

**TOWNSHIP OF MAHWAH
BOARD OF ADJUSTMENT**

MINUTES

MARCH 20, 2019

The combined public/work session meeting of the Board of Adjustment held at the Municipal Building, 475 Corporate Drive, Mahwah, NJ beginning at 7:33 pm was called to order by Mr. Rabolli, with the reading of the opening statement followed by the flag salute.

These minutes are a synopsis of the meeting. A verbatim audio tape recording is on file with the Board Secretary at the Board of Adjustment Office, 475 Corporate Drive, Mahwah, NJ. Copies of the tapes may be purchased for a fee.

Mr. Rabolli reminded all members of the Board that Board of Adjustment meetings are now being videoed and broadcast live.

PRESENT: Mr. DeSilva Mr. Montroy
Mr. Jackson Mr. Rabolli
Mr. Kearney (in at 7:40 pm) Mr. Straffin

ABSENT: Mr. Calijone Mr. Whiteman
Mr. Larson

ATTORNEY: Mr. Ben Cascio, Esq.

PROFESSIONALS: Mr. Michael Kelly, P.E., Boswell Engineering
Ms. Deborah Lawlor, PP, Maser Consulting

I. APPROVAL OF BILLS:

None to present.

II. APPROVAL OF MINUTES:

A. MINUTES OF DECEMBER 19, 2018

A motion to approve was made by Mr. Straffin, seconded by Mr. DeSilva. All eligible members voted in favor.

B. MINUTES OF FEBRUARY 6, 2019

A motion to approve was made by Mr. Straffin, seconded by Mr. Jackson. All eligible members voted in favor.

C. MINUTES OF MARCH 6, 2019

A motion to approve was made by Mr. Straffin, seconded by Mr. Jackson. All eligible members voted in favor.

III. MEMORIALIZING RESOLUTIONS:

None to present.

IV. OPEN TO THE PUBLIC:

Mr. Rabolli opened the meeting to the Public for general questions or statements. None were received.

V. PUBLIC HEARING(S):

**1. DOCKET #1447-18 – PRESTIGE MANAGEMENT SERVICES /
MSN SERVICES, LLC, 73 RAMAPO VALLEY ROAD, BLOCK 41, LOT 1**

Application for a “D” Variance for the use of a 5,830 square foot building for a Public Auction business for sales of furnishings, equipment and personal property.

Mr. Rabolli summarized the Application and stated that the matter has been adjourned several times. Mr. Cascio informed the Board that the Statutory Time ends this evening, however, the Applicant has requested an extension and granted the extension of Statutory Time. Mr. Rabolli announced that the hearing for this Docket has been adjourned to the April 3, 2019 Board of Adjustment meeting. The Applicant will be required to re-notice.

Ms. Susan McIntire of 52 North Railroad Avenue, Mahwah, NJ approached and commented that back in December it was postponed until January with no further notices. She also stated that she came to the January meeting and the Applicant did not show up. Now it is being moved again and she is not available on April 3, 2019. Mr. Rabolli replied that the Agenda is published and that she could always contact the Zoning Office. Regarding the Application, Mr. Rabolli stated that it would not be a single night application based on the complexity of the matter. Mr. Rabolli informed Ms. McIntire that there is no Application as of yet, no plans are on file. The Applicant may be required to properly re-notice.

**2. DOCKET #1456-19 – NYSE GROUP, INC.
1700 MACARTHUR BOULEVARD, BLOCK 139, LOT 4**

Conditional Use Variance, rear-yard setback variance and preliminary and final site plan approval to permit the installation of additional wireless telecommunications equipment.

Mr. Michael T. Lavigne, Esq. of Fox Rothschild LLP, 49 Market Street, Morristown, NJ approached on behalf of the Applicant and stated that the Applicant proposes to make modifications to an existing unmanned telecommunications facility, including the installation of four (4) 1 foot microwave dish antennas to an existing monopole, two (2) 1 foot microwave dish antennas on an existing rooftop, and one (1) equipment cabinet attached to an existing steel platform at grade. The existing facilities were approved by this Board approximately three (3) years ago with jurisdiction to consider any improvements to the monopole. Affidavit of Service that had been submitted to the Administrative Officer was provided by Mr. Lavigne to Mr. Cascio. Mr. Cascio stated that the Notice was in order. Mr. Lavigne called his first witness;

Mr. Kyle McGinley, Civil Engineer, 27 Pine Hill Road, Annandale, NJ approached, provided his credentials, and was sworn in and recognized as a Civil Engineer by Mr. Rabolli. Mr. McGinley described the property as being approximately 28 acres. The building height is 47 feet, 4 inches, with an overall height of 51 feet, 8 inches. The property is located in the IP-120 Zone and contains an existing data center building, as well as an existing 160 foot wireless telecommunications monopole facility. Referring to **Exhibit A1**, Mr. McGinley described the boundaries and the location of the antennas on the center of the roof.

Exhibit A1 - Overall Site Plan - NYSE Roof and Monopole, Sheet #4, Drawing #Z4, dated November 29, 2018.

Mr. McGinley explained that the Applicant is seeking variance relief for the height to the top of the proposed roof-mounted antennas of 51 feet, 8 inches where the maximum building height permitted is 40 feet, however, 47 feet was permitted by prior variance relief granted by the Board. The monopole is 538 feet. The Applicant is also seeking a rear-yard setback variance of an additional 31 feet, 5 inches proposed for the additional equipment cabinet, where 65 feet is required and 24 feet, 6 inches exists with respect to the existing telecommunications equipment, and 49 feet exists with respect to the existing building. No employee staffing is required. The facility is unmanned and will not generate traffic. Maintenance visits will occur approximately one (1) per month from the neighboring data center. There will be no additional impervious coverage. The use does not generate any heat, glare, significant noise levels or any other typical nuisance characteristics. An analysis of the structural adequacy of the existing monopole to accommodate the new dish antennas reached 87% capacity with the proposed equipment.

Mr. Rabolli summarized for the Public; the Applicant proposes to add two (2) 1 foot diameter antennas on the roof of the building, 8 feet from the roof of the building to the top of the diameter of the 1 foot antenna, co-locating on an existing tower. Nothing is being removed from the tower; four (4) 1 foot diameter antennas are being added. An additional cabinet is proposed to go on an existing platform for the existing electronics for the existing towers.

In response to questions by members of the Board, Mr. McGinley stated that the proposed additions would not exceed what the facility was designed to do. The antennas are smaller than satellite dishes, about the same weight; 12.6 pounds.

Mr. Kelly pointed out that the top of the dish would be 4.67 feet above the top of the parapet wall. The variance required for setback of the equipment was previously approved for 23.67 feet and in his opinion does not require a new variance for the rear-yard setback. Ms. Lawlor agreed with Mr. Kelly's assessment.

Mr. Rabolli opened the meeting to the Public. **Ms. Angela Galo, 4 Morningside Drive, Ramsey, NJ** approached and asked if the monopole would be located on North Central Avenue and stated that it is already 7 feet above the building before adding 5 additional feet. Mr. McGinley responded that it would be on the site and the surrounding tree line would diminish visibility.

There were no further questions from the Board or the Public for Mr. McGinley.

Mr. Lavigne called his next witness. **Ms. Sanjamjit Kaur, RF Specialist, 11 Wall Street, 9th Floor, New York, NY** approached, provided her credentials and was sworn in and recognized as an expert in Network Technology as a Wireless Network Engineer. Mr. Kelly asked Ms. Kaur if she was a licensed Engineer in the State of New Jersey or any other state. Ms. Kaur replied that she is not. Mr. Rabolli stated that she has a Masters in Engineering, there is no requirement to have a Professional Engineer's license.

Referring to **Applicant's Exhibit A1**, Ms. Kaur identified the line of sight from the antennas to the data center facility and stated that they are highly directional from one point to another. If moved by a few inches, connectivity and data would be lost.

Exhibit A2 - Radio Frequency Electro Magnetic Energy Compliance Report, dated November 15, 2018 prepared by EBI Consultants.

Referring to **Applicant's Exhibit A2**, Ms. Kaur explained that the installation would provide for point-to-point microwave lines connecting the NYSE data center to the Secaucus and Carteret data centers. This is primarily market data transmission from one exchange to the other. The network relies on the fiber trail reducing the fiber length

going from the roof into the data center. The roof would have direct access to the NYSE monopole. The line of sight is necessary because they are point to point; unlike cellular networks. The antennas comply with all FCC regulations. Evaluation of the emissions levels concluded that the additional antennas will comply with the applicable FCC standards.

Responding to questions from Members of the Board, Ms. Kaur confirmed that adding the antennas provides more stability, would increase speed of data transmission, no service is being added, no business is being added, just faster speed which is the best alternative, and that the data being transmitted is strictly for NYSE data and its customers, there will be no commercial usage.

Ms. Barbara Hawkesworth, 5 Morningside Drive, Ramsey, NJ approached and posed the question; would there be a decrease in business without the additional antennas? Ms. Kaur responded that the reason for wireless links is to increase network speed; the closer you are to the data center, the faster the speed. Ms. Hawkesworth voiced her concern about radiation and requested that the Board have a separate independent review done. Mr. Rabolli responded that numerous applications have come before the Board, including NYSE three years ago, and were 1/100th considered safe level and concluded to be harmless.

There were no further questions from the Board or the Public for Ms. Kaur.

Mr. Lavigne called his next witness. **Mr. Adam Piombino, Planner for EBI Consulting** approached, gave his credentials and was sworn in as an expert witness in the area of Radio Frequency and FCC Compliance by Mr. Rabolli. Mr. Piombino stated that he performed the required studies for this location and antennas. The findings are summarized in the report presented as **Applicant's Exhibit A2**.

Mr. Piombino explained the procedure that the FCC specifies for these types of facilities, how the antennas are calculated, commenting that mounting height is important. The nature of the antenna plays an important factor in making the calculations. The antennas have a very narrow beam, are highly directional and are compliant with FCC Standards. The FCC level for general public at ground level is 1.84%, five times lower than the occupational limit. Responding to questions from Board Members, Mr. Piombino stated that standing directly below, the percentage of emissions exposure for the rooftop antennas is .07% of the FCC general public limit, on the ground from the monopole is 1.84% and is extremely safe. If the beam should become misaligned, the levels are still below the general public limit. In response to Ms. Lawlor's question, how far away from the pole should the general public be before it is considered a danger limit, Mr. Piombino stated that there is no danger limit within any distance of the pole. Mr. Kelly inquired if the report took into account the cumulative effect of all the antennas on the pole and what

is the percentage of the maximum exposure limit. Mr. Piombino replied that the percentages given in the report were for the new antennas only, but based on his knowledge there should be no hazard with the cumulative exposure and that it would be very low, similar to these numbers.

Ms. Hawkesworth asked what precautions would be taken to ensure that if the antennas were misaligned, they would be quickly fixed for example when she sees smoke during windy weather and is not sure if anyone is aware. Ms. Kaur replied that the moment it goes down it is known within a minute and fixed within an hour; field crews go to the site and fix it. If misaligned, it is only by an inch or two even in high winds, transmission of that antenna is shut off. The antennas are monitored continuously 24/7 including during off hours when the market is closed, monitoring the entire link from end to end. Whenever there is a drop, it is fixed.

Ms. Hawkesworth requested a clarification of the cumulative emission exposure that it is not more harmful than the 1.84% of the FCC required levels. Mr. Piombino responded that it is non-ionizing radiation which means it does not interact with your body on a cellular level and the only hazard of radiation that is not built up over time, especially at this low level. Further discussion took place regarding higher percentages of impact. Mr. Piombino stated that adding more antennas would not be more impactful and would still comply with the FCC Standard.

There were no further questions from the Board or the Public for Mr. Piombino.

Mr. Lavigne called his next witness. **Mr. David Karlebach, 96 Linwood Plaza, Fort Lee, NJ** approached, gave his credentials, was sworn in as a Licensed Planning Expert by Mr. Rabolli and stated that this “D3” Variance is an affirmation of the Variance that was previously granted by the Board, which is different from other applications because there is no foreign use being introduced onto the property; it is a Data Center and Telecommunications Facility today and will be if this application is approved and the antennas are installed. The impact of the use has already been tested at this location. The Ordinance requires that the antennas do not extend more than the maximum building height for the Zone which is 40 feet. The antennas extend 4 feet 8 inches above the parapet and approximately 8 feet above the roof structure, requiring the “D3” Variance. The use is appropriate in this Zone subject to conditions. The focus is on the site.

Exhibit A3 - Photos

Mr. Karlebach presented the Positive Criteria:

- A critical part of the Country’s financial infrastructure and commerce
- The proposed antennas directly service the Data Center use

Township of Mahwah
Board of Adjustment Meeting Minutes
March 20, 2019

- The use of Microwave Networks increases speed and reliability of data transmission
- An appropriate location for a use that is conditionally permitted in the Zone with little to no impact around the surrounding area
- The roof mounted antennas are above the permitted building height of 40 feet but are largely not visible from surrounding properties because the roof mounted antennas are in the center of the roof, hidden from public view
- The closest structures are 400 – 500 feet with trees buffering the view
- The dish antennas are small in size installed below the existing infrastructure
- The intent is to keep the antennas low related to other structures in the area to decrease or minimize visibility, and is being met. The antennas mass do not present a significant mass when compared to the building.
- This Application advances all of the purposes of the Wireless Ordinance
- No change in the number or location of towers in Mahwah
- Joint use of the tower rather than construction of new towers
- Minimal adverse impact to the community

Discussions took place between Mr. Kelly and Mr. Karlebach regarding the photo simulations and visual impact and between Ms. Lawlor and Mr. Karlebach regarding the antennas on the building and distance above the parapet. Mr. Cascio requested clarification of the height of the building and the height of the parapet. Ms. Lawlor responded that the roof is at 43 feet, 9 inches and the parapet is at 47 feet, 4 inches going to 51 feet, 8 inches.

Mr. Karlebach made reference to the Smart MSR vs. Fairlawn case where the court opined that if additional height is required to effectuate the use, that fact in and of itself becomes a special reason warranting height variance relief. Ms. Galo voiced her opinion and stated that she disagrees with the point that the further away you are from an object, the more your view is diminished and commented that as seen from a distance something projects upwards and anything that is projected higher and higher becomes more visible. The question was asked if there is any way to build the antenna without going up another 8 feet. Ms. Kaur responded that the proposed height of 8 feet above the roof is so that if someone is working on the roof the antenna would not be in their direct line of sight and interfere with the line of data going across.

There being no further witnesses, Mr. Rabolli stated that the Applicant had presented their Case in Chief and the objectors had the ability to ask questions of the Applicant. Mr. Rabolli informed the objecting neighbors that if they had testimony to present they could be sworn in, give testimony and be subject to questions from the Applicant; or if they do not want to testify, the case would be moved straight to Closing Argument. Ms. Galo requested an extension for time to review the materials that were received the week prior and to return before the Board. Mr. Rabolli informed Ms. Galo that only Counsel for the Applicant would return for the next hearing; the witnesses would not be present.

Township of Mahwah
Board of Adjustment Meeting Minutes
March 20, 2019

Mr. Rabolli continued that the objectors have the right to obtain counsel, to seek expert testimony, to review the radio frequency data as well as the entire package presented by the Applicant. The request to present a Case in Chief by the objecting neighbors at the April 3, 2019 meeting was granted. Mr. Rabolli advised Counsel for the Applicant that at least six (6) Board Members will be at the next meeting or it will be carried.

Mr. Rabolli announced that the Application is carried to the April 3, 2019 meeting without further notice required.

VI. WORK SESSION:

No further discussion.

VII. ADJOURNMENT:

The meeting adjourned 9:17 p.m. on a motion by Mr. Montroy, seconded by Mr. DeSilva. All voted in favor.

These minutes were prepared by Sylvia Gerou, Zoning Board Recording Secretary. The minutes were provided to the Board of Adjustment on August 2, 2019 for approval at the Regular Meeting to be held on August 7, 2019.