

**TOWNSHIP OF MORRIS
BOARD OF ADJUSTMENT
REGULAR MEETING MINUTES
FEBRUARY 22, 2010**

Call to Order

The regular meeting of the Township of Morris Board of Adjustment was called to order on Monday evening, February 22, 2010, at 7:32 P.M. in the Municipal Building, 50 Woodland Avenue, Township of Morris.

Statement of Adequate Notice

Mr. Rick Haan issued the following:

"I hereby announce and state that adequate notice of this meeting was provided by the Secretary of this Board of Adjustment by preparing a notice dated February 16, 2010 specifying the time, date and place of this meeting, posting such notice on the bulletin board in the Municipal Building; filing said notice with the Clerk of the Township of Morris; forwarding the notice to the Morris News Bee and the Morris County Daily Record, and forwarding, by mail, the said notice to all persons on the request list, and I hereby hand a copy of such notice to the Secretary of the Board of Adjustment for inclusion in the minutes of this meeting, all of the above actions being in accordance with N.J.S.A. 10:4-6, et seq., Open Public Meetings Act."

The Pledge of Allegiance was led by Mr. Rick Haan, Vice Chairman

Roll call of Board Members and Professionals

Members Present

Mr. Rick Haan, Vice Chairman
Mr. Thomas A. Luby
Mr. James C. Allison
Mr. Donnell Williams
Mr. Paul Woodford
Ms. Kathleen Kalaher, Alternate #1
Ms. Joen Luy Ferrari, Alternate #2

Members Absent

Mr. John Christensen
Mr. Timothy Kronk

Also Present

Mr. Rich Oller, Board Attorney
Mr. James Slate, Township Engineer
Mr. Adrian Humbert, Township Planner

Professional Member Absent

Ms. Tirrell Loftin, Zoning Officer
Ms. Sonia Santiago, Board Secretary

On motion duly made, seconded, and unanimously carried, the minutes of the January 25, 2010 meeting were approved as circulated and placed on file in the office of the Board of Adjustment.

Resolutions

BA-16-09

Tower Realty Advisors, LLC

Block 6101, Lot 2, 402 Mt. Kemble Avenue, OL-40 zone. Section C & D.

Applicant proposes an in house business on the first floor with a two bedroom residential apartment on the second floor and other related improvements.

Mr. Woodford moved, seconded by Mr. Luby, roll call as indicated that resolution of approval, attached hereto and by reference made part of the official minutes of this meeting, be adopted as presented, memorializing the action taken by the Board at the January 25, 2010 meeting.

Roll Call: (Voting Members)

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| Ms. Ferrari | YES |
| Mr. Luby | YES |
| Mr. Williams | YES |
| Mr. Woodford | YES |
| Ms. Kalaher | YES |
| Mr. Haan | YES |

Public Hearings

BA-17-04

Omnipoint Communications, Inc.

Block 3004, Lot 21, 206 Sussex Avenue, OSGU zone. Section C & D.

Applicant seeks a variance for the rear and side yard setbacks and a conditional use variance for the construction of a 120-foot wireless telecommunication monopole and an adjacent equipment compound. The proposed tower is to be located toward the south end of the campus 165 feet from the rear yard setback.

Mr. Slate, Township Engineer, announced that per the applicant's Attorney request the application for Omnipoint Communications will not be heard at tonight's meeting due to potential plan revisions. The application is carried to the April 26, 2010 Board meeting without further notice. Mr. Oller asked the applicant's attorney for an extension of time to be granted until May 31, 2010. The applicant's attorney agreed to extend the time for the Board to take action. The Board secretary was instructed to send a letter to the attorney informing him of the new meeting date.

A Certified Shorthand Reporter was present for the following application.

BA-14-09

NYSMSA Limited Partnership d/b/a/ Verizon Wireless

Block 9805, Lot 1, 77 Whippany Road, OSGU zone.

Applicant proposes to co-locate a total of (6) wireless communication antennas at a center line of 108 feet on the existing monopole, and to install equipment cabinets at the base of the tower.

Mr. David Soloway, Attorney for the applicant entered his appearance and presented the application to the Board.

The following professionals being sworn in by the Board Attorney appeared to be heard.

David Stern, Professional Radio Frequency
Anthony Suppa, Professional Engineer
Kimberly Glinkin, Professional Planner (noise study expert)
Williams Master, Jr., Professional Planner

The following exhibits were submitted as evidence during testimony.

A-1 Existing Area Map with existing coverage
A-2 Photo Simulation
A-3 Photo simulation
A-4 8 ½ x 11 Aerial Photo

Summary of Testimony – David Stern, Radio Frequency Engineer

Mr. Stern stated that they had reviewed the Verizon wireless coverage for the area and the adjacent sites and we request information from those adjacent sites. We run a radio frequency propagation tool to determine if there is a gap in coverage from a theoretical stand point, we drive test the area where we actually measure the signals coming out of the site and then we can determine if there is a gap in the area. This site is known as the Birch Hill site at the Fire Company located on Whippany Road there is a gap in service we determine through the use of theoretical model and drive test.

Mr. Stern proceeded to review the exhibit submitted as A-1 Area Map, he proceeded to identify the Verizon Wireless sites in and within one mile of Morris Township. We do have a gap in coverage north to south, approximately two miles and east to west is approximately a mile and half. Mr. Sterns proceeded to review exhibit A-2 and A-3 simulations to show the coverage gaps between the various antennas heights. Mr. Stern further testified that under all scenarios studied, the maximum RF exposure limits are dramatically lower than the FCC limits. The antennas will be placed at 108 feet in order to provide coverage along Route 24 corridor and to provide sufficient in-door building coverage.

Summary of Testimony – Anthony Suppa, Professional Engineer

Mr. Suppa proceeded to review the plans submitted with the Board. He further stated that the purpose of the application was for the applicant to go inside of the existing compound with an 11.5 x 20 foot shelter. To the north there will be a 4x8 foot concrete pad for the emergency stand by generator with an enclosure with foam insulation to give it sound attenuation. The purpose of the generator is to provide service during extended power outages. On the pole there will be 6 antennas with a cluster mount same type as approved for T-Mobile. Access will be off Whippany Road to the existing paved parking lot. There will be a 70 watt light above the door that is manually activated in case a technician needs to go out there at night. The site is alarmed 24 hours a day 7 days a week with an inaudible alarm that goes back to a central station in case there is a malfunction inside someone will come out and if it is night they will turn the switch on and get inside. The antennas will be at 108 ft centerline, there will be 6 antennas 69 in x 6.7 inches by 4 inches they will be at the maximum 28 inches away from the monopole at the minimum they will be at 10 inches. They will be mounted on a three tier arm. Landscaping will be placed sometime in the spring by Omnipoint.

Mr. Suppa further stated that there will be two signs one on the fence and one on the shelter. There is no water or sewer use being proposed. There will be no on site diesel storage other than the generator's 225 gallon tank, which will be located below the generator. Testing will be done at least once a week for a period of one hour. Mr. Suppa further testified that there is room for an additional carrier on site. Mr. Suppa further stated that if the stripping were to be eliminated Omnipoint as the owner would have to apply to the FAA. The FAA would not entertain an application from Verizon Wireless since Verizon is not the owner of the pole.

Mr. Slate, Township Engineer stated that the Township Committee followed up on the paint issue, he spoke to Mr. Caffrey who in particular has followed up with T-mobile and worked out an agreement that once the weather breaks the bottom four stripes below the tree line will be painted.

Summary of Testimony – Kimberley Glinkin, Noise expert

Ms. Glinkin stated that the noise which will emanate from the emergency generator would be 57 dba at the property line with the Verizon generator, with the additional generator it will be 57.5 dba. The Township ordinance requires 65 dba during the day and 50 dba during the night. If we were to have a power outage the generators are exempt at night. We will comply with all Township and State requirements.

Summary of Testimony – Williams Masters, Professional Planner

Mr. Masters testified with regard to the site characteristics and outlined each of the variances requested. The proposal is to be located in the OSGU zone; it is a conditionally permitted use zone. The applicant is requesting use variance relief from the D-3 variety which is a deviation or departure from the conditional use standard which relates to the rear and side yard setback requirements, as well as the provision from the wireless communication ordinance of a permanent generator with fuel tank.

Mr. Masters opined that the site remains suited notwithstanding the deviations or departures relative to the setback standards. He further testified that they were not expanding on what was previously approved. The proposed equipment and generator are to be located within the existing fence compound area. The bulk variance relief can be granted without any substantial detriment to the public good or to the zone plan. In terms of public benefit, this particular use is essential, the use is not an appliance that Verizon would like to use in order to expand it's coverage it is to provide it's service in case of an emergency. The variance deviation in regard to the emergency generator can be granted with out any diminishment in the particular suitability of the site.

Mr. Masters further testified that the deviations can be granted without any substantial detriment with regard to the setbacks variances; the setback is to the right of way of the Route 24 freeway. The primary focus from a planning perspective with regard to the overall negative impact from this type of use, generally focuses on the visual impact. The antenna co-location visual impact is aesthetically inconsequential. Mr. Masters opined that there is no detrimental impact relative to the setback encroachment nor is there any detrimental impact caused by the emergency generator.

Mr. Masters proceeded to review exhibits A-2 and A-3 which consisted of photo simulations of the proposed antennas.

The meeting was opened to the public; the following person appeared to be heard.

Merle Johnson

73 Whippany Road

Mr. Slate asked the attorney for the applicant if it was possible to add additional plantings between the neighbor's property and the south side of the parking lot. The attorney agreed to additional landscaping.

Mr. Oller read into the record a paragraph from the February 12, 2010 report from Mr. Ronald Graiff, Township Radio Frequency Consultant, the report stated "the decision of the Board is now based on the ability of other carriers to co-locate on the monopole. If the Board were to approve Verizon Wireless to install its antennas at 108 feet and if in the future, another carrier came before the Board and demonstrated that 108 feet was its minimum height necessary, either an extension would have to be placed on this structure, or a new one would have to be constructed. Neither option, perhaps, being desirable. If the Board were to approve 98 feet for Verizon Wireless, the 108 foot location would still be available for another carrier. This decision can not only be based on the evidence submitted, but it may be the desire of the Board to consider Verizon Wireless' position in the community with the number of

customers it has, the level of service it requires for its customers, and the possibility that another carrier may come to the Board in the future. Those issues are beyond a technical analysis and can only best be left to the Board.” The applicant’s attorney stated that they don’t agree with Mr. Graiff’s conclusion, the testimony was that there is a difference between the various heights.

Mr. Soloway stated that this is a good application; this application does exactly what your ordinance requires us to do; which is to go out when there is a gap in coverage and find an existing structure to co-locate. We have demonstrated the need for the additional height which will give us additional coverage.

Mr. Haan stated that he was happy to hear that the applicant was willing to help with a problem which was not created by them.

The following conditions are stipulated by the Board, no diesel storage on site, Verizon is to send a written request to T-Mobile on FAA form 7460 entitled “Determination of no hazard to air navigation and to provide the Board with a copy of the letter and any reply to the letter, correct the zoning map, antennas will correspond with color scheme, submit a landscaping plan to the Township engineer to mitigate the visual impact. The applicant’s attorney agreed to all of the conditions stipulated by the Board.

Mr. Allison moved, seconded by Mr. Williams that approval be granted to the application of Verizon Wireless thereby permitting on Block 9805, Lot 1 the co-location of (6) wireless communications antenna on the existing monopole and the equipment shelter with conditions stipulated and that the Board Attorney be authorized to prepare a formal resolution memorializing the action taken by the Board, same to be presented for consideration at the March 22, 2010 meeting.

Roll Call: (Voting Members)

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| Mr. Woodford | YES |
| Mr. Williams | YES |
| Ms. Kalaher | YES |
| Mr. Allison | YES |
| Ms. Ferrari | YES |
| Mr. Luby | YES |
| Mr. Haan | YES |

Other Matters

A. Draft Copy of the 2009 Annual Report – Mr. Slate reviewed the Board’s annual report prepared by the secretary. One comment that I have relates to the three applications that were filed in 2007 and looking at our by-laws there is specific language that states that if the application is inactive for six months or more that the application should be withdrawn or send the applicant a letter dismissing without prejudice. Mr. Oller stated that the application can be dismissed without prejudice. Mr. Slate gave the Board a brief review of the applications. We can draft the letter and give the Board the names of the applications at the next meeting. A lengthy discussion was carried regarding the annual report.

The Board made further changes to the report. The secretary is to make changes and submit the report to the Board for further review at the next meeting.

B. Board of Adjustment by-laws – The Board had the opportunity to discuss and review the by laws additional changes were made.

On a motion duly made by Mr. Woodford, seconded by Mr. Luby and unanimously carried the Board's by laws were approved.

With no further business for consideration by the Township of Morris Board of Adjustment, on motion duly made, seconded and unanimously carried, the meeting was adjourned at 9:59 P.M.

Respectfully submitted,

Sonia M. Santiago, Secretary
Township of Morris Board of Adjustment