

**MINUTES
Of the Township of West Milford
ZONING BOARD OF ADJUSTMENT
March 26, 2013
Regular Meeting**

Robert Brady, Board Chairman, opened the Regular Meeting of the Zoning Board of Adjustment at 7:33 p.m. The Board Secretary read the Legal Notice.

Pledge

The Chairman asked the first alternate to sit at the dais for James Olivo who was not in attendance, he explained to the public about the Board of Adjustment, explained the Open Public Meetings Act of the State of New Jersey, appeals go to the Superior Court of the State of New Jersey. He introduced the Board Attorney. The Meeting follows a printed agenda which is on file in the Clerks's office and posted on the bulletin board. If needed a break will be taken at approximately 9:00. There are no new applications after 10:30, no new testimony after 11:00. The applicant explains the application first then anyone speaking for or against the application is given the opportunity to do so on a case by case basis. Any appeals go to the Superior Court of the State of NJ.

Roll Call

Present: Russell Curving, Steven Castronova, James Olivo, Frank Curcio, Arthur McQuaid, Michael Siesta, Michael Gerst, Robert Brady

Also Present: Stephen Glatt, Board Attorney, Michael Cristaldi, Board Engineer, Denyse Todd, Board Secretary

Absent: Clint Space, William H. Drew, Board Planner

MEMORIALIZATIONS

**NEW YORK SMSA /VERIZON WIRELESS
PRELIMINARY & FINAL SITE PLAN
WIRELESS TELECOM; USE VARIANCE
INTERPRETATION ZB12-12-12**

Block 4701; Lot 61

750 Westbrook Road; R-4 Zone

Use variance, bulk variance, preliminary and final site plan approval requested for the development of a wireless telecommunications facility in an R-4 zone. Additionally an Interpretation application was sought for zoning requirements with regard to permitted principle uses. At the Board's request the applicant was exploring a different location for the cell tower and requested a carry until March 26, 2013. The plans were received by the secretary within the mandatory time frame.

Alan B. Zublatt, Esquire appeared once again on behalf of the applicant. Mr. Olivo who was not at the previous meeting was seated at the dais. Mr. Glatt indicated that Mr. Olivo listened to the recording of the meeting and the secretary has the certification that it was done.

Mr. Zublatt indicated that the Board wanted the tower moved further west and Mr. Pierson was being recalled as a witness to discuss the KOA site that was questioned at the previous meeting. Mr. Pierson is still under oath as he was previously sworn in. A-7 was marked into evidence it is an aerial photo of the site vicinity. Mr. Pierson was asked to discuss the KOA Township site, This is south on Westbrook there appears to be two north-south ridges on that property and the valley up the middle which is how you access it. It could not be determined where roads were as they were blocked off but based on the access coming up the it seemed there would be blockage. The lower left hand corner south of Kitchell Lake is being referenced. If the upper eastern ridge is accessible, it could provide to parts of Westbrook Road and Kitchell Lake but as soon as the road comes by the subject property and goes down hill, then makes a turn and continues down into Ringwood, most of the section east of the subject property will not have coverage. From a radio perspective he does not see that as an alternative. You would need multiple sites to obtain the required coverage.

Mr. Brady asked how far would the coverage be with the proposed site coverage? It would be close to the driveway, in the right location A-8 was passed out to the Board, google earth aerial shot. The red circle (unfilled) is the western ridge of the KOA property and the red dot (solid) the north tip of the eastern ridge. Based upon the topography the KOA property is not the best choice for what is being proposed. A-7 is near the driveway. The proposed site will cover Kitchell Lake from Westbrook, lower westbrook past proposed site, airport, cut down through the gap toward quarry, at least vehicle coverage. From the quarry then back to Ringwood and then will connect with the flag pole (tower) in Wanaque. Mr. Glatt indicated with the proposed site could it be said that it will be close to twice the coverage than with the other sites and Mr. Pierson indicated yes. Mr. Brady asked if there were any questions of the Board Members.

Mr. Chris Cirrotti was called back to testify, still under oath. A-9 was marked into evidence it is a site plan with a revision date of March 7, 2013. Sheet Z-4 from the revised set entitled Compound Site Plan and Grading Plan, he is explaining that they went back to review the layout of the compound and location of the compound. In attempt to move it further west, they looked at shifting the interior configuration to increase the distance from the tower and the residential structure. The plan reflects the distance from the monopine to the 2 story home it is 106 feet now. The distance was previously 84 feet so it was moved an additional 22 feet from the home. The equipment shelter is now located in the lower left corner of the compound and it is now 88 feet it was 91 feet which is 3 feet closer and this occurred because the shelter was rotated 90 degrees in order to accommodate the tower located. He explained where the compound items were and are changing to which are reflected on the revised plan. The generator was moved to be in closer proximity to the shelter. The propane tank is now locate at the lower center of the compound it will be more easily accessible for refueling purposes and also access for collocators. The compound fence is along the easterly side of the compound that was at 36 feet now at 41 feet. The compound was moved an additional 5 feet from the home. The telco power is located on the far right side previously 54 feet from the home now 44 feet. That is a summary of the modifications of the plan.

The Health Department outlined additional concerns primarily it was the telephone and electrical conduit line, which is run from the transformer and from Westbrook Road, it will be in some proximity to the septic field and the trench and his concern was compromising the septic field possibly leading to septic discharge into the trench. He has outlined a number of conditions that they will address prior to construction to satisfy the concern. One being that they will be a minimum of 15 feet from the trench and disposal field and if they are between 15 and 50 feet the trench will need to be backfilled with impermeable material so they will comply with the Health Department's comments. Mr. Zublatt added that they will comply with the health officer in any approved plans and the engineer will be meeting with Mr. Fitzpatrick to implement all his recommendations and it will likely be a meeting in the field prior to construction. Mr. Cirrotti spoke with him after the letter was received.

Mr. Drew's comments of March 24, 2013, which he asked about repositioning which he already did and also speak about the potential crumple zones and how they relate to the house. The tower is now 106 feet from the house, the total tower height is 120 feet and although formal design is not completed, it will be done to apply for building permits. What can be done is the tower can be designed in a way that the maximum stress point, the tower will be designed in compliance with all applicable codes, TIA, EIA, 222G-current standard for antenna towers and antennas, ice snow wind. The tower will be designed in compliance with that and in such a way that the maximum stress point would be at the mid point of the tower which will allow it to break at the midpoint if there was a collapse, which is highly unlikely, but will break at the midpoint and collapse at a distance of about half the tower height. That will be done with the design. They have to be in compliance with uniform construction codes and other standards. Mr. Cirrotti added with regard to Mr. Drew's letter the necessity to relocate the other pieces of equipment which he has done.

Mr. Cristaldi's letter of March 26, 2013 was discussed next. He wanted a summary of the distances, applicant's engineer indicated that he noted were right off the plan. He felt it covered everything. Mr. McQuaid asked about the distance for the fence from the house Mr. Cirrotti indicated it was a distance of 5 feet previously the closest portion of the compound fence was 36 feet and now it is at 41 feet. The reconfigured the corner of the compound, as you move west the slope gets difficult, there are a number of trees to be impacted. They have to avoid the steep slope areas. They moved the tower to the corner but could not move fenced area more than 5 feet. There are highlands permitting considerations extending the driveway any further than necessary. The compound was abutting the driveway originally and now its shifted so driveway will need to be extended. The tower distance was 84 feet and now it is 106 feet. Mr. Glatt asked if there would be any problems with collocators

with the shifting of the compound. Mr. Cirrotti explained that was why other components were shifted to allow adequate room. In the previous plans there were open areas in the north and south side of the compound they are now able to accommodate the initial installed equipment on the south side and allow room for refueling. They will be able to accommodate collocators on the north side with plenty of room. They will still be providing the same coverage as before. Mr. Brady asked for additional questions of the Board members. They reiterated prior Highlands testimony. All components need to be flush to the ground. There is a Highlands application pending and they will need to submit the revised plans. Mr. Christaldi asked about the electric connection, Mr. Cirrotti indicated it would be to the transformer which is down the driveway. The telco lines will go to Westbrook Road. Mr. Christaldi asked if the generator was exercised and the answer was yes it is a standard protocol, frequency either weekly or biweekly. Mr. Christaldi asked questions about the noise of the generator they do not have the decibel information, however Mr. Zublatt indicated it will be the State or West Milford standard whichever is more strict. It is a propane generator, exercised during day time hours, usage will be for emergency purposes. The generator is a little bit closer to the house, there is no real difference in the few feet closer. The required set back for the propane tank is 10 feet, they are beyond that. The generator will make some sound but it should be within the standards, Mr. Cirrotti indicated he did not see a need for screening of the generator. It can be fully housed in a soundproof enclosure it is under the 10,000 KW so it is not usually needed for this size. The Generator will only be run on an emergency basis for a power failure or for testing which will only be about a 15 minute exercise. There was a question about how long the generator will work for if the electricity was out for some time. Mr. Cirrotti indicated they try to have back up for a 12 hour period, but does not have the specifics of that. The last time we lost electricity it was a 12 period in some instances. Mr. Cirrotti added that a battery is 12 hours but with a fuel supply it is probably more like 24 hours, they can provide more detail at another time. The advantage with the generator, it can be refueled. This system is remotely run and Verizon will be able to monitor the facility and reschedule the refueling if necessary. The propane is 500 gallon water capacity which is 80% or 400 gallons. One of the applicant's professionals added that this system will run for 2 days and the standard exercise time is Tuesday at 11 am. Mr. Brady asked if there were any additional questions, there were none.

Tsvia Adar Senior Planner with Dewberry, 600 Parsippany Road, Parsippany, she is a licensed profession planner in New Jersey, AICP certificate, degree in Architecture and Urban Planning 25 years of profession experience, testified before many Boards in New Jersey.

She reviewed the Engineering plans, the Township reports, the ordinances and the Master Plans, she conducted a site visit and took photographs of the site and surrounding areas. Based on that she prepared exhibits submitted to the Board one of them being A-7. She has 5 additional photo simulations from various locations around the site.

The proposed site is in the R-4 Zone it is Very Low Density Residential; facilities are permitted in this zone. The approvals and variances they are requesting are site plan approval, d-1 variance not for the use but for the additional principal structure on the site. They need a clarification possibly of the ordinance, if we allow the facility in a residential zone, it is reasonable to assume when the ordinance was created they did not intend for the facilities to be only on vacant lots, that is why it could be a 2nd principal structure on a residential property. However, the interpretation from Mr. Drew was that it was not the intent. So if the Board agrees with that they will go with the more restrictive approach and go for the proof of the d-1 or an additional principal structure on the site. There are additional residential homes on the property that were previously approved. They will need a d-6 variance for height. Based on the ordinance the height of the tower based on a formula that relied on the average tree height within 250 feet around the facility that was calculated through a tree survey which was 44.37 feet. The ordinance allowed 10 feet above the average height which means 54.37 would be allowed the proposed height is 120 feet so it is more than 10% so it needed a d variance and not a bulk variance. There was an additional section mentioned in the planner report which is section 500-135a 1a3 which is the separation distance between the facility and a building with a residential component. Mr. Zublatt pointed out at the previous meeting that this does not apply to the residential zone it applies to senior housing and that is where the section was taken from. Although they reconfigured the site and moved it to meet the standard, it is not a required or requested variance so it is not a variance but they are meeting the concern that the Board had. Mr. Glatt indicated that he and Mr. Drew disagreed with that interpretation but it is a moot point because it was moved. She wanted to clarify it again and they are in compliance.

The applicant's planner wanted to go over the criteria for a d-1 variance which is normally for a use variance the Medici case required to prove and to be considered for the approval it must contain

positive and negative criteria. Positive has special reason standard and suitability and negative has to show the grant of the variance will not result in substantial detriment to the public good or substantially impair the zone plan or ordinance. Subsequent case law relating to wireless sites specifically established different or more relaxed criteria for wireless sites specifically the landmark case Smart SMR vs. Fairlawn while not defining wireless sites as inherently beneficial the court recognized inherent benefit of the sites and treated it as such there was another case cited and the case was for inherently beneficial uses. Lower courts already recognized wireless sites as inherently beneficial uses. The Court agreed that the special reasons for wireless sites are satisfied almost automatically once the carrier has an FCC License because they recognize a service is provided which is mandatory as it serves the public it is for the public benefit, the public good with emergency services etc. However, the Court wants to show the second part of the positive criteria to show the particular suitability of the site and you show that by showing it is appropriately zoned, it is within the carrier search area, it covers the gap and the applicant's demonstrate that they made an effort to find alternative sites that are less intrusive.

The negative criteria has four steps, to identify the public interest at stake, to identify the detrimental effect that will ensue from granting the variance, the Board may impose some reasonable conditions with regard to the effects and the Board needs to weigh the positive and negative criteria to come to a conclusion that by granting the variance it will not cause a substantial detriment to the public good. All variances need to show that granting of all variances will not result in substantial detriment to the public good or impair the zone plan or ordinance. Also enhanced proof normally required with d variance to reconcile the grant of the variance with the master plan eliminating that particular use is not needed for wireless facility.

D-1 and d-6 variances are going to be combined to a point. The positive criteria special reason is satisfied by the factor that it is an FCC carrier that will provide services that will benefit the public and the community. The site is particularly suitable from R.F. standpoint and with the height of the tower and location of the site it will be able to cover the existing gap in service. The facility is in a residential zone where the use is permitted. The additional structures were approved with variances. The site is near major roadways where there is traffic. This is a 139 acre site which is wooded and under forest management. It has open roads which are owned by the State and the Township, that provides a large densely wooded area which provides screening of the tower and visibility is a concern. She drove around with a balloon and it was difficult to see from practically everywhere. The design of the site as a collocation and allow other carriers at the site to avoid additional towers. The alternative sites were evaluated and this was the only site that met the R.F. requirement to close the gap and also to have a willing owner already to have a site there. Out of the 9 sites listed the proposed site was the only one to meet all of the criteria. The negative criteria is the detrimental effect that will ensue in this case is the uniqueness of the site and its nature make it particularly suitable because it results in minimal effect, visually and otherwise. There is a huge set back from all of the property lines, it is not visible from most of the properties and there will probably be no effect at all. Sometimes you may need buffering from noise but the equipment area is almost completely screened. There is no impact on public health, safety or welfare and we heard the standards from the R.F. for the radio frequency exposure and the site is way below the standard. This facility is unmanned; it does not require water, sewer or anything else that will burden public service, it is limited in its needs. There will be no objectionable glare, heat, odor, vibration noise or traffic. The way the site is situated on the disturbed area and the portion that will be extended is attached to the portion that is already disturbed so the site will be eligible for exemption in the Highlands requirements and the application is already in place. It will also meet the requirements of the NJDEP with regard to the endangered species, it will have no effect on any slope area, the way it is situated to avoid any sensitive area.

A google map is shown marked in yellow is the site, in pink or purple are the locations where there was visibility and photo simulations were prepared. Everything in blue were photos she took toward the site but it was not visible. She drove all around with the balloon to try to see it. It could be seen right in front of it and the second one was a curve on the driveway of the proposed property then a small section on Westbrook Road between the trees but once you pass it you do not see it. A Board Member asked if it will change once 16 trees are removed. The planner feels with the density of the trees and the amount of the trees it still should not be seen. Some of the trees being removed are fairly small. She is showing the photo simulation. Also the Roaring Brook Way cul de sac could see the tip of the tower. She also did a simulation with just the pole. The photo is showing the balloon right in front of the site. The technician put a tower on the plan to show what it would look like in the location of the red balloon. The only place you can see the whole thing is right in front of the site. There are 5 photo simulations A-10 is the tower, A-11 is the second simulation on the driveway leading to the site. The balloon is barely visible and with simulation bland. If it is just the monopole,

it will be barely visible. Photo simulation A-12 is what you can see between the houses. A-13 PS3 with a stealth monopole not a monopine it is less obvious as a monopole.

Mr. Zublatt indicated that if a monopole is chosen it can be painted to camouflage he saw one that is sky blue at the top green in the middle and brown when it gets closer to the trees. They are non glare galvanized steel. The portion that is visible normally blends with the sky.

The last photo simulation from Roaring Brook Way shows the balloon and a simulation of the pole, it will be screened. Most of the leaves were out at this time. A Board Member asked how far on Westbrook she went everywhere she could in all directions with another engineer trying to see the balloon, there is minimal visual impact.

The negative criteria with regard to any conditions the Board wants to impose to mitigate any of the detriment. The visual impact is up to the Board so that can be a condition. They changed the location already which would have been a concern or a condition. She indicated that she could not think of any other detriment or conditions. The conditions of the NJDEP will be complied with. The Board needs to balance the positive and the negative. Ms. Adar indicated that what we are gaining by putting the facility on a site that is particularly suited for it and with minimal impact and the gain and the benefit to the community and the public far outweighs any possible negative or detriment. The site has no other visual impact. Normally the minimum lot size for the area is 25 acres for wireless if it was divided into separate lots, there would be several uses. By putting everything in a general area the rest of the property is completely undisturbed, which is what the Board looked at with previous use variance adding the additional residence it is also in the ordinance, it is concentrated in one place and it will close the gap in service. The overall density would not be increased.

The height was necessary with antennas to cover the gap, and because of the size of the property and the uniqueness the height will not have impact visually on surrounding properties or the property itself. There is a need to show the variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance. In this case it is clear that granting the variance would not be inconsistent with the intent of the ordinance. The d-1 additional structure, will maintain the same density, it will not be contradicting to the intent of the ordinance too many structures. The formula for the ordinance for tree height is to avoid visual impact. She indicated that they demonstrated with the visual study that the facility will not create a visual problem. It is consistent with what the ordinance wanted to achieve. Granting the variance for the height will not be detrimental to the ordinance or the intent of the master plan to maintain the rural character of the community. It will maintain the same density; so it will not be contradicting having too many structures on one lot.

The planner reviewed the Master Plans Re-examination plans to protect the community and to allow the provisions of Municipal and all goals and objectives particularly the goal stated in the 2003 and 2010 Master Plan was to provide Municipal and Social Services to meet the existing and future population and achieve efficiency in the administration of the services and providing the facility meets that goal. The proof shows the facility meets the statutory criteria for the d-1 and d-6, it satisfied the positive and negative criteria and balanced the benefit of the proposed facility to the community and the general public by far outweigh any detriment and the requested relief can be granted without substantial detriment to the public good or the intent and purpose of the zone plan and zoning ordinance. In her opinion as a planner it is an excellent site for the facility. Mr. Brady asked for any questions. Mr. Siesta asked if there would be consideration for the Township to put up antennas up for their emergency services. It would be automatically available to the Township. Mr. Siesta also asked about the height with regard to collocations and will they be able to cover the gap even though they will be at a lower height. The Planner indicated they would and Mr. Zublatt added that they anticipate that with the design of the site and that it is designed for collocation since that is the mandate for what they have to do, each carrier has different needs, inspections, different things. They anticipate 3 collocators plus them. When the other carriers come, they will need to come to the Board just because Verizon will supply collocation does not give them the right, they will need to make the proofs and show there is a gap in their coverage and then the Board can ask the questions. Mr. Siesta indicated that it would be preferred to minimize the towers going up if collocations are going on then he assumes the gaps would be pretty much the same for all carriers with the same constraints. The Planner indicated it might be slightly different, that is why it is so critical to have the height and that it will be above the tree line. It will be sensitive to any obstructions so if the height is too close to the trees the number of collocators that can go underneath will be limited. This way a portion of the tower will be above the tree line. The separation distance is about 10 feet. Mr.

Glatt indicated that it depends upon each collocater, where they have other facilities, where their towers are what frequencies are being run, Mr. Pierson agreed. The designs for different carriers will decide who can collocate it would be difficult to predict who could collocate. Board Member asked the Planner about her indication about it being common in residential, she indicated that she meant it was permitted in the residential zone, there is a residence on the site there is nothing in the ordinance that requires the tower to be on a vacant lot. Mr. Glatt indicated that historically, before the telecommunications ordinance was in place, the telecommunication companies would go around and find what was a good site and go to a property owner would negotiate and then an application would come in, some of the property was vacant some might have been a residence. Then the Municipalities all over realized they were missing out on some of the financial benefits and ordinances were passed and then there were provisions that you did not need use variances on certain properties specifically some owned by the Township, if they were a certain height, it is a mixture. It would not be unusual to see two uses when you are talking about a monopole or some kind of telecommunication facility. The planner also indicated that the property was suitable, there were no commercial areas along this road that could be used.

There was a break at 9:05 and we resumed the meeting at 9:22.

Mr. Glatt indicated that at the start of the meeting there was discussion between the applicant's planner, Ms. Adar, Mr. Zublatt and Mr. Glatt regarding the 100 feet. The applicant moved the tower to be 106 feet away. Mr. Glatt and Board Engineer Mike Cristaldi were looking at the Board Planner's report, William Drew and it appeared in the report that the applicant needs a setback of a minimum of 100 feet from a structure measured from the perimeter of the fence, and if you read it that way the fence needs to be 100 feet away not the structure not the monopole.

Mr. Glatt asked Ms. Adar a few questions as follows: Mr. Drew indicated that there was 100 foot set back requirement from the fence to the structure, correct? With a residential component, she took issue with that because it was her contention that pursuant to our zoning ordinance and in particular Article No. 12, Senior Congregate Care Zone, Under Section 500-135 wireless telecommunications facilities are subject to the following a minimum setback occupied or intended for occupancy as a residential use (setbacks are to be taken from the outer limits of the fencing around the compound) 100 feet. Mr. Glatt indicated that Ms. Adar took exception to that because it applied to Senior Citizen Housing and not to a residential property or home. Ms. Adar said that they checked the residential section and it is not there. Mr. Glatt indicated that he and the Board Engineer reviewed the section and compared it to the R-4 Zone and they are almost exactly the same except in the R-4 it leaves out the 100 feet. The assumption is that it was not put in there because it was not required. However instead of getting into an issue of who is correct, and perhaps leaving the matter a potential appeal on that one issue, can she give the Board an argument as to why you would be entitled to a bulk variance particular to this piece of property because you would not be able to make the 100 feet.

Hypothetically, she testified and reviewed so many ordinances of various Townships and normally the concern is more of the safety issue between the tower and any other structures whether it is residential or not. In her opinion although the ordinance speaks about the fence, it is really the main concern being the tower. The fact that they are able to move the tower and meet the standard for the tower itself, mitigates the main concern of safety by not conforming with the fence, it does not really have any impact on residential property or any other structure.

Mr. Zublatt wanted to ask her, assuming hypothetically for the moment the R-4 Zone has the same provision as the Senior Citizen Zone (it does not) assuming they are coming in for relief, once you say you have attempted in every way to comply with that other section in terms of locations and collocations, it would be a hardship if they had to comply with it. Ms. Adar added the Board is aware of the Highlands sensitivity from an environmental standpoint so they have to meet the requirements of being attached to the area that is already disturbed and with impervious coverage. They do not want to encroach into areas with endangered species, there are already issues they need to cover with NJDEP and meet the requirements. When you way the damages that can be done or the detriment by pushing the site further with the fence then leaving the fence where it is and moving the tower you have clearly a better solution. The intent is the safety issue with the tower and leaves the fence slightly further, it really has no negative impact by moving the site they made all the effort they could. If they go with a different alternative they will have more detriment then benefit. Mr. Zublatt asked her testimony under the hypothetical what was shown today that the benefits outweigh the detriments. Ms. Adar said no question. Also, it is consistent with the intent of the zoning plan and ordinance. There is no substantial detriment to the public good, under this hypothetical she indicated in her opinion there is not to the contrary it is beneficial.

Mr. Glatt indicated this was a better way to go and at the end of the year when the Board makes the recommendations to the Planning Board that there needs to be some clarification in the telecommunications section because it appears in the reading that there are inconsistencies, in one place they talk about the 100 feet in another they do not. As opposed to making the decision on a legal basis, a factual basis on the applicant is saying they have made a c-1 and c-2 case because of the uniqueness of the property where they can locate the building they made the effort to move it as far as they could and therefore they have a hardship.

Mr. Brady asked if the Board had any questions, Mr. Cristaldi indicated that the ordinance did not say you should or should not have a house just as a principal use you would need 25 acres. Assuming you take it more literally and you allow a tower with a house, then you would have 2 principal uses on the lot. Where do you draw the line with how many principal uses you should have on a lot. Ms. Adar clarified it is not multiple uses it is multiple structures. You do not need a d-1 for multiple uses you need d-1 for principal structures. As a planner that should be evaluated based on the conditions of a particular site. If you have a site like this where it is 139 acres and can cluster the principal uses without having the overall density higher then if they subdivided, and a less effected environment then she would be satisfied, this is the goal. Mr. Cristaldi indicated it would still be one principal use if that lot were permitted to have that one principal if the lot were able to have clustered development.

Mr. Zublatt added that when the review of the year's applications takes place that the definitions should be reviewed as well. Principal Building definition because it says the building that is conducting the principal use on the lot on which it is located. Lots with multiple principal uses may have multiple principal buildings. Mr. Glatt indicated that the clustering is for the benefit of the property owner, it's trying to put certain things for their benefit. The situation here is that there are 2 dwellings on the property that are to the benefit of the property owner. Other than a pecuniary interest because the property owner will be paid for allowing the property to be used. We have a facility that is for the public good. It does not do anything really directly for property owner. There is not a real benefit for the property owner other than a non-zoning reason, so the zoning reason should not be clustering. This facility is something that Verizon needs to close a gap and the public needs it, at the same time, this property owner is fortunate enough to have a piece of property which is where they need to put the tower. The combination of a great location and a willing owner is a great thing.

The Planner indicated that the concept of having all of the development in one area and leaving the rest has two things, allowing the owner to develop the site but the main use of the principal is to save environmentally sensitive area. Mr. Glatt indicated that he agreed with that. Mr. Brady asked if there were any other questions.

The application was opened to the public. Scott Heck , Borough Manager, Ringwood was sworn in as a representative of the Mayor. Mr. Heck indicated that it was rare that their Borough would get involved in an application in another town but they felt strongly about the application so he was asked to appear on their behalf. West Milford and Ringwood share Westbrook Road and the need for more emergency services in that area becomes more critical during times with power outages if an accident they have to wait to come out to report an accident or an emergency. There are lost hikers in the woods and it is difficult to communicate with them. It is a common problem and from an emergency perspective, it is important that they support the application, he indicated that Ringwood residents will be served well by the application as well as the emergency services groups on that side of town it is not currently served by any cell service and it would benefit. He indicated that it would be beneficial to their community. He thanked the Board.

Michael Siesta after seeing nobody else for or against the application moved to close the public portion. Arthur McQuaid second.

All in favor to close the public portion.

None opposed

Alan Zublatt thanked the Board and the Secretary on behalf of Verizon and himself for being in tune with our requests and their attempt to return what was needed. He indicated that having the meeting

open and public is what does the job to reach a conclusion. He reiterated from his opening the magnitude of the deviations in his opinion are minimal compared to the benefits. It is a huge tract of land and as Tsvia said technically weighing the pole whether it is a monopine or monopole, camouflaged in some way or as a tree is set back as far as they can do it, is minimally visual from the road and the deviations as it is developed in the hearing were shown as minimal. They will do anything to accommodate West Milford in terms of that. The spirit of the ordinance is unique in many ways, it is a rare time that there is a permitted use in a residential zone as it is in West Milford. This is what the National Broadband Act wanted to see to encourage rural development and the comments in our ordinance is to plan for it in the future as long as it does not have substantial detriment to the Community and in this case for him he heard questions and gave answers from the experts Westbrook Road needs the service and if you balance the benefits, the detriments and the impact in their attempt to accommodate Verizon, West Milford and the public, the Board would come to the conclusion that these variances and the site plan should be granted. He also found it interesting that an adjoining town comes out in favor of the application. His experience was opposite. This is a rarity and it told him that Westbrook Road really needs help in terms of emergency service questions about how long batteries will last tells him that this is the salient step in providing that service. You can judge whether collocators will come and in his opinion they will. He thanked the Board again.

Mr. Glatt explained to the Board that they would be voting on the d-1 and d-6 variances and a bulk variance for set back and a site plan.

Motion by Arthur McQuaid for NYSMSA-Verizon Wireless Preliminary and Final Site Plan, Wireless Telecom and Use Variance, Interpretation Application No. ZB12-12-12 for Block 4701; Lot 61, 750 Westbrook Road, R-4 Zone. Mr. McQuaid indicated that he was disappointed that the fencing was not moved, testimony was given that because of the Highlands Act and other slopes on the property, it creates a hardship to move it any further than what they did. They also have taken the time to move the pole bringing it more than 100 feet away from the home, even though there were thoughts whether it was necessary or not. They took it upon themselves to move it 106 feet away from the house. It was also testified that it has a crumple zone so if it were to fall, it would crumple in the middle and the pole would come down about half way. They reviewed the plans and reports on why other areas would not be fitting for the coverage that they wanted. This site will give them coverage both east and west of the pole, if they had located it on Westbrook Road, they would not have gotten anything all the way down east as far as they could and there was no need to go further west since there is another pole just up the street at the Macopin Fire Dept. Positive and negative criteria was given and there was really no negative criteria because of the location. The particulars were that it is suitable the coverage will cover most of the gap; it is permitted in our ordinances. It is close to roadways, Westbrook Road, Morsetown Road. The uniqueness of the site since it is 139 acres, the vegetation and collocation will be allowed the Municipality will be allowed to install any radiofrequency that they may need. It was testified that the visual impact is minimal. Mr. Heck representing the Borough of Ringwood came to testify that his borough is in support of the application, for emergency services this can help to provide and to provide communication services down to his borough as well. For those reasons he moves to approve the application.

Michael Siesta second the application.

Mr. Brady added that a condition should be added that emergency services be allowed to install their equipment. Also, if the tower falls into inutility that it will be removed at the expense of the company. Mr. McQuaid amended his motion. Mr. Siesta amended his second.

Mr. Zublatt wanted the Board to determine the design they wanted. It was decided to have it sky blue to the tree line and then brown without the bottle brush design. A monopole painted sky blue and brown on the bottom (tree line down). Mr. Brady indicated that the antennas will look obvious, he wants the disguised pole.

Mr. McQuaid wants a monopole but painted to blend with the sky.

If there is a no vote because of the pole/pine please state that is the reason.

Roll Call Vote:

Yes: Russell Curving, Steven Castronova, James Olivo, Frank Curcio, Arthur McQuaid, Michael Siesta, Robert Brady

No: none

Mr. Glatt let the audience know it would be a painted monopole.

DISCUSSION

VINCENT LANZA

RESOLUTION NO 13-2006 AND 14-2006

Discussion of a previous application pertaining to clarification of drainage conditions for a previous bulk variance application #0430-0673, Resolution Nos. 13-2006 and 14-2006. The information was noticed and sent to certified 200 foot list.

Mr. Lanza approached the dais he explained that he was granted a variance in 2006 for 27 Flanders Road, in that resolution, there is a statement that the drainage system being installed from Lakeshore Drive along Maple Shade Road to the low point on Flanders Road. He wants to amend that because it was not the intent and that was not the testimony that went on. He purchased the property next door in 2007, he went through the same testimony and when they did that resolution, the same statement was there. He returned to the Board for that one and had that statement amended in the resolution. Basically he indicated he has two properties on Flanders Road and there are drainage issues that he addressed and he met with the residents and tried to iron everything out and they did. Putting the drainage from Flanders all the way to Lakeshore is an astronomical cost. Mr. Glatt does not want anything testimonial at this time without swearing him in.

Mr. Brady indicated at this point since there are only 2 members left on the Board from that time, Mr. McQuaid and Mr. Brady. They will probably need testimony from the Planner who could not be here for the meeting but was the Planner at the time of the application. He indicated a transcript would be in order for that particular meeting because his recollection of that was that there was a great deal of discussion with regard to the drainage for those two lots. He visited the lot and that item was put in the resolution purposely and was agreed to by Mr. Lanza. If this is done they would need to open it as an application for the change in that particular resolution that they approved.

Mr. Lanza disagrees because the issue is whether or not he agreed to go from Flanders down Maple Shade to Lakeshore. The variance he came for after the first one, when going through drainage issues, the engineer for the Board made him put all on one plan for both lots and it was agreed upon for him to put seepage pits in to take the drainage as opposed to running the drainage all the way to Lakeshore. He has memos from the Board Engineer that state that. The Board would need the assistance of the Planner and Mr. Lanza would need to supply documents to the Board members for review. Mr. Lanza explained that they would have never come before the Board if lot 1 had to go from Flanders Road to Lakeshore there would not have been an argument for Lot no. 2 to do that because it would have been previously agreed upon.

Mr. McQuaid will need something to refresh his memory on this application. Mr. Glatt indicated that the Board was at a disadvantage because Mr. Drew was not present. Secondly, this was 2006 when the resolution was approved. He returned in 2009 relating to the property at 33 Flanders. He prepared that resolution, Mr. McQuaid and Mr. Brady and Mr. Curcio sat for that matter and 4 years later an adjoining piece of property why was it not done at the same time? It will be left as Mr. Brady suggested. Mr. McFadden will be contacted if need be. Mr. Brady indicated a transcript will need to be acquired so the Board could read the transcript. Mr. Lanza asked about the transcript. Mr. Glatt suggested a transcript be ordered. He will discuss with Mr. Drew about a new application. The two dates in 2006 January 24 and April 25 that the testimony was given with regard to the drainage. Mr. Lanza thanked the Board. Mr. Glatt asked about the noticing it was done from a current list. Mr. Glatt announced that unless things change this matter will be carried to the next meeting. Hopefully it will be heard at the next meeting no need for re-notification anyone interested can call the secretary to see if the meeting will be on for the next meeting. Mr. Lanza will meet with Mr. Drew if needed.

Motion by Steven Castronova to approve Stephen Glatt's bills

Second by Russell Curving

All in favor to approve Stephen Glatt's bills

Motion by Russell Curving to approve Alaimo- Michael Cristaldi's bills

Second by Steven Castronova

All in favor to approve Alaimo - Michael Cristaldi's bills

Motion by Steven Castronova to approve Mr. Hakim's bills

Second by Frank Curcio

All in favor to accept Mr. Hakim's Landscape Architect bills

No communications

Nothing to report with the litigation

Motion by Steven Castronova to adjourn the meeting of March 26, 2013

Second by Michael Siesta

All in Favor to adjourn the meeting

Meeting adjourned at 10:09 p.m.

Adopted: May 21, 2013

Respectfully submitted by,

Denyse L. Todd, Secretary
Zoning Board of Adjustment