

**FALLS TOWNSHIP
ZONING HEARING BOARD
SEPTEMBER 8, 2015**

Hearing commenced: 7:00 p.m.

Hearing adjourned: 10:10 p.m.

Members present: Brooks, Henderson, Miles, Molle

Members absent: Powers

Also present: Tom Bennett, CCEO & Zoning Officer; Ed Neubauer, Code Enforcement Officer; Alyson Fritzges, Esquire, ZHB Solicitor; Karen Browndorf, Court Stenographer

Petition #1: Jonathan Alvino, 400 Centennial Drive, Morrisville, PA 19067; TMP #13-030-378; Zoned: NCR. Requesting a dimensional variance to install a fence in the secondary front yard. Section 209-37.C.(3).

Atty. Fritzges marks ZHB Exhibit 1 – 4.

Mr. Alvino presents the application. He states that he would like to have a fence in his yard because he has a dog as well as a child on the way and would like to utilize the yard.

No public comment.

Member Brooks makes a motion that the application of Jonathan Alvino for a variance from Section 209-37.C.(3) of the Falls Township Zoning Ordinance be GRANTED to allow the erection of a 6 foot high fence that is a visual barrier in the secondary front yard of the property, as depicted on the plans and in accordance with the testimony presented to the Zoning Hearing Board. This approval is granted subject to the following condition with which the applicant agrees: The fence shall be installed 6' from the sidewalk.

Member Molle seconds the motion.

All in favor 4-0.

Petition #2: Krunal Patel, 58 Liberty Drive, Langhorne, PA 19047; TMP #13-004-825; Zoned: HR/TH. Requesting a dimensional variance to construct a deck which encroaches into the rear yard setback. Section 209-16.1 and Table 2-A.

Atty. Fritzges marks ZHB Exhibits 1 – 4.

Mr. Patel presents the application. He explains his neighbors have similarly sized decks. His property has woods directly behind him so expanding the deck would not impact any rear neighbors. This is the maximum sized deck approved by the homeowner's association.

No public comment.

Member Henderson makes a motion that the application of Krunal Patel for a variance from Section 209-16.1 and Table 2A of the Falls Township Zoning Ordinance be GRANTED to allow a rear yard setback of no less than 20 ft. for the expansion of the rear yard deck at the property, at the location depicted on the plans and in accordance with the testimony presented to the Zoning Hearing Board.

Member Molle seconds the motion.

All in favor 4-0.

Petition #3: Grover Kilmer, 902 Trenton Road, Fairless Hills, PA 19030; TMP #13-016-342; Zoned: NC. Requesting a use variance to allow all general contracting and trade offices on property. Section 209-22.

Atty. Fritzges marks ZHB Exhibits 1 – 5 and Applicant Exhibit 1 (proof of neighbor notification)

Brandon Wind, Esquire, presents the application. We are before the ZHB to correct an existing, non-conforming use of the property. This is a flag lot, going back quite some distance. It is blocked in the front by another parcel and on that parcel is a structure. In order to see this flag lot, you actually have to be on the flag lot to know that it is there. Back in 1988, my client became the owner of the parcel, and put up the structure, and thought that he could have general contracting companies in there. It is not retail, no showroom, clients do not come in to purchase items – it truly is a general contracting facility. It is zoned as NC (Neighborhood Commercial). To try and have a bank or any other of the permitted uses for NC zoning on this property does not make sense because you cannot see this parcel from the road.

That is why we are here today to seek your permission for a use variance to allow something that is not normally permitted under 209-22 (NC) but to allow some of the uses under 209-27 (LI – light industrial). More specifically, under subsection 15 and possibly 17. Subsection 15 allows for contracting offices, which is what is currently at the property. My client has been operating a HVAC business there for many years without complaints. The flag lot itself is surrounded on three sides by moderate to dense tree foliage. The kind of business currently there does not require large trucks – mostly vans and box trucks.

The variance we are seeking is the least required in order to be able to use this lot. It will not have any impact on the neighbors or the character or nature of any neighborhood nearby. We are not asking to store any hazardous materials. All we are asking for is the ability to use that lot for (a) its existing use and (b) to allow general contracting which would include landscaping along with reasonable accessory uses for those businesses.

Mr. Kilmer states that he agrees with Atty. Wind's testimony and that we try and keep as much as we can behind the building.

Board Questions

Member Henderson asks how many vehicles do you have operating at this time.

Mr. Kilmer states three at the present. At one time we had six.

Member Henderson states that you were talking about landscaping.

Mr. Kilmer states that there would be trailers for mowers and plows – that's his main business.

Atty. Wind reiterates that no customers will be coming onto the property, there's no showroom. For any potential landscaping business, there will not be earth movers. We are talking about hardscaping landscaping, lawn cutting machines, lawn blowing machines, etc.

Member Henderson asks regarding hardscaping, what about the stones, bricks, etc?

Atty. Wind states that they have the stones delivered to the customer's house.

Member Henderson asks what about excess material?

Atty. Wind states he doesn't know how much excess, but it is not intended to be a dumping location.

Member Henderson asks how many vehicles are owned by the landscaper?

Mr. Kilmer thinks that it's two trucks and two trailers. Remember that the property is huge, approximately 5 acres, surrounded by woods on three sides with the building in the front.

Member Brooks asks how many years you have been there.

Mr. Kilmer states since 1988.

Member Brooks asks how many businesses are running out of this building currently.

Mr. Kilmer states there are three businesses.

Member Brooks asks what the businesses are.

Mr. Kilmer states Baker Metals, the landscaper, and my nephew who works on trailers – just his office is there, he does not work on the trailers at the property.

Member Molle asks if there will be delivery of oil or oil trucks on the property.

Mr. Kilmer states no.

Member Miles questions if the other businesses are licensed with the Township also. So the fire inspectors are out there annually?

Mr. Bennett states that how we came across the landscaping business – through the annual fire inspection of the property.

Member Miles asks if there are on onsite containers for mulch or other materials.

Atty. Wind states there are no bins.

Member Miles asks about the capacity – there are 3 businesses in there currently – is there space for additional offices?

Atty. Wind states no, they are maxed out at three.

Member Miles asks if the applicant would consent to having only three businesses at the location.

Atty. Wind states the applicant has no problem with limiting the capacity to three tenants.

No public comment.

Member Molle makes a motion that the application of Grover Kilmer for a use variance from Section 209-22.B of the Falls Township Zoning Ordinance be GRANTED to allow the applicant to use the property identified as 901 Trenton Road, for all general contracting and trade offices, at a maximum of three businesses at one time, in accordance with the testimony presented to the Zoning Hearing Board.

No one seconds the motion.

Atty. Fritzges states that with no second of the motion, the motion will fail.

Member Henderson makes an alternate motion that the application of Grover Kilmer is denied.

Member Brooks seconds the motion.

All in favor 2-2 (Miles and Molle dissenting). The vote is tied, so the application is denied.

Atty. Wind states that it has not yet been denied. The motion failed. There is no motion, so there has not been a determination by this Board.

Atty. Fritzges states that is correct. The motion failed; it was not approved.

**Petition # 4: (CONT'D FROM AUGUST 11 AND JULY 14, 2015 AT APPLICANT'S REQUEST)
Cellco Partnership d/b/a Verizon Wireless, 149 Fallsington-Tullytown Road, Levittown, PA 19054; TMP #13-013-009; Zoned: LR. Requesting variances for the installation of a wireless telecommunications facility. Section 209-50.2.B, 209-50.2.C.(3), 209-50.2.C.(14), 209-50.2.D.(11).**

Atty. Fritzges explains that everyone has the right to request party status. Party status means you may testify and call witnesses and ask questions of counsel's witnesses after he has asked them questions. You do not have to request party status if you want to tell the Board your opinion on this application. Every one will get to speak and be heard. You should not be requesting party status just to have your opinion heard. When testimony is done being heard, the Board asks if there are any public comments in support or opposition of the application. At that time, any one can come up and express their opinions. I do not know if we will finish tonight; if not, the hearing will be continued until the next month's hearing when testimony will continue. The public will have their say – and absolutely everyone will be heard.

Nicholas Cuce, Esquire (representing the applicant) requests to review the party status list once the list is compiled.

Atty. Fritzges marks ZHB Exhibits 5 – 7. Other Exhibits: Exhibits A-1 (application), A-2 (quarter mile neighbor notification), A-3 (land lease agreement between Verizon and the property owner); A-4 (aerial exhibit prepared by CMC Engineering); A-5 (Curriculum Vitae of Andrew Petersohn); A-6 (Verizon's FCC license that covers this area);

Atty. Cuce presents the application. We are here for the placement of a telecommunications wireless facility which would consist of the placement of 115 ft. monopole with 12 panel style antennas within a fenced compound. The compound would also have equipment cabinets and an outdoor standby generator (propane with a propane tank). The property is owned by LM Acres, LLC. There are three witnesses: our site acquisition consultant, a radio frequency engineer, and our telecommunication site designer.

Susan Manchel (the site acquisition consultant), Wireless Access Technologies, 104 Christian Street, Philadelphia, PA 19147, begins her testimony. She states she is authorized to appear on behalf of Verizon Wireless.

Ms. Manchel states that she's been to the site numerous times and participated in the August 4th meeting held at the site for all neighbors. She states the property is zoned LR (low density residential) but is used for industrial / commercial purposes.

Atty. Cuce asks if Ms. Manchel will explain her job in determining the placement of a wireless telecommunication site.

Ms. Manchel states that she gets a search ring from a radio frequency engineer and we have to look around to locate a property within that search ring. We look for existing structures first.

Atty. Cuce asks if in this particular area, there are radio frequency constraints that have diminished Verizon's capacity and coverage objectives.

Ms. Manchel states yes, that is why we are looking for a location for a tower.

Discussion occurs regarding Exhibit A-4. Ms. Manchel states that closest residence is 889 ft., the closest cluster of houses is 1,091 ft., then 1,455 ft., and the elementary school is 1,938 ft. from the proposed tower. She says there is a lake with a natural tree buffer across from the site.

Atty. Cuce states that the ordinance for Falls Township allows for the proposed facility or use to be permitted in the IN (Institutional) district by conditional use. Depending on the property, there may be a need for dimensional variances -- correct?

Ms. Manchel states yes.

Atty. Cuce asks within the parameters of the search ring, were there any properties that were zoned IN that permitted this use?

Ms. Manchel states yes, the elementary school, the church property and St. Joseph's property. We did not choose these properties because if we located the tower at the school property, it would be much closer to residential houses. We could not locate the tower on the property and make the setbacks without locating the tower on an improved surface. We would have to construct a 20 ft. access road to the tower. So anywhere we would place the tower, we would be taking up space on their fields, we would be next to jungle gyms playgrounds, basketball courts, etc.

Regarding the church property, it is extremely small.

The St. Joseph's property was simply not interested.

We typically try and locate these towers as far away from residential neighborhoods as possible.

Atty. Cuce asks if within your search ring, were there any existing tall structures that Verizon could utilize within a quarter mile from the proposed site.

Ms. Manchel states no.

Atty. Cuce states that the proposed property is further away from residents, and is utilized for industrial purposes, and would meet Verizon's coverage objectives, is that correct?

Ms. Manchel states yes. Because the tower is located within a property that is used for industrial purposes, to the east, there are no houses whatsoever, it is within the search ring, and it is located as far from residences as possible, while keeping it within the search ring.

Atty. Cuce asks if approved (1) would Verizon provide the required certificate of insurance; (2) provide the name, address and telephone number of the tower operator; (3) would the facility be made available for review by the Township engineer; (4) would Verizon remove its facility if unused for a period of 12 consecutive months; (5) could that be accomplished within six months of its abandonment; and (6) does Verizon tend to place any signs or advertising on the tower or any of its equipment unless required by the FCC.

Ms. Manchel responds yes to all, and no to #6 (placing signs).

Board Comments

Member Henderson asks what property owners were contacted.

Ms. Manchel states St. Joseph's property was not interested, and Kenny Koretsky from the cement plant did not want a tower on that piece of property on that side, he wanted the tower located across the street, which would be much closer to residential properties.

No more Board comments.

Party Status Members

Patricia Crocker, 13 Twin Lane
Cindy Johnson, 302 North Park Drive
Brian Leaper, 38 Tall Pine Lane
Elizabeth A. Brooks, 347 North Park Drive
Jonathan R. Snipes, 878 W. Bridge Street
Britt Glatz, 25 Timothy Lane
Donald Seratch, Jr (DJ), 25 Timothy Lane
Kimberly Palucis, 114 Timber Lane
Carl Colucci, 19 Thornyapple Lane
Jim Prokopiak, 32 Butterfly Lane

Cindy Johnson, 302 North Park Drive, asks Ms. Manchel if she considered either the community park adjacent to Penn Valley Road or the old steel mill for a location.

Ms. Manchel states that the community park is out of the search ring. For optimum coverage for the customer, we have to be within a certain search ring. That search ring is determined by the radio frequency engineer.

Kimberly Palucis, 114 Timber Lane, asks Ms. Manchel if her poor cell phone service for the last year is because Verizon needs another tower.

Ms. Manchel states yes, that is why we are putting one in.

Patricia Crocker, 13 Twin Lane, asks Ms. Manchel how the tree buffer can be considered a buffer when the trees lose their leaves for 7 out of 12 months.

Atty. Cuce states that regardless of the trees losing their leaves, it is still considered a tree buffer.

Ms. Crocker states that I've never had problem with my cell service, and I live a stone's throw from the proposed tower.

Ms. Manchel states that the radio frequency engineer would be better suited to respond.

Jonathan Snipes, 878 W. Bridge Street, asks if there are other properties within the search ring that would not require dimensional or use variances, such as the property I own which abuts Mr. Koretsky. Why would the tower be located on properties that require variances when there may be others within the general area where variances would not be needed?

Ms. Manchel states that we have to be very close to or inside of the search ring. Andy Peterson [radio frequency engineer] could explain to you specifically why. If we get too close to other sites, we won't get the optimum coverage that is needed; if we are too far away from our objective, we won't get the coverage that is needed. The reason why your property was not considered is because your property was outside of the area that we needed to be.

Mr. Snipes says even though we abut Ken Koretsky's property?

Ms. Manchel states that Ken Koretsky's property is already out of the search ring.

Jim Prokopiak, 32 Butterfly Lane, asks if somebody will be testifying about the search ring – we've had a lot of discussion about it but we haven't actually seen it. He then states that it appears from the exhibit that Mr. Koretsky's property and the community park are the same distance from the proposed tower.

Ms. Manchel states that if we put the tower here (OSP on the exhibit), it would be very close to residences.

Mr. Prokopiak asks if you contacted the Township to see if they would be interested in putting a cell tower at the community park.

Ms. Manchel states that no she did not because our objective was to try and stay away from the residents – as far away as possible – while keeping inside of the location that the radio frequency engineer wanted us to.

Mr. Prokopiak states that you testified that you can exceed the search ring – that’s what you told Mr. Snipes.

Ms. Manchel states that the radio frequency engineer can testify as to what will work and what close is.

Mr. Prokopiak asks you submit candidates to the radio frequency engineer and then he evaluates them?

Ms. Manchel states no he doesn’t, Verizon Wireless radio frequency engineers do.

Discussion occurs about Mr. Koretsky’s property and how Ms. Manchel stated she has an email from Mr. Koretsky that he did not want the tower on his property which is across East Penn Valley Road, it’s about 50 ft. from Rte. 13.

Brian Leaper, 38 Tall Pine Lane, asks if out of all the options you chose the best one within the search ring.

Ms. Manchel stated yes.

Mr. Leaper asks if you are required to ask everyone within the area that has property if you can put a tower on their property.

Ms. Manchel stated no.

Mr. Leaper asks if Mr. Koretsky said he did not want a cell phone tower on his property or anywhere on his property.

Ms. Manchel stated yes that’s correct. He said he had a property at 700 E. Penn Valley Rd.

Mr. Leaper says that you looked at options within the search ring and then decided on this property and got a lease with them.

Ms. Manchel says no. The process is we get a search ring, and in that search ring, I drive every part of the ring. I look for existing structures. Then I’ll look and see where the tower can be located in this instance where it is not near residential houses.

Mr. Leaper says that you chose the point that was furthest away from all residential properties that you could find, is that correct?

Ms. Manchel states yes, within the search ring.

No more questions for Ms. Manchel.

Next witness called by Atty. Cuce – Andy Petersohn, radio frequency engineer

Andrew Petersohn, states he is an engineer at dBm Engineering, a radio frequency design consulting firm. I do work for most of the wireless carriers, including Verizon Wireless, who I am here representing this evening. I have undergraduate and graduate degrees in electrical engineering from Lehigh University. I am registered professional engineer in the Commonwealth of Pennsylvania as well as a handful of surrounding states. I've been involved in the design of these types of facilities from a radio frequency perspective for almost 20 years.

I've been tasked with gathering information on the proposed facilities on the candidates that were evaluated for this facility on the specific objectives of this facility and of the search ring in general, developing reports and offering opinions of the suitability of the proposed site.

I've testified in numerous cases like this, as well as criminal cases. I've also testified here in Falls Township.

Mr. Petersohn is accepted as an expert radio frequency engineer.

Mr. Petersohn gives a brief description of Verizon's business. Because of the increase in demand for electronics, Verizon needs to grow its infrastructure. Because of Verizon's FCC license, they are required to provide for their subscribers reasonably reliable service – the ability to make, maintain and receive voice calls as well as the ability to make, maintain and receive data sessions with adequate throughput keeping in mind all of the devices now using these networks.

Atty. Cuce questions if this particular area has a safe and reliable service in the vicinity of the facility.

Mr. Petersohn states no, it does not. Due to the capacity issues that are currently plaguing the surrounding sites, there are currently serious data throughput issues in the area which can also affect voice service. Those issues will continue to worsen over time if corrective action isn't taken.

Atty. Cuce asks Mr. Petersohn to explain the process for identifying problems in a particular area.

Mr. Petersohn states that Verizon Wireless keeps a very watchful eye on their network performance – dropped calls, data throughput speeds, ineffective call attempts. “Can you hear me now” guy is actual person in a van with sophisticated equipment driving in areas in order to get a feel for how the network is performing in real life. Customer complains also are taken into account when design engineers look at the performance of an area. Once an issue is determined, the radio frequency engineers' job is to attempt to fix it.

The first thing that is always done is leverage the existing assets that are in the area. The closest Verizon asset is approximately a mile to the south. We would seek to bolster the equipment at that site, seek to add more radio, add more LTE channels. Once we exhaust all of those avenues, in a case like this where there is a capacity issue (where the sites that are pointing to an area can no longer handle the traffic demand), we would then look to build a capacity site.

We would issue a search ring. In this case, as in most cases nowadays, it is centered in a densely residential area. That is no coincidence because a lot of traffic is generated from residential areas. I get the statement all the time – “I have wi-fi I don't need a site around here”. Yet the traffic demand continues to rise from residential areas where some folks have wi-fi but some do not. Because the demand is high in residential areas, the best location from a radio frequency perspective is to be very central to that residential area. On the other hand, we try to stay away from residential areas from an aesthetic perspective. That's the balancing act for a radio frequency engineer – you want to provide a good, strong, clean signal, yet you can't really put the tower right in the middle of that residential area. We seek to get as close as we can to the residential area when selecting a site.

The process is the radio frequency design group will issue the search ring. The site acquisition people will take that search ring and canvass the area to look for potential candidates. The first thing they always look for are existing tall structures – that is Verizon Wireless overwhelming preference. There are no tall structures in this case. The site acquisition people will then study the zoning for the area, looking for parcels that permit that use,

or where it can be constructed with minimal variance relief, always trying to stay as far away from residential properties as possible, but close enough to the ring where they can be realistically submitted as a candidate to radio frequency for review.

That only gets them to the candidate stage. If the site acquisition person calls the property and says you have a property that seems close enough to where we need it to be, are you interested, they say no, that's it. If they say yes, then they become a candidate. Those candidates are then submitted to Verizon Wireless radio frequency for their internal review. They are either approved or denied or conditionally approved based on certain criteria.

As the demand has grown for these services, and the geography that each site is supposed to cover gets smaller and smaller as we need to build more to handle the capacity demand, the search areas naturally get smaller and smaller. Fifteen years ago, we may have issued a search ring that was two miles in diameter; now we are issuing search rings that are a few city blocks. This site is somewhere in between. We now need to be very focused on where we place a new site.

With a capacity site like this, we want to be as close as possible to where that traffic is coming from and roughly equal distance from the surrounding sites -- that way we are not overly redundant from a coverage perspective.

Atty. Cuce asks what height the antennas are proposed.

Mr. Petersohn states they are proposed at 115 ft. center line. This is the proper height for this site. Part of the radio frequency design engineer's job is to find that "just right" height (not too tall or too short).

Atty. Cuce asks if the height proposed is the minimum height required for Verizon to meet its objectives.

Mr. Petersohn says yes, it is.

Atty. Cuce asks if we are proposing 12 antennas.

Mr. Petersohn says yes.

Atty. Cuce states in the ordinance there is an antenna size provision whereby the antennas are permitted to be 8 feet in height by 13 inches in width. We are just larger than that and are requesting a variance. Why we would require a variance?

Mr. Petersohn states that the antennas we are proposing are just an inch wider than the ordinance allows. These are standard antenna size.

Atty. Cuce asks if this particular tower would allow for co-location by other providers.

Mr. Petersohn states yes, it would.

Atty. Cuce asks from a radio frequency perspective what is the separation distance required between providers.

Mr. Petersohn states that the industry standard is 10 feet from center line to center line. There is no interference either physically or radio interference that the providers can co-exist on a structure. In fact when a new pole is ordered, there are ports that are already cut into a pole every 10 feet for the cables to go in and out of the pole to attach to the antennas.

Mr. Petersohn discusses Exhibit A-7 and talks about the best-server coverage footprint areas and what the new tower will cover.

Atty. Cuce asks if Mr. Petersohn prepared a study that evaluates the cumulative effects of these antenna rays operating at this site with regard to maximum permissible exposure limits by the FCC.

Mr. Petersohn says yes and it's Exhibit A-8 (electromagnetic exposure analysis). Using FCC guidelines, this site would not pose any adverse health effects at the noted exposure limits (180 times below what the FCC considers safe).

Mr. Petersohn also discusses Exhibit A-9 (interference analysis) and indicates that no potential exists for the manifestation of any type of harmful interference.

Mr. Petersohn states that the site is fully automated and the operations of the site are monitored 24/7, 365 days a year by a network center.

Mr. Petersohn discusses Exhibit A-10 (PA bureau of aviation screening) and A-11 (FAA Notice Criteria Tool Screening). The FAA notice states no additional lighting and/or marking of the facility is necessary. The PA bureau concurs with the FAA screening.

Board Questions

Member Brooks states that it's similar to supply and demand.

Mr. Petersohn states that it's more demand. We are having a hard time keeping up with demand.

Member Brooks asks if you don't build this site, service is going to get worse?

Mr. Petersohn states that with capacity exhaustion scenario, data speeds slow down. We are seeing that already here.

Member Brooks asks if you would be able to add the 12 antennas on an existing tower.

Mr. Petersohn says that we first look to tall structures and would prefer that – it's cheaper and quicker.

Member Brooks asked if they looked at the firehouse cell tower on Falls-Tullytown Road.

Mr. Petersohn says it's out of the search ring. The rings are really tight. If there was a tower just outside the ring, we would co-locate on that tower.

Member Henderson asks what the peak times are.

Mr. Petersohn says it varies ... it used to be the evening rush hour.

Due to the lateness of the hour, the hearing is continued until October 13, 2015