

**WEST AMWELL TOWNSHIP
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
October 25, 2011**

The West Amwell Township Zoning Board of Adjustment regular meeting was called to order at 7:33PM by Chairman Fulper.

The following statement of compliance with the Open Public Meetings Law as listed on the meeting agenda was summarized by Chairman Fulper: This meeting is called pursuant to the provisions of the Open Public Meetings Law. This meeting was included in a list of meetings transmitted to the Hunterdon County Democrat and Trenton Times on January 10, 2011. Notice has been posted accordingly and a copy of this notice is available to the public and is on file in the Zoning Board of Adjustment Office.

The meeting was recorded via digital recording system and a copy of the CD is on file in the Zoning Board of Adjustment Office.

Chairman Fulper led the Pledge of Allegiance to the American Flag.

ATTENDANCE/ROLL CALL:

Roll call on attendance: John Cronce-present, Brian Fitting-present, Ruth Hall-present, Dave Sanzalone-present, John Dale-present, John Ashton (ALT. #1) -present, John Hoff (ALT. #2) - present, Robert Fulper-present.

Absent: Joe Romano

Professionals Present: Stewart Palilonis, Board Attorney; Tom Decker, Board Engineer; Anthony Mercantante, Board Planner

PRESENTATION OF MINUTES:

Regular Meeting Minutes – September 27, 2011 – Motion was made by Sanzalone with a second by Dale for approval of the minutes with verification of dates as discussed. Roll call, Cronce- abstain, Fitting-abstain, Hall-aye, Sanzalone-aye, Dale-aye, Ashton (ALT. #1)- abstain, Fulper-aye.

RESOLUTION(S) OF APPROVAL:

Garden Solar LLC – Block 18 Lot 1– Brunswick Pike Conditional Use/Second Principal Use/Nonconforming Use Variances.

Motion was made by Cronce with a second by Fitting for approval of the resolution with minor changes as discussed. Roll call: Cronce-aye, Fitting-aye, Hall-aye, Sanzalone-aye. Motion carried

East Coast Colorants, LLC d/b/a Breen Color Concentrates –Block 8 Lot 23.03 - Kari Dr. – Amended Site Plan /Use Variance

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Motion was made by Cronce with a second by Hall for approval of the resolution with minor change as discussed. Roll call: Cronce-aye, Fitting-aye, Hall-aye, Dale-aye, Ashton (Alt. #1)-aye, Hoff (Alt. #2)-aye, Fulper-aye. Motion carried

APPLICATION(S):

Public Hearing: New Cingular Wireless PCS,LLC (AT&T) -Block 5.01 Lot 3 –125 Alexauken Creek Road –Variance Request – Use/Height/ Preliminary and Final Site Plan Approval (7:41PM)

Michael Lavigne, attorney for the applicant, appeared on behalf of the applicant New Cingular Wireless PCS, LLC (AT&T). Application, Checklist, and Plan titled “Site Plan of Existing Conditions” prepared by Dewberry-Goodkind, Inc., last revised July 8, 2011, Plans titled “Preliminary and Final Major Site Plan, Proposed Unmanned Equipment Shelter at Existing Transmission Tower (Co-Location), PSE&G-Lambertville Site No. W-371” prepared by Dewberry Goodkind, Inc., last revised August 11, 2011. Set consists of ten (10) sheets, were received and distributed

Angela Buonantuono, Court Reporter, Florham Park, NJ - present on behalf of the applicant New Cingular Wireless.

(Chairman Fulper related that there would be a change in the agenda order of business resulting in a brief recess of this application – Meeting recessed 7:43 PM – 7:44 PM)

Public Hearing: Lingerfield, Mark - Block 32 Lot 18 – Barry Rd.– Variance Request – Addition to Single Family Home/side yard setback (7:43PM)

Chairman Fulper advised that the application for Lingerfield would be carried to the November 22, 2011 meeting of the Board due to improper notice. No additional notification would be made.

(The regular order of agenda business resumed - New Cingular Wireless application)

Public Hearing: New Cingular Wireless PCS,LLC (AT&T) -Block 5.01 Lot 3 –125 Alexauken Creek Road –Variance Request – Use/Height/ Preliminary and Final Site Plan Approval (7:44PM)

Notices of service and publication were reviewed by Attorney Palilonis stating the original Affidavit of Publication was missing. Discussion ensued by the Board and applicant, resulting in a decision to move forward with the hearing. The applicant will submit the original Affidavit of Publication. Attorney Palilonis stated the hearing will be void if the original Affidavit of Publication is not submitted.

Mr. Lavigne provided a brief overview of the application located at 125 Alexauken Creek Rd. Block 5.01 Lot 3, 60 acre property in RR4 zone, stating there are large utility easements that run through the property with a dual set of PSE& G transmission towers running through the

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property. The application seeks approval to construct a four port insert, a thin pole that runs up within the legs of the lattice tower of the PSE&G power tower that ties within, to further support the tower to accommodate wireless telecommunication antennas at the top. The existing PSE&G tower is 105ft. tall to the top, if approved, measured from grade level to the top would be 125ft. West Amwell has a wireless ordinance that contemplates these types of uses and encourages them where possible to be attached to existing structures and is a conditionally permitted use throughout the municipality. There is one condition of the conditional use standards that is not met, the antennas are not supposed to be more than 10ft above the top of the existing structure, in this case the very top will be 20ft. above the tower, therefor a D-3 or conditional use variance will be required and also site plan approval.

The following witnesses present on behalf of the applicant were sworn in by Attorney Palilonis:

Anthony Suppa, Engineer - 600 Parsippany Rd., Suite 301, Parsippany, NJ
Greg Bailey, Site Development- 6 Grannis Ave. Morris Plains, NJ
Yvan Joseph, RF Engineer - 45 Eisenhower Dr. Paramus, NJ
Dave Gorden, Environmental Specialist- 21 B Street, Burlington, MA
Peter Tolisclusius, Planner - 230 Broad St. Red Bank, NJ

Witness #1 – Yvan Joseph, RF Engineer - Mr. Joseph offered his credentials and testimony experience and was accepted as an expert witness.

Entered as Exhibit N-1, Radio Frequency Propagation Exhibit, consists of multiple layers, the base layer is a United States Geographical Survey map (USGS) which identifies the terrain, the major bodies of water, major highways and roads in and around the town, also identifies the border of the town and also identifies the existing facilities in the town.

In response to Mr. Lavigne, Mr. Joseph stated the applicant is an FCC telecommunications carrier. Mr. Joseph provided an overlay of exhibit N-1 showing the existing coverage for AT&T and also the gap in coverage along route 202 towards the town border. Mr. Joseph stated the primary objective is to complete service along route 202 to the border of the town and the state. Referring to the first overlay, stating it represents coverage at the permitted height at 115ft., showing it provides a large amount of overlap with a significant portion of route 202 covered, while still allowing a small gap and not achieving a seamless hand off into the neighboring site which crosses the border into Pennsylvania. The uncovered area allows for dropped calls when traveling south along route 202. Mr. Joseph explained an overlap in coverage is necessary to prevent dropped calls.

Mr. Joseph provided an additional overlay on exhibit N-1 showing coverage at 125ft. stating, connecting coverage is provided along route 202, also providing slightly more coverage to the west. 125ft. is the minimum height to meet the requirements in this area.

In response, Mr. Joseph stated it is an unmanned site with a maintenance visit every 4-6 weeks. The proposed facility will provide 4G technology service. These modifications are being performed throughout Northern, Central, and Southern New Jersey.

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In response, Mr. Joseph stated the FCC regulates that all wireless carriers meet guidelines for radio transmissions. The site was evaluated and falls below the FCC limits for maximum personal exposure of the public to radio frequency energy.

In response to Board member questions, primary focus is to utilize existing facilities, this tower was most suited to the needs. Existing facility locations include the Verizon Stockton site located at 25 Broad St Stockton, 540 Route 31 /202, West Amwell 44 Route 31 South, 1385 Route 179 North Mill Rd., these are existing facility location that would share service with the proposed site. Some of the existing towers have access issues for constructability. In response to Board member questions, Mr. Joseph stated more coverage would be achieved at a height of 135ft., adding at 125ft. sufficient coverage is provided along route 202.

Chairman Fulper opened the floor to the public for questions of the applicant's witness:

Witness #2 – Anthony Suppa, CME - Mr. Suppa offered his credentials and testimony experience and was accepted as an expert witness.

Mr. Suppa provided a brief overview of the existing site conditions as approx. 56 acres with gravel access road, two Right of Ways; 200ft PSE&G, 150ft PSE&G, 2 strings of PSE&G towers and a gas transmission easement through the property. Proposing to locate on the wider towers located on the eastern side of the property with access off the west side of Alexauken Creek Rd. through an existing gravel road. Proposing a 630sf compound, in front of the existing tower will have an 11½ft by 20ft. prefab shelter with all the equipment housed inside, with two ac units located outside to keep the equipment cool. Sites require electric and telephone; propose to take service from existing utility pole and run underground on the property to the compound, sites use approx. 200 amp service.

Entered as Exhibit N-2 plans dated 8/11/11 consisting of 3 sheets, referencing sheet Z-03 shows a proposed 8x8ft compound underneath the existing tower on the eastern side with a fort worth insert, sheet Z-05 dated 8/11/11 shows the compound with proposed gravel access allowing access from the existing gravel access to the proposed compound, a proposed 8ft. high fence with privacy slats to screen the shelter, PSE&G does not allow any landscaping in the Right of Way. There is also a proposed 8ft. fence around the fort worth insert. The tower is a 105ft all steel tower, 18" steel pipe, 19 cables inside with 6 cables outside running up through the top where AT&T is proposing 12 antennae's on a 12ft triangular platform, PSE&G only allows a 20ft extension, leaving no room for additional height, current height is 105ft. A current structural report indicates the existing tower passes code, with the fort worth insert passes code with some minor reinforcing to be done on the existing tower. The fort worth insert is tied into the tower at various points along the way to the top. A manually operated 70 watt light is on the shelter, also operated by timer.

Closest residential property is approx. 250ft., noise from the ac units will be below 65db at that distance. Noise inhibitors can be placed on the units if required.

In response to Board member questioning, the base of the fort worth insert sits on a concrete pad, the tower supports the insert.

The antennas will mount on the 12ft triangular mount platform; they will be flush to the pipe on the triangular mount, not protruding any further than the 12ft. triangular mount.

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A decommissioning plan is included in the lease with PSE&G and requested as a condition of approval by Board Engineer Decker.

In response, Mr. Suppa stated that no noise measurements have been performed but based on familiarity with the equipment the noise level would be much less than 65db. At night it would be in the neighborhood of 50db. Stating, with the inhibitor it would be much less. There are two 5ton AC units outside the shelter to keep the equipment cool.

Chairman Fulper opened the floor to the public for questions of the applicant's witness:

Witness #3 – Gregg Bailey, Site Acquisition Specialist - Mr. Bailey offered his credentials and testimony experience and was accepted as an expert witness.

Mr. Lavigne questioned who the lease agreements are with for the proposed installation; in response Mr. Bailey stated that an agreement is in place with PSE&G to put the fort worth insert within the electric transmission tower and a ground agreement for access and the equipment area with the Millers who are the property owners. PSE&G has also entered into an easement modification allowing the current easement to be expanded to include the telecommunications facility.

In response to Mr. Lavigne, Mr. Bailey provided an overview of five existing towers with existing conditions and constructability issues.

Mr. Bailey responded to Board member questions stating, no other negotiations were entered into with regards to other tower locations.

Chairman Fulper opened the floor to the public for questions of the applicant's witness:

Witness #4 – Dave Gorden, Environmental Specialist - Mr. Gorden offered his credentials and testimony experience and was accepted as an expert witness.

In response to Mr. Lavigne, Mr. Gorden provided testimony with regards to wetlands, stating looking at Wetlands and Waters of the United States the two transitional zones in NJ are 50ft and 150ft. Looking at the proposed tower disturbance areas outward of 50ft and 150ft, testifying he investigated the soil vegetation hydrology in that area and found that wetlands did not occur within 50ft and did not occur within 150ft of the proposed tower company.

Mr. Gorden stated the proposed tower location is approx. 45ft higher than the nearest stream elevation. There is an unnamed stream north of the property as well as the Alexauken Creek located west of the property. From the nearest point at the top of the bank of the unnamed creek to the nearest disturbance was approx. 235ft, falling within the 300ft riparian zone for Category One waters, which the tributary to the creek is. A flood hazard area culpability determination has been requested and will be submitted to the DEP as soon as all forms are returned signed by PSE&G.

In response to Board member questioning, Mr. Gorden stated the distance from the top bank of the stream to the proposed compound is approx. 280ft, recognizing that the DEP may have jurisdiction in this area and acknowledging that if the application were to be approved, one of

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the conditions would be to be subject to approval of other agencies with jurisdiction, including the DEP.

Chairman Fulper opened the floor to the public for questions of the applicant's witness:

Witness #5 – Peter Tolisclius, Planner - Mr. Tolisclius offered his credentials and testimony experience and was accepted as an expert witness.

In response to Mr. Lavigne, Mr. Tolisclius agreed a D-3 use variance was required based on the requested height of the tower at 125ft with 115ft permitted by ordinance. Entered as Exhibit N-3 Aerial Photo downloaded from NJ Office of Information Technology, with additional 5 photos taken by Mr. Tolisclius in May 2011. Mr. Tolisclius provided a brief description of each photo location and visibility of the tower, testifying that while driving along Alexauken Creek Rd. to the northeast; in photo #4 the tower and facility was barely visible in the background.

Mr. Lavigne questioned how the grade level of Alexauken Creek Rd. compared to the base of the tower and what effect it has on visibility of the compound area. Mr. Tolisclius responded, as seen in photo #1 and #4, the tower sits at a high point behind a wooded area; it is not in a cleared area. Stating this is a very good choice for a tower from a planning view point, the other towers are in open areas.

In response, Mr. Tolisclius stated this is a conditionally permitted use, the standard is under the Coventry Square case, and we are addressing the deviation. Mr. Tolisclius opined the height is needed as discussed previously for coverage. Based on that testimony, no detriment to having this location; it meets several conditions of the ordinance, use existing structures when possible, color coordinated with the tower.

Mr. Tolisclius testified the negative criteria is minimal noise, it is well buffered by woodland, if very observant from a very short distance near Hamp Rd. you will catch a view of the new structure. Mr. Tolisclius opined there is no negative detriment and it complies with the ordinance of using an existing structure.

In response to a Board member question, why wasn't a photo taken from route 202, Mr. Tolisclius responded that he drove along route 202 and could not see the existing tower. Testifying the proposed tower will not be visible from route 202.

In response, Mr. Tolisclius testified the elevation distance between the tower and route 202 is 155ft. Elevations along route 202 are 200ft, 210ft, 180ft; the tower site ground elevation is lower than route 202.

Chairman Fulper opened the floor to the public for comments/questions:

Hearing no questions, the floor was closed to the public (9:07 PM).

Attorney Lavigne summarized the testimony presented regarding the relief sought as a conditional permitted use. Fortunate to be able to work with the wireless ordinance and to be able to utilize an existing structure, adding that the property is a large well buffered property. Addressed all questions raised by the Board and professionals. The standard and the burden on the applicant are seemingly less with a conditional permitted use as this, opposed to a straight

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use variance. Hope the Board agrees the site remains appropriate for this proposed use notwithstanding the deviation from the one height restriction.

Attorney Palilonis summarized, stating the applicant is seeking a D-3 variance, relief from a condition of a conditional use ordinance. As stated under Coventry Square, focus needs to be on any negative impacts for using this particular site and if you feel they have adequately addressed any potential negatives it would be appropriate to vote in favor of the D-3 variance as well as the preliminary and final site plan approval subject to compliance with Engineer Decker's review letter, conditioned upon co-location where appropriate and all other applicable outside agency approvals.

Motion was made by Fitting with a second by Cronce to grant 10ft. relief for cellular tower insert with site plan approval subject to compliance with all other agency approvals. Roll call: Cronce-aye, Fitting-aye, Hall-aye, Sanzalone-aye, Dale-aye, Ashton (Alt. #1)-aye, Fulper-aye, Motion carried to approve. Resolution to be prepared for December meeting. (9:13PM)

Cronce – group did a great job, is a fan of using an existing tower and should see more of that.

Sanzalone - appreciates the professional presentation.

(Chairman Fulper related that there would be a brief recess at this time – Meeting recessed (9:14 PM – 9:25 PM))

CORRESPONDENCE:

The following items were distributed as correspondence:

Letter dated Oct. 6, 2011 received Oct. 13, 2011 from **Walter Wilson Esq.** re: **Garden Solar**

Invitation from **HCPB** re: Coffee with the County- **Updated NJ Strategic State Plan Wed. Nov 9, 7:30am**

September, 2011 **NJ Planner**

Approval of Bill List 10/25/11:

A motion by Cronce, seconded by Ashton to approve the Bill List for payment was unanimously approved by voice vote.

DISCUSSION:

Secretary Hall advised that a poll of the members indicated December 21, 2011 as the best date for the December meeting. The room has been reserved.

Discussion ensued among Board members and Attorney Palilonis regarding voting on a resolution 40:55D-10.g.(2)

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Attorney Palilonis agreed *while only one member may be sufficient to vote for adoption of the resolution*, he prefers to have as many members present as possible to vote on a resolution that voted for the action taken.

OPEN TO PUBLIC:

The floor was opened to the public. Hearing no comments/questions, the floor was closed.

ADJOURNMENT:

A motion by Cronic, seconded by Hoff to adjourn was unanimously approved by voice vote (9:45PM)

Respectfully submitted,

Ruth J. Hall