

BRIDGEWATER TOWNSHIP
ZONING BOARD OF ADJUSTMENT
Virtual Online Meeting
Tuesday, October 6, 2020
—MINUTES—

1. CALL MEETING TO ORDER:

Chairman Sweeney called the Virtual Online Meeting to order at 7:30 pm.

ANNOUNCEMENT: For the duration of the Corona virus Health Emergency, the Municipal Complex is closed to the public and meetings will be held digitally, connected by conferencing software provided by RingCentral.com. Members of the public are invited to view meetings live using RingCentral webinar, which also allows them to “raise a hand” and contribute when they are invited to do so during public portions of the meeting. Instructions for Virtual online meeting:

1. Download RingCentral meetings on preferred device: <https://www.ringcentral.com/apps/rc-meetings>
2. At the advertised start time of the meeting, enter:<https://webinar.ringcentral.com/j/1483881689> into your browser. **This method allows listening & participation*

Please note: You may also join via telephone: Dial: +1(213)-250-5700, Webinar ID: 1483881689* *telephone access allows only listening and not participation.* If you would like to make a comment, text 1(908) 912-4247 with name, contact information and comment for the Board and it will read into the record.

2. OPEN PUBLIC MEETING ANNOUNCEMENT:

Adequate notice of this meeting has been given in accordance with the Open Public Meetings Act N.J.S.A. 10:4-6. On September 17, 2020 proper notice was sent to the Courier News and the Star-Ledger and filed with the Clerk at the Township of Bridgewater and posted on the bulletin board in the Municipal Building. Please be aware of the Zoning Board of Adjustment policy for public hearings: No new applications will be heard after 10:15 pm and no new testimony will be taken after 10:30 pm. Hearing Assistance is available upon request. Accommodation will be made for individuals with a disability, pursuant to the Americans With Disabilities Act (ADA), provided the individual with the disability provides 48 hours advance notice to the Planning Department Secretary before the public meeting. However, if the individual should require special equipment or services, such as a CART transcriber, seven days advance notice, excluding weekends and holidays, may be necessary.

3. SALUTE TO FLAG:

4. ROLL CALL:

Donald Sweeney- present	Jeff Foose -present
Evans Humenick-present	Daniel Ahern- present
John Fallone -present	Donna Kelly - present
Dawn Guttschall- present	Andrew Fresco -present
Pushpavati Amin- present	Gary LaSpisa -present
James Weideli -present	

Others present: Board Attorney Steven Warner, Esq., Board Planner Scarlett Doyle, PP, Board Engineer William Burr, IV, PE and Land Use Coordinator Zuzana Karas

5. MINUTES FOR APPROVAL:

November 20, 2018 Regular Meeting (pending)
August 20, 2019 Regular Meeting (pending)
November 19, 2019 Regular Meeting (pending)
January 21, Regular & Reorg Meeting (pending)
June 16, 2020 Virtual Meeting (pending)
July 21, 2020 Virtual Meeting (pending)
September 15, 2020 Virtual Meeting (pending)

August 6, 2019 Regular Meeting (pending)
September 17, 2019 Regular Meeting (pending)
December 17, 2019 Regular Meeting (pending)
February 18, 2020 Regular Meeting (pending)
July 7, 2020 Virtual Meeting (pending)
August 4, 2020 Virtual Meeting (pending)
September 29, 2020 Virtual Meeting (pending)

6. MEMORIALIZING RESOLUTIONS:

JOHN & SARAH SCHNYDERITE-259 Candlewick Lane

Block 435 Lot 3
#20-004-ZB- VARIANCE - NEW SFD

The Chairman asked for a Motion from the Board to approve the resolution.
Motion for approval was made by Mr. Weideli and second by Ms. Guttschall
AFFIRMATIVE: Mr. Sweeney, Mr. Humenick, Mr. Fallone, Ms. Guttschall, Ms. Amin, Mr. Weideli and Mr. Foose
ABSENT: None
NOT ELIGIBLE: Mr. Ahern, Ms. Kelly, Mr. Fresco and Mr. LaSpisa
DENIED: None

MARCIN & DARINKA FILIPOWICZ-1002 SUNSET RIDGE

Block 646 Lot 12
#20-003-ZB- VARIANCE – SFD – ADDITION AND RENOVATION

The Chairman asked for a Motion from the Board to approve the resolution.
Motion for approval was made by Mr. Weideli and second by Ms. Amin
AFFIRMATIVE: Mr. Sweeney, Mr. Humenick, Mr. Fallone, Ms. Guttschall, Ms. Amin and Mr. Weideli
ABSENT: None
NOT ELIGIBLE: Mr. Foose, Mr. Ahern, Ms. Kelly, Mr. Fresco and Mr. LaSpisa
DENIED: None

(Board member, Mr. Foose, questioned why he was not called to vote on the resolution above (Application #20-003-ZB)? Mr. Warner, explained that only those in favor of an application could then vote on memorizing the approving resolution.)

Chairman Sweeney, advised the board on other business needing to be addressed, specifically pertaining to the Skymanor Application, #20-007-ZB. The application, although dismissed at a prior meeting, was before the board to rescind that dismissal. It was confirmed however that, at that time of the announcement, no party was present pertaining to the application. Board attorney, Mr. Warner, advised it'd be best to address this in the order listed on the agenda and continue with the application scheduled first. Revisiting this later would ensure that if either the applicant and/or applicant's attorney wished to be present they would have that opportunity to do so. Chairman Sweeney agreed with Mr. Warner's advice and continued with the application listed on the agenda.

7. HEARING AND DELIBERATIONS:

**T-MOBILE NORTHEAST, LLC - 1222 Washington Valley Rd (Carried from 9-15-20)
Block 623 Lot 12
#20-011-ZB- VARIANCE**

(The application continued with testimony having been carried from a prior hearing date, of September 15th, 2020.)

Board attorney, Mr. Warner, confirmed that all notice requirements were satisfied. He also stated that the board's regular seven members were eligible to vote on the application, if the applicant should ask for a vote at its October 6th, 2020 meeting.

Edward W. Purcell, Esq., of Price Meese Shulman & D'Arminio, P.C., representing the applicant, reiterated to the Board the essence of the application. In addition, he informed the board that the applicant has stipulated to a two-year sunset provision as well as to reduce the height of the antennas to 119 feet, rather than 125 feet as previously proposed.

Ms. Boschulte, having been previously sworn, introduced into evidence as Exhibit A-20, a Supplemental Report for Site ID: "NJCLT57A," prepared by herself, dated September 23rd, 2020. Ms. Boschulte testified that she had investigated whether the height of the antennas could be reduced and determined it would be possible. Lowering the proposed height to 119 feet would be acceptable in still providing sufficient coverage, maintaining the current level of service needed for the area. She explained that, to make this determination, she used a "search ring" to find a potential location for a tower within a certain geographic area that would meet the requirement for providing coverage which would fill the gap in service. She concluded that, other than the PSE&G right-of-way, there were no other suitable structures of appropriate height close enough to the existing tower's antenna. Ms. Boschulte explained that, since no existing structures are available, the typical next step is to find sufficient space to build a new structure, and that is why the applicant identified the adjacent property as a potential site.

During questioning as to whether the antennas could be mounted on the water tower, Ms. Boschulte testified that the distance would not allow for that to work. She stated that because the water tower is approximately 0.8 miles away and, based upon the topography and distance, that location would not be a suitable replacement. She confirmed that the water tower is located on a very tall ridge approximately 300 feet higher in elevation than the area needing service. Due to height elevation the water tower would not provide the sufficient coverage desirable. Questions were also directed to Ms. Boschulte, as to whether there has been a service gap with the existing tower? She did confirm that there was a gap and that, without a temporary replacement tower, that service gap would continue to exist.

Discussion regarding the availability for alternative technology was debated. Ms. Boschulte stated that alternative technology such as small network nodes (SNN) or outdoor distributed antenna systems (oDAS) would not be appropriate in this situation. The reason was due to such technologies having a limited coverage range. She continued to explain that macro towers, such as the proposed replacement tower, have a broad range due to the location of the antennas being

so high above grade. Ms. Boschulte continued to clarify that the SNNs and oDAS are highly directional and cannot penetrate dwellings, trees, or other structures. She testified that SNNs and oDAS also lack redundancy and that if one node/antenna fails, the entire system would then fail. A macro tower would, however, allow for rerouting of the signal. Additionally, there would not be a battery or generator backup available with the alternative technologies. Finally, Ms. Boschulte explained that the alternative technologies would not provide e911 service, for emergency personnel to locate a caller's signal. She also explained that SNN and oDAS installations are generally used for permanent installations and require the installation of infrastructure which results in disturbance to the property. She concluded that these alternative technologies could not provide an adequate replacement for the proposed temporary macro-cell facility.

During questioning as to whether Ms. Boschulte had organized SNN or oDAS technology in other municipalities, she testified that she had done so in Hoboken, Newark, and Bernardsville/Mendham. She did however add that the alternative technologies work in such municipalities mainly because they were installed to complement the already existing macro tower network.

Ms. Boschulte stated that she is not aware of the technology used in Palo Alto, California.

Ms. Boschulte testified that oDAS has a small coverage footprint and once you venture off of the roadway, the signal degrades quickly. She explained that the signal will not reach structures that are setback significantly away from the right-of-way. It also would not reach the areas behind any existing structures because there is too much interference. Ms. Boschulte explained that the proposed tower would have antennas mounted much higher than an SNN or oDAS, producing less of an interference for trees and/or structures.

Mr. Kronk, also having been previously sworn, elucidated his testimony previously provided to the Board. He explained that he had previously referenced the standard for determining whether to grant the requested relief for the setback deviations as a conditional use standard, rather than a bulk variance standard. Mr. Kronk noted that the proposed temporary tower is not a conditional use and, therefore, the bulk variance standard would apply.

During questioning as to whether the applicant had obtained approval for the existing tower, Mr. Kronk testified that the existing tower was approved in 2007. He continued to add that the resolution of approval included a finding that a gap in service existed and the proposed temporary tower would address that. Mr. Kronk further stated that if the tower that addressed the coverage gap was removed, the coverage gap would again exist.

As to whether the courts had addressed the coverage provided by alternative technologies was questioned, such as oDAS. Mr. Kronk replied to the board that the courts had indeed done so. He explained that in *Sprint Spectrum L.P. v. Zoning Bd. of Adjustment*, No. 09-4940, the Federal court held that the oDAS was not a comparable alternative to a macro tower under the circumstances at issue in that case. Questions followed as to whether there had been any changes to the law since the 2014 decision? Mr. Kronk advised that in 2018, the FCC issued an order interpreting the Telecommunications Act of 1996, which lowered the threshold for finding that a

municipality had violated the TCA by materially inhibiting the provision of service, irrespective of whether a service gap exists. Questions followed regarding the standard for relief, Mr. Kronk testified that the standard was set forth in the Sica case. As to whether a denial of the applicant's proposal would constitute a violation of the TCA, Mr. Kronk stated that it would. The reason would be particularly since alternative technologies such as oDAS would not provide the sufficient coverage needed under the circumstances.

Mr. Kronk testified, following a height discussion, that if the Board granted the use variance, but denied the height variance, the applicant would be unable to construct such a tower.

As to the d(1) use variance relief, Mr. Kronk reiterated the testimony he previously provided and stated that the applicant had demonstrated both the positive and negative criteria. He again reviewed the four factors set forth in Sica. As for the public's interest, Mr. Kronk reiterated that members of the public rely on cellular service for many reasons, including emergency services. He noted that the Cellular Telecommunications Industry Association conducted a study finding that most people in the United States do not have landlines but, instead, rely solely on their wireless phones. As to the potential detrimental effects, Mr. Kronk advised that the primary detriment is visibility. As to reasonable conditions, Mr. Kronk noted that the applicant had already stipulated to a sunset provision and reduced the antenna height. He further noted that the applicant also has absolutely no interest in keeping the temporary tower up for longer than the necessary time. It is just a temporary mechanism to provide coverage that was previously approved. On balance, Mr. Kronk stated that the proposed enhanced communication services substantially outweigh the detriment associated with the proposal, particularly since the tower is only a temporary tower.

As to the negative criteria for the d(1) use variance, Mr. Kronk testified that granting the requested relief would not result in a substantial detriment to the public good or substantial impairment of the zone plan and zoning ordinances. He continued to explain that wireless facilities are permitted in non-residential zones and that while this property is located in a residential zone, the property is not used residentially. The site is rather occupied by the Martinsville Fire Company.

Mr. Kronk continued with the fact that the temporary tower would have a battery backup, not a generator. In response to a question Mr. Kronk informed the board that the applicant may be looking at a year to complete the project, but that two years was the anticipated worst-case scenario. During questioning as to whether there was a lease from PSE&G already in place. Mr. Kronk advised that there was not, but that the applicant had obtained a commitment letter from PSE&G which had been submitted to the Board as part of Exhibit A-19.

The applicant could stipulate to additional time constraints to ensure that the proposal would be completed in a timely fashion. Mr. Purcell, interjected to explain that it would be difficult for the applicant to do so, since the completion of the project largely depends on PSE&G's actions. The applicant specified that they would advise the Board within 14 days of receiving notification from PSE&G that it could relocate onto the replacement tower. Mr. Kronk advised it would take approximately 8 weeks to relocate the antennas once authorized. The applicant stipulated to advising the Board of the date that it will be permitted to relocate onto the permanent tower

("Permission Date") within 14 days of receiving said notification from PSE&G and that the applicant shall, thereafter, have 8 weeks from the Permission Date to relocate onto the permanent tower and remove the temporary tower from the property.

No member of the public commented on, or objected to, the application.

After reviewing the evidence submitted, the Board, by a vote of 5 to 2, found the applicant had satisfied the positive and negative criteria for the requested d(1) use, d(6) height, and bulk variance relief, and eligible for preliminary and final major site plan approval for the proposed development project, subject to the following conditions:

1. Any and all outstanding escrow fees shall be paid in full and the escrow account shall be replenished to the level required by Ordinance within 30 days of the adoption of a Resolution, within 30 days of written notice that a deficiency exists in the escrow account, prior to signing the site plan and/or subdivision plat, prior to the issuance of a zoning permit, prior to the issuance of construction permits, and prior to the issuance of a temporary and/or permanent certificate of occupancy, completion or compliance (whichever is applicable);
2. The terms of the afore mentioned approval are to be strictly construed in accordance with the plans and testimony presented to the Board herein, and same are incorporated into this Resolution by reference;
3. This approval shall expire after two (2) years from the date of the installation of the temporary wireless communication facility on the Property, at which time the applicant shall either have removed the facility in its entirety or returned to the Board and obtained further relief as warranted;
4. The applicant shall comply with the comments and recommendations set forth in the July 15, 2020 Review Memorandum prepared by the Township Engineer and Engineering Manager, Mr. Burr and Mr. Mills, respectively (attached);
5. The applicant shall comply with the comments and recommendations set forth in the June 23, 2020 Review Memorandum prepared by the Board Planner, Ms. Doyle (attached);
6. The applicant shall comply with the comments and recommendations set forth in the July 12, 2020 Review Memorandum prepared by the Health Officer, Mr. Sumner (attached);
7. The applicant shall reduce the mounting height of the antennas on the temporary tower from 125 feet to 119 feet and shall revise the plans accordingly;
8. The applicant shall not install a generator;
9. The applicant shall post a financial guarantee to secure the removal of the subject temporary tower, the form and amount of which shall be subject to the determination of the Township Engineer and/or Engineering Manager and the Township Attorney;

10. The applicant shall return the area where the temporary tower will be situated to its current condition after the temporary tower is decommissioned and removed from the Site;

11. The applicant shall advise the Board of the date that it will be permitted to relocate onto the anticipated new PSE&G tower on adjacent Lot 13 within 14 days of receiving said notification from PSE&G and shall, thereafter, have 8 weeks from said permission date to relocate onto the new PSE&G tower on adjacent Lot 13 and to remove the temporary tower from the Property and return same to its current condition;

12. The applicant shall seek from the Board of Adjustment the requisite prior approvals to permit the Applicant's facilities to be located on the anticipated new PSE&G tower on adjacent Lot 13, once same is constructed, and the Board shall retain jurisdiction for same;

13. The applicant shall be required at all times to use its best efforts, and proceed with a sense of great urgency, as determined by the Board Attorney, to obtain from PSE&G a binding written lease or similar agreement or commitment that the applicant shall be permitted, and the applicant shall agree, to relocate onto the anticipated new PSE&G tower on adjacent Lot 13, and the applicant shall be required to report back to the Board of Adjustment, on at least a quarterly basis, as to the status of such efforts, and also to advise the Board of Adjustment of any new substantive developments relating to such relocation onto the anticipated new PSE&G tower on adjacent Lot 13, including, but not limited to, relating to the certainty and the timing of such relocation, within 10 business days of the applicant's receipt of such information, by forwarding same, in writing, to the Board of Adjustment Attorney and the Board of Adjustment Secretary;

14. The applicant shall, at its sole expense and at the time of such subsequent proceeding, provide sufficient escrow for the Board of Adjustment to retain an independent radio frequency engineer or similar expert, to advise the Board in any subsequent proceedings relating to this application that may occur in the event that the applicant does not, for any reason whatsoever, relocate its wireless communication facilities onto the anticipated new PSE&G tower on adjacent Lot 13 within two (2) years from the date of the installation of the temporary wireless communication facilities on the property;

15. If the applicant has not yet done so, the applicant shall submit the requisite geotechnical and soil investigation reports to the Township Engineer;

16. The applicant shall continue to coordinate with the Martinsville Fire Company to ensure that the proposed temporary tower does not disturb any existing septic or sanitary sewer laterals and the applicant shall take the requisite action to ensure same, subject to the review and approval of the Township Engineering Department;

17. The applicant shall replace the proposed chain link fence with a solid board-on-board fence painted to match the ballast mount, same to be subject to the review and approval of the Township Planner;

18. The applicant shall submit any required contribution to the Affordable Housing Trust Fund;
19. All lighting shall be low-level/low-voltage and downward directed at the equipment, and same shall be shut off unless the equipment is being maintained or repaired;
20. All taxes, fees, escrows, assessments and other monies due to the Township shall be paid in full;
21. The applicant shall enter into a Developer's Agreement with the Township, same to be drafted, or in a form approved, by the Township Attorney unless a Developer's Agreement is deemed to be unnecessary by the Township Attorney;
22. The applicant shall comply with the Construction Mitigation Measures as set forth in Section 126-243.1 of the Land Use Code;
23. The applicant shall provide nine (9) copies of the filed map or approved plans for distribution to the Construction Official, Engineer, Planner, Tax Assessor, and others as required; and
24. The applicant shall comply with all rules, regulations, statutes and ordinances of the United States of America, State of New Jersey, County of Somerset, and Township of Bridgewater;
25. The applicant shall submit a Bridgewater Township Compliance Report prior to the plans and any deeds being signed, and prior to scheduling the pre-construction meeting and issuance of construction permits; and
26. The applicant shall comply with any and all other outside agency permit and approval requirements in accordance with the law.

The Chairman asked for a Motion from the Board.

Motion for approval by Ms. Amin and second by Mr. Fallone

AFFIRMATIVE: Mr. Sweeney, Mr. Humenick, Mr. Fallone, Ms. Guttschall and Ms. Amin

DENIED: Mr. Foose and Mr. Weideli

NOT ELIGIBLE: Mr. Ahern, Ms. Kelly, Mr. Fresco and Mr. LaSpisa

8. MEETING OPEN TO THE PUBLIC:

Members of the public wishing to make a comment to the Board on any matter not listed on the agenda were able to do so at this time. As noted, that in accordance with the Municipal Land Use Law and case Law, any questions or comments about a pending application was to be made at the hearing on that specific application.

No member of the public wished to address the Board.

9. OTHER BOARD BUSINESS:

SKYMANOR PROPERTIES, LLC-5 SKY HIGH TERRACE

#20-007-ZB- Rescind Dismissal

The Chairman asked for a Motion from the Board to approve the resolution to rescind the dismissal as well as extend the time of decision.

Motion for approval was made by Mr. Fallon and second by Mr. Weideli

AFFIRMATIVE: Mr. Sweeney, Mr. Humenick, Mr. Fallon, Ms. Amin, Mr. Weideli, Mr. Foose and Mr. Ahern

ABSENT: None

NOT ELIGIBLE: Ms. Kelly, Mr. Fresco, Mr. LaSpisa and Ms. Guttschall

DENIED: None

10. EXECUTIVE SESSION:

There was no need for an Executive Session

11. ADJOURNMENT

The meeting was adjourned at approximately 10:55 pm with a motion by Mr. Weideli and a second by Ms. Amin.