

## MINUTES – ZONING BOARD – February 22, 2021

**The Cranford Zoning Board of Adjustment meeting scheduled for Monday, February 25, 2021 at 7:30 p.m. was conducted virtually in order to avoid potential impacts from Covid-19.**

This meeting is in compliance with the “Open Public Meetings Act” as adequate notice of this meeting has been provided to the Westfield Leader and the Star Ledger with the agenda specifying the time, place and matters to be heard having been posted on a bulletin Board in the Town Hall reserved for such announcements and the filing of said agenda with the Township Clerk of Cranford. Formal action may be taken at this meeting.

The workshop portion of the meeting was called to order at 7:31 p.m. by Ms. Daly, Chair.

### **ROLL CALL:**

#### **Members Present:**

Ms. Daly  
Mr. Marotta  
Mr. Aschenbach  
Mr. Ashrafi  
Mr. Lucas  
Mr. Quinn  
Mr. Salomon

#### **Members Absent:**

None

#### **Alternates Present:**

Ms. Oliver  
Mr. Rees

#### **Alternates Absent:**

None

Also in attendance: for Mark Rothman, Esq., and Kathy Lenahan, Board Administrator

### **COMMUNICATIONS:**

None

### **MINUTES:**

Motion to adopt minutes from the January 25, 2021 meeting was made by Mr. Marotta, seconded by Mr. Quinn and passed on unanimous voice vote.

### **RESOLUTIONS:**

None

### **OLD/NEW BUSINESS**

Discussion was held regarding amending the language in the Rules and Regulations to allow written public comments during a hearing while in a State of Emergency. Ms. Daly reviewed the guidelines for public comments not related to applications before the Board.

Motion was made by Mr. Quinn, seconded by Mr. Aschenbach to include the revised language for written public comment on the Zoning Board Agenda until the State of Emergency is lifted. Motion passed on unanimous voice vote.

The workshop portion of the meeting concluded at 7:38 p.m.

**PUBLIC PORTION:**

A public meeting of the Cranford Board of Adjustment was called to order by Ms. Daly on February 22, 2021 at 7:45 p.m. via Google Meet. Ms. Daly announced in accordance with the terms and conditions of the Open Public Meetings Act, the Westfield Leader and the Star Ledger have been notified and the agenda posted in the municipal building as required.

Ms. Daly explained the protocol, purpose and procedure that will be followed during the hearing.

**1. Application #ZBA 19-010 – CONTINUED FROM JANUARY 25, 2021**

Applicant: New York SMSA Limited Partnership  
d/b/a Verizon Wireless, T-Mobil Northeast LLC  
New Cingular Wireless PCS, LLC  
Union County College  
1033 Springfield Avenue  
Block: 121 Lot: 2.01, E-1 Zone

Applicant is requesting preliminary and final site plan approval, a d(1), d(3) and a d(6) variance for a wireless telecommunications facility §255-371(5) & (6), plus numerous c(2) variances. A variance for height where the maximum height permitted is 70 feet, and 140 feet to the top of the tower and 148 feet to the top of the concealment branches is proposed §255-371(10)(a), a variance for setback where the minimum required setback to the closet property line is 185 feet and 112 feet 9 inches is proposed §255-71(10)(b)(1), a variance for separation from the nearest residential unit where the minimum is 444 feet and 229 feet 7 inches is proposed §255-371(10)(c) and if so required, variances to permit more than one principal use on a lot, for the continuation of the existing non-conforming lot area §255-37G(1)(c) and open space ratio §255-37G(1)(e).

Applicant has an alternative proposal of a facility consisting generally of an approximate 135-foot-tall monopole designed as a faux tree with branches extending to approximately 143 feet, located within a 40 foot by 60-foot fenced compound which will house the Applicants' radio and emergency power equipment. The Applicants shall each seek the following variances: use variance to permit the telecommunications use which is not permitted in the E-1 Zone §255-371 (5) & (6)), height variance to permit the tower to have a height of approximately 135 feet to the top of the tower and 143 feet to the top of the proposed concealment branches, with the top of the Verizon Wireless antennas proposed at approximately 138 feet, the top of the AT&T antennas to be approximately 128 feet and the top of the T-Mobile antennas to be approximately 119 feet above grade where a height of 70 feet is permitted in §255-371 (10)(a); variance for the setback of the tower to the closest property line to permit a setback of approximately 59 feet 3 inches, rather than 178 feet 9 inches required by §255-371(10)(b)(1); variance for the separation from the nearest residential unit to permit a separation of approximately 362 feet 10 inches to the dwelling on Block 119, Lot 17, rather than 429 feet required by §255-371(10)(c); and

setback variances to the interior property line to permit the equipment compound to have a setback of 43 feet 6 inches, the AT&T generator to have a setback of 47 feet 8 inches, and the Verizon Wireless generator to have a setback of 48 feet 1 inch, where a setback of 50 feet is required by §255-37G(1)(b). The alternative proposal is also located on Block 121, Lot 2.01 with access thereto utilizing Campus Road which is on Block 121, Lot 3, and if so required, variances to permit more than one principal use on a lot, for the continuation of an existing non-conforming lot area §255-37G(1)(c)) and open space ratio §255-37G(1)(e)), and any additional variances, waivers or other relief required by the Board after its review of this application.

Ms. Daly stated at the last meeting two members of the Public had technical difficulties in trying to make their comments regarding the above application. They were Rita LaBrutto and William Murphy. Tonight, they will have a chance to make their statements before the Board hears attorney summations.

Rita LaBrutto – 104 Arlington Road appeared and was sworn in. Stated that a property next to a cell tower would diminish its value. Has walked the park and the cemetery and never had a problem with dropped calls. UCC says it is necessary but they do not want it in parking lots A & B. Mr. Hines had no test results to share and why if it is so important do you not have data. You will be able to see the tower at Nomagengan Park, the high school, Springfield Avenue, college estates, the cemetery and the Boulevard. Other campuses with cell towers had more acreage. The RF engineer had no test data and lost credibility when he said a 148-foot cell tower would not provide adequate coverage if it was moved three blocks. The Zoning Board should deny the application, it will be a detriment and affect the character of the whole town not just the residential area. They have not proven the need for the tower.

There were no questions from the Board or the attorneys for Ms. LaBrutto.

William Murphy did not appear.

Rob Simon, attorney for Union County Residents United Inc., appeared and presented his summarization on the application. Stated the reasons an application like this gets denied is that an applicant fails to meet its burden of proof for the relief requested and required. Stated there are three applicants for this application who have all failed to meet their burden of proof. Feels applicant was evasive, dismissive and inconsistent. Reviewed the variances that the applicant is requesting. Stated the governing body does have an ordinance for wireless telecommunications facilities which permits wireless towers in certain zones, but not in the E-1 zone where UCC is located. Granting of these variances would be inconsistent with the zone plan and the zoning ordinance and will adversely change the character of the residential neighborhood. Each carrier has a burden of proof to meet for a use variance. In the E-1 zone, the max height is 35 feet, the proposed height being requested is 143 or 148 feet. A Zoning Board can deny a monopole based on aesthetics. Discussed the bulk variances and subsuming those variances with a use variance. Cranford's ordinance encourages tower facilities in non-residential areas and to locate the towers where the visual impact would be minimal. Contends that applicants can amend their site plan application, but they do not have the right to have the Board vote on both alternate proposals.

Discussed the standards of proof for the application. Must meet both the positive and negative criteria. Burden of proof is on the applicant at all times. For cell tower cases, the positive criteria must show site suitability and the need for the facility; must engage in a good faith effort for an alternative site and that the site will improve telecommunications services. Negative criteria is a four-part SICA balancing test. It must identify public interest, determinantal effects, determine determinantal effects which could be reduced with reasonable conditions and then weighing the positive and negative to see if the granting of variances would cause substantial harm to the public good.

Discussed case law where a provider can demonstrate the proposed facility will fill a gap in service and be in a less intrusive manner. Also discussed the 2018 FCC Material Inhibition Test and that the NJ 3<sup>rd</sup> Circuit has not yet determined if it is accepting this test. The FCC cannot take away the municipalities' power to regulate cell tower placement.

The previous Cranford Swim Club application was denied by the Board and upheld in court and then not appealed. Drive test data was presented for that application, but none was provided for the current application. At the time of that application, UCC opposed that application. Discussed the configuration of the UCC campus. Discussed the lower frequencies and that no propagation data was presented by the carriers at the lower frequencies. The 2012 UCC Needs Assessment stated that their issue was inside the buildings and would be solved by the in-building DAS system. Outside at UCC, the coverage is good to fair with 95% coverage. Applicant has not provided any data that current data is unreliable. No traffic counts were provided by the applicant. They provided a document from January 2013 showing daily volume from Springfield Avenue to Romore Place. Did not hear from any residents, business owners, students or facility that they currently don't have adequate wireless service. Carriers have the right to build out their network at higher frequency bands, but when trying to do so on property that requires variances, they need to prove legal justification. Stated there was no drive test data for the higher frequencies. Stated there has been no evidence of the impact of Verizon coverage with the in-building system and why has AT&T and T-Mobil not tied into the in-building system. Plus, there has been no testimony for generator back up for an in-building system and how much of the in-building system is providing coverage outside the buildings.

Discussed emergency services and the Cleary Act. The Annual Security Report stated all students, faculty and staff are enrolled in the UCC emergency notification system by text, email, voicemail. There is no evidence of any faculty or staff not receiving emergency notifications. FirstNet is at the lower range for reliability. No need for 1900 or 2100 MHz for emergency coverage. No evidence that UCC has violated the Cleary Act or has been cited for violating that act. The UCC Needs Assessment was done almost 9 years ago, and still only have Verizon in-building. There are no emergency generators, AT&T or T-Mobil not in-building, no outdoor DAS or small cell installations, no rooftop installations for emergency services. Municipalities are not required to approve cell towers when companies want to improve their signal at a higher frequency. There is no legal obligation to provide seamless coverage. The Telecommunications Act does not mandate that municipalities provide optimal service.

Discussed the height of the tower. This would be the tallest tower in the history of Cranford. If a fourth carrier wants to collocate, the Federal and State law may permit an administrative approval. It will affect how the tower would look. Height can be increased 10% and Board would not be able to do anything about it. Cranford's ordinance requires the carriers to analyze whether using existing structures could provide the coverage they are seeking. ODAS systems are in the gap areas already. Cranford has an ordinance for small cell technology in the right-of-way. Applicants did not provide any evidence as to why ODAS cannot work to fix the coverage gap. Verizon is not using all the DAS nodes, only using some of them and AT&T does not use any of them. No evidence of power outages impacting existing service with the DAS system currently used in the area. Small cell and roof top installations would be less intrusive to the area. Once Verizon was in discussions with UCC, they failed to explore other alternative properties in good faith. Proposed tower will not address the areas lack in coverage for the other carriers at the higher frequency bands. Will require at least one additional site. Believes there are opportunities that were not sufficiently investigated and did not provide propagations on why sites would not work.

Discussed that State regulations do allow Green Acres to have cell towers in certain circumstances. There must be a significant public benefit and no other feasible alternatives.

Discussed the value of properties that are near cell towers. Testimony provided was limited to market studies and not appraisals. Expert was not aware of listed or sold properties in the area of Princeton Road. Buyers will be different for Cranford then off of Route 22 in Springfield. Never did a study as to when a home sold before a cell tower and then after a cell tower was installed. Feels testimony should be rejected by the Board.

In the 2012 UCC Needs Assessment it stated that a negative to the rooftop option was the aesthetic to the campus and a positive for the monopole was visibility from the campus center would be limited. Applicant's expert did state that a rooftop installing on the Library would cover the UCC campus, which would comply with the Cleary Act. Why can't alternative sites on the campus be looked at. Under MLUL, UCC is required to provide to the Township a long-range facilities plan. Does not believe that has ever been submitted. Also, when a county college leases land to a commercial wireless carrier, it must be necessary or for a desired college purpose. No evidence that UCC considered any other design other than a faux tree.

Discussed the visual impact study done by Mr. Masters. Applicant has not committed to any conservation easement. More than 50% of tower will be visible above the tree canopy. No landscaping that could be proposed, could mitigate the adverse visual impacts of the tower. Many of the residents will see the cell tower from their property. Feels visual impact study was incomplete and inadequate. Monopole will be out of place in the location proposed.

The applicant must obtain several use variances and additional relief. The property is not suitable for a telecommunications facility which is proposed in this case. Having a willing landlord does not go to site suitability, if the site is not suitable for the proposed use. Proposed monopole in either location is not suitable; does not meet the positive criteria. The detrimental visual impact will be significant to the neighborhood and to the public good. A cell tower is not an inherently beneficial use. If the monopole is approved, it will destroy the character and appeal of these residential neighborhoods. For all these reasons, requesting the Board deny the application.

Ms. Daly asked Mr. Meese if he would like to start his summation or wait till the next meeting. Mr. Meese requested to present his summation at the next meeting. Mr. Meese stated he would provide a written statement in advance of the next meeting.

The next meeting will be March 22, 2021 and will begin at 7:00 p.m. Mr. Meese will do his summation and the Board will deliberate and vote on the application.

PUBLIC PORTION:  
None

CONCLUSION:

There being no further business, a motion to adjourn the meeting was regularly made, seconded and passes. The meeting concluded at 10:08 p.m.

---

Daniel Aschenbach, Secretary