

**MINUTES
TOWNSHIP OF WEST ORANGE
ZONING BOARD OF ADJUSTMENT
SPECIAL MEETING
July 12, 2012**

The West Orange Zoning Board of Adjustment held a special meeting on July 12, 2012 at 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 Notice of this meeting was given to the Township Clerk, the West Orange Chronicle, and posted on the Township Bulletin Board on June 19, 2012 in accordance with the "Open Public Meetings Act."

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

PRESENT: Bruce Buechler, Gregory Bullock (8:04 pm), Deborah Gabry, Phil Neuer, William Steinhart, Mark Sussman, Alice Weiss

ABSENT: Bart Quentzel (excused absence)

ALSO PRESENT: Eric Keller, Consulting Engineer
Board Attorney: Alice Beirne, Esq.
Board Secretary, Rose DeSena
Harvey Grossman, Public Advocate

ANNOUNCEMENTS

- Future Meetings: July 19, 2012 (Regular Meeting) – 8:00 PM
August 16, 2012 (Regular Meeting) – 8:00 PM
September 20, 2012 (Regular Meeting) – 8:00 PM
October 18, 2012 (Regular Meeting) – 8:00 PM
- Chairman announced the resignation of Dr. Eric Sacks
- Chairman announced that the Zoning Board Re-Organization Meeting will be at the Regular Meeting on 7/19/12
- Chairman introduced Ms. Leigh Ann Zaolino as the newly appointed Zoning Board Alternate member effective 7/19/12

SWEARING IN

Consulting Engineer for the Township of West Orange, Eric Keller, was sworn under oath.

MINUTES

Adopt Minutes: June 14, 2012 Regular Meeting

Ms. Gabry made a motion to adopt the minutes; Mr. Buechler seconded the motion and all were in favor.

Note for the record that Ms. Weiss was present but did not vote.

Adopt Minutes: June 18, 2012 Special Meeting

Ms. Gabry noted for the record that she submitted her comments to the Board Secretary to be included in these minutes. Mr. Buechler made a motion to adopt as per comments submitted by Ms. Gabry; Mr. Steinhart seconded the motion and all were in favor.

Note for the record that Ms. Weiss was present but did not vote.

APPLICATION

ZB-12-05/Seton Hall Preparatory School (Bifurcated) – Carried from 6/18/12

House Property @ 170 Northfield Avenue

Block: 59.04; Lot: 1.04; Zone: R-5

“D” & “C” variances for acquiring property to house schools administrative offices.

Noted for the record that Ms. Gabry stepped down from the dais and recused herself.

DISCUSSION

Robert Williams, Esq., attorney for the applicant, approached the podium. Mr. Williams detailed the application and what occurred at the last meeting on June 18, 2012. He stated that the addition of a science lab to the school and the improvements to the athletic field were approved at that meeting but the acquisition of the property to house the schools administrative offices, which was part of that application, was not. Mr. Williams noted that the application was bifurcated, at that time, and the applicant was required to re-notice because the original notice did not include the use variance for that lot. Mr. Williams stated that the applicant has re-noticed and detailed what was included in the notice. He also stated that all testimony was completed at the June 18, 2012 meeting.

Chairman Neuer asked if there were any members of the public present at the meeting for the Seton Hall Preparatory application; seeing none the Chairman declared the hearing closed.

Mr. Buechler asked Ms. Beirne if there was a resolution for the first part of this application. Ms. Beirne said no and stated that she will combine both parts of this application in one resolution. Chairman Neuer agreed.

Chairman Neuer detailed the conditions that will be set for this part of the application. He stated that the in-ground swimming pool on the property must be filled in; there will not be any office

space located in the basement; the attic space will be used for storage only; there will only be seven employees working at this location; the applicant has until September 30, 2012 to merge the deeds and file it with the County Registrar; Seton Hall will maintain the entire access driveway which will include plowing during the winter months; the size and width of the access driveway will not be altered; Seton Hall will designate which employees will park at the house and which ones will park on school property; there will be no visitors at the house except for deliveries; there will be no signs posted at the house and the applicant will be required to maintain the residential appearance of the house.

Mr. Bullock asked for clarification regarding the widening of the easement that was set as a condition.

Mr. Buechler made a motion to approve this part of the application with the conditions that were set. He also wanted it noted, for the record, that he did not agree with the testimony of the applicants Planner, Peter Steck, regarding the administrative offices fitting in with the neighborhood. Mr. Sussman seconded the motion to approve.

Vote was as follows:

Buechler:	Yes	Steinhart:	Yes
Bullock:	Yes	Sussman:	Yes
Gabry:	Recused	Weiss:	Yes
Quentzel:	-	Chairman Neuer	Yes

Chairman Neuer noted for the record that Ms. Gabry returned to the dais.

APPLICATION

ZB-12-02M/Auburn Data Systems, LLC

Carried from 6/18/12

Block: 84.01; Lot: 22; Zone: B-2

10 Marcella Avenue

Seeking one "D" variance for more than one principal use and a "C" variance for rear setback to install two (2) microwave dishes on an existing tower.

EXHIBITS

A-5 – James Kyle’s report dated 4/3/12

A-6 - Photo simulations

DISCUSSION

Mr. Michael Lavigne, Esq., attorney for the applicant, approached and began detailing the application and what occurred at the last meeting on 6/18/12. He stated that the applicant had requested, and was approved, to modify a prior application that came before this Board which had been denied and he detailed what the applicant is now proposing.

Mr. Lavigne reiterated the fact that the Board members were very concerned about the structure of the tower and the weight of the antennas that they were proposing to place on the tower. He noted that there was no one present at that hearing to provide testimony regarding its condition but the applicant has since provided a current report detailing a physical inspection performed on the tower.

Mr. Lavigne stated that Andrew Haldane, expert in inspections and structural analysis of towers, Anthony Suppa, expert in civil engineering and Dan Collins, FCC compliance expert testified at the last meeting and stated that the applicant's Planner would be testifying at this meeting.

Mr. Lavigne called his first witness.

James Kyle approached the podium and was sworn under oath. Mr. Kyle detailed his educational background and professional experience stating that he is a licensed Planner in the State of New Jersey. Chairman Neuer accepted Mr. Kyle as an expert in Professional Planning. Chairman Neuer asked Mr. Kyle if he prepared the planners report, dated 4/3/12, that was submitted to this Board; he replied yes. The Chairman said if he asked him to read this report, would he base that as his testimony; Mr. Kyle replied yes. Chairman Neuer asked to have Mr. Kyle's report marked at Exhibit A-5 and entered into evidence.

Mr. Lavigne asked Mr. Kyle to share his analysis. Mr. Kyle stated that the applicant is requesting two variances; one "D" variance for a second principal use and one "C" variance for a rear yard set-back. He explained that 30' is required from the rear property line and the applicant is proposing 26'.

Mr. Kyle detailed the positive criteria for the "D" use variance noting that this site is licensed by the FCC to carry microwave data transmissions for the benefit of the public. He said that they are utilizing an existing structure that currently has microwave dishes on it and will be using it for the same. Mr. Kyle cited the fact that there are a number of towers in this immediate area and this site is suitable for this use.

Mr. Kyle stated that this tower existed on this property for a number of years and that the installations of antennas, on these towers, are consistent with the type of uses in the area.

Mr. Kyle stated that the tower is structurally safe and can hold the weight of the proposed dishes and that a report was submitted to prove this. He also stated that the topography of the location makes this site suitable and that they are proposing to place the equipment inside of an existing building on the property.

Mr. Kyle began to detail the negative criteria, reading from his report. He stated that these dishes will provide fast, efficient communication from Chicago to Newark, New Jersey and help drive a national and regional economy. Mr. Kyle noted that these dishes will provide professionals to engage through virtual networking and he gave medical profession consultations as an example.

Mr. Kyle stated that the unmanned facility will be remotely monitored 24 hours a day, seven days a week and will not generate any noise or traffic.

Mr. Kyle presented photos simulations of towers. Chairman Neuer asked Mr. Kyle if they were prepared by him and Mr. Kyle replied yes. Chairman Neuer asked to have them marked as Exhibit A-6 and entered into evidence.

Mr. Kyle stated that the simulated photos depict what the towers look like before and after the antennas are installed. He noted that the visual impact is created by the towers; not by the dishes.

Mr. Kyle pointed out another tower that is closest to the tower that they are proposing to install these dishes on. He noted that the dishes that the applicant will be installing are mounted closer to the tower unlike the other tower where the dishes protrude. Mr. Kyle said that the antennas that they are proposing to install will not stand out like the existing ones because they are proposing to paint them to match the tower and will blend in.

Chairman Neuer stated that a condition would be to remove all non functioning antennas on the tower. Mr. Kyle stated that he thinks that they were already removed. Mr. Lavigne said that the only antennas that remain on the tower are the ones in use.

Mr. Kyle stated that there would be no substantial impact to the neighborhood and he referred to the Municipal Zoning Ordinance 25-8.7 stating that antennas are permitted as a conditional use in commercial/industrial zones.

Mr. Kyle detailed the positive criteria for the "C" variance for the rear set-back noting that there is not another place on this tower where they can install this antenna except at this location.

Mr. Kyle detailed the negative criteria stating that the tower has been there for a long time and does not have an impact on this location because of this.

Ms. Gabry asked Mr. Kyle if the data transmitted by this antenna is available directly to the public or would they have to subscribe for this service. Mr. Kyle stated that people utilize the network, through a company, with a subscription.

Mr. Sussman asked Mr. Kyle if this antenna would be utilized by private corporations to transmit internal corporate data; Mr. Kyle replied yes.

Mr. Lavigne asked Mr. Kyle if commercial antennas include microwave antennas used for profit; Mr. Kyle replied yes.

Mr. Buechler asked Mr. Kyle if government agencies will be utilizing their services; Mr. Kyle replied yes. Mr. Buechler asked how high the adjacent water tower is to this tower and Mr. Kyle said approximately 155'; he said he was not sure. Mr. Kyle stated that the antenna that they are proposing to install is at a lower height then the water tower.

The Chairman asked if any members of the public had any questions for Mr. Kyle based on his testimony.

Dr. Henry Zackin approached the podium and stated that he lived at 372 DiGaetano Terrace. Dr. Zackin asked Mr. Kyle if these dishes will provide transmission to any of the three local hospitals in this area; Mr. Kyle replied no. Dr. Zackin asked Mr. Kyle why he stated in his testimony, when justifying the positive criteria, that these dishes would be a benefit to the medical profession if none of the local hospitals in the immediate area will be utilizing them. Mr. Kyle stated that the company did approach a hospital in Chicago to utilize this dish to transmit data to it. Dr. Zackin asked Mr. Kyle to justify his testimony regarding the dishes having a minimal impact on the area. Mr. Kyle stated that, based on the photo simulations that he presented, the tower far overshadows the actual dish on the tower.

Carole Gottlieb approached the podium and stated that she lived at 321 Araneo Drive. She asked Mr. Kyle if the towers will be lit up. Mr. Kyle stated that the FCC requires lights on the towers, not the antennas, and they are not proposing any new lighting on them.

Judi Elterman approached the podium and stated that she lived at 398 DiGaetano Terrace. Ms. Elterman asked Mr. Kyle if there was a health study done in regards to the additions. Chairman Neuer told Ms. Elterman that this witness did not testify to this and that there was prior testimony addressing that question.

There were no further questions for this witness.

There were no further witnesses for the applicant.

Chairman Neuer recessed the meeting at 9:12 pm.

The meeting resumed at 9:19 pm.

Chairman Neuer asked Mr. Lavigne if he had any final remarks and Mr. Lavigne stated that he would like to sum up after public comment.

Chairman Neuer stated that he is opening the floor for public comment and there will be a 5 minute limit for each comment. Mr. Buechler reminded the public that this application is only for this existing tower, no other towers, and they are proposing to install just two antennas on it.

Dr. Henry Zackin approached the podium and was sworn under oath. Dr. Zackin stated that Mr. Kyle's presentation was good but that is because he is getting paid by the company to testify. He said that he did not see any benefit to the residents in West Orange or Eagle Ridge because the dishes are only to transmit financial data from New York to Chicago. Dr. Zackin questioned Mr. Kyle's comment regarding the medical profession benefiting from these dishes and said that in all reality, the hospital that they approached was in Chicago and not local. He stated that the street he lives on is where the tower is mostly visible and the fact that the towers existed prior to the Eagle Ridge development does not mean that they like them. Dr. Zackin stated that by adding dishes to them only allows more clutter. He said that there is no medical benefit to microwave

transmissions and medical problems from them may not show up immediately and he used x-rays as an example. Dr. Zackin also stated that pacemakers can be affected by microwave transmissions.

Chairman Neuer asked Dr. Zackin if the tower was there when he bought his property; Dr. Zackin replied yes.

Mr. Buechler asked Dr. Zackin if he remembered testimony regarding the removal of 24 antennas from this tower. Dr. Zackin replied yes and stated that he wishes they would remove all of them.

Mr. Buechler asked Dr. Zackin if he ever testified for people who paid him to testify. Dr. Zackin said yes, he has testified for patients but the attorneys paid him. Mr. Buechler asked Dr. Zackin if he found anything factually inaccurate in Mr. Kyle's testimony just because he got paid to testify. Dr. Zackin said yes; his visual impact statement was inaccurate and his testimony regarding medical facilities benefiting from these dishes was inaccurate.

Chairman Neuer stated that this Board knows that every time an expert is put on the stand to testify that they are getting paid for their testimony.

Carole Gottlieb approached the podium and was sworn under oath. Ms. Gottlieb stated that she cannot see any benefit from the antennas to Eagle Ridge. She stated that the towers affect 200 properties in the Eagle Ridge Development and their real estate values are plummeting. Ms. Gottlieb stated that she thinks that there has to be a better place in town for these towers.

Ms. Weiss stated that there are almost always objectors at these meetings and this Board does not always just say yes. She said that even though they may not like it, this application was modified and an improvement from the first application. Ms. Weiss stated that the towers were there before Eagle Ridge was developed and 24 antennas were just removed from this tower. She also said that the applicant is proposing to install smaller dishes than the original ones they proposed.

Mr. Bullock stated that there was previous testimony stating the towers were built in 1976 and Eagle Ridge was developed in the 1980's. He said the fact is that when people moved into this development, the towers were already there and they had more antennas on them than they do now. Mr. Bullock stated that the blinking lights are there because of FCC regulations.

Mr. Buechler stated that the applicant will be installing the equipment inside of an existing building on site and no additional lights will be installed on the tower.

Ms. Gottlieb asked if anyone is checking the emission levels of the microwaves. Chairman Neuer stated that there was testimony that the levels fall less than one percent.

Mr. Susman stated that the microwave transmission is concentrated and he used a laser beam as an example. He said that the transmission does not radiate outward.

Mr. Lavigne asked Ms. Gottlieb if she was a licensed real estate appraiser. Ms. Gottlieb said no; she is a real estate broker/agent.

Mary Ellen Morrow approached the podium and was sworn under oath. She stated that she lived at 178 Dezenzo Lane and said that her concern is the visual impact and the maintenance of the tower. Ms. Morrow said that the towers are eyesores and wanted to know if the Town had established any guidelines regulating how they will be maintained. Chairman Neuer stated that this Board has limited power and some things are out of their jurisdiction. He said that they can go to the Town Council and see what they can do. Chairman Neuer stated that this Board has conditions that they have discussed with the applicant and that included maintenance and regular inspections regarding safety of the structure.

Councilwoman Susan McCartney approached the podium and was sworn under oath. She asked for clarification regarding the statement made that 25 antennas were removed from this tower and wanted to know who removed them. Chairman Neuer stated that there are a number of entities in play; one company owns the tower and other entities own the antennas. He said that the owner of the tower is responsible for the maintenance.

Mr. Buechler stated that once the companies unplug the dishes that they installed on the towers, they stop paying and the landlord removes the dish. He said that if a new applicant comes before this Board, they will require that the non functioning dishes be removed. Mr. Buechler also stated that Director Borg was on a mission at one time to have all of the non functioning dishes removed.

Judi Elterman approached the podium and was sworn under oath. Ms. Elterman noted on the photo simulation that the dish that they are proposing to install faces her condominium. She said that she is concerned about the microwave transmission pointing towards her house. Ms. Elterman also wanted clarification regarding the rear yard set-back. Chairman Neuer explained that the Townships' Zoning Ordinance requires a structure to be a certain number of feet from a property line. He said that the tower is currently 30' from the property line, which meets the requirements, but once the antenna is installed it will protrude 4' and will only be 26' from the property line. Ms. Elterman asked the Chairman if that was legal. Chairman Neuer replied no; he said that is why the applicant is here requesting a variance.

There were no more comments from the members of the public.

Mr. Lavigne approached and summed up. He stated that this is an existing tower and is well suited for this type of antenna. Mr. Lavigne said that the antennas will be installed at 90' which is half of the height of the tower and no additional lighting will be installed on the tower. He said that this tower is well suited for this type of dish and that commercial antennas are conditionally permitted in this B2 zone. Mr. Lavigne stated that this tower has been there for many years and that there are five other towers on this ridge with more antennas on them than the tower on this site. He also noted that a similar application, proposing to install two dishes on an existing tower at 12 Marcella Avenue, came before this Board and was unanimously approved. Mr. Lavigne stated that there have been questions and concerns expressed, regarding health and safety issues, and their experts have tried to answer and address them as best as they

could. He stated that they are not changing the height of the tower, the dishes do not protrude more than the 20' that are allowed and that the structural concerns have been satisfied by having someone physically climb the tower to do the inspection. Mr. Lavigne stated that for these reasons the Board cannot deny this application.

Mr. Bullock commented on Mr. Lavigne's statement made regarding the Board not being able to deny this application. He said that the fact remains that there are citizens that are concerned about the towers and health issues associated with these dishes and the Board takes all of this into consideration. Mr. Bullock said that he will approve this application but told Mr. Lavigne not to be so assertive in saying that this Board has to approve.

Ms. Weiss said that she reiterates what she said earlier to Ms. Gottlieb and she will approve this application based on the applicant downsizing and physically inspecting the tower.

Mr. Buechler made a recommendation that the Board approve this application with several conditions: The tower must be inspected every five years; the tower is upgraded to the G standard; the two antennas must be painted to match the color of the tower; any/all repairs are to be made, that were noted in Mr. Haldane's inspection report, within 90 days of 7/12/12.

Mr. Buechler also said that the resolution must reflect what the definition of a commercial antenna is, according to the Township's ordinance, and that the erection of a commercial antenna within this zone is a conditional use according to Chapter 25-8.7.

Mr. Buechler noted the new legislation and said that Congress has taken away discretion in weighing the positive and negative criteria. He also said that there are no known health concerns that Mr. Collins submitted in his testimony. Mr. Buechler referred to the unsightly reference and said that there are a number of towers on Marcella Avenue and no cell phone towers are nice looking.

Ms. Gabry said that she would like one more condition added. She said that upon the microwave dishes not being used any longer that they must be removed within 90 days.

Mr. Lavigne asked for clarification regarding the repairs that are to be made to the tower. Mr. Buechler stated that the condition is that the owner has 90 days to make the repairs to the tower. He said that the tower owner is bound by Mr. Haldane's report.

Chairman Neuer stated that he is not crazy about having antennas on the towers but the Government says collocation on existing towers. He complimented Mr. Lavigne on his presentation. The Chairman said that the applicant performed a tower inspection, the emissions of the FCC limitations are low and he is convinced that this application does not have a negative impact on the community. Chairman Neuer also complimented Mr. Kyle on his Planner's report saying that this was one of the best planning reports he has seen. He said Mr. Kyle did not get up and state statutory; he gave examples of negative and positive criteria and drew his conclusions from that. Chairman Neuer stated that it was a well thought out presentation.

Chairman Neuer said that he accepts the Government's statutory requirements and that he recommends that the Board approve this application. He said that the applicant has reduced the

number of antennas from 5 to 2, there was a reduction of weight placed on the tower and that the inspection provides protection to the citizens of West Orange. Chairman Neuer stated that this is a beneficial use; the benefits outweigh the detriments and he agrees with Mr. Buechler's conditions.

Chairman Neuer said that a motion was made by Mr. Buechler to approve with conditions and drafts to be incorporated into the resolution.

Mr. Sussman seconded the motion to approve.

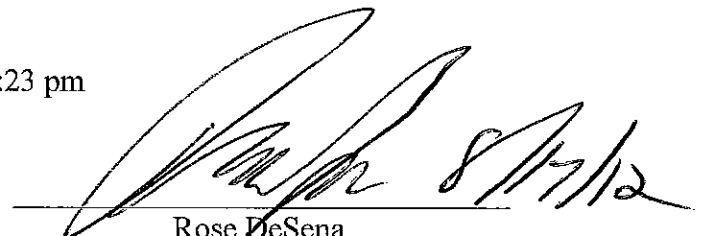
Vote was as follows:

Buechler:	Yes	Steinhart:	Yes
Bullock:	Yes	Sussman:	Yes
Gabry:	Yes	Weiss:	Yes
Quentzel:	-	Chairman Neuer	Yes

It was noted for the record that no permits will be issued to the applicant without adopted resolutions.

ADJOURNMENT

The meeting was adjourned by Chairman Neuer 10:23 pm
July 12, 2012



Rose DeSena
Zoning Board Secretary