

**TOWNSHIP OF MORRIS  
BOARD OF ADJUSTMENT  
REGULAR MEETING MINUTES  
NOVEMBER 26, 2007**

Call to Order

The regular meeting of the Township of Morris Board of Adjustment was called to order on Monday evening, November 26, 2007, at 7:30 P.M. in the Municipal Building, 50 Woodland Avenue, Township of Morris.

Statement of Adequate Notice

Chairman Vitale 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 November 19, 2007 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 County Daily Record and the Morris News Bee, 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. Lawrence C. Vitale, Chairman

Roll call of Board Members and Professionals

Members Present

Mr. Lawrence C. Vitale  
Mr. Timothy Kronk  
Mr. Rich Haan  
Mr. Thomas Luby  
Mr. James C. Allison  
Ms. Norma Larkin  
Mr. Donnell Williams, Alternate #1  
Mr. Paul Woodford, Alternate #2

Members Absent

Mr. Nelson Morales

Also Present

Mr. Rich Oller, Board Attorney  
Mr. James R. Slate, Township Engineer  
Ms. Tirrell Loftin, Zoning Officer  
Ms. Sonia Santiago, Board Secretary

On motion duly made, seconded, and unanimously carried, the minutes of the October 22, 2007 meeting were approved as circulated and placed on file in the office of the Board of Adjustment.

Resolutions

BA-16-07

Eugene Albanese

Block 9002, Lot 5, 5 Green Knoll Road, RA-35 zone. Section C.

Applicant proposes the construction of a 9'6" x 4' front entrance portico creating a front yard setback of 47 feet where 75 feet is required

Mr. Allison 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 October 22, 2007 meeting.

Roll Call: (Voting Members)

Mr. Allison	YES
Mr. Luby	YES
Ms. Larkin	YES
Mr. Woodford	YES
Mr. Haan	YES
Mr. Vitale	YES

BA-18-07

Eugene & Cynthia Spiegle

Block 307, Lot 1, 29 Bromleigh Way, OS-GU zone. Section C.

Applicant proposes the construction of a 29'8" x 20' rear deck maintaining the pre-existing nonconforming side yard setbacks of 20.3 ft. & 19.2 ft. and creating a rear yard setback of 90 feet where 100 feet is required.

Mr. Haan moved, seconded by Ms. Larkin, 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 October 22, 2007 meeting.

Roll Call: (Voting Members)

Mr. Allison	YES
Mr. Luby	YES
Ms. Larkin	YES
Mr. Woodford	YES
Mr. Haan	YES
Mr. Vitale	YES

**Regular Meeting**

BA-04-07

William Farley Development Corp.

Block 3301, Lot 51, 41 Mendham Avenue, RA-25 zone. Section C&D.

Continuation of the August 27, 2007 public hearing, applicant proposes to relocate and maintain a 10.5 x 22.8 single face billboard on the existing single family residential property creating a front yard setback of 7 feet where a minimum front yard setback of 60 feet is required.

Mr. Robert Campbell, attorney for the applicant entered his appearance and presented the application to the Board.

The following professionals appeared to be heard.

Richard Schommer, Professional Planner

Reginald Jenkins, Attorney for CBS  
Mr. Craig Brinster, CBS Real Estate Manager

The following exhibits were submitted as evidence.

- B-1 April 28, 1955 Zoning Ordinance
- B-2 Notice of Violation dated 12-16-85
- B-3 1974 re-value record
- B-4 Tax Map
- O-1 Billboard photo

Mr. Oller stated that at the September 24, 2007 Board meeting we had asked Ms. Tirrell Loftin the Township Zoning Officer to check the status of Zoning Ordinance in place in 1956 at the time the billboard was constructed and she was also to review the files to see if there was any documentation as to under what authority this billboard was constructed. It is necessary for this Board to determine if the billboard was a pre existing non conforming use or if it was constructed as a permitted use in 1956 and then sometime subsequent to the construction the ordinance changed as to make the sign a non permitted use.

**Summary of Testimony** – Tirrell Loftin, Township Zoning Officer

Ms. Loftin stated that she had found the zoning ordinance dated April 28, 1955. She proceeded to review the ordinance in place at that time. She also stated she had found a notice of violation dated 1985 signed by Thomas O'keefe the zoning official that year stating that the signs were in violation and that they needed to be removed. She also stated that she had reviewed the tax records for 1974 and looking through the record they do not acknowledge the signs and they state it's a vacant lot. A lengthy discussion was carried in regard to the documentation that Ms. Loftin submitted to the Board.

**Summary of Testimony** – Richard Schommer, Professional Planner

Mr. Schommer stated that they did not propose to remove any trees for the relocation of the billboard. The billboard will be relocated 90 feet further to the west. It is not our plan to remove any trees. There is one tree where the sign is to be located that appears to be dead and it's possible to be removed. We haven't developed a landscaping plan, but the applicant is willing to work with the Board to provide whatever is necessary to relocate the sign. If we find that the sign is legitimate then we will proceed with the case in that manner. If the Board agrees that the applicant is entitled to the relief we will provide whatever landscaping the Board feels is appropriate. It is my opinion that this sign has no impact on site distance along the street or neighboring driveway. We feel that where the sign is going to be relocated is an improvement. If we find that the sign is legitimate we will proceed with the sign. A lengthy discussion was carried regarding landscaping and deed restrictions.

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

Jeffrey Wesner	51 Mendham Avenue
Kimberley Wesner	51 Mendham Avenue

**Summary of Testimony** – Reginal Jenkins, Attorney for CBS

Mr. Jenkins stated that the representative that was at the last meeting is no longer with the company and that the company was not aware of the case. CBS is still represented and is willing to cooperate to the extend that something can be worked out between CBS and the applicant. The previous CBS representative has no standing on this matter. This is the first time we have seen the plans that Mr. Wiss presented to the Board. CBS has not consented to this application.

**Summary of Testimony** - Mr. Craig Brinster, CBS Real Estate Manager

Mr. Brinster stated that management of CBS did not know that Mr. Wiss had ordered a genetic copy of a sign that would be typical as you can see it does not show topo and is not specific to this location. He

may have ordered engineering drawings which are typical of a move of a sign of that type to another location. He could have done unanimously as a representative in the field to cooperate with the property owner as a good neighbor. I apologize for not knowing that Mr. Wiss was working independently in the field with Mr. Farley to advance cooperation. We are still here to advance cooperation. When you asked if we knew that Mr. Wiss had authority to act on behalf of CBS, I apologize he did not. I don't think he could act on behalf of the corporation without an attorney. I don't know if Mr. Wiss appeared out of good faith and not knowing he was testifying on behalf of the corporation were I think he would have to be represented by an attorney. The point that CBS outdoor would like to make is that we still would like to work with the Board and the applicant to make this work.

The Board stated to be very uncomfortable with the application and requested to have a transcript of the last meeting and see everything that essentially is on the record by the applicant no longer recognizing any testimony that Mr. Wiss gave. I think we should have the record. Mr. Oller stated that the applicant and CBS outdoor need to have further discussions as to any agreement that there is between the two of you so that we know what the application is before us. Mr. Vitale stated that we cannot proceed with this application until the parties come to an agreement. Mr. Oller informed the counsel for the corporation that he needed to address the legality of the construction of the sign and that he needed to speak with Mr. Farley regarding the sign.

**Recess taken at 8:45 pm  
Meeting reconvened at 9:14 pm.**

After a lengthy discussion regarding the relocation of the billboard, the application is carried to the January 28, 2008 without further notice. Applicant granted the Board an extension of time until February 25, 2008.

**Mr. Timothy Kronk recused himself from the following application and for the night.  
Certified Shorthand Reporter (CSR) was present for the following application.**

BA-15-05

Omnipoint Communications

Block 9805, Lot 1, 77 Whippany Road, OS-GU zone. Section C&D.

Continuation of the September 24, 2007 public hearing, applicant seeks a variance for the front yard setback and a conditional use variance for the construction of a 120' high telecommunication monopole with equipment cabinets on the site of Collinsville Fire House.

Mr. Robert Garofalo, 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.

Mr. Archie Dickson, Radio Frequency Expert  
Mr. Peter J. Tardy, Professional Engineer  
Mr. Christopher Nevill, Professional Planner

The following exhibits were submitted as evidence.

A-2 Letter to Mr. Graiff dated October 29, 2007  
A-3 FAA letter dated 7-26-06  
A-4 Photo Board with eight photo simulations  
A-5 Map of the Township of Morris

**Summary of Testimony** – Archie Dickson, Radio Frequency Expert

Mr. Dickson stated that by flush mounting the antennas they would be mounted outside the structure instead of concealed inside, we would then get a marginally better performance from the antennas and, thus, would allow a structure height reduction of 10 feet. Namely, our antennas would be 110 feet above ground level instead of 120. We would still get the same coverage to fill the gap that we need. Mr. Dickson stated that having the pole at 110 feet will still fill the purpose if they are permitted to flush mount the antennas. A lengthy discussion was carried regarding the type of antennas and height of the pole.

**Summary of Testimony** – Peter Tardy, Professional Engineer

Mr. Tardy stated that to have worked on the plans submitted to the Board. The proposed application is to install a wireless facility. The dimensions of the compound running north and south is approximately 60 feet and east and west the compound dimension is approximately 40 feet. Within this compound they propose to construct a 120 foot stealth pole as well as three equipment cabinets on a concrete slab inside the compound. The proposed stealth pole is located within the triangular compound along the southeastern corner of the compound. The setback from the southern property line is 105 feet. The front yard setback, which is along the route 24 on ramp, is six and half feet. The setback from Whippany road is 241 feet. The perimeter of this compound will be fenced with a chain link fence, as well as we propose to install landscape screening which will consist of 14 Norway spruces along the western side of the compound as well as the southern end. The three equipment cabinets, cables will be routed on a cable tray to the pole. All the proposed cables will be routed up inside the pole, up to an elevation of 118 feet for the upper levels of the antenna, as well as to an elevation of 108 feet to the lower level antennas. All six of Omnipoint's antennas will be installed inside of the proposed monopole. We are not proposing a backup generator. The equipment cabinets have backup battery power which will last three to four hours.

**Summary of Testimony** – Christopher Nevill, Professional Planner

Mr. Nevill stated we are proposing what would be considered a stealth pole, in that the antennas are located within the structure. There are no platforms or no antennas on the outside of the pole. The pole is proposed to be 120 feet. There is no permitted use in the OS-GU zone for the construction of a tower itself. Therefore we are requesting a D variance for the construction of the tower because it is not permitted in the zone. There are also some bulk standards, the towers are required to be in the rear yard of the property and the rear of the Fire Department actually has a front yard along route 24 and that would be a variance request. Mr. Nevill reviewed the positive and negative criteria for the site. There is no detriment to the public good and the tower will not impair the intent and purpose of the zone plan and zoning ordinance. We do meet the FCC requirements for emissions. There is no noise, dust, vibration, smoke or other noxious characteristics associated with the installation. It's not a traffic generator. It's visited approximately once a month. There's little impact on public utilities. We only require electric and telephone service. There is no impact to adjacent properties of noise from the facility. Mr. Nevill reviewed the exhibit submitted with the Board in regard to the visual impact. Mr. Nevill stated that anything over 27 feet above ground would require red and white striping. Therefore, any installation in this area would require the painting as an FAA requirement. A lengthy discussion was carried regarding the visual impact and location of the monopole.

The meeting was opened to the public; no one appeared to be heard.

Mr. Williams moved, seconded by Mr. Luby that approval be granted to the application of Omnipoint Communications, Inc. thereby permitting on Block 9805, Lot 1 the installation of antennas and equipment cabinets 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 December 10, 2007 meeting.

Roll Call: (Voting Members)

Mr. Allison	YES
Mr. Luby	YES
Ms. Larkin	YES
Mr. Woodford	YES
Mr. Haan	YES
Mr. Williams	YES
Mr. Vitale	YES

Other Matters

None to be heard.

Closed Session - Ms. Larkin moved and unanimously carried, the following resolution was adopted authorizing a closed session:

WHEREAS, this meeting is duly and property called regular meeting of the Board of Adjustment of the Township of Morris, and adequate public notice has been given as provided for by the "Open Public Meetings Act," and

WHEREAS, it is now necessary that this Board of Adjustment consider matters involving:

- a. Personnel or other legal matters

All of which fall within the exceptions set forth in the Open Public Meeting Act, and therefore are matters, which this body determines should be discussed at a closed, meeting.

**NOW, THEREFORE BE IT HEREBY RESOLVED**, by the Board of Adjustment of the Township of Morris as follows:

1. That this body shall conduct a closed meeting concerning the above referenced matters, all of which involve exceptions set forth in said "Open Public Meetings Act," and are matters which this body hereby determines are of such a nature that they cannot be discussed at an open meeting, and this Body is at this time unable to determine when the matters under discussion can be disclosed to the public. However, this body will make such a disclosure when circumstances permit.

Regular meeting called back to order at 10:38 pm.

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 10:38 P.M.

Respectfully submitted,

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