

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday October 13, 2015
7:00 p.m.

Chairman Daniel Michnik called the meeting to order at 7:00 p.m.

Zoning Board of Appeals members present:

Chairman Daniel Michnik	Vice-Chairman Ryan Mills
David D’Amato	Patricia Burkard
Gregory Thrun	Richard McNamara

Town Officials present:

Director of Community Development James Callahan
Deputy Town Attorney Steven Bengart
Councilman Bernard Kolber

Motion by David D’Amato, seconded by Richard McNamara, to **approve** the minutes of the meeting held on September 8, 2015, as written.

Richard McNamara	Aye	Gregory Thrun	Abstain
Patricia Burkard	Aye	David D’Amato	Aye
Ryan Mills	Aye	Daniel Michnik	Aye

MOTION CARRIED.

Other interested parties present:

Robert Brenner	Brett Morgan	Patrick Botimer
Angelo Natale	Sandra Summers	

Old Business

Appeal No. 1

Upstate Cellular Network
Restricted Business

Requests the Board of Appeals approve and grant:

- 1) A 20’ variance to allow for a 120’ tall commercial cellular tower.
- 2) A 46’ variance to allow for a 74’ setback to lot line.

Both requests apply to 7377 Transit Road.

Appeal No. 1 is in variance to §173-4(D) and §173-5(C)(3)(a).

DISCUSSION:

Robert Brenner from the Law Firm of Nixon Peabody is present on behalf of Verizon Wireless. Brett Morgan from Aerosmith Development is present as well, he is a consultant assigned to the project by

Verizon Wireless. Also in attendance is Patrick Botimer, a tower engineer from Armor Tower. Mr. Brenner noted that at the June 9, 2015 meeting the application booklet, dated May 4, 2015, was discussed. There were two (2) issues that needed to be addressed, a supplemental application dated September 21, 2015 was submitted that addressed those issues. Mr. Brenner referred to the documentation, specifically tab "O" which is proof of land owner consent to the application. There was a question as to whether the underlying land owner had consented to the Verizon Wireless application for the extension. Verizon Wireless worked with the tower owner after the meeting and, in turn, the tower owner worked with the underlying land owner to have the consent form signed, that form is now on file under tab "O".

Mr. Brenner then referred to tab "P" which is a structural certification analysis with wind speed documentation relating to the tower extension. This was requested by the Board. The design of the tower, as it is currently proposed, in the unlikely event that the tower failure caused the tower extension and the other sections of the tower to fall, would not fall beyond the parcel lines.

Mr. Brenner said the final concern was if the existing tower was complying with the Town's inspection requirements. Exhibit "Q" has been submitted and is documentation to that effect.

Mr. Thrun referenced item "O" and asked if the owner consented to the changes. The form in item "O" indicates that the Zoning Board of Appeals members can access the property in question, it does not give the land owners consent for the changes being proposed. Mr. Morgan said SBA worked with the underlying landowner and gained consent to do the upgrades. Mr. Thrun said that is not what the letter says. Mr. Morgan said that is what he was given stating the consent. Deputy Town Attorney Steve Bengart asked if an agreement was entered into. Mr. Morgan said they do not have to enter into an agreement, it was consistent with the existing agreement that the underlying land owner has with SBA. Mr. Brenner said that if the Board wants additional documentation, perhaps a letter from the land owner, or the land owner's signature on the plans, as a condition of the approval, the applicant will comply with that condition.

Mr. Thrun referred to item "Q" on the second page of the TIA inspection report and asked if these items are what was found as deficiencies of the tower, and will they be rectified prior to any changes or modifications. Mr. Morgan referred to the second part of that report which is a maintenance completion report that shows the deficiencies have already been taken care of.

Mrs. Burkard voiced her concern regarding Mr. Binner's lease. Mr. Brenner said when Mr. Binner originally signed the lease it had an exhibit in it that contemplated a 150' tower extension at the time. Mrs. Burkard assumed that since Mr. Binner is not present at this meeting, it is not an issue. Mrs. Burkard asked for details on what will happen if the tower collapses. Mr. Botimer said the way the tower is designed is there is a flange connection about mid-height, it is called a break point, which is the highest stress point of the whole structure system. In the event of a catastrophic wind event the tower could break at that point and fall right next to the tower and stay within the property area. The applicant is not aware of any further neighbor concerns since the last meeting. Mrs. Burkard said she read the documentation from 2005 where it was indicated that it could be extended to 110', but the proposal is for 120'. Will this cause any other problems? Mr. Brenner said what Verizon does when they look to pursue an extension is a complete structural analysis, which was done with this proposal and it confirms that it can be extended to 120'.

Mr. Mills asked the applicant what the next plan would be if this variance was denied. Mr. Brenner said they would construct another tower within the narrow search area that is contained in the RF report. The reason why the existing tower is being pursued is because Verizon and other carriers look at all costs and are willing to co-locate in lieu of building a new monopole or free-standing tower within a close proximity

to an existing cell tower. In most cases the co-location prevails if the tower can handle it. This tower can handle it because co-location was envisioned and contemplated originally. The foundation was built to accommodate co-location. Mr. Mills asked if there is any additional EMF or radiation with this proposed addition. Mr. Brenner referred to the application, Exhibit "K", which includes an EME (Electro-Magnetic Emissions) Study. This is a report by a third party and it confirms that there are no health effects perceived to be associated with the facility, the addition to the tower operates well within FCC thresholds and would not create any issues.

Chairman Michnik asked if the applicant explored additional sites. Mr. Brenner said if there are tall structures or other towers in the area they do not explore raw land builds. They were fortunate enough to find an existing tower in their search area to co-locate on. Chairman Michnik asked if there is a law that states it is better to extend a tower. Mr. Brenner said the NYS Law does not specifically address this, however in the Tax Payer Relief Act 2012 of the Federal Law, there is a provision in Section 6409(a) which favors co-location and that section says that municipalities, to the extent that there is a colocation opportunity at an existing base station, those opportunities should be preferred and approved by local governments in connection with wireless deployment of a network structure throughout the country. Chairman Michnik asked how close Mr. Binner's building is to the pole. Mr. Brenner said the structure is designed to fall within the 70' radius, Mr. Binner's building is well in excess of 150' outside of that area. Chairman Michnik asked about the structures to the north and south. Mr. Brenner said, again, the designated fall zone is 70', there are no neighboring structures within that area. Chairman Michnik asked about the effects of the additional height on the neighboring property owners; will it impact the value of surrounding property. Mr. Brenner said there will be no effect on the adjacent lands due to the way the tower is designed to collapse should it fall. There are recent studies that show wireless facilities do not have an impact on neighboring property values; people have become accustomed to the facilities.

Mr. Callahan asked if the applicant notified the neighbors of this meeting. Mr. Brenner said they were not aware that they had to re-notify the neighbors for this meeting. Deputy Town Attorney Steve Bengart referred to item #5 under the Application Process which states it is the applicant's responsibility to submit "Neighbor notification letters from adjacent neighbors indicating they are aware of your request and hearing time." Mr. Brenner said they did not notify adjacent neighbors of this meeting.

The discussion on this agenda item is adjourned at the request of Deputy Town Attorney Steve Bengart. He and the applicant left the conference room to discuss the matter further.

Mr. Brenner said he will re-advertise the meeting and requested that this agenda item be tabled. It is clarified that the hearing will remain open.

ACTION:

Motion by Ryan Mills, seconded by Daniel Michnik, to **table** Appeal No. 1 under Old Business leaving the public hearing open.

ON THE QUESTION:

The applicant is in agreement to the motion and asked if there are any other questions that need to be addressed by the structural expert. Mr. Mills voiced his concern noting that the neighbors may have further questions upon being notified again, but they may not want to attend another meeting. Mr. Botimer will be in attendance at the next meeting.

Gregory Thrun	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

New Business

Appeal No. 1

Angelo Natale
Residential Single Family

Requests the Board of Appeals approve and grant:

- 1.) A 1,430 sq. ft. variance to allow for a 1,630 sq. ft. detached accessory structure.
- 2.) A 10.5' variance to allow for a 26.5' tall detached accessory structure.

Both requests apply to 9312 Emerald Lane.

Appeal No. 1 is in variance to §229-55(H) and §229-55(E)(2).

DISCUSSION:

Angelo Natale is present. He submitted three (3) neighbor notification forms, they are on file. Mr. Natale explained that he would like to put a detached pool house/garage/workshop area located on the southeast corner of his house. The proposed structure is approximately 1200 square feet and will have two (2) front garages. The same type of material will be used that was used to build the house. The workshop area for Mr. Natale to use will be placed in the back of the structure, he builds small things for his daughter. The structure will not be used as living quarters and there will be no business operated out of the structure, Mr. Natale said it would be acceptable if these statements were made conditions of the approval.

Mr. D'Amato asked if the Mr. Natale could live with anything smaller than what is being proposed. Mr. Natale said it was bigger, he actually brought it down in size.

Mr. Thrun asked if it is a two-story structure. Mr. Natale said there are stairs to go up to the second floor which will be used primarily for storage. Mr. Thrun asked if the height can be lowered. Mr. Natale said this is what they came up with to meet the design needs. He said there is a similar pool house two (2) doors down from him. The patio area will be open and tied into the pool area. Mr. Thrun asked who owns the property south of Mr. Natale's. Mr. Natale said Carl Binner owns that property and there is a signed neighbor notification form from him on file.

Mrs. Burkard referred to the drawing of the front/north elevation and said that is what will be seen when Mr. Natale pulls in his driveway. Mr. Natale said that is correct.

Mr. Mills asked what size the property is. Mr. Natale said it is just over three (3) acres in size. The principle residence is 5,000 square feet. Mr. Mills asked what the square footage of Mr. Santoro's pool house is, Mr. Natale does not know that square footage. Mr. Mills referred to building elevations titled A-2.0 drawn by KCB Architecture and asked if that is how it is going to look when it is built. Mr. Natale said yes. Mr. Mills asked if dormers will be used. Mr. Natale said he does not know at this point. The structure will match the house. Mr. Mills asked if there are any energy efficient features on the structure. Mr. Natale said he is preparing to make the entire house solar, the proposed structure will be solar as well.

Chairman Michnik asked if he will be cutting into some of the woods. Mr. Natale said yes, some trees will be taken down to make room for the structure. The driveway will go right to the structure.

Mr. Mills referred to 5795 Thompson Road and said if a house was placed on that property it would be set further up, Mr. Natale said probably. Mr. Mills clarified that to put another house anywhere close to the proposed structure it would require an open land development. Mr. Binner owns approximately seven (7) acres.

ACTION:

Motion by David D'Amato, seconded by Patricia Burkard, to **approve** Appeal No. 1 as written.

ON THE QUESTION:

Mr. Mills noted what distinguishes this request from others is that Mr. Natale owns a large parcel in proportion to the size of the accessory structure as well as his principle residence is larger than average. There are no immediate neighbors that this is impacting, there is a lot of foliage and vegetation on the sight to mitigate the enhanced size. Mr. Mills said he believes this is appropriate for a variance.

Mr. D'Amato modified his motion noting that the approval is based on the conditions that the structure will not be used as a residence for rental nor will a business be operated from the structure. Mrs. Burkard agreed to the modification. Mr. Natale is amenable to the conditions listed.

Gregory Thrun	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Appeal No. 2

Sandy Summers
Residential Single Family

Requests the Board of Appeals approve and grant:

- 1.) A 3.7' variance to allow for an 8.8' side yard setback for the construction of an attached garage.
- 2.) A 5' variance to allow for a 20' rear yard setback for an addition to the principle structure.

Both requests apply to 4054 Foxwood Lane.

Appeal No. 2 is in variance to §229-52(B) and §229-55(C) *Map covered rear yard setback of 25'.

DISCUSSION:

Sandy Summers is present. There are two (2) neighbor notification forms on file.

Ms. Summers explained the reason for her request is that her mother had a stroke a few month ago that rendered her unable to go back to her current residence. She has been living with Ms. Summers since her discharge from the medical facility, however all the bedrooms and full bathrooms are upstairs. Ms. Summers's mother is currently unable to climb stairs. They temporarily made room on their main level for

her. The problem is that there is only a half bath on the main floor, which is not big enough to accommodate her needs. Her mother would like her own bedroom furniture and some other items from her house to be with her, since the house is currently up for sale. They are proposing an addition off the back of the home, with a couple rooms that would allow her to have her furniture. It would give her a separate area with a full bathroom, which is ADA compliant. This is so she can live with Ms. Summers permanently.

Mrs. Burkard asked if the siding is going to match the existing house. The applicant replied yes. There will be an exit. Mrs. Burkard asked if the addition will be a bathroom and a bedroom. Ms. Summers said it will be a full bathroom and two small bedrooms in case they need someone to stay back there. There will not be a kitchen.

Mr. Thrun asked if the proposed garage addition is for an additional parking space. Ms. Summers said it will be for her mom's car. Mr. Thrun pointed out that there is a white picket fence on the property line between the applicant's property and 4060 Foxwood Lane that will obstruct the view of the addition.

Mr. Mills asked if there are any sketches. The applicant said not yet; he went on to say that the front of the proposed structure will look exactly like the front of the house, brick on the front and white vinyl siding around the back. The addition will be one floor. Mr. Mills asked if the applicants explored other options such as finding a suitable existing residence. Ms. Summers said yes they looked in the area. They want to stay in Clarence because they have a son attending the Clarence schools and geographically they are currently in a convenient area for doctor's appointments and physical therapy for both her mom and herself, which is right across the street at the Harris Hill Nursing facility. They looked on County Road but those houses either needed work, needed to be converted, or were not in their price range. The ones that had in-law set-ups were attached to a pool, which was not what the applicants were looking for.

Chairman Michnik asked who is drawing up the plans and how soon will they be finished. The applicant said Brian Heffinger is doing the plans and he could draw something up within two weeks of this meeting. The applicant said they would like to break ground before the frost hits the ground. The applicant noted that both neighbors are happy they are staying in their home.

ACTION:

Motion by Daniel Michnik, seconded by David D'Amato to **approve** Appeal No. 2, as written.

Gregory Thrun	Aye	Patricia Burkard	Aye
David D'Amato	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Meeting adjourned 7:54 p.m.

Carolyn Delgato
Senior Clerk Typist