

**MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
April 20, 2017**

The West Orange Zoning Board of Adjustment held a regular meeting on April 20, 2017 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 the Star Ledger and posted on the Township Bulletin Board in accordance with the "Senator Byron M. Baer Open Public Meetings Act."

Chairman Neuer announced that a digital tape recording system is being utilized to record the proceedings of the meeting and instructed the general public on how the audio of the proceedings may be reviewed or obtained.

Chairman Neuer asked everyone to stand for the Pledge of Allegiance.

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

PRESENT: D. Gabry, D. Nash, P. Neuer, B. Quentzel,
F. Sanders, I. Schwarzbau, W. Steinhart,
M. Sussman

ABSENT: B. Buechler (excused)
M. Straker (excused)
A. Weiss (excused)

ALSO PRESENT: Paul Grygiel, Acting Planning Director for the Township
Eric Keller, Consulting Engineer for the Township
Alice Beirne, Esq., Board Attorney
Rose DeSena, Board Secretary
H. Grossman, Esq., Public Advocate

ANNOUNCEMENTS

Future Meetings: May 18, 2017 (regular meeting)
June 15, 2017 (regular meeting)
July 20, 2017 (regular meeting)

MINUTES March 16, 2017 (regular meeting)

Chairman Neuer stated that the draft minutes from the March 16, 2017 were circulated to all of the Board Members.

Chairman Neuer said that he submitted his comments for these minutes and asked if any Board Member had any additional comments; there were none.

Mr. Sussman made a motion to approve the minutes of the March 16, 2017 meeting; Mr. Quentzel seconded the motion and all were in favor.

It was noted for the record that Ms. Gabry was not present at the March 16th meeting and did not vote on these minutes.

SWEARING IN

Paul Grygiel, acting Planning Director for the Township and Eric Keller, consulting Engineer for the Township were sworn under oath.

DISCUSSION

First item on the agenda for discussion:

Robert Williams, attorney for ZB-17-01/Redwood, LLC application, approached the podium.

Mr. Williams stated that his client is seeking preliminary and final site plan approval with “d” and “c” variances to construct a four story dwelling with 128 luxury rental units. He said that he

would like to request a special Zoning Board meeting on June 1, 2017 and hopefully complete the hearing in one night.

Mr. Schwarzbaum stated that he cannot attend the June 1st meeting; all of other Board Members present said that they could attend the June 1st meeting.

Chairman Neuer asked Mr. Williams if he will have a court reporter at the meeting; he replied yes.

Chairman Neuer stated that if the application is not completed on June 1, 2017 and has to be carried over then Mr. Williams will have to provide a transcript for the Board Members who were not in attendance.

Chairman Neuer asked if all of the Board Members were in favor of having a special meeting for ZB-17-01/Redwood, LLC on June 1, 2017; all were in favor.

Second item on the agenda for discussion:

Chairman Neuer stated that the Township's Zoning Official requested that the Zoning Board interpret whether a laundromat falls within any of the permitted uses in a B-1 zone and asked if all of the members of the Board had reviewed this request; the Board Members replied yes.

Mr. Grygiel stated that the Township ordinance was amended in 2012 which included a definition of a personal service. He said that he provided the Board with a hand out from the definitions section of a recognized authority on the subject, The Complete Illustrated Book of Development and a laundromat was included in the definition of a personal service.

Chairman Neuer stated that it is his opinion that a laundromat is a permitted use in the B-1 zone.

Mr. Schwarzbaum stated that a laundromat can also be interpreted as a retail use which is also permitted.

Chairman Neuer made a motion that the Zoning Board issue an interpretation that a laundromat is a permitted use in a B-1 zone; Ms. Gabry seconded the motion.

The vote was as follows:

Buechler	-	Schwarzbaum:	Yes
Gabry:	Yes	Steinhart:	Yes
D. Nash:	-	Straker:	-
Quentzel:	Yes	Sussman:	Yes
Sanders:	Yes	Weiss:	-
		Chairman Neuer:	Yes

Chairman Neuer welcomed the special visitors from the Seton Hall Law School.

RESOLUTIONS

1. ZB-16-06/Zamora

Denied on 3/16/17

Block: 113.01; Lot: 69 & 70; Zone: R-T

43 Park Terrace

“c” variances for rear and side yard setbacks

Chairman Neuer stated that this resolution was circulated to all of the Board Members and asked if any Board Member had any comments; there were none.

Chairman Neuer made a motion to adopt the resolution as submitted and Ms. Nash seconded the motion.

The vote was as follows:

Buechler	-	Schwarzbaum:	-
Gabry:	-	Steinhart:	-
D. Nash:	Yes	Straker:	-
Quentzel:	-	Sussman:	-
Sanders:	-	Weiss:	-
		Chairman Neuer:	Yes

2. ZB-16-14/Sumrak

Approved on 3/16/17

Block: 159.09; Lot: 33.03; Zone: OB-1

421 Northfield Avenue

“c” variance to install a 6’ privacy fence

Chairman Neuer stated that this resolution was circulated to all of the Board Members and asked if any Board Member had any comments; there were none.

Chairman Neuer made a motion to adopt the resolution as submitted and Mr. Steinhart seconded the motion.

The vote was as follows:

Buechler	-	Schwarzbaum:	-
Gabry:	-	Steinhart:	Yes
D. Nash:	-	Straker:	-
Quentzel:	Yes	Sussman:	Yes
Sanders:	Yes	Weiss:	-
		Chairman Neuer:	Yes

APPLICATIONS

1. ZB-16-17/New Cingular Wireless PCS, LLC (AT&T) Carried from 3/16/17

Block: 159.08; Lot: 56; Zone: OB-1

405 Northfield Avenue

Seeking “d” and “c” variances for installing twelve (12) telecommunication antennas on a proposed 100’ monopole.

EXHIBITS

A-1 – Map 1 - AT&T neighboring coverage –dated 12/21/16

A-2 – Map 2 – AT&T proposed composite coverage – dated 12/21/16

A-3 – Map 3 – AT&T proposed coverage antenna centerline 97 ft. – dated 12/21/16

A-4 – Map 4 – AT&T composite coverage with rooftop antenna centerline 47 ft. – dated 12/21/16

A-5 – Map 6 – AT&T Shillelagh site composite coverage – dated 2/12/17

A-6 – Sheet Z-1 Site Plan – revision date of 2/2/17

A-7 – Sheet Z-4 Partial site plan – revision date of 2/2/17

A-8 - Sheet Z-6 Antenna orientation plan and elevation – revision date of 2/2/17

Chairman Neuer stated for the record that Ms. Carey Rose, CSR, from Veritext Reporting, is the official transcriber for this application.

Chairman Neuer disclosed, on the record, that he is a customer of AT&T and owns a few shares of their stock and asked Ms. Beirne if this would be considered a conflict; she said no.

Christopher Quinn, attorney for the applicant, approached the podium.

Mr. Quinn detailed the application stating that his client is proposing to install twelve (12) antennae on a 100' monopole. He said that this use is not permitted in the zone and will require the approval of a "D1" use variance; a further required variance is requested due to two principal uses on the property plus an additional "D6" variance for the height of the monopole. Mr. Quinn stated that they are also requesting three bulk variances.

Mr. Quinn said that he has four witnesses who will be testifying and called his first witness.

Chairman Neuer asked if there was an attorney representing any of the objectors; there was none.

Ronald Peterson approached the podium and was sworn under oath. Mr. Peterson stated that he was an independent consultant and detailed his professional background as a radio frequency emissions expert.

Chairman Neuer accepted Mr. Peterson as an expert in radio frequency emissions discipline.

Mr. Peterson stated that he submitted to the Board a site conformity assessment report with FCC rules and regulations dated December 2, 2016. He detailed the levels of emissions that will be transmitted and said that the actual values being transmitted are basically much lower than what they are predicting they will be; he said that the New Jersey state limits are lower.

There were no questions for Mr. Peterson from the Board Members or the Board Professionals.

Chairman Neuer asked if any members of the public had any questions for Mr. Peterson.

Phillip Davies approached the podium and stated that he lives at 12 Fairview Avenue.

Mr. Davies asked Mr. Peterson if the levels have been tested on babies and young children or if studies have been done; he said that there is no evidence that there is anything different. Mr. Peterson said that the FCC added an additional factor of five (5) and that is what they are using. He said that since 2010 there has been scientific literature that concludes that there is no evidence of any harmful effects to adults or children.

Mr. Davies stated that there are also negative studies and asked Mr. Peterson how he justifies the negative studies; he said there are all kinds of studies and he does not believe they are valuable.

Mr. Davies asked Mr. Peterson how this compares to the tobacco studies in 1960 when they said tobacco was safe and now it kills people; he said that radio frequency energy has been around since 1900 and we have been exposed to it since then. Mr. Peterson said the basis for these studies is that this is more scientific and if it meets the safety criteria then it is safe for everyone.

Mike Tormey approached the podium and stated that he lives at 81 Ridgeway Avenue.

Mr. Tormey asked Mr. Peterson if the residents will be able to pick up any of the frequencies from the tower; he said that the frequencies are on a different band and it will not interfere with anything i.e. computers or speakers.

Mr. Tormey asked Mr. Peterson if the antennae will have any ill effect on the reception for the firehouse; he said no.

Mark Koehne approached the podium and stated that he lives at 16 Fairview Avenue.

Mr. Koehne asked Mr. Peterson if the reason for building the tower is because of poor service in the area.

Chairman Neuer stated that this question is not for this witness because his testimony did not address these issues.

Alan Sanders approached the podium and stated that he lives at 27 Old Salem Road.

Mr. Sanders stated that he would like to ask about property values.

Chairman Neuer stated that Mr. Peterson did not testify about property values; he said that would be a question for the Applicant's Professional Planner.

Mr. Quinn called his next witness.

Daniel Penesso approached the podium and was sworn under oath. He said that he is a radio frequency engineer, employed by Black and Veatch, who is hired by AT&T as a consultant and was involved in the design of the network.

Mr. Penesso detailed his educational and professional back ground as a design expert and said that no licenses are required for this profession.

Chairman Neuer accepted Mr. Penesso as an expert radio frequency engineer with regard to design and implementation of wireless networks.

Mr. Quinn asked Mr. Penesso if currently there is adequate service in the vicinity; he replied no.

Mr. Penesso presented Map one of the AT&T coverage in the area of the proposed site dated December 21, 2016 that was marked as Exhibit A-1 for identification.

Mr. Penesso referred to Exhibit A-1 and detailed the service that is currently provided in the area. He said that the Exhibit clearly shows a deficiency of coverage in the area. Mr. Penesso said that the proposed antennae will provide a stronger signal and more coverage.

Chairman Neuer asked Mr. Penesso what the approximate area of the deficiency is; he said approximately one half mile on Northfield Avenue.

Chairman Neuer asked Mr. Penesso how many antennae are being proposed; he said three (3) sectors of antennae.

Mr. Penesso said that they are proposing a 100' monopole and that this is the minimum height the pole can be in order to provide the required coverage.

Mr. Schwarzbaum asked Mr. Penesso how many users they have; he said that he does not have the subscriber information.

Mr. Sanders asked Mr. Penesso if the coverage they are proposing is primarily in West Orange; he replied yes.

Chairman Neuer asked Mr. Penesso if the height of the monopole was lower would they need more poles; he said yes.

Chairman Neuer asked Mr. Penesso if they investigated any other sites; he said yes. Mr. Penesso said they looked at different locations with heights lower than 106 feet.

Mr. Quentzel asked Mr. Penesso what dBm stands for; he said decibel in milliwatts.

Mr. Schwarzbaum asked Mr. Penesso if he has an overlay of their competitors; he said no.

Mr. Penesso detailed the locations of the other cell towers that AT&T has antennae on.

Ms. Gabry asked Mr. Penesso if the other towers were monopoles; he replied no. Mr. Penesso said that they are utility towers that are over 120 feet high.

Mr. Schwarzbaum asked Mr. Penesso if potential co-location can be used to provide this coverage; he said no. Mr. Penesso said that each carrier has their own frequencies and designs and that he cannot provide testimony on the gaps. He said that carriers can co-locate on different structures with a ten (10) foot separation and they do this all of the time but this time they cannot.

Mr. Sanders asked Mr. Penesso if other carriers can co-locate on the proposed pole; he said yes. Mr. Penesso said that even if other carriers co-locate they will still be under the required frequency. He said that if they design below the trees they will not get the signal and that there are no buildings tall enough in the area to co-locate.

Mr. Penesso presented Map two of the AT&T proposed composite coverage dated December 21, 2016 that was marked as Exhibit A-2 for identification.

Mr. Penesso referred to Exhibit A-2 and detailed what the proposed coverage will be.

Mr. Penesso stated that there is no other site in the township that would provide this coverage; he said they approached the golf course but could not secure a lease with them. Mr. Penesso said that they also investigated the fire department as a location.

Mr. Penesso said that the station will be un-manned and that there is no pollution or smoke associated with the monopole.

Mr. Penesso presented Map 3 of the proposed coverage centerline dated December 21, 2016 that was marked as Exhibit A-3 for identification and detailed what the proposed coverage would be strictly on the site.

Mr. Penesso presented Map 4 of the composite coverage with a rooftop antenna dated December 21, 2016 that was marked as Exhibit A-4 for identification.

Mr. Penesso referred to Exhibit A-4 and detailed it. He stated that a rooftop antenna does not provide the coverage needed.

Mr. Penesso presented Map 6 of the Shillelagh site composite coverage dated February 12, 2017 that was marked as Exhibit A-5 for identification.

Mr. Penesso referred to Exhibit A-5 showing the flag pole antenna on the Shillelagh site and detailed the gaps in coverage in the proposed location.

Mr. Keller asked Mr. Penesso if they could put the antennae on the roof of the Shillelagh site's existing building to achieve the coverage; he said no. Mr. Penesso said that they could achieve coverage northeast but not northwest or south of the proposed site.

Mr. Grygiel asked Mr. Penesso if they would get the same coverage if the antennae were designed on the inside of the monopole; he said that it could be done but they would have to stack the equipment inside and the monopole would have to be taller and bulkier.

Chairman Neuer asked if any members of the public had any questions for Mr. Penesso.

Robert Giordano approached the podium and stated that he lives at 22 West View Road. He asked Mr. Penesso if he was aware that there was an application before the Zoning Board that was denied approximately seven years ago involving the fire house property that was mentioned in his testimony; he said no.

Mr. Giordano asked Mr. Penesso if he was aware that there are antennae on the rooftop of 405 Northfield Avenue; he said yes.

Alan Sanders approached the podium and stated that he lives at 27 Old Salem Road. He asked Mr. Penesso if the monopole was higher would they meet their coverage objectives; he replied yes.

Mr. Sanders asked Mr. Penesso why they are not making the monopole higher; he said there are other variables to making the monopole higher and they do not want it to interfere with the existing network. Mr. Penesso said that this is the minimum height to reach their coverage objectives and if they were proposing to make the monopole higher they would also have to ask for another variance.

Andrew Russo approached the podium and stated that he lives at 24 Old Salem Road. He asked Mr. Penesso if there are other monopoles in the middle of residential areas in the City of Orange and South Orange; he said they are in various locations.

Mr. Russo asked Mr. Penesso if the monopole is going to be the same type of pole that is located at Stagg Field that looks like an artificial tree. Mr. Quinn stated that this witness did not testify to that.

Mr. Penesso stated that a "monopine" is a structure that looks like an artificial tree; he said there are various types of structures.

Mark Koehne approached the podium and stated that he lives at 16 Fairview Avenue. He stated that he has an AT&T plan and asked Mr. Penesso why he gets good coverage in his basement; he said that he is probably getting reception from another pole.

Mr. Koehne asked Mr. Penesso to explain more about the topography issue regarding the Shillelagh site; he said the topography drops as you go along Northfield Avenue and coverage skims over it.

Mr. Koehne asked Mr. Penesso how much of the area that they are trying to get more coverage for is either a golf course or a reservation; he referred to Exhibit A-2 and detailed the residential area and golf course area that will receive more coverage.

Mike Tormey approached the podium and stated that he lives at 81 Ridgeway Avenue. He asked Mr. Penesso if there were any other monopoles in the area that could meet their objective; he said no.

Mr. Tormey asked Mr. Penesso if they could utilize the monopine at Stagg Field; he said they already have twelve (12) antennae on that site.

Mr. Tormey asked Mr. Penesso if there is a need to provide coverage in the reservation; he said yes.

Mr. Tormey asked Mr. Penesso to describe the flag pole at the Shillelagh site that is used for antennae; he said it is a sixty three (63) foot unipole structure that has the antennae stacked inside of it.

Mr. Tormey asked Mr. Penesso why they cannot build the monopole in another area near the Shillelagh site to meet their objective; he said because the topography drops too much and they would not be able to meet their objective.

Joseph Wenzel approached the podium and stated that he lives at 22 Fairview Avenue. He referred to Exhibit A-1 and asked Mr. Penesso if they get AT&T coverage in the white area; he said yes, but it is unreliable. Mr. Penesso stated that they need coverage to work for all devices and not just for cell phones.

Chairman Neuer called for a recess at 9:43 pm.

Chairman Neuer resumed the meeting at 9:53 pm.

Mr. Wenzel resumed his questioning as he referred to Exhibit A-1 and asked Mr. Penesso if they could "boost" the power in location that area; he said that there is no such thing as "boosting". Mr. Penesso said they can lower the power but they cannot go any higher.

Mr. Wenzel asked Mr. Penesso if they investigated any other site for the potential monopole; he said yes they investigated the fire house as a location.

Mr. Wenzel asked Mr. Penesso if they looked at the Seton Hall sports fields on Prospect Avenue as a potential site; he said no. Mr. Penesso said that if they shift it to somewhere else they will have a gap somewhere else.

Mr. Wenzel asked Mr. Penesso if they looked at southwest as a potential site; he said yes but the topography drops in that direction.

Phillip Davies approached the podium and stated that he lives at 12 Fairview Avenue. He asked Mr. Penesso if Verizon also has this problem; he said he does not know.

Mr. Davies asked Mr. Penesso why this area is so important to AT&T; he said because there is unreliable coverage in this area.

Mr. Steinhart asked Mr. Penesso how far from a cell tower do you have to be to get reliable service; he said the rule of thumb is one mile.

Mr. Steinhart asked Mr. Penesso what is the approximate distance from the monopole to the area that they want to reach; he referred to Exhibit A-2 and said one mile or so to the south.

Ms. Gabry asked Mr. Penesso if there are any utility poles in the area; he said no.

There were no further questions for Mr. Penesso.

Mr. Quinn called his next witness.

Petros Tsoukalas approached the podium and was sworn under oath. Mr. Tsoukalas detailed his professional background as a civil engineer licensed in the State of New Jersey. Chairman Neuer stated that Mr. Tsoukalas is accepted as an expert licensed civil engineer.

Mr. Tsoukalas presented sheet Z-1 of the site plan with a revision date of February 2, 2017 that was marked as Exhibit A-6 for identification.

Mr. Tsoukalas detailed the exhibit and stated that they are proposing a monopole with a lightning rod on the top of it. He said that they changed the original proposed location of the monopole and moved it as far away as possible from the neighbors. Mr. Tsoukalas said that they added two parking spaces to make up for the two parking spaces that they will be utilizing for the location of the pole so they did not lose the two parking spaces.

Mr. Tsoukalas presented sheet Z-4 of the partial site plan with a revision date of February 2, 2017 that was marked as exhibit A-7 for identification and detailed where they are placing the

equipment. He said that they will have natural gas generators as backup power and they will only run in emergency situations. Mr. Tsoukalas said that they will meet the DEP noise regulations.

Chairman Neuer asked Mr. Tsoukalas if the generators were sound tested yet; he said no.

Mr. Schwarzbaum asked Mr. Tsoukalas if the generators will run at night; he said no. Mr. Tsoukalas said they will only run in emergency situations.

Mr. Quinn stated for the record that they will perform a sound test as a condition of approval.

Ms. Gabry asked Mr. Tsoukalas who will be responsible for maintaining the landscaping; he said AT&T.

Mr. Tsoukalas continued his testimony and detailed the set-backs from Wiley Terrace.

Mr. Tsoukalas presented sheet Z-6 of the antenna orientation plan with a revision dated of February 2, 2017 that was marked as Exhibit A-8 for identification and detailed the location of the monopole with the lightning rod on the top. He said that they are proposing to place twelve (12) - six (6) foot antennae on the pole and that no lighting is being proposed.

Mr. Tsoukalas said the only signage being proposed are the ADA signs that Mr. Keller recommended that they replace in his memo dated March 6, 2017 and a do not enter sign at the parking lot exit. He said that they will also be adding traffic arrows at the parking lot entrance and exit.

Mr. Tsoukalas said that the area is flat so there will be no water run-off. He said they will check the equipment once every four (4) weeks and that there are no audible alarms.

Mr. Tsoukalas addressed the comments in Mr. Keller's memo dated March 6, 2017.

- Item #1 – ADA signage is being replaced.
- Item #2 – Applicant's attorney, Mr. Quinn, requested to amend the application and add an additional parking variance rather than create two (2) substandard parking spaces; Chairman Neuer granted the amendment and stated for the record that the amendment does not require additional notice.
- Item #3 – Will comply and move the bollards.

- Item #4 – Will run a noise test post construction to make sure the decibel levels meet the requirements as a condition of approval.
- Item #5 – The surface area will be gravel
- Item #6 – Grading on the north side of the enclosure will be re-examined to address Mr. Keller’s concern that the flat area will trap water.
- Item #7 – Mr. Keller asked if there were other options besides a monopole or a monopine; Mr. Tsoukalas said that the monopine will work the same as a monopole but it will not work on a flag pole. He said that the flag pole would have to be 140’ high to work.
- Item #8 – The Planner will testify to where the topography limits the view of the monopole.
- Item #9 – The monopole will be available for co-location of another provider.
- Item #10 – The applicant is open to having additional landscaping installed.
- Item #11 – Will comply
- Item #12 – Will comply
- Item #13 – Will install bollards at the curb line.
- Item #14 – Mr. Tsoukalas clarified Mr. Keller’s concern regarding the detail of the generator and said that the generator looks exactly like it does on the plans.
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Chairman Neuer noted the time and said that the Zoning Board ends their meetings promptly at 11:00 pm.

Chairman Neuer said that there is a limited time that applications for wireless towers can be heard and asked Mr. Quinn if he is going to voluntarily extend the statutory “shot clock” for this application; he replied yes.

Mr. Quinn asked to be carried over to the regular Zoning Board meeting held on June 15, 2017.

Chairman Neuer announced that this application will be carried over to the regular Zoning Board meeting held on June 15, 201 and that no further notice will be required.

The meeting was adjourned by Chairman Neuer at 11:04 pm.

Adopted: May 18, 2017



Rose DeSena, Zoning Board Secretary