

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday June 12, 2018
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
Patricia Burkard	Richard McNamara
Jonathan Hickey	

Town Officials present:

Director of Community Development James Callahan
Town Attorney Lawrence Meckler
Councilman Paul Shear

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** the minutes of the meeting held on May 8, 2018, as written.

Jonathan Hickey	Abstain	Richard McNamara	Aye
Patricia Burkard	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Other interested parties present:

Joseph V. Valenti Thomas Klebes

New Business

Appeal No. 1
Settlement Agreement

Upstate Tower Co. LLC et al vs. Town of Clarence
et al, 8135 Sheridan Drive.

DISCUSSION:

Town Attorney Lawrence Meckler noted that this agenda item was previously approved by the Clarence Town Board and Planning Board. Upstate Tower and Blue Wireless came to the Town about a year and a half ago looking to place a 160 foot cell tower on private property which is located at 8135 Sheridan Drive, The Buck and Doe Shop. After nine 9 months of back and forth between the Town Board and Work Sessions, the Town Board kept asking for more information in respect to safety and to fall zone. Currently, Town Code allows up to a 100 foot cell tower on private property. Upstate Tower requested the Town Board refer the matter to the Zoning Board of Appeals. Mr. Meckler asked Upstate Tower if they went to the Zoning Board of Appeals and did not receive a favorable decision, would they accept that. They said they

want to reserve their rights. After nine months the Town is still asking for information but the company went dark and brought litigation to federal court for a mandatory judgement to allow a 160 foot cell tower. The Buck and Doe Shop has an agreement with Blue Wireless, the main issue is the height. Mr. Meckler went on to say they went to mediation, the Town hired outside counsel Steve Ricca. The case revolved around the fact that Upstate Tower/Blue Wireless did not exhaust their administrative remedies, because they never went to the Zoning Board of Appeals. The Federal Communications Commission's rules and guidelines would govern whether or not they can put up a 160 foot cell tower on private property. Even if it was successful in dismissing the case it would have come back to the Zoning Board of Appeals. If the Zoning Board of Appeals did not give them a variance they would go back to Federal Court. The only issues that could be addressed are the coverage issue and the safety issue. How is loss of coverage due to the height of the tower proved? The applicant provided a 100 page report regarding the safety of the height of the tower. The case could have been dismissed and their attorney's knew that it would have been dismissed based on procedural accounts, but they also knew that eventually it would be brought back to Federal Court and it would pass there. So as part of the mediation the height was reduced to 130 feet. Mr. Meckler knew they would not go any lower than that because a cell tower on Goodrich Road was recently approved to be raised from 100 feet to 130 feet. 130 feet was agreed upon by all parties and a settlement was reached. The Town Board and the Planning Board have both approved the 130 Feet. The Zoning Board of Appeals approval is also needed in order to close the case.

Mr. Callahan said it is important to note that the lawsuit was against the Town Board, the Planning Board, and the Zoning Board of Appeals.

ACTION:

Motion by Jonathan Hickey, seconded by Richard McNamara, to authorize special counsel to execute the files and stipulation in order as set forth by Town Attorney Meckler this evening.

ON THE QUESTION:

Chairman Michnik asked if this means that anyone who wants to put up a cell tower over the town's limitation does not need to go before the Zoning Board of Appeals. Mr. Meckler said no, this case sets no precedent. The Town's Cell Tower regulations are going to be tightened. Chairman Michnik asked if the regulations will be tightened so that other companies are able to piggy back on the existing towers so there aren't multiple towers going up in town. Mr. Callahan said that is addressed in the law under co-location. Chairman Michnik asked how enforceable the code is. Mr. Callahan said anyone can sue, the Federal Government is behind the cell tower company in terms of health, safety and welfare, it is hard for the Town to put any kind of stipulation on it.

The action was commenced in the U.S. District Court, Western District of New York with respect to property located at 8135 Sheridan Drive, Clarence, New York.

Jonathan Hickey	Aye	Richard McNamara	Aye
Patricia Burkard	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Appeal No. 2

Joseph V. Valenti
Residential Single Family

Requests the Board of Appeals approve and grant a 4' variance to allow a 6' side yard setback for the placement of a detached accessory structure (emergency generator) located in the side yard of 6047 Samantha Lane.

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

DISCUSSION:

Mr. Valenti is present and said his area seems to lose power frequently. He is an asthmatic and has to have air conditioning in the Summer time and must have humidity in the Winter. His wife is suffering from cancer and it is very uncomfortable without those things. They would like to have peace of mind that they will have electricity if the power goes out, and if they travel they won't have to worry if something happens while they are away. He has discussed this with neighbors on either side of him and they agree with his request. He submitted an approval from the Amber Meadows Association, it has been placed in the file. Chairman Michnik noted that there are two (2) neighbor notification forms on file. Mr. Valenti noted that the generator will be placed on the side of the house behind a big bush and a tree, he will also install some landscaping around the generator.

Mr. Hickey asked if the applicant knows the size of the generator. Mr. Valenti said it is 2' by 4'. Tim Barton is the contractor, he has installed other generators in the community. Mr. Barton has forwarded the necessary paperwork to the Building Department. The generator will go on for 12 minutes once every other week at a designated time set by the installer. The generator will cost approximately \$3100 plus \$2300 for installation. Mr. Hickey asked what the level of sound is when the generator is on. Mr. Valenti said he does not know and there was no information, regarding the sound, which was submitted to the Building Department.

Mr. Valenti said the proposed location is next to the gas line, the installer prefers to be as close to the gas line as possible when connecting to that pipeline. The electricity is on the other side of the house, to run a conduit for the electricity across the basement would be easier than running a gas line.

Chairman Michnik asked if his neighbors are aware of the extra noise that will be created. Mr. Valenti said yes they are aware, in fact one of the neighbors has a generator himself. The proposed location is the only spot in which it meets the requirements for distance away from windows.

Mr. Valenti has lived there for seven years. Mr. Hickey asked how many times the power has gone out within the past year. Mr. Valenti said at least five (5) times and it is at random times and circumstances. The last time it went out was a couple months ago for three (3) hours.

ACTION:

Motion by Jonathan Hickey, seconded by Patricia Burkard, to **approve** Appeal No. 2 as written.

ON THE QUESTION:

Mr. Hickey said Mr. Valenti's unique facts and circumstances regarding not only the property but he and his wife are important in the analysis of this case.

Jonathan Hickey	Aye	Richard McNamara	Aye
Patricia Burkard	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

Appeal No. 3

Paul and Sharon Barker
Residential Single Family

Requests the Board of Appeals approve and grant a variance to allow a 350' front yard setback for the construction of a single family home located at 5045 Kraus Road.

Appeal No. 3 is in variance to §229-52(A)(2) *100' allowable front yard setback.

DISCUSSION:

The applicant is not present.

Appeal No. 4

Thomas Palmer
Residential Single Family

Requests the Board of Appeals approve and grant an 8.5' variance to allow a 1.5' side yard setback for the placement of a detached accessory structure (emergency generator) located in the side yard of 6024 Jessica Place.

Appeal No. 4 is in variance to §229-55(E)(1).

DISCUSSION:

One (1) neighbor notification form is on file. Thomas Klebes is present and assisting Diane Palmer. Mrs. Palmer said they need the generator for power failures, she has low vision so it helps to have light. The power goes out 5-6 times a year. She has lived in her house six (6) years.

Mr. Hickey asked what the cost is for the project. Mr. Klebes said it will cost about \$5500. Tim Barton will do the work, Genrac is the manufacturer. It will test itself every other week for 10-12 minutes. Mr. Hickey asked if there is a particular circumstance that contributes to the power outages. Mrs. Palmer said it is random. The last time the power went out was few months ago, it was out for eight (8) hours.

Mr. Klebes is on the Homeowners Association Board and he noted that this generator was approved, he will forward a letter stating the same to be placed in the file.

ACTION:

Motion by Ryan Mills, seconded by Patricia Burkard, to **approve** Appeal No. 4 as written.

ON THE QUESTION:

Mr. Hickey noted that the side of the house where the generator is going to be placed is immediately adjacent to a wetland area and will never have a personal residence built on it. The applicant's sight and health issues are more than sufficient to warrant the approval of the appeal.

Jonathan Hickey Aye
Patricia Burkard Aye
Daniel Michnik Aye

Richard McNamara Aye
Ryan Mills Aye

MOTION CARRIED.

Appeal No. 3

Paul and Sharon Barker
Residential Single Family

Requests the Board of Appeals approve and grant a variance to allow a 350' front yard setback for the construction of a single family home located at 5045 Kraus Road.

Appeal No. 3 is in variance to §229-52(A)(2) *100' allowable front yard setback.

DISCUSSION:

The time is 7:33 p.m., the applicant is not present. They will have to re-apply and come back before the Board next month.

Meeting adjourned at 7:34 p.m.

Carolyn Delgato
Senior Clerk Typist