



# TOWN OF SOUTHPORT

1139 Pennsylvania Avenue  
Elmira, NY 14904

*Minutes Approved  
by Board of Appeals  
1/15/2020*

## ZONING BOARD OF APPEALS

### INFORMATIONAL HEARING

### **MATTHEW KERWIN, BARCLAY DAMON, O/B/O, UP STATE TOWER CO, LLC & BUFFALO-LAKE ERIE WIRELESS SYSTEMS**

*(a/k/a "Upstate" and "Blue Wireless")*

**WEDNESDAY, DECEMBER 18, 2019**

**7:00 PM**

Minutes of the informational hearing of the Zoning Board of Appeals, Town of Southport held at the Southport Town Hall, 1139 Pennsylvania Avenue, Elmira, New York on December 18, 2019 at 7:00 p.m. The informational hearing is a continuation of the November 20, 2019 hearing and was held to provide an update on the Application of Up State Tower Co., LLC and Buffalo-Lake Erie Wireless Systems, represented by Matthew Kerwin, Barclay Damon, 125 Jefferson Street, Syracuse, NY 13202, concerning an area variance to construct a telecommunications tower at Morley Place, Town of Southport, NY (*Tax Map #109.07-5-45*), Site: ELM-765, zoned Industrial, but does not meet the current code in Section 525-109(D)(1)(a)(2)-Setback Requirements.

#### Item No. 1 - Call to Order

#### **Attendance**

Board Members Present: Justin Faulkner  
Susan Silvers  
Edward Steinhauer  
Shawn Crater, Alternate Member

Board Member Absent: Deborah Eames

Others Present: Leslie Connolly, Town Attorney  
Peter Rocchi, Town Code Enforcement Officer  
Bonnie Balok, Secretary-Zoning Board of Appeals

#### Item No. 2 - Approval of Minutes of June 19, 2019 and November 20, 2019

Chairman Faulkner advised the next item on the agenda is the approval of the June 19<sup>th</sup> and November 20 minutes, June 19 - It was noted at that meeting, Mr. Crater was absent from the June 19<sup>th</sup> meeting and therefore could not vote on the June 19<sup>th</sup> minutes. Motion was made by Ms. Silvers to accept the minutes; seconded by Mr. Steinhauer. June 19, 2019 minutes were unanimously approved.

November 29 - It was noted, Ms. Silvers was not present at the November 20<sup>th</sup> meeting and therefore could not vote on the November minutes. Mr. Faulkner noted a correction was needed on Page 4 (*omit: imitated*) (*add: initiated*). Motion was made by Mr. Steinhauer to accept the minutes to include the correction; seconded by Mr. Crater. November 20, 2019 minutes were unanimously approved.

#### Item No. 3 - New Business

(1) Update on Application of Up State Tower, Co. LLC and Buffalo-Lake Erie Wireless System (*continued - 11/20/19*)

The informational hearing to provide an update on the Application of Up State Tower Co., LLC and Buffalo-Lake Erie Wireless Systems, concerning an area variance to construct a telecommunications tower at Morley Place, Town of Southport, NY (*Tax Map #109.07-5-45*), Site: ELM-765, zoned Industrial, but does not meet the current code in Section 525-109(D)(1)(a)(2)-Setback Requirements was not held.

Minutes of December 18, 2019– Informational Hearings–MATTHEW KERWIN, BARCLAY DAMON, O/B/O, UP STATE TOWER CO, LLC & BUFFALO-LAKE ERIE WIRELESS SYSTEMS 125 Jefferson St., Syracuse, NY 13202 Re: Budd Street & Morley Place, Elmira, NY 14904 and Michael Reese, 511 Herrick Street, Elmira, NY 14904 Re: 1495 Cedar Street, Elmira, NY 14904

Town Attorney Connelly advised the hearing would not be held due to the fact the applicant did not provide a revised application and supporting materials in accordance with Planning Board and ZBA submissions deadlines for those boards to consider the project at their respective meetings. Further, the ZBA did not receive anything from the applicant before the ZBA’s December 6 deadline. Based upon this information, the project would not be included on the ZBA’s December 18, 2019 agenda. Town Attorney Connelly further advised, until the application is submitted in conformity with the Town’s newly adopted laws, the Town is unable to move its review of this project forward and the shot clock remains stopped.

Item No. 3 - New Business (continued)

(2) Michael Reese, 511 Herrick Street, Elmira, NY 14904

- Re: Area variance to operate a used car lot on a sub-standard size lot allowed by Town Ordinance Section 525-110--Vehicle filing stations, vehicle repair, vehicle sales, etc. 525-110--A1a-Lot size shall be greater than one (1) acre; lot size is less than the required one (1) acre. 525-110--Ale-Minimum lot width shall be the greater of two hundred feet (200’); lot has three (3) front yards none of which meet the required minimum lot width. 525-110--B3a-No vehicle shall be parked, stored or left standing within fifteen feet (15’) of a road ROW

1495 Cedar Street, Elmira, NY 14904 Tax Map#: 109.11-2-13

Current Use: Commercial Zoned: CR

Discussion took place concerning the size of the lot (4/10 of an acre) and the need for one (1) acre for a used car lot, the number of cars to be on the lot--ten (10) to fifteen (15) cars, measuring ten foot (10’) by fifteen (15’) foot per car, five (5) in front and five (5) in back, two (2) rows on Cedar Street and Caton Avenue, repairs would be done at a facility with two (2) bays to clean them. Minimum lot width would be two hundred feet (200’), not including the building; lot is one hundred sixty five (165) to one hundred seventy (170) and two hundred feet (200’) is required.

Further, two variances would be required: one for the lot and one for acres.

It was noted, Andy Mallow, property owner, has provided written permission for Mr. Reese to use the property at 1495 Cedar Street, Elmira, NY 14904 for use as a retail used car lot. Mr. Reese will be leasing part of this property. Mr. Mallow will keep three (3) to four (4) parking spaces for his wood working business office toward Cedar Street which consists of two (2) bays and an office. Mr. Mallow is willing to make any changes such as lighting.

Mr. Rodabaugh had a body shop and car lot on this site for a long time.

Mr. Reese will meet with the Chemung County Planning Board on Thursday, December 19, 2019.

Public Hearing will be scheduled for Wednesday, January 15, 2020 at 7:00 pm. concerning the area variance.

Mr. Reese requested the legal notice and instructions be emailed to him. Email provided to Secretary Balok

Informational Hearing Adjourned: 7:16 pm.

**Minutes of December 18, 2019– Informational Hearings – Dan Williams,**

1251 Pennsylvania Avenue, Pine City, NY 14871,  
Re: 809 Maple Avenue, Elmira, NY 14904

and

**Fagan Engineers, o/b/o, Dave and Amy Cleary,**

113 East Chemung Place, Elmira, NY 14904

Re: Autumnview Way, Pine City, NY 14871

Item No. 3 - New Business (continued)

(3) Dan Williams, 1251 Pennsylvania Avenue, Pine City, NY 14871

Re: Use variance relief from Town Zoning, Section 525-20—Use Regulation Table to allow operation of a business in an existing vacant school that is owned by a church.

809 Maple Avenue, Elmira, NY 14904

Current Use: Commercial

Tax Map#: 100.09-1-1

Zoned: R2

Mr. Williams advised he purchased Energy Savers from Dan Sherman and tried to relocate the business to Furman Road and Pennsylvania Avenue in the Town of Southport, but that was not workable. Mr. Williams explained he is buying a lot located in the City of Elmira and a lot in the Town of Southport along with an easement for tractor trailers. Mr. Williams will be taking the gym on the property, putting in two (2) overhead doors for a fabrication shop, using the classroom building for dry storage which measures sixty (60) by one hundred twenty (120), and will be loading enclosed trailers in the parking lot. This is a glass and glazing business, a big opportunity but must have fast turnaround. The property will be fenced in, glass will be put in a dumpster and he will try to keep a tight ship in because they don't have storage, The property border is already zoned commercial and only the back lot is zoned R2. The building is in decent shape, perfect fit for installation of two (2) overhead doors. This will create more jobs, taking property that was not on the tax rolls and putting it on the tax rolls. Two or three times a week the area will receive tractor trailer loads, FedEx and UPS daily. Tractor trailers will be in 10:00 am – 1:00 pm.

Mr. Williams requested the public hearing be scheduled after the Cleary hearing.

Public Hearing will be scheduled for Wednesday, January 15, 2020, 7:20 pm. concerning the use variance.

Informational Hearing Adjourned: 7:31 pm.

Item No. 3 - New Business (continued)

(4) Fagan Engineers, o/b/o, Dave and Amy Cleary, 113 East Chemung Place, Elmira, NY 14904

Re: Area variance to build eleven (11) elevated duplexes (twenty two (22) units, minimum area requirements- Shall be ten (10) acres in the PDD in a R1 zone, as per Section 525.43 D2; duplexes not allowed in R1

Autumnview Way, Pine City, NY 14871

Current Use: Residential

Tax Map #: 108.00-1-34.11

Zoned: R1

James Gensel, Fagan Engineers explained the use of a PDD in a R1 zone requires a minimum of ten (10) acres and the Clearys would like to use the existing parcel which is 4.8 acres requiring a right-of-way and there is a concern about ground water. Due to the ground water problem, the duplex construction would be slab on grade, combined septic systems and have raised beds. The duplexes would be at market rate, no subsidies and the proposal would be rental duplexes, not for sale, garages, driveways, two (2) bedrooms with study. Looking at septic now- one hundred ten (110) gallons per day per bedroom, single story units, zoning for property to PDD. If ZBA approves 4.8 acres for PDD, then the next step would be to go to the Town Board. The proposal would be for eleven (11) duplexes, building one or two at a time, rent them and build another. The Clearys intend to own all lots not to subdivide them.

**o/b/o, Dave and Amy Cleary,**  
113 East Chemung Place, Elmira, NY 14904  
Re: Autumnview Way, Pine City, NY 14871

Item No. 3 - New Business (continued)

(4) Fagan Engineers, o/b/o, Dave and Amy Cleary, 113 East Chemung Place, Elmira, NY 14904

The road would be a public road but maintained by the Town. Discussions concerning plowing would have to take place to determine if the Town or PDD would do this. There would be six (6) buildings, septic at both ends, they set the density.

Discussion took place concern questions that had to be answered first such as sewer, highway department turn around, public road could change to private, and evaluation of factors that go into this area variance. The Planning Board does not evaluate the same thing that the ZBA does.

Attorney Connolly advised the ZBA can have a variance contingent on highway approval, sewer approval and Planning Board or Town Board approval.

If SEQR treats this one way may have to have more septic and less homes. This is on the public water system.

Public Hearing will be scheduled for Wednesday, January 15, 2020, 7:10 pm. concerning the use variance.

Informational Hearing Adjourned: 8:02 pm.

#### **4. Old Business**

(1) Review applications and résumés for Zoning Board of Appeals Board

Board Member and Alternate Board Member

Discussion took place concerning bringing Mr. Carter on the ZBA as a permanent member which would leave an alternate position open on the ZBA. Motion made by Ms. Silvers; seconded by Mr. Steinhauer. Unanimously approved.

The ZBA members discussed and reviewed résumés submitted by two (2) applicants for the ZBA board position openings. Based upon the review of the résumés and discussion, the Board selected the following individuals be contacted for the ZBA Board openings:

Motion by Mr. Steinhauer; seconded by Mr. Crater. Ms. BeLinda Combs (*Permanent Board member to fill Mr. John Arikian's term expiring 4/1/2024*). Unanimously approved.

Motion by Mr. Crater; seconded by Mr. Steinhauer Mr. Ken Wrigley (*Alternate Board member to serve for a period of five (5) years-term expiring 4/1/2025*). Unanimously approved.

Upon acceptance of the positions openings, the names will be submitted to the Town Board for approval.

#### **5. Organizational Structure for the Year 2020**

(1) Election of Chairman, Vice Chairman and Secretary

Chairman-----Ms. Silvers nominated Mr. Faulkner; seconded by Mr. Steinhauer. Unanimously approved.

Vice Chairman-Mr. Faulkner nominated Ms. Silvers; seconded by Mr. Crater. Unanimously approved.

Secretary-----Mr. Faulkner nominated Ms. Balok; seconded by Ms. Silvers. Unanimously approved.

(2) Establishment of Meeting Day and Time

Meeting Day and Time ---Mr. Faulkner made a motion to keep the third Wednesday of the month as the meeting day and the time to remain the same at 7:00 pm. Ms. Silvers seconded the motion. Unanimously approved.

**Michael Reese  
Dan Williams  
Fagan Engineers, o/b/o, Dave and Amy Cleary,**

Item No. 6 – Discussion

No further discussion

Item No. 7– Adjournment

Ms. Silvers made a motion to adjourn; seconded by Mr. Steinhauer. Adjournment unanimously approved.

Meeting Adjourned: 8:45 pm

Original on File:

Town Clerk  
Town Board  
Board of Appeals  
Planning Board  
Town Supervisor  
Town Attorney  
Town Assessor  
Town Code Enforcement Officer

C:

Applicant: Matthew Kerwin, Barclay Damon, o/b/o,  
Up State Tower Co, LLC & Buffalo-Lake Erie Wireless Systems  
125 Jefferson St., Syracuse, NY 13202  
Applicant: Michael Reese, 511 Herrick Street, Elmira, NY 14904  
Applicant: Dan Williams, 1251 Pennsylvania Avenue, Pine City, NY 14871,  
Applicant: Fagan Engineers, o/b/o, Dave and Amy Cleary,  
113 East Chemung Place, Elmira, NY 14904

Bonnie Balok, Secretary  
Zoning Board of Appeals,  
December 26, 2019

*Minutes Approved  
by Board of Appeals  
1/15/2020*

**ZONING BOARD OF APPEALS  
TOWN OF SOUTHPORT, COUNTY OF CHEMUNG, STATE OF NEW YORK**

**RESOLUTIONS  
2019**

*(Note: Resolutions 13-17 cover the up-coming 2020 ZBA Board)*

**Resolution No. 13**

**Appointment of Justin Faulkner, Chairman of the Zoning Board of Appeals, Town of Southport for the year 2020.**

**Resolution by: Silvers**

**Seconded by: Steinhauer**

Whereas, the Zoning Board of Appeals held an organizational meeting to elect a chairman for the year 2020, and  
Whereas, Ms. Silvers made a motion to nominate Justin Faulkner as Chairman. Mr. Steinhauer seconded the motion.  
Resolved, Justin Faulkner will serve as Chairman of the Zoning Board of Appeals, Town of Southport for the year 2020.

Ayes: Crater, Silvers, Steinhauer      Abstained: Faulkner      Noes: None      Carried.

**Resolution No.14**

**Appointment of Susan Silvers, Vice Chairman Zoning Board of Appeals, Town of Southport for the year 2020.**

**Resolution by: Faulkner**

**Seconded by: Crater**

Whereas the Zoning Board of Appeals held an organizational meeting to elect a vice chairman for the year 2020, and  
Whereas, Mr. Faulkner made a motion to nominate Susan Silvers. Mr. Crater seconded the motion. Resolved, Susan Silvers  
will serve as Vice Chairman, Zoning Board of Appeals, Town of Southport for the year 2020.

Ayes: Crater Faulkner, Steinhauer      Abstained: Silvers      Noes: None      Carried.

**Resolution No.15**

**Appointment of Bonnie Balok, Secretary, Zoning Board of Appeals, Town of Southport for the year 2020.**

**Resolution by: Faulkner**

**Seconded by: Silvers**

Whereas the Zoning Board of Appeals held an organizational meeting to elect a secretary for the year 2020, and  
Whereas, Mr. Faulkner made a motion to nominate Bonnie Balok. Motion seconded by Ms. Silvers. Resolved, Bonnie  
Balok will serve as Secretary, Zoning Board of Appeals, Town of Southport for the year 2020.

Ayes: Crater, Faulkner, Silvers, Steinhauer      Noes: None      Carried:

**Resolution No.16**

**Meeting Day for the Zoning Board of Appeals, Town of Southport shall be the third Wednesday of each month.**

**Resolution by: Faulker**

**Seconded by: Ms. Silvers**

Whereas the Zoning Board of Appeals held an organizational meeting to select a meeting day for the year 2020, and  
Whereas, Mr. Faulkner made a motion to set the meeting day as the third Wednesday of each month. Motion seconded by  
Ms. Silvers. Resolved, the third Wednesday of each month shall be the meeting day for the Zoning Board of Appeals for the  
year 2020.

Ayes: Crater, Faulkner, Silvers, Steinhauer      Noes: None      Carried.

**ZONING BOARD OF APPEALS  
TOWN OF SOUTHPORT, COUNTY OF CHEMUNG, STATE OF NEW YORK**

**RESOLUTIONS  
2019**

*(Note: Resolutions 13-17 cover the up-coming 2020 ZBA Board)*

**Resolution No.17**

**Meeting Time for the Zoning Board of Appeals, Town of Southport shall be 7:00 p.m.**

**Resolution by: Faulkner**

**Seconded by: Ms. Silvers**

Whereas the Zoning Board of Appeals held an organizational meeting to select a meeting time for the year 2020, and Whereas, Mr. Faulkner made a motion to set the meeting time as 7:00 pm each Motion seconded by Ms. Silvers. Resolved, 7:00 p.m. shall be the meeting time for the Zoning Board of Appeals for the year 2020.

Ayes: Crater, Faulkner, Silvers, Steinhauer

Noes: None

Carried.

Board also discussed the time frame for information to be provided to the Board. Board agreed to ten (10) days prior to meeting; Paper work should be sent to the Board members seven (7) calendar days prior to the meeting; send hard (paper) copies, eliminate same email copies.