

Florence, New Jersey 08518-2323
 March 22, 2011

The Regular meeting of the Florence Township Zoning Board of Adjustment was held on the above date at the Municipal Complex, 711 Broad Street, Florence, NJ. Chairman Fratinardo called the meeting to order at 7:30 p.m. followed by a salute to the flag.

Secretary Zekas then read the following statement: "I would like to announce that this meeting is being held in accordance with the provisions of the Open Public Meetings Act. Adequate notice has been provided to the official newspaper and posted in the main hall of the Municipal Complex."

Upon roll call the following members were found to be present:

Brett Buddenbaum	B. Michael Zekas
John Fratinardo	Robert Adams
John Groze	William Bott (LATE)

ABSENT: Keith Crowell
 Ray Montgomery
 Candida Taylor

ALSO PRESENT: Solicitor David Frank
 Engineer Dan Guzzi
 Planner Robert Perry

Chairman Fratinardo announced that a letter had been received earlier today from the attorney for LB Solar requesting that the Board continue the application to the April 26, 2011 meeting. He also advised the public in attendance that since this was announced at the public meeting they would not receive additional mailed notice.

Solicitor Frank stated that there were only 5 members in attendance and stated that the Board would do some of their other business prior to hearing the Use Variance application for T-Mobile to see if any other members arrived.

Solicitor Frank suggested that the Board take action on Mr. LaRocca's application first.

Motion of Zekas, seconded by Buddenbaum to dismiss Application ZB#2010-14 for Joseph LaRocca without prejudice.

Upon roll call the Board voted as follows:

YEAS: Buddenbaum, Fratinardo, Groze, Zekas, Adams
 NOES: None
 ABSENT: Crowell, Montgomery, Taylor, Bott

30.

Motion of Zekas, seconded by Adams to continue Application ZB#2011-01 for LB Solar as requested to the April 26, 2011 meeting.

Upon roll call the Board voted as follows:

YEAS: Buddenbaum, Fratinardo, Groze, Zekas, Adams
NOES: None
ABSENT: Crowell, Montgomery, Taylor, Bott

MINUTES

Motion of Zekas, seconded by Groze to approve the Minutes from the January 25, 2011 meeting as submitted. Motion unanimously approved by all members present.

RESOLUTIONS

Resolution ZB-2011-07

Continuing until February 22, 2011 the application of Joseph LaRocca for Use variance and site plan waiver to permit conversion of a warehouse with one apartment into four apartments on property located at 312 Summer Street, Florence, NJ. Block 43, Lot 8.

Motion of Zekas, seconded by Adams to approve Resolution ZB-2011-07.

Upon roll call the Board voted as follows:

YEAS: Zekas, Buddenbaum, Fratinardo, Groze
NOES: None
ABSENT: Crowell, Montgomery, Taylor, Bott

Resolution ZB-2011-07A

Dismissing without prejudice the application of Joseph LaRocca for Use variance and site plan waiver to permit conversion of a warehouse with one apartment into four apartments on property located at 312 Summer Street, Florence, NJ. Block 43, Lot 8.

Motion of Zekas, seconded by Groze to approved ZB-2011-07A.

Upon roll call the Board voted as follows:

YEAS: Buddenbaum, Fratinardo, Groze, Zekas, Adams
NOES: None
ABSENT: Crowell, Montgomery, Taylor, Bott

31.

Resolution ZB-2011-08

Deeming incomplete and continuing until February 22, 2011 the application of T-Mobile, LLC for minor site plan with use and bulk variances to permit the co-location of 9 (nine) telecommunications antennae at a centerline height of 109' on an existing 120' lattice tower on property located at 2022 Route 130 north, Florence Township. Block 160.01, Lot 10.01.

Motion of Zekas, seconded by Adams to approve Resolution ZB-2011-08.

Upon Roll call the Board voted as follows:

YEAS: Zekas, Buddenbaum, Fratinardo, Groze
NOES: None
ABSENT: Crowell, Montgomery, Taylor, Bott

Resolution ZB-2011-09

Granting the D2 Use variance to permit the expansion of the pre-existing non-conforming use subject to site plan approval and continues indefinitely the D1 Use variance to permit 5,000 sq. ft. to be subdivided off of the adjoining property and added to the subject property for use by the dental facility.

Motion of Groze, seconded by Adams to approve Resolution ZB-2011-09.

Upon roll call the Board voted as follows:

YEAS: Adams, Buddenbaum, Fratinardo
NOES: None
ABSENT: Crowell, Montgomery, Taylor, Bott
INELIGIBLE: Zekas

Chairman Fratinardo called for Application ZB#2010-16 for T-Mobile Northeast, LLC. Applicant is requesting minor site plan with use and bulk variances to permit the co-location of nine (9) telecommunications antennae at a centerline height of 109' on an existing 120' lattice tower on property located at 2022 Route 130, Florence Township. Block 160.01, Lot 10.01.

Debbie Shulski, attorney for the applicant, had a suggestion since there were only 5 members in attendance. She stated that there was a court reporter in attendance and T-Mobile would be willing to let the court reporter transcribe the hearing and then have the absent members review the transcripts and if the Board wanted to take it under advisement and vote at the next meeting T-Mobile would be agreeable to doing that, if the absent Board Members would be agreeable to reading the transcripts.

Solicitor Frank stated that this is functionally possible, but you are imposing on 3 people who aren't here this evening. He stated that there are 5 members eligible to vote here this

evening. Attorney Shulski stated that they would like to start putting testimony on the record.

Alternate Board Member Bott arrived at 7:41 p.m. The hearing will proceed with 6 members in attendance.

Attorney Shulski said that T-Mobile had appeared before the Board 2 months ago and at that time there were still some concerns with the plan. Since then, a limited survey plan and some additional documentation had been submitted to address some comments from the Board's professionals review letters, and she stated that if the Board grants completeness, she has additional exhibits to be distributed to the Board.

Attorney Frank stated that the applicant did re-notice for this meeting so the Board does have proper jurisdiction.

Engineer Guzzi referred the Board to his March 9, 2011 review letter. He stated that the applicant for the most part has satisfied the critical submission items which include Item A the survey. Items B through E are outstanding, but they are environmental issues and contours, and due to the limited scope of development he would support a waiver. Item F concerns all structures, wooded areas and trees six inches and greater in diameter; there are none shown on the updated survey so with verification or testimony he is satisfied that this has been addressed. Item G (signature blocks) was satisfied. Item H is for drainage condition; due to the scope of work a waiver would be supported. Items I, J, K L and M are all minor items for which waivers would be supported for this application.

Engineer Guzzi said that, if the Board would consider granting the submission waivers as indicated in his report, the hearing could proceed.

Motion was made by Zekas, seconded by Buddenbaum to grant the submission waivers as outlined by Engineer Guzzi and deem the application complete. Upon roll call the Board voted as follows:

YEAS: Buddenbaum, Fratinardo, Zekas, Groze, Adams, Bott

NOES: None

ABSENT: Crowell, Montgomery, Taylor

Attorney Shulski stated that if the Board has no objections she would do an offer of proof. All of the witnesses would be sworn in, she would summarize their testimony. They would affirm it as their own and be available for any direct questions. She stated that she was planning on doing this for 3 of the witness. One was a fact witness to establish standing, one is the radio frequency expert and the third is the land planner. Then the engineer will do a narrative of his own. Chairman Fratinardo stated that this would be acceptable to the Board.

Solicitor Frank suggested that all witnesses be sworn in and then proceed with the Use issue first. William P. Gilmore, Steven Hornberger, Glenn Villanueva and Douglas Cowan were all sworn in by Solicitor Frank.

Solicitor Frank asked if Mr. Gilmore had appeared before this Board before. Mr. Gilmore stated that he had not. He said that he was a New Jersey licensed professional engineer with a Bachelor's of civil engineering from Drexel University. He stated that he has appeared before countless Boards in New Jersey and Pennsylvania as a professional engineer. Mr. Gilmore was accepted by the Board as an expert in the field of civil engineering.

Solicitor Frank stated that Glenn Villanueva has been accepted as an expert witness before the Board previously.

Mr. Cowan stated that he is licensed in New Jersey as a professional planner and he has appeared before this Board on another T-Mobile matter about a year and a half ago. Chairman Fratinardo stated that Mr. Cowan was accepted.

Attorney Shulski distributed the Exhibit list to the Board Members comprised of Exhibits A-1 through and A-28. She called Steven Hornberger as the first witness whose testimony she would summarize. Mr. Hornberger would be testifying as a fact witness to establish standing. He is the site acquisition representative retained by T-Mobile. Generally his responsibility is to do a "scrub of the site" whereby he finds available candidates within the search ring as established by the radio frequency expert. She stated that he would testify that T-Mobile looks to co-locate whenever possible, obviously it is in the best interest of the municipality as well as T-Mobile.

The site before the Board this evening is a co-location and Mr. Hornberger would testify that this is in keeping with T-Mobile's plan. T-Mobile has authorization by the tower owner to proceed with the application before the Board this evening. There is an antenna site agreement marked in your package as Exhibit A-3, and a letter of authorization from the tower owner that is marked as Exhibit A-4 to establish standing. Lastly Mr. Hornberger would testify that T-Mobile would be compliant with all applicable ordinance requirements in terms of removal of the facility, abandonment and any other requirements that the township has for the annual inspections. This essentially summarizes the testimony of Mr. Hornberger.

Attorney Shulski asked Mr. Hornberger if he affirmed this as his own testimony. Mr. Hornberger answered that he did. She asked if he had any corrections or additions? Mr. Hornberger stated that he did not. Attorney Shulski asked if the Board had any questions of Mr. Hornberger? There being no questions she proceeded to the next witness.

Attorney Shulski stated that the next witness whose testimony she would summarize was Glenn Villanueva. She stated that Mr. Villanueva's C.V. was Exhibit A-18 in the packet. Attorney Shulski said that Mr. Villanueva would testify that T-Mobile is licensed by the FCC and under its license it is required to provide what is known as "reliable coverage".

The FCC license is marked in the package as Exhibit A-5. "Reliable coverage" is the ability to initiate and maintain a call without experiencing busy signals, going directly into voice mail or experiencing a dropped call. Mr. Villanueva would testify that he had prepared a propagation analysis. Exhibit A6 depicts the existing coverage in Florence Township. The white area depicts the gap in coverage. As you can see there is currently a gap in coverage. The yellow color represents in vehicle coverage and the green represents in building coverage. Exhibit A7 depicts the facility when it is up on air and assumes the proposed coverage for the site and surrounding area. The area is white is less and it provides for more in building coverage. The propagation analysis determines that the proposed facility is needed in order to satisfy the purpose in the company's grid system. Mr. Villanueva would also testify that the facility complies with all applicable radio frequency and emission standards.

Attorney Shulski stated that one of the ordinance requirements was that there be an annual inspection by the tower owner. She stated that it didn't appear that was happening, but there is a report marked in the package as Exhibit A9 showing that the facility is in compliance with all applicable FCC standards. She said that these facilities have very low power transmitters and operate typically very much below what the FCC regulations are. Mr. Villanueva would testify that there would be no interference with any of the other carriers. In the event that they did interfere, there would be harsh penalties under their license and they would have to take immediate corrective measures. Lastly, Mr. Villanueva would testify that the proposal complies with all applicable local, federal and state regulations.

Mr. Villanueva affirmed this as his own testimony and stated that he did not have any correction or additions.

Chairman Fratinardo asked if Attorney Shulski had testified that the inspections had not been done previously. Attorney Shulski stated that she couldn't say for sure that they haven't taken place, but if the township doesn't have that on record she isn't sure. She stated that they do not represent the tower owner, so she is not familiar with whatever obligation the tower owner may have had. She stated that one of the comments in Engineer Guzzi's letter was to go back and confirm that the tower was compliant in the past. She stated that she did not know how to do that, and the important thing is that the tower is compliant now.

Chairman Fratinardo stated that we can't go back but how do we make sure that it is in compliance in the future? Engineer Guzzi stated that obviously you can't go back, but he thought maybe the inspections had been done and just not submitted to the township, in which case you could get them from the tower owner. If not, we need to establish that going forward they would be submitted. Attorney Shulski stated that this is also an enforcement issue. Obviously the township has the ability to enforce that provision of the ordinance and to reach out to the tower owner and make sure that this is being complied with.

Solicitor Frank stated that in reviewing the compliance report it appears that someone actually did a physical visit to the site with sensors. He asked about enforcement in the future. Is this something that each co-locator should be obliged to do or is it something that the entire facility should be obliged to do. Attorney Shulski stated that when they get a report prepared it takes in the overall cumulative affect of all the carriers on the facility. If the tower owner were responsible, they would take in all the co-locators.

Chairman Fratinardo asked if T-Mobile's site agreement with the tower owner called for him to do an annual inspection? He stated that if it was in the agreement T-Mobile could get a report on an annual basis. Solicitor Frank stated that the condition should be that one report be submitted every year. The report could be done by the owner or by one of the co-locators.

Member Bott stated that there are antennae from other telecommunication companies on the tower. Shouldn't an agreement with the tower owner state that the tower should be checked each year? Attorney Shulski said that this is not usually included as part of the lease agreement. If there is an ordinance requirement then whoever initially constructs the tower would have the responsibility, or sometimes the ordinance calls out that future co-locators do the annual inspections. Attorney Shulski said that it looks like this was a condition of the underlying approval for the tower owner; obviously their duty to do that would include future providers on it. Member Bott stated that it would be their duty but it would be to your advantage to state in the lease that they would be responsible for that.

Attorney Shulski stated that the next witness summary that she would present was from the planner Doug Cowan. Mr. Cowan would testify as to the positive and negative criteria, which this Board is very familiar with. T-Mobile has an FCC license so it is determined to be inherently beneficial. The site is particularly well suited for the telecommunications facility because it is located in a highway commercial zoning district and there is already a tower there so it eliminates the proliferation of towers elsewhere in the township. The proposed facility is not negatively impacting the intent or purpose of the Master Plan or zoning because the use does not produce any odors, noise or dust. It does not have impact on any public infrastructure in terms of water and sewer. There would be a very de minimus impact, if any, on traffic given that it is an unmanned facility and only requires monthly maintenance trips. The site will continue to function as a telecommunication facility. There is no change in the basic operation of the facility, nor will the overall appearance of the existing structure be significantly altered by the addition of the antennas. They are going to be placed at a lower height than the existing antennas. The equipment is going to be located within an existing building so there will not be any visual aesthetic impact from the addition of the equipment.

Attorney Shulski stated that Mr. Cowan would also testify that applying the Sica test, the use benefits the general welfare in providing prompt and reliable coverage. It also allows for enhanced 911. There are a number of businesses and residences that do not have landlines but rely on their cell phones. The positive affects outweigh the negative and there is no other practical means to provide the upgrade in service that would be less intrusive on the surrounding area that what is being proposed.

Douglas Cowan affirmed that this was his testimony and stated that he did not have any corrections or additions.

Attorney Shulski called William P. Gilmore, P.E. to testify. Mr. Gilmore pointed out the site on the site plan. He stated that at one point this site was developed and then all the buildings were razed. There are remnants of a bituminous parking area at the northern part of the site as well as an existing gravel area. To the east of the site, there is the existing one story block telecommunications building and immediately north of that is a self supporting 120' high tower that has AT&T antennas currently mounted to it. There is some vegetation including a large 15" tree.

Mr. Gilmore stated that he walked the site earlier in the day and there is a bituminous drive that dissipates about 200' back from the road, the remainder of the 2000' of the site is former farmland and there is some typical early succession vegetation you would see when you stop farming a field. There are no other buildings or structures other than the block building and the telecommunication tower. This plan also shows some of the proposed landscaping north of the building.

Mr. Gilmore showed a larger scale plan of the one story block building and the 120' existing tower that depicts the 6 T-mobile antennas and 3 arrays immediately behind those antennas at 109'. The entire communication structure is currently surrounded by an 8' chain link fence with a 12' gate.

Engineer Guzzi asked if there were any other structures on the site. Mr. Gilmore stated that he had walked the entire site and there were no other structures.

Mr. Gilmore responded to one of the comments in Engineer Guzzi's letter saying that there would be no generator. This site works on a back-up battery system that would be located in one of the cabinets in the existing block structure. He stated that there is plenty of room on the site for a service vehicle. Typically a technician would stop by every 6 weeks to make sure that everything is performing satisfactorily. This vehicle is a small pick-up truck or mini-van. Obviously, there is no water and sewer service required. No lighting is proposed.

Attorney Shulski asked that their exhibits be submitted into the record. She stated that they don't have any additional testimony but would be happy to address any questions that the Board might have.

Member Bott asked if T-Mobile was in the process of being purchased by AT&T and stated that AT&T already has antennas on that tower. Attorney Shulski stated that at this point it is too early to tell but having lived through the merger of AT&T/Cingular it was a 2 year process.

Vice Chairman Zekas asked for an explanation of the terms "reliable in building" versus "reliable in vehicle" as it pertains to the coverage maps. Mr. Villanueva stated that the in-

building coverage is a stronger signal. The in-vehicle is a lower signal that might not be able to penetrate inside a building or commercial establishment. Vice Chairman Zekas asked if mounting the antennas on this tower would be a significant increase in coverage? Mr. Villanueva stated that in his opinion it would be a significant increase plus there is approval for a future development planned in this area. The new antennas will also increase, the in-building coverage for some of the neighboring residential areas.

Engineer Guzzi stated that he had prepared a report dated March 9, 2011 and also a supplemental report dated March 17, 2011 to review additional information that was submitted. He stated that based on all the information that was provided and the testimony given today the applicant has addressed all of the outstanding comments.

Planner Perry referred the Board to his March 4, 2011 letter. The applicant has through its professionals, satisfactorily addressed all his comments. He noted that when the site was originally approved there were buildings between the area with the cell tower/equipment building and the road. Minimal landscaping was approved as the buildings provided additional buffer. Now that the buildings have been razed, he asked for some additional white pines and forsythia be added to provide a nicer barrier in front, and the applicant has complied.

Motion of Zekas, seconded by Groze to open the hearing to public comment. Motion unanimously approved by all members present.

Dennis O'Hara, 871 Wallace Avenue was sworn in by Solicitor Frank. Mr. O'Hara stated that he also had read the article regarding the merger of AT&T and T-Mobile. He asked if AT&T was the only carrier with antennas on the tower now?

Engineer Guzzi stated that if there is not a second carrier on the tower at this time, there is at least an approval for a second carrier. Mr. O'Hara asked that if the merger should occur would the Board require these T-Mobile antennas to be removed?

Planner Perry stated that on his report under general comments on page 3, item 4 a note has been added to the plan stating that if the carrier abandons or discontinues use of the facility within 90 days the structures would be physically removed.

Attorney Shulski stated that if T-Mobile were to decommission this site then it would be required to remove the antennas. She stated that she doesn't know yet what will happen as it would depend on the whole network. Solicitor Frank stated that in addition to that, there are some pretty significant anti-trust issues raised by this merger so it is possible that it won't go through at all or that there will be very significant divestitures to maintain competition in various markets. It is quite possible that even with a merger this antenna would remain viable.

Motion of Buddenbaum, seconded by Zekas to close the public comment. Motion unanimously approved by all members present.

Vice Chairman Zekas asked about the possible condition of the required inspection of the antenna. Solicitor Frank stated that the current approval condition requires that there be an annual report made to the town. He suggested that there be one such report, and it would be appropriate for co-locators to produce a copy of that report. Chairman Fratinardo said that the condition would be that the co-locator submitted a copy of the report or an inspection should be done.

Attorney Shulski suggested that the condition be worded in such a way that the obligation is on the tower owner and T-Mobile cooperate with the tower owner to insure that the report is done. Chairman Fratinardo stated that either the town would get a report from T-Mobile that was generated by the tower owner, but if something is not done by the tower owner then T-mobile would have to do the inspection. He said that it is obvious that in the past the annual inspection has fallen through the cracks. If the Board imposes this condition and T-Mobile then goes to the tower owner and gets a copy of the inspection that is fine. Attorney Shulski stated that this requirement was a condition of the prior approval when the tower owner came in to construct the tower. Solicitor Frank stated that the Board is just asking that T-Mobile produces as a condition of this approval a copy of that inspection. Attorney Shulski asked if it was okay that T-Mobile did not conduct the inspection, but just got a copy from the tower owner? The Board agreed with this. Solicitor Frank stated that the Board is not suggesting that there be multiple inspections. Only one need be done each year. They are just requiring a report be submitted by T-Mobile in case the tower owner doesn't supply one.

Secretary Zekas said that based on that condition he would like to make a motion that the Board approves the applicant's request for the Use variance and minor site plan with bulk variances. This motion was seconded by Member Adams.

Solicitor Frank stated that the conditions would be the one discussed regarding the annual report as well as compliance with the engineer's and planner's review letters and details as agreed to on the record.

Upon roll call the Board voted as follows:

YEAS: Buddenbaum, Fratinardo, Groze, Zekas, Adams, Bott
NOES: None
ABSENT: Crowell, Montgomery, Taylor

CORRESPONDENCE

- A. Letter from Attorney Denis Germano dated March 7, 2011 regarding recent ordinance interpretation for Brian and Susan Petuch.

Solicitor Frank stated that in Florence Township's ordinances there is a provision that says that all variances expire after one year. He said that he adds this statement to all the resolutions. The Petuch decision was not a variance but an Interpretation of the ordinance. Due to financial matters the Petuch's will not be able to start the construction

immediately, and that is why they are concerned with the one year expiration. He stated that if the Board would like he could prepare a revised resolution that removes that provision.

Chairman Fratinardo asked if this Board deleted that provision would this Interpretation stand in perpetuity? Solicitor Frank stated that it would stand so long as the relevant provisions of the ordinance remains unchanged. Chairman Fratinardo asked if the Petuch's did not make the improvement but sold their house. Would the Interpretation end? Solicitor Frank stated that there were specific conditions based on the nature of what was proposed, the interior entrance to the apartment, the close relationship of their son with their family, etc. It was very important to the Board that this remains to be seen as a single family home. All these conditions would have to be exactly the same for the Interpretation to be continued.

Motion of Zekas, seconded by Buddenbaum to modify the resolution as requested by the applicant. Upon roll call the Board voted as follows:

YEAS: Buddenbaum, Fratinardo, Groze, Zekas, Adams, Bott
 NOES: None
 ABSENT: Crowell, Montgomery, Taylor

Motion of Zekas, seconded by Adams to open the meeting to public comment. Motion unanimously approved by all members present.

Dennis O'Hara, 871 Wallace Avenue stated that Alternate Member Bott had brought up a point at the Council meeting regarding the fact that there are no ordinances for solar fields and there are applications for ground mounted solar pending.

Solicitor Frank stated that many towns are addressing the issue of solar by adopting ordinances. Some towns are making solar a conditional use in zones other than the industrial zones whereby statute they are permitted as of right. This is something that Council might delegate to the Planning Board and its Planner and see it get developed there. The Zoning Board is a quasi-judicial body that decides things based on the standards that are available. He stated that the legislature has spoken a bit about solar and there are some rules established and other principles, which cover accessory issues generally. There are tools to deal with it, but it is always better if the Council and the Planning Board get together and work out ordinance to guide the process.

Mr. O'Hara stated that he would contact Township Administrator and Acting Zoning Officer, Richard Brook and ask that Council and Planning Board look at establishing an ordinance for ground mounted solar.

Mr. O'Hara asked if this is called an accessory use, does that mean it is only on the lot in question or could it be on an adjoining lot? Solicitor Frank stated that accessory uses would typically be found on the same parcel as the principal use. If a particular parcel is comprised of multiple tax lots that would not necessarily mean that the use couldn't be

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accessory on one and served a use on another tax lots. The Board could make it a condition to have the lots merged.

Motion of Zekas, seconded by Buddenbaum to close the public comment. Motion unanimously approved by all members present.

There being no further business motion was made by Adams and seconded by Buddenbaum to adjourn the meeting at 8:34 p.m.

Raymond Montgomery, Secretary

RM/ne