



**CAL. NO. 25-07-SP**                      Douglas K. Paulding, 20 Wakeman Road, South Salem, NY 10590 [Owner of record: Linda B. Paulding, 20 Wakeman Road, South Salem, NY 10590]

Application for the renewal of a Special Permit pursuant to Article V, Section 220-38 of the Zoning Ordinance to authorize the storage of Contractor's Equipment.

The property is located on the south side of Wakeman Road, designated on the Tax Map as Sheet 47C, Block 10066, Lot 15, in an R-2A, Two-Acre Residential District.

No one was present to represent the applicant at the meeting.

Chairman Egginton stated that this matter will be adjourned until such time that litigation involving the applicant and the Town is resolved.

**CASE ADJOURNED.**

**CAL. NO. 08-09-BZ**                      Michael Sirignano, Esq., 895 Route 35, Cross River, New York 10518 [Owners of record: Giuseppe and Jessica Faraci, 241 Smith Ridge Road, South Salem, NY 10590]

Application for [1] a variance of Article IV, § 220-23D(11) in the matter of the construction of a 100 square foot open car port addition to an existing 600 square foot accessory structure that is larger than permitted (existing 600 square feet proposed 700 square feet) and [2] Article IV § 220-23E of the Zoning Ordinance in the matter of the proposed addition of a carport that is closer to the front lot line (proposed 40.9 feet where 50 feet is required) than permitted in an R-2A, Two-Acre Residential District.

The property is located on the east side of Smith Ridge Road, designated on the Tax Map as Sheet 47, Block 10056, Lot 25, in an R-2A, Two-Acre Residential District.

Mr. Sirignano, Esq. was present at the September 23<sup>rd</sup> meeting. Mr. Sirignano stated that he filed an application for a Wetland Permit. He stated that he received a fax today from Bruce Barber, Wetland Inspector asking for additional information for the wetland application. Mr. Sirignano asked that the ZBA conditionally approve the application. He stated that he knows that the ZBA is anxious to get this matter off of the agenda but the two preceding matters have been carried on the agenda for several years. Mr. Sirignano requested that the application be held over for another month if the Members don't feel comfortable acting on the merits of the carport tonight.

Chairman Egginton stated that the ZBA will allow one additional month and then vote on the matter. He stated that the requested variance is for the car port.

**THE PUBLIC HEARING IS HELD OPEN.**

**CAL. NO. 15-09-BZ/SP**                      Smith Ridge Properties LLC, 5 Main Street, PO Box 839, Georgetown, CT 06829 [Owner of Record: Carl Pedersen and Vibeke Brundham Jensen, 373 Mt. Holly Road, Katonah, NY 10536]

Application for a variance of [1] Article IV, Section 220-23D(11) of the Zoning Ordinance in the matter of an existing accessory building that exceeds 600 square feet (proposed 1899 square feet) in an R-4A, Four Acre Residential District; [2] Article IV, Section 220-40 C(2) of the Zoning Ordinance in the matter of the proposed floor area of the accessory apartment that exceeds 600 square feet (proposed 980 square feet); [3] a Special Permit pursuant to Article V, Section 220-40 of the Zoning Ordinance in the matter of a proposed accessory apartment on the second floor of an existing accessory building.

The property is located on the east side of Mount Holly Road designated on the Tax Map as Sheet 16, Block 10533, Lot 383 in an R-4A, Four Acre Residential District.

The applicants and their representatives were not present at the September 23<sup>rd</sup> meeting.

Chairman Egginton read a letter of withdrawal into the record dated 9/11/09.

**THE APPLICATION IS WITHDRAWN.**

**CAL. NO. 17-09-BZ**                      Michael F. Sirignano, Esq., 892 Route 35, Cross River, NY 10518 [Owner of record: Donald and Sharon Gale, 27 Knapp Road, South Salem, NY 10590]  
Application [1] an appeal from the decision of the Building Inspector denying a building permit based upon a 1989 opinion of the Town Planning Director. [2] a variance of Section 280A of the Town Law in the matter of the proposed construction of a one family residence which does not have frontage on a road which is improved to the satisfaction of the Town, said parcel consisting of 1.355 acres.

The property is located on the east side of Knapp Road, designated on the Tax Map as Sheet 34, Block 11826, Lots 59 & 60, in an R-1A, One-Acre Residential District.

Mr. Sirignano, Esq. was accompanied by Mrs. Gale at the September 23<sup>rd</sup> meeting.

Mrs. Katie Heineman of 91 Knapp Road was also present at the meeting.

Chairman Egginton stated that a site walk was conducted on the morning of Saturday, September 12<sup>th</sup>. He asked if anyone wished to comment on the site walk.

Mr. Krellenstein stated that they still have some lingering legal questions. He stated that their contention is that the property was not properly subdivided and Mr. Sirignano was going to address those contentions.

Mr. Sirignano stated that his client just wanted the members to have her personal thoughts.

Chairman Egginton acknowledged receipt of the letter dated September 22<sup>nd</sup>.

Mr. Sirignano stated that at the last meeting some Board members stated that the ZBA attorney had rendered an opinion that had not been disclosed to him or his client concerning the timing of the deeds that pertain to the creation of the lot. He stated that it is their contention by the submission of the old tax maps that this is a separate lot well before a deed separated ownership of the two abutting lots. Mr. Sirignano stated that because of the Town's tax map showing this lot as a stand alone separate lot during the period that we proved to the Open Area Regulations that were in effect in the late 1950's and 1960's that it constitutes sufficient proof that this was a separated out and divided according to the Town's old records at a time when subdivision approval was not mandatory. He stated that the Gale family and the prior owner had paid taxes on the lot and it was assessed as a separate lot and the Town has collected taxes on it as a building lot. Mr. Sirignano stated that Bill Cargain the prior Building Inspector rendered opinion to him that this was a separate lot and all they needed was a 280A variance for the frontage issue and based upon that opinion his client spent considerable engineering fees to get the Board of Health to approve the septic for the lot. He stated that based upon the tax maps, the assessment of the lot and based upon the opinion of the prior Building Inspector which was relied upon by his client to

her detriment should these variances not be granted or the interpretation not be as requested that the equities favor his client.

Chairman Egginton stated that he has severe concerns regarding the legality. He stated that there were so many questions that were raised regarding this particular application. Chairman Egginton stated that the application should be before the Planning Board.

Mr. Casper stated that the real division was in 1976. He stated that as you know we had another matter that you represented before the ZBA for a zoning application and subsequent to that there was no appropriate completion of the subdivision process through the Planning Board. Mr. Casper stated that he differentiates this because there seems to be no communication between the applicant and the municipality except what may have been done with the assessments. He stated that it seems to him that if in fact the only evidence regarding the timing of the subdivision is in the 1970's which was long after any of right. Mr. Casper stated that it is almost jurisdictionally not even before us.

Mr. Krellenstein stated that the applicant has the burden of demonstrating that the decision below is wrong and the applicant has not met that burden. He stated that the evidence before us is that the lots were divided in 1976 and no evidence that Planning Board approval was not required for earlier subdivisions in fact the statute that was submitted suggests that Planning Board approval was required. Mr. Krellenstein stated that the applicant has not met the burden of demonstrating that the decision below is wrong. Mr. Krellenstein moved that the application be denied.

The motion was seconded by Mr. Casper; In favor: None; To Deny: Mr. Casper, Mr. Price, Mr. Krellenstein and Chairman Egginton.; Abstain: None; Absent: Ms. Mandelker;

Mr. Sirignano stated that if they go before the Planning Board they will still need a frontage variance. He asked if he could informally poll the Board.

Mr. Casper responded that there is a lot going on behind that question.

Mr. Krellenstein stated that he can not answer that.

Mr. Casper stated that if an applicant comes in and says if I were to do this what do you think. He stated that when they come back they mention well I meant to do this.

Mr. Sirignano asked if the Board would have granted the appeal would the 280A be problematic.

Mr. Casper responded no comment.

Mr. Krellenstein responded no comment. He stated that he will not give advisory opinions on what he might do in the future on an application that is not before the Board now. Mr. Krellenstein stated that it is not prudent.

**THE APPLICATION IS DENIED.**

**CAL. NO. 18-09-SP**  
**New York 10590**

**Michael and Jen Prunty, 79 Smith Ridge Road, South Salem,**

Application for a Special Permit pursuant to Article V, § 220-40 of the Zoning Ordinance in the matter of an existing approved accessory apartment. This application is occasioned by a change of ownership.

The property is located on the corner of Spring Hill Lane and Route 123, designated on the Tax Map as Sheet 43, Block 10552, Lots 09, 10 & 20, in an R-4A, Four-Acre Residential District.

No one was present to represent the applicant at the September 23<sup>rd</sup> meeting.

Chairman Egginton stated the public hearing will remain open. He stated that the control date for this application is October 28<sup>th</sup>.

**THE PUBLIC HEARING IS HELD OPEN.**

**CAL. NO. 19-09-SP**                      **Beverley Wilson, 57 Bouton Road, South Salem, NY 10590**  
Application for a Special Permit pursuant to Article IV, Section 220-23A(9) of the Zoning Ordinance to allow the storage of Contractor's Equipment.

The property is located on the south side of Bouton Road, designated on the Tax Map as Sheet 31, Block 10805, Lots 56 and 66, in an R-1A, One-Acre Residential District.

Chairman Egginton stated that a site walk was conducted on the morning of Saturday, September 12<sup>th</sup> and he personally walked the site a few weeks prior. Chairman Egginton stated that Mr. Krellenstein has recused himself as a client of one of the affected parties. He asked if anyone wished to comment on the site walk.

Mr. Casper stated that a lot of neighbors and Mrs. Wilson came out. He stated that basically the trucks will come in one entrance and go out another. Mr. Casper stated with the exception of December 1<sup>st</sup> through March all of the large and small pieces of equipment will be kept behind a very large hedge in back of the Wilson property. He stated that the three plow trucks could park up front as was previously approved parallel to the barn obscuring the neighbor's view from December through March. Mr. Casper stated that otherwise they would be parked in back. He stated that he did not feel that going in once and leaving once would always be possible but it should be a reasonable minimum because there are a lot of neighbors that could be impacted. Mr. Casper stated that he does not recall the list of equipment but it would be what the Board approved last year. He stated that the employee vehicles would park in Mrs. Wilson's driveway by her garage.

Chairman Egginton stated that essentially the equipment will be stored in the back area covered under a tarp. He stated that during the summer time the loading and unloading will occur back there and in the winter the plow trucks will be pre-positioned as Mr. Casper described. Chairman Egginton stated that he has personal concerns with limiting the specific times and number of trips in and out of the property because they are impossible to enforce by the Building Inspector or Code Enforcement. He stated that we are dependent upon the trust of the neighbors and everyone working things out because it is a reasonable arrangement. Chairman Egginton stated that the equipment will be removed from the barn structure and placed out of sight.

Mr. Casper asked which side was the entrance and which side is the exit.

Mr. Wachter responded that they discussed that the trucks would exit the east side near his house and enter on the west side.

Mr. Casper stated that nothing will be closer than 50 feet from the property line and that Mr. Maddock will supplement the screening where the plow trucks will be parked.

Mr. Price agreed with the screening in the vicinity of the barn. He stated that Mr. Maddock and Mr. Wachter should discuss the possibility of screening in the back if needed.

Chairman Egginton stated that this arrangement is workable and he would recommend a 2 year approval for the Special Permit.

Mr. Wachter stated that the Board suggested last year that the hours of operation be 7AM to 7PM.

Mr. Casper stated that 220-38F(4) generally discusses hours of operation. He stated that between those hours it seems workable.

Chairman Egginton asked if the screening will go between the snow plow trucks and Bouton Road.

Mr. Maddock responded yes.

Mr. Casper stated that they would be increasing the existing screening there.

Mr. Wachter stated that he was concerned that should Mrs. Wilson leave the property that a third party will have this source of income.

Chairman Egginton stated that the Special Permit is not transferable; it is a matter of law.

Mr. Wachter stated that the neighbors and Mrs. Wilson have developed a level of trust with Mr. Maddock. He stated that the Special Permit should be specific to Cutting Edge.

Chairman Egginton stated that he did not think that that is a condition that they can impose on this Special Permit.

Mr. Casper stated that the applicant is Mrs. Wilson and Cutting Edge; we are not approving any other relationship.

Mr. Mole, Town Attorney stated that the legality of it is that the Special Permit is issued to Beverley Wilson. He stated that if the relationship changes with Beverley Wilson with the person that is storing the equipment it is going beyond the purview of the Board.

Mr. Casper stated that it is Mrs. Wilson's application.

Chairman Egginton stated that the Special Permit is very specific.

Mr. Casper asked if it was the same equipment as previously approved.

Mr. Maddock responded yes.

Mr. Wachter asked if what is approved tonight will supersede what was approved last year.

Chairman Egginton responded that there have been changes such as the new location of the equipment.

Mr. Wachter asked about the loitering of employees outside the barn.

Mr. Casper stated that the ZBA has actually increased the protection well beyond don't loiter, we have relocated the equipment. He stated that the fact that Mrs. Wilson shares her hospitality with the employees is not their concern.

Mr. Wachter asked if the resolution will state a condition that there be no dumping of debris from other sites on the Wilson property.

Chairman Egginton responded that they can do what they want within certain limits because it is their property. He stated that he is not sure they can state that condition.

Mr. Casper stated that is fair enough. He stated that Mrs. Wilson can do what she wants but in terms of the operation of the business.

Mr. Wachter stated that Mrs. Wilson can store the firewood in the driveway if she wants.

Chairman Egginton asked if anyone wished to be heard either in favor or opposed. No one responded.

Mr. Casper stated that the applicant has met all of the criteria of the ordinance for the issuance of the Special Permit for a period of two years. Mr. Casper moved that the application for the Special Permit be approved subject to the following conditions:

The following list of contractor's equipment will be part of the Special Permit

- Brush Bandit 150 Chipper-5000 pounds
- Tractor-2472 pounds
- 2004 Chevy Rack Body Dump Truck-GVW 12000 pounds
- 2007 Chevy Rack Body Dump Truck-GVW 12000 pounds
- Increase the screening that is parallel to Bouton Road and perpendicular to the barn to screen the snow plow trucks.
- 3 Snow plows should be pre-positioned to the west of the barn from December 1<sup>st</sup> through March 31<sup>st</sup>.
- The hours of operation are primarily from 7AM and 7PM.
- That they enter on the west side and exit on the east side.
- All other equipment is stored beyond the far hedge where the Brush Bandit 150 Chipper-5000 pounds and the Tractor-2472 pounds are currently stored.
- Storage of the lawn equipment in the barn during the winter.
- Employees will park their cars at Mrs. Wilson's garage.
- No collection of debris from offsite and no chipping of offsite debris on the property.
- Issuance of the Special Permit for a period of 2 years.

The motion was seconded by Mr. Egginton; In favor: Mr. Casper, Mr. Price and Chairman Egginton; Absent: Ms. Mandelker; Abstain: Mr. Krellenstein;

Chairman Egginton moved that the Special Permit be extended 45 days from September 30<sup>th</sup> 2009 under the same conditions.

The motion was seconded by Mr. Price; In favor: Mr. Casper, Mr. Price and Chairman Egginton. To Deny: None; Abstain: Mr. Krellenstein; Absent: Ms. Mandelker;

**THE APPLICATION IS APPROVED.**

**CAL. NO. 20-09-BZ**

Homeland Towers, LLC, 1121 Walt Whitman Road, Suite 300, Melville, NY 11747 [Owner of record: Vista Fire District, 377 Smith Ridge Road, South Salem, New York 10590

Application for [1] a variance of Article V, Section 220-41.1E (1) of the Zoning Ordinance in the matter of the proposed 150' tall cell tower component of the facility with appurtenances cresting to an overall height of approximately 154' above grade level and that will exceed the 120' height limitation for all towers, antenna towers and monopoles and [2] a variance of Article V, Section 220-41.1E (4) of the Zoning Ordinance in the matter of the proposed rear yard tower setback of 127' where 190' is required and a proposed side yard tower setback of 149' where 180' is required.

The property is located on the east side of Smith Ridge Road, designated on the Tax Map as Sheet 50A, Block 9834, Lots 84, 88, 94, in an R-1A, One-Acre Residential District.

Chairman Egginton stated that they have one member this evening that is not present and one member that will recuse himself. He stated that they have a quorum of three members tonight and asked if the applicant would like to hold the public hearing open until next month or continue tonight.

Mr. Daniel Laub, Esq. of Cuddy and Feder LLP was present to represent the applicant at the September 23<sup>rd</sup> meeting. Also present were Manny Vicente President of Homeland Towers and Mike Koperwhats of VHB. Mr. Laub stated that they conducted a site walk and he would like to discuss any issues that the Board may have. He stated that at a minimum they would seek to close the public hearing tonight.

Mr. Krellenstein asked if any member of the Antenna Advisory Board was present. No one responded.

Mr. Casper stated that there was a memo from the AAB suggesting that there was as much coverage as a taller antenna would provide at the fire house than two 120' antennas with one located at the fire house and one at a town owned parcel that that would be the only way to provide coverage from Connecticut to Route 35. He stated that apparently there is a topographical anomaly there that will make this particular tall tower not as effective as we would like. Mr. Casper stated that he is concerned about a very tall tower that does not accomplish the goal of providing cell coverage.

Mr. Laub stated that what they have provided is a conservative analysis from the major carriers. He stated that basically the idea is that if you are looking to provide service then 120' is the floor at which you are beginning to provide service to reach over to the preserve and into New Canaan to their 110' tower.

Mr. Casper asked if the tower in New Canaan is a monopole.

Mr. Laub responded yes.

Mr. Vicente stated that they did produce the latest AAB memo and it is not exactly as stated.

Mr. Laub stated that the AAB revised their opinion.

Chairman Egginton stated that the AAB had stated in a 10/16/08 memo that they were

recommending 2 towers, one at Vista Fire House at 120' and one on a town owned parcel on Route 123. He stated that at that time they were satisfied that they could provide excellent coverage from the state line along Route 123 to Route 35. Chairman Egginton stated that unfortunately Mr. Sohonyay was not present last month or tonight to further clarify their position. He stated that Cuddy and Feder submitted Exhibit C an excerpt from the minutes of a 4/28/09 Planning Board meeting in which Mr. Cole of the AAB had some concerns about coverage from a 120' tower implying that they were in favor of a taller tower at Vista Fire House. Chairman Egginton stated that there is no mention of a second tower in the Planning Board minutes. He stated that he is fine with the information he has received.

Mr. Krellenstein stated that we should not have to read the tea leaves on what these comments may or may not mean. He stated that if the AAB has a comment then they should rest on what they have written or be here and they have apparently chosen to rest on what they have written. Mr. Krellenstein stated that there have been queries and we know that the AAB is aware that there is a meeting tonight and they chose not to show up. He stated that it is not incumbent on us to read into the 2 memos about what they may or may not have meant by this. Mr. Krellenstein stated that the issue before us is a narrow one, the issue is simply whether or not to grant a variance for 34' to extend it from 120' to 154'. He stated that is the only issue in front of us right now. Mr. Krellenstein stated that the applicant has a burden to meet and in his view they have met that burden. Mr. Krellenstein stated that if there are opponents to the tower they have an obligation to respond and we will take their comments. He stated that the applicant last month made a requisite showing and it is not that complex. Mr. Krellenstein stated that they have to show that it is necessary to provide service and eliminate gaps and they have shown that. He stated that it is incumbent on the opponent to demonstrate that it is not the case or the least intrusive way to do this or that the variance should not be granted.

Chairman Egginton stated that the Town Board has gone on record meeting after meeting recommending fewer rather than multiple towers to provide maximum coverage as possible. He stated that he agrees with that approach because the fewer the environmental impacts and the less visual impact. Chairman Egginton stated that they conducted a balloon test on September 12<sup>th</sup>. He asked for the definition of a monopole and a flag pole structure.

Mr. Vicente responded that they discussed this at length with the Planning Board and they are both identical in the sense that they are free standing structures. He stated that the traditional monopole can give the carriers the flexibility they need to control their signal and you would have platforms with antennas on them. Mr. Vicente stated that the flagpole structure has the antennas in the hollow space at the top or in sections of that free standing monopole with fiberglass covers. He stated that unfortunately what that does is limit the number of antennas and the flexibility of directing the antennas for carriers and many times it forces additional height that is needed for the structure. Mr. Vicente stated that rather than the carriers being able to achieve their coverage objective with the platform or 10' spot they may need 20' to get the same amount of antennas. He stated that they are identical free standing structures, one hides the antennas one does not and the down side to hiding the antennas is you are limiting the use of the antennas and the use of the structure which usually means you need to increase the height.

Mr. Laub stated that you would have a proliferation of towers.

Mr. Krellenstein asked how much better would coverage be with two 120' towers as opposed to one 154' tower.

Mr. Vicente responded that the consensus was that the one 154' tower would actually provide better coverage than the two at 120' because the 120' tower located further up Route 123 would be redundant coverage. He stated that the one taller tower actually provided much better coverage than the two tower model because the one to the north would not enhance the coverage all that much. Mr. Vicente stated that the difference in the time frame and the two AAB memos may have been looking at that data from different carriers in that time frame. He stated that that is what we are really doing here is deciding whether one taller structure is better than 2 smaller ones. Mr. Vicente stated that the one taller tower does seem to have better coverage than the two smaller ones.

Mr. Laub stated that we are actually talking about three towers because without the variance we would have a 120' tower at Vista Fire House so we would have a carrier at 120' and a carrier at 110' and then with the tree canopy he did not think that in terms of coverage they could have a carrier at 100' and at 90'. He stated that then you would need another tower in that area.

Chairman Egginton stated that he believes the town site is south of Steven's Memorial Church. He asked if the Vista Fire tower were 120' would they need another tower in that immediate area.

Mr. Laub stated that somewhere in that vicinity because the tower could host only AT & T and Sprint so where do T-Mobile and Verizon go.

Mr. Vicente stated that when you think about it from a development and infrastructure standpoint, if this Board does not grant the variance we can not accommodate all the carriers on a 120' structure, so we would need two towers there. He stated that then we would need two towers further up on Route 123 because the same problem exists there also. Mr. Vicente stated that we could only do two carriers effectively at that height so in essence we are talking about 34' which is the difference between one tower and potentially four towers. He stated that it sounds simplistic that way but it is about space and height and unfortunately carriers need the separation and the height.

Mr. Krellenstein stated that he wants to hear on the record that this is the least intrusive means to give coverage in the area and that there is a need to remediate the coverage situation in the area so that he can justify this. Mr. Krellenstein stated that he would feel most aggrieved if there is a second application because someone says there still are gaps in coverage and that would be a tremendous disservice to the Town. He stated that we can swallow one tower but two towers as proposed by the AAB is more intrusive.

Chairman Egginton stated that the main concern is with respect to coverage. He stated that he shares Mr. Krellenstein's concerns.

Mr. Casper asked if this tower will provide coverage from Route 35 into New Canaan. He asked if it is the magic bullet.

Mr. Vicente stated that from what he has seen and what they have presented, this site with a 154' tower achieves the coverage objective which is connectivity from existing sites. He stated that they have shown that. Mr. Vicente stated that he can not see into the future and can not predict what some other company might do in the future. He stated that based on the data that they have today and the tests that have been done and submitted, a 154' tower does achieve the coverage objective.

Mr. Casper asked for what the coverage objective is. He stated no gaps in coverage. Mr. Casper stated that if he votes for it, he wants to know that he is voting for the technology and the physicality.

Mr. Vicente responded that it provides the coverage that we show on the maps. He stated that there may be some holes based on terrain but those will always exist so it is not 100% seamless but it is what the industry needs and what folks need to use their phones.

Mr. Casper stated that he is not questioning whether or not it will provide coverage. He asked if he could keep his phone call going from Route 35 to Starbucks in New Canaan.

Mr. Vicente responded yes.

Mr. Casper asked if they have any other plans to apply for a cell tower in this coverage area.

Mr. Vicente responded not in this coverage area.

Chairman Egginton stated that on September 12<sup>th</sup> the ZBA did conduct a site walk and the applicant flew 2 balloons, one at 120' and one at 154'.

Mr. Krellenstein stated that although there is a 34' difference and from what he could tell there is no material difference between 120' and 154'. He stated that the tower is not going to be viewed as desirable to a lot of people. Mr. Krellenstein stated that the issue before us is a narrow one, do they meet the criteria for the variance. He stated that they made their initial requisite showing, the burden shifts to the opponents who must demonstrate that there is a less obtrusive means of remedying the gap in service. Mr. Krellenstein stated that if someone has some evidence that there is a less intrusive means of remedying the gap in service he would like to see it.

Mr. Casper stated that he does not look at it the same way. He stated that to him it is a matter of showing that this works. Mr. Casper stated that we have an Antenna Advisory Board that works on paper only and they need to substantiate this with a non-conflicting opinion of the desirability of two 120' towers vs. one 154' tower.

Chairman Egginton asked if anyone wished to be heard on this application.

Ms. Deborah Van Der Heyden, 2 Murray Place stated that the requested variances are for the height of the tower and the setback or fall zone. She stated that the setback is supposed to be two times the height of the tower. Ms. Van Der Heyden stated that the impact is great to the neighbors because of the fall zone and the affected area has been a preserve because of the wetlands. She stated that the equipment storage area will be very intrusive for the neighbors.

Chairman Egginton stated that the tower was sited with respect to the setback so that it would be further back from Route 123 and from Tommy's Lane. He stated that this was done in difference to the visual impact.

Mr. Casper asked what their responsibility is regarding the fall zone.

Mr. Vicente stated that regardless of what the Code says and the need for a variance, the way the structure is engineered is so that they collapse on themselves and don't fall over. He stated that they are engineered to break in to sections and fall straight down rather than over. Mr. Vicente

stated that the way the base is constructed along with the foundation it is literally impossible for it to fall down like a tree. He stated that it is designed to collapse in sections.

The Board Members reviewed Article V, Section 220-41.1E (4) of the Zoning Ordinance.

Ms. Van Der Heyden stated that she is concerned because of the collapse of the World Trade Center.

Chairman Egginton stated that he was deeply involved in the analysis of the tower collapse.

Ms. Van Der Heyden stated that she is only referencing it because you can't anticipate everything and it was a very unusual set of circumstances.

Mr. Krellenstein asked if that is a basis to deny an application for a variance.

Ms. Van Der Heyden stated it is not just the height, the area is not going to be well screened and the tower will be very visible above the tree line. She stated that the other issue is if the AAB was here they could interpret the data. Ms. Van Der Heyden stated not every provider has to be afforded the opportunity to ease through our community. She stated that there is no guarantee that you will have uninterrupted service around the world. Ms. Van Der Heyden stated that she would like to see a layman's interpretation of the data.

Mr. Krellenstein stated that they will not do it for you.

Ms. Van Der Heyden stated you are asking community members to come up with the resources to go out and hire specialists to present contrary evidence. She stated that our property values are at risk and we as a town should hire consultants that could advise us.

Mr. Krellenstein stated that he understands her point and is not minimizing it at all and he recognized that it is a tremendous burden. He stated that as a town we actually have those experts and they are called the AAB. Mr. Krellenstein stated that they choose to absent themselves from these proceedings, they have known about it, we have memos and yet they have chosen to absent themselves. He stated that it seems relatively clear they have to show that there are gaps in the coverage and they have shown that. Mr. Krellenstein stated that it is up to the Town to show that there are less intrusive means to remedy the gaps other than what is proposed. He stated that nobody has made that showing. Mr. Krellenstein stated that the state of the law is pretty clear they have made their showing; there are gaps in the coverage and the anecdotal accounts by people that get service in a particular area is just not enough to overcome what they have shown. He stated that without speaking for them, he thinks that the Town wants the tower there otherwise they would have heard about it. Mr. Krellenstein stated that perhaps someone else would like to show that either there is a less intrusive alternative or that the gaps in coverage are manufactured. He stated that he absolutely accepts that the proponent will spin the evidence in the way that is most favorable for the proponent. Mr. Krellenstein stated that if someone wants to demonstrate that they are wrong, he is willing to listen. He stated that he is sensitive to the fact that nobody likes this and he accepts that the neighbors have a right to speak on it but he needs more than that.

Ms. Van Der Heyden stated that it exceeds the zoning which was already set for a height of 120'. She stated that they have allowed spot zoning to allow cell providers into our community and the Town has provided a pathway for them to come in.

Mr. Casper responded that the Federal government says that we have to.

Ms. Van Der Heyden stated that we had an 80' limit and now we increased it to 120'.

Mr. Casper stated that he is assuming that the members of the AAB are on that board for some level of expertise. He stated that they are involved in those recommendations for some reason other than an interest in antennas. Mr. Casper stated that he wants them to affirmatively confirm or deny what is said. He stated that he just wants them to say that this is the best thing to do. Mr. Casper stated that it is highly unlikely that the tower could fall.

Mr. Sven Moeller, Tommy's Lane stated that initially it was 2 additional companies that would collocate and now it is 4, therefore they would have twice the revenue and we would have twice the impact.

Mr. Casper asked if Mr. Moeller was opposed to 34'.

Mr. Moeller responded that he is opposed to the tower because it is an economic benefit to the company. He stated that he is opposed to two towers at 120' because that is also an economic benefit to the company because now they are offering a spot to 4 companies.

Mr. Casper asked if he would prefer 2 towers.

Mr. Krellenstein asked what do you propose we do, deny the variance.

Mr. Moeller responded that they have to find a location that is not in a hole.

Mr. Krellenstein responded that that is not before the Board.

Ms. Van Der Heyden stated that it is not the best location due to the topography. She asked if anyone on the ZBA contacted the AAB.

Mr. Krellenstein responded that they were in contact this week and they were aware of the meeting as well received a copy of the agenda.

Chairman Egginton stated that they chose not to attend.

Ms. Van Der Heyden stated that we don't know why they did not attend tonight; possibly they had a conflict tonight just as a Zoning Board member had a conflict tonight.

Mr. Krellenstein agreed.

Ms. Van Der Heyden stated that we don't have to give them permission to put a tower in, if there is no significant coverage gap.

Mr. Casper stated that our issue is 34'.

Chairman Egginton stated that there will be a cell tower somewhere and the Town Code allows 120'.

Ms. Van Der Heyden stated that it is an overriding issue. She stated that we do not have to say

yes to it because it is not within the rural nature of our community. Ms. Van Der Heyden stated that the ZBA should write a letter to the AAB with their questions and ask them to respond with a deadline.

Mr. Krellenstein stated that he does not know if the ZBA actually needs their help. He stated that we have their comments. Mr. Krellenstein stated that you may be right, there may be a town obligation but other than saying anecdotally there may not be a gap in the coverage, there is nothing else to base a decision denying the variance.

Ms. Van Der Heyden stated that we need proof. She stated that they have not demonstrated a need from their customer base regarding dropped calls and a lack of coverage.

Mr. Krellenstein stated that there are two sets of jurisprudence on that; there are cases that say it is determined based on the carrier's need and there are other cases that say it is determined by the user need. He stated that as a theoretically neutral body, it is not our purview to go and ferret out the evidence that may support your case. Mr. Krellenstein stated that he is glad that that is not their obligation. He stated that he keeps trying to frame this as a narrow issue. Mr. Krellenstein stated that the issue is not whether or not there is a cell tower there because he can not influence that on this Board. He stated that the issue to him is whether or not to grant the variances. Mr. Krellenstein stated that in his view they have made a showing to justify granting the variances. He stated that he understands that no one wants a cell tower in their backyard but they get less concerned when it is in someone else's backyard. Mr. Krellenstein stated that it is going to go somewhere and that is not before this Board. He stated that when he looked at the height of the balloon he did not see a big difference between 120' and 154'.

Ms. Van Der Heyden stated that a balloon does not represent a standing still structure.

Mr. Krellenstein agreed.

Ms. Van Der Heyden stated that the only reason for the variance is to accommodate the carriers. She stated that they are responsible for decisions that impact the community. Ms. Van Der Heyden stated that she has Mr. Sohonyay's phone number and she will contact him.

Mr. Casper stated that he does not know anyone that would ask for a tower in their backyard. He stated that we know that we need them and we can not look into other health related issues. Mr. Casper stated that they can not consider the aesthetics. He stated that there are only 3 Board members that can vote tonight and 4 members next month. Mr. Casper asked if the applicant would hold the application over until next month in order to receive a concrete statement from the AAB. He stated that then we would feel that we had the interests of neighbors, community and providers adequately represented.

Mr. Laub stated that they would agree to hold the application over to get the AAB's involvement.

Chairman Egginton stated that if it is acceptable they will put a control date on the application.

Mr. Krellenstein stated that he is not sure how much light the AAB can shed on this. He stated that this is a serious matter and it is another month that someone can provide proof that there is a less intrusive means to meet the standard to justify this Board denying the variance. Mr. Krellenstein stated that he is willing to carry the application over until next month but it doesn't mean that if someone comes in and says that two 120' towers are better that would meet that standard.

Mr. Laub asked if they could conditionally close the public hearing on the sole acceptance of the AAB's submission of information.

Mr. Casper responded no.

Mr. Krellenstein responded no.

Mr. Laub stated that the carriers needs have been demonstrated from time to time as to whether one particular carrier has slight scatter coverage in this area or that area, is irrelevant. Mr. Laub stated that carriers all have the right to provide their services in an area, there should not be a mini monopoly were everyone is forced to go to only one carrier in a particular area.

Mr. Krellenstein stated that there should not be towers popping up everywhere because everyone wants their own tower.

Mr. Laub agreed. He stated that that is why they are proposing one tower with collocation.

Mr. Casper stated that ultimately that is the bottom line for him. He stated that he wants our experts to come in and act on behalf of the community. Mr. Casper stated that at best the AAB has sent mixed signals. He stated that he wants to do it the right way.

Mr. Krellenstein stated that he would vote on this tonight but he is sensitive to the neighbor's concerns, this is not a shed or barn, it is big stuff. He stated that he will go to the next month because he does not know that the applicant will be materially prejudiced.

Mr. Vicente questioned what is big.

Mr. Krellenstein responded putting a cell tower in someone's backyard is big.

Mr. Vicente stated that it is a 34' variance and the setback variances.

Mr. Krellenstein responded that they only have to grant the variance if they can demonstrate that there is a gap in coverage.

Mr. Vicente stated that they did demonstrate that.

Mr. Krellenstein stated that they will give the application another month to see if they can meet the burden that there is a less intrusive means.

Mr. Vicente stated that he understands. He stated that there is a tremendous amount of history and balancing. Mr. Vicente stated that he is glad that the Board has seen all that they have done on this application. He stated that he has not heard anyone make the case for a less intrusive means. Mr. Vicente stated that he has been waiting meeting after meeting for someone to show otherwise. He stated that they should take everything into this balance and if the Board needs another meeting to get to their decision and give everyone else an opportunity he is fine with that. Mr. Vicente stated that they have been discussing the same issue for a long time.

Mr. Casper stated that the applicant has only been before this Board once in 3 years.

Mr. Mario DiFiore, 7 Lorraine Road asked what is their tie to the community. He stated that it is the community that should be voicing their concerns.

Mr. Krellenstein stated that they are a public utility and that is the law.

Mr. Casper stated that they are also here on behalf of the community because they provide emergency service, communication and cell phone coverage. He stated that it is part of safety and welfare so they do represent the community. Mr. Casper stated that our town's experts have to speak up and frankly if they don't having had explicit pressure put on them; he feels that their answer to us is no big deal move forward.

Ms. Van Der Heyden stated that she went through two years of meetings to get approval for one house.

Chairman Egginton stated that the public hearing will remain open until the next meeting on October 28<sup>th</sup>. He stated that he will communicate with the AAB in writing requesting their comments and opinion on this particular application.

### **THE PUBLIC HEARING IS HELD OPEN.**

### **III. PUBLIC HEARINGS**

**CAL. NO. 21-09-BZ**                      Michael F. Sirignano, Esq., 892 Route 35, Cross River, NY 10518 [Subject Property: Nino's Restaurant, 355 Smith Ridge Road, South Salem, NY 10590] [Owner of Record: Nuo and Christine Camaj, 11 Hilltop Drive, North Salem, NY 10560]  
Application for [1] an appeal from the decision of the Building Inspector to correct a Violation of the Housing Code § 92-4 and of the Zoning Ordinance § 220-76B (1) [2] an interpretation and determination of pre-existing legal non-conforming outdoor seating pursuant to § 220-9A. Order to Remedy Violation dated 7/13/09.

The property is located on the east side of Smith Ridge Road, designated on the Tax Map as Sheet 49A, Block 9846, Lot 10, in an R-1A, One-Acre Residential District.

Chairman Egginton asked if anyone wished to be heard either in favor or opposed. No one responded. Chairman Egginton read a letter of withdrawal from Mr. Sirignano, Esq. dated September 22<sup>nd</sup> 2009 into the record.

### **THE APPLICATION IS WITHDRAWN.**

**CAL. NO. 22-09-SP**                      Contract Vendee: Lee Legenzowski and Robyn Bonder Legenzowski, 8 Lorraine Road, South Salem, NY 10590 [Subject Property: Laurel Pond, Smith Ridge Road, South Salem, NY 10590] [Owner of Record: Town of Lewisboro, 11 Main Street, South Salem, NY 10590]

Application for a Special Permit pursuant to Article IV, § 220-23A (9) and Article V, § 220-38 of the Zoning Ordinance to allow the storage of Contractor's Equipment. Site walk scheduled for Saturday, September 12th between the hours of 9:30AM and 12Noon.

The property is located on the east side of Smith Ridge Road, designated on the Tax Map as Sheet 49C, Block 9834, Lot 6, in an R-1A, One-Acre Residential District.

Chairman Egginton asked if anyone objected to the notice as it appeared in the Lewisboro Ledger. No one responded.

Mr. William Lonergan, Esq. was present at the September 23<sup>rd</sup> meeting and accompanied by Mr. and Mrs. Legenzowski.

Mr. Lonergan stated that the contract is subject to his client's ability to obtain a Special Permit for the Storage of Contractor's Equipment. He stated that they are making their application under § 220-23A (9) which makes it a principal permitted use in a residential district. Mr. Lonergan stated that the application includes a site plan which documents where the equipment will be stored. He stated that the equipment includes 3 pick up trucks and 3 trailers which are not subject to the permit.

Mr. Casper asked if that is the only equipment subject to the permit.

Mr. Lonergan responded there are two ¾ ton pick up trucks and one 1 ton pick up truck.

Mr. Casper stated that it is basically the one truck.

Chairman Egginton stated that the members of the Board conducted a site walk on Saturday, September 12<sup>th</sup>.

Mr. Lonergan stated that his client regrets that he was unable to meet with the Members at the site.

Mr. Casper stated that they drove in and looked around. He asked if the existing building will be used for storage.

Mr. Legenzowski responded they will either use it or demolish it.

Mr. Lonergan stated that the existing building will not be used for the storage of contractor's equipment. He stated that they were advised by the Building Department that the building could not be used for the storage of equipment. Mr. Lonergan stated that it was a bath house at one time when Laurel Pond was an active pool.

Mr. Casper stated that they have a sufficient size parcel and it meets the criteria of the Ordinance then we have to approve it. He stated that it does not require that the residence be on the property.

Mr. Lonergan stated that under that section of the Code it is a principal permitted use irrespective of residence.

Mr. Legenzowski discussed the proposed parking location of the vehicles on the site plan.

Chairman Egginton stated that two of the trucks are ¾ ton pick up trucks.

Mr. Legenzowski stated that there are dense evergreens along the property line. He stated that he is a landscaper and could screen it more.

Mr. Casper stated that he would like to approve the application for a year and reevaluate it next year. He stated that if he would approve the application it would be for specific vehicles, screening in place and the hours of operation because it is a residential area.

Mr. Legenzowski stated that the hours of operation would be 8AM to 5PM.

Mr. Lonergan stated that unlike many applications for contractor's equipment applicants already own the property and in this case we do not. Mr. Lonergan stated that they are spending a substantial amount of money to acquire the property and they would like a 2 year approval.

Mr. Casper responded that he would like to see it in its final form.

Mr. Price asked what the distance is from the parking area and the side property line. He asked if it is 50'.

Chairman Egginton stated that from the scale it looks to be at least 50'.

Mr. Lonergan stated that his client was asked to go to the Building Department and mark the site plan. He stated that he is assuming that it is 50'.

Mr. Price asked if they got any feedback from the surrounding neighbors.

Mr. Mario DiFiore, 7 Lorraine Road stated that Mr. Legenzowski clearly needs a place to park his trucks. He stated that his concern is that the property has access in the back to Lorraine Road and the employees do not have ties to our community. Mr. DiFiore stated that he was concerned about crime.

Mr. Lonergan stated that access to the property is on Route 123.

Mr. Legenzowski explained that his neighbor is worried about people walking through the property to Lorraine Road. He stated that he understands the concern but he also lives on Lorraine Road and has small children himself.

Chairman Egginton asked if the employees currently park at the residence on Lorraine Road.

Mr. Legenzowski responded that they park at a different location.

Mr. Price stated that he remembers that the property has a very steep hill.

Mr. Legenzowski stated that the area is fenced with 8' high barbed wire fence. He stated that barbed wire is not legal and he has no problem taking it down.

Chairman Egginton asked if Mr. DiFiore was aware of the fence.

Mr. DiFiore stated that he was not aware of the fence until tonight.

Mr. Price stated that the site plan states that there is an existing chain link fence.

Mr. Legenzowski responded that there are 3 rows of barbed wire on top.

Ms. Frances George, 11 Lorraine Road asked if Mr. Legenzowski will be building an extension from his property to the Laurel Pond property.

Mr. Legenzowski responded no, there will be no access from Lorraine Road.

Chairman Egginton asked if anyone wished to be heard either in favor or opposed. No one responded.

Chairman Egginton stated that the applicant has met all of the criteria of the ordinance for the issuance of the Special Permit for a period of two years. Chairman Egginton moved that the application for the Special Permit be approved subject to the following conditions:

The following list of contractor's equipment will be part of the Special Permit

- 3 Light Utility Trailers
- (1) Chevrolet 3500 Low Boy Dump Truck One Ton
- (2) Silverado 2500 Pick-up Trucks
- The trucks are parked as documented on the submitted site plan.
- The hours of operation are primarily from 7AM and 7PM.
- Employees to park no more than 4 personal vehicles on the site.
- No access roads other than the existing access road from Route 123.
- No loitering of employees.
- A period of 2 years.

The motion was seconded by Mr. Price; In favor: Mr. Casper, Mr. Price and Chairman Egginton; Absent: Ms. Mandelker; Abstain: Mr. Krellenstein;

**THE APPLICATION IS APPROVED.**

**CAL. NO. 23-09-BZ**

John and Jill Gusmano, 57 Lakeshore Drive, South Salem New

York 10590

Application for [1] a variance of Article III § 220-9D(2) and [2] Article IV § 220-23E and [3] Article IV § 220-23D(11) of the Zoning Ordinance in the matter of the construction of a second story addition to an existing 1 story garage that is closer to the side lot line (proposed 9.2', existing 9.2', where 15' is required) and that will be larger than permitted (proposed 1204 square feet, existing 560 square feet where 600 square feet is permitted) and that will result in an increase in non-conformity other than use than permitted in an R-½A, One Half-Acre Residential District.

The property is located on the east side of Lakeshore Drive, designated on the Tax Map as Sheet 36G, Block 11174, Lots 6 & 7, in an R-½A, One Half-Acre Residential District.

Chairman Egginton asked if anyone objected to the notice as it appeared in the Lewisboro Ledger. No one responded.

Mr. James DeLalla, ASLA was present to represent the applicant at the September 23<sup>rd</sup> meeting. He stated that the proposal is to take the existing garage and add a second story with no change to the footprint. Mr. DeLalla stated that it will be primarily for storage and since it is a garage there are no internal stairs to the second floor so they added an external stairway with a small deck.

Mr. Krellenstein asked if they are adding a deck to a storage garage.

Mr. DeLalla stated that it is primarily storage but there will be a room upstairs for a playroom because the house is so tight they need the storage space.

Mr. Casper asked if the deck is on the second floor.

Mr. DeLalla responded yes. He stated that the existing garage is 9.2' from the property line and the expansion is all vertical so there is no increase in the coverage.

Chairman Egginton stated that it is an increase in non-conformity.

Mr. DeLalla discussed the plans with the Board. He stated that there are some proposed changes to the site plan but nothing that would affect zoning in terms of a variance.

Chairman Egginton asked if the applicant would be applying for an accessory apartment at this time.

Mr. DeLalla responded no.

Mr. Casper asked if it is for storage and a playroom.

Mr. DeLalla responded yes.

Chairman Egginton asked if anyone wished to be heard either in favor or opposed. No one responded. Chairman Egginton stated that the public hearing will remain open and a site walk will be conducted on the morning of Saturday, October 24<sup>th</sup> 2009. He stated that he is not a suspicious person but it is evident that the future use of this as an accessory apartment is a possibility.

Mr. DeLalla stated that there is no water.

Mr. Casper stated that the property is right on the lake and he probably could not get Department of Health approval.

**THE PUBLIC HEARING IS HELD OPEN.**

**IV. NEW BUSINESS/CORRESPONDENCE**

Chairman Egginton stated that they have one item to discuss under new business this evening.

Correspondence from Caesar Cirigliano, 52 Mead Street was briefly discussed.

Mr. Casper stated that they closed the matter.

Mr. Krellenstein stated motion for reconsideration is denied.

Mr. Mole asked if this was submitted by an applicant.

Mr. Casper stated that the applicant withdrew their application and the neighbor did not want them to withdraw the application.

Mr. Krellenstein stated that they wanted the withdrawal to be with prejudice.

Mr. Casper stated that he is going through a SPLR analysis on why that should not have been.

On motion by Mr. Casper, seconded by Chairman Egginton the Board voted 4-0 to adjourn the meeting.