

MINUTES

BOARD OF ADJUSTMENT

TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY

Regular Meeting

March 24, 2016

The Regular Meeting of the Board of Adjustment was called to order at 7:30 PM in the Public Meeting Room.

It was confirmed that the meeting was being held in conformance with all regulations of the SUNSHINE LAW and proper notice had been given to the Courier News; also, the Agenda had been posted in Town Hall, Board Office, and supplied to the Township Clerk at least forty-eight hours prior to the meeting. The Agenda items will not necessarily be heard in the order listed and the meeting will not continue significantly past 10:30 PM.

Roll Call:

Members present were Mr. Sullivan, Mr. Miller, Mr. Delia, Mr. Sylvester and Mr. Mustacchi. Mr. Boyer, Mr. Smith, Mr. Siburn and Mr. Nappi were absent. Mr. Daniel Bernstein, Board Attorney, was also present.

Adoption of Minutes

March 10, 2016 Conference Meeting

A motion was made by Mr. Mustacchi, seconded by Mr. Sylvester, and carried by unanimous voice vote to adopt the minutes of the March 10, 2016 Conference Meeting as presented.

Applications for Review:

App.#4-16: David & Joe Peluso, 74 Park Avenue, Block 601, Lot 8 (R-10 Zone)

Applicant seeks approval to construct a wood framed chimney for a gas-insert fireplace to be located on the southwest exterior side wall of the house, approximately 2' x 4.5' x 15' high. Relief is needed from Section 6.1.1B "Schedule of General Regulations" because the combined side yard setbacks are less than the required 30' and the building and total lot coverage percentages will be further increased. Existing, nonconforming issues are lot area; lot width; principal side yard and combined side yard setbacks; building coverage; and total lot coverage.

David Peluso was sworn and stated that they want to add a fireplace but do not want to use space inside the house. They propose to build a small addition to the side of the house.

In response to questions from the Board, Mr. Peluso stated that the fireplace will be gas and the size will be 2' x 4' x 15'. The addition will be a bump out with the fireplace inside of it. They intend to live in the house.

Open to Public

The hearing was opened to the public for questions or comments with regard to the application. There were no members of the public who had comments or questions.

A motion was made by Mr. Miller, seconded by Mr. Sylvester, with respect to App#4-16: David & Joe Peluso, 74 Park Avenue, Block 601, Lot 8 (R-10 Zone) to approve the application with requested variances, subject to the conditions discussed and further subject to the standard conditions that shall be set forth in a Resolution of Memorialization to be adopted by the Board. The voice vote was 5-0 with Mr. Sullivan, Mr. Miller, Mr. Delia, Mr. Mustacchi and Mr. Sylvester voting in favor and none opposed.

App.#12-15: Anco Environmental Services, Inc., 40 Russo Place, BI.1901, L. 40

Anco Environmental Services, Inc. ("Anco") is a company involved in oil tank removal and installation and also operates as a clean-up contractor. The property is also used for vehicle and equipment repair and as a storage yard for equipment. The fuel oil that is removed is retained in a tanker truck at 40 Russo Place and then sold. A company related to Anco is engaged in the cleaning and servicing of oil burners. The owner of the property was cited for noncompliance of Section 17.1.1 – "Use of land without receiving all required permits of approval." A zoning permit was not issued for the current use. The applicant is requesting approval to continue to operate its business – which is not an approved use – and would like to obtain all variances needed (including relief from Sections 17.1.1 "Prohibitions," Section 6.3.6A "Permitted Principal Uses," Section 6.3.6B "Permitted Accessory Uses," Section 6.1.1B "Schedule of General Regulations," Section 6.4.3A.6 "Nuisance Factors," Section 6.4.3B.26., and Section 6.4.3B.48.) There are also accessory structures – such as fuel tanks – on the property that do not comply with the required setbacks and/or permitted accessory

August Santore, attorney for the applicant, stated that the application has not yet been submitted to the DEP. The applicant is aware that buffering will be required but they do not know what the DEP will require. The applicant is prepared this evening to discuss the operations on the site and questions raised in Mr. Mistretta's July report.

Mr. Sullivan noted that the applicant was supposed to keep Mr. Mistretta advised of the progress of the environmental studies and right now this application is incomplete.

Mr. Bernstein noted that the applicant has been using the property contrary to the ordinance for an inordinate amount of time. The Board had hoped that there would be some clean up on the site.

Mr. Santore stated that it was not the applicant's intent to circumvent the process. The applicant has hired professionals and he has followed up with them as to their progress and advised them that they need to complete their work.

Mark Annis, representative of applicant, was sworn and stated that when they started this process there were 20 tanks on the property and now there are only 2 or 3. Mr. Annis explained the process that takes place on the property with the oil tanks. The tanks are removed from a homeowner's property and the ultimate disposition is the scrap yard. The homeowners try to recover some of the expense by having their insurance company inspect the tank. When the applicant was cited for violation they advised the insurance companies that the tanks cannot be kept on the property for more than a week.

Further discussion took place with regard to the application including the need for dialogue between the applicant and Mr. Mistretta, the large number of structures shown on the survey that are not on the applicant's property and the need to address the issues raised in the denial letter of April 2015.

Mr. Annis stated that some of the tanks have been removed, there is a berm that separates them from the neighbor, 20 trees have been planted along the entrance to the property to screen it from the street and he has spoken to the neighbor about leasing land. There have been no complaints from the neighbor. Mr. Annis further stated that moving the structures will be a substantial effort and they only want to do it once.

Mr. Santore stated that he has had communications with the professionals and hopes to have final calculations within a few weeks. He will follow up again next week and provide an update to Mr. Mistretta and Mr. Bernstein.

The application was carried to the meeting of the Board scheduled on April 28, 2016 with no further notice required.

App.#2-16: Wireless EDGE Towers, LLC & Co-Applicant: New York SMSA Limited Partnership (d/b/a Verizon Wireless), 175 Watchung Blvd., Bl. 4903, L. 36 (OL-Zone)

Wireless EDGE is the tower company that won the Board of Education's bid to place a monopole and compound on the high school property and is appearing before the Board of Adjustment for approval of the monopole and the placement of Verizon's antennas at a centerline height of 124' on the monopole. Verizon will also place its related equipment at the base of the pole. Wireless telecommunications antennas are not permitted in the OL-Zone; therefore, the Applicant is seeking use variance and a height variance. The Applicant is also seeking preliminary and final site plan approval.

Judy Fairweather, attorney for the applicant, stated that the Board of Education went out to bid for this project and Verizon was awarded the bid. Ms. Fairweather discussed the bid process and reviewed the variances being requested. In response to a question from the Board, Ms. Fairweather stated that the applicant will provide a copy of the consent of the Board of Education, as owner of the property, to the application.

Sean Haynberg, radio frequency engineer, was sworn, gave his professional and educational background and was accepted as an expert witness. Mr. Haynberg presented Exhibit A-1 – service area, Exhibit A-2 -service area with addition of proposed cell site, Exhibit A-3 – existing radio frequency coverage plot, and Exhibit A-4 - radio frequency coverage plot with proposed site. Mr. Haynberg indicated the location of the existing cell sites and explained why the applicant is proposing this site to cover deficiencies in this area and how the proposed site will relieve the deficiencies. The existing locations are at their capacity limits and the network is growing every year.

In response to questions from the Board, Mr. Haynberg stated that this site was chosen because of its elevation and central location. There are primarily residential areas in the vicinity and to the south is the Watchung reservation. The monopoles at other locations are 130', 160', 140', 147' and 131' in height.

Mr. Haynberg indicated on Exhibits A-3 and A-4 the proposed location of the new monopole and the areas that do not have reliable service that will have improved service.

Open to Public

The hearing was opened to the public for questions with regard to Mr. Haynberg's testimony.

Members of the public, including Michael Azarian, John Karnach, Russ Hovland, Dimitri Agatonov, Dick Masia and Daniel Palladino, raised questions as to whether the proposed location is the most suitable location for the cell tower, if it should be closer to the school building, how the height was measured, whether the applicant considered putting the tower on higher ground where it would not have to be as tall and would have greater range, what testing was done throughout the area of the existing service, what areas in Berkeley Heights are experiencing gaps in service and what alternative sites or alternative technology was considered.

Mr. Haynberg stated that it is his testimony that the location is suitable. They did not analyze any other properties since all the abutting properties are residential. In his opinion there is no other technology that is capable of providing the service more efficiently. He has been all through the area testing with his phone.

Members of the public raised further questions with regard to how long will it take to reach maximum capacity with this addition, the height of the monopole, whether any consideration was given to locating it at the highest point at the high school on top of the school building which would mean a shorter pole and if the Alcatel-Lucent site was considered.

Mr. Haynberg explained how coverage would be provided more efficiently and stated that it will take a number of years to reach capacity limits again. The height is required because of the need to be above the significant number of trees and there is already a facility on the Alcatel-Lucent site.

Doug Reinstein, President of the Berkeley Heights Board of Education, was sworn. Mr. Reinstein stated that the Board's primary goal is to improve the safety and security of members of the community in the event of an emergency. The Board of Education wants to provide improved security with reliable, dependable and consistent communications with first responders for the high school. The criteria considered for location of the cell tower was an

area that would not need to be used for 25 years and as far away from the residents as possible.

Mr. Reinstein presented Exhibit A-5 - aerial view of the high school site and indicated the proposed location of the cell tower. He stated that presently cell phone coverage at the high school is poor.

Open to Public

The hearing was opened to the public for questions with regard to Mr. Reinstein's testimony.

Members of the public, including Russ Hovland, Dimitri Agatonov, Michael Azarian, Dick Masia, Daniel Palladino, Ann Allen and Barry Cohen, raised questions with regard to whether any other technology, such as land lines, was looked at in terms of safety, why this is being located on school property, how much the Board of Education is being paid, if the Township will be able to utilize the tower, whether alternative sites were considered such as on top of the high school, how many people were invited to attend this meeting, has the Board of Education received any guarantee from Verizon that the cell tower will accomplish its goals, and whether the Board of Education approached Verizon or was approached by Verizon.

Mr. Reinstein stated that the Board of Education identified the need and counted on the professionals to determine how to meet the need. The Board wanted to make sure they have the ability to communicate with first responders and people inside and outside the school in the event of an emergency. The Board believes that residents do not want a cell tower in their backyard so they propose to locate it as far away from the residents as possible. The Board will receive \$42,100 with additional funding if other carriers join the pole. The school budget is approximately \$45 million so this is a minimal amount. The amount will increase by 3% each year and the funds will be used for educational purposes. Mr. Reinstein stated that he understands that the Township will be putting an antenna on the pole and the proposal includes that. The Board will provide copies of reports prepared by Verizon.

Mr. Reinstein further stated that the Board of Education has discussed this issue at over twelve public sessions over the last two years and minutes of those meetings can be accessed online. The notices for this hearing before the Board of Adjustment were sent out in accordance with municipal land use law and were sent to 42 residents. It was the Board of Education's decision to improve the cell service and they were not approached by Verizon.

Mr. Bernstein explained the notice requirements by which the Board of Adjustment is governed. He noted that the Board of Adjustment has no say over what the Board of Education should do for their meetings. The Board of Education filed the application for site plan approval and the law requires that property owners within 200' be notified of the hearing.

With regard to a guarantee of service, Mr. Haynberg stated that the property is going to be entirely covered with excellent service. The school will be directly under the facility and all calls will go through.

Mr. Mistretta asked if any of the exhibits or testimony would change if there are other carriers on the pole.

Mr. Haynberg said the exhibits and testimony would not change.

Sergeant Ernest Schmidt of the Berkeley Heights Police Department was sworn and stated that he is testifying on behalf of Chief of Police DePasquale who is out of state. The Board of Education reached out to the Police Department because the wireless provider said they would offer an antenna to public safety agencies. The Police Department interest is only related to police radio communication and they support this tower based on the benefit that it would receive. The area in question has always been difficult and spotty for police communication so this would benefit the Police Department.

Open to Public

The hearing was opened to the public for questions with regard to Sergeant Schmidt's testimony.

Members of the public, including Dimitri Agatonov and John Karnach, raised questions as to whether land lines would be more reliable for the school and whether Sergeant Schmidt has ever been prevented from reporting an incident from the area in question.

Sergeant Schmidt said he did not have an opinion as to land lines and has not been prevented from reporting an incident from the area.

Ms. Fairweather stated that for the next hearing copies of the Resolution of the Board of Education and of the bid will be provided. She will review any deed restrictions and will present testimony from an expert on radio waves, the civil

engineer, who will discuss the site plan, a representative from Wireless Edge on why this location was chosen and the applicant's Planner.

The hearing of this application was carried to the meeting of the Board of Adjustment scheduled on April 28, 2016 with no further notice required.

Adjournment:

A motion was made by Mr. Miller, seconded by Mr. Delia, to adjourn the meeting. The voice vote was unanimous and the meeting was adjourned at 10:37 PM.

Regina Giardina, Secretary Pro Tem