

**MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT
SPECIAL MEETING
February 7, 2013**

The West Orange Zoning Board of Adjustment held a special meeting on February 7, 2013 commencing 8:00 PM at 66 Main Street, West Orange, N.J. in Council Chambers.

Chairman Neuer called the meeting to order at approximately 8:00 P.M. It was announced that notification of this meeting was given to the Township Clerk, the West Orange Chronicle, and posted on the Township Bulletin Board on January 24, 2013 in accordance with the "Open Public Meetings Act."

Chairman Neuer asked everyone to stand for the Pledge of Allegiance

Alice Beirne, Esq., Board Attorney, read the Opening Statement.

PRESENT: G. Bullock (8:06 pm), D. Gabry, W. Merklinger, P. Neuer,
B. Quentzel (8:04 pm), W. Steinhart, M. Sussman, A. Weiss

ABSENT: B. Buechler (recused)
L. Zaolino (excused absence)

ALSO PRESENT: P. Grygiel, Consulting Planner/Acting Planning Director
Board Attorney, Alice Beirne, Esq.
Board Secretary, Rose DeSena
Harvey Grossman, Public Advocate

ANNOUNCEMENTS

Future Meetings: February 21, 2013 (Regular Meeting) - 8:00 PM
March 7, 2013 (Special Meeting) – 8:00 PM
March 21, 2013 (Regular Meeting) - 8:00 PM
April 18, 2013 (Regular Meeting) – 8:00 PM

Chairman Neuer made reference to a letter to the Editor, which was written by a Township resident Mary Ellen Morrow, in the West Orange Chronicle. He stated that the article contained many kind words concerning the Zoning Board of Adjustment.

MINUTES

Adopt Minutes: January 10, 2013 (Special Meeting)

Ms. Gabry made a motion to approve the minutes; Mr. Steinhart seconded the motion. All were in favor to approve the minutes of the special meeting held on January 10, 2013.

Adopt Minutes: January 17, 2013 (Regular Meeting)

Mr. Sussman made a motion to approve the minutes; Ms. Gabry seconded the motion. All were in favor to approve the minutes of the regular meeting held on January 17, 2013.

SWEARING IN

Consulting Planner for the Township, Paul Grygiel was sworn under oath.

APPLICATION

- 1. ZB-12-18/T-Mobile Northeast, LLC & New Cingular Wireless** **Carried from 12/20/12**
Block: 155; Lot: 40.01; Zone: B-2
8 Rooney Circle
Seeking site plan approval and three (3) "D" variances for establishing a temporary wireless communication facility.

EXHIBITS

- A-1 - Owners consent to temporary variance from Price Meese Law Firm dated 2/5/13
- A-2 - Site Plan Set - eight sheets with a revision date of 10/19/12
- A-3 - Existing and Proposed Coverage locations for T-Mobile – three sheets
- A-4 - Existing and Proposed Coverage locations for AT&T – four sheets
- A-5 - Planners Report prepared by Timothy M. Kronk, PP, AICP
- A-6 - Aerial Photograph
- A-7 - Existing & Proposed Photo from Rooney Circle and Entrance to the Marriott Courtyard
- A-8 - Existing & Proposed Photo from Route 280 W on-ramp
- A-9 - Existing & Proposed Photo from Prospect Avenue Bridge over Route 280
- A-10 - Existing & Proposed Photo from Rooney circle near Shop Rite

DISCUSSION

Gregory Meese, Esq., attorney for T-Mobile, approached the podium. Mr. Meese stated that the co-applicants, T-Mobile and AT&T, are seeking site plan approval for a temporary wireless communication facility. He stated that this facility will replace a previously approved existing facility that had to be taken off the air due to PSE&G upgrading their towers. Mr. Meese said that until the tower replacement project is completed, both carriers must temporarily relocate their antennas that were mounted on the existing PSE&G electric transmission towers located near Rooney Circle and Marion Drive. He said that the tower replacement project will take approximately two years.

Chairman Neuer thanked Mr. Meese for responding quickly to Ms. Beirne's letter requesting submission of a legal memorandum stating that the Zoning Board may limit the approval of a variance to certain duration. The Chairman stated that Mr. Meese submitted an affidavit signed in Richmond Virginia by Dave Budley stating that the property owner understands that the site is temporary and they will not have the vested right to use the flag pole for antennas once the temporary antennas have been removed by these applicants. The duration of the variance shall not exceed the two years applied for by these applicants.

Chairman Neuer asked to have the letter from Price Meese and the owner's consent to temporary variance marked as Exhibit A-1 and entered into evidence.

Mr. Meese stated that the applicants are proposing to attach their antennas to a 123' tall flag pole which will be removed upon restoration of the PSE&G tower location. He said that the use variance is being requested for the temporary duration. Mr. Sussman asked Mr. Meese if the fence they are proposing will also be removed; Mr. Meese replied yes.

Chairman Neuer asked Mr. Meese how the flag will be illuminated; Mr. Meese said that their Engineer will explain that.

Mr. Meese stated that he spoke to the Township Engineer, Lenny Lepore, about making the flag pole permanent. Chairman Neuer said that the applicants are here before the Board tonight requesting a temporary variance only. He said that they could come back before this Board if they wish to make it permanent.

Ms. Weiss asked Mr. Meese if he had any colored photos of the flag pole; Mr. Meese replied yes.

Ms. Weiss asked Mr. Meese if there is a sample piece of the flag pole; Mr. Meese replied no. He said that the pole is made of metal and is a regular flag pole.

Mr. Meese called his first witness.

Joshua R. Cottrell approached the podium and was sworn under oath. Mr. Cottrell detailed his educational and professional background stating that he was a licensed professional Engineer in the State of New Jersey. He also said that he has testified many times before other Boards for

applications of similar scope. Chairman Neuer accepted Mr. Cottrell as an expert in the field of Engineering.

Mr. Cottrell presented plans that were submitted with the application. Chairman Neuer asked to have the entire set of plans consisting of eight sheets with the revision date of 10/19/12 marked as Exhibit A-2 for identification. Mr. Cottrell referred to sheet SP-2 of the plans and detailed the enlarged area where the flag pole and antennas will be located. He stated that AT&T will have six (6) antennas and T-Mobile will have six (6) antennas for a total of 12 antennas.

Mr. Cottrell referred to sheet SP-3 stating that the cables will not be visible from the exterior and explained that the antennas will be mounted within the flag pole and will likewise not be visible. He also detailed where the equipment cabinets will be placed on the plans.

Chairman Neuer asked Mr. Cottrell who drew the plans; Mr. Cottrell stated that the plans were prepared by members of his firm.

Mr. Cottrell stated that telephone and electric are the only utilities required at the site. He said that they are not proposing to install a generator because there is an internal battery that is used to backup the power.

Mr. Cottrell stated that a technician visits the site every two to six weeks. He also said that no additional parking is being proposed.

Chairman Neuer referred to the temporary 6'2" fence that they are proposing at the site. He asked Mr. Meese if the applicant wanted to amend the application requesting the additional variance for this fence. Mr. Meese said yes and asked to amend the application requesting a variance for the height of the temporary fence. The amendment was accepted.

Mr. Quentzel asked Mr. Cottrell how they would prevent the flag pole from coming down during a hurricane. Mr. Cottrell said that 85 mph wind gust factors are built in during the calculations. He said that these calculations will be submitted when they apply for the permits because the Engineering Department requires that.

Mr. Bullock asked Mr. Cottrell how this flag pole is similar to the existing flag pole in town which houses antennas; Mr. Cottrell said he did not know because he never saw that flag pole.

Ms. Gabry asked Mr. Cottrell to explain how they install the antennas within the flag pole; Mr. Cottrell said they move the fiberglass panels and place the antenna inside the pole.

In response to a question by Mr. Sussman the witness stated that the lower 80' of the pole is galvanized steel and the remainder of the pole is made of fiberglass with the antennas inside of this section of the pole.

Mr. Bullock asked Mr. Cottrell what color the pole will be; Mr. Cottrell said it will be painted white.

There were no further questions for Mr. Cottrell from the Board.

Chairman Neuer asked if any members of the public had any questions for Mr. Cottrell; seeing none he asked Mr. Meese to call his next witness.

Mr. Meese called the Radio Frequency Engineer testifying for T-Mobile.

Joseph Menio approached the podium and was sworn under oath. Mr. Menio detailed his educational and professional background, stating that he is an expert in Radio Frequency Engineering in the State of New Jersey and New York and that he has testified many times before Boards. Chairman Neuer asked Mr. Menio if he is licensed; Mr. Menio stated that he is licensed by the FCC but there is no certification in New Jersey for Radio Frequency Engineering. Chairman Neuer accepted Mr. Menio as an expert in the field of Radio Frequency Engineering.

Mr. Menio presented a map of T-Mobiles existing and proposed coverage facilities. Chairman Neuer asked to have the entire set, consisting of three sheets, of the existing and proposed coverage facilities marked as Exhibit A-3 for identification. Mr. Menio detailed the first sheet showing the coverage that T-Mobile had at the old site. He then referred to the second sheet showing gaps that opened up on Route 280 and Prospect Avenue after those antennas had been decommissioned. Mr. Menio then referred to sheet three showing all the gaps being filled in with the proposed temporary facility.

Mr. Sussman asked Mr. Menio if coverage would be better, long term, if they left the antennas at the temporary site or relocated back on the PSE&G tower; Mr. Menio said there would be equal coverage.

There were no further questions for Mr. Menio from the Board.

Chairman Neuer asked if any members of the public had any questions for Mr. Menio; seeing none he asked Mr. Meese to call his next witness.

Mr. Meese called the Radio Frequency Engineer testifying for AT&T.

Yven Joseph approached the podium and was sworn under oath. Mr. Joseph detailed his educational and professional background stating that he designs radio frequency networks. He said that he has testified before Boards in New Jersey, New York and Connecticut and is licensed by the FCC. Chairman Neuer accepted Mr. Joseph as an expert in the field of Radio Frequency Engineering.

Mr. Joseph presented a base drawing with three clear overlays of AT&T's existing and proposed coverage facilities. Chairman Neuer asked to have the set of AT&T's existing and proposed coverage facilities marked as Exhibit A-4 for identification. Mr. Joseph detailed the USGS base map showing the existing site and the proposed site. He presented the first overlay which showed the existing coverage prior to the site being displaced. Mr. Joseph said that they had reliable service. He presented the second overlay that showed the gaps in coverage without the facility being online. Mr. Joseph then presented the third overlay showing the gaps being filled in from the proposed site at the Marriott.

Mr. Sussman asked Mr. Joseph if the proposed location is preferable or if the old location is preferable. Mr. Joseph said that AT&T would prefer to remain at the proposed location because the site is closer to Route 280 and will have better coverage. He said that the proposed site will also be easier to maintain.

There were no further questions for Mr. Joseph from the Board.

Chairman Neuer asked if any members of the public had any questions for Mr. Joseph; seeing none he asked Mr. Meese to call his next witness.

Mr. Meese called his next witness.

Dan Collins approached the podium and was sworn under oath. Mr. Collins stated that he is an FCC compliance expert, has an electrical degree and has testified before this Zoning Board before. Chairman Neuer accepted his credentials as an FCC compliance expert. Mr. Collins said that the radio frequency levels are below what is permitted.

There were no further questions for Mr. Collins from the Board.

Chairman Neuer asked if any members of the public had any questions for Mr. Collins; seeing none he asked Mr. Meese to call his next witness.

Timothy Kronk approached the podium and was sworn under oath. Mr. Kronk detailed his educational and professional background as a Professional Planner licensed in the State of New Jersey. Chairman Neuer accepted Mr. Kronk as an expert in the field of Professional Planning.

Chairman Neuer referred to the planning report, dated 8/22/12, that was submitted with the application and asked Mr. Kronk if he prepared it; Mr. Kronk replied yes. Chairman Neuer asked Mr. Kronk if he was to ask him to read the report would it constitute his testimony this evening; Mr. Kronk replied yes. Chairman Neuer asked Mr. Kronk to sign the planners report dated 8/22/12 and asked to have it marked as Exhibit A-5 for identification.

Mr. Kronk presented an aerial photograph of the site. Chairman Neuer asked to have the aerial photograph of the site marked as Exhibit A-6 for identification. Mr. Kronk detailed the aerial photograph showing the proposed site at the Marriott Hotel, Route 280 and Prospect Avenue.

Mr. Kronk presented four (4) photo boards that showed what is current and what is being proposed and began detailing them. He said that they performed a balloon test at 123' for the proposed photo and also took photographs. Chairman Neuer asked to have the photo board showing the current and proposed view from the intersection of Rooney Circle & the entrance to the Marriott Courtyard marked as Exhibit A-7 for identification; the photo board showing the current and proposed view from Route 280 West at the Prospect Ave. On-Ramp marked as Exhibit A-8 for identification; the photo board showing the current and proposed view from Prospect Avenue looking southwest marked as Exhibit A-9 for identification and the photo board

showing the current and proposed view from Rooney Circle marked as Exhibit A-10 for identification.

Mr. Kronk detailed the positive and negative criteria stating that the applicants are licensed FCC communication carriers who received a prior "D" Use variance in this area, based on their needs, and that they still have the same needs. He stated that this will benefit the general public and that there will be no detrimental impact to the area or visual impact to the area.

Mr. Meese asked Mr. Kronk about the status of the PSE&G project. Mr. Kronk said that this is a phased project that has a two year time frame and said that PSE&G is right on schedule.

Mr. Quentzel asked Mr. Kronk if this Board can expect to see any other temporary telecommunication facilities in town because of the PSE&G project; Mr. Kronk said this will be the only temporary site for T-Mobile.

Chairman Neuer asked Mr. Kronk if he reviewed the memo from the Township's Consulting Planner, Mr. Grygiel; Mr. Kronk replied yes.

Chairman Neuer asked Mr. Kronk if he is in concurrence with the T-Mobile letter from Mr. Meese; Mr. Kronk replied yes.

Mr. Merklinger said that Exhibit A-10 shows another tower in the photo and asked if there will be any conflict with these two towers; Mr. Kronk replied no.

Mr. Merklinger asked if there will be any interference with the building that is near the proposed site because hand held communication devices are used in that building; Dan Collins approached and replied no.

Mr. Steinhart asked what flag size is being proposed; Mr. Kronk said the flag is 12' x 18'. Mr. Steinhart asked Mr. Kronk if the flag size will have an impact on the noise because the condos are very close to the site; Mr. Kronk said the noise level rises because of the wind but that the noise from Route 280 is probably greater than the flag may produce.

Ms. Gabry asked Mr. Kronk who will maintain the flag; Mr. Kronk said T-Mobile will maintain it.

Mr. Merklinger asked what material the flag will be made of; Mr. Kronk said it will be a standard flag. Mr. Merklinger said the flag must be changed if it frays and said that a nylon flag would hold up better.

Chairman Neuer asked Mr. Kronk how they will illuminate the flag at night; Mr. Cottrell approached and said that the light will be mounted at the bottom of the flag pole and directed upward. He also said the light will be shielded to avoid conflict with motorists on Route 280 and Prospect Avenue.

Chairman Neuer stated that if the applicants decide to make this permanent they will have to come back to this Board. He said that they have two years to see if there will be any negative impact.

Chairman Neuer asked Mr. Kronk when they plan on starting; Mr. Kronk said they would like to start in ten (10) days hopefully.

There were no further questions for Mr. Kronk from the Board.

Chairman Neuer asked if any members of the public had any questions for Mr. Kronk; seeing none, Mr. Kronk was excused.

Chairman Neuer asked the Board members if they wanted to waive the break and finish the hearing; the Board members agreed to waive the break.

Chairman Neuer asked Mr. Meese to summarize.

Ms. Gabry asked Mr. Meese if this flag pole was designed for just T-Mobile and AT&T; Mr. Meese replied yes.

Mr. Meese stated that people come to rely on these carriers and the sooner they are back on air the better it is for public safety. He said that there will be no negative aesthetic impact and asked the Board to vote favorably.

Chairman Neuer closed the public hearing and opened it for discussion by the Board.

Mr. Sussman said that this is an excellent application that was well presented and he urged the Board to vote in favor.

Mr. Bullock said that he has one concern. He said that only two carriers are applying tonight and that no other carriers will be able to put antennas on this flag pole. Chairman Neuer said that he will recommend only these two carriers can collocate on this tower. He said that certain conditions will be incorporated to prevent other carriers from utilizing this pole. The Chairman said that there is Federal Legislation that is in favor of collocation but because this is a temporary facility the Chairman believes this Board can prevent collocation.

Chairman Neuer said that he urges the Board to approve this application subject to the following conditions: It is a temporary facility and as such no collocation of other carrier's antennas on this flag pole; term of the variance is limited to two years; they must arrange to have the property owner record a form of deed restriction.

Mr. Meese said the term should be two years from the time they have the building permit and if they need an extension then they must come back to the Board to explain why.

Chairman Neuer told Mr. Meese that they will have to record a deed or other instrument that would state that it is a temporary facility and the variance does not run with the land. The Chairman said that the deed or other instrument will expire when the pole is relocated.

Mr. Meese said that he does not agree with this. He said that this is the carrier's facility and if someone else wanted to use this facility they would have to come back to this Zoning Board. Mr. Meese said that it would be hard for the owner of the property to even agree to this.

Chairman Neuer said in order to keep the Board out of litigation the instrument would have to be recorded because once the variance is granted it runs with the land. He said that this Board needs to take proactive measures to make sure that it does not.

Ms. Gabry said to condition the flag being maintained and the flag pole must be white.

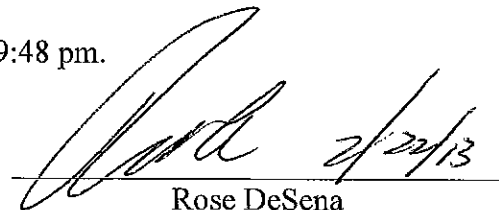
Chairman Neuer made a motion to approve the application with said conditions; Ms. Gabry seconded the motion.

The vote was as follows:

Buechler:	Recused	Steinhart:	Yes
Bullock:	Yes	Sussman:	Yes
Gabry:	Yes	Weiss:	Yes
Merklinger:	-	Zaolino:	-
Quentzel:	Yes	Chairman Neuer	Yes

ADJOURNMENT

The meeting was adjourned by Chairman Neuer at 9:48 pm.


Rose DeSena
Zoning Board Secretary

February 21, 2013