DUPAGE COUNTY

BUILDING & ZONING DEPARTMENT

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Building Division
Zoning & Planning Division
Environmental Division

July 24, 2023

TO: DuPage County Building Board of Appeals

FROM: Jim Stran, Building & Zoning Manager

RE: Appeal of Building Official's Decision Regarding Denial of VB BTSII, LLC's Amended Building Permit Application

On June 26, 2023, the DuPage County Building & Zoning Department received an "amended building permit application" (*see* materials attached hereto) from Vertical Bridge Development LLC ("Vertical Bridge"), seeking issuance of a permit to build an "access road" and 5G cellular tower in the Medinah Spring Valley Lake subdivision in Bloomingdale Township, Illinois.[1] As the Committee may recall, on November 23, 2022, Vertical Bridge previously appealed the Building Official's "initial" decision to revoke Vertical Bridge's original Building Permit, Number. T69474, to this Committee.

The Building and Zoning Official's initial decision to revoke Vertical Bridge's original building permit arose from the expiration of a prerequisite "access permit," that was issued by Bloomingdale Township. Specifically, based on the building plans Vertical Bridge has submitted to the County, posting an access bond and obtaining a road entrance (i.e., "access") permit from the Township is required by the DuPage County Building Code before a building permit may be issued. Under the Section 8-112.6 of the Code:

> "Access Drive and Culvert. No permit shall be issued for work requiring the posting of a highway or culvert bond until satisfactory proof has been submitted that approved cash bonds have been posted or a waiver thereof has been given by the highway authority having jurisdiction."

During the review process for Vertical Bridge's initial, July 8, 2022, permit application, Vertical Bridge had originally provided the County a copy of a receipt from Bloomingdale Township demonstrating it had obtained an approved access bond and road entrance permit from Bloomingdale Township—the highway authority having jurisdiction. Under the belief that there existed an approved bond and road entrance permit, the County approved and issued Permit No. T69474. On or around November 15, 2022, however, the County was notified by Bloomingdale Township that:

(i) Vertical Bridge's access bond had expired; and
(ii) a refund of the total bond amount had been sent to Vertical Bridge; and
(iii) Vertical Bridge had cashed the refund check.

Given this notification and based upon reliable information that there was no "current" approved bond and/or road entrance permit issued by the Township, the County revoked

[1] Vertical Bridge sent a second request to appeal on July 18, 2023, which is also included in the appeal packet.

Building Permit No. T69474. On December 6, 2022, this Committee denied Vertical Bridge's request to appeal the revocation.

Turning now to Vertical Bridge's current, June 26, 2023, "amended building permit application," the amended construction plans show that Vertical Bridge now intends to construct its proposed "access road" using asphalt as opposed to gravel. As such, the amendment to the construction plans submitted by Vertical Bridge does not by itself contain any changes which would prevent approval of a permit. However, the remaining circumstances surrounding the amended permit request (e.g., the continued absence of an "approved bond or waiver" from the Township, as is required by the Building Code) remain largely unchanged.

While Vertical Bridge's amended permit request indicates it has submitted checks amounting to $7,500.00 to Bloomingdale Township, it has not provided any documentation showing *approval of an access bond or a waiver thereof…by the highway authority having jurisdiction* (i.e., a receipt *from the Township* showing that that Vertical Bridge has posted an "approved access bond" and has been issued "a road entrance permit"). Nevertheless, Vertical Bridge's amended permit application now asks that that the County consider the Code's Section 8-112.6 "Exception" to issue a building permit <u>in the absence of an approved access bond and/or waiver from Bloomingdale Township</u>.

The Exception under Code Section 8-112.6 reads as follows:

> "On such permits that are able to be issued immediately on site by field personnel and where the proposed project will have no impact on access drives and/or culverts, a written notarized affidavit from the property owner, assuring the above cash bond or waiver will be obtained from the highway authorities having jurisdiction before any delivery of construction materials and/or commencement of construction, may be accepted prior to the issuance of such permit."

Based on the materials Vertical Bridge has submitted to the Building Official contained within its successive, combined "amended building permit application" and request to appeal, the Official has found (*see* Building Official's 7/10/23 Decision, attached) as follows:

"It is the determination of the department that VB BTSII, LLC's amended permit application for a cell tower and access drive requires review by multiple disciplines, including but not limited to the Building Division, Zoning Division, and Stormwater Management department, as well as the Local Fire district and Bloomingdale Township, before a building permit may be issued.[…] Therefore, application of the Code's Section 8-112.6 Exception is not appropriate for this project as the permit is **<u>not</u>** *able to be issued immediately on site by field personnel*." (Bold/brackets added).

"Additionally, based on both the original and amended construction plans submitted by VB BTSII, LLC, the proposed entrance for the project […] **<u>would</u>** *have an impact on the access drive and/or culvert* [….] As such, the exception cannot apply to a commercial project of this nature

and description. County staff are not authorized to issue the permit [under the Exception] based on the contents of VB BTSII, LLC's amended permit application." (Bold/brackets added).

"Based on the amended permit application as submitted, DuPage County Building Code, Section 8-112.6: Access Drive and Culvert, remains applicable to VB BTSII, LLC's proposed construction project, and submittal of the approval of a bond or waiver from the highway authority having jurisdiction to the County by VB BTSII, LLC will still be required before a building permit may be issued."

Given the above, it is the recommendation of this Building Official that Vertical Bridge's appeal be denied.

Regards,

Jim Stran
Building & Zoning Manager
DuPage County Building & Zoning Department