

MINUTES

BOARD OF ADJUSTMENT

TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY

Regular Meeting

September 8, 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. Boyer, Mr. Smith, Mr. Delia, Mr. Sylvester and Mr. Mustacchi. Mr. Bernstein, Board Attorney, was present.

Adoption of Minutes

August 11, 2016 Regular Meeting

A motion was made by Mr. Mustacchi, seconded by Mr. Boyer, and carried 7-0 to adopt the minutes of the August 11, 2016 Conference and Regular Meeting as presented.

Adoption of Resolution:

Denial of App.#12-16: Iuri Oganezov, 238 Washington St., 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" 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. Relief is also needed from Section 6.3.10 "Residential Garage Construction," item C. Nonconforming issues are lot area; lot width; principal front, side and combined side yard setbacks; building coverage, other coverage and total lot coverage.

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

Application for Review:

CARRIED FROM JUNE 23, 2016:

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 representing the applicant, stated that she has completed the testimony of David Karlebach, the applicant's Planner and he is available for questions.

Mr. Bernstein noted that the application is for a conditional use requiring two variances. The first variance is for the proposed tower not being on municipal-owned land. It is on land owned by the Board of Education, not the municipality. The second variance is for height of 130' which exceeds the 125' permitted. The applicant is also seeking site plan review.

Robert Simon, attorney representing property owners including Michael Azarian, Peter Gilson and John Karnash, questioned the applicant's Planner, David Karlebach, with regard to his testimony. Mr. Simon raised questions with regard to Mr. Karlebach's communications and experiences with Wireless Edge, Verizon and other carriers in connection with various applications similar

to this one, how his testimony as a Planner is affected by the radio frequency testimony, his knowledge as to the present users of the high school facilities, what effect the generators will have on the users of the property, the location of part of the property in Summit and whether or not the Summit ordinance was reviewed, whether he was asked to evaluate any other sites, and the use of the roadway around the site and the driveway. Mr. Simon also asked if Mr. Karlebach knew anything about the lease arrangement, why the Board of Education decided to proceed with this project, whether he was involved in the selection of the proposed site, and how Verizon became a co-applicant if they were not the successful bidder. Mr. Simon further questioned Mr. Karlebach regarding the Township ordinance requirements, whether antennas attached to the school building would be sufficient for the intended purpose, Verizon service to the area, complaints regarding coverage gaps, whether or not alternative sites were considered and if alternative technologies were considered.

David Karlebach, previously sworn, stated that he has not had any communications with Verizon in connection with the application. He has worked with Wireless Edge on other applications and testified on their behalf. He was present for the testimony of the radio frequency engineer, but as Planner he focused on the land use issues. The users of the Governor Livingston property include students, teachers, faculty, and other people who use the athletic fields for events. He does not have any knowledge as to the frequency of the field use or the hours that the fields are used. The generators will not interfere with what is going on at the field. He is aware that part of the site is located in Summit and the site was selected by the Board of Education. He was not asked to evaluate alternative sites and he has no knowledge as to the use of the roadway. The driveway is apparently used by visiting teams' buses and he has no knowledge of anyone using it beyond the athletic fields. He is not aware of the lease arrangement between the Board of Education and Wireless Edge. He only did the planning analysis and was not involved in the site selection.

Mr. Simon read sections of the ordinance with respect to Township Council authorization for the filing of an application. Mr. Karlebach stated that those provisions apply to municipal property and the municipality would not have to consent to an application on private land. He has reviewed the ordinance requirements and concluded that there are two variances required.

Mr. Karlebach further stated that he has not evaluated the existing service in the area or complaints with regard to the service from residents or drivers in the area. He did not investigate coverage gaps as part of the planning

analysis and he is not qualified to testify as to what types of equipment could be used other than a cell tower. He stated the opinion that the visibility of the tower is not substantial enough to cause damage to the neighborhood and the applicant's proposal complies with the Township ordinance. He has not done any investigation of alternative sites or alternative technology.

Open to Public

The hearing was opened to the public for questions or comments with regard the application.

Lily Liu was sworn and stated that she cannot imagine a cell tower right in the middle of the school. It will take up a lot of space and kids will have less room to play.

Mr. Simon asked questions about the balloon tests and photographs submitted to the Board by Mr. Karlebach and if the above ground tank would require a variance.

Mr. Karlebach stated that he tried to take photographs that were most representative of the site. The above ground petroleum tank may require a waiver not a variance.

Mr. Simon introduced Hank Menkes who was sworn, gave his educational and professional background and was accepted as an expert witness.

Mr. Menkes stated that he has reviewed the radio frequency analysis report and the transcript of the testimony in this case and he attended the June 23 meeting of the Board. He visited the proposed location of the cell tower site and reviewed the exhibits that have been submitted. Mr. Menkes provided his opinion as to the reports and suggested alternative methods for addressing the need for additional coverage. He raised the question of whether a 130' tower is the best method to address the problem and suggested that Verizon can improve their service without adding a new cell tower with small cell technology and improved WiFi networks.

Mr. Menkes further stated his opinion that the data presented by the applicant does not support the claim of a shortage and that there are numerous technologies to improve service without the need to build another cell tower. He stated that the largest coverage gaps are outside of Berkeley Heights and even with the new tower there will remain a coverage gap south and east of the site.

Mr. Menkes presented Exhibit O-1 - example of small cell technology device that is offered by Erikson Communications. The device can be mounted on a building to provide additional coverage and upgrading of the WiFi network. He also presented Exhibit O-2 – photograph of Erikson radio dot ceiling mounted device for the same purpose. These could be mounted on the ceiling of the hallways in the school. These forms of technology would require that a small building be constructed on the same piece of land proposed for the cell tower. Mr. Menkes stated that it is his professional opinion that the proposed new cell site and 130' tower is inconsistent with the facts because it does not take into consideration alternative methods of providing capacity. The alternative technology he has suggested would be a more visually attractive solution that would provide coverage that would not just be for the Verizon customers.

Open to Public

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

Members of the public including Ed Vergara, Chris Rinaldi, Mary Stevens and Dimitri Agatonov asked questions regarding the small cell technology, how long the small cell technology has been available, costs of the small cell technology, who would be responsible for paying those costs, and whether or not the applicant considered any small cell technology before proposing the cell tower.

Mr. Menkes stated that the small cell technology could replace the cell tower, the equipment could be located in a small building, the cost would be considerable and the Board of Education would have to have discussions with the carriers about who would pay for it. He believes there are alternative technologies available. He does not know if the Board of Education considered small cell technology but thinks it would have been prudent for them to do so.

The hearing of Application #2-16: Wireless EDGE Towers, LLC & Co-Applicant was carried to November 10, 2016 with further notice required. Ms. Fairweather stated that the applicant will grant an extension through November.

Adjournment:

A motion was made by Mr. Boyer, seconded by Mr. Mustacchi, to adjourn the meeting. The voice vote was unanimous and the meeting was adjourned at 10:50 PM.

Regina Giardina, Secretary Pro Tem