

MINUTES

BOARD OF ADJUSTMENT

TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY

Regular Meeting

June 23, 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. Boyer, Mr. Smith, Mr. Siburn, Mr. Nappi, Mr. Delia, Mr. Sylvester and Mr. Mustacchi. Mr. Miller was absent. Mr. Bernstein, Board Attorney, was present.

Adoption of Minutes

June 9, 2016 Conference Meeting

A motion was made by Mr. Mustacchi, seconded by Mr. Siburn, and carried 7-0 to adopt the minutes of the June 9, 2016 Conference Meeting as presented.

Adoption of Resolution:

App.#3-16: Ruggero Scavina, Lenox & Rosehill Avenues, Block 401, Lots 3, 4, 5, 6 & 7

The applicant sought a determination under N.J.S.A. 40:55D-68 that the use of the property as a nursery (i.e. plant or horticulture business) is a valid, prior nonconforming use. This request was denied. In the alternative, a request was made for a use variance under N.J.S.A. 40:55D-70d(1) for a nursery and landscape business which was approved subject to the condition that the type and extent of permissible uses shall be set at a hearing on MLUL Notice at which time a variance site plan will be reviewed. (R-15 Zone)

A motion was made by Mr. Siburn, seconded by Mr. Delia, to adopt the above Resolution. The roll call vote was unanimous with Mr. Smith, Mr. Siburn, Mr. Nappi, Mr. Delia, Mr. Mustacchi and Mr. Sylvester voting in favor and none opposed.

Applications for Review:

App.#10-16: Hemal & Snehaben Vakharia, 40 Pine Grove Road, Bl. 2201, L. 6 (R-15 Zone)

The applicant is proposing to construct a deck, 16' x 24' x approx. 8' high, with a deck connection to an existing side yard porch having stairs to grade. Relief is needed from Section 6.1.1B "Schedule of General Regulations" because one side yard setback for the deck will be less than the 12' required by ordinance, and the combined side yard setbacks will be less than the 30' required. Nonconforming issues are lot area, lot width and principal front yard setback.

Hemal and Snehaben Vakharia were sworn and stated that they want to build a deck over the existing patio and need a variance for side yard setback of 11' where 12' is required. Mr. Vakharia presented Exhibits A-1 – A-8 – photographs showing the existing small deck that will be removed, the kitchen door and step down to the patio, and the view of the neighbor's house and driveway.

In response to questions from the Board, Mr. Vakharia stated that the deck will be 16' x 24', they do not intend to have any storage under the deck and they have an existing shed on the property that is 10' x 9'.

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. Boyer, seconded by Mr. Smith, with respect to App.#10-16: Hemal & Snehaben Vakharia, 40 Pine Grove Road, Bl. 2201, L. 6 (R-15 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 7-0 with Mr. Sullivan, Mr. Boyer, Mr. Smith, Mr. Siburn, Mr. Nappi, Mr. Delia and Mr. Mustacchi voting in favor and none opposed.

App.#12-16: Iuri Oganezov, 238 Washington Street, Block 205, Lot 7 (R-10 Zone)

Proposed second story addition over the existing first story and new deck attached to the rear of the house. The addition would be an upwards expansion over the existing nonconforming first floor; as a result, the expansion will encroach into the required principal setbacks. Relief is needed from Section 6.1.1B "Schedule of General Regulations" of the Land Use Ordinance because 1) the principal front yard setback is less than the required 30'; 2) both side yard setbacks are less than required by ordinance and 3) combined side yards are less than the 30' required; 4) the maximum building coverage allowed is 20% while the existing coverage number is 29.16% and 30.16% is proposed; 5) the proposed deck does not conform to the 12' side yard requirement. Nonconforming issues are lot area; lot width; principal front, side and combined side yard setbacks; building coverage, other coverage and total lot coverage.

Arthur Henn, architect, was present and asked if he can represent the applicant for the hearing.

Mr. Sullivan advised that the Board would prefer that the homeowner be present. The hearing of the application was carried to the August 11, 2016 meeting of the Board 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.

Mr. Bernstein noted that the application is for a conditional use variance and site plan for a cell tower. The proposed tower is 5' higher than permitted by the ordinance. The Board has heard testimony from a radio frequency engineer, the President of the Board of Education and a radiation safety expert. The civil engineer has completed his direct testimony, has had some cross examination and the application has one additional witness, the professional planner. In addition, Mr. Simon will present some witnesses.

Judy Fairweather, attorney representing the applicant, was present.

Josh Cottrell, engineer, previously sworn, reviewed the revised plans dated June 13, 2016. Mr. Cottrell discussed the tree replacement requirements and the June 7 report of the Environmental Commission with their recommendations. The trees will be planted in the fall and they will be maintained and replaced if they do not survive. In response to questions from Mr. Mistretta, Mr. Cottrell stated that the revised plan shows the steep slopes in the area and since there is no disturbance proposed in that area the ordinance steep slope requirements have been met. The driveway will be improved with additional gravel and a design waiver will be requested for the curbing.

Open to Public

The hearing was opened to the public for questions regarding Mr. Cottrell's testimony.

Robert Simon, attorney representing property owners including Michael Azarian, Peter Gilson and John Karnash, asked questions regarding the ordinance with respect to tree replacement, specimen requirements, tree inventory, the storage of oil on the property and the usage of the fields at the high school.

Mr. Cottrell stated that the ordinance requires a landscaping plan. A tree inventory was not provided and the plan lists the trees 8" or greater in diameter that are to be removed. The storage tank will be for diesel fuel and a design waiver will be requested. Mr. Cottrell said he does not have any information on the use schedule for the fields.

Mr. Simon asked further questions regarding the access road, the chain link fence and the landscaping plan. He stated that he and his client were not consulted about the placement of trees.

Mr. Cottrell stated that the gravel drive will only be accessed with permission since there will be a locked gate. The height of the trees being removed is approximately 50-60' and an analysis of the dripline of the trees was not done. They can provide a smaller mesh in the fence to make it difficult to climb. The landscape architect will meet with the school board representative to decide on where trees will be planted. The trees will be approximately 6-10' in height and the trees will be maintained. All existing landscaping within the area of disturbance will be removed.

In response to a question from Mr. Mistretta regarding decibel levels of the generators, Mr. Cottrell stated that the decibel level will meet the code requirements. Because of the way that decibels are measured the level does not go up significantly with the addition of other generators. Even if there were four generators the noise code would still be met. The Verizon generator will be at 41 decibels at the property line where 65 decibels are permitted.

Mr. Mistretta suggested that there be a condition of approval that noise levels not be exceeded and noise attenuation measures would be installed.

Members of the public including Cindy Cai, Clint Barker, Peter Collins, Jinping Shi, Haili Wong, Ed Vergara, Dimitri Agatonov, Gail Moody, Peter Tortorello, Sheri Cai, and Huang Wu asked questions and made comments on the following topics: other areas considered for location of the tower, need for additional diesel tanks for multiple generators, radio frequency studies, how long it will take to remove the tower, how long the generator will last in an emergency, the strength of the tower and whether it would withstand an earthquake, number of generators, number of antennas, the variance for height, how long construction will take, width of the access road, alarm systems, impact on the quality of life for people living nearby, how close the construction will be to the playing fields, and disaster plans.

Mr. Cottrell stated that earlier witnesses testified as to site selection and radio frequency, he is not aware of any regulations as to the number of generators, he has not been involved in the removal of a tower but it would probably take a few weeks, the generator would last approximately 77 hours at full power before needing to be refueled, the tower is not required to be designed to withstand earthquakes but must meet wind speed guidelines, the applicant is only proposing one generator and the fueling and maintenance schedule will be worked out by the Board of Education. Mr. Cottrell further stated that the construction will take 4-6 weeks on a schedule to be worked out between the Board of Education and the contractor, the access road is 20' wide, there will be no audible alarms, all alarms will go to a Verizon switch station, the construction will be 80' from fields and will not be allowed when kids are on the fields and there are no plans in place for extreme disaster.

Mr. Bernstein noted that the Board of Adjustment only considers zoning issues. The applicant must get a building permit from the construction official who will apply the codes.

Discussion took place regarding continuance of the application to September. Ms. Fairweather stated that the applicant will grant an extension.

Abigail Collins, age 12, Sophia Burke, age 12, and Thomas Burke, age 11, were sworn and made a statement to the Board. They will be attending Governor Livingston High School in the future and they live in houses that are near the high school. They have obtained 306 signatures on a petition from students who are concerned about health issues for students using the athletic fields. They are also concerned about having the tower in the background for graduation photos.

Mr. Sullivan noted that the letter of approval from the State Board of Education states that the approval is for three antenna providers and the applicant has requested approval for five. Ms. Fairweather stated that she will request an amendment to the letter.

David Karlebach, planner, was sworn, gave his professional and educational background and was accepted as an expert witness.

Mr. Karlebach stated that the applicant is seeking a conditional use variance, a variance for location of the cell tower on property owned by the Board of Education rather than by the municipality, and a variance for height of 130' where 125' is permitted. As to the height, Verizon only requires 125' but the additional 5' is for the benefit of the police department and municipality. Mr. Karlebach reviewed the criteria for granting of variances and stated the opinion that the variances being requested can be granted without substantial detriment to the zoning plan.

Mr. Karlebach presented Exhibits A-5, A-6, A-7, A-8 and A-9 – series of photographs showing existing conditions and what the facility would look like if approved and installed, the views from various streets in the area, views from other locations from which the facility will be visible, the existing greenery and wooded area around the site, and the view from the driveway at the athletic field. He stated that there are 4 residential homes within 500' and 26 residential lots within 1000 feet of the proposed facility. The facility will be unmanned with little municipal services required, virtually no traffic impact, and no appreciable noise, odors, glare, dust or fumes. He has reviewed the Master Plan and finds no impact on the Master Plan. He does not see any benefit to moving the facility to a different location on the site. The facility will provide an important use that will benefit the police and the residents and provide for safety of citizens in emergencies.

In response to questions from the Board, Mr. Karlebach stated that the code recommends regular inspection every two years and after any significant wind

or ice occurrence. The base of the tower will be adequately screened and he does not believe it will be visible from adjoining properties. He was not asked to walk the site and give an opinion on other locations.

Open to Public

The hearing was opened to the public for questions regarding Mr. Karlebach's testimony.

Members of the public including Haili Wong, Russ Hovland, Dimitri Agatonov, Ruhong Cai, Cindy Cai, Huy Cian, Yuan Li, Hi Zhang, Ming Wang, Yehun Tan, Quing Li, Henrick Rainmaker, Myra D'Ousa, Ed Vergara, Peter Tortorello, Chao Hu, Sheri Cai, asked questions and made comments on the following topics: distance from the school playground, damage by hurricane, current signal strength, other types of technology that were considered to provide the service, benefits to Verizon, view from the school windows, how long it will take for trees to mature, radiation from the facility, whether or not the Beautification Committee was consulted, risks of having an oil tank on the school property, height of other cell towers in town, and the effects on the quality of life for the children at the school and the residents.

Mr. Karlebach stated that the pole will be immediately adjacent to the practice field, the tower would be inspected to satisfy the requirements of the pertinent codes, he was not asked to look at alternative technology and does not have any expertise in that regard, the location selection was previously testified to by the President of the Board of Education and the location was determined by them, Verizon is licensed by the FCC and has a mandate to provide coverage to the area, the exhibits and photographs submitted by him were provided to the Board of Adjustment to assist in their decision making, and no photos were taken from the school windows.

Mr. Bernstein noted that there was a previous expert witness who testified with regard to radiation and that expert stated that this project will meet all federal and state standards.

Mr. Karlebach further stated that he is not aware of any discussions that took place with the Beautification Committee, the governing body determined that a 125' high tower is permissible in this location and he does not believe that 5' more in height would rise to the level of a substantial detriment, he was not able to take photographs from private property, he believes the photographs submitted provide adequate information for the Board to consider, there are other significant structures within residential and school areas such as electric

transmission towers and water towers, he does not have any expertise as to radiation, does not know the height of the other cell towers in town and he believes the quality of life will be improved.

The hearing of Application #2-16: Wireless EDGE Towers, LLC & Co-Applicant was carried to September 8, 2016 with further notice required. Ms. Fairweather stated that the applicant will grant an extension through September.

Adjournment:

A motion was made by Mr. Smith, seconded by Mr. Boyer, to adjourn the meeting. The voice vote was unanimous and the meeting was adjourned at 11:25 PM.

Regina Giardina, Secretary Pro Tem