

BOARD OF ADJUSTMENT
MINUTES OF THE MEETING

APRIL 7, 2011

CALL TO ORDER: This is a regularly scheduled meeting of the Board of Adjustment of the Borough of Franklin Lakes. In compliance with the Open Public Meetings Law, Notification of this Meeting has been sent to our Official Newspapers and Notice has been posted on the bulletin board at the Borough Hall. I direct that this announcement be entered into the Minutes of the meeting.

ROLL CALL:

Present : Mr. DiFlora, Mrs. Gerber, Mr. Messaros, Mr. Bavagnoli, Mr. Badenhausen,
Mr. Frankel, Board Attorney Davies, Board Engineer Tiber

Absent: Mr. Khoury, Mr. Toronto

OLD BUSINESS

Cal.#2011-4 Application For T-Mobile, Urban Farms Shopping Center, 805-845 Franklin Lake
Road, Block 2201.08, Lot 2, Use Variance, CARRIED FROM 3-3-11

Greg Meese, Attorney for T-Mobile Northeast, LLL, recalled that at the last meeting Edward York, Radio Frequency Engineer for T-Mobile, discussed the need for the pole height. The Board made some references to the height of the pole at the McBride Agency and the Market Basket to see if a roof mounted device might also work in this case.

Edward York, was sworn by Mr. Davies. Mr. Meese recalled that at the last meeting the Board requested that he prepare exhibits locating a roof mounted device in the cupola at the Market Basket. Mr. York labeled these exhibits as B-4, B-5, B-6 and B-7. Mr. York said that he has five exhibits showing the coverage area of the other carriers.

Mr. York referred to his Exhibit B-1 - Radio Frequency Coverage Exhibit: Baseline drive test for T-Mobile GSM 1900 megahertz which was marked as Exhibit A-11 dated 4/7/11.

Exhibit B-2: Radio Frequency Coverage Exhibit: Baseline Drive Test for Sprint CDMA 1900 megahertz which was marked as Exhibit A-12 dated 4/7/11

Exhibit B-3. Radio Frequency Coverage Exhibit: Baseline Drive Test for Verizon CDMA 850 megahertz marked as Exhibit A-13 dated 4/7/11

Exhibit B-4. Radio Frequency Coverage Exhibit. Baseline Drive Test Data for AT&T GSM megahertz marked as Exhibit A-14 dated 4/7/11

Exhibit B-5: Radio Frequency Coverage Exhibit: Baseline Drive Test Data for Metro PCS CDMA 2100 megahertz marked as Exhibit A-15 dated 4/7/11

Exhibit B-6: Radio Frequency Coverage Exhibit. Potential Coverage of McBride Site Assuming an Antenna Height of 60 ft., marked as Exhibit A-16 dated 4/7/11

Exhibit B-7 Radio Frequency Coverage Exhibit. Potential Coverage of Proposed Site assuming an Antenna Height of 40 ft., marked as Exhibit A-17 dated 4/7/11

Mr. York reviewed the Exhibits beginning with Exhibit A-17. In this exhibit, the green area depicts reliable in-building coverage and the yellow area shows reliable in-vehicle coverage. The proposed site in this case is at a much lower level and covers less than ¼ mile to the north along the High Mountain Road corridor. This is the coverage area that is in question which is exacerbated by the rough terrain in this area and the height of the pole is the key to filling in the gaps. Mr. York recommends covering all of the area from the proposed location rather than requiring additional sites in the future. Mr. York said that the McBride site (Exhibit A-16) is a little further south and covers an area slightly further along High Mountain Rd.; however, there is a significant gap of about 1/8th of a mile north of Chippewa Trail. Mr. York confirmed that the other Exhibits show a non-reliable gap in coverage in the High Mountain Road corridor for the T-Mobile network.

Mr. York confirmed that all of the FCC licensed carriers that are operating in this market have a significant gap in coverage in Franklin Lakes as demonstrated by the data in the other exhibits. If approved, the proposed T-Mobile site will offer space for two other carriers. He pointed out that a standard monopole design would accommodate all of the other carriers. A higher monopole offers more flexibility for co-location. The flag pole design option is thin and allows less room for co-location.

Mr. York stated that Exhibit A-12 shows Sprint coverage with a coverage gap that is almost identical to the T-Mobile gap. Exhibit A-13 notes that the coverage gap is smaller on High Mountain Road for Verizon. Exhibit A-14 shows that AT&T has better coverage to the south but it drops off south of Chippewa Trail when traveling north. Exhibit A-15 indicates Metro PCS; however, Mr. York said that their site, although approved, is not yet operational.

Mr. York referred to a letter of November 8, 2010 which was marked as Exhibit A-18. This is a report from Pure Com Solutions using the FCC standard calculations assuming the worst case, full power scenario. Test results of 100% or less are considered safe. The result of the test using the absolute worst case scenario at this site was 4 1/2% which is more than 20 times below what is considered a safe threshold. Most of the signal in the area, from a health and welfare standpoint, comes from AT&T because that tower is located lower to the ground.

Mr. DiFlora pointed out that there are other areas behind the Market Basket shopping center where this pole could be located that would be further from the property line. The ordinance calls for a distance of 300 ft. and the applicant is proposing 156 ft. Mr. Meese said that this question should be addressed by the site engineer. Mr. Meese remarked that he was told that due to the location of loading docks this was the one spot on the property where the greatest distance could be achieved in accordance with the ordinance. Mr. Frankel said he would be curious to see what the effect of a 100 ft. tall tower would be. Mr. York said that he has prepared a plot plan depicting a 100 ft. tower, which was marked as Exhibit A-19 dated 4/7/11. This shows that to the north the gaps do start to open up. Mr. York concluded that 100 ft. is decent but the proposed height at this location will better fill in the coverage gaps in the area. He added that at lower heights there is less room for co-locators and these co-locators would have to be located at lower heights again resulting in coverage losses.

Mr. Badenhausen made a motion to open the public portion of the meeting for questions of Mr. York only, seconded by Mr. Messaros, all ayes. No one came forward and Mr. Bavagnoli made a motion to close the public portion of the meeting, seconded by Ms. Gerber, all ayes.

Mr. Meese introduced Joseph Binetti, who conducted the site acquisition work for T-Mobile at this location. Mr. Binetti was sworn by Mr. Davies and said that he is a contractor for T-Mobile wireless at 4 Sylvan Way, Parsippany, New Jersey. Mr. Binetti stated that he has been a site acquisition consultant for 10 years and he tries to find sites where properties could be leased for the location of T-Mobile telecommunications sites. He initially contacted former Mayor DeNicola in June 2010 about the possibility of locating a site on municipal property. He later followed up with the Borough Clerk but never received a response from either individual. Mr. Davies marked the letter sent via email to Mayor DeNicola dated June 18, 2010 as Exhibit A-20. Another letter sent by a T-Mobile Director and resident of Franklin Lakes, Andrew Ajab, dated July 12, 2010 was marked as Exhibit A-21. Mr. Binetti read this letter into the record. The letter inquired about the possibility of leasing for a telecommunications site at the Southside Fire House in Franklin Lakes or across the street at McBride Field. Mr. Binetti said that he spoke to the Borough Clerk twice in an attempt to reach the Mayor but his calls were not returned. Mr. Binetti also approached the Catholic Church on the corner but the Diocese of Newark indicated that they were not interested. His inquiries to the Indian Trail Club were ignored and he is still waiting for an official response from the new President of the Franklin Lakes Board of Education. He reported that he followed up with Peter McBride of the McBride Agency on March 29, 2011, but was told that the McBride Agency didn't want to see a pole as high as 130 ft. replacing the existing structure. The copies of the emails to the McBride Agency were marked as Exhibit A-22 by Mr. Davies. Mr. Binetti was finally able to negotiate a structured deal for the site from Douglas Blauvelt the manager of the Market Basket.

There was a discussion regarding the site at the McBride Agency. Some Board Members felt that this is a superior location which had not been seriously pursued; however, Mr. Meese pointed out that T-Mobile needs to have a pole that is 130 ft. high which would require a use variance at that location. A telecommunications tower is allowed at the proposed location but is too close to the residential zone. Mr. DiFlora said that he would like to see more concrete evidence of correspondence to the owners of the various sites pursued by Mr. Binetti. He suggested that T-Mobile may want to re-visit the possibility of locating the tower on municipal property.

Mr. Bavagnoli made a motion to open the public portion of the meeting for questions of Mr. Binetti, seconded by Mr. Badenhausen, all ayes. No one came forward and Mrs. Gerber made a motion to close the public portion of the meeting, seconded by Mr. Badenhausen, all ayes.

Ekata Shah, KMB Design Group, 1800 Route 34, Wall Township, New Jersey, site engineer for the project was sworn by Mr. Davies. Ms. Shah referred to the complete set of drawings consisting of five sheets including revision #4 (**I THINK – COULDN'T HEAR MR. DAVIES**) which was marked as Exhibit A-24. Ms. Shah described the location of the facility and said that the proposal calls for a unipole of 130 ft. It will consist of 4 canisters which can handle one set of antennas and T-Mobile will occupy the top two locations. The pole will be surrounded by a chain link fence with privacy slats. Three equipment cabinets will be located on a steel platform behind the fence and the cabling from the pole will be directed into these cabinets. No generator is proposed at this site. Ms. Shah referred to Sheet ZO-1 and reviewed the setbacks and the height of the structure and the fence. She stated that the minimum distance to the residential zone is 300 ft; however, the proposal calls for the pole to be 156 ft. from the residential zone. She noted the original location of the pole; however, because the Market Basket subsequently decided to construct a freezer at the rear of the building, therefore, this original location could not be utilized. There are loading docks and transformers next to the freezer that is under construction which makes these areas unusable. Ms. Shah confirmed to Board Members that the pole could only accommodate one additional carrier. Ms. Tiberi commented on the fact that there is a lot of equipment located on the roof of this building. Ms. Shah stated that any screening would not prevent this equipment from being seen and could cause potential problems with roof drainage.

Ms. Gerber made a motion to open the public portion of the meeting for questions of Ms. Shah only, seconded by Mr. Badenhausen, all ayes. A resident living on Longbow Drive asked if the pole could be located on top of the freezer. Ms. Shah stated that structurally it is not possible to mount anything on a freezer. No one else from the public came forward and Mr. Badenhausen made a motion to close the public portion of the meeting, seconded by Mr. Messaros.

David Karlebach, Planner for the applicant, of David Karlebach, P.P.P.C., 38 East Ridgewood Ave., Ridgewood, N.J., was sworn by Mr. Davies. Mr. Karlebach said that he is familiar with the Franklin Lakes Master Plan and Zoning Code, the application and site plan drawings. He visited the site and tethered a balloon to a height of 130 ft. to simulate what this installation would look like through photo editing. Mr. Karlebach referred to Exhibit A-25 which is an aerial photograph of the site and surrounding areas with an overlay of the various zoning districts in the Borough with the site outlined in yellow. He described the site in question and the surrounding area which contains retail uses, recreation uses and institutional uses which provide buffering. Most residential development occurs to the north and east of the site and the greatest visibility from residential areas occurs in areas immediately west of the site along Feather Lane and Longbow Drive. Mr. Karlebach stated that from a zoning perspective this is the most appropriate site for the pole. The applicant has demonstrated that there is a gap in the range of service which cannot be satisfied through the use of existing towers and a conditional use is required because 300 ft. setback is required between the pole and the nearest property line along Feather Lane.

Mr. Karlebach said that there is a hardship involved because the existence of these lawfully existing structures on the site would create difficulties for the applicant if the ordinance were strictly enforced. No height variance is required. The focus of the Board in evaluating this application is not whether or not the site is appropriate for this use, but consideration of the characteristics of the site and whether or not it is appropriate considering the deviation from the conditional use criteria. Mr. Karlebach believes that this is an appropriate site for the following reasons:

1. T-Mobile Engineers have presented evidence that there is inadequate signal strength in this area and that this site is particularly suited to relieve this inadequacy.
2. One other carrier is interested in co-locating at this facility meaning that this would serve the needs of at least two carriers.
3. This site contains 449,757 sq. ft. which is 20 times the required lot area in the zone. The proposed pole is a conditionally permitted use in the RB Zone located at the junction of two arterial roads and would serve businesses, residences and the traveling public.
4. The structure will not generate noise, vibration, odors, glare, dust or fumes.

Regarding negative criteria, Mr. Karlebach said that there will be an impact on the homes within 300 ft. of the site according to the ordinance. From his research, he found that there are only two homes that are located less than 300 ft. from the proposed site. The reason for this requirement is to offset visual issues; however, the existing topography and vegetation should be considered and Mr. Karlebach pointed out the benefit of the steep, wooded embankment between this property and the homes on the streets to the north and west. He felt it would be more useful to have an ordinance that addresses visual impact and relates the height of the tower to the proposed setbacks. He stated that this ordinance allows the Board to make this adjustment even though it is not specified.

Mr. Karlebach introduced Exhibits A-26 through A-30 – Each Exhibit contains 4 photos. Photos on the left side of the board show existing conditions and photos on the right show a 130 ft. high structure at this location. Mr.

DiFlora stated that the Board will have questions for Mr. Karlebachon at the May meeting. Mrs. Gerber made a motion to carry this application to the meeting of May 5th, seconded by Mr. Messaros.

Roll Call Vote

Ayes: Mr. DiFlora, Mrs. Gerber, Mr. Badenhausen, Mr. Messaros, Mr. Bavagnoli, Mr. Frankel
 Nays: None

Cal.#2011-6 Application For Burgio, 1031 Franklin Lake Road, Block 1208, Lot 4, Appeal,
 Violation of the following Section of the Ordinance:

<u>TYPE</u>	<u>REQUIRED</u>	<u>PROPOSED</u>	<u>EXISTING</u>	<u>VARIANCE</u>	<u>CODE</u>
Regulations of general application	1-principal structure	2-principal structures	1	two structures during construction	300-104.F.

DATE DEEMED COMPLETE: February 9, 2011 DETERMINATION DATE: June 9, 2011

Joseph Spinello, attorney for the applicants, stated that on March 3, 2011, an application was granted to allow two buildings to remain on the same lot conditioned upon certain calculations to be determined by Weissman Engineering which have now been submitted to the Board. The other condition concerned the posting of a bond in the amount of \$400,000. At that time, Mr. Spinello didn't object because he thought the premium would be in the area of \$2,000. After the meeting, he checked with Interstate Bonding Company who indicated that the premium would be between 3% and 5% or \$12,000 to \$20,000. Mr. Spinello said that he believes that the Board intended to ensure that the building presently being used as the Burgio's home would be demolished to avoid having two buildings on one lot.

Mr. Spinello recalled that Mr. Burgio had been asked how long construction of the new house would take and Mr. Burgio said approximately one year. The builder indicated that it would cost in the area of \$5,000 to demolish the house which seems to be a low amount; however, the builder in this case is Mr. Burgio's brother in law. Mr. Spinello reiterated that the intent here is to make sure the house is demolished and he proposed to Mr. Davies that a bond be posted in the amount of \$30,000 to ensure that the building would be razed within 16 months. The plans for the new home call for a gas line to be run underneath the existing building which is another reason why the house must be demolished. Mr. Spinello requested that the amount of the bond be reduced.

Mr. DiFlora stated that if the applicant runs into any financial difficulties that would prevent him from completing the new home it may stop him from demolishing the existing home. He emphasized that the Borough of Franklin Lakes does not want two homes on one lot, but said the Board would consider reducing the amount of the bond. This would come with a firm date stating when the house must be razed regardless of the extent of completion of the other house. At that moment the house must be demolished sixteen months from the date of the issuance of the building permit.

Michael Burgio, 1031 Franklin Lakes Road, was sworn by Mr. Davies. Mr. Burgio accepted the conditions that all debris associated with the demolition must be removed from the site including the footings and foundation and the area must be completely regraded. In addition, the underground oil tank must be removed along with the appropriate asbestos abatement. The septic tank must also be removed or abandoned correctly. Mr. Burgio stated that the gas line for the new house will be located under the house he is occupying now which means that this house will have to be demolished before the gas line for the new home can be installed. He understands that he will have to find somewhere else to live for about two months before the new house is completed. Mr. Davies said that a bond in the amount of \$30,000 is required. **COULDN'T HEAR WHAT MR. DAVIES SAID ABOUT THE TIME LIMIT – MAY BE 16 MONTHS BUT NOT SURE**

Mr. Frankel made a motion to approve the applicant's request, seconded by Mr. Messaros.

Roll Call Vote

Ayes: Mr. DiFlora, Mrs. Gerber, Mr. Badenhausen, Mr. Messaros, Mr. Bavagnoli, Mr. Frankel
 Nays: None

Cal.#2010-7 Application For Breen, 224 Forest Street, Block 1507, Lots 12-15, Dimensional Variances,
 CARRIED FROM 9-2-10, TIME EXTENSION TO 4-7-11

This application will be dismissed without prejudice since plans not submitted by 3-7-11.

Mr. Bavagnoli made a motion to dismiss the application without prejudice because the plans were not submitted by March 7, 2011. Mrs. Gerber seconded the motion.

Roll Call Vote

Ayes: Mr. DiFlora, Mrs. Gerber, Mr. Badenhausen, Mr. Messaros, Mr. Bavagnoli, Mr. Frankel
Nays: None

RESOLUTION

LUKACS, BLOCK 2101.02, LOT 4

Mrs. Gerber made a motion to memorialize the resolution, as amended. Mr. Frankel seconded the motion.

Roll Call Vote

Ayes: Mr. DiFlora, Mrs. Gerber, Mr. Messaros, Mr. Badenhausen, Mr. Frankel
Nays: None

METRO PCS, BLOCK 3303, LOT 22

Mrs. Gerber made a motion to memorialize the resolution. Mr. Bavagnoli seconded the motion.

Roll Call Vote

Ayes: Mr. DiFlora, Mrs. Gerber, Mr. Badenhausen, Mr. Messaros, Mr. Bavagnoli
Nays: None

COLEBURN, BLOCK 1201, LOT 4

Mrs. Gerber made a motion to memorialize the resolution. Mr. Badenhausen seconded the motion

Roll Call Vote

Ayes: Mr. DiFlora, Mrs. Gerber, Mr. Messaros, Mr. Badenhausen, Mr. Frankel
Nays: None

MINUTES

The Minutes of March 3, 2011 were presented for approval. Mrs. Gerber made a motion to approve the minutes, seconded by Mr. Badenhausen.

Roll Call Vote

Ayes: Mr. DiFlora, Mrs. Gerber, Mr. Messaros, Mr. Badenhausen, Mr. Frankel
Nays: None

VOUCHER

Robert Davies, Esq.	MEET. ATTEND. 1-6-11	\$300.00
	MEET. ATTEND. 2-3-11	300.00
	MEET. ATTEND 3-3-11	300.00

Mr. Bavagnoli made a motion to approve the vouchers, seconded by Mrs. Gerber

Roll Call Vote

Ayes: Mr. DiFlora, Mrs. Gerber, Mr. Badenhausen, Mr. Messaros, Mr. Bavagnoli, Mr. Frankel

Nays: None

The meeting was adjourned at 10:49 P.M.