

**WEST AMWELL TOWNSHIP
ZONING BOARD OF ADJUSTMENT
RESCHEDULED MEETING
December 21, 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 provision of the Open Public Meetings Law. Notice of this meeting has been transmitted to the Hunterdon County Democrat and Trenton Times on December 11, 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.

Chairman Fulper related that there would be a change in the agenda order of business due to the Chairman and Vice-Chairman having a conflict with the PECO application, and will be recused from the public hearing, resulting in the appointment of a temporary Chairperson.

ATTENDANCE/ROLL CALL:

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

John Cronce-absent

Professionals Present: Stewart Palilonis, Board Attorney

PRESENTATION OF MINUTES:

Regular Meeting Minutes – November 22, 2011 – Motion was made by Sanzalone with a second by Dale to accept the minutes with minor correction and verification (refer to CD). Roll call, Fitting-aye, Romano-aye, Hall-aye, Sanzalone-aye, Dale-aye, Ashton (ALT #1)-aye, Fulper-aye.

RESOLUTION(S) OF APPROVAL:

Lingerfield, Mark - Block 32 Lot 18 – Barry Rd.– Variance Request – Addition to Single Family Home/side yard setback

Motion was made by Fitting with a second by Romano for approval of the resolution as written. Roll call: Fitting-aye, Romano-aye, Hall-aye, Sanzalone-aye, Dale-aye, Fulper-aye. Motion carried

CORRESPONDENCE:

The following items were distributed as correspondence:

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12/9/11 from Clerk Olsen – **NJLM – Legislative Alert****DISCUSSION:**

Chairman Fulper advised that Planner Mercantante will not be submitting a 2012 proposal, adding that Tom Decker has submitted a contract for 2012. Adding that he is aware that the Township Committee and Planning Board will be interviewing professionals for the engineering position and is aware that one applicant is a planner/engineer that could potentially provide both services. Noting that Secretary Hall advised that VanCleeef offers a planner if we were interested. Attorney Palilonis stated that it was generally not advisable to use the same professional for both services.

Chairman Fulper requested information on when the Planning Board and Township Committee would be interviewing the professionals, suggesting that a member of the Zoning Board would like to sit in on the interviews.

Secretary Hall advised that Board members Romano and Ashton terms expire on December 31, a Citizen Leadership form is required if they would like to be reappointed to the board, final decision is that of the mayor.

Approval of Bill List 12/21/11:

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

(Chairman Fulper related that there would be a brief recess at this time – Meeting recessed (7:49 PM – 8:00 PM))

Chairman Fulper recused himself from the PECO hearing due to conflict as a neighboring landowner to the applicant. Attorney Palilonis convened the meeting to oversee the appointment of a temporary Chairperson.

Nominations for Temporary Chairperson

Attorney Palilonis opened the floor for nominations for the position of Temporary Chairperson. Nomination was cast by Hall for the appointment of David Sanzalone. Motion was seconded by Dale. Hearing no other nominations, the floor was closed to nominations. Motion carried on voice vote – all ayes. David Sanzalone appointed as Temporary Chairperson for the purpose of hearing the PECO application.

APPLICATION(S):

Completeness/Public Hearing: PECO Energy Company c/o Dilworth Paxson, LLP – Block 17 Lot 13.01 – 79 Rocktown- Lambertville Rd. - Variance Request – Use/Height/Appeal of Zoning Officers Denial. (8:02 PM)

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Brett Wiltsey, attorney for the applicant, appeared on behalf of the applicant, PECO. Application, zoning denial dated 11-8-11, copy of plan titled "Land Development Plan prepared for Nextel Communications of the Mid Atlantic" as prepared by Anderson Engineering Associates, Inc., copy of plan titled "Lands Leased to CATV Service Company by Lambertville Water Company" were received and distributed.

Notices of service and publication were previously reviewed by Attorney Palilonis and found to be in order.

Mr. Wiltsey stated they are asking for variances to upgrade equipment on a tower that has existed since 1986. The initial zoning application was denied by the Zoning Officer for two reasons, the first being the ordinance requires 10 acres, whereas the existing site has 3.5 acres. The second reason is for height, stating the existing tower is at 190ft, whereas the ordinance allows for 140ft.

Mr. Wiltsey testified the proposed upgrade will not expand the tower, heighten the tower, and will not enlarge the tower, stating the proposed project is for upgrading the equipment.

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

James Miller, Planner - 222 Nicholson Dr. Morristown, NJ
John Dolmich, Engineer - 2604 Grand Terrace, York, Pa

Attorney Palilonis questioned whether the applicant was addressing the appeal; Mr. Wiltsey stated they were requesting a variance, not arguing that the Zoning Officer's decision was wrong.

Attorney Palilonis stated the board doesn't usually grant more relief than is required; recognizing that notice was given on an appeal. Offering that he prefers to hear testimony on whether or not the project is intensification. If it is intensifying the use, a variance is required, adding if it isn't intensification why would the board give a variance.

Witness #1 - James Miller - Planner - Mr. Miller offered his credentials and testimony experience and was accepted as an expert witness. Stated the tower is 240ft in height and is a guide lattice tower. A number of different carriers co-exist, as well as PECO. Stating they believe it is intensification because they are mounting four additional antennas on the legs of the lattice tower, and also a radio unit. While not a major intensification, it does increase capacity, adding that many municipalities deemed it to be intensification if the use is non-conforming going into the application.

In response to questioning from Board members, Mr. Miller stated the antennas are proposed to be mounted at 190ft, the tower is at 240ft, and the ordinance allows 140ft, acknowledging it as one of the two conditions not met.

Witness #2 - John Dolmich - Engineer- Mr. Dolmich offered an overview of the purpose of the antennas, stating there is no commercial traffic or no residential traffic. Equipment currently exists on the tower that carries PECO wireless traffic for their two way radio systems and other telemetry type data. Stating, we are adding these antennas that will talk to the collectors and

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then talk to the meters, and then ride back over the existing infrastructure to a microwave dish that exists on the tower that links to another location in Chalfont Pa., the dish will be used to carry additional traffic. The antennas do need to be added to talk to collector points in the region, specifically in the west, southwest and northwest of the Lambertville tower. About a 3-4 mile range is being monitored by the tower.

Board member Fitting pointed out that the tower is actually 250ft, in response Mr. Dolmich agreed the existing tower height is 250ft. and the equipment will be mounted at 193ft. In response, Mr. Dolmich stated they propose to add four antennas that will tie into the existing equipment (since 1999). The radio's will be mounted in pairs, for a total of four, and pointed toward a west facing direction. Four sets are required for redundancy in case of failure.

Mr. Dolmich stated that the tower has been certified by the structural engineer to handle the additional load. Board member Romano offered that the Board Engineer report indicates *no technical comment at this time*, assuming it applies to the structural issue.

Board member Romano recognized that the proposed antennae will be located 1ft. away from the Comcast antennae, Mr. Dolmich stated that these antennas operate on a different frequency than the other antennas on the tower and could be co-located as close as inches without any effect to existing systems or negative effect from their system to this system. Systems will be mounted to the legs and face, no antennas will be facing the east, coverage areas are to the northwest, directly west and toward the southwest, requiring four antennas to pick up coverage in case of failure.

Photos depicting view of the antennas, compound, and view of the structure from the road were entered as Exhibit P-1A, B, C.

In response to questioning, Mr. Dolmich stated that American Tower, a tower leasing company, is the owner of the tower. Board member Romano identified that the tower is at 104% with the proposed application, a little bit over stress, questioning if the tower is at max capacity and if there are any plans to add additional carriers in the future. Mr. Dolmich stated that none of the professionals present were qualified to answer, not knowing if strengthening of the guide wires or additional guide wires or replacement of any of the members may make the tower more structurally sound to add more carriers. It would be up to American Tower to decide whether they would want to add another carrier or not and at that time what structural modifications would be required to add that carrier.

In response to questioning, Mr. Dolmich stated approx. 60 pounds in total will be added by way of this application.

Planner Miller provided the following testimony as to how the positive and negative criteria of granting the use variance in accordance with the MLUL and Township's Master Plan and Zoning Ordinances will be met:

Positive criteria – stating this application is a pre-existing non-conforming conditional use, citing a standard from a case in West Windsor Township and required to demonstrate that the site remains suitable for the use notwithstanding the nonconformity. Stating there are many reasons

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why the site remains suitable for the use. First, the site remains suitable because of the size and magnitude of the tower, adding a panel this size and the radio is not going to create a discernible change in the tower or intensify the use in any way. The antennas will be attached to the leg and virtually invisible from the public right of way, creating no significant impact as the result of this installation. Second, this is a site which in many ways is particularly suited for the use, first by the existing infrastructure and tower, second by the wooded site with very deep setback. Even though the lot size may be less than the ordinance requires for this use, it remains an excellent site for this use because of the screening and the buffering of the trees. Finally, it is the least intrusive means of providing this service because if PECO had to go anywhere else within the community they would have to build a new structure which would have a much greater impact on the community than attachment to this structure. This site remains suitable for the use despite the two nonconformities, the lot size and the height; the tower height actually helps because the antennas have to be at 180ft to function properly. For the reasons stated, Mr. Miller opined they satisfied the positive criteria.

Negative criteria – The West Windsor case establishes a two prong test, required to show whether the proposed conditional use variance will cause such damage to the character of the neighborhood as it constitutes substantial detriment to the public good, and whether the conditional use variance is reconcilable with the municipalities legislative determination that the condition should be imposed in all conditional uses in the zoning district. In terms of the first point, there is no potential for any detriment to the neighborhood as a result of this installation, basically the tower overrides any potential impact that these relatively small antennas would have, they are going to blend in with the existing structure and there won't be any apparent change in the structure and therefore no potential to have any adverse or negative impact on the area. In terms of the second test, it meets that prong because the primary focus of your conditional use standards for this use is to encourage any kind of wireless communication carrier to locate on an existing structure, it encourages co-location. This application advances that motive because it is co-locating on an existing structure. In terms of the other aspects of the non-conformity, the use isn't going to have any impact on the size of the lot or height of the structure; in every respect this application is consistent with the intent of the ordinance even if there are some slight deviations from the standards themselves. Mr. Miller testified there is no impairment to the intent or purpose of the zone plan because it advances the primary objective for the telecom ordinance to encourage telecommunications uses to co-locate, additionally there is no detriment to the community and no impact on the zone plan or zone ordinance. Mr. Miller opined the application satisfies both the positive and negative criteria and is consistent with the objectives of the telecom and wireless ordinances and would merit the approval of the board.

Acting Chairman Sanzalone opened the floor to the public.

Hearing no questions of the applicant's professionals, the floor was closed to the public (8:34 PM).

Attorney Wiltsey stated, the testimony was not different whether they requested the appeal or asked for variances, so he decided to just ask for the variances. Mr. Wiltsey summarized the testimony presented regarding the relief sought for the use variances as, the acreage is a little small and going to be a little high. Not really making any changes to the tower other than upgrading to be consistent with Pennsylvania law, and provide more efficient services. Clarifying

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the use variances requested are for height and lot size. Requesting the Board to consider the variances as requested.

Acting Chairman Sanzalone opened the floor to the public.

Hearing no comments/questions, the floor was closed to the public (8:49 PM).

Attorney Palilonis stated the question is whether or not they are intensifying the basic structure by adding the antennas and if so, is a conditional use variance required, and if so is it warranted.

Board discussion ensued regarding whether to consider the application as requiring variances or as an appeal, resulting in a decision to consider as an appeal, based on the conclusion that it was not an intensification of the use.

Motion was made by Fitting with a second by Ashton to grant appeal of the Zoning Officer's decision based on it is not a significant intensification of the use. Roll call: Fitting-aye, Romano-aye, Hall-aye, Dale-aye, Ashton (ALT#1)-aye, Hoff ALT#2)-aye, Sanzalone-aye. Motion carried. Resolution to be prepared for January meeting. (8:56PM)

OPEN TO PUBLIC:

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

ADJOURNMENT:

A motion by Hoff, seconded by Dale to adjourn was unanimously approved by voice vote (8:57PM)

Respectfully submitted,

Ruth J. Hall