

Town of Claverack
Zoning Board of Appeals
P.O. Box V
Mellenville, NY 12544

Meeting: August 25, 2010
7:30 p.m.

Approved 9/22/10

Chairman Frank Clegg called the August 25, 2010 meeting of the Town of Claverack Zoning Board of Appeals to order at 7:30 PM

Members in attendance were: Chairman Frank Clegg, Stephen Melnyk, Norma Barnard, David Graziano, Oliver Milot, Paul Gundrum, Jock Winch, Engineer; Joe Romano, Attorney; Nelson Alford, Secretary; Jodi Keyser, Attorney; Rob Fitzsimmons entered late and is recused from the Mariner and Homeland tower applications.

Chairman Clegg led the Board members and audience in the Pledge of Allegiance.

Correspondence:

Town of Claverack Building Inspector report for July 2010.

NYS DEC Letters of 8/5/10 regarding Millbrook Rd.

Columbia Greene Planning Boards training on 9/13/10.

MYS Association of Environmental Management Council training for 11/19/10 – 11/21/10 in West Point.

NYS DEC Hudson River Estuary Program conference on 12/13/10 in New Paltz.

Motion to approve the minutes of July 28, 2010 was made by Oliver Milot with a second from Norma Barnard. All members were in favor. Motion carried.

Continuing Board cases for 8/25/10:

Mariner Tower II LLC: Tax Map # (SBL)143 . – 1 – 08 Located at 1631 County Rte. 11 Stop 100 Craryville Special Exception for development of new public utility/telecommunications facility including a monopole tower.

Mr. Ciolfi representing Mariner Tower along with Kevin Brennan and Jim Woodward of AT&T were in attendance. Mr. Ciolfi asked as a good gesture that due to the complexity of both cellular applications and the public hearings if the Board would allow the last application on the evening's agenda could be heard first. Chairman Clegg informed Mr. Ciolfi that the applicant for the Ray application were not in attendance as of yet therefore the Board will proceed with the application. Mr. Ciolfi submitted a memo to the Board members that summarizes the Mariner Tower application. Mr. Ciolfi stated that Mariner Tower II LLC has a signed lease with AT&T wireless. Mr. Ciolfi informed the Board that AT&T is looking to expand their coverage area along the Rte 23 corridor, the TSP, and the THSD. Mr. Ciolfi stated that the property for the new tower consists of 10 +/- acres located on County Rte 11. Mr. Ciolfi stated that as of this date the application does not have an official curb cut approval from CC Highway but has spoken to the highway department and there are no huge issues and that the official curb cut approval will be obtained pending TOC ZBA approval. The curb cut consists of a gravel roadway. Mr. Ciolfi stated that the application is seeking to construct a 180' monopole type tower affixed to a concrete foundation, equipment shed, and security fence. Mr. Ciolfi informed the Board that the site will be secured and monitored. Mr. Ciolfi described the drainage details for the Board. Mr. Ciolfi stated that the AT&T antenna will be located at the 177' mark on the tower. Mr. Ciolfi stated that the application also includes a dimensional variance because the height of the tower does not meet the 1 ½ fall zone requirement per ZBA code. Mr. Ciolfi reminded the Board of the propagation study, balloon float, and viewshed maps were reviewed. Mr. Ciolfi acknowledged that the Board is in a predicament with having to decide another cellular tower application at the same time. Mr. Ciolfi stated that in his opinion he has proven that the applications are seeking to obtain improved service and increased coverage in a separate area from the Homeland tower application. Mr. Ciolfi stated that he has also proven that the coverage and service objective of the Mariner tower would not be reached from co-locating on the Homeland tower. Mr. Ciolfi then explained the sight-line map for the Board showing that Bloody Hill is in the path of the Homeland tower and this restricts the coverage to the THSD whereas the Mariner Tower bypasses Bloody Hill. Mr. Ciolfi informed the Board that the historic impact study letter is in the submitted packet. Mr. Ciolfi informed the Board that EBI is prepared and in the process of conducting the review. Mr. Ciolfi stated that if the height of the tower were to be increased by 10% or more

then a new application for NYSOPRHP would be required. Mr. Ciolfi stated that the objective of the Mariner Tower would be reached at the 180' height and it meets the needs of AT&T and any other possible carriers and also maintains the level of impact. Mr. Ciolfi stated that a tower at 180' or 190' would not require lighting. Mr. Ciolfi informed the Board that the Mariner Tower will also provide space for local emergency and municipal agencies free of charge and will rent to other carriers. Mr. Ciolfi stated that his client is seeking to complete the tower in 2010. Mr. Ciolfi ended his remarks by stating that no other site or tower meets the needs of AT&T. Mr. Alford stated that the application has been noticed for public hearing and asked if the Board members had any questions. Mr. Alford asked Mr. Ciolfi to explain the setback issue for the 1 ½ fall zone for the Board members. Mr. Ciolfi explained by stating that the front setback is 90', side setback is 89', and the rear setback is 82', which is between 180' and 188' short. Chairman Clegg asked if the property is large enough to support the variance if granted. Mr. Ciolfi stated affirmatively that the tower would remain completely within the Cullen property if it was constructed at 180' but if the tower height was expanded it would not. Oliver Milot asked what would happen if the tower were not needed anymore. Would the tower remain or would it be removed. Mr. Ciolfi stated that this is a condition of the approval and it requires a removal bond with the TOC but he has been in this business for 18 + years and has not become an issue because of the long term binding lease with the carrier. Oliver Milot asked what happens if the property owner sells the property on which the tower is located. Mr. Ciolfi stated that the binding lease remains for future owners also. Jock Winch asked about removal bonds. Mr. Alford stated that removal bonding is a condition that would be required for both towers. Mr. Brennan informed the Board that AT&T files a memorandum of lease for their protection also. Stephen Melnyk asked if the tower impacts any neighboring houses within the immediate area of the tower. Mr. Ciolfi stated that the closest house is over 700' away and you would need to look up through the trees to see the tower. Chairman Clegg opened the application to the public at 8:01 PM. Gerd and Herta Ricker informed the Board that they owned a farm at 271 Palmer Rd since 1940. Mr. Ricker stated that he is very proud of his property and maintains it to the best of his ability. Mr. Ricker stated that a few years ago he felt punished when high-tension power lines were placed along his property. Mr. Ricker stated that he lost property then and also when the TSP took some of his land. Mr. Ricker continued that a couple of years ago a cellular tower was proposed directly up the hill from his home but it was never built. Mr. Ricker continued that he is aware of the need for cellular towers but also hears that possibly more towers would be needed every 3 or 4 miles apart. Mr. Ricker stated that he understands the facts and topography of the area but is asking that the applicants put the most into the projects to keep less of a need for future towers. Mr. Ricker also asked the Board if anyone has visited the Forest Lake property where the Homeland tower is being proposed. Mr. Ricker stated that in his opinion it is a beautiful piece of property and he is sad that a cellular tower is going there.

Skip Speed asked the Board why two cellular towers are being proposed or the same area? Chairman Clegg answered that the towers are both seeking different coverage areas that can not be obtained by either one co-locating on the others tower. Skip Speed then stated that it is his understanding that they are seeking the same areas for coverage. Mr. Ciolfi answered that it would be the same if A&T were required to co-locate on the Homeland tower but it is not the area that AT&T is seeking continuing that the Mariner site provides coverage to the THSD, Cty Rte 11 and the Rte 23 corridor which cannot be reached from the Homeland tower. Skip Speed then stated that the Homeland tower will benefit the Village of Philmont and the Mariner tower will benefit the landowner. Mr. Ciolfi again stated that the Homeland tower/Verizon wireless site increases coverage to cover the TSP but the Mariner tower/AT&T site will provide coverage to the TSP, THSD, County Rtes. 11 & 11A and they have also invited the County, Town and Village agencies to locate antennae on the tower free of charge.

Tom Cody of the Rip Van Winkle Amateur Radio Club informed the Board that his club currently uses a whip antenna at the site of the proposed Homeland tower. Mr. Cody continued that he has concerns that the Mariner tower will have an effect on their radio repeaters. Mr. Cody stated that his club has very good propagation to the THSD from the Forest Lake property so he can't understand why there is a need for two towers.

Mr. Visconti of Homeland Tower addressed the Board stating that at the July meeting Mr. Brennan had stated that he was in negotiations with the Homeland site for 5 years. Mr. Visconti stated that the Village of Philmont sent out the RFP and that went to the Homeland Tower company. Mr. Visconti stated that he was under the impression at the time that Mr. Brennan preferred the Homeland site for the location of an AT&T antenna. Mr. Brennan of AT&T explained to the Board and audience that AT&T was in talks with the Village 5 years ago about the Forest Lake property and a site on Palmer Rd. Mr. Brennan continued that he was taken to the Palmer Rd. site by Mr. Visconti but because of the controversy surrounding the site they did not want to use the site. He was then taken to the Forest Lake property by a representative from Liberty Tower. Mr. Brennan continued that an agreement was then signed but at the same time mergers were then taking place and took time and capital away from the project. Mr. Brennan continued that during the same time the Village of Philmont sent out an RFP. Mr. Brennan stated that he was in negotiations with the Cullen property the current Mariner site. Mr. Brennan stated that studies were done on both sites and it was determined that the Homeland site would not get the coverage area that AT&T was seeking and would also require another tower site. Mr. Brennan continued that his company is seeking to build out the entire county. Mr. Brennan stated that he is currently in negotiations with Ancram, Hillsdale, and Copake for sites to make this possible. Mr. Brennan stated that they are also

looking into another site, which would provide hand off to the other towers. Mr. Visconti then stated that AT&T representatives were still interested in the Homeland tower site. Chairman Frank Clegg stated that he was under the impression that at the July meeting the representatives from both the Mariner and Homeland towers were in agreement with each other for the need of each. David Graziano stated that he also remembered that at the July meeting representatives from both towers basically nodded in agreement with each others argument for their different needs and now feels that business is being brought into the argument instead of the need. Mr. Visconti stated that is not true. Mr. Ciolfi stated that he feels that he has proven the need for the Mariner tower and that he has provided a credible application without objections from the community. Chairman Frank Clegg closed the public comment at 8:35 PM. Mr. Alford informed Mr. Ciolfi that he needs to provide the Board with the NYSOPRHP review letter and the application will need to be reviewed by the Columbia County Planning Department. Mr. Alford suggested that this application be sent in a timely manner because the CC Planning Department meeting will be held on 9/21/10 the day before the next ZBA meeting but it is possible to get this done. Mr. Ciolfi asked if the Board could vote on the application making the items conditions of the approval. Mr. Alford stated no because the Board will need CC Planning approval before making a decision. Secretary Jodi Keyser will send a copy of the full application to the CC Planning Department. Mr. Alford stated that the Board can incorporate the Variance, SEQRA, and Site Plan into one Resolution. Mr. Alford informed the applicant to provide a copy of the NYSOPRHP review letter to his office and copy to Joe Romano prior to the September meeting. Continued to the September 22, 2010 meeting.

Homeland Towers LLC NYNEX Mobile Limited Partnership 2 d/b/a Verizon Wireless:

Tax Map # (SBL)143 . – 1 – 42 Balance of Interest test for proposed Telecommunications facility at Forest Lake, Philmont NY

Mr. Gaudio, Mr. Visconti were present for the application. Mr. Gaudio reminded the Board that Verizon Wireless and Homeland Tower LLC are in a joint venture to construct a cellular tower at the Forest Lake Property owned by the Village of Philmont. Mr Gaudio informed the Board that his application is seeking an exception from ZBA review due to the benefit to the Village of Philmont. Mr. Gaudio stated that the application is also seeking a Area Variance for setbacks and a Special Exception. Mr. Gaudio informed the Board that the Homeland Tower application is the same and different in ways from the Mariner Tower application. Mr. Gaudio stated that his application will replace an existing communication antenna with a much safer, and more secure antenna by relocating the current whip antenna used by the Rip Van Winkle Amateur Radio Club onto the cellular tower. Mr. Gaudio also stated that the Homeland tower will benefit the Village of Philmont by providing revenue, improved communication, and free space for County emergency communication antenna. Mr. Gaudio stated that the relocation of the Amateur Radio antenna will be a benefit to that club which provides a huge service to the community. Mr. Gaudio stated that his company reached out to the Radio Club to replace their 25-year old antenna with a new safe, secure, and maintained antenna on the Homeland tower. Mr. Gaudio also stated that Homeland Tower will purchase a new antenna for the Radio Club. Norma Barnard informed the applicant that in her opinion they are trying to sell the Board members on the Radio Club and that is not what they are here for. Need to get back to the application itself. Mr. Gaudio stated that he has submitted approval from the CC Planning Department, NYSOPRHP review letter and approval, and proof that the application meets the TOC Code requirement of no net increase in towers. Mr. Gaudio stated that there is an existing curb cut and roadway. Mr. Gaudio stated that because of the large area there is a low impact to the area, visibility is minimal, and proven the need for coverage will be obtained by the site. Chairman Frank Clegg opened the meeting to the public at 8:40 PM. Mr. Ciolfi of the Mariner Tower LLC stated that they are currently looking at a site on Rte 22 in Copake and would not need another site along Rte 23. Mr. Brennan rebutted that statement by saying that he apologizes to Mr. Ciolfi but it was determined that another site along Rte 23 will be needed in order to extend coverage past the Bloody Hill area to hand off to another tower to provide coverage to the Hillsdale area. No further comment. Closed public comment at 8:50 PM. David Graziano stated that if he understood at the July meeting he heard that Verizon could place an antenna onto the Mariner tower and get the coverage needed. Mr. Gaudio stated that he provided an affidavit proving that the Mariner tower site would not provide Verizon with the coverage needed. Mr. Alford informed the Board members that the Homeland Tower application is complete and they will need to make a determination on the SEQRA then the immunity issue then the remaining issues but they could decide both applications at the September meeting if they wished. Board members agreed that they would rather vote on both cellular towers at the September 22, 2010 meeting. Stephen Melnyk asked at what height the Radio Club antenna will be placed. Mr. Gaudio stated that they have not yet determined the exact height of the Radio Club antenna but will place it at the best for maximum coverage. Mr. Alford asked Mr. Cody of the RVW Radio Club if the applicant has reached an agreement with the club and if he would explain the agreement for the Board. Mr. Cody stated that RVW member Stan Engel has signed a letter of agreement with Homeland Tower but he did not have the agreement with him to discuss. Stephen Melnyk asked if the two towers are built it is his understanding that there will not be a need for another tower for a 3-mile radius from each tower. Mr. Brennan stated that he is looking at a site along Rte. 23 East of the TSP to cover Rte 23 to Hillsdale because of Bloody Hill. Continued to September 22, 2010.

Rob Fitzsimmons enters meeting.

Danyell C. Ray dba Georgia Ray's Kitchen LLC: Tax Map #(SBL) 101 . – 1 – 56 . 100 Located at 9 Ginsberg Lane. Seeking Special Exception and Site Plan Review for catering business, retail food sales, and residential living area. Ms. Kathleen Christiano/business manager for Georgia Ray's Kitchen was present for the application. Ms. Christiano stated that she represents Chef Danyell Ray operator of a premier catering business currently housed at 149 Joslen Blvd. in Hudson. Ms. Christiano continued that her client is seeking to purchase a building located at 9 Ginsberg Lane. Ms. Christiano stated that her client will relocate his off premises catering business to the site and add a retail breakfast/lunch business with some prepared dinner items to go. Submitted a letter from Ginsberg's Institutional Foods regarding the roadway but it was determined that the roadway is not a private road owned by the Ginsbergs. Jock Winch asked for a letter from CCDOH regarding the septic. Joe Romano stated that it was determined at the July meeting that CCDOH approval was not needed because the impact is equivalent or less then the former business. Rob Fitzsimmons informed the Board that the TOC Building Department will make sure that the application meets the CCDOH approval. Chairman Frank Clegg opened the meeting to the public at 9:05 PM. No Comments. Closed the public comment at 9:06 PM. Joe Romano reviewed the SEQRA for the Board. Motion for Negative Declaration with regard to SEQRA was made by Jock Winch with a second from David Graziano. All members were in favor. Motion carried. Motion to approve Site Plan Review and Special Exception was made by Stephen Melnyk with a second from Jock Winch. All members were in favor. Motion carried. Maps were stamped and signed. Ms. Christiano paid fee of \$100.00 for the Site Plan Review.

Motion to adjourn was made by Stephen Melnyk with a second from Jock Winch. All members were in favor. Meeting adjourned at 9:15 PM.

Respectfully submitted,
Jodi Keyser
Secretary