

**UPPER TOWNSHIP ZONING BOARD OF ADJUSTMENT  
MEETING MINUTES  
DECEMBER 14, 2017**

The regular meeting of the Upper Township Zoning Board of Adjustment was held at the Township Hall, 2100 Tuckahoe Road, Petersburg, New Jersey. The meeting was called to order at 7:30 p.m.

**SUNSHINE ANNOUNCEMENT**

**SALUTE TO THE FLAG**

**ROLL CALL**

Present: Sherri Lisa Galderisi, Joseph Healy, Karen Mitchell, Christopher Phifer, Andrew Shawl, Larry Trulli, Matthew Unsworth and Chairman Paul Casaccio.

Absent: Ted Klepac, Lynn Petrozza, Susan Adelizzi-Schmidt.

Also in attendance were Jeffrey Barnes, Board Solicitor; Paul Dietrich, Board Engineer; Shelley Lea, Board Secretary and Zoning Officer.

**APPROVAL OF THE NOVEMBER 9, 2017 MEETING MINUTES**

A motion to approve the minutes was made by Mr. Unsworth, seconded by Mr. Healy, and approved. Abstain: Phifer.

Chairman Casaccio welcomed Jeffrey Barnes, Esquire, to the board.

**2018 MEETING SCHEDULE**

Meetings will remain the second Thursday of each month except for November has been changed to November 1, 2018.

A motion to approve the meeting dates was made by Mrs. Galderisi, seconded by Ms. Mitchell, and approved.

**RESOLUTIONS**

1. CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS – BLOCK 560 LOT 1.01 – BA 18-17

A motion to adopt the resolution was made by Mr. Shawl, seconded by Mr. Healy, and approved. Abstain: Phifer.

2. JAMES & BARBARA McCORMICK – BLOCK 569 LOT 16 – BA 17-17

A motion to adopt the resolution was made by Chairman Casaccio, seconded by Mr. Shawl, and approved. Abstain: Phifer.

**BILLS**

A motion to approve the bills was made by Mr. Healy, seconded by Mr. Unsworth, and approved.

**SWEAR IN PAUL DIETRICH AND SHELLEY LEA**

**APPLICATIONS**

1. JUSTINE KABBeko – BLOCK 732 LOTS 4 & 5.01 – BA 20-17

Applicant is requesting a use variance for expansion of a non-conforming use, front yard setback variance and side yard setback variance for the principal structure and a side yard setback variance and variance for the distance between buildings for the detached garage at 17 Norwood Road in Marmora.

Justine Kabbeko, 17 Norwood Road, Marmora, was sworn. Ms. Kabbeko authorized her father to speak on her behalf.

Mark Kabbeko, Sr., 17 Norwood Road, Marmora, was sworn. Mr. Kabbeko testified that the previous approval granted by the board was to allow the construction of a single-family home on the lot with a 4-ft. wide front porch. The plans that were approved by the construction office were for a 5-ft. wide front porch. The As Built Survey that was prepared by Kelly Survey, dated 9-8-17 show the setbacks are not the same as previously approved by the board. The front yard setback is one foot less than approved and the side yard setback is off slightly which could be because of the thickness of the vinyl siding.

Mr. Kabbeko testified that while he was waiting for his As Built Survey to be prepared the shed was placed on the property. He was told the shed in its current location does not meet the setbacks and requires a variance. He stated there was no time to stop the delivery of the shed since it was already built.

Ms. Lea testified that she had seen the garage on the property and sent the owner a notice. During the investigation into the property it was discovered that a CO was never issued for the house that was built on the property. Mr. Kabbeko had an As Built Survey prepared and the survey showed that setbacks of the house and the detached garage were not in compliance. She did not agree that Mr. Kabbeko came in to file an application for the garage prior to placing it on the property. A Certificate of Occupancy cannot be issued until the applicant has final zoning approval.

Mr. Dietrich testified that in 2009 the applicant came to the board to construct the house closer to the property line than allowed. The house was built but the applicant never got a CO. After receiving a notice from the zoning officer, the applicant had an As Built Survey prepared in order to get a CO but the setbacks for the house and garage were not conforming. The garage cannot be moved back on the property because of the septic.

The meeting was open to the public. Hearing no response, the meeting returned to the board for findings of fact.

MR. SHAWL – Justine Kabbeko and Mark Kabbeko are before the board attempting to resolve a number of issues dealing with property at 17 Norwood Road in Marmora. The existing house was demolished and variances were granted to construct a new home on the lot as shown in Resolution BA 31-09. The As Built Survey shows the front yard setback is 1.35 ft. where 2.75 ft. was granted. The applicant had a garage delivered to the property without obtaining a zoning permit. The garage encroaches in the side yard setback and it is closer than 15 ft. from the house. The applicant is requesting relief to allow the garage to be 4.10' from the side property line and 3' from the house. He understands the confusion with the front yard setback but does not understand why the garage was placed on the property without a permit.

MR. PHIFER – He concurs. He has no issue with the porch being constructed slightly larger but he is not in favor of the garage in this location with its proximity to the principal structure.

MRS. GALDERISI – She concurs. She also has no problem with the front porch setback. The applicant was aware there were issues with the site before placing the garage on site.

MR. TRULLI – He has no problem with granting the setbacks for the principal structure. He is not in favor of the garage being so close to the house.

MR. UNSWORTH – He concurs. He is comfortable with splitting the application for voting purposes.

MR. HEALY – The house has been lived in since 2012 and the garage was delivered in the summer of 2017.

MS. MITCHELL – She finds the side yard setback could have been corrected when the new house was built.

MR. CASACCIO – He concurs. He finds that a deed of consolidation should continue as a condition of any approval.

A motion was made by Mr. Healy and seconded by Mrs. Galderisi, to grant the setback variances for the single-family dwelling with the condition a deed of consolidation is prepared and approved by the Board Solicitor prior to filing. In favor: Galderisi, Healy, Phifer, Shawl, Trulli, Unsworth, Casaccio. Opposed: Mitchell.

A motion was made by Mr. Healy and seconded by Mr. Shawl, to grant the setback variances for the detached garage. In favor: Galderisi. Opposed: Healy, Mitchell, Phifer, Shawl, Trulli, Unsworth, Casaccio.

## 2. CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS – BLOCK 599 LOTS 2 & 8 – BA 19-17

Application is for amended preliminary and final site plan approval, a D-1 use variance for a use not permitted in a zone, a D-6 height variance, and a use variance to allow more than one principal use on a lot, to construct a 145-foot-high wireless telecommunication monopole and supporting equipment at 559 Route US 9 South in Marmora.

Chairman Casaccio stepped down during this application and Mr. Unsworth acted as Chair.

Richard F. DeLucry, Esquire, represented the applicant. The applicant is proposing to install a monopole tower in the back corner of the cemetery. He marked an aerial photo as Exhibit A-1 and the photos that Mr. Miller will use to testify as Exhibit A-2. He stated that the monopole is

the most appropriate for the needs of the township and to minimize the number of facilities. One pole can accommodate 3 or 4 carriers.

Jody DeMarco, Licensed Professional Engineer and consultant with Advantage Engineers, Andrew Petersohn, Radio Frequency Engineer and James Miller, Professional Planner, were sworn.

Mr. DeMarco, referred to sheet Z-1 of the site information plan by Advantage Engineers, dated 8-4-17 and last revised 9-14-17, that was marked A-3. He stated there would not be any changes to the size or configuration of the subject property. The proposed monopole would conform to the setback requirements, however the permitted height is only 35 ft. This is a self-supporting tower with no guide wires enclosed with a 6-ft. high fence. The foundation will be designed after the soil types are determined. The tower would not generate any smoke, noise or dust. This would be an unmanned facility; however, a technician would come by once a month to check on the equipment. He stated that page Z-2 shows the 50' x 50' compound with a 10' x 20' concrete pad with a generator and radio equipment. There is also a gravel driveway with a turn around. The tower would be designed to sustain a wind speed of 105 MPH. They plan to install landscaping around the four sides of the compound.

Mr. DeMarco testified the proposed monopole is 140 feet tall with a 5-foot lightning rod on the top. The base of the pole is about 4 ft. in diameter and tapers as it goes up. The total square footage that would be dedicated to the tower is 4,540 sq. ft. The proposed tower would be similar to the recently approved tower at Cedar Square only a little shorter.

Andrew Petersohn testified their main focus is to address the capacity issue. He stated that the usage patterns have changed over the last decade. He stated that the seasonal population also effects the data and usage. He testified if the towers become obsolete any removal of the tower is addressed in the lease. He referred to Exhibit A-6 showing the proposed best server coverage. He stated this is a large property surrounded by a densely populated residential area. In regard to radio frequency exposure he stated that as an engineer he examines the specifics of the design then using the FCC's formulas determines the anticipated exposure levels from the facility and compares them to the benchmark that the FCC sets as far as levels that are acceptable for human exposure. He testified that the exposure levels would be 1% less than the FCC limits.

Mr. Petersohn explained the residents on Cindy Lane would have excellent service anywhere in their home. He stated that Verizon does not want to build new facilities since it is very expensive and that the recently approved tower at Cedar Square would not help this area. There is nothing they can do with the existing sites to improve the capacity in this area. The tower is designed to serve any Verizon Wireless device whether they are traveling or stationary within the new footprints of coverage. Although a site is not being served by the proposed facility they will be served by a site that is now off loaded that can improve their service. He stated that if the proposal is not approved the need does not go away and they would seek an alternative candidate. There are no structures in the area that are tall enough and in the right location to provide the type of support they require. Verizon needs all the facilities that it has plus the proposed tower. He commented there are towers that have existed since the 1980's

that are still operational. They swap the equipment when needed and antennas for new sophisticated ones.

Andrew Sanfosso, 9 Cindy Lane, was sworn. He stated that some days he cannot come outside because the crematory stinks. If approved he would have to put up with radiation from the cell tower. He wants to know if he has enough time to sell his house.

There was a short break.

James Miller explained how the photo simulations were prepared using a balloon. These simulations are used to see if there is a visual impact. He testified the tower would not have a visible impact to the residents of Strathmere but could be visible from some locations on the intercostal waterway. Four simulations were prepared and are on display. He stated that the cemetery is the largest non-residential property in the vicinity where Verizon needs to locate their site. The property is zoned "R" Center Residential and the cemetery is a permitted use. The property abuts the town center district.

Mr. Miller testified the site is particularly suited since there is no alternative structure within this area that could house a Verizon antenna. There is no pre-existing lattice tower or mono tower or tall building that could accommodate the antennas. None of the carriers want to build a tower unless they must because of the time, expense and permitting involved. They only go to a raw land site when there is no other option. This site has the attributes of a commercial or non-residential zone since it is nestled into the corner of the town center district. This is an optimum use in a cemetery since they are very large properties and provide very extensive setbacks allowing them to mitigate the visual impact. The proposed tower is over 1,000 feet from Route 9 and Cindy Lane. A cemetery is the most permanent a use as you can possibly have and highly unlikely to transition to another use. Cemeteries are also usually landscaped heavily and the trees help to mitigate the visual impact. For these reasons, he feels this is the optimum location. He believes this is the least visibly intrusive location since the setbacks and the trees mitigate most of the visual impact. He commented that the court recognizes that when you erect tall structures there is going to be incidental visual impact. In this case there is no significant visual impact on any of the adjoining properties.

Mr. Miller testified regarding the negative criteria. He stated the courts ruled that cell towers are not inherently beneficial uses but that they benefit the public welfare. He finds that the benefits of the cell tower outweigh any detriment since most homes do not have landlines and businesses utilize many devices to operate. The most significant potential impact is the visible impact. The visual impact has been lessened and mitigated since it has been placed in a location furthest from the residential uses in the area and closer to the non-residential uses. This is the best location within the location given the need to service this area. He stated there is such a minimal impact that he does not see any potential impairment to the intent or purpose of zone plan. He finds there are benefits in the enhanced communication in terms of servicing the residential and commercial business along the Route 9 corridor and the general public. He believes that all the applicable criteria have been met. He testified that it is not common to locate a tower in a cemetery but it has been done.

ZONING BOARD OF ADJUSTMENT  
DECEMBER 14, 2017  
PAGE 6 OF 8

Mr. Dietrich stated that although cemeteries do not pay taxes the area receiving income will be taxable based on the rental income.

Solicitor Barnes explained to the board the criteria used when hearing an application for a cell tower.

Mr. Miller testified in regard to the second use on the site. It is typical for a wireless facility to be on a site where there is another established use. He finds the site is particularly well suited for the proposed use. This is a uniquely suited location for the wireless facility. He feels that if located on one of the surrounding properties it would be more detrimental to the community. He believes the proposed location would provide sufficient space and appropriate location for numerous residential and commercial enterprises since it is not occupying a space that would otherwise be devoted to one of those uses and because of the distance between this location and the surrounding residential uses. He further believes that locating the antenna at the cemetery would provide for adequate light, air and open space.

The meeting was open to the public.

Anthony Cinemo, Jr., 7 Cindy Lane, was sworn. He had question about the notices that were sent out. He had concerns about the windspeed and property values. He asked about radio waves and elector magnetic exposure from the proposed facility. He requested the board deny the application.

Mr. Petersohn addressed the question regarding radio frequency. He stated that compared to the devices people are using it is insignificant.

Larry Gremo, 5 Cindy Lane, was sworn. He submitted a letter that his wife wrote. She is suffering from radiation used in MRI's. There is no guarantee the proposed radiation levels are safe. He asked about the notices that were sent since he did not receive one.

Dan Kohr, 11 Cindy Lane, was sworn. He bought his home next to a cemetery knowing that another home or a commercial or industrial use would not be constructed next to him. He finds it offensive that the applicants are trying to erect a cell tower in a cemetery. He is offended that he cemetery does not pay taxes. He is concerned about the appearance of the township if cell towers keep being approved. He feels the applicant should find a location that is more appropriate. He is concerned that the use of the cemetery will change. He feels the families of those buried in the cemetery should be notified about the application.

Dr. Joan Perks, 11 Cindy Lane, was sworn. She feels the trees will not block the block the view of the tower. She wants evidence that the capacity has been reached. She stated that the applicants refer to research but there is no evidence. She asked if board members with Verizon plans have a conflict. She feels the applicant should find a better location for the tower. She does not agree that the tower would not be visible from Cindy Lane. She is concerned about the health risk of having a tower that close to her home.

The meeting was closed to the public and returned to the board.

Mr. DeLucry stated that the testimony given by the professionals was factual and creditable. He stated there is a need for additional service in this area and the service cannot be provided without the infrastructure. He finds the applicant did a good job in finding a site for the proposed tower. He stated that the proposed site has the benefit of a natural buffer to the south particularly. The proposed use does not produce negative impacts found in other occupied facilities such as noise, glare and odor. There are only occasional visits to make sure things are working properly. It has been confirmed by the professionals that the site is well suited for the proposed use. He agrees there is a lot of land in the township but this is where service is needed. He believes they have found the best location with the least impact. It has been noted that the tower would be less than 1% of the permitted levels of exposure. The benefit to the public is enhanced communication. The exhibits demonstrate there would be a negligible insignificant view of the tower.

The board was asked for findings of fact.

MR. SHAWL – Cellco Partnership is before the board regarding 559 Route US 9 South known as block 599 lot 8. The applicant wishes to build a 145 foot tall cell tower like the one that will be constructed at Cedar Square. The applicant provided many photo simulations. The property is in the R zone. The proposed location of the tower is in a cemetery creating two principal uses on one lot. The maximum height permitted in this zone is 35 feet. Mr. DeMarco explained the proposed location of the tower. The applicant proposes a monopole with no guide wires. There would not be any impact to the storm water due to the minimal area being disturbed. The noise from the equipment would be like a refrigerator. The tower would not generate any smoke or odor. This is an unmanned facility and only periodic checks would occur. A 10' x 20' concrete pad is proposed for the generator and back up battery. The tower would be designed in accordance with the wind speed requirements. Power would be run from an existing pole on an adjacent property underground. The total area being utilized by the applicant equals 4,540 sq. ft. Periodic visits to the site would be by Verizon Wireless technicians. Mr. Petersohn discussed the existing conditions and how the problem in this area is a capacity issue and not a coverage issue. Erecting this tower would improve the capacity problem. If the equipment is not installed there would be additional delays and buffering for different applications, downloading files and video sharing. Cell phones, cars and other vehicles all contribute to the increase in data usage. The proposed tower would improve the capacity for quick communication. This is the best location for the tower since it is near dense residential areas and travel ways. The area around the facility is largely vacant. The adjacent property is the Coca Cola Bottling Company and a storage facility. Mr. Petersohn also testified the tower would meet all FCC guidelines. The tower would serve any Verizon Wireless device in a home, business or driving on the road. Technology continues to develop but there are no plans to decommission any equipment once this location goes into service. Mr. Miller provided four photo simulations showing the visual effects of the tower. He testified that the tower would not visually impact Strathmere and that the trees would block the view of the tower from the south minimizing the impact. The cemetery is the largest non-residential property that could host the antenna in the geographic area. The property abuts the Town Center zoning district and shares some of the characteristics of the TCC zone. He further testified the site is particularly well suited and there are not any alternative structures nearby well suited for providing the type of service proposed. The landscaping on the property would help to mitigate any visual impact. He demonstrated that

the tower benefits the public welfare by providing cell phone and wireless communications. Several residents of Cindy Lane are opposed to the application because the visual impacts negatively impact their neighborhood, concerns regarding exposure and that too many towers would make the township look ugly. Mr. Shawl finds that the applicant has met the burden of proof.

MR. TRULLI – Nothing to add.

MRS. GALDERISI – Nothing to add.

MR. PHIFER – He finds the applicant has met the burden of proof and that special reasons a and g apply. He does not know of a location where the tower could be located that would not be close to a residence. The proposed location is only feet away from the town center zone. He finds the location is suitable.

MR. HEALY – nothing further to add.

MS. MITCHELL – She is not convinced that there are locations nearby that are more suitable that would have less impact on the existing residential dwellings and the final resting spot of people that have purchased plots or that are in that cemetery.

MR. UNSWORTH – He agrees with Mr. Shawl's findings as far as the location geographically and technically, however he does not agree that a cemetery is an appropriate place for a cell tower.

A motion was made by Mr. Shawl and seconded by Mr. Healy to grant the application as proposed. In favor: Phifer, Shawl. Opposed: Galderisi, Healy, Mitchell, Trulli, Unsworth.

#### **ADJOURNMENT**

A motion to adjourn the meeting was made by Mr. Trulli, seconded by Ms. Mitchell, and approved. The meeting was adjourned at 11:32 p.m.

Submitted by,

Shelley Lea