

ZONING BOARD OF APPEALS

Town of Cortlandt  
Westchester County, New York

DECISION & ORDER

Name of Petitioner: **LORSAINE ATORO** Case No. 14-95  
Address: **29 Biorubbo Drive**  
**Cortlandt Manor NY 10566**

Location of Property: **29 Biorubbo Drive**  
Tax Map Designation: **Section: 24.17 Block: 5 Lot: 13**  
Present Zoning: **R-40**

Nature of Petition:  
 Use Variance  Area Variance  280A Exception  
 Special Permit  Interpretation  
Describe Specific Request: **Area Variances for construction of an Amateur Radio Antenna support structure on above referenced property.**

Board Members  
Present: **Thomas A. Bianchi** Absent: **Nettie O. Roub**  
**Wai Man Chir**  
**Charles P. Heady, Jr.**  
**John Mattia**  
**Carolyn Reilly**  
**John R. Russo**

The above-referred to Petition, having been duly advertised in the *Croton Cortlandt Gazette*, the official newspaper of the Town of Cortlandt in the issue published on 6/11/95, Town Board Resolution No. 153-88 having been complied with and the matter having duly come to be heard before a duly convened meeting of the Board on the following dates

6/19/95, at the Town Hall, 1 Heady Street, Cortlandt Manor, New York, and all of the facts, matters and evidence produced by the Petitioner, by the administrative official and by interested parties having been duly heard, received and considered, and a site inspection of the premises having been made, and due deliberation having been had, the following Decision and Order is hereby made:

This is an application for an area variance for construction of an Amateur Radio Antenna support structure on the above property in the "R-40" Single-Family Residential District.

This case previously came before this Board in June, July and August 1995, at which time the Applicant requested a 120-foot structure, measured from the base. In addition, at the July 1995 public hearing, the Applicant's husband, Mr. J.P. Kleinhaus, stated that the antenna he desires to construct will have a 24-foot "wing span", which will sit 2.5 feet atop the antenna.

By our Decision and Order, dated October 18, 1995, this Board denied Applicant's requested area variance for a ~~120-foot~~ tower (and only a 120-foot tower), for the reasons stated therein (see attached copy of the Decision and Order.)

Thereafter, the Applicant and her husband, Mr. Kleinhaus, commenced an Article 78 Proceeding against this Board in Westchester County Supreme Court (Index No. 19396/95). The Article 78 Proceeding was fully litigated and resulted in a Decision (12 pages) dated March 15, 1996, by Justice Joan B. Leffkowitz.

Ultimately, Justice LeSkowitz signed an Order, dated May 6, 1996, incorporating the Court's March 15, 1996 Decision, and provided, inter alia:

"Ordered, that this matter is remitted to the ZBA for further proceedings to weigh whether the ZBA can reasonably accommodate Petitioners' request or a modified request, if one is made by Petitioners."

Following the Decision by the Court, there were various proposals discussed by the parties (the Applicant and this Board), through their respective Counsel, leading to this matter being remanded to this Board's Agenda on June 19, 1996.

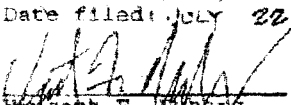
After the Board's executive Session concerning this litigation and a Public Hearing being held on June 19, 1996, with a lengthy presentation by the Applicant, her husband and their Counsel, this Board hereby considers the Applicant's modified request for a 100-foot tower and GRANTS the requested area variance (35 feet to 100 feet) subject to the following terms and conditions discussed with the Applicants and their Counsel on June 19, 1996:


1. The proposed antenna tower in the rear yard can be erected to a height of 100 feet.
2. The tower is to be placed one-half the distance between where the rear yard "bottoms out" and where the Applicant previously proposed to locate the tower in her initial application.
3. The Applicant will be required to paint the antenna structure below the tree line, and above the tree line in appropriate colors, such colors to be colors that would minimize the appearance of the antenna structure to neighboring property owners and the public.
4. The guy wires to be placed by the Applicant shall be a minimum of six (6) feet in from the Applicant's property line. In addition, two (2) Surveys are to be made and certified to the Town concerning the antenna structure (the first showing the proposed location of the footings for the guy wires and the antenna base, and the second an "as built" Survey showing where the footings were actually placed).
5. The Applicant will submit a plan to the ZBA showing exactly the antenna structure to be erected and the materials to be used, etc.

This is a Type II action under SEQDR with no further compliance required.

NOW THEREFORE, Petition is granted and it is further ordered that in all other respects Petitioner comply with all of the rules, regulations and ordinances of the Town of Cortlandt and all other agencies having jurisdiction.

Adopted: July 17, 1996  
Cortlandt Manor, New York  
Date filed: July 22, 1996

  
Vincent F. Ryberg  
Clerk, Zoning Board

  
Thomas A. Bianchi  
Chairman, Zoning Board