

Town of Shelby Zoning Board of Appeals
Board Meeting
Shelby Town Hall
4062 Salt Works Rd
Medina, NY 14103
August 4, 2019

ZBA Board Members Present: Craig Lacy Chairman
Patti Bushover Secretary
Larry Szatkowski
Sharlene Pratt
Marian Fry

Planning Board Members Present: Kirk Myhill Chairman
Bradley Pask Secretary
Larry Hill
Teresa Wilkins
Jerry Velesko
Roger Wilkins Alternate

Others Present: Edward Zelazny 11535 Harrison Rd Medina NY property owner, James Zelanzy 11722 Harrison Rd Medina NY, Peter George Representing Tarpon Towers II, LLC applicant, Nate Vander Wal Attorney for Nixon Peabody LLP Representing Bell Atlantic Mobile Systems LLC d/b/a Verizon Wireless applicant, John Silverhand Video Taping Meeting

Call to Order: Chairman C. Lacy called the Business Meeting to order at 7:20 p.m.
Voice roll call was taken by P Bushover. P Bushover reported that there was a quorum present

Old Business: Chairman Lacy called for Old business:

First Order of Old Business: No Old business.

New Business: Chairman Lacy Called for New business:

First Order of New Business: was to consider the application for variance 20-01, concerning a request from Tarpon Towers II, LLC and Bell Atlantic Mobile Systems, LLC. For height variance for a communications tower to be located at 5093 Creek Rd Medina, NY

Before considering the five factors Chairman Lacy read Exhibit C Applicable Legal Standards from the application submitted from Tarpon Towers II LLC and Bell Atlantic Mobile Systems LLC. (see attachment I)

C. Lacy asked the ZBA to consider the five factors and state their findings.
(See Attachment II)

After considering the Five Factors C. Lacy called for a motion. Patti Bushover made a motion to grant the variance to allow the applicant to construct a 165 ft. high tower at the purposed site. Marian Fry seconded the motion. The motion passed by a unanimous roll call vote.

Reasons being: it will cause no detriment to the health, safety, and welfare of the area. The ZBA farther finds benefit to the community has been clearly stated no detriment is noted also the requested height of 165 ft. height is the needed to provide the desired service.

This is a type I SEQAR was needed and was considered.

Meet adjoined at 7:45 pm

Next Meeting: As Needed Chairman Lacy will notify ZBA members.

Respectfully Submitted
Patti Bushover Secretary ZBA
August 26, 2020 Variance 20-01

ZONING BOARD OF APPEALS
AREA VARIANCE FINDINGS & DECISION

Applicant: Tarpon Towers II, LLC
Bell Atlantic Mobile Systems LLC.
Appeal Concerns Property at the following address:
5138 South Gravel Road Medina
County Tax Map Section: 101 Block: 1 Lot: 29.11
Zoning District Classification: GB

Application No. **AV-20-01**
Date of Application: **6-17-2020**
(Postmarked or Hand Delivered)
Date of Public Hearing: **08-04-2020**
Date notice Published: **07-21-2020**
Date of County Referral: **07-23-2020**
Date of Final Action: **08-04-2020**
Date of Filing Decision with the
Municipal Clerk: **08-05-2020**

Requirements for which Variance is Requested: **Maximum height of 35'**

Applicable Section of Town Zoning Code: **510E**

TEST: No area variance will be granted without a consideration by the board of the following factors:

1. Whether undesirable change would be produced in character of neighborhood or a detriment to nearby properties: YES NO **X**
Reasons: **The height of the tower will not result in any undesirable change in the neighborhood or be a detriment to nearby properties.**
2. Whether benefit sought by applicant can be achieved by a feasible alternative to the variance:
YES NO **X**
Reasons: **165' is the height required to provide adequate and reliable wireless service in the area.**
3. Whether the requested variance is substantial: YES **X** NO
Reasons: **130' is considerable greater than 35' requirement**
4. Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood: YES NO **X**
Reasons: **The project will not pollute, create noise, or vibrations increase vehicular traffic nor be unsightly to passer byes or neighbors.**
5. Whether the alleged difficulty was self-created: YES **X** NO
Reason: **The growing needs of wires communications in the area requires addition towers of a height necessary to provide reliable service**

DETERMINATIONS OF ZBA BASED ON THE ABOVER FACTORS:

The ZBA, after taking into consideration the above five factors, find that:

_____ the benefit to the Applicant DOESNOT Outweigh the Detriment to the Neighborhood or Community and therefore the variance request is denied.

___X___ the benefit to the Applicant DOES outweigh the Detriment to the Neighborhood or Community

Reasons: **The benefit to the community has been clearly stated and no detriment is noted**

The ZBA further finds that a variance of **130'** from **Section 510E** of the Zoning Code is the minimum variance that should be granted in order to preserve and protect the character of the neighborhood and the health, safety and welfare of the community because. **To serve its desired function and provide the desired service 165' is the optimum height required.**

CONDITIONS: The ZBA finds that the following conditions are necessary in order to minimize adverse impact upon the neighborhood or community, for the reasons following:

Condition No. 1

Adverse impact to be minimized:

Condition No. 2

Adverse impact to be minimized:

	CRAIG C LACY	08-04-2020
	Chairman, Zoning Board of Appeals	Date
	RECORD OF VOTE	
	MEMBER NAME	AYE NAY
Chair	Craig Lacy	X
Member	Patti Bushover	X
Member	Larry Szatkowski	X
Member	Sharlene Pratt	X
Member	Marian Fry	X

EXHIBIT C

APPLICABLE LEGAL STANDARDS

In Cellular Tel. Co. v. Rosenberg, 82 N.Y.2d 364 (1993), the New York Court of Appeals determined that cellular telephone companies are public utilities. The Court held that proposed cellular telephone installations are to be reviewed by zoning boards pursuant to the traditional standard afforded to public utilities, rather than the standards generally required for the necessary approvals.

'It has long been held that a zoning board may not exclude a utility from a community where the utility has shown a need for its facilities.' There can be no question of Cell One's need to erect the cell site to eliminate service gaps in its cellular telephone service area. The proposed cell site will also improve the transmission and reception of existing service. Application of our holding in Matter of Consolidated Edison to sitings of cellular telephone companies, such as Cellular One, permits those companies to construct structures necessary for their operation which are prohibited because of existing zoning laws and to provide the desired services to the surrounding community. . . . Moreover, the record supports the conclusion that Cellular One sustained its burden of proving the requisite public necessity. Cellular One established that the erection of the cell site would enable it to remedy gaps in its service area that currently prevent it from providing adequate service to its customers in the Dobbs Ferry area.

Rosenberg, 82 N.Y.2d at 372-74 (citing Consolidated Edison co. v. Hoffrnan, 43 N.Y.2d 598 (1978)).

This special treatment of a public utility stems from the essential nature of its service, and because a public utility transmitting facility must be located in a particular area in order to provide service. For instance, water towers, electric switching stations, water pumping stations and telephone poles must be in particular locations (including within residential districts) in order to provide the utility to a specific area:

[Public] utility services are needed in all districts; the service can be provided only if certain facilities (for example, substations) can be located in commercial and even in residential districts. To exclude such use would result in an impairment of an essential service.

Anderson, New York Zoning Law Practice, 3d ed., p. 411 (1984) (hereafter "Anderson"). See also Cellular Tel. co. v. Rosenberg, 82 N.Y.2d 364 0993); Payne v. Taylor, 178 A.D.2d 979 (4th Dep't 1991).

Accordingly, the law in New York is that a municipality may not prohibit facilities, including towers, necessary for the transmission of a public utility. In Rosenberg, 82 N.Y.2d at 371, the court found that "the construction of an antenna tower . . . to facilitate the supply of cellular telephone service is a 'public utility building' within the meaning of a zoning ordinance." See also Long Island Lighting Co. v. Griffin, 272 A.D. 551 (2d Dep't 1947) (a municipal corporation may not prohibit the expansion of a public utility where such expansion is necessary to the maintenance of essential services).

In the present case, Verizon Wireless is currently suffering from a lack of reliable wireless telecommunications coverage in and around the "Zelazny" cell area of the Town of Shelby. The Project is needed to remedy this service problem and to provide adequate and reliable wireless telecommunications service coverage to this area. Therefore, Verizon Wireless satisfies the requisite showing of need for the facility under applicable New York law.