

Chairman Schwemmer called the regular Meeting of the Board of Adjustment of April 7, 2010 to order at 7:07 p.m.

**MEMBERS PRESENT:** Morris Bauer, Elliott Averett, Felix Graziano\*,  
Craig Schwemmer, Anthony Spina, John Turick  
**Alternate Members:** Dorothy Walter  
**Members Absent:** Frank Baguiao, Harvey Ort  
**Others Present:** Attorney Fraser, Clerk Kesper, Engineer Hall,  
Planner Banisch. RF Engineer Eisenstein

\*Arrived Late

STATEMENT OF COMPLIANCE WITH THE OPEN PUBLIC MEETINGS ACT  
- Adequate notice of this meeting was sent to the Observer-Tribune and the Morristown Daily Record on January 12, 2010 and posted on the Bulletin Board on the same date. Notices were mailed as there were requests.

Pledge of Allegiance

***MINUTES***

1. February 3, 2010 Regular Meeting

Mr. Spina made a motion to approve the minutes, seconded by Mr. Bauer. A voice vote was taken; Mr. Schwemmer abstained, all others were in favor and the motion carried.

***RESOLUTIONS***

NONE

The meeting was opened to the public for items not on the agenda. There were no comments from the public and the meeting was closed to the public for items not on the agenda.

**APPLICATIONS**

1. Pineiro – Block 59, Lot 46.02 – 210 Beacon Hill Road – R-5 Zone – 1.210 Acres – Request for Front yard setback and non-conforming lot size variance for front entrance portico

Maria Pineiro, Applicant

Maria Pineiro was sworn in by Attorney Fraser

The board reviewed the application package for a 13' x 8' portico.

Mr. Banisch stated that the applicant is asking for a 96' setback where 100' is required.

Ms. Pineiro answered the board that the setback required was measured off the survey. She stated that the septic system is in the front yard, between the walkway and the road to the left of the front door.

Mr. Graziano arrived and joined the meeting.

Mr. Hall stated that he reviewed the survey and the requested 96' is accurate.

The meeting was opened to the public no questions or comments.

Mr. Spina made a motion to approve the application with a 94' setback. seconded by Mr. Bauer.

Ayes: Averett, Schwemmer, Bauer, Turick, Spina, Graziano, Walter  
Nays: None                      Abstentions: None                      Absent: Ort, Baguiao

2. Verizon Wireless – Block 28, Lot 14 – Bartley Road – R-5 Zone – 10 acres - Request for Use Variance for 120' Wireless Communications Tower – Deemed Complete October 7, 2009 - Previously Heard October 7, 2009 and November 4, 2009 – Public Hearing Continued – Expires February 4, 2010

David Soloway, Applicant's Attorney  
Joseph Menio, Applicant's Radio Frequency Engineer  
Anthony Suppa, Applicant's Engineer  
Robert Riffel, Jr. Applicant's search area analysis consultant

Mr. Bauer stepped down due to a conflict of interest.

Mr. Graziano and Mr. Turick read the transcripts from the October 7, 2009 and November 4, 2009 meetings and are eligible to vote on this application.

Mr. Soloway answered Ms. Fraser that the applicant would proceed with only six members present and stated that he would hope the seventh member would read the transcript. He also stated that their planner was not available for this meeting and therefore they would not be concluding their hearing this evening.

Mr. Soloway stated that there was only one other site in the area that would be viable that had an existing structure that could be used to lower the height of the tower on Ort Farm. He stated that the location was 99 West Mill Road (Scott Farm), if they could extend the height of the silo by 60' with a 80' tower on the Ort farm, he noted that there is already one carrier on the silo. He stated that they tried to reach the property owner, Borgenicht, and they did not respond and they also sent a letter to the law firm of Gebhardt and Kiefer who represented the Borgenicht trust on other matters. The letters were marked A-7 (February 17, 2010) and A-8 (March 10, 2010).

Mr. Mineo stated that Attorney Soloway's representation of locations was accurate.

David Banisch, Leon Hall and Bruce Eisenstein were sworn in by Attorney Fraser.

Mr. Riffel reviewed the other sites looked at by the applicant. He stated that block 28 lot 63.01 is landlocked off Fairview Avenue. He spoke to Katherine Coyle, the director of the Morris County Agriculture Development Board stated that this property is in farmland preservation and both of the areas that are not in the preservation easement are for parking for lot 63 and patriots path and a parking area and that the electric tower is on preserved. Block 28 lot 4 (on Fairview Avenue and Naughtright Road) is farmland preserved with no exception areas. He presented copies of the deeds which were marked A-9 (original) and A-10 (later 2000 deed). He answered Mr. Hall that he did not confirm that block 28, lot 4.01 was preserved but a member of the public at the last meeting confirmed that it was.

Mr. Soloway referred to the outstanding issue of lot 28, lot 11 owned by Bartley Road LLC on which there is a transmission tower that was not on farmland preserved property. He stated that that property owner was unwilling to host the facility. He did not have the owners at the meeting but presented letters to the board confirming this fact. A written

response was not received. The letters were marked A-11 (November 16, 2009) and A-12 (January 10, 2010). He answered Mr. Averett that the Ort silo is only 30'- 40' tall which is not sufficient for Verizon needs. He stated that the applicant would be willing to build a silo as a stealth tower. He reviewed for the board that none of the existing PSE&G towers were viable, because of either structural inadequacies, they already have antennas on them or are on farmland preservation property. He stated that under the green acres requirements an applicant must demonstrate that there are no alternatives, of which this location is an alternative.

Dr. Bruce Eisenstein presented his qualifications to the Board, he is a professor at Drexel, but not representing Drexel, and for the last 30 years he has been a teaching courses on cellular communications. He stated that since 1999 he has consulted for municipalities on the placement of communication towers and also that he had not done work for any of the cellular communication companies. He stated that he is also a licensed professional engineer.

Dr. Eisenstein explained that he first tries to verify a gap in coverage and explained network plans and what a gap is (an appropriate power level). He referred to the applicant's coverage, propagation charts and the colors show the level of power coverage. He explained how the propagation models are produced. He then reviews whether the proposed coverage was acceptable. He then looks at whether the applicant meets FCC requirements.

Dr. Eisenstein stated that based on the transcripts of the prior meetings on this application, exhibits and information provided him there is an extensive gap. The proposed site will remediate this in the southern area somewhat, because of the ridgelines that the signal cannot get over. He explained how communication companies reuse their signals. He explained that if a tower is too tall it will interfere with other sites. He stated that the applicant's proposed tower is in the center of the gap area and that some areas will not be covered due to the topography. He stated that he does not see any difference in the propagation at 100' or 120'. It was his recommendation that the tower not be taller than 100'. He stated that he has not seen propagation charts at 80' and it was his opinion that it is possible that it may work at this height as well.

Mr. Menio agreed with Mr. Eisenstein but it does fill in other areas where they do not have good coverage.

Mr. Soloway stated that the applicant would amend the application and asked for a 100' tower not an 120' tower.

Mr. Menio presented a propagation exhibit at the 80' height which was marked A-13 and that they would still have a coverage gap.

Dr. Eisenstein answered Mr. Schwemmer that unless the tower is moved several hundred feet the propagation (coverage) would not change.

Mr. Schwemmer stated that the location of the tower is the concern and asked if a series of lower towers would work.

Mr. Soloway stated that based on previous testimony, the applicant cannot locate on any of the existing PSE&G towers.

The propagations prepared for Dr. Eisenstein by the applicant were marked A-14 (100') and A-15 (120').

Dr. Eisenstein stated that after reviewing the propagation at 80' (A-13) it was his opinion that the applicant loses some coverage to the southwest along West Mill Road as well as a gap to the east which is not covered at 100' or 120'.

Mr. Menio stated that he concurred with Mr. Eisenstein but that it is a loss of 5200' of coverage, almost a mile of coverage. He referred to the topo map on A-13 and pointed out road references in the area of coverage and non-coverage. He stated that the Borgenicht silos are in the area of non-coverage.

Dr. Eisenstein stated that if you are in the white (low coverage) but close to the green coverage phones would work marginally. He stated that he would like to see the plots at ten times less power. It was his opinion that going to 80' would be a good trade off and an 80' silo would probably not hurt the viewshed.

Mr. Schwemmer stated that at this point the applicant has not shown the proofs to erect a 100' tower.

Mr. Menio stated that at 80' the applicant would start losing the overlap – handing off calls from one tower to another.

Dr. Eisenstein did not agree with the applicant on the hand off of calls from tower to tower because Verizon uses the CDM system which uses a soft hand off where both towers carry the call for a period of time. He explained what he wanted to see prior to the next meeting.

Dr. Eisenstein stated that the propagation maps understate areas along roads and that you actually get better coverage along a road.

Mr. Hall pointed out that our ordinance requires colocation.

Dr. Eisenstein stated that below 80' you would not get a co-locator. He explained how the communication companies could build a silo to allow co-locators at 80, 90 and 100 and that it could be design so it could be increased if there was another company who would want to colocate.

Mr. Soloway explained that the other carriers, except T-mobile are already located in the area and probably would not want to locate at this location.

Mr. Banisch answered the board that in Alexandra Township they approved a 100' silo extendable to 120'.

Ms. Fraser suggested allowing the silo to be 90' with Verizon at 90' and a colocator at 80'. She also stated that the applicant should look at the teen center where possibly a flag pole could work to expand the network.

Mr. Banisch stated that there is also a church in the area with a steeple.

Dr. Eisenstein stated that even at the proposed 120' there was a half mile of area not covered. He disagreed with Mr. Menio's statement that at 80' there would be a significantly greater area of non-coverage.

Mr. Menio stated he would provide Dr. Eisenstein the requested information to determine hand-off/roll off of calls.

Mr. Soloway answered Mrs. Walter that there are now generally four carries, not the five that were around previously. The carriers in the area are now: Verizon Wireless, AT&T, T-Mobile and Sprint (Sprint and Nextel have merged). He stated that there is a new service, Metro PCS, which is new to this area, but they are targeting more urban areas.

Mr. Soloway answered Mr. Averett's comments on the location on Ort Farm was chosen because of highland recommendations/requirements to not expand the impervious coverage.

Mr. Averett asked if the current 40' silo could be taken down and replaced with a new taller silo.

Mr. Soloway stated that photo simulations using the previous photos will be done showing a silo. He stated that the antenna silos may look like silos but they are not usable as such due to the electrical fire hazards with the materials stored in a silo. He also stated he would have additional photographs showing the view. He will also have additional stealth antennas such as a windmill.

Mr. Suppa described the location of the Ort farm and the compound area. He referred to drawing Z-1 which was previously submitted to the board. The compound will be between a barn and greenhouse on existing gravel. He referred to Z-3 which showed the compound fenced, and noted that there will be a generator located outside the structure and one parking space. The shelter will have a sand color stone finish with two air conditioning units and space for two colocators. Twenty five evergreens are proposed for landscaping. He reviewed the variances needed. He stated that there would be a 70 watt light over the door which will be on a timer to go off after a technician left and that this would be an unmanned facility. He stated because of the electrical equipment it cannot be a working silo. He stated that if a silo was used the equipment would be inside the silo. He answered Mr. Banisch that he would have to look into whether they could build a new tower with mounting the antennas and all equipment outside on the silo.

Dr. Eisenstein stated that the antennas could be flush mounted and painted the same as the silo and would be not very noticeable.

The meeting was opened to the public for questions.

John Worthington – Pleasant Grove Road -asked about the monopole size.

Mr. Suppa answered that the diameter at the top is 24” and the silo 20’

Dr. Eisenstein told the board about a flagless flagpole that the antennas are inside and this disappears from view as another stealth method, which would probably have to be at 100’ for colocators.

Mr. Soloway stated that the flagpole does not hold as many colocators.

Ms. Fraser answered Mr. Worthington regarding the review required on cellular communications which lays out the parameters of review under telecommunications act and municipal land use law.

Laura Akin – 98 East Mill Road asked about Valley View Chapel’s property.

Mr. Soloway stated that in the report of alternative locations Valley View Chapel was number 10 and representatives of the Chapel were not interested.

Shelly Heriteck – 29 Douglas Drive asked about why the shift in height from 120 to 100 or less.

Mr. Soloway explained that based on the Board's consultant, Dr. Eisenstein's recommendations the applicant agreed to the lower height.

There were no further questions and the meeting closed to the public for questions on this evening's testimony.

The meeting was adjourned to May 5, 2010.

Eligible: Averett, Schwemmer, Spina, Baguiao, Walter

Ineligible – Bauer, Ort

Absent: 10-7 – Graziano – Read Transcript

11-4 – Turick, Graziano – Read Transcript

4-7 – Baguiao

Mr. Graziano left the meeting.

Mr. Bauer returned to the meeting

3. Black Oak Golf Turf Care Center – Block 18, Lot 22 – 105 Bartley Road  
– Request for preliminary and final site plan approval for turf care center – Completeness Hearing and if deemed complete Public Hearing

Mark Blount, Applicant's Attorney

Robert Brightly, Applicant

Mr. Blount referred to the previous hearing on the use variance for this application and asked that the resolution granting the use variance be entered into the record as it contains information and conditions on the use variance.

Mr. Brightly was sworn in by Attorney Fraser.

Ms. Fraser reminded Mr. Hall and Mr. Banisch that they were previously sworn and remain under oath.

Mr. Hall referred to his report of February 26<sup>th</sup> and the waivers requested for completeness and he did not object to the waivers being granted for completeness only.

Mr. Spina made a motion to deem the application complete, seconded by Schwemmer all were in favor and the application deemed complete.

Mr. Brightly referred to Mr. Hall's letter and explained the maneuvers that trucks will have to make, which is an existing condition on the property. He stated that if the employee's park to the northerly limits the

trucks will be able to turn around. He pointed out the employee parking spaces on the plan.

Mr. Blount referred to the use variance resolution and that the deliveries are only on monthly basis, not daily.

Mr. Brightly referred to a copy of page 22 of the tax map as of March 2007 which was marked A-1. 30 x 310' strip of land that comes off Bartley Road and is located between lot 27 (club house site) and Lot 25 and 21.01. He stated that there was some history with these lots with a subdivision resolution in 1996 and in 1944 the large lot was created and the subject lot created in 1953. Lot 25 was created in 1954 and he has researched the deeds have a 14' right of way easement (25 and 21.01) and on lot 22 has access to this easement. In 1986 a survey established the right of way of 31.5' which was probably created because of gore on the property. He does not know who owns it but that lot 22 has access off the gravel driveway and he is showing a connection from the clubhouse, lot 27 to the 31.5 right of way and then continue on the gravel drive. They can take it off the plans and not use it, but it takes traffic off of the road.

Mr. Blount stated that the existing gravel driveway within in the 31.5' easement is specifically described in all the deeds and grants the right to lot 22 to use it.

Mr. Brightly answered Mr. Averett that there is no direct connection between lot 27 and the driveway easement area.

Mr. Hall stated that the driveway connection to the 31.5' easement appears to be off the Black Oak Golf Course site. He stated that on the survey submitted it is shown as a driveway access easement. He stated that if that driveway access agreement exists and lot 22 has rights to this area of driveway access in a deed then they can use the connection from the parking lot of the connect the golf course club house parking lot to the end of the 30' right of way.

Mr. Brightly stated that the driveway easement has been used since 1953.

Mr. Blount the proposed connection to the golf course property has not been used.

Mr. Brightly stated that employees would use the club house driveway.

Mr. Blount read from deeds in the chain of title for lot 22 from 1969 and 1975 which referred to the access.

Mr. Hall asked that the deed be given to the board attorney for review and approval.

Mr. Banisch stated that if this area was used it would be a benefit to the public and adjoining neighbors by limiting the number of turns onto Bartley Road past the homes on the driveway.

Mr. Blount stated that he will either get agreement with the property owners to connect lot 27 to the driveway easement or clear up the title allowing the connection of lot 27 with this driveway easement.

Mr. Brightly stated that this area is shown on the tax map as a dashed line along lot 27.

The deed from 1975 was marked A-2.

Mr. Brightly stated that the fuel tanks will be protected by bollards and fencing and the details will be added to the plans. A sign detail is on the plan and the applicant proposes to use the existing sign and posts (6' from pavement) and put in a new sign between the posts. He stated that there is about 900' of sight distance to the left and 700' to the right and the sign will not interfere with sight distance. The sign detail (color, etc.) will be revised and submitted for Mr. Hall and Mr. Banisch for their approval. He pointed out the detail for the wash area and there is no discharge as it is all self contained.

Mr. Blount stated that a driveway maintenance agreement will be prepared upon the approval of this board. He answered Mrs. Walter that the other homeowners on the driveway will be part of the agreement.

Mr. Brightly will add a note to the plans about obtaining an approval for a new septic system or sewer connection.

Mr. Hall stated that he wanted it clear that until the new sewage system is installed the turf care center will not be able to operate or occupy the structure.

Mr. Blount read the condition from the Use variance.

Mr. Hall stated that the language was acceptable.

Mr. Brightly reviewed the design waivers. He stated that there will be no new disturbance on the property and acknowledged that any disturbance would be under the jurisdiction of the DEP.

Mr. Banisch informed the Board that the planning board has reviewed and authorized the board attorney to amend the golf course site plan which includes a temporary turf care center near the club house.

Mr. Brightly referred to Mr. Banisch's report and stated that the wash area is for the lawn mowers. He stated that this property has been added to the list of properties that need sewers because of a failing septic system. He stated the variances required are on the title sheet of the plans and that they are all pre-existing conditions.

Mr. Hall stated that the difference in this application and others, regarding driveways and turn around areas is that this is a pre existing structure. He did not think this driveway needs to be widened as it meets driveway requirements of 12' and as it has been there for a long time it is hard and can support large trucks as it has over the years.

Mr. Blount stated that the additional use would not increase the risk of fire and that chemicals are not stored at this facility.

Mr. Hall stated that a condition of the waiver for the sign be subject to his on site inspection.

Mr. Brightly stated that no new lighting is proposed. The current light is a motion sensor light. He will add to the plan a two yard trash receptacle and small cans for recycling.

Mr. Brightly addressed the variances and that they are pre-existing and that the structures were lawfully constructed and the use received approval from this board in 1944. This use brings the lot into more conformity as a golf course is a permitted use as well as keeping the current needed use of animal recovery. It was his opinion that there was no substantial detriment to the granting of the variances.

The meeting was opened to the public for questions and comments. There were no questions or comments and the meeting was closed to the public for questions and comments on this application.

Mr. Spina made a motion to direct the board to draw up a resolution of approval subject to the discussions this evening and the board professional reports and the conditions of the use variance. Seconded by Mr. Bauer.

Eligible: Averett, Bauer, Schwemmer, Spina, Turick, Walter

Absent: Baguiao

Ineligible: Ort, Bauer

***DISCUSSION - CORRESPONDENCE***

## 1. Vouchers

The vouchers were reviewed. Mr. Spina made a motion to approve the vouchers reviewed by the Chairman and found in order and send same on for payment. The motion was seconded by Mr. Baguiao. A voice vote was taken; all were in favor and the motion carried.

Mr. Averett made a motion to adjourn, seconded by Mr. Spina. A voice vote was taken; all were in favor and the meeting was adjourned at 11:10 p.m.

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Virginia R. Kesper, Clerk