

**BLAIRSTOWN TOWNSHIP
ZONING BOARD OF ADJUSTMENT
July 13, 2010**

MINUTES

The Blairstown Township Board of Adjustment met in regular session on Tuesday, July 13, 2010 at 7:30 pm at the Blairstown Municipal Building, 106 Route 94, Blairstown, New Jersey. The following Board members were present: Mark Ohannesian, Charles Anderson, Andrew Straut, Andrew Smith, Debra Waldron, Philip Rivera, Mike Repasky and John Sartori. Barbara Green was absent. 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.

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

Minutes of May 11, 2010 Regular Meeting

Action: A motion was duly made by Mr. Anderson, seconded by Mr. Straut, and unanimously carried, without abstentions, to approve the minutes of May 11, 2010, as written.

Executive Session Minutes of May 11, 2010

Action: A motion was duly made by Mr. Anderson, seconded by Mr. Straut, and unanimously carried, without abstentions, to approve the Executive Session minutes of May 11, 2010, as written.

RESOLUTIONS:

None

COMPLETENESS:

None

RETURN TO BOA FOR ACTION ON THE PLAN:

ZB#05-08 Verizon Wireless/All Walnut Valley aka "Cellco", Block 15.01, Lot 4, 155 Rt. 94 – Site Plan & Bulk Var., 155 Rt. 94.

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Roger Thomas explained to the Board that this minor site plan and bulk variance application had been before the Court, which ruled in their favor.

He said the only thing coming before the Board in this application is a minor site plan with regard to the bulk variances. Therefore, he declared that everyone present is eligible to vote today. It is not a situation whereby they had to be present at prior hearings. He stated this is an independent application in that regard.

Lynn Dunn, Esq., attorney for the applicant, presented the following exhibits, which were then marked, and given to the Board Secretary.

- Exhibit A-1 Superior Ct. Order of Judgment, dated 4/30/10
- Exhibit A-2 Superior Ct. Ltr. of Transmittal for Exhibit A (above)
- Exhibit A-3 Site Plan, dated 1/4/08 for Verizon Wireless a/k/a Cellco
- Exhibit A-4 Photo – Detention basin below highway
- Exhibit A-5 Photo – Conditions in area where detention basin is located
- Exhibit A-6 Photo – Compound from distance
- Exhibit A-7 Aerial view – All Walnut Valley Cell Site, dated 11/4/2008
- Exhibit A-8 Letter, dated 7/7/08 from Warren Cty. Planning Dept., Exempt after Review

James A. Miller, PP, J.A. Miller Planning Consultants, was sworn in. He stated the proposed site is occupied by a 2 story office building, named Blirstown Creative Professional Center, located at 155 Rt. 94. In the rear of the structure is the service alley with an existing Telecom 19' x 45' fenced-in compound which includes a 122' stealth flagpole containing 2 carriers, Sprint and Team Mobile. Verizon Wireless is proposing to erect a second flagpole which will be shorter and display the NJ State flag. The American flag is currently flown on the existing pole.

He explained there will be an 11' x 6' shelter in the compound. There is a very de minimis level of improvement. The maximum lot coverage is 40%. The existing condition is 55.8% including the shelter roof, which is an .8% increase and another 990 sq. feet. They are asking for a variance to allow them to continue to use the existing conditions. They are adding to the impervious surface because of the rooftop of the shelter. Ted Rodman pointed out that a setback variance is needed since the compound is being made bigger.

The first variance is a C-2. Mr. Miller said there are 2 purposes that will advance the purpose of the MLUL.

1. Purpose A – encouraging the appropriate use of land and advancement of health, safety and general welfare.
2. Purpose I – to provide a desirable visual environment through creative development. He believes a stealth structure is a good alternative for a wireless facility.

The positive criteria stated:

- The amount of the variance is de minimis - an .8% increase.
- Enhanced communications by filling a gap in wireless service
- Benefits the public and provides emergency communications
- Occupying a site already suited for use.

He stated the benefits are greater than the .8% increase in impervious surface

The second variance pertains to the buffer requirement to provide visual screening.

The positive criteria stated:

It is a continuation of an existing condition, falling within the existing buffer
This property backs up to the library property which has a detention basin. This buffers the office building and is an Open Space parcel.
The compound is screened from the public by the structure.

The negative criteria stated:

Use is a permitted conditional use
Variances are consistent with the controls in place
Amount of impervious cover sought is not enough to alter intensity of the development of this site
Regarding the setback variance - the adjacent property is protected by the detention pond
Adequate air, light and open space exists around the structure which backs up to an open space area.

Finally, Mr. Miller commented that the setback is an existing condition and a de minimis change. It is a small extension of the compound which backs up to the open space behind the library.

In every case, the relief is consistent with the intent and standard they are seeking the deviation from.

Ted Rodman asked if there are other suitable locations without the need for the setback variance. Lynn Dunn responded they can't shift the pole location without undoing the Court's ruling which relies on the proximity of one pole to another. Roger Thomas agreed the location is not before the Board but part of the original decision.

Lynn Dunn, responded that the issue of particular suitability was determined by the Court, and is not before the Board this evening. The applicant has the Court's ruling regarding the setbacks under the Wireless Communications Ordinance. She said the issue now is the increased encroachment by the proposed equipment compound.

Mr. Miller revealed that Verizon ("Cellco") uses the most space and does not share their buildings. Besides Verizon, there will be 2 other carriers located on 3 levels in the proposed antenna. Compounds will be 123 feet long. There is security on the shelter. There are slats on the existing fencing and the applicant will match the design. Verizon has no control as to who will co-locate in the future.

Saseen S. Abujawdeh, PE, The Cedars Group, Inc., engineer for the applicant, who has testified before this board, explained the proposed pole will have a diameter of 36" vs. 18" for the existing pole. Due to increased demand, antennas require more coaxial cables, thus the increase in diameter of pole size. There will be a distance between the poles of 55 or 57 feet. He stated the existing building is 15' x 78' and the proposed is 19' x 45 1/2'. The proposed flagpole has a setback of 14' and the shelter has a setback of 5'.

There was a concern for digging up and removal of propane tanks located 10 feet from Verizon's compound, for future co-locators. Roger Thomas pointed out that moving them to the west, brings them closer to the residences on Eldan Pl.

From a coverage and FAR viewpoint, Ted Rodman questioned the need for the size of the proposed building, pointing out it contains a generator and air-conditioner. Lynn Dunn responded that it is a
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technological preference, She said they have a sovereign right for their design standard. The Federal Communications Act pre-empts any local zoning or planning board decisions. She declared it is the applicant's decision and, "they stand by it".

Lynn Dunn informed the Board that the bottom line is, if additional or a reasonable amount of replacement landscaping is necessary, the applicant would be willing to meet with Ted Rodman to discuss.

Flag protocol was discussed. It dictates the American flag be located to the left. It must be flown highest and there is only one American flag permitted to fly. A condition listed below, is to remove one American flag.

Ted Rodman's report of 6/25/10 was reviewed.

This portion of the hearing was open to the public. There was no public present.

Roger Thomas stated if there is going to be a motion in favor, he recommends the following conditions:

The plan, sheet 3, bottom left, must be revised to reflect a proposed **121 foot** high pole, including the ball. Note #4 on the site plan, be corrected to reflect a maximum of 3 carriers on the pole.

A noise test be performed prior to the issuance of a CO to assure the on-site generator meets state standards.

The routine timing of the testing of the generators will be Mon. through Fri. between 10am and 4pm.

Item #2 of Ted Rodman's 6/25/10 report, - Landscaping to the westerly side, be subject to Ted Rodman's approval in conjunction with applicant's representative.

The fence will be 8 feet high and match the existing fence.

Item #3 - Soil conservation approval or waiver, be subject to the review of drainage calculations.

Items #6, 7, 8, 10, 11 & 12 as conditions

Removal of one of the flags

Chairwoman Waldron asked Attorney Dunn to indicate the size of the current existing fenced compound area on the map. Saseen Abujawdeh stated the existing fenced compound is approximately 15' x 78'. The proposed is 19' x 45 1/2". Ted Rodman commented that the variances will apply more to the structures than to the fenced area.

Roger Thomas declared, this motion would include the approval of the minor site plan and bulk variance application.

Action: A motion was duly made by Mr. Rivera, seconded by Mr. Straut, to approve **ZB#05-08 Verizon Wireless/All Walnut Valley aka "Cellco"**, Block 15.01, Lot 4, 155 Rt. 94 – Minor Site Plan & Bulk Variances. Roll call vote: Ohannesian, Anderson, Straut, Smith, Waldron, Rivera, and Repasky– yes.

PUBLIC HEARING:

ZB#04-10 Carl & Della Darst, Block 2003, Lots 28,29,29.01,31.01-Hope Rd. – Amended Prel. & Fin. Site Plan

Roger Thomas announced that this matter will be carried, without further notice until the

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August 10, 2010 meeting.

CORRESPONDENCE:

None

OTHER BUSINESS:

Cell Tower Ordinance

Roger Thomas stated that he came up with some modifications to Blirstown's existing Ordinance in Section 19-601E. He added a provision in the revised Ordinance for only one tower per lot, as per the Board's direction. If an additional tower is proposed, a D variance is required. His underlined Section 1 (4) (d), reflects this.

Priorities are contained in the Ordinance. To make the first priority easier for the applicant, Roger Thomas has suggested language to encourage this. He has included that Township-owned property be included as a first priority, if it is technically possible, to generate income for the Township.

He pointed out that the modifications to the existing Ordinance are underlined.

He included a provision for multiple carriers to provide a rural looking equipment building not exceeding 600 sq. ft. to accommodate multiple carriers.

If the BOA agrees with this draft, Roger Thomas will distribute it to the Planning Board at their July 19, 2010 meeting. Finally, it will be directed to Township Committee for approval.

Action: A motion was duly made by Mr. Anderson, seconded by Mr. Straut, to approve the Draft Ordinance amending Land Development Ordinance Section 19-601E(2) regarding cell towers. Roll call vote: Ohannesian, Anderson, Straut, Smith, Waldron, Rivera and Repasky-yes.

Last Frontier – ZB#02-06

Roger Thomas stated that the Opinion dated 5/24/10 states the Board has won this case, however it is being remanded back to the Court for consideration of their inverse condemnation claim. He stated that he has spoken with the Judge and is moving forward with that aspect of it. He has spoken with the Township Attorney and the Mayor regarding certain procedural aspects. Since it does involve damages, who will handle this, is being decided. A decision must be made whether this is going to be handled procedurally by the Township Attorney, or a private carrier attorney, or Roger Thomas.

NEW BUSINESS:

None

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PUBLIC PORTION:

There were no comments from the public, as no members of the public were present, at this time of the meeting.

VOUCHERS:

Action: On a motion duly made by Mr. Rivera seconded by Mr. Straut, escrow and general vouchers, as attached to these minutes, were approved. Roll call vote: Ohannesian, Anderson, Straut, Smith, Waldron, Rivera, Repasky and Sartori – yes.

ADJOURNMENT:

The Chairman asked the Board for a motion to adjourn.

Action: On motion duly made by Mr. Smith seconded by Mr. Repasky, and unanimously carried, the meeting was adjourned at 9:39 pm.

Respectfully submitted,

Marion C. Spriggs
Board Secretary