

**EPHRATA BOROUGH
ZONING HEARING BOARD MINUTES
January 21, 2015**

MEMBERS PRESENT: Jim Kiefer, Glen Mellinger, Dennis Rowe, and Greg Zimmerman
David Martin was absent

STAFF: Nancy Harris, Zoning Officer
Joe Kenneff, Goodman & Kenneff, Attorneys
CRS Reporter

VISITORS: James Strong, 100 Pine Street, Harrisburg
Joe Ruiz, 1328 Jasmine Lane, Lancaster
Deborah Baker, 1835 Ohara Lane, Middletown, PA 17057
Bruce Stegman, 35 East Avenue, Red Lion, PA 17356
Dennis Townsley, 151 Boomerang Drive, Ephrata
Donald Whitcraft, 83 Stonecreek Court, Ephrata
Kristee Reichard, EASD, 803 Oak Boulevard, Ephrata
Frank Chlebnikow, 5031 Richard Lane, Mechanicsburg, PA 17055

Chairman Kiefer called the meeting to order at 7:00 PM in the Council Chambers of the Borough Office, 124 South State Street, Ephrata, PA.

Reorganization

Mr. Kiefer said we have in-house business to do before we begin our hearings. The first thing we have to do is reorganize; we have to select a Chairperson and Vice Chairperson.

Mr. Kiefer entertained nominations for the position of Chairman.

Motion by Mr. Zimmerman, to nominate Mr. Kiefer as Chairman for the year 2015 for the Zoning Hearing Board. There were no other nominations. Motion passed unanimously

Mr. Kiefer entertained nominations for Vice-Chairman.

Motion by Mr. Rowe to nominate Mr. Martin as Vice Chairman. There were no other nominations. Motion passed unanimously.

Mr. Kiefer said we also have to appoint our solicitor for the Zoning Hearing Board for the year 2014. It has been Goodman & Kenneff.

Motion by Mr. Zimmerman, seconded by Mr. Rowe to appoint Goodman & Kenneff as the Zoning Hearing Board Solicitor for the month of February. Motion passed unanimously that Goodman & Kenneff continue as Solicitor for the Zoning Hearing Board.

Approval of Minutes

Motion by Mr. Rowe, seconded by Mr. Mellinger to approve the minutes of the October 15, 2014 and November 19, 2014 meetings. Motion passed unanimously.

Mr. Kiefer said there are three hearing this evening. The first hearing tonight will be for McDonalds.

Nancy Harris, Ephrata Borough Zoning Officer, was sworn in.

Mr. Kenneff asked Mrs. Harris if in her capacity as Zoning Officer did she see the letter regarding the McDonalds application?

Mrs. Harris said on January 12, 2015 she received a letter from Stevens & Lee Lawyers & Consultants. Mrs. Harris read the letter into the record.

The letter is dated January 12, 2015 and it says

Dear Ms. Harris: On behalf of McDonald's USA, LLC, I request that the application pending before the Zoning Hearing Board be tabled on January 21, 2015 and continued to the April 15, 2015 hearing night. Unless you feel it is necessary, no representatives of McDonald's are planning to be present before the Board at the January 21st hearing night. This letter will also constitute a waiver of the 60-day time frame to commence the hearing, set forth in Section 908 (1.2) of the Municipalities Planning Code, until April 30, 2015. If you require any additional information please contact me. Sincerely yours, STEVENS & LEE, Charles M. Suhr

Mr. Kiefer said he believes this is the third or fourth continuation; he personally doesn't have any problem giving another continuance on this with some reservation that this will be the last one.

Motion by Mr. Zimmerman, seconded by Mr. Rowe to accept the continuance requested by McDonalds until the April 2015 meeting. Motion passed unanimously.

Mr. Kiefer said the next hearing is for a sign variance for the Ephrata Pioneer Fire Company, 135 South State Street. It's an application for two sign variances for an electronically changing message sign. Relief is requested under Section 319-106.8.4 and 319-102.b of the Code of the Borough of Ephrata. The subject property is located at 135 South State Street. It is in the Central Business Zoning District. The owner and applicant is Ephrata Pioneer Fire Company in care of Dennis Townsley of 135 South State Street, Ephrata, 17522.

Mr. Kiefer will recuse himself from this hearing because he serves as an officer in the Ephrata Pioneer Fire Company.

The hearing was turned over to Mr. Zimmerman.

Mr. Kenneff said he understands there will be a continuance request from the members of the Fire Company. Mr. Kenneff said since we are here we will mark the exhibits and put them on the record.

Mr. Kenneff noted that Mrs. Harris is still sworn in.

Mrs. Harris said on December 5, 2014 we received the application with attachments, which will be marked collectively as Exhibit 1. As a result a public notice was prepared stating the time, date, and location of the hearing. The public notice will be marked Exhibit 2. A mailing list was prepared of all property owners within 200 feet, and they were sent a copy of the public notice by regular mail. The mailing list will be marked as Exhibit 3. A copy of the public notice was given to The Ephrata Review for publication. It was published January 7 and January 14, 2015. The proof of publication will be marked as Exhibit 4, and a copy of the public notice was posted on the property and that posting was verified January 13, 2015.

Dennis Lamar Townsley was sworn in.

Mr. Townsley said they are requesting the board to grant a continuance due to their attorney needing to request more information for the hearing until next month.

Motion by Mr. Mellinger, seconded by Mr. Rowe to grant the continuance to Ephrata Pioneer Fire Company for next month's meeting. Motion passed unanimously.

Mr. Kiefer said the third hearing is a continuation from the December 17, 2014 meeting for Cellco Partnership d/b/a Verizon Wireless, 4642 Jonestown Road, Suite 200, Harrisburg, PA 17109.

Mrs. Harris requested a brief recess.

Mrs. Harris said on November 21, 2014 we received the application and attachments; they will be marked collectively as Exhibit 1. As a result a public notice was prepared stating the time, date, and location of the hearing. The public notice will be marked Exhibit 2. A mailing list was prepared of all the property owners within 200 feet, and they were sent a copy of the public notice by regular mail. The mailing list will be marked Exhibit 3. A copy of the public notice was given to The Ephrata Review for publication. It was published December 3 and December 10, 2014. The proof of publication will be marked as Exhibit 4, and a copy of the public notice was posted on the property. This property does have two street frontages so it was posted on the Oak Boulevard side and the Old Mill Road side and both postings were verified December 9, 2014.

Mr. Kenneff noted that the applicant is represented by Attorney Strong.

Attorney James Strong was sworn in along with four witnesses. Attorney Strong is with McNees, Wallace & Nurick in Harrisburg and is here on behalf of the applicant Verizon Wireless.

Mr. Strong said Verizon Wireless is proposing a commercial communications tower facility on Ephrata Area School District property located at 803 Oak Boulevard and the War Memorial Field is located on the northern side of that property. That property is located in the borough's residential low density district and the use that is proposed is not permitted in that zoning district and that is the first variance that is requested from the board would be a variance to permit the use.

Mr. Strong gave an overview of what exactly Verizon Wireless is proposing to do.

Mr. Strong said on the easel is a copy of the zoning plan that was submitted with the variance application to the borough and has also been marked as Applicant's Exhibit A-2.

Mr. Strong said the school is located on the southern side of the property and on the northern side is the War Memorial Field. On the north side of the field are the bleachers and just below the bleachers are the existing light packs that provide illumination for the baseball, football, and soccer field.

Mr. Strong said Verizon Wireless is proposing to replace one of the existing light packs that are 80 feet in height currently with the lights attached at the top. Verizon is proposing to replace the 80 foot pole with a slightly taller 100 foot monopole and Verizon's antennae would then be attached at the top of the new pole and the School District's lights would be reattached at the elevation of 80 feet, which is the elevation they are currently on the existing pole.

Mr. Strong said the tower elevation detail on the right side of the plan shows the proposed light pack replacement so again an 80 foot light pack currently would be replaced with a stronger pole that would be 100 feet in height.

Mr. Strong said although it is technically a new structure it is essentially replacing the existing pole that is there with a slightly taller pole. Mr. Strong said from his perspective it is a good use of existing features and while that technically co-locating on an existing structure is as close as we can get to it but we do need a slightly taller structure and a slightly stronger structure than what is there.

Mr. Strong said access to the proposed facility would be from Old Mill Road – a 20 foot wide access easement would come in and cross the existing parking lot, turn north and then when it crosses into the area of the athletic fields it would detour over and run along the tree line until we get to the proposed lease area which is on the north side of the existing bleachers.

Mr. Strong said for the new section of the access route is located on the unpaved area; they are proposing grass pavers.

Mr. Strong said on the left side of the plan is the compound site plan which is the site just to the north of the stadium seating. The new pole is proposed right behind the announcer booth. To the right or east side of the announcer booth would be Verizon's equipment. Standard installation would be an equipment shelter 11 ½ feet x 16 feet. The equipment shelter houses all the radio equipment. That equipment is connected by cables to the antennae that would be located at the top of the tower. There is an emergency generator that will sit on a 4' x 10' concrete pad. That generator would be for providing emergency power in the event of a power failure.

Mr. Strong said utilities will be located underground in a utility easement. The only utilities that are required are telephone and electric.

Mr. Strong said there are two variances that are required in order for Verizon to move ahead with the School District on this project. The first is a variance to permit the use. The ordinance

permits the use in several districts in the borough. The other variance request is a request for a dimensional variance from the tower setback requirement. That is found in Section 319-76.5.2 of the Zoning Ordinance. That section requires the tower to be setback a distance equal to half the height of the antenna from any property lines. However, the northern property line is 43 feet from the location of the replacement pole. The distance to the tallest part of the tower structure would be the top of the 5 foot tall lightning rod - that height is 105 feet so half that distance would be 52.5 feet as the required set back. The requirement would be 52.5 and now we're at 43 off the line.

Mr. Strong said the tower itself is 100 feet and the antennas are centered at the top of the tower so four feet will extend above the top of the tower and four feet will extend below. The tallest point on the overall structure will be the top of the lightning rod that's a five foot tall lightning rod. The total height overall would be 105 feet.

Mr. Strong said one of the things they are going to present as an exhibit is a photo simulation.

Mr. Strong had a photograph of the stadium as it currently exists and then they superimposed what the new taller tower would look like with the antennas at the top and lights reattached at the 80 foot elevation.

Mr. Kiefer asked Mrs. Harris if there was anything of this nature in the area in this district as far as being on a pole? Mrs. Harris said not in the borough.

Mr. Strong said the industry has changed in the last 14 years since the Elks tower was approved. The idea then was to provide coverage. The demand on the network is much different now. It's not so much about being able to talk to someone. The demand is for the transmission of data.

Mr. Strong called his first witness who was already sworn in. Mr. Kenneff asked that they introduce themselves and spell their names for the record and provide an address.

Deborah Baker, 1835 Ohara Lane, Middletown, PA 17057. Ms. Baker is a site acquisition consultant. On this Verizon project she is the sub-consultant to a firm, NB&C, who is a site acquisition consultant directly to Verizon Wireless on this project.

Verizon Wireless requested that Ms. Baker's company locate a potential or possible antennae site in the Ephrata Borough area to address coverage objective or network objectives.

Ms. Baker identified the School District property as a candidate for a proposed facility.

Ms. Baker said once Verizon Wireless decides that they need a new site in an area she is given a very small circle, basically a point, on a map. Her job is to go out and investigate and either find an existing structure at or as close as she can to that point on the map that Verizon can mount their antennas on or if there is not anything existing investigate the zoning ordinance and find the closest areas that are zoned for towers where another tower can be built. Ms. Baker goes out and drives around the area to see what's out there. It became obvious that the point Verizon needed was basically right on the School District's property. Verizon Wireless as a whole in the Central Pennsylvania area is working with a number of school districts to do an installation exactly like

this. Manheim Township School District, at their football stadium, has T-Mobile on one of their light standards and has been there for about 10 years.

Ms. Baker is also working with Manheim to put Verizon on another light standard, which will be similar. That was just approved by the school board. There are some school districts in Harrisburg where this is being done. It's a good use of an existing tall structure.

Ms. Baker said a lot of times schools are in residential areas and their light standards at the stadiums are the tallest structures around.

Ms. Baker looks for something existing, although the zoning didn't permit it; it was an existing very tall structure that only had to be increased slightly to meet Verizon's Wireless needs.

Ms. Baker worked with the school district and there weren't any other tall structures. Zoning doesn't allow a new tower in the area.

Ms. Baker and Verizon thinks it is good that going on a school district property the rent can go to the school district versus building something on a single person's property where the rent goes to the property owner.

Verizon received authorization from the School District to file any and all necessary applications for approvals that are required. Exhibit A-1 is a letter from the Ephrata Area School District dated November 17, 2014 to Verizon Wireless giving permission to file for zoning and any and all required permits. It is signed by Brian Troop, Superintendent.

Exhibit A-2 is a copy of the zoning plan submitted with the application. Ms. Baker said there are a number of existing light standards 80 feet tall around the football stadium. The light standard Verizon is proposing to replace is located behind the bleachers at the back of the property. Ms. Baker said that's a good one to have picked because it is the farthest away from homes and also Verizon's proposed equipment cabinet will be behind the bleachers so it won't be visible. That area is already enclosed with a chain link fence so there will be no new fencing to go around the equipment shelter. No water or sewer service is required. The existing area behind the grandstand where the proposed improvements will be located is currently all grass.

The generator will be outside the building on a concrete pad; that area is already fenced.

Frank Chlebnikow, 5031 Richard Lane, Mechanicsburg, PA 17055. Mr. Chlebnikow is employed by Rettew Associates. Rettew prepared the zoning plan submitted with the application and the plan identified as Applicant's Exhibit A-2.

Mr. Chlebnikow said one item that was not discussed is that Cocalico Creek is located near the east side of property and there is no floodplain associated with the project site and there are no wetlands within that area.

Mr. Chlebnikow said no guide wires are proposed or required for this type of structure.

Applicant's Exhibit A-3 represents an aerial photo with the site plan or zoning plan overlaid on top of the aerial.

Mr. Chlebnikow said the property sits at the intersection of Old Mill Road and Oak Boulevard, with the Cocalico Creek on the eastern side of the property. The school building itself is located on the southern half of the property. Separating the school building and the field is an existing parking area. Access to the site, as has been identified, would be off of Old Mill Road through the existing parking area through a 20 foot easement continuing on, turning into a northern direction as identified earlier, ultimately it follows the eastern property line but for construction purposes there will be temporary 20 foot wide construction easements.

They have identified the 43 foot existing set back from the base of the tower to the property line. The tower set back is required to be 52.5 feet from the property line.

The stream corridor is wooded and would provide a buffer. The property on the east side of the creek is owned by the borough. The properties to the west that adjoin the school district property are owned by the Commonwealth of Pennsylvania's Historical and Museum Commission. The property to the north, the Cloister property, is owned by the Commonwealth.

Applicant Exhibit A-4 represents the photo simulations that were produced by Rettew. There are a number of photos that were taken from various locations surrounding the school district property showing the location of the proposed tower and antenna to see if you could actually identify or see the tower from those locations. There were a total of seven pictures that Mr. Chlebnikow identified.

Mr. Zimmerman said you are saying 100 feet now will you be back in six months or a year and say you want to go 120.

Mr. Strong said all we are in front of you for is approval of the 100 foot height; that's all Verizon needs. We're not looking for anything taller than that. If there is a concern about it being extended later in the future it certainly could be a condition of approval. Any extension would need to come back before the Zoning Hearing Board. Their interest is to have antennas at the 100 foot elevation and not going above that.

Mr. Strong said he has two thoughts on a subsequent application to extend the height. As previously mentioned there could be a condition requiring that any extension come back to the Zoning Hearing Board and one of the two variance requests relates to the distance the tower is set back from the property line and that set back is directly related to the height of the facility. Any increase, in addition to it being a condition of approval, would have to come back before the board because you would be increasing the required set back distance. With both of those perspectives the Zoning Hearing Board would maintain control going forward over that issue.

Joe Ruiz, 1328 Jasmine Lane, Lancaster, PA. Mr. Ruiz is contracted to an engineering firm, DBM, and they work directly with Verizon. It is Mr. Ruiz's responsibility to review the application, look at what design criteria was set by Verizon, and make sure it aligns with their objectives.

Applicant Exhibit A-5, Radio Frequency Design Analysis, is a report that talks about the application and what the original intent of this site was. Page 2 identifies the coverage in the area and identifies the sites in and around this proposed location.

Mr. Ruiz said one of the major points of this site and major objective was to help offload the capacity issues at adjacent sites. Mr. Strong said when we talk about capacity and talk about the Ephrata area, the larger more concentrated areas of subscribers is more difficult to cover with one site. The proposed site is necessary at that location for the efficient operation of the system.

Mr. Ruiz said the tower height, 100 feet with the 5 foot lighting rod, is minimum height necessary for the tower and Verizon Wireless' antennas to address the objectives for this facility.

Mr. Ruiz said there are no other existing sites or tall structures in the area where Verizon could locate their antennas and accomplish the same objectives for the overall network that this proposed facility will address.

Exhibit A-6 shows that the facility will comply with all applicable standards established by the Federal Communications Commission. Exhibit A-7 shows the antennas will not create any interference with other communication facilities or devices.

Mr. Ruiz said the proposed facility will comply with FAA and Commonwealth Bureau of Aviation Regulations. Exhibit A-8 provides the summary of findings. It is Verizon's practice not to light a tower

Exhibit A-9 shows that the same analysis was done with the Commonwealth Bureau of Aviation. This report also includes a Summary of Findings.

Neither the FAA nor Commonwealth Bureau of Aviation requires that the monopole not be lit.

Bruce Stegman, President of Stegman Engineering, 35 East Avenue, Red Lion, PA was previously sworn in. Mr. Stegman provided his educational background and experience in structural engineering.

Exhibit A-10 is a letter prepared December 9 describing the tower as being 100 foot with 5 foot lighting rod. Verizon would stipulate that the tower would be designed to meet the latest Pennsylvania State and National building code requirements and there would be a 90 mile an hour design wind load. The tubular steel will be essentially stronger than the existing light poles. Mr. Stegman said unless the tower was designed to be extended, which it's not, it cannot be extended.

In Mr. Stegman's opinion the proposed antennas and tower are safe and structurally sound so surrounding areas will not be negatively affected by the unlikely scenario of the support structure failure.

Mr. Stegman said the tower will be designed so the area of probable failure would be in the middle so it would bend over. The antenna would remain secure.

Mr. Zimmerman said in the letter it says that Verizon will specify that the design will accommodate two additional carriers. Mr. Strong said additional antennas could be accommodated for other network needs, but they are not planning for anyone else to attach to it. The tower will be designed to accommodate additional antennas is that became a need in the future.

Mr. Zimmerman asked what the design life of the pole is. Mr. Stegman said the building code stipulates a 50 year probability of occurrence. That's not to say that the structure has a 50 year life. Monopoles are identical to high mass lighting. These structures would probably have a lifetime of about 100 years.

Mr. Strong said there will be a new foundation put in.

Mr. Stegman said there are design procedures that Verizon uses that ensure that poles collapse on themselves. Essentially they would specify that the upper and lower sections be overdesigned so the area of probable failure would be the middle of the pole and that is under the highly unlikely event. Mr. Stegman said he has never been involved with the failure of a properly designed monopole.

The meeting was recessed for a few minutes in order for Mrs. Harris to change tapes.

The meeting was reconvened.

Mr. Strong noted that there aren't any members of the general audience here to testify on behalf of the application.

Mr. Strong requested that Exhibits A-1 through A-10 be admitted into the record. Mr. Strong said it's a very good and unique solution to address a real need that Verizon Wireless has in the area. It's a benefit for both Verizon Wireless and to the School District and essentially utilizes an existing structure although we do have to make it 20 feet taller.

Motion by Mr. Rowe, seconded by Mr. Zimmerman to close testimony. Motion passed unanimously.

Mr. Kiefer said he wonders if they are setting a precedent for future requests from other companies. This is clearly a residential area and sits next to a historic site. Mr. Kiefer said he has always been taught that variances require hardship and you have to prove it. Mr. Kiefer said he is having a difficult time finding the hardship involved in this. It is not self-induced by the company for making a profit. Mr. Kiefer said going that high in that area is polluting the area visually.

Mr. Zimmerman said he understands their criteria for picking that location but there are also some other locations that might be at a higher elevation. What comes to mind is the Ephrata Rec Center. If you leave the school district property you drive up hill to the Rec Center.

Mrs. Harris said in September she just received the new Comprehensive Plan. Nothing addressed communication towers in there; however, as a result of that we will be looking at

rewriting the zoning ordinance because things are changing rapidly in the technology area and that's definitely one area where we need to look at the language because cell towers aren't going away so we will need to regulate those differently. Mrs. Harris said so your concern with setting a precedent unless we rewrite the zoning ordinance that may go away.

Mr. Zimmerman said they did a good job of presenting their case and the information is here.

Motion by Mr. Rowe, seconded by Mr. Mellinger to approve the variance 319-24-A and variance 319-76.i.2 subject to the following conditions:

- a) The applicant shall comply with the plans and promises as presented at the Zoning Hearing Board.
- b) The applicant shall comply with all applicable rules, regulations, and ordinances and shall comply with any applicable building code requirements.
- c) A violation of any of the conditions of the decision shall constitute a violation of the ordinance.
- d) This decision shall bind the applicant, his heirs, successors, grantees, and assigns.
- e) Additional screening to the north side of the equipment shelter consisting of at the very least 6 foot evergreens for approximately 25 feet.
- f) Any extension in height of the tower the applicant shall come back before the Board
- g) Any addition of antennas of other carriers the applicant must come back before the Board.

The motion was tied with a vote of two yeas by Messrs. Mellinger and Rowe and two nays by Messrs. Kiefer and Zimmerman. Mr. Kenneff said in a tie vote that acts as a denial.

Mr. Kiefer said therefore with a tie in the vote of the Zoning Hearing Board variances are denied on this application.

The meeting was adjourned at 9:00 PM.

Respectfully submitted,

Nancy E. Harris
Zoning Officer