

DRAFT RESOLUTION

Resolution of
The Town of Rhinebeck Zoning Board of Appeals

In the Matter of the Area Variance Application of Archcare at Ferncliff

ZBA Case No. 1056

Whereas:

I. Background

1. **Applicant.** The Applicant is Archcare at Ferncliff (referred to hereafter as the “Applicant”). The Applicant is represented before this board by Paul Beichert of Timely Signs of Kingston.
2. **Property Involved.** This appeal involves property located at 21 Ferncliff Drive, in the Town of Rhinebeck, and which bears the Tax Parcel No. 135089-6070-00-850800. The Applicant’s property is approximately 36.7 acres in area and is located in the HP-20 Zoning District.
3. **Description of Proposed Project.** The Applicant seeks to replace their existing sign, which has been there for 15 years and is worn, with a newer sign. The current sign is made of wood, and is deteriorating. The proposed sign will be made from aluminum. The new sign will be the same size and include the same name and information as the existing sign. The size will be 43" w x 32" H, or 9.56 square foot per side. The total signage area will be 19.12 square feet. The color scheme will change. Currently, the sign is primarily white with red lettering. The proposed sign will be red background with white lettering.
4. **Area Variances Needed.** The Applicant does not meet the Sign Regulation in the Town of Rhinebeck. Pursuant to the Town of Rhinebeck Zoning Law §125-37(J)(2), nonresidential signs within residential districts are permitted a maximum sign area of 8 square feet. The sign will be 9.56 square foot per side, for a total sign area of 19.12 square feet. Thus, an area variance is requested for 11.12 square feet.

II. ZBA Review

5. **Timeliness of Appeal.** The Applicant filed an appeal with this Board on November 30, 2023, and has paid the requisite fee. The appeal was filed within sixty (60) days of the date of the ZEO’s determination appealed from, dated November 27, 2023, and thus the application is timely as required by § 125-125(B) of the Town of Rhinebeck Zoning Law. This application was deemed complete and accepted by this Board on February 21, 2024.
6. **SEQRA.** After accepting this appeal, we determined that this matter should be classified

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as a Type II action under the State Environmental Quality Review Act (“SEQRA”) because the project (proposed action) involves the installation of traffic control devices on existing streets, roads, and highways, which includes signs [6 NYCRR §617.5(c)(22)]. No further review is required pursuant to SEQRA.

7. **Referrals and Responses.**

The application was referred to Dutchess County Planning Department, pursuant to General Municipal Law §239-m on February 29, 2024, Town of Rhinebeck Planning Board pursuant to Town of Rhinebeck Zoning Law §125-125(E) on February 29, 2024, and Town of Rhinebeck Waterfront Advisory Committee (“WAC”) on February 29, 2024, based on the Property’s location with the Local Waterfront Revitalization Program (LWRP).

The Town of Rhinebeck Planning Board responded on March 04, 2024. The Rhinebeck Planning Board stated that the requested variance raised no significant planning or environmental concerns for replacement of an existing sign in-kind. The Rhinebeck Planning Board did, however, want to confirm that: (1) no signage for the daycare would be located on the entrance; (2) the sign to be replaced is in the same location as the proposed sign; and (3) seek confirmation from the County that the sign is outside the right-of-way. The ZBA asked the Applicant to confirm these statements. No signage for the daycare is included on the proposed sign requested. The sign to be replaced is located in the same location as the proposed sign. The Applicant would verify that the sign was not located in the County right-of-way.

The Dutchess County Planning Department responded on March 12, 2024, and stated that the project is a matter of local concern, with additional comments. The Dutchess County Planning Department noted that the proposed sign more than doubles the allowable sign area permitted in the district, and includes minor text elements that may be illegible to passing motorists. The Dutchess County Planning Department suggested that the ZBA consider the minimum area variance that may be needed, and simplify the sign to remove the unnecessary text. The ZBA inquired about the text on the sign, agreeing that some of the text, particularly the text stating “a member of the continuing care community of the Archdiocese of New York,” was small and not practical. However, upon reviewing the existing sign, the same text exists on the current sign. As this request is for replacing a sign in-kind, the ZBA did not find issue with keeping the same text as currently exists on the sign, particularly as the new sign does not increase the sign area from exists currently. The ZBA did ask if the text was removed, if it would reduce the sign area, but the Applicant stated the sign needed to be of a certain size to be readable for passing drivers, so removal of the text would not reduce the sign area. The Applicant also noted that the text relating to the Archdiocese of New York was for legal purposes, and provided an indication that Ferncliff was not simply a private estate but operated by the Archdiocese of New York.

8. **Public Hearing.** A public hearing on this appeal was duly advertised and held at Town Hall on March 20, 2024. During the course of the public hearing, we received a comment from Bob O’Connor, Jr. Mr. O’Connor wanted to learn more about the proposal. He

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noted that a prior sign resembled more of a small street sign, which worked well. He did not feel a bigger sign was needed, but noted that he didn't greatly object to this modest increase. Mr. O'Connor noted, generally, that he appreciated signs that were more modest in size and more residential in nature. He appreciated learning more about this proposal, and did not have any particular objection to the sign proposed. The public hearing was closed on March 20, 2024.

9. **Site Visit.** All members of the ZBA are familiar with the property and signage, and indicated they would make individual visits to the Applicant's property and the surrounding neighborhood to observe first-hand on-site conditions, property characteristics, setting, surrounding environment and the character of the surrounding neighborhood.

III. Findings of Fact & Conclusions of Law

10. **Balancing Test.** In our review of the variance sought, we have considered the benefit to the applicant if the area variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. We determine that the variance requested should be granted because there is no detriment to the health, safety and welfare of the neighborhood or community by the granting of this variance, particularly as the requested sign is an in-kind replacement in both size and text.
11. **Consideration of Five Factor in Balancing Test.** In our determination, we have considered the five factors required by § 125-124(c)(1) of the Town of Rhinebeck Zoning Law as follows:
 - A. If the variance is granted, will it cause an undesirable change be in the character of the neighborhood or cause a detriment to nearby properties?

We find the answer to this question is no. The proposed sign is replacing a very similar sign, in both size, text and location. Although the ZBA agrees that the text stating "a member of the continuing care community of the Archdiocese of New York" is very small to read, as it was demonstrated that the same language is on the existing sign that is currently in place. Therefore, we do not have an issue with it being included here.
 - B. Can the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than an area variance?

We find the answer to this question is No. The size of the sign is not increasing from what is currently there. The Applicant requires to change the sign due to its age and provide a slight update for its branding. The size of the sign needs to be large enough for passing motorists to see the sign to make a safe and proper turn into the Property. To reduce the sign any further would make it harder for drivers to see the sign while traveling.

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- C. Is the requested area variance substantial?

We find the answer to this question is No. Although the area variance requested is substantial in the number of square feet, it is not substantial in terms of replacing the existing sign in-kind. The size and location of the proposed sign are not increasing or changing from what has existed on this Property for Archcare in the past 15 years.

- D. Will the proposed variance have an adverse impact on physical or environmental conditions in the neighborhood or district?

We find the answer to this question is no. The sign will replace an existing sign in the same location as one currently exists now.

- E. Is the alleged difficulty self-created?

We find the answer to this question is yes. Although the sign does have to be of a certain size to be visible to passing motorists, there is additional text on the sign that could be removed. Although such text exists now, which is why we are not raising issue, it still seems small and unnecessary, which could result in a slightly smaller sign if removed.

- 12. **Minimal Variance Requested.** In addition to our review of the five factors and balancing test, we must also determine if this requested variance is the minimum variance necessary and adequate to accomplish what is requested by the applicant.

We find the answer to this question is yes. Although some text may be capable of being removed, the requested area variance does not increase or enlarge the existing sign. The proposed sign is replacing an existing sign in its exact location, and for the same size that exists presently on the Property.

NOW, THEREFORE BE IT RESOLVED, based on all of the facts described above and upon the reasoning described above, as follows:

- Section 1. The ZBA hereby grants the variance requested by the Applicant, finding that the benefit to the Applicant outweighs the detriment to the health, safety and welfare of the neighborhood or community by such a grant. The sign is replacing an existing sign. The sign will be the same size as what currently exists, and in the same location. The text is also not changing or deviating from what is currently on the sign.
- Section 2. The granting of this variance is expressly contingent upon the proposed sign being constructed in conformity with the application and plans submitted.
- Section 3. The granting of this variance shall also be expressly contingent upon the Applicant's full payment to the Town of Rhinebeck of any and all fees and escrow

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deposits due in connection with this application in full compliance with Article XIV "Fee Reimbursement" of the Town of Rhinebeck Zoning Law. The variance shall not be deemed granted until all such fees are paid in full by the Applicant.

Section 4. The granting of this variance does not absolve the applicant from having to secure any other required permits and/or approvals.

Section 5. The area variance shall be null and void unless the proposed construction is commenced within one year of this resolution.

Motion to approve resolution by: _____

Seconded by: _____

		In Favor	Against	Abstain
Vote:	Scott Bergin	_____	_____	_____
	Kathryn Clark	_____	_____	_____
	Richard Kopyscianski	_____	_____	_____
	Joseph Kupiec	_____	_____	_____
	Brian Normoyle	_____	_____	_____

Result: Motion passes by the following margin:

Dated:

Filing: A copy of this resolution was filed in the office of the Town of Rhinebeck Town Clerk on ____ (date) __, 20__ by ____ (name) __, Secretary to the ZBA.

Copies of this Resolution were provided to:

- Town of Rhinebeck Planning Board
- Town of Rhinebeck Building Inspector
- Town of Rhinebeck Zoning Enforcement Officer
- Town of Rhinebeck WAC
- Dutchess County Planning Department

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Resolution of
The Town of Rhinebeck Zoning Board of Appeals

In the Matter of the Area Variance Application of Wireless Edge Towers II

ZBA Case No. 1053

Whereas:

I. Background

1. **Applicant.** The Applicant is Wireless Edge Towers II, LLC and Verizon Wireless (referred to hereafter as the “Applicant”). The Applicant is represented before this board by Robert Gaudio, Esq. of the firm of Snyder & Snyder.
2. **Property Involved.** This application involves property located at 3718 Route 9G in the Town of Rhinebeck, and which bears the Tax Parcel No. 135089-6171-00-860700 (the “Property”). The Property is owned by Ruge’s 9G Properties LLC. The Property is approximately 131 acres in area and is located in the ORP Zoning District.
3. **Description of Proposed Project.** The Applicant proposes to install a 200-foot monopole communication tower (cell phone tower) on the Property. The communication tower will be leased by Verizon, but will have collocation options available for other carriers. There are four (4) additional antennas proposed for collocation purposes. The Applicant is concurrently seeking a special use permit and site plan approval from of the Town of Rhinebeck Planning Board. Initially, the Applicant proposed a 150-foot monopole, designed as a tree with faux branches, on another property along Route 9G, but upon discussions with the Planning Board, the Planning Board suggested that the Applicant consider an alternative site, which is the current application before this Board.
4. **Area Variances Needed.** Pursuant to Town of Rhinebeck Zoning Law §125-68(BBB), communications towers or attachments thereto should be no higher than 10 feet above the average height of the existing tree canopy or buildings within 300 feet of the proposed facility. However, the height of a communications tower or attachments thereto shall not exceed the height limits of the zoning district in which the facility is proposed to be located, unless the facility is completely camouflaged in accordance with Subsection BBB(9)(a).

In the ORP zoning district, the height limitation is 35 feet. As the proposed communication tower is a monopole design, we have determined that 35 feet, the height limit of the zoning district, is the best method for establishing the height of the communication tower.

The proposed communication tower is 200 feet. Thus, an area variance of 165 feet is required.

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II. ZBA Review

5. **Timeliness of Appeal.** The Applicants filed an application with this Board on December 21, 2023, and have paid the requisite fee. The Applicants were first before the Town of Rhinebeck Planning Board for site plan and special use permit on April 03, 2023. At that time, the proposed project site was for 3866 Route 9G (Tax Map Parcel 125089-6171-00-695860). On November 20, 2023, the Planning Board took a straw poll to consider alternate locations. A majority of the Planning Board members stated that the Ruge’s property would be a good alternative site to consider. The Applicant filed their application before the ZBA pursuant to §125-66(E) and §125-75(B). It should also be noted that referral of this Application to the ZBA for area variances directly from the Planning Board to the ZBA without the necessity of a decision or determination of the Town Zoning Enforcement Officer (ZEO) is authorized by New York State Town Law § 274-a(3) (Site plan approval) and § 274-b(3) (Approval of special use permits). This application was accepted by this Board on January 18, 2024 and deemed complete.

6. **SEQRA.** This Application is simultaneously before the Town of Rhinebeck Planning Board. The Planning Board classified this action as an Unlisted Action. On _____, the Planning Board concluded its SEQRA review, finding _____.

7. **Referrals and Responses.**

The application was referred to the Dutchess County Planning Department pursuant to General Municipal Law §239-m on _____, Town of Rhinebeck Planning Board pursuant to on _____, and Town of Rhinebeck Waterfront Advisory Committee (“WAC”) on _____.

On February 5, 2024, the Town of Rhinebeck Planning Board initially stated they required more information and time to review the application in order to provide an informed referral response. On February 20, 2024, the Planning Board supplemented its response, and noted that the requested variance location is consistent with the Planning Board’s and Town’s desire to place telecommunications equipment in this area within the ORP Zoning District. The Planning Board noted that more detail and input is required to make a fully informed judgment on the variance request, particularly from some of the Planning Board’s consultants to determine if the tower could be shorter to provide the required coverage area.

8. **Public Hearing.** A public hearing on this appeal was duly advertised and held at Town Hall on February 21, 2024. During the course of the public hearing, we received several comments from members of the public, all voicing support for the proposed communications tower. Many of the comments expressed support due to the prospect of increasing coverage, noting that they feel the lack of cell service in this area is dangerous, particularly for cases of emergency. We also received a letter from the Rhinebeck Fire Department, dated February 20, 2024, which also expressed support for

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the proposed communication tower on the Property. The Rhinebeck Fire Department noted the benefit of improving emergency response capabilities, and enhancing public safety in Rhinebeck by filling gaps in cell coverage. One member of public asked if a light is required on this communication tower per FAA requirements. the Applicant responded that no FAA lighting is required for this communication tower. The Public hearing was continued to March 20, 2024, pending the Planning Board's SEQRA determination. No additional comments were received from the public. The public hearing was continued to April 17, 2024, pending the Planning Board's SEQRA determination. [Any additional public comments received.]

9. **Visual Impact Analysis.** On January 22, 2024, the Applicant conducted a visual impact analysis through a "crane test." On this date, a crane was positioned at the proposed communication tower location on the Property with its boom arm extended with a red flag over the approximate centerline of the monopole at a height of 200 feet. Photographs were taken during "leaf-off" foliage conditions within a two-mile radius of the proposed communication tower location, which included areas within the Town of Red Hook and the Village of Red Hook. A visibility analysis was provided by the Applicant upon the conclusion of the crane test.
10. **Site Visit.** On January 22, 2024, ZBA member Kathryn Clark visited the Property and the surrounding neighborhood during the Applicant's planned crane test to observe first-hand on-site conditions, property characteristics, setting, surrounding environment and the character of the surrounding neighborhood. The crane test demonstrated that the proposed monopole communications tower was not overtly visible from the immediate area, and was located far back from the road.
11. **Shot Clock.** The Federal Telecommunications Act of 1996 ("TCA") requires local municipalities to act on applications for a wireless telecommunications tower "within a reasonable period of time...taking into account the nature and scope of the request." This limitation on the time allowed for review is what is commonly referred to as the "Shot Clock." The Federal Communication Commission ("FCC") has issued rulings as to what constitutes a "reasonable period of time." For new telecommunication tower applications, the FCC has stated that the "reasonable time period" for reviewing applications is presumptively 150 days. While this application has not been in front of the ZBA beyond that period, the Applicant has extended the Shot Clock time period during the Planning Board's until April 15, 2024.

III. Findings of Fact & Conclusions of Law

12. The Applicant is a "public utility" for purposes of zoning pursuant to the case. *Cellular Telephone Company v. Rosenberg*, 82 N.Y.2d 364 (1993).
13. In contrast to the typical area variance application, a "public utility" applicant must demonstrate three factors in order to meet the public utility area variance test. An applicant must demonstrate:
 - A. that there are gaps in the service that need to be remedied;

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- B. that the proposed facility will remedy those gaps; and
- C. that the facility presents a minimal intrusion on the community. The basis and rationale for establishing this test are “where the intrusion or burden on the community is minimal, the showing required by the utility should be correspondingly reduced.”¹

14. **Consideration of the Three Factor Public Utility Area Variance Test.** In our determination, we have considered the three factors as stated above as follows:

- A. Are there gaps in the service that need to be remedied?

We find the answer to this question is yes. It is well known on our Board, from personal knowledge, and from the comments received from the public, that there are gaps in coverage and capacity in the Town of Rhinebeck. The comments we received during the course of the public hearing, including from the Town of Rhinebeck Fire Department, indicate that there are gaps in service that need to be remedied, and we agree.

- B. Will the proposed facility remedy those gaps?

We find the answer to this question is yes. The Applicant has provided a Radio Frequency (RF) analysis to demonstrate the gap in service in the area based on both coverage and capacity. The RF analysis submitted by the Applicant has demonstrated that coverage will be improved by the proposed facility. This has been demonstrated by the RF maps provided in the application which show the improved coverage based on the proposed facility.

- C. Will the facility present a minimal intrusion on the community?

We find the answer to this question is yes. The proposed communications tower is proposed in the ORP zoning district, which permits these facilities with the issuance of a special use permit and site plan approval from the Town of Rhinebeck Planning Board. As stated in the Planning Board’s referral comments, the ORP is where the Town desires to place such facilities. Although the height is large, numerically, it is set back a considerable distance from the road, and is surrounded by existing vegetation. Utilizing this location, with the distance it is setback from the road, is a good use of the Property and a suitable location for the proposed communication tower. When visiting the Property during the crane test, it was clear that the communication tower would not be obtrusive to the community. The monopole design, which will be painted brown, helps to further reduce visibility in the surrounding area. There is no FAA lighting required for this communication tower, further reducing potential visibility impacts.

NOW, THEREFORE BE IT RESOLVED, based on all of the facts described above and

¹ *Matter of Consolidated Edison Co. of N.Y. v. Hoffman*, 43 N.Y.2d 598 (1978).

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upon the reasoning described above, as follows:

- Section 1. The ZBA hereby grants the variance requested by the Applicant, finding that the proposed communication tower at 200 feet will remedy existing gaps in coverage in Rhinebeck. The slim monopole design, painted brown, presents a minimal intrusion on the community while providing a benefit for increased coverage and capacity in the area. The communication tower is setback from the road and surrounded by existing vegetation and trees. No FAA light is required for the communication tower, further reducing potential visibility impacts.
- Section 2. The granting of this variance is expressly contingent upon the following: [list any conditions]
- Section 3. The granting of this variance shall also be expressly contingent upon the Applicant’s full payment to the Town of Rhinebeck of any and all fees and escrow deposits due in connection with this application in full compliance with Article XIV “Fee Reimbursement” of the Town of Rhinebeck Zoning Law. This variance shall not be deemed granted until all such fees are paid in full by the Applicant.
- Section 4. The granting of this variance does not absolve the applicant from having to secure any other required permits and/or approvals. The proposed structure must be constructed in conformity with the application and plans submitted, subject to any additional requirements and conditions from the Planning Board.
- Section 5. The area variance shall be null and void unless the proposed construction is commenced within one year of this resolution.

Motion to approve resolution by: _____

Seconded by: _____

	In Favor	Against	Abstain
Vote: Scott Bergin	_____	_____	_____
Kathryn Clark	_____	_____	_____
Richard Kopyscianski	_____	_____	_____
Joseph Kupiec	_____	_____	_____
Brian Normoyle	_____	_____	_____

Result: Motion passes by the following margin:

Dated:

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Filing: A copy of this resolution was filed in the office of the Town of Rhinebeck Town Clerk on ____ (date) __, 20__ by ____ (name) __, Secretary to the ZBA.

Copies of this Resolution were provided to:

- Town of Rhinebeck Planning Board
- Town of Rhinebeck Building Inspector
- Town of Rhinebeck Zoning Enforcement Officer
- Town of Rhinebeck WAC
- Dutchess County Planning Board