

BOARD OF ADJUSTMENT
MINUTES OF THE MEETING

SEPTEMBER 1, 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. Khoury, Mr. Messaros, Mr. Bavagnoli,
Mr. Badenhause, Mr. Frankel, Ms. Schoenberg, Board Attorney Davies,
Board Engineer Tiberi

Absent: Mr. Toronto

OATH OF OFFICE

Robert Davies administered the Oath of Office to Alexandra Schoenberg, Alternate #2, for a two year term which will expire December 31st, 2011.

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 8-9-11, 7-7-11, 5-5-11,
4-7-11 (HEARD) AND 3-3-11 (HEARD)

Greg Meese, attorney for T-Mobile, introduced himself and stated that this application was last heard on April 7, 2011. At the request of Mayor Bivona, T-Mobile was asked to adjourn the application to give the Mayor time to research and contact property owners in an effort to offer an alternative location to T-Mobile. Mr. Meese referred to a letter dated April 25, 2011 to Mr. Davies confirming the Green Acres encumbrance on a municipal property. The letter was marked Exhibit A-31 and refers to McBride Field which is owned by the Borough of Franklin Lakes. A letter dated May 4, 2011 referred to a time extension which was memorialized in a waiver of time that was executed by Mr. Meese on behalf of T-Mobile and by Mr. Davies on behalf of the Zoning Board of Adjustment. The two documents were marked A-32 and A-33. On May 12th, Mr. Meese submitted a photo simulation of an alternative location to Mayor Bivona which had been discussed with the Board in April. These simulations which show a pole on the other side of the brook next to the pump station will be presented to the Board this evening. This alternate proposal was offered because the present proposal is for a unipole which means that all of the antennas would be enclosed within the pole. The unipole has co-location limitations and no more than three carriers can be housed in this type of a facility. A tree pole would allow for co-location of all the carriers and the tree pole could be located on the other side of the brook next to the trees where it would blend in.

Mr. Meese referred to correspondence to Mr. Davies dated July 6th regarding a further time extension through August 18th, because Mayor Bivona indicated promising discussions with representatives of Most Blessed Sacrament (MBS). He added that on August 3rd and 4th he and Mr. Davies had agreed to a time extension through September 1st. Exhibit A-34 is the July 6th letter; and Exhibit A-35 is the letter from Mr. Meese granting a time extension dated August 4th.

Mr. Meese explained that T-Mobile has conducted a Historic Sites Review as part of the continued review of alternative sites. This was performed at the McBride Agency on Franklin Lake Road and T-Mobile obtained an Adverse Effects Determination from State Historical Preservation Office (SHPO) on this site with a request that the applicant relocate the proposed wireless communication equipment in order to avoid causing an adverse effect on the property as well as any potential below ground resources. This memo dated June 29th, 2011 was marked as Exhibit A-36.

Joseph Benetti, T Mobile Communications, 4 Sylvan Way, Parsippany, N.J., was re-sworn by Mr. Davies. Mr. Benetti testified that he is a site acquisition specialist for T-Mobile and has been in discussions with property owners relative to the leasing of a site for T-Mobile. Since April, Mr. Benetti has investigated other sites and has spoken to the Franklin Lakes Board of Education. He discussed a potential location with Kathy Schwartz, President of the Franklin Lakes Board of Education, and met with Mr. Solocas of the Board of Education regarding the High Mountain School property. A site evaluation as well as site exhibits were prepared; however, on June 9th, Kathy Schwartz emailed Mr. Benetti stating that at this time, the Board of Education was not inclined to pursue this proposal. The proposal included an antenna system and the leasing of Board of Education property as well as a

review of an existing site plan for the High Mountain School. The lease exhibit was prepared by F.C. Architects showing the location of the facility and a proposed 130 ft. unipole. The proposal also included an Environmental Analysis of the surrounding wetlands. This information including emails between the School Board and Mr. Benetti was marked as Exhibit A-37. The Board of Education indicated that they were not inclined to pursue the proposal and Mr. Benetti pointed out that the proposal would be an incoming producing venture. He said that the physical proposal to the School Board was not included as part of Exhibit A-37 but was a standard lease agreement.

Mr. Benetti stated that he corresponded with Mike Asbil, Director of the Indian Trail Club on April 19, 2011. Mr. Asbil responded that any questions regarding the Indian Trail Club should be submitted to Peter McBride. Mr. Benetti contacted Mr. McBride to find out if either the McBride Agency or the Indian Trail Club would be interested in the facility. Another letter was sent to Peter McBride on May 23, 2011, and he has never had a reply from the Indian Trail Club. The correspondence of April 19th was marked as A-38. Mr. Benetti said that Mr. McBride sent a response via fax dated April 29, 2011 regarding the McBride Agency property stating that there was interest in the proposal, but they would only consider a height of between 80 feet and 90 feet. T Mobile indicated that the height was not suitable for their needs. The fax was marked as Exhibit A-39.

Mr. DiFlora asked if the same lease agreement and the same figures were presented to everyone who was approached. Mr. Benetti testified that he thought all figures presented to the various entities were identical. Mr. Davies reviewed the information presented to him including a letter to Peter McBride of the McBride Agency and a response; two letters from Wave Wireless to the Indian Trail Club and one letter in response. Mr. Davies was given a detailed proposal including aerial photographs and diagrams to the Board of Education as well as diagrams of poles which he shared with Board Members.

Upon questioning from Mrs. Gerber, Mr. Benetti explained that the Historic Sites Committee, which is part of the DEP, looks at archeological and visual impacts on a historic building. A review of the McBride Agency property showed an adverse impact on historical property and a potential adverse effect on underground or archeological properties meaning that there could be some Indian or early Colonial artifacts on the property. There were environmental constraints involving the wetlands surrounding the High Mountain Road School property. Mr. Meese stated that at the McBride property, the minimum height in order for the cell tower to effectively cover the gap in coverage would be 120 ft. There is a gap in coverage so it would have to be 120 feet along High Mountain Road because poles lower than that would not alleviate the coverage problems. Mr. Frankel commented that as he understands it, the Radio Frequency expert who testified at a prior meeting thought that the 100 foot coverage gap was only marginally inferior at the 130 foot level. Mr. Badenhausen asked about the field across the street and Mr. Meese replied that Exhibit A-31 showed that it is encumbered by Green Acres restrictions.

Mr. Badenhausen made a motion to open the public portion of the meeting for questions of Mr. Benetti only, seconded by Mr. Frankel, all ayes. Brian Paul, 323 Feather Lane, asked why Mr. Benetti didn't follow up with the Board of Education to understand exactly why they did not want to pursue locating the tower on school owned property. Mr. Benetti said that the Board met on June 7th to discuss the proposal but did not come up with a specific reason why they were not interested in locating the cell tower on school property. Mr. Paul said it is important to understand the specifics involved in the decision with the Board of Education. Mr. Paul suggested that Mr. Benetti approach Kathy Schwartz of Board of Education for an answer. Mr. DiFlora said that the Mayor and Mr. Hart, the Borough Administrator, did not meet with the Board of Adjustment to discuss their strategy but tried to come up with alternative locations that T-Mobile could look into. Mr. Meese noted that locating the cell tower on the Board of Education property would require a full use variance.

Mr. Paul said that he finds it odd that the information provided tonight does not include the offer to the Board of Education. Mr. Meese said that monetary offers to property owners are not discussed at Zoning Board hearings. He added that if the T-Mobile offer was too low, the Board of Education could have counter offered a different amount but they did not. Mrs. Gerber recalled that there was an environmental concern regarding the wetlands at this location. Mr. Meese said that the proposed cell tower was proposed to be located outside of the wetlands and the wetlands buffer area.

Mr. Paul asked if Mr. Benetti had followed up after initial inquiries to the McBride property and the Indian Trail Club. Mr. Benetti said he followed up on behalf of both properties and all the correspondence is documented. Mr. DiFlora pointed out that there is not a separate response on behalf of the Indian Trail Club. Mr. Paul questioned whether the 90 foot tower would be inadequate because portions of the pole would not be available to lease out to other companies. He asked if there would be adequate service for the community. Mr. Meese said that it is inadequate based on T-Mobile's needs for radio frequency to fill the gap.

Carol Holden, 304 Feather Lane, asked if there is a compelling interest served by this tower that would make the community better or is it a business decision. Mr. Meese said that Mr. Karlebach, the Planner, would be better able to answer this question.

John Haffernen, 315 Feather Lane, asked why the cell tower at McBride Field which is 65 feet to 70 feet tall is able to provide coverage for Verizon and AT&T. Mr. DiFlora said that these questions had been answered previously and different frequencies operate at different heights. Mr. Meese said that Mr. Yorke provided the information at the last meeting demonstrating that all of the carriers experience difficulty with coverage at this location. Mr. Haffernen suggested that they look into a larger number of shorter poles to address the coverage gap. Mr. DiFlora commented that this would result in a large number of poles throughout Franklin Lakes and would be a potential aesthetic issue.

No one else from the public came forward and Mrs. Gerber made a motion to close the public portion of the meeting, seconded by Mr. Bavagnoli, all ayes.

Mr. Meese called on Mr. Yorke to testify regarding the height of the cell tower. Edward Yorke was sworn by Mr. Davies and said his business address is 4 Sylvan Way, Parsippany, N.J. He works for Purcon Solutions and is contacted to T-Mobile. Mr. Yorke said that he analyzed a 90 foot facility at the McBride Agency and handed out 11 in. by 17 in. plots marked as A-40, A-41 and A-42. Mr. Yorke said that each exhibit shows the boundary of the municipality, Route 208, Route 287 and the terrain. There are green and yellow shaded areas. The green area represents reliable in-building coverage and the yellow area would receive reliable in-vehicle coverage. Exhibit A-40 or C.1 is the potential coverage received by the McBride site if 90 feet were available. Exhibit A-41 or C.2 shows the combined coverage at 90 feet plus the existing coverage. Mr. Yorke said that a gap remains and is shown at the 90 foot level along a half mile to three quarters of a mile stretch along High Mountain Road. The McBride site at the 90 foot height combined with existing coverage would not result in the coverage necessary to fill this gap. This is a residential area and no other towers are available to supplement with a second site. Mr. Yorke referred to Exhibit A-42 or C.3 depicting a 120 foot tower which clearly does a better job of coverage because it can get up over a hump of terrain. It doesn't completely fill the gap but comes very close at less than one quarter of a mile. Mr. Yorke stated that a gap of a half a mile to three quarters of a mile is a long duration and culminates in a dropped call. At 120 feet, the proposed site is better because it is closer to High Mountain Road and has a better view or angle along that corridor. The McBride site is slightly southwest and has to shoot across the trees resulting in more losses creating a gap in coverage.

Mr. DiFlora questioned the differences between Exhibits A-40 and A-41. Mr. Yorke explained that Exhibit A-40 has the McBride site at 90 feet on its own. Exhibit A-41 has the existing coverage added in plus additional coverage from the operational sites. Going north is the sensitive direction and the gap between existing coverage and potential coverage is the concern. If the McBride site was available, the tower would have to be 120 feet high otherwise there would be significant gaps in residential areas which would be impossible to cover. High Mountain Road runs between two large hills and has to be covered from north to south. Mr. Khoury pointed out that the additional 30 foot difference in the height of the cell tower results in about twenty seconds of improved coverage. Mr. Yorke said that the gap on Exhibit A-41 is cut by two thirds which is an additional quarter to three quarters of a mile. Each location will get different coverage in a different direction depending on the view of local terrain.

Ms. Tiberi, the Board Engineer, stated that based on the scale of the drawings the 120 foot height would provide an additional 800 lineal feet of in-vehicle coverage on High Mountain Road. Mr. DiFlora commented that this would work out to be approximately 15 seconds at 40 mph.

Mr. Yorke referred to Exhibit A-8 that shows the proposed site of the 120 foot tower on the Market Basket property. The McBride site is further east and the north is the sensitive area because of the ridges on the other side. The proposed site works better because of the improved angle along High Mountain Road. Mr. DiFlora asked for the effect on coverage if the tower was located closer to the abandoned Exxon gas station adjacent to the rear of the building. Mr. Yorke said that coverage would be slightly better. Mr. DiFlora questioned the limiting factor of height and Mr. Yorke indicated that based on his analysis, the gaps for AT&T and Verizon are smaller but those companies are able to transmit on the cellular band width and have a slightly better range and it is likely that they can work at lower heights.

Mr. Frankel recalled from previous testimony that higher frequencies require higher towers. This puts T-Mobile, Sprint and Metro PCS at a disadvantage because they need height in order to operate. Verizon and AT&T are at lower frequencies and do not require towers to be as high. Mr. Yorke confirmed that T-Mobile would be taking the highest position on the proposed tower and co-locators would have to go below. Mr. Meese clarified stating that if the unipole design is approved with the antennas inside, that would be the case but, if the tree design is approved the

pole would be 120 feet high with a horizontal platform with the carriers 10 feet below. If the antennas are inside the pole the number of carriers would be limited to two or three. Mr. Frankel asked if carriers could be located side by side and Mr. Yorke said this would be challenging. Mr. Yorke said that there is less coverage for a pole that is 100 feet compared to a pole that is 120 feet. Mr. Frankel commented that there are problems connected with the McBride site including historical significance and DEP issues and every 10 feet that is lost means that coverage gradually becomes worse. It is inferior in terms of line of sight travelling up High Mountain Road and the objective is to fill in the gaps that the other nine cell towers cannot do.

Mr. Meese said that the tree design is an option that would accommodate more co-locators. The standard monopole was the original proposal; however, the tree against the tree line does have aesthetic benefits. Mr. Meese recalled a letter from SHPA during the initial presentation which stated that a flagpole style would not be permitted. After discussion, pertaining to the cell tower at Twinbrook Nursery which resembles a tree, Mr. Meese indicated that T Mobile has accommodated the neighborhood and the Zoning Board by granting several time extensions and he is not authorized to grant any further extensions at this time.

David Karlebach, 38 East Ridgewood Avenue, Ridgewood, N.J., was sworn by Mr. Davies. Mr. Karlebach said that he had testified at the last meeting and addressed the Board's concern about other carriers co-locating on the tower. Mr. Meese noted that one of the options to increase the possibility of co-locators was to change the design of the mount from a unipole design to a standard monopole or tree design. Mr. Karlebach testified that the tree type pole is substituting for the unipole at the alternate location on the other side of Pond Brook in the auxiliary parking lot. He presented photos that were taken at the beginning of May at the alternate location. Mr. Davies marked the photos as Exhibit A-43 which is a series of six photos. The photos on the left show the proposed unipole at the new location and photos on the right show the proposed tree pole. Mr. Karlebach described the top row of photos stating that the view is from the vicinity of 833 Aztec Trail approximately 1,000 feet northwest of the site. The top third of the structure is visible from this area. The middle set of photos depict a view from 804 Tequesta Drive approximately 350 feet north of the site where there is visibility through the tree branches. The final photo on the bottom is a view from the intersection of High Mountain Road and Tequesta Drive approximately 550 feet north, northeast of the site where the pole is mostly obscured from that location. Mr. Karlebach described Exhibit A-44. The uppermost photos show a view from Franklin Lake Road /High Mountain Road circle approximately 660 feet southeast of the site where the pole is the most prominent and visible. The middle set of photos is a view from 377 Longbow Drive, 960 feet west of the site. At this location, the proposed facility is visible from between the tree branches, however, later in May or June the facility would probably not be visible at all. The next photo is a view from 315 Feather Lane, approximately 600 feet west of the site. The unipole and tree pole are visible from this location.

Mr. Karlebach referred to Exhibit A-45 which shows an actual tree pole at the rear of a discount tire center in Paramus, N.J., off Paramus Road. This pole is approximately 100 feet high and Mr. Karlebach had two different views of the pole which he distributed to Board Members. Mrs. Gerber questioned the manufacturer of this tree pole; however, Mr. Karlebach didn't know. He indicated that if this tree pole proposal was approved, T Mobile would contact this manufacturer and duplicate the pole in Franklin Lakes. There is a pump house at the rear of the Market Basket auxiliary parking which was noted by Mr. Karlebach as the location for the pole. This area aligns with Aztec Trail and Feather Lane; however, the pole is being pulled further from the homes on Feather Lane while becoming more visible at the same time. Mr. Bavagnoli said he would like to compare photos from the original site and Mr. Karlebach showed Board Members the photos of the pole at the original site. These photo simulations had been marked as Exhibit A-26, Exhibit A-27, Exhibit A-28 and Exhibit A-29. Mr. Bavagnoli asked how far these two sites are from the nearest house. Mr. Meese said that the existing site is 156.7 feet from the residential zone and 211 feet from the nearest residential structure. Across the brook, the pole is closer to the residential zone line.

Mr. Khoury asked if a balloon test was done at the alternate site. Mr. Karlebach said that this test was performed with a balloon tethered at 130 feet. Referring to the distance, Mr. Meese said that there is approximately 240 feet to the closest residence from the alternative location and approximately 125 feet to the zone line property line. Ms. Tiberi asked if a schematic was prepared from Lot 5 which is the closest residential property line and structure. Mr. Karlebach said that there is a photo from 315 Feather Lane. Ms. Tiberi again asked why a schematic for the residential property that would be impacted the most was not provided. Mr. Karlebach indicated that it is difficult to judge which property is the most impacted since there are intervening elements in the landscape that can obstruct views. Therefore, the closest property to the pole may not be the most impacted. He showed Ms. Tiberi a photo of the balloon from the nearest residential structure which was marked as Exhibit A-46. The photo was taken from approximately 330 feet northwest of the site in the winter at the original location. The photo was taken from the center of the cul de sac of Feather Lane where the home nearest to the pole is located.

Mr. Toronto made a motion to open the public portion of the meeting for questions of the last two witnesses. The motion was seconded by Mr. Frankel, all ayes. Erin Paul, 323 Feather Lane, asked Mr. Yorke if the height of the pole would be affected if it were located on High Mountain Road at the traffic circle. Mr. Yorke estimated that the pole could be 10 to 20 feet lower at this point to provide better coverage from a radio frequency standpoint. Other factors to be considered are what zone this area is in and, whether or not the site is available. Ms. Tiberi asked for

clarification of the proposed height of the pole. Mr. Meese said that 120 feet is the lower of the two sets of antenna in the unipole. The original application was filed noting 120 feet and went up to 130 feet because the design changed from a traditional monopole to a unipole with stacked antennas. The lowest height is what the bottom antenna would be. The tree pole could be 120 feet because the antennas would be horizontal. Two levels of antennas are necessary for the unipole due to narrowness and because there is a second set of antennas which must be at 120 ft. or higher. The simulation for the tree pole is 130 feet but it actually would only be 10 feet lower at 120 feet. Mr. Yorke confirmed that if all the antennas are at one level 120 feet becomes sufficient.

Carol Holden, 304 Feather Lane, asked Mr. Karlebach why photos were not taken from the front or back of some of the properties on Feather Lane. Mr. Karlebach said that he couldn't enter a residential property without permission from the homeowner. He indicated that these photos are representative enough of what is being proposed in order for the Board to make an informed decision. Mr. DiFlora disagreed and said that the photos do not depict sufficient viewing angles.

Ms. Holden questioned the public benefit and Mr. Karlebach said that there are numerous planning benefits including enhanced public safety from improved wireless communications. Cell phones are typically used to report traffic accidents, drunk drivers and suspected criminal activity. Safe, secure and on demand wireless communication increases work productivity and efficiency. The only detriment in Mr. Karlebach's opinion would be a slight visual impact caused by the unipole or tree pole at limited locations. Much of the land surrounding this site is developed for public use, institutional use or simply vacant land which is why this provides an ideal location. He reminded the Board that this is a conditionally permitted use and this site is appropriate for the use as per the governing body, subject to conditions. The only condition not satisfied relates to the setbacks and there are many reasons to relax the setback requirement. There are existing driveways, parking areas and loading areas that complicate locating this facility at a different location. Below ground, there are underground utilities and pipelines that would prevent the pole from being installed at a different location. Mr. Karlebach recommended that attention be focused on the setback rather than whether or not the site is appropriate for the structure. The photos allege to show that an increase of 156 feet to 300 feet would not make a substantial difference in the appearance of this facility at various locations around this site.

Bob Brady, 312 Feather Lane, commented that people can use providers other than T Mobile if they are unhappy with the quality of cellular coverage. Mr. Meese said that the FCC has determined that each licensed carrier has an independent right to provide coverage to its licensed area and whether or not another carrier provides coverage is irrelevant. The Board is obligated to find a location from which T-Mobile can erect a facility to provide coverage to the coverage area.

John Heffernan, 315 Feather Lane, asked if there is any other area on the Market Basket property that is closer to High Mountain Road where the pole would not infringe on residential properties. Mr. Meese said that these two areas were the only areas agreed to by the property owner. The location could have been closer; however, the Market Basket installed a chiller in the area that had initially been considered, as well as underground pipes. Mr. Heffernan asked whether the pole could be situated at the edge of the parking lot across the street from the circle or the back parking lot. Mr. Meese said that the back parking lot, which is closer to High Mountain Road, is one of the options. Mr. Meese estimated that the tree pole could be 10 feet lower at this location.

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. Bavagnoli, all ayes.

Mr. Badenhausen asked Mr. Karlebach about the effect of cell towers on residential property values. Mr. Karlebach said that he is not a licensed real estate appraiser. He spoke to George Reago who has been a tax assessor in thirteen different New Jersey municipalities and, asked him whether anyone had ever asked him for a change in the valuation of their property based on the proximity to a cell tower. Mr. Reago said that no one has asked and he would not make an adjustment to the value of a home based on the distance from a cell tower.

Mr. Bavagnoli made a motion to open the public portion of the meeting for public comment, seconded by Mrs. Gerber, all ayes. Bob Brady, 312 Feather Lane, said that regardless of the regulations, this pole doesn't belong in this shopping center. It is a large, ungainly object surrounded by a wire fence which is a terrible looking mess. He doesn't want to have to look at 120 foot or 130 foot tower from his screened in porch.

Carol Holden, 304 Feather Lane, stated that zoning laws are created to protect a community and its residents and allowing this type of use creates a slippery slope. If the pole is allowed 150 feet from these residential properties, what is the next precedent that can be broken because someone says that the health and safety of the community is

promoted by cell phone usage. The residents have a right to expect that the zoning laws will remain in effect and setting this type of precedent worries Ms. Holden.

Ellen Paul, 323 Feather Lane, commented that there must be a reason for a 300 foot setback requirement. The pole will be in direct view from the living rooms of many of the residents here tonight. T-Mobile says that this is an approved use but, the setback is a major issue. Ms. Paul pointed out that when residents do additions they are expected to abide by the setback requirements and to respect their neighbors and T Mobile should be asked to do the same.

Brian Paul, 323 Feather Lane, stated that the application is disingenuous in several ways. There was no follow up with the Board of Education or the Indian Trail Club. The pictures that were presented are misleading. There are alternative sites that are almost as good but, in T-Mobile's opinion these sites are not suitable. Mr. Paul said that the record that has been made is not suitable for decision making by the Board. Photos shown tonight were not taken from the correct angles. The application is legally deficient and T Mobile has not met the burden that is required by law. Mr. Paul said that the issue is money and maximizing revenue and the variance should be denied. This is a big variance for marginal benefit and it will impact all of the residents in this area. If the Board approves this application, they are not doing the job it is charged with.

Mr. Meese stated that T-Mobile is a licensed FCC carrier meaning that it has an obligation and a right to provide coverage. The Board has an obligation to allow for the facilities necessary to provide this coverage. T Mobile made a good faith effort to find another area in Franklin Lakes which would be less intrusive; however, zoning limits the number of properties that can be considered. Municipal properties were researched with the Mayor who did his own investigation which confirmed Mr. Benetti's prior work that no municipal sites were available. T-Mobile contacted the surrounding large properties including residential properties where a strict use variance would be required. These investigations included MBS and the McBride Agency and those sites were found to be unavailable. Mr. Meese noted that the subject site is permitted under zoning. The only other conditional site would be the Indian Trail Club and despite several attempts, there was clearly no interest.

Mr. Meese said that the Zoning Board has to look at the requirements and conditions in the Master Plan. The Master Plan states that a facility is permitted on this site and the height limitation in this zone is 130 feet for a co-location facility. All of the carriers are eager to locate here because they all experience the same type of gap which is problematic for T Mobile. The applicant has tried to meet the setback requirements but due to the location of the Market Basket's chiller the location for the pole had to be moved further down behind the building. The proposal is for a single pole behind the building which complies with the height requirement but doesn't comply with the setback requirement. The Board was concerned about co-locators and T Mobile provided an option for a fourth carrier which requires an area to mount the antennas along with an area for equipment which will be on the roof. A tree pole was proposed at the back of the auxiliary parking lot. Mr. Meese stated that in his opinion there is no location in Franklin Lakes where T-Mobile could successfully comply with all of the requirements and the Board is obligated to allow T-Mobile to operate. They have demonstrated its entitlement to the variance because there is no other alternative.

Mr. Meese reiterated that the pole is conditionally permitted on this property and acknowledged the setback variance. There is also a thick wooded area at the back of the property in question as demonstrated in the photos. Mr. Karlebach has pointed out which homeowners will have a view of the pole and what they will see. T-Mobile has demonstrated its need for the facility as well as alternative designs and locations and Mr. Meese said that based on this along with case law, the Board should grant this application. The applicant has met its burden for this application and Mr. Meese again urged the Board to approve the application.

Mr. DiFlora referred to the cell tower at Ramapo High School which he described as a similar situation. The Board was not convinced by the testimony that the tower should be placed on that property for a variety of reasons and the application was rejected. As a result, there was a request for an appeal in front of a judge in Hackensack. The judge ruled in favor of the cell phone company and there was no alternative for the Borough but to approve the application. The Board subsequently lost control of the application because they couldn't enforce any conditions on the applicant. Residents have to recognize and accept the risks involved in the rejection of the application because the application will probably end in a similar fashion as the Ramapo High School cell tower application. The alternative is to work with the applicant to reach a compromise.

Mr. Toronto asked the residents of Feather Lane if they would prefer a monopole or a tree pole. The resident indicated that they would take their chances in court. Mr. Paul said that the application is deficient and the residents intend to hire an attorney. He implored the Board to reject the application. Ms. Holden asked for reasons why the

judge in Hackensack overturned the Board's decision on the pole at Ramapo High School. Mr. Davies explained that the judge found that it was necessary for a pole to be located somewhere in the area in order to provide cell phone coverage and he agreed with the proposed location. Mr. Paul said that T-Mobile could be a good neighbor and co-locate somewhere else. He does not want to be forced to live with an eyesore. Another resident asked that the pole be located closer to High Mountain Road and Mr. Bavagnoli explained that T-Mobile originally wanted to locate the pole where the chiller is now located. A resident suggested offering more money to McBride to locate the tower at the Indian Trail Club.

Mr. Meese objected to further comments from the public. He added that the applicant is willing to work with the community and the Board but none of the alternative locations were acceptable to these neighbors. Mr. Paul asked if the Board of Education realized that this is a money-making venture and the more co-locators on the pole the more money they could make. Mr. Meese again objected to the re-opening of the public hearing but stated that T-Mobile did a thorough job with the Board of Education including a lease exhibit and presentation. The reason why it was rejected is irrelevant.

Mr. DiFlora said that the setback requirement is 300 feet and T-Mobile is asking for 156 feet which is significant. He added that the photo simulation and display were insufficient and doesn't come close to what he would like to see. Mr. Meese said that the Board should have asked the applicant to do additional tests and Mr. Karlebach made a fair representation of the existing conditions. Mr. DiFlora reiterated that the photos were insufficient. Mr. Meese indicated that there would be no further time extensions by T-Mobile. Mrs. Gerber said that the first time Board Members are seeing these pictures is tonight. They were not submitted in Board Member's packets and these photos should have been made available prior to tonight's hearing.

An audience member pointed out that the billboard application, mentioned several times by Mr. DiFlora during the hearing, went to court and the Board's ruling was not overturned. Mr. DiFlora said that that application was quite different from this one.

Mrs. Gerber reiterated that the difference in phone coverage along the High Mountain Road corridor between the 90 foot high pole and the 120 foot high pole doesn't appear to be extremely significant. In light of the fact that the setback has been cut in half, she doesn't see that keeping the pole height at 120 feet or 130 feet is justified when a shorter pole would do equally as good a job. Mr. Bavagnoli said that Mr. Meese has noted that the Board has an obligation to provide equal access for T-Mobile. The RF Engineer has pointed out that all carriers have a problem with coverage in the High Mountain Road area and 130 foot would give perfect coverage; however, there is a visual impact on the community. The location is good but the tower is too high. Mr. Meese said that there seems to be a misunderstanding of the Telecommunications Act of 1996. The Act says that the Board must allow all carriers to provide reasonably seamless and reliable coverage including indoor coverage. Mr. Yorke is trying to provide seamless in-vehicle coverage and in his opinion High Mountain Road is one of the largest transportation corridors in the community.

Mr. Khoury said that in his opinion, the setback is the issue and the visual effects are the same whether the pole is 90 feet high or 200 feet high. Everyone familiar with the town realizes the gap in coverage in this area and tries to anticipate it or work around it. There are nine cell towers in the Borough and another one wouldn't be a problem except that this one goes too far in violation of the setback which could set a precedent. Mr. Davies cautioned against the idea of looking at this application in terms of setting a precedent and he said that every application must be judged on its own merit.

Mr. Khoury made a motion to deny the application, seconded by Mr. Messaros.

Roll Call Vote

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

Nays: None

NEW BUSINESS

Cal.#2011-11 Application for Flink, 650 Ewing Avenue, Block 2309.02, Lot 2.08, dimensional variances which are in violation of the following Sections of the Ordinance:

TYPE	REQUIRED	PROPOSED	EXISTING	VARIANCE	CODE
Principal Structure ¹	One	Two	Two	Required	300-104.F
Rear Yard Setback (Driveway)	25'	9.58'	9.58'	15.42'	300-102
Driveway Encroaches Into 20' No Disturbance Buffer	20'	Yes	Yes	Required	300-124.B.(1)
Rear Yard Setback Shed	25'	13.2'	13.2'	11.8'	300-102
Shed Encroaches Into 20' No Disturbance Buffer	20'	Yes	Yes	Required	300-124.B.(1)
Rear Yard Setback Patio Northern Portion	25'	17.06'	17.06'	7.94'	300-102
Patio Encroaches Into 20' No Disturbance Buffer	20'	Yes	Yes	Required	300-124.B.(1)

¹ The Applicant proposes an expansion of one of the two principal structures onsite.

Bruce Whitaker of McDonnell and Whitaker, attorneys, introduced himself on behalf of the applicants. The property is in the A-40 zone with two principal dwelling units located on the property. The applicants planned to build an addition on the home that they occupy; however, when they approached the Building Department about their plans they were informed that the property is nonconforming. The construction that is proposed for the addition meets all of the bulk requirements of the zone. The property consists of over 119,113 square feet which exceeds the 40,000 square feet that is required for this zone. Mr. Whitaker submitted an OPRA request to become familiar with the history of this property to determine if there had been any previous development of the property. The property has historic significance from the standpoint of the age of the homes and the barn that occupy the property. Town records indicate that in 1963, the Planning Board granted a subdivision of this property. Mr. Whitaker marked Exhibit A-1 which is a subdivision map indicating that there were three buildings on the property at the time of the Planning Board subdivision approval. Under the law this is a defacto approval that would allow two principal structures plus the barn to exist on this property. There was an ordinance in 1963 that would not allow two principal structures but there was no resolution for the subdivision in town records. Mr. Whitaker conducted a title search; however, there is nothing on record at the County other than the subdivision map that had been filed.

Mr. Whitaker said that the application calls for the Board of Adjustment to confirm that the nonconformities that exist on the site are true and legal nonconformities. The nonconformity of having two principal structures on one location can be approved in two ways. Approval could be acknowledged by the Planning Board in 1963 or by looking back historically at these homes and how they occurred. Mr. Whitaker referred to Exhibit A-2: A History of the Daniel DeGray House, 660 Ewing Avenue which was changed later by the Post Office to 650 Ewing Avenue. The book stated that the oldest house on the site was built during the American Revolution and was sold to a Philadelphia architect in 1906. There was a stone house built in the rear in 1910 for Mr. Pennington, gardener and caretaker of the estate. Exhibit A-3 is the statement from Bergen County that refers to the DeGray Dutch style barn. These structures pre-date Franklin Lakes' Zoning Code and Mr. Whitaker stated that the nonconformities can be approved and a resolution of nonconformity can be granted pertaining to the two principal structures on the property. This is not permitted in the A-40 zone. There is an additional structure on the property which is the barn.

Mr. Whitaker noted that the driveway is 9.8 feet where 25 feet is required within the 20 foot no-disturbance buffer. The applicants did not install the driveway which has always existed and services the barn. There is a patio that infringes into the rear of the second house which is 17.06 feet where 25 feet is required. This existed when the applicants purchased the home. There is a rear shed that houses garbage cans that existed when the applicants purchased the property.

Robert Wiessman, 686 Godwin Avenue, Midland Park, N.J. was sworn by Mr. Davies. He testified that he prepared the plan entitled, Plot Plan, Lot 2.08, Borough of Franklin Lakes, Bergen County, New Jersey, dated May 31, 2011, revised June 28, 2011, which was marked as Exhibit A-4. He added that the addition meets all of the bulk requirements contained in the Code of the Borough of Franklin Lakes. The photos demonstrate that a 20 foot no disturbance area and a 25 foot setback create a significant buffer. It was confirmed that every effort will be made to have the addition comply with the existing architecture.

Gary Flink, 650 Ewing Avenue, Franklin Lakes, was sworn by Mr. Davies. Mr. Flink purchased the house in 2007 and has made no improvements to the property concerning the driveway location. Mr. Flink presented photos of existing conditions on the lot. These photos were marked as Exhibit A-5.

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

Mr. Messaros made a motion to approve the variance request. Mr. Khoury seconded the motion.

Roll Call Vote

Ayes: Mr. DiFlora, Mr. Gerber, Mr. Khoury, Mr. Badenhausen, Mr. Messaros, Mr. Bavagnoli,
Mr. Frankel, Ms. Schoenburg

Nays: None

Mr. Davies stated that there is a condition that the addition matches the architectural style of the existing structure.

Cal.#2011-12 Application for De Luccia, 232 Gregory Road, Block 2604, Lot 1.01, dimensional variances which are in violation of the following Sections of the Ordinance:

<u>TYPE</u>	<u>REQUIRED</u>	<u>PROPOSED</u>	<u>EXISTING</u>	<u>VARIANCE</u>	<u>CODE</u>
Driveway Side Yard					
Setback Northeast	20'	16.6'	16.6'	3.4'	300-71.D.4.(j)
Front Yard Setback	50'	43.3'	46.79'	6.7'	300-102
*Mulch Play Area					
Rear Yard Setback	25'	17'	17'	8'	300-102

*Play area encroaches into the 20 Foot No Disturbance Area and it is within the wetland buffer area.

Two existing walkways located within the Gregory Road Right-of-Way replaced with modified walkway improvements.

DEEMED COMPLETE: July 27, 2011

DETERMINATION DATE: November 24, 2011

Darryl Siss of Techone, Ricabone and Siss, introduced himself on behalf of the applicant. The main variance request is for front yard setback. The applicants were told by the Building Department that their plans show an encroachment into the front yard setback by the front porch and vestibule area. There is an existing open front porch which encroaches into the front yard setback and the applicant intends to enclose this porch and extend it slightly. The setback is proposed to be reduced to 43.3 feet from the existing setback of 46.79 feet. This results in a 6.7 foot variance which is an increase of 3.49 feet over the existing variance condition. There are several existing conditions including the fact that the play area encroaches into the 20 foot no-disturbance area by means of a mulched area. This area is entirely within the wetland area and they will have to approach the DEP for another variance. The driveway has a northeastern side yard setback beyond the 50 foot front yard of 16.6 feet versus the required 20 feet. This nonconformity will remain.

Michele DeLuccia, 232 Gregory Road, was sworn by Mr. Davies and testified that she and her husband have owned the property since 2006. The purpose of the application is to update the house and expand the porch. The driveway setback existed when the house was purchased and they want to get one car around the other for improved access.

Michael Callori Callori Architects, 344 Broad Avenue, Leonia, N.J., was sworn by Mr. Davies. Mr. Callori presented the following exhibits: Exhibit A-1: Photos of the house as it exists today; Exhibit A-2: Architectural plans submitted and revised through September 25, 2009; and Exhibit A-3: sketch of front elevation. Mr. Bavagnoli made a motion to open the public portion of the meeting for questions of Mr. Callori only, all ayes. No

one came forward and Mr. Khoury made a motion to close the public portion of the meeting, seconded by Mr. Badenhausen.

Mr. Davies stated the following findings and conditions:

1. The swing set must be located in a conforming location out of the 25 foot setback. The swing set and mulch will be subject to DEP approval because of the location in a wetlands area.
2. The entire exterior will be finished in matching materials.
3. Board of Health will review and if required approve driveway construction.
4. The fireplace depiction will be corrected to show that it can be located on level ground. It appears to be conforming in all respects including height.

Mr. Bavagnoli made a motion to approve the application with the above conditions, seconded by Mr. Frankel.

Roll Call Vote

Ayes: Mr. DiFlora, Mr. Gerber, Mr. Khoury, Mr. Badenhausen, Mr. Messaros, Mr. Bavagnoli,
Mr. Frankel, Ms. Schoenburg

Nays: None

Cal.#2011-13 Application For Kayal, 1044 Dogwood Trail, Block 1209, Lot 7, dimensional variance,
which is in violation of the following Section of the Ordinance:

TYPE	REQUIRED	PROPOSED	EXISTING	VARIANCE	CODE
Building Height	40'	42'	42'	2'	300-102

DEEMED COMPLETE: August 10, 2011

DETERMINATION DATE: December 7, 2011

The applicants were informed that the Board would not be able to hear this application tonight. The attorney stated that he would agree to carry the application with no further notice being required.

RESOLUTIONS

PRESBYTERIAN CHURCH, 730 Franklin Lake Road, Block 2206, Lot 2.01

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

Roll Call Vote

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

FAHIMI, 902 Ewing Avenue, Block 3102, Lot 3.01

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

Roll Call Vote

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

Nays: None

MINUTES

The Minutes of August 9, 2011 were presented for approval. Mr. Badenhausen made a motion to approve the minutes, seconded by Mrs. Gerber.

Roll Call Vote

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

Nays: None

