

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday November 10, 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 Ryan Mills, to **approve** the minutes of the meeting held on October 13, 2015, as written.

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

MOTION CARRIED.

Other interested parties present:

Patrick Botimer	Brett Morgan	Robert Brenner
Ferdinando Cimato	Charles Riggio	Eric Friedman
Dean Davis	Salvatore DiNatale	Margaret Kasprzyk
Peter Morgan		

Old Business

Appeal No. 1 (from June 2015)

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 and explained that a supplemental consent letter has been provided per the Board's request, the document is on file. The underlying landlord has given his consent for the project. At the Board's request, the applicant re-noticed the proposal and sent notices via certified US mail to the adjacent landowners 10 days prior to the hearing; copies of the certified receipts are on file. Mr. Brenner referred to §173-7(d) of the Town Code and said this project fully complies with the code. He also noted that there are three (3) setback variances that the applicant is requesting, the most significant one is listed above. There is also the request for the height variance. He referred to Exhibit B which outlines the radio frequency case and the need for the proposed site. There is propagation mapping in connection with the proposed height. In Exhibit P there is a structural certification letter from Armor Tower certifying that the tower extension is designed, in the unlikely event of a tower failure, in such a manner that the tower would collapse within the existing parent parcel. A tower extension was fully contemplated 11 years ago when the site was initially reviewed. The 2004 construction drawings that were submitted to the Town show a fairly significant tower extension shown. He suspects that at the time the project was originally reviewed there was discussion between the applicant and the Town about co-locating facilities to eliminate the number of towers in the area and the proliferation of monopoles in the immediate vicinity.

Mr. Mills asked if there is any possibility under any scenario reasonably that it would fall outside the subject parcel. Patrick Botimer with Armor Tower said the tower is designed with two weak links at the flange locations, so that in the event of a catastrophic wind event the tower would fail at those points and the upper portion would fall next to the still standing, less loaded section. It is unlikely that the tower would fall on adjacent property. If the wind speed is going to be an issue, the residential homes will be a bigger issue than the tower because the towers are designed with extra safety factors, more than the residential homes. The tower would collapse, it is unlikely that it would separate from the main pole.

Chairman Michnik asked if the applicant tried to contact any adjacent property owner to lease additional land from them. Mr. Brenner said they do not believe any additional property is necessary. They have been in discussions with adjacent landowners; those landowners reached out to the applicant and made offers for easements and land purchases. However, besides the fact that the applicant does not believe they need additional property because of the design of the tower, the offers were unreasonable.

Mr. D'Amato asked if Mr. Botimer is aware of any towers that have fallen. Mr. Botimer said he has been in the tower design, manufacturing and fabrication business for 27 years and has not seen one tower fail.

Salvatore DiNatale owns the land to the south of the project site and said he has a huge problem with this tower. He said there are issues with the existing tower, it is taller than it is supposed to be, by 10'. The Special Use Exempt Permit that was given called for a 70' tower to be no more than 73' in height including the lightning rod. The tower is around 82'. If a 120' tower is built it would actually be about 130' including the lightning rod. Mr. DiNatale said it is evident in the reports that have been furnished that there are structural issues with the tower as it sits currently. Mr. DiNatale spoke with Mr. Botimer this week. Mr. DiNatale said the letter provided by Mr. Botimer does not bare the seal of a NYS Licensed Engineer with a signature. He asked if Mr. Botimer if he is a NYS Licensed Engineer. Mr. DiNatale went on to say that one of the requirements of the Special Use Exempt Permit was that the tower needed to be inspected by a licensed professional engineer every two (2) years and those reports have to be furnished to the Town Engineer, this has never happened. There are reports on file from people who are implying that they are engineers. Mr. DiNatale referred to the NYS Education Law §145 which states the only persons that can

present themselves as professional engineers are licensed professional engineers in NYS. Presenting yourself as an engineer when you are not is a Class E Felony. The paperwork that was submitted by the applicant bares nothing on it that it has been prepared by a professional engineer, the inspection reports are the same and actually show issues with the anchor bolts. Mr. DiNatale talked with a professional engineer that he knows who said in this type of situation there was corrosion on the anchor bolts being below the tops of the nuts, the water then goes into the anchor bolts. The engineer recommended an ultra-sonic inspection of the anchor bolts. Mr. DiNatale said this is a predominantly residential area with a few businesses scattered throughout. He thinks it is fair to say that the Cimato property in the back will be developed as residential single family homes. He thinks 100' is fair; having a required setback is fair. He said this was told to the applicant in 2004 that the Town Board at the time felt it was a self-created need and told them to go back to the drawing board. The applicant decided to go forward, even though they had other options at the time, and build an 80' tower with the limitation that went with it. He does not believe that a 50' extension is necessary, he has many pictures of cell towers that have racks upon racks two feet (2') apart all the way up the towers. To put another carrier 50' up is creating 30' of vertical real estate. SBA Communication owns the tower, they are a publicly traded NASDAQ Corporation and own over 26,000 cell towers, they develop vertical real estate. This should be treated no different than any other land development issue in the Town with the limitations that go with putting a house on a lot, you don't put two (2) houses on top of each other on the same lot. SBA develops towers and lease and rent space, the object of a 120' tower is to make an excuse to put someone way at the top and establish 30'-40' of real estate to rent out to someone else. SBA Communications bills itself as the leading provider of antennae space. 90% of the studies favors the party paying for this stuff. He finds it hard to believe that they can't find a way to build the tower within the guidelines. A 25 foot easement may or may not interfere with his plans but it is something may be willing to entertain, but 46' is ridiculous, it is a third of the way into his property. That is a third of the way into his property. In a lot of municipalities they require a fall zone of one and a half times the tower length. Towers don't fall straight down, sometimes the momentum carries them away from the center point. He was told by a gentleman at this meeting that this is a theoretical design, there has been no testing of towers of this type to prove that it will or will not do what it was intended to do. A 50' tower is not going to come to a nice soft landing, it's going to swing into itself. A piece will come unattached and become a projectile and end up 50'-100' down the road. Mr. DiNatale said the representative has no way of predicting what the tower will do; he is not even an engineer. Mr. DiNatale referred to the drawing and said it clearly states that the anchor bolts need attention. There was a hole at the top of this thing for 10 years and water has been going down into the tunnel into the tower. There is no way of knowing if there is standing water and how long it has been there. This TIA Inspection or FDH doesn't bear the stance. In NYS it's not even legal to do business this way. The law specifically says that you have to have a professional engineering license. Mr. DiNatale referred to the report which specifically stated that base bolts do not extend to top of locking nuts creating low spots for water collection, and rust formed on inside of nuts. Resignation, remove rust, put a little cold galvanizing on there and fill with silicone. He doesn't a little paint and some caulk will hold a 100' tower in place. That's ridiculous. Mr. DiNatale said he has been referring to the supplemental material received by the Town on September 22nd, Exhibits O, P and Q. He referred to Exhibit P, the Structural Certification Letter, and said again no professional engineer's signature/seal which is required by NYS Law.

Chairman Michnik asked Mr. Botimer if he is a certified professional engineer. Mr. Botimer said he is not but they have professional engineers on staff that would be willing to stamp that letter.

Mr. DiNatale has owned his property for 15 years, he did not oppose the tower in the first instance.

Mr. Thrun referred to the report which indicates that every two (2) years it (the tower) should be inspected and reports should be sent to the Town. He asked if these reports have been received by the Town. Mr. Callahan said nothing had been reported to his department. Mr. DiNatale said he spoke with the Building Department on Monday and they had no report either. Mr. Thrun said that is a violation of the terms of the agreement previously established.

Mr. Brenner reiterated what he said in his opening remarks with reference to the 2004 plans, there is a proposed tower elevation design showing at that time just a hypothetical proposed 40' monopole extension and was part of the public record with the Town. Mr. Callahan clarified that the 40' extension was not part of the request at the time, the request was for the tower that is there now. Mr. Brenner concurred and went on to say that the tower was clearly designed to accommodate a future extension. The location of the approved tower and setbacks took into consideration the future extension and were all shown on those plans. Mr. Thrun said at the time it was theoretically at 40' but it was allowed for what it was allowed for. Forty extra feet, even though it might have been built to carry that load, was not proposed, it was not allowed. It is at the height that it was permitted for. Mr. Brenner understands and said that is why they are asking for the variance.

Mr. Brenner referred to the inspection report and said the speaker was alluding to some of the deferred maintenance issues and Exhibit Q of my supplemental submission from September 21st. The final page shows the maintenance report and shows that all those issues were addressed. With reference specifically to the bolts, the report shows that they were cleaned, rust was removed and they were prepped for silicone as the report called for. Additional details can be provided to the Board if they wish.

Mr. Thrun asked if the required inspection of every two years was done.

Mr. Brenner wanted to state clearly that with respect to the two year inspection report and the existing tower height, Verizon Wireless is a third party to this entire situation. Those concerns are clearly a code enforcement issue. He suggested, as a code enforcement matter, the Town seek the appropriate reports from the tower owner and that this application be judged on its individual merits because those aren't issues that were caused by Verizon Wireless. Verizon does not own this tower, it is merely licensing the right to construct its array on the extension. It does not own this tower and will not own this tower. It is not responsible for the maintenance.

Mr. Thrun asked if SBA should be the applicant asking for this variance, since they own the tower. Mr., Brenner said no and went on to say they have provided evidence of land control in their submission. Mr. Thrun asked how the Town will know that SBA is doing the maintenance. It is not up to Verizon to force them to do that. So if it falls into decay, Verizon will be held harmless and the Town will still be dealing with that situation. If the tower is not being maintained properly, what the representative is saying about how it will break may not hold true.

Mr. D'Amato said it was Verizon's responsibility to check into the inspection reports when they presented the request to the Board to make use all this Intech was done and carried on over the years. Mr. Brenner acknowledges that it hasn't been done and now they have public utility need for a facility and they are trying to work with what is there to the extent that they can furnish additional inspection reports, they can ask SBA to do that and the Board can condition the approval on our doing that. Verizon is coming to the table now to satisfy a need it has. They have worked with SBA to obtain the report that was submitted. They understand the Town's concern, but the fact is that they have pushed SBA on this issue, Mr. Brenner had talked to SBA about this and they are aware of the Town's concerns. Mr. D'Amato asked why the Board wasn't made aware of these issues before tonight. Mr. Brenner said it was discussed previously and

went on to explain that at the June 9, 2015 meeting there was a request for the applicant to furnish a tower inspection report, which was submitted by letter dated September 21st. With respect to inspection reports, prior to the report SBA furnished to Mr. Brenner, they were not aware it was an issue until this week and it was discussed with ZBA council this morning.

Mr. Thrun asked if the arrays are being tested, can they break off or shatter off and become projectiles? Mr. Botimer said no, the small components, the base, the hardware are not designed minimalistically for loading, there is a minimal size that is generally available so their capacity is much greater than their need. Mr. Thrun asked what the rating is on the components. Mr. Botimer said they are much stronger than the need. Mr. Botimer said he is a structural engineer, not licensed. Mr. DiNatale said that claim cannot be made in NYS and he accused Mr. Botimer of committing a Class E Felony. It is clarified that this meeting is to gather information for the variance request.

Mr. Mogan said on the topic of the inspection every two years, the tower was originally owned by Cingular Wireless which became AT & T Wireless. When it was originally approved in 2004 it was Cingular. SBA acquired it in 2008 and obviously was not aware that the Town requirement for the original approval was every two years. They have since reviewed the tower, made all the recommended improvements to the tower to bring it into compliance and going forward, now that they are aware of it, will be more than happy to provide an inspection every two years.

Mr. Thrun asked what action, if any, the Town takes if someone does not follow up on the inspections they are supposed to be performing. Mr. Callahan said if the Town is aware of it, certainly. It is part of the original SEUP and the Town Board would have some responsibility at that point to take some action.

Mrs. Burkard said she is surprised Mr. Binner is in favor of this after all that Mr. DiNatale has told the Board, she asked if he is paid rent for the tower. The answer is yes. She asked if the rent will be increased because the tower will be higher. Mr. Brenner does not know the specifics of the agreement because that is between SBA and Mr. Binner. Mrs. Burkard said there is no guarantee that it will be inspected in the future, the applicants are just saying it will. Mr. Brenner said the Town needs to require the tower owner to provide those inspections; SBA understands that is an obligation of theirs moving forward. Mrs. Burkard asked if the tower will be inspected by a professional licensed engineer. Mr. Brenner said it should be.

Mr. DiNatale asked why SBA wouldn't have a lawyer of their own to review the Special Use Exempt Permit before buying the tower. Mr. Morgan said when they are purchased they are purchased in bulk, they buy 100's if not 1000's at a time and they take them with what they are. SBA does not investigate them beforehand. Mr. D'Amato noted that it is SBA's responsibility to bring those towers up to code, and clearly this was not handled properly.

Mr. Brenner recaps Mr. D'Amato's concerns saying he (Mr. D'Amato) is concerned that the existing tower is not structurally sound and he would like a report furnished by a licensed P.E. demonstrating that it is. Mr. D'Amato said yes those are his concerns. Mr. Brenner said it would be easier for them to get that document out of SBA if that was made a condition of the approval. Verizon Wireless would be amenable to a condition that requires that report be furnished to the Town Engineer's satisfaction by a third party licensed professional engineer prior to the issuance of any building permit. Mrs. Burkard asked if there will be written proof contained in the report that the two year inspection requirement will be performed.

Mr. Mills referred to the comment made about the lug nuts being damaged at the base of the tower. It is not clear if the nuts within the tower are damaged because they are not visible. It appears that the exterior

was dealt with. Mr. Brenner asked if that issue can be made a condition of the approval; he wants to make sure the appropriate expert is addressing the concern. He agrees that an engineer should look at this.

Mr. Morgan referred to the supplemental paperwork submitted by Mr. Brenner and said the anchor bolts at the flange of the monopole do not protrude high enough that the water will not run off of the top of it, so there is an open space at the top of it where water can sit. They cleaned the top of that and put silicone on the top of it so water will now run off. It is not getting into the actual monopole that way it is the base flange here and it's the structural anchor bolts that go into the tower foundation. Mr. Botimer said the water sits on the bolts, it actually puddles in the nut, there is no way the water permeates the surface. Mr. Brenner said they can have the bolts looked at and certify that they are sound.

Mr. D'Amato referred to the TIA inspection report, tab Q, in which it is indicated that there is an opening at the top of the tower and wondered if something could fall down there and if it is supposed to be open. Mr. Brenner said the reason it looks that way is because this tower was designed for an extension, when the extension is built they can ensure that the top of the tower is closed off. However they will address the issue in the report. It is explained that any water that enters that opening in the top of the tower will travel down the pole and exit at the base, that is the way the flange is designed. A comprehensive inspection of the tower will be done to make sure all components pass a structural integrity analysis.

Mr. DiNatale stated all of his concerns again and said the applicant's approach has been very unprofessional and border line illegal.

Fred Cimato, from Cimato Enterprises, said his property is directly behind the cell tower. They also own, with their other partnership ACP, the property next to it. He went on to say that they were never contacted regarding an easement or purchasing his land, which was a statement made earlier in the meeting. Mr. Cimato said he owns many cell towers in WNY, the first thing they go after is looking at how they protect the residents for the fall zone, this is a major criteria. He is in construction so he understands how things fall apart and if the tower timbers down one way or another who is to say it would come down on his property. He is a developer, he does not know what he is going to do with the property yet but he does not want to be restricted because he would have to be so many feet from the property line, now it inhibits the use of his property. Mr. Cimato said he does a test bore for every residential lot they do to protect the foundation of the houses. He said the base of the tower has not been given the final blessing to say yes it meets all the criteria. He asked what the life span is of the tower. Mr. Cimato said he gets paid extra money for every co-locator that is put on the other cell towers that he owns, he assumes this is the same way. He wants to know how he will be protected as a property owner. They own almost 200 acres and have owned it for over 25 years. Mr. Cimato was aware of the original tower when it went in, he had no problem with the height nor the location.

Mr. Brenner said one of the Cimato's contacted a colleague of his back in May, Mr. DiNatale directly reached out to Mr. Brenner in July and again last Friday, so there were discussions with adjacent neighbors. The applicant will work to make sure a full structural analysis is done as a condition to any approval before any building permits are issued. With reference to how Mr. Cimato's property will be protected, Mr. Brenner said the tower has been designed so that it won't fall outside the bounds of Kitchen Advantage property.

Mr. Mills asked if there are plans for other carriers to utilize this additional space. Mr. Brenner referred to tab B, the Radio Frequency Report and Analysis, of the submitted materials and said when Verizon constructs a facility they always propose the minimum height necessary that they can prove from a radio

frequency perspective is needed in connection with Verizon Wireless' network. The 120' is the minimum height necessary to satisfy Verizon's public utility need. The extension is not being proposed to allow others to co-locate on the tower. Mr. Mills asked if the applicant would consent to a condition that there will be no other co-locators allowed on this extension. Mr. Brenner said cannot agree to that because it is not his (Verizon's) tower. Mr. Mills asked if Mr. Brenner could go back to the owner to see if they would consent to that. Mr. Brenner said he is not sure they would agree because they (SBA) may not want that encumbrance on the future marketability of the tower.

Mr. Cimato said if something fails who will be responsible, Verizon or SBA? Mr. Brenner said SBA would be responsible, they own the tower.

Mr. Mills asked what the insurance limit is that is carried on these towers. Mr. Brenner does not know but can obtain the information if the Board wishes. He noted that insurance is definitely carried on the towers.

Mr. DiNatale said how do we take an RF's Engineers report at face value that 120' is needed. Chairman Michnik explained that if it is stamped and authorized and the documents meet the requirements, he would say they would accept it.

Mr. Brenner said the 120' extension is relatively low in comparison to other facilities in the Upstate NY region.

Mr. D'Amato asked Mr. Cimato what the average tower heights are of the cell towers that he owns. Mr. Cimato said they range from 135' to 200'+.

ACTION:

Motion by Ryan Mills, seconded by David D'Amato, to **table** the request **and close the hearing** for Appeal No. 1 under Old Business so that the Board may take action concerning the environmental review. There will be no further testimony or evidence relating to this appeal. Prior to or during the next meeting the Board will complete the necessary requisite environmental reviews.

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

MOTION CARRIED.

ACTION:

Motion by David D'Amato, seconded by Gregory Thrun, to **initiate** coordinated review under the State Environmental Quality Review Act for Appeal No. 1 under Old Business.

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

MOTION CARRIED.

Appeal No. 2 (from July 1994)

Margaret Kasprzyk
Agricultural Rural Residential

Requests clarification of a previous Zoning Board of Appeals Approval granted on July 12, 1994 to construct a single family residence behind an existing single family residence located on the same parcel at 10280 Lapp Road.

See ZBA minutes of 7-12-94, 11-9-99, 12-14-99.

DISCUSSION:

Margaret Kasprzyk is present and asked if this was approved. Mr. Callahan explained that there is no file associated with the 1994 application. There are only minutes from the 1994 and the 1999 meetings. The minutes clearly identify that there was an approval for a single-family home, however the Building Department will not issue a permit because they don't have the requisite background information associated with that action. They wanted it to come back before the Zoning Board of Appeals just to re-verify that there was approval for a single family residence behind the current one on that property.

Margaret Kasprzyk said they currently have a 1,040 square foot house that is close to the road and surrounded on three (3) sides by Beeman Creek. They want to build a 1600 square foot ranch home behind the existing house. There used to be an old barn there but it has since been torn down. She has the requisite wetland report, septic report and drawings.

Eric Friedman, of Friedman Services, is the project manager and referred to the Drainage and Plot Plan of SBL # 30.00-2-9, Exhibit A on file.

It is clarified that neighbor notification forms are not required because the Town owns the surrounding property.

The existing house will be a workshop. Margaret Kasprzyk said there is 33' from the house to the barn, they specifically designed part of the proposed house so that the garage and the front door would be seen between that 33'. She recalled, from previous meetings, that the Board asked her to take out the front door and replace it with a picture window to make it look more like a barn but that it not in the minutes anywhere. She is planning to do this anyway.

Mr. D'Amato asked if the applicant has changed the variance request since 1994 or 1999. Mr. Friedman said he needed clarification on the setback before he can answer that question. Mr. Callahan clarified that the 120' setback, which is what was requested in 1994, is from the right-of-way. Mr. Friedman said they are not at that 120', they are at about 105', they are definitely under the 120'. Mr. D'Amato asked if the rest of the request is the same as what was asked for in 1994 and 1999. Margaret Kasprzyk said number 2 from the 1994 minutes can be eliminated because they are not asking to do the pond.

Mr. Mills asked the applicant if they can convert the front building to make it look more like an accessory structure and less like a house. The existing house and the barn alongside of it is cedar board and batten. There is a picture window and a front door on the house.

The workshop will be used for personal use only, no business will be operated out of the structure. Mr. Kasprzyk used to work for an electronic company, he is retired now and works on and tinkers with electrical

items for his personal use only. Mr. Kasprzyk asked about the wetlands around them and wondered if that determines the function of the pond.

Chairman Michnik asked what Mr. Kasprzyk tinkers with. Mr. Kasprzyk said he works on clocks, old toys and lamps. He likes to have a place where he can play. Chairman Michnik asked if the applicant would be amenable to a condition stating there is no business to be operated on the property. The applicant said he would not have a problem with that condition.

Deputy Town Attorney Steve Bengart asked the applicants if they would be amendable to a condition stating that the two houses couldn't be split. They agreed.

ACTION:

Motion by Gregory Thrun, seconded by Patricia Burkard, to **approve** Appeal No. 2 under Old Business with the following stipulations:

- that the front building eliminate the picture window and front door and make it look like the remaining barn next door and the rest of the siding so that there is no front entrance.
- No resident retail or commercial business can be operated out of that location and no signs are to be put up advertising any business.
- The home cannot be segregated from the secondary house; it must remain as one parcel.
- The pond is eliminated from the variance request.

ON THE QUESTION:

The applicant has provided documentary evidence as well as testimony that the Town of Clarence owns land surrounding the structures and there doesn't seem to be any neighbors adversely impacted in any way by this variance application.

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

MOTION CARRIED.

New Business

Appeal No. 1

Chuck Riggio
Commercial

Requests the Board of Appeals approve and grant a 4,131 square foot variance to allow for a 21,192 square foot lot located at 9059 Main Street.

9059 Main Street is a pre-existing non-conforming lot of record currently with 25,323 sq. ft.

DISCUSSION:

Two (2) neighbor notification forms are on file.

Chuck Riggio is present and explained that he wants the property line adjusted so it conforms more with how it is currently laid out. Recent events have forced the two properties to be deeded separately. He owns 9059, 9055 and 9051 Main Street. If he deeds the properties separately he can shop insurances better for the residentials and the commercials.

Mr. D’Amato asked if the landscaping is changing or if the parking will be bigger. Mr. Riggio said no, only the property line is changing.

Chairman Michnik asked what type of business is operated out of 9055 Main Street. Mr. Riggio said there is a fitness center, a pilates studio and a bicycle shop. He will not add more blacktop.

ACTION:

Motion by David D’Amato, seconded by Ryan Mills, to **approve** Appeal No. 1 as written.

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

MOTION CARRIED.

Appeal No. 2

Peter Morgan
Residential Single Family

Requests the Board of Appeals approve and grant:

- 1.) A variance to allow for a third accessory structure.
- 2.) A 952 square foot variance to allow for a 1,152 square foot accessory structure.
- 3.) A 6’10” variance to allow for a 22’10” tall accessory structure.

All requests apply to the proposed third accessory structure located at 5450 Thompson Road.

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

Richard McNamara recused himself from this agenda item and left the dais as the applicant is his neighbor.

DISCUSSION:

Peter Morgan is present and explained that he plans to retire in 18 months and he would like to build a woodworking shop with a man cave on the second floor.

Two neighbor notification forms are on file.

Mr. Mills asked if the applicant can decrease the square footage of the proposal and still achieve the necessary solitude. Mr. Morgan said he could reduce it to 20’ x 24”. Mr. Mills then asked about the height. Mr. Morgan referred the Board members to the plan he submitted entitled No.1152-1 by Behm Design and said that is the plan but there will be no apartment design on the second floor. Mr. Mills asked what the exterior materials will be. Mr. Morgan said he will do board and batten and stain it the same color brown as the house. He will not operate any type of business out of the structure. Mr. Mills referred to the plan

and noted the height is 22' 10", Mr. Morgan said he can change that. He can put a shed style roof on and rafters of the appropriate engineered strength, instead of trusses, to handle the local snow loads. There will be electricity in the structure but no plumbing. There will be a cold water line put in but nothing else. The driveway will not be extended to the proposed structure. He plans on keeping the two (2) existing storage sheds. Mr. Morgan clarified that the second floor will have no tenants, there will be no bedrooms, no kitchens, and it will not be an in-law apartment. He has lived there for fourteen (14) years. Mr. Morgan will do the construction himself. He is looking to pour the foundation next summer.

Chairman Michnik asked if 20' x 20' would work. Mr. Morgan said if the alternative is the Town says no to his request than he would say yes to reducing the size. Chairman Michnik said the applicant currently has three (3) accessory structures on his property, the code allows two (2) total. Chairman Michnik said the proposed structure at 20' x 24' is going to look very big back there on the property. He would prefer 20' x 20', which will still provide enough room for his shop and a chair and television on the second floor.

ACTION:

Motion by Gregory Thrun, seconded by Daniel Michnik, to **approve** Appeal No. 2, with the following conditions:

- the size of the structure is to be 20' x 20' maximum.
- there will be no business operated from the structure.
- the structure will not become an apartment, an in-law apartment or any rental unit.

ON THE QUESTION:

The height does not need to be addressed because it will decrease with the decrease in square footage. The structure will look similar to the other sheds on the property.

Deputy Town Attorney Steve Bengart said there are similar sized structures, if not larger, on the surrounding properties. The location of the proposed structure provides a visual blockage by the house and will not be an eyesore. There is an appropriate amount of foliage that buffers the neighbor.

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

MOTION CARRIED.

Meeting adjourned at 8:46 p.m.

Carolyn Delgato
Senior Clerk Typist