

BERNARDS TOWNSHIP **ZONING BOARD OF ADJUSTMENT**

MINUTES v3
VIRTUAL Special Meeting
June 11, 2020

CALL TO ORDER

Vice Chairman Zaidel called the meeting to order at 7:31 PM.

FLAG SALUTE

OPEN PUBLIC MEETINGS STATEMENT – Vice Chairman Zaidel read the following statement:

"In accordance with the requirements of the Open Public Meetings Act, the Municipal Land Use Law and operational guidance documents issued by the Division of Local Government Services of the Department of Community Affairs, notice of this Special Virtual Meeting of the Zoning Board of Adjustment of the Township of Bernards by web-based platform with remote public access was posted more than 48 hours in advance on the Township website, on the outside doors of the Municipal Building, One Collyer Lane, Basking Ridge, New Jersey; was sent to the Bernardsville News, Whippany, New Jersey and the Courier News, Bridgewater, New Jersey; was also filed with the Township Clerk, all on May 29, 2020; and was mailed electronically to all those people who have requested individual notice.

The following procedure has been adopted by the Bernards Township Zoning Board of Adjustment. There will be no new cases heard after 10:00 PM and no new witnesses or testimony heard after 10:30 PM.

Please note that in light of the guidelines issued by the Department of Community Affairs, Division of Local Government Services regarding holding virtual land use board meetings and hearings, the Board has decided to proceed with this meeting as a virtual meeting.

The Municipal Building will not be open for this meeting which will be conducted using Zoom Video Conferencing. The meeting will be streamed live via You Tube for those interested in watching on their computers. The link will be available at 7:30 PM by clicking the "Watch the Meeting Live" icon on the Bernards Township homepage. Public questions/comments from Bernards Township residents will be accepted only during the public questions/comments periods of the meeting. Please call Thomas J. Quinn at 908-930-3434. If you have an iPhone, please use "Facetime" for your call. You will be required to provide your name and address and be sworn in prior to making comments."

ROLL CALL:

Members Present: Eorio, Genirs, Humbert, Kraus, Pochtar, Tancredi, Zaidel
Members Absent: Breslin (recused), Juwana
Also Present: Board Attorney, Amanda Wolfe, Esq.; Township Planner, David Schley, PP, AICP;
Board Engineer, Thomas J. Quinn, PE, CME; Board Secretary, Cyndi Kiefer

On motion made by Ms. Genirs, seconded by Mr. Kraus, all eligible in favor and carried, the absence of Mr. Juwana was excused.

APPROVAL OF RESOLUTION

[Hayworth, Stephen B.; ZB20-005](#); Block 1511, Lot 4; 10 Depot Place; Bulk Variance (approved) – Mr. Tancredi moved to approve the resolution as drafted. Mr. Eorio seconded.

Roll call: Aye: Eorio, Genirs, Kraus, Pochtar, Tancredi, Zaidel
Nay: NONE
Ineligible: Humbert

Motion carried.

APPROVAL OF RESOLUTION

[Hughes, Robert & Carrie C.; ZB20-008](#); Block 5401, Lot 21; 31 Coppergate Drive; Bulk Variances; (approved) – Ms. Pochtar moved to approve the resolution as drafted. Mr. Tancredi seconded.

Roll call:	Aye:	Eorio, Genirs, Kraus, Pochtar, Tancredi, Zaidel
	Nay:	NONE
	Ineligible:	Humbert

Motion carried.

PUBLIC HEARING

[New York SMSA LLP d/b/a Verizon Wireless](#); Block 803, Lots 2, 3, 5, 6, and 23; 300 North Maple Avenue; Preliminary/Final Site Plan, Use (d-1) Variance, Bulk Variance; ZB20-001 (carried from 05/06/2020)

Present:	Richard L. Schneider, Esq., Attorney for the Applicant
	David K. Stern, PE, Radio Frequency Engineer for the Applicant
	Frank Colasurdo, RA, Architect for the Applicant
	Christopher Lanna, Environmental Consultant for the Applicant
	William F. Masters, Jr., PP, Planner for the Applicant
	Andrew M. Petersohn, PE, Engineer for the Applicant

Ms. Wolfe stated that notice was sufficient and timely therefore the Board had jurisdiction to hear the application and that all the witnesses had been previously sworn during the 05/06/2020 hearing.

Richard L. Schneider, Esq., attorney with the firm of *Vogel, Chait, Collins & Schneider PC*, Morristown, NJ, entered his appearance on behalf of the Applicant. He then gave a brief summary of the application and what had transpired at the previous meeting noting that testimony had been presented to establish that the application complies with the electromagnetic field (EMF) guidelines as set forth by the Federal Communications Commission (FCC). He noted that this determination of safety is solely under the purview of the FCC and that the Board has no jurisdiction in the matter. However, in an effort to address concerns about the levels of EMF raised by residents at the last meeting, Mr. Petersohn, who had been accepted by the Board as an expert in the field of EMF compliance, had prepared an additional report which was submitted as **Exhibit A-4** (consisting of 4 pages, dated 05/08/2020).

Referring to that exhibit, Andrew M. Petersohn, PE, engineer with the firm of *dBm Engineering PC*, Fairview Village, PA, testified that this supplemental report refines the testimony presented at the previous hearing and addresses the contributions of the most proximate nodes (#15 and #43) to the EMF levels at #27 and #28 Brentwood Court, the residential properties most impacted by the application. He stated that the report contains additional analyses with exact calculations and that he followed the FCC guidelines for performance calculations to generate the results, reiterating that in each instance he used worst-case scenario assumptions in his calculations. The results show that this installation is significantly below the FCC General Population Maximum Permissible Exposure Limit at both residential locations and that the Verizon antenna site installation will be fully compliant with the FCC human exposure standards. He added that due to the design of the nodes, their distance and the existing conditions, the radio frequency exposure contribution of the proposed nodes would likely be entirely masked by the ambient radio frequency environment on the two properties studied.

Hearing no questions from the Board, Vice Chairman Zaidel opened the meeting to the public for questions of this witness and imposed a 5-minute time limit.

David A. Berger, 28 Brentwood Court, questioned how the testing was conducted since the nodes weren't even up yet. Mr. Petersohn responded that he used the FCC prescribed methodology in determining anticipated exposure. He added that the analysis was conducted as if there was a clear line of sight between the nodes and the closest property lines and because he did not use any attenuating factors such as foliage in his calculation, the resulting anticipated exposure levels were grossly exaggerated but still well below the FCC requirements. Mr. Berger expressed concern that the FCC guidelines are outdated since they are from 1996. Mr. Petersohn responded that the FCC had adopted an order in 2019 reaffirming those guidelines on exposure safety standards.

Lawrence Trachtenbroit, 21 Brentwood Court, was duly sworn by Ms. Wolfe and expressed concern that the 1996 FCC guidelines being used are outdated.

William Ratz, 27 Brentwood Court, asked if the Board was aware that a petition signed by over 100 township residents had been forwarded to Ms. Kiefer. Ms. Wolfe advised that the Board is not allowed to consider ex parte communications such as a petition. He then asked if there had been any studies conducted to ascertain the effect of EMF levels from 5G technology on wildlife. Mr. Petersohn responded that he was not aware of any negative effects.

Izabela Trachtenbroit, 21 Brentwood Court, questioned the methodology used in the calculations and asked how residents could measure the actual levels. Mr. Petersohn responded that a citizen could request that a post-construction test be performed.

Eduardo E. Rubino, 84 Culberson Road, asked if there have been any variants seen from the anticipated exposure levels and the actual results. Mr. Petersohn responded that on-site surveys have consistently shown that the actual levels are significantly below what is anticipated by the calculations.

Hearing no further questions, that portion of the hearing was closed.

Frank Colasurdo, RA, principal with *Frank Colasurdo Architects*, Mt. Olive, NJ, was accepted by the Board as an expert in the field of architecture specializing in wireless facility design.

Mr. Colasurdo gave a brief description of the subject property and existing structures. He then provided testimony as to the rationale for the placement of each of the six (6) nodes and added that the hotel is used strictly for Verizon invitees. He noted that the Applicant proposes to install a security camera in the corner of the upper parking deck near Node #13. In response to a question, Mr. Colasurdo stated that no trees will be removed and that the proposal will not create any additional impervious coverage.

Mr. Schneider stipulated to those comments made in both Mr. Schley's memo dated 04/20/2020 and Mr. Quinn's memo dated 04/08/2020 which were under his purview.

Hearing no questions from the Board, Vice Chairman Zaidel opened the meeting to the public for questions of this witness and imposed a 5-minute time limit.

Tamara L. Devoe, 274 North Maple Avenue, asked if the Applicant is willing to plant trees to block the signal. Mr. Schneider opined that it is not necessary since the EMF levels are so low.

Dr. Ratz questioned the 5G nodes recently approved for the Verizon headquarters campus and commented that the virtual forum being used for this hearing was terrible.

Mrs. Trachtenbroit asked how many more nodes are planned. Ms. Wolfe responded that the Board could only consider the six (6) nodes proposed in this application.

Barbara Chorazykiewicz, 195 Madisonville Road, asked if there are any nodes planned for Madisonville Road. Mr. Schneider responded that the Board could only consider the six (6) nodes proposed in this application.

Mr. Rubino stated that the residents are concerned about future applications. Vice Chairman Zaidel responded that the Board could only consider the six (6) nodes proposed in this application.

Lorena Ratz, 27 Brentwood Court, asked if the nodes could be moved closer to Interstate 287 and away from the residential areas. Mr. Schneider responded that that had been addressed during the first meeting.

Mrs. Chorazykiewicz asked about the basis for the New Jersey Department of Environmental Protection (NJDEP) permits. Mr. Colasurdo provided an explanation noting that one of the two required permits had already been approved and that they were awaiting approval of the second.

The Board decided to proceed with the remaining testimony and to allow both questions and comments afterwards.

William F. Masters, jr., PP, professional planner with a business address of Morris Plains, NJ, was accepted by the Board as an expert in the field of professional planning. He discussed the relevant characteristics of the property from a planning perspective, adding that although the current use of the property as a conference center is a permitted use, the proposed nodes are not an accessory use to the permitted principal use ("accessory use" meaning a use naturally and normally incident and subordinate to the principal use) and hence, require a "d(1)" or "use" variance. He testified that a previous determination had been made that, due to the testing aspect of these nodes, the township's wireless ordinances do not apply and that if they did apply, these proposed nodes would be in compliance.

Mr. Masters then addressed both the Sica and Medici standards in regard to the "d(1)" or "use" variance and also provided testimony to satisfy the positive and negative criteria for both a "c(1)" or "hardship" variance and a "c(2)" or "benefits outweigh detriments" variance for the two (2) bulk variances required.

* * * *The Open Session was recessed at 10:14 PM and reconvened at 10:21 PM.* * * *

Mr. Kraus asked if the Applicant would be agreeable to conducting a post-construction survey in order to assure the residents that the actual EMF levels would be far less than the estimated levels, as Mr. Petersohn stated. Mr. Schneider stated that he would not agree to that as a condition at this point.

Vice Chairman Zaidel stated that normally the hearing would be opened to the public at this time, but because of the late hour, the application would be carried to a special meeting to be held on June 22, 2020 *in person and with no further notice* so that all of the residents would have an opportunity to ask questions and make comments. Mr. Schneider provided an Extension of Time to Act through June 22, 2020.

COMMENTS FROM MEMBERS OR STAFF - None

ADJOURN

On motion by Mr. Humbert, seconded by Ms. Pochtar, all in favor and carried, the meeting was adjourned at 10:51 PM.

Respectfully submitted,

Cyndi Kiefer, Secretary
Zoning Board of Adjustment

Approved as drafted 08-05-2020

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