

**LIVONIA JOINT ZONING BOARD OF APPEALS**  
**July 17<sup>th</sup>, 2023**

Present: Chairman M. Sharman, R. Bergin, D. Major, J. Prato, M. Thompson, CEO A. Backus, Zoning Compliance Assistant Julie Holtje, Attorney J. Campbell, Recording Secretary A. Houk

Excused:

- AGENDA:**
- (1) Accept and approve the meeting minutes of June 19, 2023*
  - (2) Jeff & Kathleen Padlick – 5218 East Lake Road, Livonia, NY*  
*\*Continuation from June 19, 2023*
  - (3) Timothy Damon – 5078 Hartson Point, Livonia, NY*
  - (4) April Gianvittorio – 4740 East Lake Road, Livonia, NY*
  - (5) Mary Williamee – 4706 East Lake Road, Livonia, NY*
  - (6) Bell Atlantic/Verizon Wireless – Niver Road, Livonia, NY*

Chairman Mike Sharman brought the meeting to order at 7:00 p.m. and opened with the Pledge of Allegiance.

Chairman Mike Sharman asked if everyone reviewed the meeting minutes from June 19<sup>th</sup>, 2023. The Board agreed they had, and a motion was made to approve. M/2/C (M. Thompson/D. Major) Carried: 5-0.

*(2) Jeff & Kathleen Padlick – 5218 East Lake Road, Livonia, NY - Continuation*

**PLEASE TAKE NOTICE** that the LIVONIA JOINT ZONING BOARD OF APPEALS will hold a public hearing on Monday, **June 19, 2023**, at 7 p.m. at the Livonia Town Hall, 35 Commercial Street, Livonia, New York, to consider the application of **Jeff & Kathleen Padlick** for an area variance pursuant to Section 150-17C of the Zoning Code of Livonia. This area variance is requested for a proposed Garage and Addition which will violate the front and side Setback requirements according to Sections 150-31G (1 & 2) and 150-71 non-conforming lots. The proposed structure also violates the maximum lot coverage requirement of 25%; according to Section 150-31F and Section 150-70 A. (2), no nonconforming buildings shall be enlarged. This property is located at **5218 East Lake Road, Livonia**, New York, and is zoned Neighborhood Residential District (NR). The application is on file in the Building Zoning Department in the Livonia Town Hall, 35 Commercial Street, Livonia, New York, for public review. All interested parties will be heard at this time.

ZCA Julie Holtje polled the Board for site visits:

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Chair M. Sharman: Yes  
R. Bergin: Yes  
D. Major: Yes  
J. Prato Yes  
M. Thompson Yes

Chairman Mike Sharman asked Jeff & Kathleen Padlick and their Architect, Randall Peacock, to come forward for the continuation of the proposed Garage and Additions. Randall stated that they had made some revisions and reduced the Addition on the north side to a single story, as the neighbors had asked them to do. They removed the entire deck that was going on the north side of the house. They will add a larger deck on the south side of the home. The total Lot Coverage at this point is 38.3%, which was reduced from 39% on the previous application. They would still be removing and rebuilding the existing garage, setting it back further from the street to provide additional parking spaces, and moving it away from the south property line. That will improve the conditions that are there now by adding additional parking and fire safety by moving the garage further away from the property line while enlarging the size of the new garage. They don't feel that the additions as proposed are out of the ordinary for that neighborhood. Numerous other properties within the vicinity exceed or are similar to the coverage they are proposing.

Doug Major asked for the compelling reason for increasing the garage's size. Randall stated that the house was used as a seasonal cottage, but it is becoming a year-round house for the Padlicks. The increased size of the garage will provide additional storage for boats, docks, and outside furniture, and their classic car & motorcycle during the winter. The second reason for the increased size is to provide an interior means of access to the house. Currently, the only way to enter the house is through a little gate in the fence near the road that goes down the stone and concrete stairway to the front entrance. That area gets covered with ice and becomes very dangerous in the cold months. The garage is sized to incorporate an elevator and an interior stairway to provide access to the lower-level deck on the house's first-floor level. They have some elderly parents with mobility issues, and this will provide safe access.

Rosemary Bergin asked if the 39.1% Lot Coverage includes the Lot Coverage of 3.8% that was already over. Randall clarified that the 39.1% Lot Coverage is what the original application was for and consisted of all structures on the lot per the Town's ordinance. Rosemary asked what the Lot Coverage would be if you eliminated the new deck. Randall stated that the deck on the south side is currently 75.1 Sq Ft. Rosemary noted that she was referring to the deck on the west side. Randall stated that the deck is 353.5 Sq. Ft. Removing the west side deck would reduce the Lot Coverage to 34.3%. Randall stated that this deck is considered Lot Coverage, but it is replacing a Patio on the lower level, which is pretty much impervious. The deck would reduce the impervious surface because the water comes through the deck and is absorbed into the ground. Rosemary said the Patio below that deck doesn't factor into the Lot Coverage. Randall stated that was correct. Kathleen noted that the deck on the front provides them with a view of the Lake, which they don't currently have because the houses around them stick out further on the Lakefront than they do. This deck will provide them with the same opportunities that their neighbors have.

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CEO Adam Backus noted that it's not totally applicable, but he wanted to point out that the Code does allow an encroachment to access first-level living space. It can encroach on the side Setback. The intent is to allow access to the first-floor living space in a safe manner. ZCA Julie Holtje complemented Randall on his Lot Coverage calculations and noted that she doesn't count stairs because they are considered access. Chairman Mike Sharman asked for the calculations without the stairs they are proposing. Randall stated that the only stairs they are proposing are for the deck on the west side. The stairs are 3 ½' X 7' for a total of 24.5 sq. ft. Joe Prato asked for the square footage for the new deck. Randall noted that those stairs are 4' X 3', 12 Square feet. It would be 36.5' altogether. Joe noted that it states 10 sq. ft. in the plans. Randall said that was correct; the stairs are 10 square feet. That would be 3386 square feet of coverage, which would be 37.9% Lot Coverage. Mary Ann noted that there was a concern about the drainage from the road. Randall stated that it is their intent that if the Variance is approved, they will be working with McMahan LaRue, a civil engineer, to design a drainage plan that will address stormwater & drainage from the road. The end result will be less stormwater on the ground. They will incorporate dry wells, which will put the water back into the ground. The intent is to have a better situation than what is currently there. Kathleen noted that they had met with their neighbor to the north to discuss the revisions, and the neighbor was very pleased with the new rendition. ZCA Julie Holtje noted that the neighbor also stopped into the office and said that they had mentioned everything they needed to at the first meeting, and they were fine with the project being pursued.

Chairman Mike Sharman noted that the Board received a letter from neighbors located at 5224 East Lake, Bob & Pam Rice, located on the southern side, and Jim & Deb Ward of 5223 East Lake, located on the eastern side. Neither neighbor had any objections to the Padlick's proposal.

Kathleen stated that the neighbors are happy with the revision, and they have done everything they can to ensure they are maintaining a nice piece of property and taking steps to ensure drainage is addressed. They hope they will be able to put on their Addition and make their house so they can live in it as they age. Their neighbors have to move because they can't do stairs anymore. The garage with the elevator will allow them to age in place. They are very excited to move forward.

Chairman Mike Sharman asked the Board if there were any further questions.

Chairman Mike Sharman closed the Public Hearing with no one present wishing to speak regarding this application.

This application was submitted to the Livingston County Planning Board for their review. There was not a quorum present at this meeting. The Livingston County Planning Board motioned to informally recommend "Disapproval" of the proposed action because of strong concern for the proposed amount of Lot coverage in the proximity of Conesus Lake.

This application was determined to be a Type II action, and SEQR was not required per # 12 of the New York Codes, Rules, and Regulations 617.5 Type II Actions.

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Chairman Mike Sharman asked the Board to go through the area variance criteria:

1. Will an undesirable change be produced in the character of the neighborhood, or will a detriment to nearby properties be created by granting the variance? No
2. Can the benefit sought by the applicant be achieved by some feasible method other than a variance? No
3. Is the variance substantial? Yes
4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood? No
5. Is the alleged difficulty self-created? Yes

Chairman Mike Sharman asked the Board for a motion to approve or disapprove the proposed Area Variance for the proposed Additions and detached Garage. Joe Prato made a motion to approve the application as submitted. Motion to approve. M/2/C (J. Prato/M. Sharman) Carried: 2-3. (Rosemary/Doug – Nay) (Mary Ann – Abstained)

Attorney James Campbell explained that this means that there is no action taken on this application, and it does not go forward.

Kathleen wanted to speak about the past practices of the Board for approving a greater than 41% Lot Coverage application in the past. Where that stands with the Boards ability or wish to say no to their proposal. Past practice does show proof that the Board has approved up to 42.6%. The application was for a 12' X 19' Deck and an 8'2" X 23' 10" dormer on a non-conforming building lot. Chairman Mike Sharman asked if she was saying that the application was not for a larger footprint but was more for square footage. Chairman Mike Sharman asked if she was able to see the difference in that application compared to hers. The Board would need to know the facts of that application in comparison to theirs.

Attorney James Campbell and the Zoning Board went into an executive session for legal counsel. Kathleen noted that she had documents of the presidence available for the Board's review.

Attorney James Campbell stated that he has spoken with the Zoning Board members in regard to precedence within the ZBA applications. From a legal standpoint, he is not concerned because the applications are very fact-based, and in order for precedence to be a meaningful issue, you need to establish that. This application is virtually identical to another previous application that has been granted or denied. Having said that, it doesn't mean that the Board can't hear the applicant's concerns and put your own weight into whether or not it has legitimacy. There was a

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brief discussion about the application, and Attorney Campbell suggested to the Board that they share some of their concerns with the applicant.

Chairman Mike Sharman stated that the applicant has not been declined; it is a no-action. The Board is willing to give the applicant some time this evening to make some adjustments to their plan if they would like to do that. There are some items in particular that bother some of the Board members. The applicant has only come down 1% from their previous application. At the last meeting, he felt the applicant realized they were way over on Lot Coverage. Rosemary Bergin stated that her concern was that at the last meeting, the Lot Coverage was a very big ask; it was 39%. At this meeting, they expected a reasonable decrease in that, but the applicant only came down 1%. Rosemary would be inclined to support the application if the applicant just wanted to do the garage. The garage is a safety feature of the home for your family. You have a senior citizen family member that could benefit from an elevator. That would be a reasonable request. The rest of the application is not a need; it is just a want. Jeff Padlick stated that they are trying to make the home so they can age in place, which was the purpose of what they were asking to do on the north end. That would have allowed them to have a downstairs bedroom. If they can't add the downstairs bedroom, that will defeat the whole purpose of trying to age in place. Doug Major stated his biggest objection to the proposal is that they have a boundary of 2 ½' on the end, which is way beyond the recommended guidelines, and he cannot support expanding that. If they cannot expand west or east, that would make a difference. Attorney James Campbell noted that would subtract approximately 96 ½ square feet. Doug said that the total lot coverage is a big ask. The first thing he would like them to think about is expanding the north side. The second is to work with the Board to find a 100' out of the deck or garage to turn their ask from 800 Sq. Ft down to 700 sq. ft. If they could eliminate the north end and decrease the deck by 100', it would be a reasonable request. Kathleen asked Rosemary what she would consider reasonable square footage. Rosemary stated that she doesn't know about square footage; she is looking at the Lot Coverage. Rosemary said the garage has fairly large square footage, but she sees it as a safety feature for their home. She would be in agreement to support the garage, but the deck and north end need to be reduced. Rosemary said 25% is what the Code states. The applicant would have to make a proposal to show a reduction in Lot Coverage. Chairman Mike Sharman stated that he has been there and knows the neighbors quite well. He has a feeling about impermeable surfaces; the patio would be one, but the decks are not. The application has not been declined. The applicant has the opportunity until the meeting is adjourned to work with their architect to make any adjustments. The applicant can also request another continuation and return to a future meeting. The Board needs to know how the applicant would like to proceed before adjournment. He asked if they had any questions. Kathleen stated that they understood. Kathleen requested to ask Attorney James Campbell a question. She said that she tried to look up the Code about an extension and asked for clarification. Attorney James Campbell stated that there is no vote at all, which means there is no required number of votes to

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constitute an action. Chairman Mike Sharman stated that they haven't passed or been declined at this point. Once the Board adjourns, the application would be considered declined. Attorney James Campbell stated that if the applicant is interested in trying to resolve this, he would suggest that they go out and meet with their architect to see if they would like to make a modification to the application that the Board could hear tonight. At this point, the only thing that has been offered has been essentially a non-action, which equals a denial in the face of the law as it results in the request. When the Board adjourns the meeting tonight, the application will be considered closed, and the applicant will have to re-apply. If the applicant is going to request a significantly different set of relief from the application, it's not a problem. It's when it's not a significantly different request. Kathleen & Jeff stated they didn't think they could try to make changes in the time left before the Board Adjourns. In fairness to them, they wouldn't want to feel pressured to try to figure something out in a short amount of time. Chairman Mike Sharman stated that it was meant to give the applicant an opportunity if they wanted to try to adjust the application. Jeff stated that they need time to be able to sit down and think about how they could change their plans. Jeff asked if the Board could hold the meeting open and allow them to return at the next meeting with another revision. Attorney James Campbell stated that the Board voted, so it resulted in a non-action resolution. The applicant would have to make a new application that is meaningfully different. Randall asked if reducing the Lot Coverage by 2% would be meaningful enough to return with a new application. Attorney James Campbell stated yes, based on the feedback from the Board. Randall stated that they will work to try to find a way to reduce the Lot Coverage and return with a new application. The Padlick's were offered a private room to discuss their application with their architect.

***(3) Timothy Damon – 5078 Hartson Point, Livonia, NY***

**PLEASE TAKE NOTICE** that the LIVONIA JOINT ZONING BOARD OF APPEALS will hold a public hearing on **Monday, July 17, 2023**, at 7 p.m. at the Livonia Town Hall, 35 Commercial Street, Livonia, New York, to consider the application of **Timothy Damon** to the Zoning Code of Livonia. The applicant has proposed the placement of a 6' tall vinyl fence on the lakeshore property, which requires approval by the Zoning Board of Appeals per Section 150-56 J. This property is located at **5078 Hartson Point**, Tax Parcel # 92.54-1-3.1, Livonia, New York, and is Zoned Neighborhood Residential (NR). The application is on file in the Building Zoning Department in the Livonia Town Hall, 35 Commercial Street, Livonia, New York, for public review. All interested parties will be heard at this time.

ZCA Julie Holtje polled the Board for site visits:

Chair M. Sharman	Yes
R. Bergin	Yes
D. Major	No
J. Prato	Yes
M. Thompson	Yes

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Chairman Mike Sharman asked Timothy Damon to come forward to address the Board for the proposed Lakeshore Fence. Timothy stated they he would like to install a 6' tall white vinyl fence, 60' long. It would replace a chain link fence that is currently there that is 3 1/2' – 4' tall. The chain link will be taken out, and a vinyl fence will be installed a few inches toward his property to the south. The chain link was installed directly on the Lot line. He will make sure the vinyl fence is on his property. He will stop short of the Lake by 35' so it won't obstruct anyone's view of the Lake. The neighbor who would care most about that is his neighbor to the north, Alice Middleton, who is present here at the meeting. He has spoken with her and believes they have come to an agreement on how far it can come to the Lake. He feels that any concern about obstructing the Lake view has been settled.

Chairman Mike Sharman asked if Building & Zoning had any input regarding putting the fence on or off the lot line. CEO Adam Backus said that we advise that a fence can be put up to the lot line so any future maintenance can be done without being on the neighbor's property. Timothy stated that he would make sure it is not on the lot line and on his property. Attorney James Campbell suggested referring to his survey ties for the correct location. Chairman Mike Sharman confirmed that he spoke with the neighbor, showing how far it would be from the Lake. Timothy stated that it would stop 35' lakeside of his Breakwall. Chairman Mike Sharman asked for confirmation on the height of the entire fence. Timothy confirmed that it will be 6' for the entire length. The top will be lattice 10-12" high. Doug Major asked Timothy to explain why he would like to put up a new fence since he would be going from one that you could see through to one that you can't. Timothy stated that there was always a little barrier there with evergreen trees, and the deer have taken care of the lower branches over time, so there isn't really any barrier anymore.

Chairman Mike Sharman opened the Public Hearing and asked those who wished to speak to state their name and address and direct their questions to the Board.

Alice Middleton of 5074 Hartson Point stated that she is the neighbor located to the north. She has lived at and owned her property for 21 years. She is celebrating her 74<sup>th</sup> year at Hartson Point. Her father owned a property that is now inherited by Alice and her sisters a 100' north of the proposed fence. She objects to the height of the fence. She does agree with Mr. Damon that 35' from the lakeshore and his Breakwall is appropriate. She thinks 6' in height is offensive. She would be in favor of something closer to 5', with the last foot being lattice. A taller fence will block airflow from southern breezes and sunlight, so she wouldn't be able to grow anything in that area. She also has Lilly of the Valley flowers along that area, which has been there for many years. She & Mr. Damon have had many cordial discussions about the fence, and the height of the fence is her concern. A fence of this size would not only be a summertime fence, but it would also be a snow fence in the winter. She wasn't sure what impact that might have on her property. She has an outdoor open-air front porch on the lakeside. Winter storms could potentially dump much snow on the open-air porch. It's unknown what issues that may cause. She would prefer a fence that wasn't totally solid. The current fence is about 4' 2" high and has been there for about 70 years. At one time during discussions, Mr. Damon said he was going to

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attach the new fence to the existing one, but I think he determined that may cause an issue on how you clean between them. The existing fence is not a chain link; it consists of mesh squares. She feels a 6' fence is offensive. Alice noted that she has no winter access to her home.

Chairman Mike Sharman asked the Board if there were any further questions.

Rosemary thought the proposed fence was to be 5' tall with a 1' lattice on the top section. Timothy confirmed that was correct. Doug asked what the height of the existing fence was. Timothy stated that it was 4' at most. Chairman Mike Sharman asked if the fence would come up to the road. Timothy stated that it came approximately 15' back from the access road. Chairman Mike Sharman stated that most of the winds come from a southwest direction, and he could see Alice's concerns about winds on a solid fence. Sometimes, a little space between the fence sections does make a big difference. Timothy noted that some of the changes that Alice would like would no longer make it a privacy fence. If that is what is approved, such as slats, it defeats the purpose.

With no further comments, Chairman Mike Sharman closed the Public Hearing.

This application was determined not to require Livingston County Planning Board review per Section 239-m and 239-n of Article 12 of the General Municipal Law agreement (# 8).

This application was determined to be a Type II action, and SEQOR was not required per # 12 of the New York Codes, Rules, and Regulations 617.5 Type II Actions.

The Board considered the impacts of the fence and took into consideration the concerns of the neighbors.

Chairman Mike Sharman asked the Board for a motion to approve or disapprove the Lakeshore Fence. Rosemary Bergin made a motion to approve the proposed solid Fence 5' tall, with 1' of lattice at the top, located 35' off from the Lake and 15' off from the road. Motion to approve. M/2/C (R. Bergin/M. Thompson) Carried: 5-0.

***(4) April Gianvittorio – 4740 East Lake Road, Livonia, NY***

**PLEASE TAKE NOTICE** that the LIVONIA JOINT ZONING BOARD OF APPEALS will hold a public hearing on Monday, **July 17, 2023**, at 7 p.m. at the Livonia Town Hall, 35 Commercial Street, Livonia, New York, to consider the application of **April Gianvittorio** for an area variance pursuant to Section 150-17C of the Zoning Code of Livonia. This area variance is requested for a proposed Garage, which will violate the front Setback requirements according to Sections 150-31G (1) and 150-71 non-conforming lots. The proposed structure also violates the maximum lot coverage requirement of 25%, according to Section 150-31F. This property is located at **4740 East Lake Road, Livonia**, New York, and is zoned Neighborhood Residential District (NR). The application is on file in the Building Zoning Department in the Livonia Town Hall, 35 Commercial Street, Livonia, New York, for public review. All interested parties will be heard at this time.



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ZCA Julie Holtje polled the Board for site visits:

Chair M. Sharman:	Yes
R. Bergin:	Yes
D. Major:	Yes
J. Prato	Yes
M. Thompson	Yes

Chairman Mike Sharman asked April Gianvittorio and Architect Mark Muller to come forward for the proposed detached Garage. Mark stated that the existing garage is located very close to the road. It could be repaired where it stands, but they don't think that would be a good solution. They would prefer to remove the existing garage and rebuild a structure that is no larger than the existing one, with no increase in Lot Coverage. They would locate the new garage further away to be 9' off the property line. Move it further off the roadway to allow for additional parking. This will clean up the area and bring the property into better conformance. April stated that the current garage is very old and has a cracked foundation. She has spoken to some of the neighbors about removing it and noted that it is currently an impediment to some neighbors when pulling out of their driveway. Aesthetically, it is not nice to look at. Chairman Mike Sharman asked if it would be a one-story garage. Mark stated that it would be one story from the road. He noted that, like many properties around Conesus Lake, as you move further back off the road, the area drops in elevation. A foundation will be needed to bring that area up, and there will be space under the garage that can be used for storage. From the roadside, it won't be any taller. Rosemary noted that April also owns the property across the street. When she spoke with April, she was ambivalent about putting up a garage or shed. Rosemary felt that the property across the street would be a better area for a bigger garage. April stated that they are exploring their options, and this is an option they want to explore so they do not have to cross the busy street. CEO Adam Backus noted that if they were to apply for a permit to repair the existing structure substantially, it would be very likely it would be denied because it would rise to the cost of a replacement to salvage what is there. It is not really an option to repair what is currently there. Chairman Mike Sharman noted that their application looks a lot better than what is there now. Doug asked for clarification on the Lot Coverage. They are currently over, but the new garage is going to be smaller. Mark noted that the Lot Coverage now is between fifty to sixty percent, and they do not plan on increasing what is already there. The proposed garage will be the same square footage as what is currently there. Rosemary asked if the garage would be pushed further down the hill. Mark confirmed that it will be moved closer to the lake to move it off the road more. It will be 20' off the shoulder of the road. Joe asked how close the existing garage was off the highway. Chairman Mike Sharman stated it is currently .5' off the highway. Moving the new garage back will be a big safety improvement. April noted there was an accident there two years ago in the winter. It's a blind curve in that area. They could park further south, but that impedes the neighbor to the south site line. Currently, they are not able to park in front of the garage and felt that if they could, it would also help the neighbor's visibility. ZCA Julie Holtje stated that the proposed garage would reduce the footprint by twenty-three square feet. It will not increase the Lot Coverage. Chairman Mike Sharman noted that the Board appreciates any case that presents a less non-conforming situation.

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Chairman Mike Sharman asked the Board if there were any further questions.

Chairman Mike Sharman opened the Public Hearing and asked those who wished to speak to state their name and address and direct their questions to the Board.

Richard Mistretta, located across the street at 4735 East Lake Road, stated that originally he was told that the garage was coming down and they were making a parking area and asked for clarification. Chairman Mike Sharman replied that the application is requesting to remove the existing garage and rebuild it with a smaller garage moved further back towards the west, 20' off the road. The parking area will be located in front of the new garage. Richard noted that he was told there would be no garage. Mark confirmed that they are applying for a garage. April commented that they don't have a set plan; they are investigating their options.

Chairman Mike Sharman closed the Public Hearing with no further comments.

This application was submitted to the Livingston County Planning Board for their review. They determined that it has no significant Countywide or inter-municipal impact. Approval or disapproval of this application is a matter of local option.

This application was determined to be a Type II action, and SEQR was not required per (# 10) of the New York Codes, Rules, and Regulations 617.5 Type II Actions.

Chairman Mike Sharman asked the Board to go through the area variance criteria:

1. Will an undesirable change be produced in the character of the neighborhood, or will a detriment to nearby properties be created by granting the variance? No
2. Can the benefit sought by the applicant be achieved by some feasible method other than a variance? No
3. Is the variance substantial? No – Decreased footprint and increased setback.
4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood? No
5. Is the alleged difficulty self-created? Yes

Chairman Mike Sharman asked the Board for a motion to approve or disapprove the proposed Area Variance for the proposed detached Garage. Doug Major made a motion to approve the application as submitted. Motion to approve. M/2/C (D. Major/R. Bergin) Carried: 5-0.

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*(5) Mary Williamee – 4706 East Lake Road, Livonia, NY*

**PLEASE TAKE NOTICE** that the LIVONIA JOINT ZONING BOARD OF APPEALS will hold a public hearing on Monday, **July 17, 2023**, at 7 p.m. at the Livonia Town Hall, 35 Commercial Street, Livonia, New York, to consider the application of **Mary Williamee** for an area variance pursuant to Section 150-17C of the Zoning Code of Livonia. This area variance is requested for a proposed detached Garage, which will violate the side setback requirements according to Sections 150-31G (2) and 150-71 non-conforming lots. This property is located at **4706 East Lake Road, Livonia**, New York, and is zoned Neighborhood Residential District (NR). The application is on file in the Building Zoning Department in the Livonia Town Hall, 35 Commercial Street, Livonia, New York, for public review. All interested parties will be heard at this time.

ZCA Julie Holtje polled the Board for site visits:

Chair M. Sharman:	Yes
R. Bergin:	Yes
D. Major:	Yes
J. Prato	Yes
M. Thompson	Yes

Chairman Mike Sharman asked Mary Williamee to come forward for the proposed detached Garage. Mary stated that the existing garage is only a one-car and has a leaning foundation. She would like to put in a two-car garage with additional storage. ZCA Julie Holtje noted that Mary came into the office this morning, and there is a slight change made for the better. Chairman Mike Sharman asked for clarification regarding a breezeway on the property. Mary stated that it was not really a breezeway. In the storage area in the back, there is a walkway that doesn't connect to the house. It was originally 8', and they reduced it to 4' to give her a little more storage room. Mary Ann asked if it was covered. Mary said that it was covered. Chairman Mike Sharman asked if it was on the map. Mary confirmed it was on the map and provided the map for the Board. ZCA Julie Holtje explained that it is within the footprint of the garage that is shown on the map. Doug referred to the map and stated that the red square shows the proposed garage. The bottom left is 5' from the property line, and the top left is 8'. Julie noted that it is drawn parallel, but it was changed before the meeting to 8' to keep the driveway 10' off the property line in order to meet the design criteria and to be able to access the garage with a car. Doug asked if it would be 10' off the front property line. Julie explained that the Design Criteria require driveways to keep a 10' separation from a property line and reviewed the map with Doug. Chairman Mike Sharman asked where the entrance to the garage would be. Mary stated it would be from the east/roadside, how it is currently.

Chairman Mike Sharman asked the Board if there were any further questions.

Chairman Mike Sharman closed the Public Hearing with no one present wishing to speak regarding this application.

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This application was determined not to require Livingston County Planning Board review per Section 239-m and 239-n of Article 12 of the General Municipal Law agreement (# 10).

This application was determined to be a Type II action, and SEQR was not required per (# 12) of the New York Codes, Rules, and Regulations 617.5 Type II Actions.

Chairman Mike Sharman asked the Board to go through the area variance criteria:

1. Will an undesirable change be produced in the character of the neighborhood, or will a detriment to nearby properties be created by granting the variance? No
2. Can the benefit sought by the applicant be achieved by some feasible method other than a variance? No
3. Is the variance substantial? No
4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood? No
5. Is the alleged difficulty self-created? Yes

Chairman Mike Sharman asked the Board for a motion to approve or disapprove the proposed Area Variance for the proposed detached Garage. Rosemary made a motion to approve the application as submitted. Motion to approve. M/2/C (R. Bergin/J. Prato) Carried: 5-0.

***(6) Bell Atlantic/Verizon Wireless – Niver Road, Livonia, NY***

**PLEASE TAKE NOTICE** that the LIVONIA JOINT ZONING BOARD OF APPEALS will hold a public hearing on Monday, **July 17, 2023**, at 7 p.m. at the Livonia Town Hall, 35 Commercial Street, Livonia, New York, to consider the application of Bell Atlantic Mobile / Verizon Wireless for a Conditional Use Permit pursuant to Section 150-102 A of the Zoning Code of Livonia. The Conditional Use Permit is for the construction of a 195’ Cellular Tower per Section 150-33D (2), Public Utility, and to be located **near 6653 Niver Road, Tax parcel # 93.-1-43.112** in the Town of Livonia, NY, and is Zoned Neighborhood Residential Conservation District (ARC-5). This application is on file in the Livonia Building and Zoning Department in the Livonia Town Hall, 35 Commercial Street, Livonia, New York, for public review. All interested parties will be heard at this time.

ZCA Julie Holtje polled the Board for site visits:

Chair M. Sharman	Yes
R. Bergin	Yes
D. Major	Yes
J. Prato	Yes

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M. Thompson            Yes

Chairman Mike Sharman opened the Public Hearing.

Attorney James Campbell noted that the Zoning Board of Appeals received a letter from the Livonia Joint Planning Board seeking to be the lead agency for the Cell Tower application. The Zoning Board needs to make a determination as to whether they are in agreement for the Planning Board to serve as the lead agency.

Chairman Mike Sharman asked the Board for a motion to approve or disapprove the Livonia Joint Planning Board as the lead agency for the Cell Tower. Mary Ann made a motion for the Planning Board to be the lead agency. Motion to approve. M/2/C (M. Thompson/R. Bergin) Carried: 5-0.

Jeffrey Twitty, Attorney at Nixon Peabody, stated he is here on behalf of Bell Atlantic, representing Verizon Wireless, along with Jackie Bartolotta, who is the Site Acquisition Specialist for the site, as well as Phillip Colantonio, the RF engineer for this site. They are here to seek a Conditional Use Permit for the construction of a 195' Cellular Tower. They are currently before the Planning Board for Site Plan approval. They had a Public Hearing with the Planning Board last week, and a lot of what they have been discussing with the Planning Board surrounds the radio frequency justification for this project, the height of 195', and why they are located at 6653 Niver Road. Those are the issues that they are working with the Planning Board on; and they are happy to hear any concerns the ZBA has as well.

Rosemary stated that there was a letter received from the Town's Engineers, William Johnson and Steven Ciccarelli. The letter dated June 22 recommends a number of locations, and she wondered if those locations have been discounted. Steven stated that locations have not been as of this point. The recommendations are a subset of the findings from the report that was issued to the Town three weeks ago. One week ago, they received permission from the Town to release that report to the applicant, so they only had about one week to review the findings. They expect that he will receive their response very soon. Jackie noted that they received the findings last Tuesday and are in the process of drafting a response letter now. Chairman Mike Sharman stated that the synopsis is very well done, showing ten findings. Steven noted that they had addressed multiple findings in that letter, but in the actual report, they found twelve actual findings. They were summarized, and some of the findings overlapped. This summary was sent in an email in plain language. The 28-page report was more detailed and used more technical vocabulary.

Chairman Mike Sharman asked if anyone from the public wished to speak to state their name and address for the record and direct their questions to the Board.

Kevin Masterson of 3817 Cluny Point said that it is required by the Code to investigate co-location and asked if co-location for the proposed tower was considered and what the findings were. Jackie commented that there were not any other existing structures within the search area. The RF findings data that was submitted included the search range. The project starts with the

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RF engineer determining the need in the network and comes up with a search area. Generally, if there is a site within the search area, that would solve the network issues. Within this search area, they looked at sixteen sites, but no existing structures were possible for co-location. Kevin asked if they could co-locate on the Tower on Cleary Road. Jackie said that Verizon also co-locates in that location, but there is not enough coverage area. Rosemary asked if that is what is meant by blackout areas. Jackie stated that there is not enough RF coverage on that particular tower to cover the search range.

Bob Nilsson of Harder Road said that he has a Verizon wireless phone and understands where coverage works and where it doesn't. He is guessing that it is Conesus where they are looking to provide more coverage and why they weren't looking for a site in Conesus. Jackie stated that the coverage is for both areas. It was based on the search range, and they did look at properties in both towns. Not all property owners are interested in being considered for these projects. When they submitted the information to the RF engineers, it was determined that the parcel on Niver Road best met all the objectives. Bob asked how big the coverage area was, as it is only two miles from the existing tower on Cleary Road. Steven, the RF engineer, stated that most of it is terrain-related. Looking at page 15, it shows that they do get coverage from the site on Cleary Road. It reaches Hemlock. That was one of their goals was to provide some coverage down in Hemlock. The current coverage is not very good. If you are inside a home, you are lucky if you can get two bars of service. The new tower will help alleviate that problem. Because it is still a distance away, it should help improve the coverage inside the home until they can get a more permanent solution in the Hemlock area. The new tower will cover Hemlock, the Town of Conesus, and the Town of Livonia. Bob stated that the service decreases as soon as you cross Niver Road and head south on Federal Road. Hemlock Lake is the biggest undeveloped lake east of the Mississippi River. It is a pristine, natural area, and this tower will change that forever. It will be a giant 200' man-made structure towering over the lake, towering over the scenery and landscape. He, along with many people living in that area, really enjoys the way that it looks now. They would like to preserve that. The benefit to the company and the one landowner affects everyone in the community, and he would like that taken into consideration. He would like to see this application denied and a tower placed in Conesus because that is where the coverage is needed. Years ago, he was aware that he would need a Variance to install a wind turbine on his property because it was over 35'. He asked if the reason why Verizon wasn't required to obtain a Variance was that it was because it was communications. Bob felt the dead zone is really from Conesus to Webster's Crossing and felt the problems are further south. Chairman Mike Sharman agreed. As was mentioned, the coverage does have to do with the terrain. Attorney James Campbell stated that it's not just about the dead zone. Losing coverage completely is not the only criteria. Its capacity, as people are using phones for more than just making phone calls. It draws on the network; it's not just about dropping a call. Phillip stated there are three reasons that they can request a tower. One is capacity, network congestion, which is pulling traffic off from the other nearby sites, and deployment of new services.

Bob Nilsson stated that the Town's RF Consultant report was issued, but the applicant hasn't had a chance to respond yet; why would we go ahead with the Conditional Use Permit without their response? CEO Adam Backus stated that the Board is not proceeding with the CUP tonight. The ZBA is here to hold the Public Hearing, discuss concerns, and propose recommendations,

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comments, or concerns to the Planning Board before the applicant returns to the Zoning Board. The ZBA will not be acting until the SEQR has been done with the Planning Board as the lead agency. Sharon Mistretta asked if there would be any camouflage around the tower. Chairman Mike Sharman stated that was a reasonable question that has been brought up many times. When they proposed Cleary Road, he was aware that they discussed camouflage or colors other than gray. It seems that gray is the go-to color. CEO Adam Backus noted that there is potential to have buffering around the compound. It would be screening around the fenced-in area, nothing up high on the tower. Sharon has not seen the actual proposed site. Chairman Mike Sharman explained the location. Jackie noted that the entrance will be on Niver Road, with the tower 300' back off the road. In relation to the topography, Chairman Mike Sharman asked if the tower going to be higher than the elevation by the road. Looking at the topographical map, Jackie stated that the tower would be a little higher. The elevation at Niver Road is 1462', and the location of this site is 1468'. Kevin Masterson asked why they picked 300' off the road instead of 1500' off the road; the property is a big parcel. Jackie stated that it was determined that going 300' in it would be less intrusive and not disturb the whole parcel. It also would meet all the Setback requirements at 300'. It was the right height that would work, and that is why they decided on that location. Bob Nilsson asked how far off from Federal Road the tower would be. Jackie stated that she didn't have that exact measurement, but it was approximately 1000'. She reviewed the map with Bob.

Chairman Mike Sharman asked if the Planning Board suggested any buffer or screening. ZCA Julie Holtje reviewed the Site Plan with the Zoning Board members. Jackie noted that they would disturb as minimal of an area that is possible. There is a lot of vegetation on the property that they will not be disturbing. Rosemary asked about the size of the area they would be leasing for the tower. Jackie stated that they would lease an area that is 100' X 100'. They were planning to fence 56' X 74'. The self-supported tower and related equipment cabinets on a concrete pad will be within that. There will also be space for any co-locations in the future. Chairman Mike Sharman asked how many other utilities could co-locate on this tower. Jackie said she thought a tower of this size could accommodate a total of four ~~other~~ carriers. Dick Mistretta asked how tall the tower on Cleary Road was. CEO Adam Backus noted that it was 125'. Dick asked if he was at Hemlock Park if he could see this tower? Bob Nilsson stated that he felt it could be seen. Dick asked if there were any comments received from the two neighbors near the tower site. Chairman Mike Sharman stated that he does not believe they have received any comments from the neighbors. ZCA Julie Holtje noted that the Building and Zoning office did receive some phone calls regarding the application. There were questions relating to the application, and those callers were made aware of the public meetings if they wished to attend. Doug Major stated that part of the placement of the tower has to do with the projected usage and needs of the community. If this is just a step along the way, the question to the Board would be, is this a step in the appropriate direction, or is it a misplaced step? Based on the data that was analyzed, where the usage shortage is and coverage, it's based on some extrapolated look, not just today but over the next five to ten years. A decision to put a 200' structure in place has to be based on an evolution over time. In ten years, he would like to feel comfortable that it was placed in the right place. For future towers, the growth area would be at least ten miles away, and this tower will cover our needs for at least ten years. Then, in the future, the next tower will be placed appropriately as opposed to a site that will only cover the needs for a year or two. That

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is the question to ask the Board, understanding whatever planning they have and the RF science they have been coming together to make sure this is a logical place to put a 200' structure. He is sympathetic to the comments from the public that this is in an area that doesn't have a 195' structure. That being said, times change, and utilities need to change, but as he feels responsible for understanding those utilities need changes, he also needs to be appreciative of where we are going and whether this is the right interim step that we have to interrupt an area that is virgin from structures of that height. That is the guidance he would provide to the Planning Board. Jackie noted that their response to the Town's RF consultants addresses both of those things. Phillip commented that this will not be the tallest tower in the area. There is a site on the other side of Hemlock Lake in the town of Richmond that is 250' tall. They are at 162', and AT&T is at 250' at that site. With all the hills and valleys, you need to be high enough over them to provide coverage. There are other towers in the area that are at heights of 180', and another is at 185'. This tower is proposed at 195', which is in the ballpark for the height and is not substantially higher. CEO Adam Backus noted that the tower will not be lit.

Attorney James Campbell said that ten years ago, nobody anticipated the things we would be doing today. There is some inherent challenge in trying to predict where the technology will continue to go. The applicants have to balance that against the requirements that they have for the federal license that they have as a utility provider. They have to meet a certain set of criteria, which is particularly challenging. Doug commented that especially when you don't know who is going to cooperate with whom. Chairman Mike Sharman asked how old the Cleary Road tower was. CEO Adam Backus said that it was installed in the 80's. They just updated their equipment, and the DISH network is going to co-locate. Chairman Mike Sharman asked if there were any complaints received about visibility or from the neighbors of the Cleary Road tower. CEO Adam Backus stated that no complaints had been received. He also noted that there have been no complaints about the tower in the Village since it has been up.

CEO Adam Backus stated that in addition to letting the applicant know what the Planning Board will want to know, is making sure that there is enough buffer around the fenced-in area. He advised the applicant that they should be ready to explain the distance from Niver Road. Jackie stated that exhibit "P" does include a view shed map where there are hatch lines that reflect where the tower will be visible from, which includes the mile radius and a two-mile radius. Following that information are some photos from the areas that were identified. Bob Nilsson wanted to know if the two-mile radius included Hemlock Park. Jackie stated that according to the analysis, they are not projecting that the tower will be visible from Hemlock Lake at all. Jackie also noted that for this balloon test, they flew one at 175' and one at 195'.

Chairman Mike Sharman asked the Board if there were any further questions.

This application was submitted to the Livingston County Planning Board for their review. They made a motion to recommend "Approval" of the proposed action. This motion failed to pass due to a lack of quorum vote. The County Planning Board has taken no official action on this application due to a lack of quorum vote. A response of "No Action" on the part of the County Planning Board should not be construed as a judgment on the project. The Town is now free to take final action on this application.



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This application was determined to require long-form SEQR and will be reviewed with the Livonia Joint Planning Board as the lead agency.

At this point, Chairman Mike Sharman asked what the next steps were from the Zoning Board of Appeals. Attorney James Campbell said the Zoning Board would be waiting pending further action by the Planning Board. If this Board has any thoughts or comments, they should feel free to send them by email to the Building & Zoning office.

Chairman Mike Sharman asked for a motion to hold the Public Hearing open until the next Zoning Board of Appeals meeting. Joe made a motion to hold the Public Hearing open. Motion to approve. M/2/C (J. Prato/D. Major) Carried: 5-0.

Chairman Mike Sharman asked if the Padlick's were still present. Attorney James Campbell said they did leave and will submit a new application.

Chairman Mike Sharman asked for a motion to adjourn the Livonia Joint Zoning Board Meeting at 9:22 p.m. M/2/C (J. Prato/M. Thompson). Motion carried: 5-0

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Respectfully submitted,  
Alison Houk, Recording Secretary