

Town of Clarence
One Town Place, Clarence, NY
Zoning Board of Appeals Minutes
Tuesday, June 13, 2023

Richard McNamara called the meeting to order at 5:30 p.m.

Zoning Board of Appeals members present:

Gerald Drinkard Raymond Skaine Richard McNamara Patricia Burkard

Zoning Board of Appeals members absent:

Chairman Ryan Mills Patrick Krey

Town Officials present:

Director of Community Development Jonathan Bleuer
Deputy Town Attorney Steven Bengart
Councilman Paul Shear

Other Interested Parties:

Steve Fantuzzo Sharon Barker Paul Barker Don Campagna Jeffrey Palumbo
Cheryl Schultz Brett Morgan

Motion by Gerald Drinkard, seconded by Raymond Skaine, to **approve** the minutes of the meeting held on April 11, 2023.

Gerald Drinkard Aye Raymond Skaine Aye Richard McNamara Aye
Patricia Burkard Abstain

MOTION CARRIED

Motion by Gerald Drinkard, seconded by Patricia Burkard, to **approve** the minutes of the meeting held on May 9, 2023.

Gerald Drinkard Aye Raymond Skaine Aye Richard McNamara Aye
Patricia Burkard Aye

MOTION CARRIED

NEW BUSINESS

Appeal No. 1

Tarpon Towers II, LLC.
Agricultural Rural Residential

Applicant requests a variance of 49' to allow for a 149' tall telecommunication tower located at 6879 Salt Road, with access to Hunts Corners Road.

Town Code Reference:
§173-4(D)

DISCUSSION:

Steve Fantuzzo with Nixon Peabody and Brett Morgan and Cheryl Schultz with AiroSmith Development were present to represent the request.

Providing a brief overview of this request, Mr. Fantuzzo explained the project thus far.

Mr. Fantuzzo stated that the property owners have leased a 100' by 100' parcel to Tarpon Towers to construct the telecommunication tower and house the required equipment. Tarpon Towers then leases space on the tower to Verizon Wireless.

The Planning Board has approved the Site Plan for this proposed project, and tonight the applicant is seeking an area (height) variance in order to allow the applicant to construct a 149' tower. The Town of Clarence Zoning Code states a maximum height of 100'.

The height of this proposed tower has been determined as a need by the Radio Frequency (RF) Engineers. The height is what is required before there are substantial drop-offs in service capacity.

Mr. Drinkard noted that the Planning Board gave a Negative Declaration on the State Environmental Quality Review Act (SEQRA) at their May 17, 2023 meeting. There will be no effect on the environment.

The Planning Board also placed several conditions on the site plan approval.

Mr. Drinkard pointed out that the only thing the Zoning Board is focusing on is the 49' extension for the height variance.

Mr. Drinkard asked Mr. Fantuzzo what the difference is with the additional 49' that they are requesting.

Mr. Fantuzzo explained that maximizing both coverage and capacity, as well as maintaining the lowest height is the goal when planning a telecommunications tower. Coverage is only able to be maximized in certain heights and within certain areas.

Mr. Fantuzzo also added that first and foremost, the telecommunication companies look for existing towers that they can lease space on and place an antenna, or municipal property to place a tower. Neither of those options are available in this proposed area, which has led the applicant to this area.

Mr. Fantuzzo noted that the minimum height for this location that will achieve the greatest coverage is this proposed location. From an engineering standpoint, this height is the lowest that they can go and still maximize both coverage and capacity.

Mr. Drinkard asked Mr. Fantuzzo if they would still put the proposed tower up if they were only permitted to stay at 100’.

Mr. Fantuzzo responded they most likely would not, it would be too substantial of a drop-off and it would not have enough of an impact.

Mr. Drinkard asked what the benefits are for everyone to have this tower placed here.

Mr. Fantuzzo responded that it will be more efficient, not only for the immediate area but it will assist with the efficiencies of towers in the surrounding areas as well.

Mr. Skaine asked where the other towers are located in relation to this proposed tower.

Mr. Fantuzzo referred to a document in the applicant’s original submission, the Radio Frequency (RF) report that indicates where the other towers in the area are located.

Mr. Skaine asked if Verizon will be the only carrier on this proposed cell tower.

Mr. Fantuzzo responded that as of now, he believes they are the only ones.

Mr. Skaine asked if Verizon will own the tower.

Mr. Fantuzzo explained that Tarpon Towers will own the tower, and Verizon will place their antennae on the tower.

Brett Morgan with AiroSmith Development explained that initially the tower will be built to accommodate Verizon Wireless, but it is designed to also accommodate other wireless carriers. Tarpon Towers markets their facilities to other wireless carriers, giving them the opportunity to co-locate on this facility, depending on their needs.

Mr. Skaine asked where additional wireless carriers could locate on the tower at a lower height than 145’.

Mr. Morgan explained that typical spacing between wireless carrier antennas is 10’ apart.

Mr. Skaine commented that another carrier could be placed down less than 100’ from the ground.

Mr. Morgan responded yes, if that is what they require and what works for them.

Mr. Skaine asked about the fall zone in comparison to the space that Tarpon Towers is leasing.

Discussion continued regarding the fall zone.

Mrs. Burkard asked if there are neighbor notifications.

Mr. Bleuer responded yes, they are on file. The Planning Office went above and beyond for their notifications, notifying not only touching parcels, but instead using the same notification list that the Planning Board uses of a 500 ft. radius, or anyone that has previously attended a meeting and signed in with interest in the project.

Mrs. Burkard asked if a tower has ever fallen down.

Mr. Fantuzzo responded that he is not aware of any specifically. They are typically built with break points. The application has a section that provides exhibits.

Mr. Fantuzzo explained that even if it fell outside of the fall zone, there are no structures or homes in the immediate area that would be affected.

Mrs. Burkard asked if the proposed tower will be replacing any other towers in the area.

Mr. Fantuzzo responded that it will not replace any other towers, it is a new location. The proposed tower will work in connection with other towers in the area to provide maximum service and coverage.

Mr. McNamara asked Mr. Bleuer if a windmill on the same property had previously been approved.

Mr. Bleuer explained that there is a windmill on the property, it is less than 100' tall.

In regards to Public Participation, no one spoke.

Neighbor Notifications are on file, no comments were received.

ACTION:

Motion by Patricia Burkard, seconded by Gerald Drinkard to **approve** Appeal No. 1 as written.

ON THE QUESTION:

Mr. Drinkard noted that the cell tower applicant has demonstrated that the cell tower height is the minimum required to meet dependable transmission needs. It is the optimal location on the property, as demonstrated by an analysis of the optimal cell tower location.

Additionally, Mr. Drinkard stated that the improved cell tower service will provide adequate and reliable cell services that are consistently acceptable to all nearby residents and businesses.

Gerald Drinkard	Aye	Raymond Skaine	No	Patricia Burkard	Aye
Richard McNamara	Aye				

MOTION CARRIED

Appeal No. 2

Paul & Sharon Barker
Residential Single-Family

Town Code Reference:

1. §229-55 (D)
2. §229-55 (H)
3. §229-55 (E)(2)

Applicant requests variances:

1. to allow a detached accessory structure to be located within the front yard setback; and
2. of 625 sq. ft. to allow a 825 sq. ft detached accessory structure; and
3. of 10' to allow an 26' tall detached accessory structure;

located at 5045 Kraus Road.

DISCUSSION:

Sharon and Paul Barker were present to represent their request.

Mrs. Barker explained that they are approximately 22 ft. off of the south lot line which will have trees and shrubs for mitigation and privacy. They will be planting additional trees to mitigate the view from the road also.

Mrs. Barker stated that they want to build this proposed accessory structure in this location because it is closer to the driveways for the types of vehicles and equipment such as snow plows and lawn equipment that they will be putting in to the proposed structure.

Mrs. Barker added that it is well past the 100' setback, and they do plan to match the materials and style to that of their home, so that it is aesthetically pleasing.

Mr. Skaine agreed with Mrs. Barker, it will not be visible from Kraus Road.

Mrs. Burkard asked if the proposed structure will be used for vehicles also.

Mrs. Barker responded no, only for snow plows, lawn equipment, etc.

Mrs. Burkard asked why the height is necessary.

Mrs. Barker responded that the height without the cupola is within code. They would prefer to not remove the cupola; it adds to the aesthetics of the building.

Mr. Drinkard asked if the building will be used for business purposes.

Mrs. Barker responded no, for storage only.

Mr. McNamara complimented the applicant's property and plans for the proposed structure.

In regards to Public Participation, no one spoke.

Neighbor Notifications are on file, no comments were received.

ACTION:

Motion by Raymond Skaine, seconded by Patricia Burkard, to **approve** Appeal No. 2 as written

ON THE QUESTION:

Mr. Bengart asked if there should be a condition stating that no business is to be performed from the proposed structure.

Mr. McNamara responded no; they are comfortable without the condition.

Gerald Drinkard	Aye	Raymond Skaine	Aye	Patricia Burkard	Aye
Richard McNamara	Aye				

MOTION CARRIED

Appeal No. 3

Jill Quigley
Residential Single-Family

Applicant requests a variance of 5' to allow a 7.5' side yard setback for a garage addition located at 5478 Shimerville Road.

Town Code Reference:
§229-52(B)

DISCUSSION:

Jill Quigley was present to represent her request, explaining that she would like to have a very comfortable 2 ½ car garage built.

Ms. Quigley clarified that she is requesting a 7' 6" variance to create a 5' side yard setback. The verbiage on the agenda is incorrect.

Mr. McNamara explained that with that change, the request will need to be tabled in order to have the correct paperwork and notifications published.

Mr. Bleuer explained that the application that was submitted requested a 5' variance, which is the way that it was published. This Board does not have the ability to consider anything other than what was published, therefore the request will need to be tabled.

Mr. Bleuer stated that the Planning Office will work with the applicant to get the request correct, and she can return next month with the amended request for the Zoning Board to consider.

Ms. Quigley agreed to withdraw the application before the Board at tonight's meeting.

Mr. Bleuer stated that he received a letter of concern from a property owner at 5468 Shimerville Road, objecting to the variance. This letter will be placed in the project file.

Appeal No. 4

Jeffrey D. Palumbo
Traditional Neighborhood District
Commercial

Applicant requests variances:
1. of 6" to allow a 9'4" side yard setback; and
2. of 6" to allow a 9'4" side yard setback;
to allow for a Minor Subdivision of land located at 10295 Main Street.

Town Code Reference:
1. §229-63(A)
2. §229-63(A)

DISCUSSION:

Jeff Palumbo was present to represent the applicant, the George Family Trust. Mr. Palumbo explained that there are several buildings located on one parcel, the family (estate of Don George) would like to divide the parcel so that there are two separate parcels, each one with its own structure.

Mr. Palumbo explained that the plan shows a line down the existing driveway, resulting in the request for a variance.

The variances will not have any effect on neighboring properties, or depreciate the property itself. There will not be any construction done on the property, therefore the change will not be anything visual for people to see.

Mr. Drinkard noted that the request appears to be a simple split of the property.

Mr. Palumbo responded yes, that it all it is. Unfortunately, the plans fall slightly short of not needing a variance.

Mr. Drinkard stated that if this request is approved, a SEQRA approval would also be necessary.

Mr. Palumbo confirmed that they are aware of that.

Mr. Skaine asked if both buildings will remain and not be demolished.

Mr. Palumbo responded that is correct.

Mrs. Burkard asked if there have been any buyers interested in the property.

Mr. Palumbo responded that interest has been for individual buildings, not the entire parcel. This is what has led them to seek the variances.

In regards to Public Participation, no one spoke.

Neighbor Notifications are on file, no comments were received.

ACTION:

Motion by Gerald Drinkard, seconded by Raymond Skaine to **approve** pursuant to Article 8 of the Environmental Conservation Law to **accept** the Part 1 Short Environmental Assessment Form as submitted. Also, to approve the Parts 2 and 3 Environmental Short Assessment Form as prepared, to **issue a Negative Declaration** on the proposed Minor Subdivision at 10295 Main Street. This Unlisted Action involves a lot split to create one (1) additional lot in the Traditional Neighborhood District Commercial zone. After thorough review of the submitted plans and Environmental Assessment Forms it is determined that the proposed action will not have a significant negative impact on the environment.

Gerald Drinkard	Aye	Raymond Skaine	Aye	Patricia Burkard	Aye
Richard McNamara	Aye				

MOTION CARRIED

Motion by Gerald Drinkard, seconded by Raymond Skaine to **approve** Appeal No. 4 as written.

Gerald Drinkard	Aye	Raymond Skaine	Aye	Patricia Burkard	Aye
Richard McNamara	Aye				

MOTION CARRIED

Appeal No. 5

Donald W. Campagna
Residential Single-Family

Applicant requests a variance of 184 sq. ft. to allow for a 384 sq. ft. detached accessory structure located at 4365 Fairfield Road.

Town Code Reference:
§229-55(H)

DISCUSSION:

Donald Campagna was present to represent his request, explaining that he would like to erect a larger shed.

Mr. Skaine asked about the detached shed on the property and if it considered a secondary structure.

Mr. Bleuer explained that in the Residential Single-Family zone, a property owner is able to have up to 2 detached accessory structures no greater than 200 sq. ft.

Mr. Campagna noted that the existing accessory structure is 196 sq. ft.

Mr. Campagna explained that there are two parcels, his daughter, son-in-law, and grandkids live next door. This proposed detached accessory structure will be utilized by both properties. He is attempting to avoid having to build two detached accessory structures (sheds).

Mr. Drinkard asked if there is a basement with this house.

Mr. Campagna responded yes.

Mr. Drinkard responded that he does not feel this will have any impact on the character of the neighborhood, it is set back far enough that it won't be visible.

Mr. McNamara asked if the siding will match the house.

Mr. Campagna responded that his existing accessory structure matches his house, and he plans to have this proposed accessory structure match his daughter's house. Both homes have very similar appearances in terms of siding, roof, and colors. They treat both properties as one parcel, keeping everything similar in appearance.

Mr. McNamara asked Mr. Campagna if he owns the property behind him.

Mr. Campagna responded yes; he owns the 8 acres behind him also. There are 10 acres total between his property and his daughter's.

In regards to Public Participation, no one spoke.

Neighbor Notifications are on file, no comments were received.

ACTION:

Motion by Gerald Drinkard, seconded by Raymond Skaine to **approve** Appeal No. 5 as written.

Gerald Drinkard	Aye	Raymond Skaine	Aye	Patricia Burkard	Aye
Richard McNamara	Aye				

MOTION CARRIED

Appeal No. 6

Adam Sobieraj
Agricultural Floodzone

Applicant requests a variance to allow a detached accessory structure (pole barn) to be located within the front yard setback located at 8170 Westphalinger Road.

Town Code Reference:
§229-34(E)

DISCUSSION:

Adam Sobierai was present to represent his request, explaining that he would like to put up a pole barn or garage approximately 15' off of the southwest corner of his property, and 25' off of the west corner of his property. Because he is on a corner lot, it is his understanding that the setback has to be as far off of the property line as the home itself.

Mrs. Burkard asked what size pole barn Mr. Sobierai is hoping to build.

Mr. Sobierai responded 32' x 48', it is zoned Agricultural.

Mrs. Burkard asked what materials the proposed structure will consist of.

Mr. Sobierai responded that he started looking at two possible companies to build the proposed structure. Once he found out he needed to go through the variance process, he ceased the research on materials and focused on the variance. If the variance isn't approved, he has no need to research the materials.

Mr. Sobierai added that he plans to match the accessory structure to his existing house. If he decides on a pole barn it will be all steel, and a garage would be vinyl siding with a regular asphalt roof.

Mrs. Burkard asked where the driveway will be located.

Mr. Sobierai responded that it will come out where the road curves. Mr. Sobierai noted that he has had the Highway Department out to look at it and they confirmed it would be ok that way.

Mr. Drinkard pointed out that the proposed location is a very wooded area.

Mr. Sobierai explained that if the proposed structure was located closer, he would not have a good view of his children when they are playing in the backyard.

Mr. Drinkard noted that it appears there is an elevation in the center of Mr. Sobierai's property, and asked if there is a septic system located in that area.

Mr. Sobierai responded yes; the septic system is located there.

Mr. Drinkard noted that Mr. Sobierai's neighbors are not easily seen, making the property nicely secluded. The proposed structure would not be out of character for the neighborhood.

Mr. McNamara asked if the proposed pole barn will be one or two story.

Mr. Sobierai responded that he would like to store his camper inside the structure, therefore the garage door would need to be at least 12 ft. high to accommodate his current camper. He would like to give himself room to upsize to a larger camper at some point, so he would like a 14 ft. garage door for that possibility.

Mr. Bleuer stated that because this is an Agricultural Zone, there is no 9 ft. height limit for garage doors like in the Residential Zone. Depending on the location for the code, the height would be a 35 ft. maximum to the ridgeline.

Mr. McNamara asked if there will be a business run out of the proposed structure.

Mr. Sobierai responded no.

Mr. Bengart asked Mr. Sobierai if he would be agreeable to a condition placed that states no business is to be conducted from the structure.

Mr. Sobierai responded yes, that would not be a problem.

Mr. McNamara asked Mr. Sobierai if he plans to run power to the structure.

Mr. Sobierai responded that he has not decided yet, it will depend on the cost difference but he would like to, yes.

In regards to Public Participation, no one spoke.

Neighbor Notifications are on file, no comments were received.

ACTION:

Motion by Raymond Skaine, seconded by Patricia Burkard to **approve** Appeal No. 5 as written with the following condition:

1. no business is to be conducted from the structure

Mr. Sobierai heard, understands, and agrees to the condition.

Mr. Bengart pointed out that the condition runs with the land, not the owner. By agreeing, Mr. Sobierai agrees for the future as well.

Mr. Sobierai agrees to the condition.

Gerald Drinkard	Aye	Raymond Skaine	Aye	Patricia Burkard	Aye
Richard McNamara	Aye				

MOTION CARRIED

Meeting adjourned at 6:30 p.m. with a motion by Raymond Skaine.

MOTION CARRIED

Amy Major
Senior Clerk Typist