

MINUTES

**Town of Wappinger
Zoning Board of Appeals
February 12, 2013**

**Town Hall
20 Middlebush Road
Wappinger Falls, NY**

Summarized Minutes

Members:

Mr. Prager	Member
Mr. Della Corte	Member
Mr. Casella	Member
Mr. Johnston	Member
Mr. Galotti	Member

Others Present:

Mrs. Roberti	Zoning Administrator
Ms. Rose	Secretary
Mr. Horan	Attorney

Summary

Old Troy Subdivision	Variance Granted
Danny & Anna Leone	Public Hearing February 26 th
Anthony & Nina Mari	No Show—Called wife reschedule for June
Ronald Ferris	Public Hearing February 26 th
Verizon Wireless	Public Hearing February 26 th

Mr. Prager: First item on the agenda is to approve the minutes from January 8, 2013.

Mr. Galotti: I make a motion to approve the minutes from January 8, 2013.

Mr. Casella: Second.

Mr. Prager: All in favor?

Board: Aye.

Mr. Prager: Next on the agenda is:

Adjourned Public Hearing:

Appeal No. 12-7474

Old Troy Subdivision-Craig T O'Donnell-Is seeking an area variance of Section 240-37 of District Zoning Regulations in an R/80 Zoning District. The applicant is proposing two resident lots in a residential district.

- Where **80,000 square feet is required per lot**, the **applicant can only provide 80,039 square feet** for Lot 1 (which is in conformance) and can only provide **75,315 square feet** for Lot 2. The applicant is seeking a variance of **4,685 square feet for Lot 2.**

The property is located at **Wheeler Hill Road (Along the southwest side of Old Troy Road and near the intersection of Wheeler Hill Road)** and is identified as **Tax Grid No. 6057-04-589487.** (Day)(PH 12-11-12 opened and closed)(PB approved Neg Dec on 1-23-13)

Mr. Prager: We did have a public hearing on December 11, 2012 which was opened and closed. The Planning Board did approve the Negative Declaration. There was a discrepancy in the square footage.

Mr. Morris: My name is Jason Morris with Day Engineering. The square footage is not correct on the agenda. The numbers you read from the agenda are not correct yet but the numbers in the plans are.

Mr. Prager: I read of the Negative Declaration and everything seems

fine. Is everything fine with you Barbara?

Mrs. Roberti: Yes. This was adopted by the Planning Board and you are now free to make a decision.

Mr. Prager: Can I have a motion to grant or deny this variance?

Mr. Galotti: I make a motion to grant the variance.

Mr. Casella: Second.

Mr. Prager: Roll call vote.

Ms. Rose:	Tom Della Corte	Yes
	Bob Johnston	Yes
	Al Casella	Yes
	Peter Galotti	Yes
	Howard Prager	Yes

Mr. Prager: The variance has been granted and will be filed in days.

****** NOTE: THE SQUARE FOOTAGE HAS BEEN CORRECTED. THE ABOVE FOOTAGE IS CORRCT***** (see attached e-mail)**

Mr. Prager: The next item on the agenda is:

Appeal No. 13-7478

Danny & Anna Leone-Is seeking an area variance of Section 240-37 of Zoning Regulations in an R-15 Zoning District.

-Where **15 feet to the rear is required for an existing 15' X 30' above ground pool and a 6' X 8' deck**, the applicant **can only provide 6.2 feet**, thus requesting a **an 8.8 foot rear yard setback**.

-Where **6 feet to the side yard is required for a 10' X 12' existing shed**, the applicant **can only provide 0 feet**, thus requesting a **6 foot side yard variance**.

The property is located at **1 Amherst Lane** and is identified by **Tax Grid No. 6057-02-700568**.

Mr. Prager: Please state your name for the record.

Mr. & Mrs. Leone: Danny Leone & Anna Leone.

- Mr. Prager: Please tell me what is going on. Is the pool there?
- Mr. Leone: Yes, we had an existing pool that kept breaking because of the branches on the trees kept falling and ripping the liner. We replaced the pool with a larger one and turned it around away from the trees.
- Mr. Prager: I see on the drawing, is that how it is today?
- Mr. Leone: Yes.
- Mr. Prager: Did you turn it 90 degrees?
- Mr. Leone: We turned it 45 degrees.
- Mr. Prager: What about the shed?
- Mr. Leone: We replaced the shed in 1994. It was an existing old metal shed. We didn't know we needed a permit because we put it in the same spot.
- Mr. Casella: Is the new shed the same size?
- Mr. Leone: No it's a little bigger. The old shed was 10 x 10 and the new one is 10 x 12.
- Mr. Della Corte: Did the original shed have a permit.
- Mrs. Roberti: I didn't see one for the original shed.
- Mr. Leone: We bought the house with the metal shed.
- Mr. Della Corte: Barbara, when was the amnesty program?
- Mrs. Roberti: It was 2001.
- Mr. Prager: You installed the newer shed in 1994.
- Mr. Leone: Yes. This one is a wooden shed.

Mr. Prager: What we will do is a site inspection on February 23rd. Can you put a stake where your rear property line is? The public hearing will be February 26th.

Mr. Leone: Yes.

Mr. Prager: The next item on the agenda is:

Appeal No. 13-7480

Anthony & Nina Mari-Is seeking an area variance of Section 240-37 of Zoning Regulations in an R-20 Zoning District.

-Where **15 feet to the side yard is required for an existing 20' X 20' car port**, the applicant **can only provide 13 feet**, thus requesting a **2 foot side yard variance**.

The property is located at **12 Barbara Lane** and is identified by **Tax Grid No. 6156-02-556828**.

Mr. Prager: Is Mr. Mari here?

Ms. Rose: No, I left a message yesterday on his answering machine about tonight's meeting.

Mr. Prager: We will move the Mari's to the next meeting date.

Mr. Prager: The next item on the agenda is:

Appeal No. 13-7482

Ronald Ferris-Is seeking an area variance of Section 240-37 of Zoning Regulations in an R-20 Zoning District.

-Where **20 feet to the side yard is required for a two car garage addition**, the applicant **can only provide 17 feet**, thus requesting a **3 foot side yard variance**.

The property is located at **5 David Loop** and is identified by Tax Grid No. **6157-02-976678**.

Mr. Prager: Please state your name for the record.

Mr. Ferris: My name is Ronald Ferris. I am looking to build a two car garage so my other two cars can stay in a garage. They are classic cars and they should not be outside.

Mr. Prager: This garage is not there now?

- Mr. Ferris: That is correct. There is a garage there now. This garage will make it deeper. It will not be next to the existing one. The cars will be front to back. It will make my driveway shorter and bring my side yard closer to my one neighbor.
- Mr. Casella: Are you going to make it the same width of the house?
- Mr. Ferris: It will be a little narrower than the existing garage.
- Mr. Casella: (Reviewing the map) this is the existing garage.
- Mr. Ferris: (Reviewing the map) this is the existing garage and the addition will come out here. It will be longer.
- Mr. Prager: We will set the public hearing for the 26th and we will have a site inspection 23rd.
- Mr. Casella: Is there a stake at the end of your property?
- Mr. Ferris: There is a chain link fence.
- Mr. Della Corte: The property is marked but can you mark where the garage is going to go.
- Mr. Prager: Next on the agenda is:

Appeal No. 12-7477

Verizon Wireless- Is seeking an area variance of Section 240-81 (G)(3)(c)[1] of District Zoning Regulations in a COP Zoning District.

-Where **1,500 feet on a horizontal plane to any structure which is to be occupied by a public or private school**, the applicant **can only provide -0- feet.**

-Where a **minimum distance of 750 feet on a horizontal plane from any daycare center, church or place of worship**, the applicant **can only provide -0- feet.**

The property is located at **155-179 Myers Corners Road** and is identified by **Tax Grid No. 6258-03-350303.**

- Mr. Prager: Please state your name for the record.

Mr. Olsen: My name is Scott Olsen. What we are looking for is a new communication facility here in the Town of Wappinger. It is not a tower. What we want to do is put antennas on top of an office building. The building is off of Myers Corners Road. The problem we are facing is in that structure and use you have a day care center. Technically we have a -0- foot variance issue. We knew where the day care was before we made application. So for perception purposes, we moved the antennas to a different part of the building. They will not be on top of that day care center. We will have three antennas on the building. Each sector will be pointing in a different direction to get a complete 360 degree coverage zone. We have a 12 X 30 foot equipment shelter which will be on the ground and in the back.

Mr. Prager: What is 26 x 26 on the ground?

Mr. Olsen: That is probably our lease area. We always take a little bit more ground space than needed.

Mr. Johnston: How tall is the building?

Mr. Olsen: There building is 33 feet tall.

Mr. Prager: You have 3 of them.

Mr. Olsen: Yes, there are 3 sectors.

Mr. Prager: There are 2 on the southeast side. Which is the front of the building to me and that would be Myers Corners Road. There is one in the rear. What is the other thing that measures 46 x 26? (Pointing to the map)

Mr. Olsen: That is the lease area on the ground. In that area will be our equipment shelter that house switches, radio and other needed material. There are residents across the street and there is also a church across the street. We measured the distance from the antennas to those locations that will need a variance.

Mr. Horan: I had the opportunity to do some research regarding these issues. Last time we met I had some concerns about our ordinance which was adopted back in 1998. There are some

limitations. If you look at the code, it says closer than 1500 feet on a horizontal plane. It talks about non tower mounted PWSF which is what we are talking about here. It shall not be attached to a 1 family or a 4 family dwelling or to an accessory building. The color shall be the same as the exterior of the building. If roof mounted, it shall not extend more than 15 feet above the building. The applicant is complying with all of these. With respect to the setback issue that they are requesting, the code talks about sighting. The following locations are in order of preference. When you are looking to locate a cell tower under our code, the placement of the existing structure such as buildings, smoke stacks, water towers, silos and ground signs shall be encouraged. The first thing is to look for is an existing building and the applicant is looking at an existing building. The other thing is that it is preferred they be located in a commercial building rather than a residential building. Which again, the applicant is complying with. The rest of the code talks about towers. If you now get to the variance, the code says no tower or personal wireless service facility with the exception of repeaters shall be 1500 feet on a horizontal plane to any structure existing at the time of the application which houses any school. One of the issues here is the horizontal plane. In doing some research the horizontal plane is just that; going out horizontally from the antenna. The FCC talks about the natures of these antennas. They are very directional. At the last meeting the engineers talked about that and they talked about the power requirements. The FCC guide states that most of the power goes out in a horizontal plan. It doesn't go up and it doesn't go down it just goes out.

Mr. Prager: Since the school being on the first floor, it will be over their heads.

Mr. Horan: It may not fall in that definition because it is not technically in the horizontal plane.

Mr. Prager: What about across the street, Myers Corners School is there and it is on a higher plane?

Mr. Horan: That is one issue. With respect to this FCC document, one of the things is the estimated worse case distances that should be

maintained from single cellular PCS and paging base station antennas. There is a figure worst estimated case horizontal distances that should be maintained from single Omni directional cellular base station, Omni meaning it broadcasts all around at 360 degrees as appose to directionally. I believe these are directional antennas not Omni. You look at the power curve here with distance, effective radiate power per channel of 100 watts, which is the worst case scenario; it becomes a problem at 50 feet. That is the clear zone. We have 1500 feet in our code. That to me is a troubling issue. Secondly, the most troubling issue is, this is a text from a federal statue, it is called preservation of local zoning authority. This is from the Telecommunication Act of 1996; exception is provided in this paragraph that nothing in this act limits or effect the authority a state or local government or instrumentality over decision of placements construction of or the modification of personal wireless service facility on the basis of the environmental effect of radio frequency emissions to the extent such facilities comply with the commissions regulations of such emissions. In essence, if they qualify for a FCC license we cannot look at the environmental effects of what the radio waves do. We can look at the visual aspects and other safety aspects. One of the other things that troubled me was the sections of the 1500 foot horizontal plan almost seems to be stepping into that regulation of health and safety requirements saying we as the Town Board back in 1998, not having been sued like other municipalities, decided that we take themselves and try to preempt some of the FCC requirements setting the 1500 rather than the 50 foot envelope which again is preempted by this section. There is a case New York SMSA Limited Partnership verses the Town of Clarkstow, New York. This is in Rockland County. This is a 2009 decision from the Southern District of New York.

Mr. Prager: You brought up the subject of safety. What is considered the safety portion?

Mr. Horan: There is a prevision in this Clarkstown case in which they talked about site distance, a prohibition of being within 300 feet of a day care center. What the court said on the face it may have these health and safety concerns that the municipality cannot look at. The town gave an argument that

we don't want potential for live wires to be around a day care. The court said that is not a safety concern with the emissions from the radio antennas. We can let that provision stand. The applicant has not challenged the validity of status. The applicant is willing to live with the board's decision. I'm just laying out the law as it stands. Another issue the courts bring up about the site issue, to the extent that these distances will prevent the applicant from getting good coverage in the town.

Mr. Casella: Doesn't the Wappinger Central School have offices there?

Mr. Prager: Yes but they are below the roof.

Mr. Casella: The reason I am asking the question is because what do you define as a school?

Mrs. Roberti: There is Orchard View High School in that building and it is part of the Wappinger School District.

Mr. Johnston: What is the height of the antennas?

Mr. Olsen: They will be about 2 feet above the roof. If I recall, there is a FCC regulation that states if the antennas are taller than 10 meters they are exempt from monitoring them because it is such low power. These antennas point to the horizon. What you will be get is a shadowing. These are very low power and Verizon is very conservative. The problem is when you are on the roof and in front of them. Then you need to be OHSA certified. There will be signs on the roof. There are provisions to power it down if there is a fire there.

Mr. Prager: How do you power it down?

Mr. Olsen: I'll confirm but I was told it is hard wired to their operation center. I believe it is called a knock.

Mr. Prager: If this is approved, I would like to get with you and get the distance to those antennas that we can work around.

Mr. Olsen: Ok.

- Mr. Horan: The problem is they are directional antennas so standing in front of them is the problem.
- Mr. Prager: Are you going to do anymore research?
- Mr. Horan: I think I have done enough research and I will send the board a memo.
- Mr. Prager: I will ask everyone on this board to review the codes and look at everything we are talking about. Does anyone have anymore questions?
- Mr. Della Corte: What is the purpose of these particular antennas?
- Mr. Olsen: We have gaps in service and what we are trying to do is provide seamless service.
- Mr. Della Corte: Is filling in the gaps the request of the customer or is it Verizon?
- Mr. Olsen: It is both. It is not economical for us to do this unless you are talking about gaps of a ½ mile to 1 mile. With all of these extra wireless devises out there, the system has been taxed and we do get customer complaints.
- Mr. Della Corte: I don't remember exactly from the last meeting but you said something about the Federal Government already put into place safety regulations that towns can't fight.
- Mr. Horan: That is true. I didn't actually have the statues last week.
- Mr. Prager: Any further questions? Jim you will give us a memo?
- Mr. Horan: Yes.
- Mr. Prager: I will set the next public hearing for February 26, 2013. I will also like to set a site visit.
- Mr. Olsen: If you let us know, I can have someone there.
- Mr. Prager: I am familiar with the building.

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Mr. Prager: The site visit will be February 23rd.

Mr. Prager: Can I have a motion to adjourn this meeting?

Mr. Casella: I make a motion to adjourn this meeting.

Mr. Johnston: Second.

Mr. Prager: All in favor?

Board: Aye.

Respectfully Submitted,

Sue Rose, Secretary
Zoning Board of Appeals