



# TOWN OF WHEATFIELD

## COUNTY OF NIAGARA

### Zoning Board of Appeals

2800 Church Road, North Tonawanda, NY 14120

Phone: (716) 694-1026 Fax: (716) 694-1800

www.wheatfield.ny.us

## Minutes of Meeting September 23, 2019

Chairman Muscatello called the meeting to order at 7:00 pm.

### **Roll Call:**

Present: Richard W. Muscatello (Chair) Michael Schaffer (Vice Chair)  
Art Gerbec Arthur Kroening  
Matthew F. Klettke Debbie Carr (Secretary, non-member)

### **Reading & Approval of Previous Meeting Minutes:**

Motion to approve Board minutes of August 29, 2019 was made by A. Gerbec and seconded by A. Kroening:

- A. Gerbec - Yes
- A. Kroening - Yes
- R. W. Muscatello - Yes
- M. Schaffer - Yes
- M. Klettke - Yes

Motion approved

Motion to approve Board minutes of September 9, 2019 was made by A. Gerbec and seconded by M. Klettke:

- A. Gerbec - Yes
- A. Kroening - Yes
- R. W. Muscatello - Yes
- M. Schaffer - Abstain
- M. Klettke - Yes

Motion approved

**Communications:** Distributed Continuing information on the NYSDOS training for Local Planning & Zoning on Tuesday, October 22, 2019 at Niagara County Community College. All members signed up. Debbie Carr will notify Niagara County.

**New Business:** Member reading assignment articles:  
1. "Traits of good leaders"  
2. "Get Comfortable With Ambiguity"

### **Hearings(s) Held/Interpretations:**

**7:05 pm: Marle Marshanke** requests an area variance for Lot # 147.18-2-72, located at 2465 Sylvan Place to construct an addition with a 5' side-yard setback where a 10' setback is required.

### **Board Findings**

1. One (1) neighbor physically attended today's meeting and submitted written documentation supporting the variance.
2. Also, attending was the construction contractor, acting as a resource person in support of the petitioners.
3. An extensive and collegial discussion ensued which unveiled parental concerns for the health and safety of their growing family.
4. The attachments accompanying the Appeal application was appreciated.

Motion to close the public hearing was made by M. Schaffer, seconded by M. Klettke. Ayes: Unanimous

- A. Gerbec - Yes
- A. Kroening - Yes
- R. W. Muscatello - Yes

- M. Schaffer - Yes
- M. Klettke - Yes

Motion approved

**Findings per New York State Law Guidelines:** Subsequent to reading the guidelines for granting area variances, listening to the petitioner's testimony, and considering the attendee's contributions,, the Zoning Board of Appeals concluded:

1. The proposed addition could be extended longer but doing so would seriously impair the vision of the children when playing in the rear yard; a condition verified by the neighbor who frequently hosts his grandchildren A mere 10' addition would not produce enough space to justify the investment.
2. The addition will not be symmetrical or be aesthetically pleasing.
3. Yes. The addition would only be approximately 6' from the neighbor's garage.
4. The proposed construction is occurring in the Town's flood plain. The addition could very well set a precedent for future similar decisions from neighboring properties.
5. Yes

After discussing different iterations, a Motion to approve the variance with a 7' side-yard setback verses a 10' side-yard setback was made by M. Schaffer, seconded by A. Kroening.

However, the motion was subsequently amend by another motion to approve the variance with a 7' side-yard setback verses a 10' side-yard setback, to include a fire wall between the proposed addition and the neighboring garage made by M. Schaffer, seconded by A. Kroening.

- A. Gerbec - Yes
- A. Kroening - Yes
- R. W. Muscatello - Yes
- M. Schaffer - Yes
- M. Klettke - No

Motion Approved

**7:35 pm: Up State Tower Co LLC for Great Lakes Marine Radio** requests four (4) variances for Lot #177.01-1-2, located at 7263 Shawnee Road to construct a cell tower where the tower height exceeds the maximum; has more than one tower per acre; the setback from residential dwellings is less than the required 500' and does not meet the minimum requirements for the setback to the lot line.

Board Findings:

**Prologue:** The following four (4) variances disapproved by the Town's Zoning Enforcement Officer, received via one application, were evaluated individually. However, the final ZBA decision was voted on collectively:

1. Maximum number of Towers per acre
2. Set back from Residential Zoning
3. Set Back from lot line
4. Tower Height

The aforementioned variances pertain to an existing and similar structure that has been in existence for many years. The proposed replacement tower, although designed to be slightly higher, has been designed to improve telecommunications coverage.

Motion to close the public hearing was made by M. Klettke, seconded by M. Schaffer.

- A. Gerbec - Yes
- A. Kroening - Yes
- R. W. Muscatello - Yes
- M. Schaffer - Yes
- M. Klettke - Yes

Motion approved

Findings per New York State Law Guidelines:

1. The proposed replacement Telecommunications tower has been professionally engineered and substantiated as to design, need and benefits. To achieve these benefits, the tower height will be increased

to 165 feet from the current 145 feet. The 145' Tower has been in existence since the 1940s. The improved tower has been engineered to require a lesser "fall zone" area. (Refer to End Notes item a).

2. The possibility of an undesirable change in the character of the neighbor is mitigated by the fact that the existing tower have been in place since the 1940s. (Refer to End Notes item b)
3. The 145' tower enjoyed the approval of all the currently requested variances. Based upon the enormity and layout of the property, the street views of the tower height increase will not produce and undesirable change in the character of the neighborhood or a detriment to nearby properties.
4. The proposed and improved telecommunication tower will provide greater safety and efficiency to a substantial portion of the Western New York region. To achieve this benefit the petitioner is laying out thousands of dollars to tear down the old tower and replacing it with a safer and more efficient, effective tower. As mentioned in item 2, above, the location has hosted a similar structure and layout for many years. The proposed improvement will not have an adverse effect on the neighborhood. (Refer to End Notes item c)
5. Yes. Self-created but for the purpose of bringing new and improved telecommunication services to an array of inhabitants, commercial and industrial benefactors.

End Notes:

- a. Exhibit 13 of the site plan application states that should a catastrophic wind load occur, failure would result in the upper portion of the tower folding over the lower portion, preventing a total collapse of the structure and resulting in a fall zone radius equal to 25 feet, signed and certified by a New York licensed engineer.
- b. Refer to Exhibit 13A, petitioner's site plan.
- c. The replacement tower allegedly could accommodate five (5) co-locaters

Motion to approve the four (4) variances as submitted made by M. Schaffer, seconded by A. Gerbec.

- A. Gerbec - Yes
- A. Kroening - Yes
- R. W. Muscatello - Yes
- M. Schaffer - Yes
- M. Klettke - Yes

Motion Approved

**Miscellaneous:** None at this time.

**Next Meeting Schedule :** October 7, 2019 @ 7:00 pm, sharp, Building Dept., lower level conference room.

**Public Hearings:** Scheduled for October 7, 2019

- **7:05 pm: Rajvinder Singh** requests an area variance for Lot # 162.08-1-46, located at 6884 Ward Rd
- **7:35 pm: Edward Muth** requests an area variance for Lot #175.09-2-24.2, located at 2298 River Rd

**A motion to adjourn :** Made by M. Schaffer, seconded by A. Gerbec. Ayes: Unanimous

Respectfully Submitted,

Deborah Carr  
Secretary (Redacted by Chair)

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