

**BLAIRSTOWN TOWNSHIP
ZONING BOARD OF ADJUSTMENT
January 13, 2009**

MINUTES

The Blairstown Township Board of Adjustment met in regular session on Tuesday, January 13, 2009 at 7:30 pm at the Blairstown Municipal Building, 106 Route 94, Blairstown, New Jersey. The following Board members were present: Mike Repasky, Mark Ohannesian, Barbara Green, Andrew Straut, Charles Anderson, Philip Rivera, Lois Brod, Debra Waldron and Joe DiGrazia. Also present were Board Attorney, Roger Thomas, Board Engineer, Ted Rodman and Board Secretary, Marion Spriggs.

SALUTE TO THE FLAG: was recited.

ROLL CALL: was taken.

THE SUNSHINE STATEMENT: was read aloud.

REORGANIZATION:

Meeting was called to order by Roger Thomas.

Mr. Thomas administered the Oaths of Office to new Board members. The new Board members are: Barbara Green, Mike Repasky, and Philip Rivera.

"Adequate notice of this meeting of the Blairstown Township Zoning Board of Adjustment has been provided in accordance with the Open Public Meetings Act (Chapter 231 P.L. 1975)".

At this time Mr. Thomas called for nominations for the position of Board Chairman. Joe DiGrazia was nominated as Chairman by Mrs. Brod and seconded by Mr. Straut. The meeting was opened for other nominations and discussions. There being no other nominations or discussions:

Action: The nomination for Joe DiGrazia to serve as Chairman was made by Mrs. Brod, seconded by Mr. Straut. Roll call vote: Green, Straut, Anderson, Rivera, Brod, and Waldron -- yes. Mr. DiGrazia abstained.

At this time, Mr. DiGrazia, as Chairman, asked for the following nominations:

Action: The nomination for Debra Waldron to serve as Vice Chairman was made by Mrs. Brod and seconded by Mr. Straut. Roll call vote: Green, Straut, Anderson, Rivera, Brod, and DiGrazia --yes. Mrs. Waldron abstained.

Action: The nomination for Roger Thomas, Esq., Dolan & Dolan, to serve as Board Attorney
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was made by Mrs. Waldron, seconded by Mrs. Brod. Roll call vote: Green, Straut, Anderson, Rivera, Brod, Waldron and DiGrazia --yes.

Action: The nomination for Ted Rodman, Rodman Associates, to serve as Board Engineer was made by Mrs. Waldron, seconded by Mr. Anderson. Roll call vote: Green, Straut, Anderson, Rivera, Brod, Waldron and DiGrazia --yes.

Action: The nomination for John A. Madden, PPE, Maser Consulting, to serve as Planning Board Planner, was made by Mrs. Waldron, seconded by Mr. Straut. Roll call vote: Green, Straut, Anderson, Brod, Waldron, and DiGrazia – yes. Mr. Rivera – abstained.

Action: The nomination for Marion Spriggs to serve as Board Clerk was made by Mrs. Waldron, seconded by Mrs. Brod. Roll call vote: Green, Straut, Anderson, Rivera, Brod, Waldron and DiGrazia --yes.

Action: The nomination for Lois Brod to serve as Board Secretary was made by Mrs. Waldron, seconded by Mr. Anderson. Roll call vote: Green, Straut, Anderson, Rivera, Brod, Waldron and DiGrazia --yes.

Resolution Complying with the Open Public Meetings Act

Roger Thomas stated that the Board has designated the Express Times and Star Ledger as their official newspapers. He confirmed that the Governing Body has done the same. For the record, he stated these papers are independent. He reiterated that the Board wishes to have the Express Times, which is published daily, as their primary paper. The Star Ledger is the Board's designated secondary newspaper. To eliminate future confusion, he stated, the intent of this resolution is NOT that both papers must be notified, when notices must be published. Notices will be published by the Express Times, and if this cannot be done, then the Star Ledger will be used.

Action: A motion was made by Mrs. Waldron, seconded by Mr. Straut to adopt the schedule of meetings and designate the official newspapers complying with the Open Public Meetings Act. Roll call vote: Green, Straut, Anderson, Rivera, Brod, Waldron and DiGrazia --yes.

MINUTES: (As distributed prior to the meeting date).

Minutes of December 9, 2008 Regular Meeting

Action: On a motion duly made by Mr. Anderson, seconded by Mr. Straut, the Minutes of the December 9, 2008 meeting were approved, as written. Roll call vote: Straut, Anderson, Brod, and DiGrazia --yes. Green, Rivera, and Waldron - abstained.

RESOLUTIONS:

ZB#05-08 Verizon Wireless/All Walnut Valley, Block 1501, Lot 4, 155 Rt. 94, Minor Site, Bulk Vars (4), Use Vars. (4) – (D3) – **DENIAL**

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Roger Thomas clarified that originally, this application was for a flagpole cell tower of 122 feet. During the course of the hearing, it was changed to a height that would be below the existing tower.

Action: A motion was duly made by Mrs. Waldron and seconded by Mr. Anderson, to adopt the Resolution of Denial for **ZB#05-08 Verizon Wireless/All Walnut Valley**, Block 1501, Lot 4, 155 Rt. 94, Minor Site, Bulk Vars (4), Use Vars. (4) – (D3), as written. Roll call vote: Straut, Anderson, Brod, Waldron and DiGrazia – yes. Ms. Green and Mr. Rivera – abstained.

EXTENSION TO RECORD DEEDS:

ZB#03-07 Ray O'Brien, Block 1101, Lot 6, 16 Sunset Hill Rd.

Mrs. Brod and Chairman DiGrazia stepped down for this application. Mrs. Waldron acted as the Chairwoman.

Richard Keiling, attorney for the applicant, reiterated that this Board granted Ray O'Brien approval back in November 2007, to put an accessory structure on his property, on Sunset Hill Rd.

Mr. Madden, of Maser Consulting, substituted as Township Engineer, for Ted Rodman, who stepped down on this application. Recently, Mr. Madden indicated that he didn't agree with the language indicated in the draft deed. Mr. Keiling modified that language, and adopted it directly to the language used in the resolution drawn by Attorney Thomas. This resolution was valid for 6 months.

Mr. Keiling refaxed this information to Mr. Madden and still has not received Mr. Madden's approval. The deed cannot be recorded until this approval is received. The draft deeds were submitted in January 2008.

Mr. Keiling is requesting an additional 60 days extension from this date, which is January 13, 2009.

Action: A motion was duly made by Mr. Anderson, seconded by Mr. Straut, to grant a 60 day extension to record deeds, with all the conditions of the prior approval, for **ZB#03-07 Ray O'Brien**, Block 1101, Lot 6, 16 Sunset Hill Rd. Roll call vote: Repasky, Ohannesian, Green, Straut, Anderson, Rivera and Waldron – yes.

INTERPRETATION:

ZB#01-09 Frank Cook, Block 601, Lot 14.09, 6 Dogwood Road –Interpretation

Mrs. Brod and Chairman DiGrazia stepped down for this application. Mrs. Waldron acted as the Chairwoman.

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Richard Keiling, attorney for the applicant, explained that Mr. Cook has a 12 acre piece of property on Dogwood Rd. in Blirstown. Mr. Cook has a structure, in existence for 60 years, that has 4 residential units on it. The applicant went to David Diehl, Zoning Officer, to get a certificate of a pre-existing, non-conforming use. Mr. Diehl's response was that the ordinance for single family in a zone was done many years ago. He stated that if the zone changes, there is a 1 year period in which to obtain that certificate from the Zoning Officer.

Mr. Keiling stated that since the ordinance of 1 residence on 1 lot, was years ago, the applicant must come before this Board and explain the circumstances - as to how long it has been there, and that these 4 residential units, predate Blirstown Township's zoning and have been in existence for 50 years.

Exhibit A-1 was marked, which is a portion of a tax map, for Blirstown Twp., for that section of the property.

Mr. Cook, was sworn in.

Mr. Cook stated that he owned the 12 $\frac{3}{4}$ acre property on 6 Dogwood Rd., for 32 years.

He has resided in Blirstown since 1944. About 1955, his parents owned a repair service and service station in Walnut Valley, known as Cook Brothers Garage, where he was employed. Mr. Cook stated that the Schwartz family purchased the property in 1955. He had occasion to visit the property for machinery repair. It had been used as a turkey farm. The Schwartz's removed some buildings related to raising turkeys, and converted it into a mink farm. The existing buildings were used to house farm workers. It ceased to be used as a mink farm, in the early 1970s. He purchased the property in 1977. The apartments were still being used at that time and 3 are still being rented out. Mr. Cook occupies the 4th unit, currently.

Presently, there are 3 occupied and rented apartments. Mr. Cook resides in the 4th apartment. This is a long masonry building with 2 stories.

This portion was opened to the public. There were no questions.

John Plunkett, from 2 Dogwood Rd., Columbia, was sworn in.

Mr. Plunkett has lived in the area for 50 years. He confirmed that the adjacent property to his, was a mink ranch. He stated that the building was used to process food for the mink. The second floor contained 2 apartments. There was an office in the back of the building with another apartment adjacent to it, on the left. He had visited the building many times and ascertained that farm workers continue to live there under the Cook ownership.

This portion was opened to the public. There were no questions.

Attorney Keiling stated that possibly the zoning came to Blirstown in the 1960s. Attorney Thomas recollects that zoning came to Blirstown in 1964.

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Attorney Keiling requested that the Board issue a resolution that the structure currently existing on the property, is a bonafide 4 family unit.

Action: A motion was duly made by Mr. Anderson, seconded by Mr. Straut , to render the interpretation that **ZB#01-09 Frank Cook**, Block 601, Lot 14.09. 6 Dogwood Road, is a pre-existing, non-conforming use. Roll call vote: Repasky, Ohannesian, Green, Straut, Anderson, Rivera and Waldron – yes.

Roger Thomas asked Attorney Keiling to investigate if these units have been designated as such on the tax card, so they are not viewed by COAH as generating new units. Mr. Keiling agreed to check this tomorrow.

COMPLETENESS:

ZB#08-08 Omnipoint Communications, Inc., Block 1501, Lot 4, 155 Rt. 94, Minor Site Plan, Bulk & Use Vars. (formerly PB#07-08 – Planning Board application)

Thomas J. Molica, Esq., Vogel, Chait, Collins and Schneider, of Morristown, acted temporarily on behalf of David Soloway who was enroute to this meeting.

Mr. Molica, indicated that the outstanding taxes have been paid.

Roger Thomas, Esq. reiterated that this was the only matter holding up deeming this application complete, and it has now been resolved.

Action: A motion was duly made by Mrs. Waldron, seconded by Mrs. Brod, to deem **ZB#08-08 Omnipoint Communications, Inc.**, Block 1501, Lot 4, 155 Rt. 94, Minor Site Plan, Bulk & Use Vars. – complete. Roll call vote: Green, Straut, Anderson, DiGrazia, Brod and Waldron – yes. Mr. Rivera – abstained.

PUBLIC HEARING:

ZB#08-08 Omnipoint Communications, Inc., Block 1501, Lot 4, 155 Rt. 94, Minor Site Plan, Bulk & Use Vars. (formerly PB#07-08 – Planning Board application)

Thomas J. Molica, Esq., Vogel, Chait, Collins and Schneider, of Morristown, explained that the applicant is seeking to collocate 3 wireless communication antennae inside the existing flagpole on the subject property on 155 Rt. 94, which is located in the HC zone. They are proposing this location at 101 feet. Existing carriers on the site are Sprint, and AT&T. He stated that this is the type of collocation that the Township ordinance encourages.

Three new equipment cabinets are being proposed. Omnipoint needs a use variance and 2 bulk variances.

Dan Collins, Chief Technical Officer, Pinnacle Telecom Group, Cedar Knolls, NJ, was sworn.

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Mr. Collins indicated that he performed a Compliance Assessment and issued a report, dated 8/12/08, of acceptable levels of radio frequency emissions conforming to the FCC standards. Page 11 has the calculated results. He followed the OET 65 guidelines.

His findings divulge how the applicant meets the standards, issued by FCC, for safe, continuous exposure by human beings to radio frequency emissions by antennae.

Mr. Collins stated that the radio frequency effects of all operators were taken into consideration when the study was performed. Radio frequency over 100% would be out of compliance. The radio frequency operational level of Omnipoint Communications at this site, along with the AT&T and Sprint operations, at full capacity, would be less than ¼ of 1% of the FCC standard. This equates to 400 times less than the FCC standard. He revealed that the NJ state standard is 5 times less protective than the federal level. The applicant more than satisfies the standard for both federal and state level.

At this point, the hearing was opened to the public. There being no questions, this portion was closed.

Attorney David Solloway, arrived at 8:25 pm, and questioned the professionals from this point.

Archie Dickson, RAF, Omnipoint Communications, 4 Sylvan Way, Parsippany, NJ, was sworn in.

Mr. Dickson from Glasgow, Scotland, has been working on the design of digital radio networks since 1987 in Scotland. For 7 years in the US, he has been working with Cingular Wireless and Team Mobile, Omnipoint. He has designed radio sites in 7 counties in New Jersey.

Their computer system and a test vehicle provide data. They indicate there is a weak coverage along Rt. 94 at the proposed site which results in dropped calls.

Exhibit A-1 was marked. This is a propagation study with overlay, mounted on foam board. The information on it was computer calculated, and adjusted by measurements taken by driving and testing.

He explained the propagation study to the Board. The white areas indicate weak coverage or no coverage. The proposed coverage will be 2 miles wide. Chairman DiGrazia remarked that what is being added is a lot of work, for not a significant return on the investment. Mr. Dickson responded that they will not have to pay for a new tower. The applicant will simply add antennae to an existing tower, electricity exists – so no cables will be needed. The intended main target is Rt. 94.

Mr. Dickson stated that they have to keep expanding their network in view of customer needs. 30% of households rely solely on cell phones.

At this point, the hearing was opened to the public. There being no questions, this portion was closed.

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Robert Toms, PE, MTM Design Group, Waldwick, NJ, was sworn in.

He explained drawing Z-2, from MTM Design Group, dated 3/31/06, which was submitted with the application.

He summarized, by presenting the following information. The existing flagpole is 120 ft. Omnipoint is proposing to install a 14.6 ft. x 20 ft. compound extension, which will be behind the building. A 5 ft. x 20 ft. concrete pad is proposed, to support 3 equipment cabinets. The cabinets are 4.4 ft. wide x 2.4 ft. deep and 5.6 ft. high. The antennae will be inside the flagpole. There will be total of 12 cables. They will put privacy slats in the 8 ft. high fencing, when they fence the expanded area. There will be no lights or signage.

He addressed the bulk-type deviation of proposed 8.8 ft. rear yard setback. The requirement is 20 ft. A lot coverage variance is necessary as 40% lot coverage is permitted in this zone. 62% is existing and 62.4% is proposed.

Ted Rodman's report of 11/7/08 was reviewed.

Mr. Toms verified that the cabinets will be serviced for about 30-45 mins. Every 30-45 days.

This point of the hearing was opened to the public. There being no questions, this portion was closed.

David Karlebach, PP, PC, 38 E. Ridgewood Ave, Ridgewood, NJ was sworn in.

He described the proposed site from a Planner's perspective. He stated that this is an ideal location on the existing tower. The impacts of this proposed facility on this site have already been tested. There are no negative effects on the community. A D variance is required since it is the expansion of a second principal use. A rear yard setback variance is required, as 20 ft. is required by ordinance, and 8.8 ft. is being proposed. This is a continuation of an existing, non-conforming condition that exists on the property. A lot coverage variance is necessary as 40% lot coverage is permitted in this zone. 62% is existing and 62.4% is proposed.

Mr. Karlebach presented the positive criteria of the balancing test: It serves the public good and safety, via 911 calls, and meets the increasing demand for such services. The existing gap can be remedied by using an existing structure. It is listed in the Township ordinance as a first priority location. It is located in a HC zone.

Mr. Karlebach identified the negative criteria of the balancing test: This expansion is non-traditional and will not increase the number of employees, or change hours of operation. It will not change the amount of traffic. No proposed increase in the height of the structure. The increase in size of the equipment compound will occur behind the building. No noise, vibration, odors or glare will result. There will be no change in the appearance of the site.

The Board has requested mitigating impact, by measure of installing privacy slats in the chain link fence to conceal the equipment cabinets, as a condition. The applicant has already incorporated that.

Mr. Karlebach presented to the Board, that the public benefits far outweigh any perceived impact.

This application does not conflict with the Master Plan.

At this point, the hearing was opened to the public. There being no questions, this portion was closed.

Attorney Solloway summarized, by stating that this application is exactly what the Township ordinance encourages.

Roger Thomas indicated conditions which should be stated in the approval resolution, should the Board approve this application.

His suggested conditions are as follows:

Removal of equipment, when the technology becomes obsolete.

The expanded fence will match the existing fence.

The equipment color will be beige, or other earth tone color.

Ted Rodman's report of 11/7/08 Items #2 through #15, excepting #6 which has been provided, as conditions

Chairman DiGrazia requested that the currently deficient, existing landscaping be remedied. Attorney Solloway agreed to work with Ted Rodman on this.

Action: A motion was duly made by Mrs. Waldron, seconded by Mr. Rivera, granting a D variance to **ZB#08-08 Omnipoint Communications, Inc.**, Block 1501, Lot 4, 155 Rt. 94, Minor Site Plan. Roll call vote: Green, Straut, Anderson, Rivera, DiGrazia, Brod and Waldron – yes.

Action: A motion was duly made by Mrs. Waldron, seconded by Mr. Anderson, granting C variances and minor site plan to **ZB#08-08 Omnipoint Communications, Inc.**, Block 1501, Lot 4, 155 Rt. 94, Minor Site Plan. Roll call vote: Green, Straut, Anderson, Rivera, DiGrazia, Brod and Waldron – yes.

CORRESPONDENCE:

Minutes from 11/25/08 Planning Board meeting
Day Pitney ltr. dtd. 12/15/08 Re: Resolution compliance, **ZB#06-07 New Cingular**
NJ Planner Dec./Jan. 2009 issue

VOUCHERS: Professional services rendered.

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Action: A motion was duly made by Mrs. Waldron, seconded by Mrs. Brod, escrow and general vouchers, as attached to these minutes, were approved. Roll call vote: Green, Straut, Anderson, DiGrazia, Brod and Waldron – yes. Mr. Rivera – abstained.

OTHER BUSINESS:

2009 BOA Budget

Chairman DiGrazia indicated that the Governing Body is asking for a 3% decrease in the 2009 budget. He suggested to the Board of Adjustment that \$4,500. be the 2009 BOA budget figure.

Attorney's fees, due to litigation, is a source of concern to some members. Currently litigation is ongoing.

Action: A motion was duly made by Mrs. Waldron, seconded by Mr. Anderson to accept the BOA budget, as suggested, at \$4,500. for 2009. Roll call vote: Green, Straut, Anderson, Rivera, Brod and Waldron – yes.

Annual Report (Info mailed to R. Thomas on 12/31/08 for R. Thomas' preparation purposes)

- Darst Status

Roger Thomas stated that the Darst matter is done. There is an appeal.

- Last Frontier

Roger Thomas stated that he discovered the Judge is preparing her decision re: Last Frontier. He expects the decision will be forthcoming.

NEW BUSINESS:

Chairman DiGrazia requested that copies of the BOA By-laws be sent to members for review. Attention will be paid to the Board's action of entertaining no new business after 10:30pm.

Mandatory Training for new BOA members

Roger Thomas advised the new members of the mandatory training course for new Planning Officials. The course can be taken from NJPO and Roger Thomas is authorized to teach, as well. He will keep the members informed. He plans to teach the class this spring.

Mrs. Waldron welcomed the new members, and thanked them for attending. She stressed if they cannot attend a meeting, they would be required to listen to the cd recording, in order to be able to vote. She indicated that there may be instances where the alternates would be called on to vote, due to absence or conflict of interest of regular members.

ADJOURNMENT:

The Chair asked the Board for a motion to adjourn.

Action: On motion duly made by Mr. Straut, seconded by Mrs. Brod and unanimously carried, the meeting was adjourned at 9:57 PM.

Respectfully submitted,

Marion C. Spriggs
Board Secretary