

**ZONING BOARD OF ADJUSTMENT
JULY 23, 2015**

PRESENT: Mr. Hutchinson, Ms. Casserly, Mr. Fitzgerald, Mr. Lisko, Ms. Young, Mr. Cupoli, and Mr. Ross

ABSENT: Mr. Fowler and Mr. Greig

ALSO PRESENT: Board Attorney Kevin E. Kennedy, Esq., Board Secretary April Claudio, Zoning Officer Ted Bianchi and Acting Borough Engineer Bob Bucco

The secretary stated that adequate notice of this meeting of the Zoning Board of Adjustment was sent by email to our official newspapers, the Coast Star and the Asbury Park Press on December 22, 2014 and by posting a copy of said notice at the Municipal Complex on the same date.

Mr. Cupoli made a motion to waive the reading and approve the minutes of the May 26, 2015 special meeting, which was seconded by Ms. Young and approved by the following vote:

AYES: Mr. Hutchinson, Ms. Casserly, Mr. Fitzgerald, Ms. Young, Mr. Cupoli, and Mr. Ross

NAYS:

ABSTAIN: Mr. Lisko

Ms. Casserly made a motion to waive the reading and approve the minutes of the June 25, 2015 meeting, which was seconded by Mr. Fitzgerald and approved by the following vote:

AYES: Ms. Casserly, Mr. Fitzgerald, Mr. Cupoli, and Mr. Ross

NAYS:

ABSTAIN: Mr. Lisko, Mr. Hutchinson and Ms. Young

Mr. Kennedy discussed some of the language of the conditions in the resolution for 1902 B Street with the Board in order to obtain some clarification and ensure the resolution reflected the conditions accurately.

Mr. Kennedy stated a neighbor who is a professional planner, Elizabeth McLaughlin, submitted a letter to the Board for a request for reconsideration on the application for 1902 B Street based on the fact the application was approved with incorrect information having been given. He explained the Municipal Land Use Law regarding mistaken information in an application. He added the Board is not obligated to take public comment during the vote on resolutions but can allow her to speak. He explained the Board has 45 days from granting the approvals to adopt a resolution.

Mr. Ross stated he recalled a detailed conversation on the average front yard setback for the porch. The front yard setback to the house was not discussed as much as the setback of the porch and the site lines. He added he doesn't really understand the argument in the letter if the porch is in line with the neighbors. He felt that some of the other points in the letter were discussed at the meeting.

Mr. Cupoli agreed that many of the issues brought up in the letter were discussed in length at the meeting.

Ms. Young stated she was not present at the meeting but feels it is the burden of Ms. McLaughlin to prove the Board received incorrect information or not. Mr. Kennedy agreed and added the Board relies on the testimony the applicant and their professionals provide. He added that if there is incorrect information then that falls on the applicant.

Mr. Fitzgerald felt hearing anything tonight on this without the applicant present would put the Board in jeopardy. He asked if the Board approved the resolution could the objector appeal the decision in another fashion that would involve working it out with the applicant. Mr. Kennedy replied yes. Mr. Fitzgerald stated he would recommend that the objector follow the normal appeal process if they choose.

Ms. Casserly stated there was a thorough conversation between both parties at the meeting. She felt it would be unfair to hear from the objector without the applicant present.

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Mr. Hutchinson stated he was not at the meeting however he would agree the Board should follow procedure and move forward with the resolution and allow the process to proceed as it normally would.

Mr. Lisko stated he was not at the meeting as well but feels he has not heard anything from the other Board members to warrant opening up the application for reconsideration.

The Board felt it would be unfair to the applicant to allow Ms. McLaughlin to speak at this meeting since the applicant was not present to speak as well. Mr. Kennedy added that the Board has a written letter from Ms. McLaughlin's attorney outlining her concerns which is probably what she would discuss anyways.

Ms. Casserly made a motion to waive the reading and approve the resolution granting approvals to Jack & Susan Marino, 1902 B Street, which was seconded by Mr. Cupoli and approved by the following vote:

AYES: Ms. Casserly, Mr. Fitzgerald, Mr. Cupoli, and Mr. Ross

NAYS:

ABSTAIN: Mr. Lisko, Mr. Hutchinson and Ms. Young

Mr. Hutchinson made a motion to waive the reading and approve the resolution granting approvals to Donna Rowe and John Federici, 323 13th Avenue, which was seconded by Mr. Fitzgerald and approved by the following vote:

AYES: Mr. Hutchinson, Ms. Casserly, Mr. Fitzgerald, Mr. Lisko, Mr. Cupoli, and Mr. Ross

NAYS:

ABSTAIN: Ms. Young

Mr. Cupoli made a motion to waive the reading and approve the resolution dismissing the application of Michael & Veronica O'Connor, 508 13th Avenue, which was seconded by Mr. Fitzgerald and approved by the following vote:

AYES: Ms. Casserly, Mr. Fitzgerald, Mr. Cupoli, and Mr. Ross

NAYS:

ABSTAIN: Mr. Lisko, Mr. Hutchinson and Ms. Young

RICHARD & RITA ADASE – 413 13TH AVENUE

Appearing for this application was Mr. Adase. Mr. Adase stated he has owned the property for three years and currently lives there. He would like to replace his small backyard porch with a slightly larger porch that would allow room for a table and chairs. The existing deck is deteriorating. The proposed deck would extend 6 inches further into the rear yard setback than the existing deck. He is requesting a rear yard setback variance. The house itself doesn't even comply with the rear yard setback requirement now.

Mr. Ross asked if the existing a/c unit will be relocated and if so where. Mr. Adase stated he planned on relocating it and possibly getting a smaller one but it would stay within the setback requirements.

Ms. Casserly asked if there are any plans to enclose the deck. Mr. Adase replied no.

Mr. Hutchinson asked if the deck would need a variance to be rebuilt as is. Mr. Adase replied yes.

There were no public comments.

Board Comments:

Mr. Ross stated he is in favor of the application.

Mr. Cupoli stated this is a diminimus change.

Mr. Fitzgerald, Ms. Casserly, Ms. Young, Mr. Hutchinson and Mr. Lisko stated they are in favor of the application.

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Ms. Young made a motion to approve the application, which was seconded by Ms. Casserly and approved by the following vote:

AYES: Mr. Lisko, Mr. Hutchinson, Ms. Casserly, Mr. Fitzgerald, Ms. Young, Mr. Cupoli, and Mr. Ross

NAYS:

ABSTAIN:

MICHAEL PROVENZANO – 1006 13TH AVENUE

Appearing for this application was Mr. Provenzano and his contractor Michael DeBlasio. Mr. Provenzano stated he has owned the property for about ten years and lives there. Mr. Provenzano and Mr. DeBlasio explained they are requesting to build an addition at the rear of the house to allow for the utilities to be moved out of the crawl space. Requesting a variance for rear yard setback. The addition would square off the back of the house. Have applied for a RREM grant which is requiring that this work be done in order to obtain the grant. Also have to fill in the crawl space per flood regulations. The grant will allow them to do improvements to a home damaged by Hurricane Sandy.

Mr. Cupoli stated he should recuse himself from this application since he has done work for Mr. Provenzano before.

Ms. Casserly asked about the a/c condenser. Mr. DeBlasio stated there is nothing changing with the front or side yard setbacks.

There were no public comments.

Board Comments:

Mr. Hutchinson stated he is in favor of the application. Ms. Casserly, Mr. Fitzgerald, Ms. Young, Mr. Ross and Mr. Lisko agreed.

Ms. Young made a motion to approve the application, which was seconded by Mr. Fitzgerald and approved by the following vote:

AYES: Mr. Lisko, Mr. Hutchinson, Ms. Casserly, Mr. Fitzgerald, Ms. Young, and Mr. Ross

NAYS:

ABSTAIN:

Mr. Kennedy stated he prepared a resolution in the event the application is approved. Mr. Lisko stated the Board has done this for properties damaged by Hurricane Sandy. Mr. Kennedy added that he believes there are time restraints the applicant has with the grant as well. Mr. Kennedy read the resolution into the record.

Mr. Hutchinson made a motion to approve the resolution granting approvals to Michael Provenzano, 1006 13th Avenue, which was seconded by Ms. Casserly and approved by the following vote:

AYES: Mr. Lisko, Mr. Hutchinson, Ms. Casserly, Mr. Fitzgerald, Ms. Young, and Mr. Ross

NAYS:

ABSTAIN:

Mr. Cupoli rejoined the Board.

At approximately 8:40 pm the Board took a recess. At approximately 8:47 pm the Board reconvened. The Board Secretary took roll call, all members were still present.

**NEW YORK SMSA LIMITED PARTNERSHIP D/B/A VERIZON WIRELESS – 917-919
MAIN STREET**

Appearing for this application was attorney Lynne Dunn, radio frequency engineer Mark Griggs, site engineer Alec Norris, engineer Paul Dugan, and planner William Masters JR.

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Mr. Kennedy stated Mr. Bucco is the Borough's conflict engineer. He stated Ms. Casserly advised him that the company she works for receives donations from both Mr. Bucco's engineering firm and the applicant's engineering firm. He felt that there is not a conflict. Ms. Dunn agreed.

Mr. Griggs stated he is a radio frequency engineer for Verizon Wireless. He had an exhibit showing reliable coverage based on existing antennas and poles in the area. The map shows the downtown area is not in a reliable coverage area. People's phones may work in this area but there could be calls dropped or loss of network during high traffic peak hours. He presented a new map showing the reliable coverage area with the new proposed antennas in place. These antennas would service the businesses on Main Street and the commuters at the Train Station. He explained the sector exhaust charts presented to the Board. The existing sectors are being exhausted because of the increase in devices being used and the increase in data usage. He added that smart phones now allow for more usage for Facebook updating, video streaming, alerts and notifications etc., which require a lot data usage.

Ms. Dunn asked Mr. Griggs to discuss alternate properties for the location which are owned by the Borough as required in the ordinance. Mr. Griggs stated one location is the water tower however he felt it was too close to an existing site and there would be too much overlapping coverage. Also looked at 800 Main Street but felt it did not have a good view of the train station and downtown. Also looked at Belmar Plaza but it is not tall enough to have a good view of Main Street. He looked at the senior building at 710 Eighth Avenue but it doesn't have a clear unobstructed view of Main Street. Looked at the brewery building but it doesn't have a clear unobstructed view of the train station. Their goal is to have a clear unobstructed view of as much of Main Street as possible and the train station. Trying to have good coverage near all of the train stations along the coast.

Ms. Young asked for clarification of the difference in coverage. Mr. Griggs explained the maps and added that coverage would now be available from 5th to 15th Avenue along Main Street.

Mr. Fitzgerald asked if the police tower at Borough Hall has been considered as a location. Mr. Griggs stated he feels that having one at Borough Hall would fill in the gap for the remaining area not in reliable coverage. Ms. Dunn stated the Borough has had preliminary discussions with Verizon but those particulars are not part of this discussion as the Borough would have to prepare a bid package in order to do it. Mr. Griggs added that having just one at Borough Hall rather than the proposed site would not give the coverage they are requesting. He added he hopes to have antennas at both sites to get the most reliable coverage for the whole town.

Mr. Norris presented large photo boards of the plans previously submitted as well as a plan showing the existing site conditions. He explained on the rooftop there would be two, two foot antennas with the cables going down to the interior of the first floor of the building where the utility cabinets would be located. There is no light or noise from these antennas. Maintenance crews would visit the site about once a month.

Ms. Dunn stated Mr. Dugan is her professional who is aware of FCC regulations. Mr. Dugan explained the electromagnetic fields in relation to what the FCC permits. The frequency exposure levels are substantially lower than what the FCC allows. The antennas would comply with state and federal FCC regulations.

Mr. Hutchinson asked what the wattage is at the antenna. Mr. Dugan stated it is 40 watts times 2 because they transmit twice.

Mr. Masters stated the applicant is seeking a "d1" use variance because a wireless communication facility is not a permitted use in the CBD-1 zone. Positives are that is in a non-residential zone, the building is existing and supports their proposal which is better than having to build a new building or facility, this is a high traffic area, it has a close proximity to the train station and they have a willing landlord. He feels this site is suited for a wireless facility. Verizon has four FCC licenses which shows they are compliant with FCC regulations. The antennas are monitored on a 24 hour basis and visited at least once every four to six weeks. He had submitted photos to the board showing a simulated view of the antennas on the rooftops. He stated there is some visibility of the antennas but feels that there is no detrimental impact because of the size of the antennas. He added that these are newer technology that has come out within

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one year where the Borough's wireless ordinance hasn't been updated in ten years. The aesthetic impact is not significant. The use of the antennas provides a direct benefit to the public. The only visual impact is the two antennas since; all of the other equipment is inside the building. Feels that the proposal would not cause substantial harm or detriment to the public. Benefits clearly outweigh the detriments. There are other variances being requested for existing non-conformities which are not being exacerbated; i.e. lot size, lot frontage, lot shape, building coverage.

Ms. Dunn added that the antennas can be painted to match the colors of the building. Mr. Masters stated they are typically an off white color but can be painted any color the Board chooses.

Mr. Ross questioned about the safety aspect of radio frequency when include all other towers in the area as a whole. Mr. Dugan stated when he does his report he only includes the site in question not the surrounding towers. He added that the frequency from Verizon towers is so low it doesn't have a big effect. He added that the impact of the frequencies individually or as a whole is very low. Mr. Ross stated he did some internet research and questioned why there is so much concern about frequency safety if the impact is so low. Mr. Dugan stated he would like to know why as well. He added that a lot of the negativity is the media and small groups against them. He stated he has worked with professionals who have studied radio frequency for many years and have done tests and reports that show there is low impact. Ms. Dunn stated they will comply with the FCC regulations which should be what is considered and not the perception of people.

Mr. Ross asked if there would be any interference with other competitors. Mr. Griggs stated the FCC regulations have them all operating under their own licenses and frequencies in a way to not compete with each other.

Mr. Cupoli asked for the height from the ground. Mr. Griggs stated it is 32.11 feet and 29.6 feet to the top of the antennas. Mr. Cupoli asked about backup power. Mr. Norris stated there is a hookup for an emergency generator. Mr. Cupoli asked if there is any cooling required for the system. Mr. Norris stated they would be using the building's existing and heating and cooling system. Mr. Cupoli pointed out the Board gave approvals to Hanley's liquor store for an addition and wondered how that would interfere. Mr. Griggs stated as long as it's not right next door it won't be a problem. Mr. Cupoli stated he has Verizon wireless service and has never had a problem and therefore wonders how necessary this is. Mr. Griggs stated Mr. Cupoli is referring to their voice frequency, but these antennas are to address the 4G LTE data frequency which is different.

Ms. Young asked if the Board has any policies or procedures that would control the number of antennas throughout the town. Mr. Bucco stated there are no limits on the number. Her concern was more and more carriers wanting antennas throughout town.

Ms. Dunn added that the FCC requires them to work with other carriers and share antennas when feasible.

Mr. Kennedy suggested the Board could ask the Mayor and Council to consider something like this when they do their annual study. He also added that the regulations that govern telecommunications are federal and have taken away a lot of the control the local agencies have over these.

Ms. Young stated she would like to know if the town has a game plan to address the expansion of antennas throughout town. She wants to make sure antennas aren't popping up all over town.

Mr. Fitzgerald asked Mr. Kennedy to include in the yearend report that the Mayor and Council revisit the wireless ordinance as it may need to be updated since technology has been updated. Mr. Fitzgerald felt the property owner should be here. Mr. Kennedy stated the property owner has to consent to the application which has been done and is not obligated to appear. Mr. Fitzgerald asked if all municipal sites were looked at first before choosing this location. Ms. Dunn stated the Borough ordinance permits antennas in two locations owned by the municipality one of which is the water tower and Mr. Griggs stated the water tower is too close to their existing site at the West Belmar site.

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Ms. Casserly asked what the lifespan is of the antennas with technology always changing. Mr. Griggs stated the site is adequate now and doesn't see it not being adequate any time soon. If anything, there may be a need for more antennas. Ms. Casserly asked if there would be a disruption to the tenants during installation. Mr. Norris replied no.

Mr. Hutchinson stated the borough does have some regulations and specifies areas where these uses are permitted and doesn't see a need to grant a "d" variance.

Ms. Dunn added that the second location that is permitted by ordinance is the 100 block of 10th and 11th Avenues which is the Mayfair site where they already have an antenna.

Mr. Lisko asked Mr. Bucco if he had any concerns about the location. Mr. Bucco stated his only concern was can the roof hold the antennas.

Public:

Gene Creamer, Fourth Avenue, questioned whether or not there are two or three antennas because the newspaper notice referenced a GPS antenna. Mr. Norris stated yes there would be a GPS antenna. Mr. Creamer asked if it is a receiving only antenna. Mr. Norris replied yes. Mr. Creamer stated the Borough Ordinance states that type of antenna doesn't require land use approval. He also felt they should be asking for a conditional use variance from the planning board and not a use variance from the zoning board.

Walter Macgowan, 925 Main Street, stated his concern is there are already a ton of wires over the back of his building over the outdoor eating areas for his tenants. He spoke to Mr. Griggs before the meeting about possibly moving the location of the one antenna away from his building so he has one less thing to look at and appreciates them willing to do so. Mr. Griggs confirmed to move the one on the southwest corner an additional two feet.

Board Comments:

Mr. Ross stated he agrees the town needs to come up with a plan for this. He stated he's not sure he understands the urgency for this because he's not an expert and doesn't know what the difference is between optimal usage and slightly less optimal usage. He is also concerned about having too many antennas in town. However, he added that based on the FCC regulations and the testimony provided he doesn't see how the application could be denied.

Mr. Cupoli stated he is not in favor of the application and thinks there may be other sites to service the area better.

Ms. Young stated she is not in favor of the application. It's not that she's against what Verizon presented but her concern has to do more with the lack of plan the town has for antennas.

Mr. Fitzgerald stated they gave a wonderful presentation however he is not in favor of the application because of similar reasons that Ms. Young presented. He is also not happy with how they determine what areas should be addressed and what areas aren't.

Ms. Casserly agreed and said she is not in favor of the application because she doesn't know how the town feels about this since there is no plan and feels there should be a plan before anyone makes an application to add an antenna in town.

Mr. Hutchinson stated nobody has discussed aesthetics and what one person may find acceptable another may not.

Ms. Dunn asked that the application be carried to another meeting to allow for them to work further with the Borough and see if any agreements could be made for additional antennas and to also have the property owner present.

The Board agreed to carry the application to the September 24th meeting.

Mr. Hutchinson made a motion to adjourn the meeting, which was seconded by Ms. Young and approved unanimously.