

Approved

Town of Jerusalem  
Zoning Board of Appeals

July 9<sup>th</sup>, 2015

The regular monthly meeting of the Town of Jerusalem Zoning Board of Appeals was called to order by on Thursday, July 9<sup>th</sup>, 2015 at 7 pm by Chairman Glenn Herbert.

Roll Call:	Glenn Herbert	Present
	Jim Crevelling	Present
	Ed Seus	Present
	Dwight Simpson	Present
	Earl Makatura	Present
Alternate	Rodgers Williams	Present
Alternate	Joe Chiaverini	Present

Others present: John Phillips/CEO, Robert Burgdorf, Esq., Terri Burkholder, Michael & Pamela Townsend, Robert Stiles, Lynn Barry, Matthew & Sheri Davison, Art Morris/Le Chase Construction, Dave Sweet/KC, Jerry Hiller/KC, Jeff Bray/KC, Tony Tufano/KC Director of Facilities, Stephen Colby, and Tim Cutler/Planning Bd.

A motion was made by J.Crevelling seconded by G.Herbert to approve the June Zoning Board minutes as written. The motion was carried unanimously.

COMMUNICATIONS: There were two notices from the Yates County Planning Board regarding their review and recommendations for Application #1047 and Application #1049.

AREA VARIANCE/SPECIAL USE REVIEW:

OLD BUSINESS:

Application #1047 for Upstate Cellular Network d/b/a Verizon Wireless (tabled from the June 11<sup>th</sup>, 2015 zoning board meeting) requesting a Special Use permit to construct and operate a 125 ft. monopole (with an additional 4 ft. lightning rod) on land owned by Michael & Pamela Townsend located at 3338 County House Rd. having Tax Map Parcel No. 60.03-1-1 and located in the Ag-Residential Zone.

Attorney Robert Burgdorf, from Nixon & Peabody in Rochester, was present to represent Upstate Cellular Network, and to give a brief review again of the project as applied for and to answer any questions that the board members or anyone present at the meeting might have.

It was noted that a letter of request was sent from the Zoning Board to the Planning Board asking them to be the lead agency for review in the SEQR process for Upstate Cellular Network for the Site Plan and Special Use Applications (see May 14, 2015 Zoning Board minutes on file).

The Site Plan and Special Use applications for Upstate Cellular were reviewed by the Yates County Planning Board at their June 25<sup>th</sup> Planning Board meeting and received a recommendation for approval of both the Site Plan and the Special Use Permit.

The Jerusalem Planning Board reviewed the Site Plan application for Upstate Cellular Network at their June 4<sup>th</sup> meeting and again on their July 2<sup>nd</sup> meeting. They received a negative declaration for SEQR and also Site Plan approval, at the July 2<sup>nd</sup> meeting.

Upstate Cellular Network went before the Zoning Board of Appeals on June 11<sup>th</sup> for the Public Hearing applying for a Special Use Permit to construct and operate the 125 ft. monopole telecommunications tower, the 12 ft. by 30 ft. equipment shelter along with other associated improvements on property owned by Michael & Pamela Townsend at 3338 County House Rd., Penn Yan, NY 14527. Upstate Cellular would be leasing .23 ± acre of land from the Townsends along with the right of ingress and egress to and from this site from County House Rd.

Attorney Robert Brenner was present for the first meeting of the Zoning Board to give a brief review of the application as applied for and to present the reasons why Upstate Cellular was in need of requesting another tower site in the Town of Jerusalem. It was noted by Mr. Brenner as he presented the coverage areas in this location that there is a large uncovered area in this vicinity. Currently there is an application for another tower in Milo which is pending which would give more coverage but would still leave much of Yatesville and Guyanoga area uncovered for cellular service. If the present tower site is approved, the chart showing the Yatesville site would extend coverage and fill in a lot of area that is now uncovered by cellular service.

Another question that came up at the June meeting that was answered by Teri Burkholder the Site Acquisition specialist was how they picked the site. Teri explained the process that they go through in picking the site and how their attempt to contact property owners as possible candidates for the tower site.

Questions concerning the human exposure to the radio frequency electromagnetic fields was also addressed at the June Zoning Board meeting.

The Public Hearing remained open and a motion was made to table any decision on this application until the July Zoning Board meeting. (See the June 11<sup>th</sup> Zoning Board minutes).

At the July Zoning Board meeting, the Public Hearing was continued with Attorney Robert Burgdorf representing the Upstate Cellular Network. Attorney Burgdorf gave a very short and brief review of the application for Upstate Cellular Network and their proposed request.

A question by one of the board members was raised as to why the company was back so soon to build another tower site. It was noted by Attorney Burgdorf that the demand for 4G technology and useage has increased beyond what Upstate Cellular Network thought there would be. Their technical research people have also been working hard to come up with new methods for meeting these demands without having to build new cellular towers since this is a greater expense to the company. He also noted that a new tower site is about the last resort to fulfill the needs and demands of their consumers.

The Upstate Cellular Network application document has the wording included in its paperwork which includes the co-location clause, the Tower design and Tower removal, the pertinent compliance as set forth in the Zoning Code §160-85 through §160-92.

A motion was made by G.Herbert seconded by J.Crevelling to approve Application #1047 for a Special Use Permit for the installation of a wireless telecommunication facility and other site improvements as named above, Upstate Cellular Network, to be located on leased land otherwise identified as 3338 County House Rd., Penn Yan, NY 14527 having Tax Map #60.03-1-1 per the application as applied for.

The motion was carried with a poll of the board as follows: E.Seus-grant, E.Makatura-grant, D.Simpson-grant, J.Crevelling-grant, G.Herbert-grant.

Application #1048 for Robert Stiles owning property at 7319 East Bluff Dr. Penn Yan, NY requesting an Area Variance to build a two-story addition onto a pre-existing, non-conforming house adding more sq. footage to come closer to the front yard property line than the house already does in its pre-existing, non-conforming location.

This application was first presented at the June 11<sup>th</sup> Zoning Board meeting and tabled to give the applicant the opportunity to revise the proposed plans for the addition to the existing house.

Mr. Stiles was present at the July meeting having sent a written document to the Zoning Board members (copy on file) in advance of the July meeting to summarize the reasons behind his request and the fact that he was no longer asking for a two story addition but only a one story addition with a balcony added, that would face the lake.

Mr. Stiles noted for the board that his property sets high off the road on an embankment. The proposed addition will not come close to the embankment but there will be a flat grassy lawn between the building and the edge of the bank abutting the road. The vegetation that holds the integrity of the embankment will not be disturbed by this addition. Mr. Stiles also noted that if they were to build to the back side of the current lot they would only be able to go another six feet before they would be into an area that would require a steep slopes permit and would be of considerable more construction cost to him at this location. They do plan to expand slightly to the north which is along the same non-conforming line but which would also require an area variance even if they came no closer to the front yard lot line than where the building is already located.

Mr. Stiles had pictures of other properties that are built closer to the road than is current home, however, Chairman G.Herbert stated that each application is considered on its own merit and without knowing the circumstances of each of the properties there would be no comment on them.

The board members reviewed the area variance test questions with the following results:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby property owners will be created by the granting of the area variance: (3-no, 2-yes) G.Herbert-no, J.Crevelling-yes, E.Makatura-no, E.Seus-no, D.Simpson-yes.

2. Whether the benefit to the applicant could be achieved by some other feasible method than an area variance: (5-yes, 0-no).

3. Whether the requested area variance is substantial: (3-yes, 2-no) G.Herbert-yes, J.Crevelling-yes, E.Makatura-no, E.Seus-no, D.Simpson-yes.

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district: (3-no, 2-yes). G.Herbert-no, J.Crevelling-yes. E.Makatura-no, E.Seus-no, D.Simpson-yes.

5. Whether the alleged difficulty was self-created: (5-yes, 0-no).

Board members were in agreement that this is a SEQR Type II action.

A motion was made by J.Crevelling and seconded by G.Herbert to deny the application as requested for a front yard setback of 9 ft. 6 in. The motion was split with a poll of the board as follows: E.Seus-abstain, E.Makatura-deny motion, D.Simpson-deny motion, G.Herbert-grant motion, J.Crevelling-grant motion.

There was some discussion among board members about a second motion for this application. Board members discussed a five foot variance and then talked about whether this would include any roof overhang. It was then decided that since the proposed addition was up on the bank that it would not be a problem for traffic since it is not down at road level.

A second motion was then made by J.Crevelling and seconded by E.Seus to grant an area variance of 6 ft. or 41.2 ft. as measured from the center of the traveled way to the closest point on the building whatever that will be whether it is the roof overhang or a deck/balcony railing or deck support post, etc.

The motion was carried with a poll of the board as follows: E.Makatura-grant, D.Simpson-grant, G.Herbert-grant, E.Seus-grant, J.Crevelling-grant.

In granting this area variance, the board finds that the strict application of this chapter would deprive the applicant of reasonable use of the land and is the minimal variance that will accomplish this purpose. This variance will not be injurious to the neighborhood nor alter the essential character of this locality.

#### NEW BUSINESS:

Application #1049 for Matthew Davison owning property at 569 Assembly Ave. Keuka Park, NY 14478 requesting an Area Variance to build a 48 ft. by 60 ft. garage at this location with less setback from the rear yard property line than zoning requires. This property is located in the Agricultural-Residential Zone and the Scenic-Overlay District.

Mr. Davison was present to answer questions for board members and stated that he had applied for an area variance several years ago and had received approval for the variance but the building had never been built.

It was noted that this building was going to be built in approximately the same place as the former building but this building that an area variance is being requested for is slightly larger than the previous one.

It is noted in the zoning code that Article XV, 160-74 references the time limit for actions on variances and refers back to Article XIV Section 160-65 (F) states that if an area variance is granted then a building permit must be obtained and work must begin within six months upon obtaining the building permit and that the building permit is good for one year.

It was also noted that since the first area variance was granted, this property is now part of the Scenic Overlay District which allows for a change for side yard setbacks for buildings whether principal or accessory buildings. The building is allowed to be 20 ft. from the side yard lot lines rather than the 40 ft. that is normally required for accessory buildings in the Ag-Residential Zone.

The area variance test questions were reviewed with the following results:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby property owners will be created by the granting of the area variance: (5-no, 0-yes).
2. Whether the benefit to the applicant could be achieved by some other feasible method than an area variance: (1-no, 4-yes) G.Herbert-yes, J.Crevelling-yes, E.Makatura-yes, E.Seus-no, D.Simpson-yes.
3. Whether the requested area variance is substantial: (5-yes, 0-no).
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district: (5-no, 0-yes).
5. Whether the alleged difficulty was self-created: (0-no, 5-yes).

The board was in unanimous agreement that this is a SEQR Type II action.

This application was reviewed by the Yates County Planning Board due to the property location being within 500 ft. of County Rte. 25 (Assembly Ave.) The County sent back a recommendation for approval (copy on file with the application).

A motion was made by G.Herbert and seconded by J.Crevelling to grant this area variance as applied for requesting a rear yard setback of 25 ft. The motion was carried with a poll of the board as follows: E.Makatura-grant, E.Seus-grant, D.Simpson-grant, J.Crevelling-grant, G.Herbert-grant.

In granting this area variance the board finds that the strict application of this chapter would deprive the applicant of reasonable use of the land and is the minimum variance that will accomplish this purpose. This variance will not be injurious to the neighborhood nor alter the essential character of this locality.

Application #1050 for Keuka College owning property at 577 Assembly Ave. Keuka Park, NY 14478 also known as the Jephson-Athletic Complex. Art Morris of LeChase Construction was present to represent Keuka College to request an Area Variance for a new replacement scoreboard that is larger in square footage than the present zoning allows by 5 sq. ft. and is higher by 11 ft. 8 in. than zoning allows.

It was noted by Mr. Morris and representatives from the college that the location of the new scoreboard would be in a different place than the prior scoreboard but would not be a problem from the standpoint that it is a solid scoreboard with only the numbers being lighted up. There are no flashing lights that would cause a distraction to drivers that can see it from the road. The sign is for seasonal use and is not used during the winter months when the leaves are off the trees and would be even more visible.

An adjacent neighbor asked if the College had obtained permits for the other signs/scoreboards that are existing. It was noted by the College that probably there were no permits, but they would review their records to be sure. Chairman G.Herbert stated that the matter would be looked into and that a letter should be sent to the Town by the adjacent neighbor so that the Town could review their records and if no permits were given then proper corrective actions could be taken.

The area variance test questions were reviewed with the following results:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby property owners will be created by the granting of the area variance: (5-no, 0-yes).
2. Whether the benefit to the applicant could be achieved by some other feasible method than an area variance: (2-yes, 3-no) G.Herbert-no, J.Crevelling-no, E.Makatura-yes, E.Seus-yes, D.Simpson-no.
3. Whether the area variance is substantial: (3-yes, 2-no). G.Herbert-no, E.Maktura-yes, due to the code requirement for height of signs. E.Seus-yes, J.Crevelling-yes, for the same reason as stated. D.Simpson-no.
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district: (5-no, 0-yes).
5. Whether the alleged difficulty was self-created: (5-yes, 0-no).

Board members were in agreement that this is a SEQR Type II action.

A motion was made by G.Herbert and seconded by D.Simpson to approve the application as requested for the scoreboard to be 26 ft. 8 in. high and the overall area of the scoreboard to be 156 sq. ft. The motion was carried with a poll of the board as follows: J.Crevelling-grant, E.Seus-grant, E. Makatura-grant, D.Simpson-grant, G.Herbert-grant.

In granting these area variances the board finds that the strict application of this chapter would deprive the applicant of reasonable use of the land and is the minimum variance that will accomplish this purpose. These variances will not be injurious to the neighborhood nor alter the essential character of this locality.

Application #1051 for Stephen Colby owning property at 5268 West Bluff Dr., Keuka Park, NY 14478 requesting an Area Variance to replace an existing storage shed with a slightly larger shed with placement of the new shed at the same location which does not have the required setback from the south side yard lot line that zoning requires.

Mr. Colby explained the reason that the larger shed was needed for the storage of 4ft. by 8 ft. sheets of plexiglas shutters that he and his wife use to put up on the screened in porch in the winter time to keep out the snow.

In addition, Mr. Colby noted that if they were to move the building to meet the side yard setback they would be too close to the house as there is flexibility to the plexiglas but not that much to be able to get the sheets into the building for summer storage. If they rotated the building in a different direction it would put them too close to the creek bank on the other side as they would try to maneuver the sheets into the building from a different angle.

It was noted that there has not been a problem with the current building in its present location. The new building would be following the same line of existing setback from the south side yard line as the present building except the new building is longer than the current one to accommodate the sheets of plexiglas.

The existing building has been in its present location for over thirty years. Mr. Colby stated that it was there when they bought the property.

The area variance test questions were read with the following results:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby property owners will be created by the granting of an area variance: (5-no, 0-yes).
2. Whether the benefit to the applicant can be achieved by some other feasible method than an area variance: (4-yes, 1-no). G.Herbert-yes, J.Crevelling-yes, E.Makatura-yes, E.Seus-yes, D.Simpson-no.
3. Whether the requested area variance is substantial: (1-yes, 4-no) G.Herbert-no, J.Crevelling-yes, D.Simpson-no, E.Makatura-no, E.Seus-no.
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district: (5-no, 0-yes).
5. Whether the alleged difficulty was self-created: (4-no, 1-yes). G.Herbert-no, J.Crevelling-no, E.Seus-yes it was self-created, D.Simpson-no, E.Makatura-no.

The board was in unanimous agreement that this is a SEQR Type II action.

A motion was made by G.Herbert and seconded by J.Crevelling to grant the application as requested to allow the replacement of the old metal building with the new building 8ft. by 10 ft. to come no closer to the south side yard lot line than 4 ft. as measured from the closest part of the building. The motion was carried with a poll of the board as follows: E.Makatura-grant, J.Crevelling-grant, E.Seus-grant, G.Herbert-grant, D.Simpson-grant.

In granting this area variance, the board finds that the strict application of this chapter would deprive the applicant of reasonable use of the land and is the minimum variance that will accomplish this purpose. This variance will not be injurious to the neighborhood nor alter the essential character of this locality.

**OTHER BUSINESS:**

There was a brief discussion about the application coming before the Zoning Board for the Keuka Commons for Area Variances possibly in August. It needs to go before the Yates County Planning Board because there is a road (County Rte 25) Central Ave. and Assembly Ave. that are affected by the area variance application.

There being no other business for discussion, a motion was made by J.Crevelling seconded by D.Simpson to adjourn the meeting. The motion was carried unanimously and the meeting was adjourned.

Respectfully submitted,  
Elaine Nesbit/Secretary