

MINUTES – ZONING BOARD – SEPTEMBER 21, 2020

The Cranford Zoning Board of Adjustment meeting scheduled for Monday, September 21, 2020 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 Mr. Marotta, Chairman.

ROLL CALL:

Members Present:

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

Members Absent:

None

Alternates Present:

Mr. Savino
Mr. Rees

Alternates Absent:

None

Also in attendance: Mark Rothman, Esquire, and Kathy Lenahan, Board Administrator

COMMUNICATIONS:

None

MINUTES:

None

RESOLUTIONS:

**Application # ZBA 20-002
128 Lehigh Avenue North
Block 524 Lot 8**

Applicant is requesting a design waiver for a proposed 6-foot-high fence in the side-frontage and less than 50% open. Maximum height permitted for a front & side yard fence is 4 feet with 50% open, proposed is 6 feet with less than 50% open §255-26K(2).

The Resolution of Memorialization was reviewed by the Board. After discussion, a motion to approve the resolution as amended, was made by Mr. Savino, seconded by Mr. Rees and passed by unanimous voice vote.

OLD/NEW BUSINESS

None

The workshop portion of the meeting concluded at 7:37 p.m.

PUBLIC PORTION:

A public meeting of the Cranford Board of Adjustment was called to order by Mr. Marotta on September 21, 2020 at 7:45 p.m. in Room 107 of the Municipal Building, 8 Springfield Avenue, Cranford, New Jersey. Ms. Lenahan announced in accordance with the terms and conditions of the Open Public Meetings Act, the Westfield Leader or Star Ledger has been notified and the agenda posted in the municipal building as required.

Mr. Marotta explained the protocol, purpose and procedure that will be followed during the hearing.

Mr. Rothman stated that the first application will need to be continued without a date certain and the applicant will re-noticed.

1. Application #ZBA 20-001
Applicant: SEAK Holdings, LLC
189 North Avenue East
Block: 312 Lot: 13 ORC Zone

Applicant is requesting a d(3) Conditional Use variance for the conversion of an existing 1 ½ story rear structure from a machine shop/clock manufacturing business to a single family rental unit, where a principal nonresidential use must be located on the ground floor of the building §255-39B(22)(h).

2. Application #ZBA 19-010 – Continued from September 14, 2020
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 §255-37I(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 §255-37I(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 §255-7I(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 §255-37I(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 §255-37I (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 §255-37I (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 §255-37I(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 §255-37I(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.

Rob Simon, Esq. appeared and stated Peter G. Steck, will be testifying this evening.

Peter G. Steck appeared and was sworn in. His qualifications were presented to the Board and he was accepted as an expert in professional planning.

Questions from Mr. Simon to Mr. Steck ascertained the following:

He has reviewed the materials submitted by the applicant including the alternate plan. Also reviewed the zoning ordinances, and master plan. He toured the site and reviewed the videos of some of the meetings and all of the minutes, along with all the exhibits. He has appeared before this Board in the past regarding a prior application for a cell tower and the Cranford Swim Club. Stated that at that time, UCC was opposed to the cell tower at the swim club. Stated the 2019 Reexamination Report recommended the same Land Use Plan recommendations from 2009. Reviewed the subject property and an overview of the application (and alternate plan) before the Board. Discussed the relief the applicant is seeking in the E-1 zone. Stated the only use allowed at the site is for higher education plus a daycare facility. Cellular facilities are not permitted in the E-1 zone. Reviewed the ordinance allowing cellular towers in commercial zones including setbacks and height limits. Stated each site has to be evaluated independently and it is unusual to have two sites before the Board at the same time. Reviewed the relief that is being requested including the d(1) and d(6). Stated there are also a number of 'c' variances that really relate to the "d" variances. Feels focus should be on the d(1) and d(6) variances.

Discussed the SICA standard and the four steps which are:

- Judge benefits and merits of general welfare advanced by this facility
- Determine negative impacts of the facility
- Can reasonable conditions be imposed by the Board
- Weighing positive and negative criteria

In reviewing the record, he is not aware of any deficiencies regarding dropped phone calls. Stated there is no evidence on the record that there has been a violation of the Cleary Act with UCC. Believes the review of other sites was defective. Stated he is aware of DAS networks and that they are on some college campuses. It is his opinion, that it is better planning to adhere to the ordinance which favors placing on existing buildings with maximum height of 70 feet and to consider alternate architecture and technology to limit the need for the height requested. Stated part of positive criteria is picking a site that is suitable. This site is in a specialized zone only allowing one principle use. Area is surrounded by single family homes, a cemetery, and a park. The master plan recommends this site for a historic designation. Observatory on premises is listed as being eligible for designation on the state and national registers. Stated there are some trees in area at 92 feet or more, but most vegetation is in the 60 to 70-foot range. Law allows 10% increase in cell towers with no additional site plan approval. Stated when close to the tower on Colby or Princeton, you are looking through tree branches; as you travel further away, the tower becomes much more visible. Stated there are hundreds of homes that will be able to see the facility as you move away from the property. Does not feel that the "spruce tree" which is taller than anything in area, blends into the environment. His opinion is the same for both the original and the alterative proposal. There is one impact from equipment area which could be helped by landscaping, but height of spruce tree is more apparent as you go away from the site. Feels it is out of character with the area. Stated that in zones where it is permitted, the preference would be to add antennas to existing structures; or you can integrate structures either on roof of an existing building or adjacent to an existing building. The trees are deciduous with a few conifers. During winter, the pole and the equipment will be much more visible. Stated there is alternate technology that could be explored for a lower height or another location to lessen the visual impact. Concludes there is a deficiency in the analysis and a visual impact that produces a substantial negative impact that cannot be outweighed by the benefits of cellular coverage. In his opinion, there is a substantial impairment to the zone plan and zone ordinance. The master plan states a historic area. Believes there should be an enhanced review of the aesthetic impact. The zoning ordinance has a special zone for this property and is a one principle use zone. It does not permit alternate or companion uses. Feels applicant has not satisfied the negative criteria. In his opinion, the applicant has not satisfied their burden of proof and both locations should be denied. If approved as proposed, it will be substantially detrimental to the public good.

Questions from the Board to this witness ascertained the following:

Reviewed the definition of a "lot" in the Township ordinance. An accessory use never arises to a "d" variance. A prohibited use or two principal uses would rise to a higher level of a "d" variance. Case law states you don't have to find it's the only site in the area, but you have to look at the facts as to are the characteristics of the site that make it more accepting of a non-permitted use. Each carrier has to be looked at independently for the positive and negative criteria. He reviewed the 2009 Land Use Plan Map describing age restricted housing. He did not do a site search, but feels an adequate site search should not exclude all residential zone properties.

Questions to Mr. Steck from Mr. Meese ascertained the following:

His clients are properties owners in the area provided by Mr. Simon. He has not met with or talked directly to any of the residents. The clients live on the streets in the areas like Colby and Princeton. He was not present for all the hearings, but he did listen to the TV35 recordings and reviewed all the exhibits. Reviewed from the minutes from Mr. Gentile and Mr. Hines testimony. Reviewed the text of the master plan for the E-1 zone. Stated it recommends age restricted/

senior services/intuitional. The master plan does recommend continuation of the campus, but you cannot look at the text and ignore the Land Use Plan Map. Discussed Lot 2.01 but also stated the campus is a 48-acre area. Setbacks apply to conditional uses, but cell towers are not a conditional use in this zone. In his opinion, the principle of having either an equipment compound or tower pushed away from sensitive land uses and from property lines is a consideration in evaluating this application. The setback to a residential property line is more significant since it is more disruptive. Municipalities cannot prohibit carriers from provide their service. There is a national interest and an emergency component to wireless communications. Stated that granting of a license to a carrier does satisfied the positive criteria, except for the issue of suitability. It is the Boards' role to evaluate the application and apply the SICA test. Stated part of advancing the welfare of the public good is reliability. If there are a lot of dropped calls, that would indicate improved service is warranted. Dropped power for a day is not a significate event. Does not know how many households are only wireless nor does he know how many residents rely solely on wireless, but does know it is increasing. Stated service on the campus is power sensitive, but they do have a generator that is not linked to their service. A lot of people rely on wireless communications. The campus has complied with the Cleary Act. A text message to a campus community would be one way to comply. He read the minutes regarding Mr. Hynes testimony. There is nothing in the record that shows there has been a violation of the Cleary Act. The only thing being evaluated, is a single solution of a monopole. Alternate technologies are not part of this application. Issues with DAS is dependent upon the normal power grid. If grid goes out, some of sites may disappear. Does not recall other issues with DAS. The applicant excluded residential zones from their search. He did not evaluate other sites, since the burden or proof is on the applicant. He judges from a planning point of view the adequacy of the applicant's proofs. He did not evaluate any sites in terms of superiority; that is not his expertise. He did not disagree with the descriptions of the sites. The site must meet the needs of the carrier, but the facility must be able to minimizes the negative impacts and comply with the SICA test. There could be other locations or other ways to minimize the height. It is a balancing test. Stated in general, colocation is a positive thing. Springfield Ave is a county road and there are several thousand vehicles traveling on that road during the day. He would like to see if there were dropped calls in that area. Coverage maps look at higher frequency not lower frequency analysis. Does not know how many residential homes this facility would cover; it could be a thousand. This facility could cover Nomahegan Park & the cemetery. There are also schools in the area. It is an unusual application because it does not take into account service provided in the lower frequencies.

Mr. Meese stated he would need another 45 minutes to finish his cross of Mr. Steck.

Board and attorneys discussed alternate dates. All parties agreed, the next meeting for this application would be November 9th.

Mr. Marotta stated Mr. Steck will be back for cross by Mr. Meese and for questions from the Board and the Public.

PUBLIC PORTION:
None

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CONCLUSION:

There being no further business, a motion to adjourn the meeting was regularly made, seconded and passes. The meeting concluded at 11:12 p.m.

Daniel Aschenbach, Secretary