like George Janes to suggest vantage points for the visual simulation. Attorney Everett suggested the ZBA have input on which viewpoints they would like the balloon test. A special meeting was suggested to evaluate viewpoints. The board decided to discuss the viewpoints through email and or conference call. Attorney Kerwin reviewed how photos will be taken from various vantage points between a 1-5 mile radius. Private property cannot be trespassed on to take photos. He is willing to work with the board on whichever other vantage points they would like to see. A balloon float test will be

scheduled to evaluate the visual impacts of the tower. The balloon test will need to occur before the leaves are out on the trees. A float date will be published according to the town law (14 days prior). The ZBA discussed a Metro North cell tower, also likely to be erected. The ZBA would prefer only one cell tower and requested that SBA consider approaching the MTA for a shared tower approach. Attorney Everett cited a court of appeals case that included the MTA. SBA may also consider allowing their monopole to be used for local emergency services.

**A motion was made for the ZBA to be lead agency. It was 2<sup>nd</sup>-all in favor.**  
A coordinated review will need to be done.

A radio frequency consultant will be hired through the town to evaluate this application for the ZBA. The Town Engineer has received the application for review. Attorney Everett went through the following EAF issues: verification of no federal wetlands impacts, verification from NYSDEC about the threatened or endangered species, a SHPO letter on potential impacts to cultural resources, verification if it is located in Ag district, and confirmation if the tower would be located in floodway or floodplain. Attorney Kerwin suspects that is a misprint and will review further. SBA will submit a SWPPP. Colocation statement is located in Exhibit 9. SBA will supply the town with a reclamation letter. The ZBA will discuss a financial guarantee of removal.

**A motion was made to approve the 2/16/15 minutes. Board members Pelosi, Menegat and Blackman approved. Board member Cassone abstained. Motion passed, minutes accepted.**

**Motion to close the meeting-all in favor**  
**Meeting closed 9:45 pm**

Respectfully submitted,

L.DeLango  
ZBA secretary (alternate)

The foregoing represents unapproved minutes of the Town of Amenia ZBA from a meeting held on March 16, 2015 and are not to be construed as the final official minutes until so approved.

  X   approved as read