



**ZONING BOARD OF APPEALS**  
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**July 11, 2022**  
**WebEx Meeting Minutes**

**Present:** Patti Kelly (Chair), Henry Rua (Vice-Chair), Joe Mayone, Tim Scott, Randy Ricks & Bill Schirmer, Alternate

**Also Present:** Scott Olson: Attorney Young Summer LLC, Kimberly Garrison: Grant & Lyons LLC, Brett Buggeln: Tarpon Towers, John Parisio, Fernando Martinez, Kevin Freeman: Zoning Board Secretary

Patti called the meeting to order at 7:00pm. She took roll call of ZBA members and announced a quorum was reached. She asked Alternate Member Bill Schirmer to join the board for the Parisio and Martinez applications and he agreed to do so.

**PUBLIC HEARING**

**JOHN AND LIZ PARISIO**

**17 Mary Ann Ave.**

**Saugerties, NY**

**SBL# 17.1-2-25**

**File # 22-002**

The property is located in the MD Residential Zone. The applicants seek to build an extension onto their home and are requesting a 10' area variance from the required 30' setback.

Patti Kelly asked for a motion to open the public hearing. Henry did so with Tim seconding. The motion passed unanimously with the following vote: Rua- yes; Scott- yes; Schirmer- yes, and Patti yes. Randy Ricks was recused.

Patti made a motion to declare SEQRA as a Type 2 617.5 (c) (17) for area variances. Bill seconded. The motion passed unanimously with the following vote: Rua- yes; Scott- yes; ricks-yes, Schirmer- yes, and Patti yes.

Patti noted that Mr. and Mrs. Parisio were late in mailing the certified letters, so the public hearing will need to be continued to the Aug. 1 meeting. Kevin Freeman reported that 16 out of 33 letter receipts were accounted for. There were no letters or emails.

Don and Judy Corbett spoke and said they were unsure about the scope of the project. Patti invited Mr. Parisio to describe the application. He explained how the addition would be situated. Patti explained the plans could be viewed by contacting Kevin Freeman at the Zoning office.

Mr. Corbett asked the direction described as the back of the property. Mr. Parisio answered it would not be towards the street. He explained the restrictions imposed by the setback regulations.

Patti asked if the Corbett's were satisfied with the information. They were. She asked if the board had any questions and there were none. Patti explained the public hearing would be continued at the next ZBA session. She asked who would move for the continuation. Henry did so with Tim seconding. The motion passed unanimously. Rua- yes; Scott- yes; Schirmer- yes, and Patti yes. Randy Ricks was recused.

**FERNANDO MARTINEZ**  
**1 Cedar Lane in Barclay Heights**  
**Saugerties, NY**  
**SBL# 29.29-5-9**  
**File# 22-003**

The property is located in the HD Zoning District. The applicant wants to build a detached 20' x 16' accessory structure to house a hobby truck. He seeking a 10' side yard area variance from the 15' required setback and a 27' area variance to the required 30' rear yard setback.

Tim moved to open the hearing, with Randy seconding. The motion passed unanimously. Rua- yes; Scott- yes; Ricks-yes, Schirmer- yes, and Patti yes.

Patti moved the SEQRA classification to be Type 2 617.5 (c) (17) for area variances. Henry seconded. The motion passed. Rua- yes; Scott- yes; Ricks-yes, Schirmer- yes, and Patti-yes.

Patti asked for public comments. Kevin informed the board that all the return receipts were returned except one.

Gail Porter spoke to the application, saying she didn't receive her letter until Friday. She asked about the plans, specifically the height and where the driveway would be sited. Mr. Martinez explained the placement of the garage, with a new driveway on Birchwood, gated into the fence. She inquired about the density requirements and Patti explained that, according to the Building Inspector's letter, the project fits within the allowable density for the zoning district. Kevin shared the site plan photo.

Ms. Peters inquired how high the garage would be above the fence. Mr. Martinez said the fence was 7.5' high and the roof would be approximately 4' above the fence. She asked if the tree would be removed. He replied that only a couple branches would be removed.

Leigh Crawford said she was concerned about alleyways between houses which the neighbors use in case of an emergencies and said this fenced structure would interfere with that. Mr. Martinez said his yard is fenced and on his private property and wouldn't interfere with the current space behind his fence and his neighbor to the rear. Ms. Crawford was also worried that other trucks would appear on the lawn once the current ones were housed in the new garage. Patti explained the fence was pre-existing, meaning it was already there when the Martinez family moved in. She said Mr. Martinez told the ZBA that the fence would be left in place, and the proposed garage would be within that fenced area. There was a question about losing a walk- through area in the neighborhood. Henry explained the fence prohibited any walk through because it was on private property. Ms. Crawford said she was not in favor

and felt the board was in favor of the variance and had already made up their minds. Patti said the ZBA does not make any decisions until after the public has had a chance to speak.

Leigh Crawford questioned the additional driveway on Birchwood. Henry said it was up to the Highway Department as to whether or not Mr. Martinez would get a permit for that.

Mr. Spiegler said the driveway would be viewable from his living room window. He assumed that Mr. Martinez would include future projects. He objected to the fence being modified to allow the driveway on Birchwood. Mr. Fernandez said the fence was his to do with what he wanted. Mr. Spiegler said he expected the gate wouldn't be closed. Henry said it was within Mr. Martinez's rights to take down the fence if he ever chooses to do so.

Ms. Crawford said this is a residential neighborhood, and she is part of a community that knows who they are, and they try to accommodate each other and give each other some space. She said she hopes Mr. Martinez would use it to put things away. She understood he could do anything he wanted to his fence, but he was going outside of what the community does. Patti asked which would be the better solution: keeping the trucks in the yard or putting them away in a structure behind the fence. Ms. Crawford spoke to the temporary garage in the front of the house and worried about potential expansion and fire hazards.

Ms. Porter asked why he couldn't just get rid of his stuff, that a precedent would be set for the subdivision and her property value. She initially thought it was a good idea but had concerns that these variances could come up elsewhere in the neighborhood. She referred to the issue as being a self-imposed problem. Mr. Martinez explained that his stuff was very valuable.

Mr. Spiegler said that he expected Mr. Martinez would continue building vehicles on the property. Mr. Martinez said it was a dream of his to build this specific truck. Mr. Spiegler said he was totally against the project.

Ms. Peters asked about the purpose of the variance. Patti explained the setback requirements for the different districts established in 1989.

Ms. Spiegler asked if the garage would be behind the fence. If the fence was open, could they make a complaint? Mr. Spiegler said the board was favoring the applicant over the neighbors and left the meeting.

Ms. Peters asked why the board might not approve. Patti explained the zoning criteria used to examine variance requests.

Ms. Porter asked if Mr. Martinez could build to the fence. Patti said he could not build to or exceed the property line. Ms. Peters asked if there was a way to propose anything smaller?

Mr. Crawford asked if the garage would be used to work on vehicles. Mr. Martinez explained that his existing garage has an oil tank in it and cannot be used for vehicles.

Patti asked if the board had any questions. She moved to close the public hearing and Henry seconded. The motion passed unanimously. Rua- yes; Scott- yes; Ricks-yes, Schirmer- yes, and Patti -yes.

**NEW BUSINESS**

**LYNN & MORRIS ALMELEH**  
**921 & 625 Glasco Turnpike**  
**Saugerties, NY 12477**  
**SBL # 28.3 – 7 – 1/23/24**  
**File #- 22-004**  
**Referral from the Planning Board**

The properties are located within the MDR zoning district. The applicants are seeking a lot line revision with the Town of Saugerties Planning Board which will require a side yard area variance of 2-foot from the required 25 side yard setback.

Nobody was present to represent the applicants. The application will be rescheduled.

**CONTINUED PUBLIC HEARING**

**TARPON TOWERS 11, LLC/VERIZON WIRELSS**  
**PUBLIC HEARING**  
**Tarpon Towers II, LLC & Verizon Wireless**  
**Mount Marion Fire Department**  
**766 Kings Highway**  
**Mt. Marion, NY 12456**  
**File #: 19-0006**  
**File #: 19-0007**  
**SBL #: 28.4-11-13.100**

Patti explained that Scott Olson, on behalf of his clients, had sent the ZBA a 15-page detailing his objections to rescinding the Negative Declaration (Neg Dec) and passing a Positive Declaration (Pos Dec).

Patti told Mr. Olson that she was going to respond with some personal comments about his letter, and then board members, if they chose to, could also offer comments. Then members of the public could comment. She further explained that at the end of the meeting the ZBA would discuss this issue in public, and make a determination as to how they want to proceed, and whether or not to give direction to our attorneys.

Patti moved to open the Continued Public Hearing; Henry seconded. The motion passed. Rua- yes; Mayone- yes; Scott-yes; Ricks-yes; and Patti yes.

Patti told Mr. Olson that first she wanted to express a general concern arising from a comment he made on page 6 of his letter. He stated “It is our understanding that the ZBA had intended to grant the requested governmental immunity, similar to how it addressed the unrelated wireless communications facility at the Centerville Fire Department.” And you later go on to say that “It was not until after the ZBA received some negative comments from a handful of local residents after the Negative Declaration was adopted, that the ZBA changed its mind about granting the government immunity”. You make similar comments on page 13. She stated that The ZBA has always reviewed this application with an

open mind and in accordance with the Zoning Law. She told Mr. Olson that he apparently mistook the ZBA's civility and politeness during our review of the application as acquiescence. Reaction from the public didn't cause the ZBA to deny Immunity from Zoning. The ZBA reviewed all nine factors of the Monroe balancing test, as was fully stated and discussed in our decision, and ultimately the application failed the Balances of Interests test, which is why we are continuing with the review of the area and use variances.

Patti said her second point was on page 2 where Mr. Olson said that it appears that by issuing a Positive Declaration at this late stage of review, it would force the applicants to consider alternative locations. She took issue with what he called the late stage of review, because iterations of this, along with comments about the shot-clock came up often in his letter. document. Patti said that from June, 2019 through Dec. 2020 (that's 18 months), the ZBA spent a total of 8 meetings over 8 months reviewing the application. The delays caused by the applicant totaled 10 months. The Nov. and Dec. meetings were postponed by Mr. Olson, and had they not been postponed the ZBA would have voted on the decision pertaining to Immunity from Zoning in November and begun its review of the use and area variances in December of 2020.

She also said that the Use and Area variance application was tabled at the request of the Mr. Olson and his clients in Jan. 2021 after the ZBA made its Monroe Balancing of Interests determination denying immunity from zoning, and Industrial Drive was reviewed since it wouldn't require a use variance in the OLI District. This application for Mount Marion Fire Department was scheduled for the February agenda after the area variances for 17 Industrial Drive were denied. In March 2022, the ZBA board continued with its SEQRA review for Mount Marion after it had previously rescinded the negative declaration in 2020, and voted unanimously to adopt the Positive Declaration. Patti said that Mr. Olson opposed that vote and it was, notably, the first time he raised an objection to the rescission of the Neg Dec from 2020. So here we are 4 months later, with one of those months being postponed again at the request of Mr. Olson and still arguing his opposition to a vote taken by the ZBA 2 years ago at a meeting that he attended and about which he raised no objection or even questions. And yet, he complains in this letter about the "late stage of the review."

Patti's third point dealt with Mr. Olson's assertion that she had suggested that the Positive Declaration will require the applicants to consider new locations for the tower, when it was actually the ZBA's Planner, Dan Shuster, who suggested that the scoping issues would likely be narrow at the March 7 meeting. He stressed that the scoping is not intended to be a complete laundry list of looking at everything under the sun, but, instead, the applicant is asked to submit a scope of work that will be undertaken to address those identified impacts. Mr. Shuster said scope would most likely be related to the location of the site of the tower or the tower design or the tower height or alternate locations, but it's up to the applicant to propose a scope and the board to approve a final scope and then review the environmental impact statement that results.

Her final point took issue with Mr. Olson's comments on page 14 and elsewhere in the document about the applicants' exhaustive search for alternatives. Mr. Olson's letter stated that the applicants already examined more than 30 alternative locations, and only two were identified as viable: the Mt. Marion Firehouse house and 17 Industrial Drive. Patti told Mr. Olson that was a false statement. She said that, putting aside the 20 plus properties that were dismissed out of hand, without examination, because they were zoned residential (which is the same for the firehouse property), would require a type 5 tower (which is the same for this project), or were deemed too small, there were four other properties that were deemed viable by Mr. Olson's team and to whom you asked for a lease agreement: She mentioned two sites at 37 Industrial Drive, where the property owner was, and continues to be, willing to lease, but the

applicants refused to negotiate. There was the Glasco Turnpike property that reached almost into the OLI. In that case the owner was very interested, but her lawyer had grave concerns about the lease. And there was the Quarry property on Kings Highway, deep into the Industrial Zone, which the applicants' RF engineer said was too far way and would never ever work. The Quarry turned the applicant down. But, Patti asked Mr. Olson, what if they had said yes? How can he continue to say that the Industrial Zone is unworkable?

Patti asked if any other board members had comments. Henry Rua said he would wait to make his comments at the end during the ZBA discussion. She asked if the public had questions or comments. There were none.

Patti asked Mr. Olson if he had any comments. He replied that it was his understanding, that the ZBA prior to the July public hearing intended to pursue and grant the governmental immunity. He added that doesn't mean it was a done deal, just that the ZBA asked the Planner to prepare them. Patti asked him if those documents ever came to the ZBA for a vote. He answered no, added that he's allowed to make those arguments in his letter. He said he's been very clear about what he and his clients believe the case to be, and he doesn't think it's unreasonable to make those statements when they're made professionally and based on some evidence. Mr. Olson said it was the ZBA and Dan Shuster, not the applicants, who initiated the Monroe Balancing of Interests for the application. Patti told Mr. Olson that the ZBA had no option since the Zoning Law expressly says the ZBA "shall" determine if the project is immune from zoning.

Mr. Olson addressed Ms. Kelly's comments about delays, by saying he acknowledges that there were times in the application review that we stopped to draft responses. And there were periods of at least 6 months here and a few months there, but the reality is that the shot clock is 5 months, and the ZBA has considered this application for more than a year. Ms. Garrison responded that the FCC timeline is presumptive based on the application. Patti said she thought it was an odd way to do business to start an application review process and the shot clock in June 2019 if then walk away for 6 months. Mr. Buggeln from Tarpon Towers said he was taken aback that the Chair brought up the issue of leases which reflects on their business practices. Henry Rua told Mr. Olson his timelines were arbitrary. He said Mr. Olson took a 6- month delay to answer questions, another month when he couldn't get information in by the deadline because he's going on vacation, and so on. Joe Mayone agreed with Henry's comments and added that the ZBA just wants to keep the ball moving and not have these tactics put up anymore.

John Kilby commented on the omission in Mr. Olson's letter of the 2 viable sites on his property at 37 Industrial Drive in Mr. Olson's letter. Patti told Mr. Kirby that she had also mentioned those sites in her comments to Mr. Olson.

Kimberly Garrison commented on Mr. Olson's statements about Dan Shuster's preparation of a document that would have granted government immunity, and Patti's response that the ZBA never voted to approve it. She said that, in the interest of clarity for the record, consultants and lawyers are often asked to draft proposals for consideration and review. And if the ZBA decides not to adopt it, it remains just an opinion that was drafted, not a decision or an approval.

Mr. Olson said the ZBA was not without criticism, and pointed to the April, 2020 public hearing that Chairperson Kelly cancelled. Patti agreed that she had done that, and said Mr. Olson was well aware of the reason. She said the purpose of the hearing was to give the public an opportunity to comment on the

balloon test photos that Mr. Olson said would be ready by that date. The photos were not ready. The public would not have had anything on which to comment, and the public hearing was postponed.

Ms. Schuppin made the point that technology has accomplished great things, but it is often incompatible with how people live in their homes and neighborhoods. She said people are concerned about their health and with the increased density of radiation. She said the technology has become intrusive.

After asking if there were any more comments and hearing none, Patti opened up discussion for the board for comment and to discuss how to proceed with the Neg Dec and Pos Dec and to give the ZBA attorneys direction. She discussed her thoughts on the Quarry property being approached by the applicants even though it had been deemed not viable for years. Mr. Olson inserted himself into the discussion by saying they didn't offer a lease to the Quarry owners, but because that property had been brought up so often, his team made an inquiry into whether the Quarry would be interested in a lease. Mr. Olson said no RF engineering had yet been done to determine if it was viable. Henry asked Mr. Olson if Verizon ever considered the Central Hudson property which he, personally, had asked about many times. Joe said there was never any evidence Verizon had looked at that location. Mr Olson said he believed the RF engineer provided a response to that at an earlier meeting. Patti said absolutely not. He didn't even know what it was, and there was never a response to that inquiry.

Patti asked the board if they would prefer to rescind the Neg Dec and proceed with the Pos Dec. Kim responded that the original Neg Dec of 2020 was made on the assumption of immunity. The previous chair stated that the determination was incorrect. Kim's advice is that if the board wanted to do a Neg Dec, it would have to be drafted with correct information, or the Neg Dec could be rescinded and the Pos Dec could be drafted to incorporate information from Mr. Olson's letter and the discussion if the board felt it was applicable.

Henry agreed, with what Kim said. He also said that Verizon has not looked at a single property where a variance isn't an issue, sticking the ZBA with the lesser of two evils. He asked the applicants to find property that wouldn't require a variance, such as Central Hudson. Mr. Olson, again, interjected himself into the board's conversation saying that there were simply no other properties in the area. Kim reminded the board that variances are not part of the SEQRA assessment, but safety is one of the factors to be considered. Tim added that he didn't understand why so many properties were dismissed despite being viable. Joe said he is concerned about the fall zone and safety of the local residence, agreeing the ZBA should continue with the Pos Dec. Patti said she didn't see any way that this application could be a Neg Dec. without fudging the issues the ZBA identified that needed to be addressed and mitigated in the Part 2 form. She said she'd re-read the Pos Dec and thinks it's a solid and straightforward document. Randy asked why the tower at Town Hall and the one at the Malden rest stop were able to build so close to structures. Patti said the Village had jurisdiction over the tower at Town Hall and the State for the Malden tower.

Patti made a motion to rescind the Negative Declaration from 2020 and to ask our attorneys to prepare a Positive Declaration with input from the ZBA members for us to approve at the next meeting in August.

Henry seconded the motion. There was a roll call vote.

	In favor	Against	Abstain
Roll Call Vote			

Patti Kelly	<u>X</u>	_____	_____
Henry Rua	<u>X</u>	_____	_____
Joe Mayone	<u>X</u>	_____	_____
Timothy Scott, Jr.	<u>X</u>	_____	_____
Randy Ricks	<u>X</u>	_____	_____

Patti moved to continue the public hearing. Tim seconded. With a roll call vote the motion passed: Rua, yes; Mayone yes; Scott, yes; Ricks, yes, Kelly, yes.

Randy moved to approve the June minutes. Henry seconded and the motion passed: Rua, yes; Mayone yes; Scott, yes; Ricks, yes, Kelly, yes.

Joe moved to adjourn, Henry seconded and the motion was approved: Rua, yes; Mayone yes; Scott, yes; Ricks, yes, Kelly, yes.

The meeting was adjourned at 7:48pm.  
 Respectfully Submitted,  
 Kevin Freeman  
 ZBA Secretary