

TOWNSHIP OF WEST MILFORD

PLANNING BOARD

Minutes April 7, 2005 REGULAR MEETING

Chairman, Michael Tfank, called the meeting to order at 7:35 p.m. with the reading of the legal notice.

ROLL CALL

Present: Joseph Elcavage, James O'Bryant, Edward Orthouse, Douglas Ott, Michael Siesta (Arrived Late), Clinton Smith, Leslie Tallaksen, Kurt Wagner. Alternate: Steven Castronova. Chairman: Michael Tfank. Board Attorney: Glenn Kienz, Esq. was represented by Bryant Gonzalez, Esq. Planning Director: William Drew, P.P. Consulting Engineer: Robert Kirkpatrick, P.E. was represented by George James, P.E.

Absent:

PUBLIC PORTION

No one wished to speak.

APPLICATIONS

HIGH CREST LAKE LODGE, INC.
Minor Subdivision #0410-1932
Bulk Variance #0430-0668

COMPLETE: 12-17-04
DEADLINE: 04-16-05

Block 13201; Lot 25
12 Northwood Drive; LR & R-4 Zones
Subdivide to create three (3) building lots.
Applicant requesting dismissal without prejudice.

William Drew, Planning Director, advised that a letter had been received from the applicant requesting the application be withdrawn.

MOTION made by James O'Bryant, seconded by Kurt Wagner, to dismiss the application without prejudice.

On roll call vote: Yes - Joseph Elcavage, James O'Bryant, Edward Orthouse, Douglas Ott, Clinton Smith, Leslie Tallaksen, Kurt Wagner, Steven Castronova, Michael Tfank.
No - None.

CELLULAR TELEPHONE COMPANY
d/b/a AT&T WIRELESS (OAK RIDGE)
Preliminary & Final Site Plan #0420-0190AB

COMPLETE: 01-24-05
DEADLINE: 04-30-05

Block 16307; Lot 21
364 Oak Ridge Road; CC Zone
Construct a wireless telecommunications monopole and equipment cabinets.

Renu Shevade, Esq., Pitney, Hardin, Kipp & Szuch LLP, Morristown, NJ represented the applicant. This application was carried from the February 23, 2005 regular meeting.

The application before the Board is a request for preliminary and final site plan approval for the subject property. The applicant is requesting approval to construct a 60-foot high monopole with associated equipment on the subject property, which is more commonly known as the Eastern Propane Building.

Ms. Shevade indicated that the intent of the application was to create an unmanned wireless communications facility at the subject property. She indicated that the use was a permitted accessory use in the CC Zone. She also noted that the applicant was proposing to stealth the proposed monopole and the applicant would provide testimony in this regard.

Ms. Shevade indicated that the plans had been revised to eliminate any bulk variances that had previously appeared on the application and site plans submitted to the Board. She indicated that the proposed use was a permitted use in the Zone and as such the applicant did not have to provide Medici-variance testimony. She reiterated that the site plans conformed to the site plan requirements and as such no variance relief was necessary for the application.

Ms. Shevade also noted that the applicant had reached out to the resident, Patricia Harrington, with regard to obtaining the model number of her hearing device in order to assist her in determining if there would be any interference with her device. She indicated that she reached out by letter on two occasions to Mrs. Harrington but received no response from Mrs. Harrington.

Ms. Shevade then had Mr. Zamora reiterate his prior testimony as to why the site was needed by the applicant.

Ms. Shevade then had Alice Fahy-Elwood, a health physicist, testify on behalf of the applicant regarding the safety of the site. Ms. Fahy-Elwood indicated that she had been a health physicist since 1992 and had worked at Bell Laboratories as a safety analyst with regard to wireless facilities. She noted that at present she was a consultant since 2002 to the wireless facilities industries and was extremely familiar with the safety and health issues presented by wireless facilities. She noted that she had reviewed the proposal of the applicant and described to the Board the respective emissions given off by cell tower sites and handheld cell phone devices. She noted that it was more likely that a hearing device might be affected by the emissions generated by a cellular telephone being held to that person's ear, than by the emissions generated by a cell tower. In this regard she testified that the emissions from a cellular telephone were at 60 to 70 percent (60%-70%) of permitted field strength versus the 1 percent (1%) of the permitted field strength emissions allowed by a cell tower. In her opinion, it was not likely that Mrs. Harrington's hearing device would be affected by the proposed wireless communications facility.

The Board then opened the hearing to the public for comment on the testimony provided by Ms. Fahy-Elwood and Mr. Zamora. In this regard the Board first heard from Patricia Harrington and Lee Harrington, 376 Oak Ridge Road. Mrs. Harrington then looked to have the Board consider what she proclaimed to be an e-mail from a person she believed to be an expert with regard to the interference caused by radio frequency emissions to hearing devices. Mrs. Harrington handed the e-mail to the Board Attorney who ruled that the e-mail was inadmissible to the Board because: (1) it had not been provided to the Board or the applicant within ten (10) days of the hearing and (2) the e-mail was not subject to cross-examination by the applicant since the author of same was not at the hearing such that the veracity of the statements made in the e-mail could be verified.

The Board Attorney also noted that as issues of health and safety are preempted by federal law, the evidence to be presented was irrelevant to the Board's determination of the application.

Ms. Shevade indicated that the applicant was still willing to look into the issue of whether any interference would be caused to the hearing device used by Mrs. Harrington and would be willing to reach out to Mrs. Harrington in this regard.

With no other members of the public coming forward to provide comment or question with regard to the testimony provided by Mr. Zamora and Ms. Fahy-Elwood, the Board promptly closed the public comment portion of the hearing.

The Board then heard from Ronald J. Igneri, P.E., Innovative Engineering, Inc., 1144 Hooper Avenue, Toms River, NJ, who testified with regard to the site plans prepared and submitted to the Board. Mr. Igneri then referred to Exhibit A-4, which he indicated was Sheet ZO1 (revised Sheet 4) of the plans previously submitted dated March 24, 2005, which he indicated, showed the revised setbacks on the subject property. He then gave an overall description of the subject property and indicated that the subject property was located at Lot 21, Block 16 in the Community Commercial Zone at 394 Oak Ridge Road. He noted that this was the existing Eastern Propane Site and that the site measured approximately 0.26 acres. He testified that the grass area to the rear of the lot would be the location for the proposed stealth monopole, which would be located inside a fenced in compound with associated equipment.

Mr. Igneri then testified with respect to Exhibit A-5 which he noted was Sheet ZO2 of the plans submitted and which depicted the equipment compound to be created on the subject property. He then testified with respect to the equipment compound and noted that it consists of a set of cabinets and battery cabinets located atop of a concrete pad with cables and cable bridge connecting the cabinets to the monopole. He then indicated that the plans depicted the southeast elevation showing the structure at 60 feet, which was in conformance with the Ordinance requirements. He noted that the monopole would be colored brown versus the flagpole design required in the Ordinance because it was believed by the applicant that this was more appropriate for the Zone. He noted that utility poles appeared similar to the proposed monopole in brown color and that from an aesthetic standpoint the brown color monopole was more appropriate for the Zone. He indicated, however, that the applicant was willing to do whatever the Board requested in terms of an aesthetic design.

Mr. Igneri noted that the antennas for the monopole were actually located inside of the pole structure and as such would not show. He also noted that the utility pole design would be least intrusive and that this was the applicant's intent not to create a detrimental aesthetic to adjacent property owners. He testified the 35-foot setbacks of the proposed monopole and noted that these were in accordance with the bulk requirements such that no variance relief was required.

Mr. Igneri then described the landscaping aspects of the proposal and noted that there would be a staggered row of vegetation around the compound fence. He noted that the site would be an unmanned facility and no water or sewer would need to be provided. In this regard he noted that the only utility being provided to the monopole was electricity.

With regard to other aspects of the application, Mr. Igneri noted that soil disturbance would be minimal and that there would be no regrading and no change to the existing drainage patterns. He further noted that utilities servicing the monopole would be stored underground.

Mr. Igneri then explained why the location of the monopole was where it was proposed. In this regard he noted that the only clear area on the subject property contained septic systems underground and as such the proposed location was the only area of the subject property where the monopole could be located.

The Board then opened the meeting to the public for comment on the testimony provided by Mr. Igneri. In this regard the Board first heard from Gary Prince, 92 Circle Drive, who was concerned as to the location of the proposed monopole to his home, which was adjacent to the subject property. Mr. Prince reviewed issues of height, structure and construction of the proposed monopole with Mr. Igneri.

Mr. Igneri indicated that the proposed monopole would be built to industry wide design standards and would be 60 feet in height, made of steel center frames with plastic panels and would be designed such that it would not fall in a way that would impact Mr. Prince's home.

Mr. Prince indicated that he was not in favor of the application as he felt that it would be a visual eyesore and felt that the site of the tower had not been accurately depicted by the applicant.

The Board next heard from Tyrell Rydgen, 38 Circle Drive, who asked why the applicant was now seeking to address a coverage gap. Ms. Shevade then indicated that typically wireless carriers started by first covering roadways and then filling in neighborhoods pursuant to the license issued to them by the FCC. She indicated that this was the method undertaken by the applicant for providing wireless communications services.

The Board next heard from Victor Marchiafava, Timber Lane, Newfoundland, who indicated that he had a cell tower on his property and during the time that he has had the cell tower on his property there have been no negative affects and that he considered the cell tower an asset to his property located at 1894 Route 23 North.

The Board next heard from Joseph Mazurek, 22 Caro Drive, who expressed general concerns with respect to the health and safety effects of cell towers.

The Board next heard from Roy Frietas, 34 Oak Drive, who discussed issues of interference posed by radio frequency emissions from the proposed site. Mr. Zamora addressed these issues and reiterated that the proposed monopole would pose no interference with electronic devices. Mr. Frietas then inquired as to whether any lighting was required, whether the proposed monopole posed any well water interference and whether the site was grounded in case of lightning.

Mr. Igneri responded that at a height of 60 feet it was the Federal Aviation Administration's decision as to whether the applicant had to provide lighting. With regard to well water interference, he indicated that there would be none. Lastly with respect to lightning, Mr. Igneri noted that the proposed monopole would be grounded. He also discussed the power supply to the monopole and described the use of battery equipment to power the site.

With no other members of the public providing comment or question, the Board promptly closed the public comment portion of the hearing.

Upon discussing the location of the proposed monopole with the Board, the applicant agreed that it would be willing to relocate the monopole to a setback of 50 feet and provide an additional row of landscaping as a condition of approval. The applicant further agreed that it would accept as a condition of approval meeting with the Township Landscape Architect to review the site for other landscaping recommendations.

The applicant also agreed that it would send another letter to the Harringtons to provide any research data available with regard to the hearing device used by Mrs. Harrington as a condition of approval.

The applicant also agreed to make the monopole appear like a brown utility pole as a condition of approval.

MOTION made by James O'Bryant, seconded by Leslie Tallaksen, to approve the application.

On roll call vote: Yes - James O'Bryant, Douglas Ott, Clinton Smith, Leslie Tallaksen, Kurt Wagner, Steven Castronova, Michael Tfank.
 No - Joseph Elcavage.

DEMOTT POST
Minor Subdivision #0410-1971
Bulk Variance #0530-0703
Block 12106; Lots 2 and 3
802 and 810 Macopin Road; R-2 Zone
Relocate lot line.

COMPLETE: 02-22-05
DEADLINE: 06-22-05

The applicant, DeMott Post, appeared before the Board and explained that he wished to subdivide the property in order to have additional land to allow room for a turn around on his driveway, which would enable him to safely access Macopin Road. He stated he

No - None.

MICHAEL & JOSEPH COSTELLO, BRADLEY MALAVOLTA

Minor Subdivision #0310-1956

Block 6403; Lot 1.02

Lincoln & Tintle Avenues; R-1 Zone

Request for time extension.

The application before the Board is a request for an extension of time within which to file Minor Subdivision Deeds for the Subject Property. Appearing on behalf of the applicants was Bradley Malavolta, who appeared to explain pursuant to N.J.S.A. 40:55D-47 as to why an extension was needed in order to file the Minor Subdivision Deeds for the subject property. Mr. Malavolta indicated that delays had been experienced by the applicants with respect to applications pending before the New Jersey Department of Environmental Protection for wetlands delineation. He also indicated that once a Letter of Interpretation was issued by the NJDEP, he would then process an application for a Highlands Exemption. As such, he was requesting the Board grant him an extension of one (1) year to complete the process and file the required Minor Subdivision Deeds. Mr. Malavolta indicated that if the Board granted him an extension, the Deeds would be filed immediately after completion of the required State approval process.

There were no members of the public present expressing an interest in this application.

MOTION made by Joseph Elcavage, seconded by Kurt Wagner, to approve a one-year time extension.

On roll call vote: Yes - Joseph Elcavage, James O'Bryant, Edward Orthouse, Douglas Ott, Michael Siesta, Clinton Smith, Leslie Tallaksen, Kurt Wagner, Michael Tfank.
No - None.

CARL BIERWAS

Minor Subdivision #0410-1964

Bulk Variance #0430-0665

Block 8201; Lot 2

1945 Macopin Road, R-1 Zone

Request for time extension.

The application before the Board is a request for an extension of time within which to file Minor Subdivision Deeds for the subject property. The applicant, Carl Bierwas, appeared before the Board to explain pursuant to N.J.S.A. 40:55D-47 as to why an extension was needed in order to file the Minor Subdivision Deeds. Mr. Bierwas indicated that he had experienced delays with the processing of an application for a Highlands Exemption with the New Jersey Department of Environmental Protection and consequently an extension for a period of one (1) year was needed in order to file the Minor Subdivision Deeds for the subject property. He indicated that an application had been filed with the New Jersey Department of Environmental Protection for a Highlands Exemption and that delays had been experienced in the processing of this application necessitating the request for an extension of time to the Planning Board.

Mr. Bierwas indicated that he intended to file Minor Subdivision Deeds as soon as the process was completed with the NJDEP and as such respectfully requested that the Board grant a reasonable and appropriate extension of time to allow him to file the Minor Subdivision Deeds for the minor subdivision approval previously granted in this matter.

There were no members of the public present expressing an interest in this application.

MOTION made by Joseph Elcavage, seconded by Kurt Wagner, to approve a one-year time extension.

On roll call vote: Yes - Joseph Elcavage, James O'Bryant, Edward Orthouse, Douglas Ott, Michael Siesta, Clinton Smith, Leslie Tallaksen, Kurt Wagner, Michael Tfank.
No - None.

MEMORIALIZATIONS

GEORGE IV AND DIANA CLUFF

RESOLUTION No. 2005 - 11

Minor Subdivision #0410-1969

Bulk Variance #0430-0685

Block 7212; Lot 4

7207 19

1665 Union Valley Road & 44 Shadowy Lane; R-2 and LR Zones

APPROVED: Minor subdivision approval to create a separate lot for an existing dwelling on Lot 4 and the annexation of a portion of Lot 4 to the adjoining property owner.

MOTION made by Joseph Elcavage, seconded by Kurt Wagner, to memorialize the resolution.

On roll call vote: Yes - Joseph Elcavage, Douglas Ott, Michael Siesta, Clinton Smith, Kurt Wagner, Steven Castronova, Michael Tfank.
No - None.

BALD EAGLE COMMONS

Resolution No. 2005 - 12

Amended Preliminary Site Plan #0420-8815

Final Site Plan #0420-8815 (Phase III A)

Block 5308; Lot 3

Cahill Cross Road; SCC Zone

APPROVED: Exemption from obtaining a Highlands Applicability and Water Quality Management Plan Consistency Determination as per Condition #(3)A of Resolution 2004 - 27

MOTION made by James O'Bryant, seconded by Joseph Elcavage, to memorialize the resolution.

On roll call vote: Yes - Joseph Elcavage, James O'Bryant, Douglas Ott, Clinton Smith, Kurt Wagner, Steven Castronova, Michael Tfank.
No - None.

ORDINANCES FOR INTRODUCTION – None.

ORDINANCES REFERRED FROM COUNCIL – None.

MISCELLANEOUS

Joseph Elcavage proposed the Board adopt a resolution requesting the Township Administrator and Planning Director obtain and include in the municipal budget for Council consideration the cost of codification of the Land Development Ordinance.
MOTION made by Mr. Elcavage, seconded by Steven Castronova.

On roll call vote: Yes - Joseph Elcavage, Edward Orthouse, Douglas Ott, Michael Siesta, Clinton Smith, Leslie Tallaksen, Kurt Wagner, Michael Tfank.
No - James O'Bryant,

PLANNING DIRECTOR'S REPORT – None.

PLANNING BOARD ATTORNEY'S REPORT

Bryant Gonzalez, Esq. advised that Ron Cucchiaro, Esq. would be attending a Court ordered mediation in the O'Shea case. He recommended that the executive session minutes of the Board in the matter of Apple Valley Estates be released as that matter has been transferred to COAH. Mr. Cucchiaro would like to be able to represent to the mediator, Judge Minuskin, that the executive session minutes had been released to Mr. O'Shea.

MOTION made by James O'Bryant, seconded by Joseph Elcavage, to release minutes of the March 24, 2004, May 26, 2004 and July 7, 2004 executive sessions of the Board. On voice vote all were in favor.

MINUTES

MOTION made by Joseph Elcavage, seconded by Michael Siesta, to approve the minutes of the February 23, 2005 regular meeting. On voice vote all were in favor.

COMMUNICATIONS

The following correspondence was received and filed:

County Planning Board reports to the Planning Board regarding the following application:

Eden Farms, Minor Subdivision, Block 7212; Lots 3 and 4, 1665 Union Valley Road. Approval withheld pending receipt of additional information.

Copy of letter dated January 27, 2005 from the DEP authorizing a General Permit No. 25 requested by Gary Bush for property known as Block 2702; Lot 6, 24 Landing Road.

Notice dated February 3, 2005 advising that Harold and Marie Hansen are applying for a General Permit for the installation of a sanitary disposal system for property located at 38 Compass Avenue, Block 7508; Lot 25.

Copy of letter dated February 8, 2005 from the DEP advising that the request for a Letter of Interpretation submitted by Michael Costello for property known as Block 6403; Lot 1.02 is deficient and will be cancelled if the required information is not received within 30 days.

Notice dated February 8, 2005 advising that George Schmidt is applying for a General Permit for the repair of a septic system located at 50 Shadyside Road, Block 806; Lot 10. Copy of letter dated February 9, 2005 from the DEP authorizing the General Permit No. 25 requested by Fred Collins/Gregory Gussetelu for property known as Block 1101; Lot 3, Warwick Turnpike.

Notice received February 22, 2005 advising that Gerald and Deborah McGovern are applying for a General Permit for the installation of a sanitary disposal system for property located at 38 Madelyn Avenue, Block 6604; Lot 2.

Notice dated February 21, 2005 advising that Jersey Central Power and Light Company is applying for a Statewide General Permit #1 for vegetative maintenance activities.

Letter dated February 28, 2005 from the DEP approving the application for a General Permit No. 25 submitted by Victor and Blanche Pizzulo for property located at 88 Otterhole Road; Block 11601; Lot 4.

Letter dated March 9, 2005 advising that Robert Schmidt is applying for a Treatment Works Approval for the on-site sanitary waste disposal system for two existing single-family dwellings located at property located at 11-13 Paterson Road, Block 2001; Lot 12.

Letter dated March 3, 2005 advising that Robert Mazzocchi is applying for a Letter of Interpretation for property located on Club House Trail, Block 504; Lot 1.

Notice dated February 28, 2005 from the DEP approving the application submitted by Passaic County for a Stream Encroachment Permit and authorization of Statewide General Permit No. 10A for the replacement of Union Valley Road Bridge Structure #1600-434 over Green Brook.

Notice dated March 24, 2005 advising that Said Hashimi is applying for a General Permit No. 25 for the construction of a septic alternation for property located at 578 Macopin Road, Block 13401; Lot 7.

Letter dated March 29, 2005 from Patricia E. Harrington regarding her intention to provide testimony in the matter of the Cellular Telephone Company AT&T Wireless application proposed to be located at 364 Oak Ridge Road.

Notice dated March 17, 2005 advising that the West Milford Shopping Plaza is submitting a Treatment Works Application for property located at 1926 Union Valley Road, Block 6701; Lot 10.

ADJOURNMENT

Meeting adjourned by unanimous consent at 10:23 p.m.

Respectfully submitted,

Grace R. Davis
Secretary