

TOWNSHIP OF DENVILLE
PLANNING BOARD
MINUTES

October 28, 2009

The Planning Board of the Township of Denville held its regularly scheduled meeting on Wednesday, October 28, 2009. The meeting was held at the Township Municipal Building, 1 Saint Mary's Place and commenced at 7:30 P.M. Chairperson Kuntz presided.

Secretary Probasco read Notice of Public Meeting.

Roll Call: **Present** – Mayor Hussa, Chr. Kuntz, Vice Chr. Filauro, Glenn Buie, Peter Nienstadt, Lou Maffei, Jim Schoner, Kurt Schmitt
 Absent – Howard Shaw
 Professionals Present – Ed Buzak, Esq., Nicholas Rosania, PE, William Denzler, PP

MINUTES

September 23, 2009

Motion to adopt the minutes as submitted was made by Mbr. Filauro, seconded by Mbr. Buie and unanimously approved by all Members present and able to vote.

PURCHASING

Motion to pay vouchers submitted by The Township of Denville, (dated September 28, 2009) subject to the availability of funds, was made by Mbr. Buie, seconded by Mbr. Nienstadt and unanimously approved by all Members present and able to vote.

Motion to pay vouchers submitted by Denzler & Associates, (dated October 5, 2009) subject to the availability of funds, was made by Mbr. Buie, seconded by Mbr. Filauro and unanimously approved by all Members present and able to vote.

Motion to pay vouchers submitted by The Buzak Law Group, (dated October 7, 2009) subject to the availability of funds, was made by Mbr. Buie, seconded by Mbr. Nienstadt and unanimously approved by all Members present and able to vote.

CORRESPONDENCE

Chr. Kuntz referenced Ordinance 21-09 regarding the Downtown Overlay Zone and a copy of a proposed Lighting Ordinance from the Environmental Commission.

PROFESSIONAL COMMENTS

Mayor Hussa, Nicholas Rosania, Township Engineer and William Denzler, Township Planner all indicated that they had no comments.

PUBLIC HEARINGS

PSP/FSPV 09-06 MetroPCS New York, LLC
Block 31406, Lot 1
276 State Highway 53

Lawrence Schlyen, Esq. of Brown, Moskowitz & Kallen (75 Main Street, Millburn, NJ 07041) represented the applicant, Metro PCS New York, LLC. Applicant seeks preliminary and final site plan and conditional use approval for the installation of a wireless telecommunications facility containing six antennas on the existing 130' telecommunications tower at 276 East Main Street in the Industrial zone. Mr. Schlyen provided an overview indicating that the proposed application is variance free on an existing tower and that the tower height is not increasing. Applicant has complied with the conditional use requirements in the attempt to collocate the antennas.

Ronald J. Reinertsen, PP, AICP, Senior Planner of Pennoni Associates, Inc. (210 Malapardis Road, Cedar Knolls) provided planning testimony (Exhibit A-1 through A-6) using aerial images taken on July 29, 2009 dated July 30, 2009.

Syed Mujtaba (130 Clinton Road, Fairfield) was present, sworn in and accepted as a professional expert in the field of radio frequency design. Mr. Mujtaba is a MetroPCS employee responsible for design implementation. Mr. Mujtaba reviewed Exhibit A-7 dated June 25, 2009 depicting the coverage, reliable coverage indicated in green and proposed locations indicated by blue dots. A blue star near the center is the proposed MetroPCS site.

Mark Nidle, Compliance Expert for MetroPCS New York, LLC (14 Ridgedale Avenue, Cedar Knolls) was present, sworn in and accepted as a health and safety expert. Mr. Nidle responded to Mayor Husa testifying to compliancy of having met FCC standards and categorically excluded. Automatic exclusion if the antennas are at least 35' in the air and being no health risks. Referenced an independent study of existing carriers on the existing pole. The assumption is based upon all the carriers operating 24/7 365 days annually at full power knowing that they will not be 185 times below the maximum permitted exposure level of .5399 of the FCC's and 925 times below the State of New Jersey's and FCC's allowable regulations.

Sara Marabella, Engineer and Architect (242 Old New Brunswick Road, Piscataway) was present, sworn in and accepted as a professional expert. Ms. Marabella reviewed drawing Z03 (Exhibit A-8) detailing co-location on the existing 130' self supported tower within the existing 50'x50' fenced equipment compound. A description of the equipment would be 4 cabinets (2 are radios and 2 are battery back-up's) on a 7'x14' concrete slab. Drawing Z04 showed the proposed antenna's location on the Equipment Plan and Elevation (Exhibit A-9) describing three sectors with two antennas per sector. All structural support has been analyzed by the owner of the tower's engineer and confirmed sufficient capacity. Assuming approval, all details of the new electrical panel will be part of the construction drawing.

Chr. Kuntz opened the application to the professionals for questions.

Nick Rosania, Township Engineer inquired about the weight, radiation and lighting. Sara Marabella responded that the antennas were 30 lbs. each. Mark Nidle testified that the radiation levels are 198 times less than the allowed measurement. Sara Marabella indicated that the lighting would only be used during maintenance, would be motion activated and not visible due to being shielded by other carrier housing and equipment shelters.

Bill Denzler, Township Planner inquired about structural report to confirm the capacity. Lawrence Schlyen, Esq. responded that a report existed and would be provided. Mr. Denzler inquired about there only being 5' separation. Sayed Mujtaba responded that 10' separation between each is a guideline but not mandatory. Mr. Denzler confirmed that the application is variance free and meets all the requirements and conditional use standards.

Nick inquired about the total capacity of the tower. Sara Marabella responded that it is difficult to determine or assume capacity based upon future unknown antennas but agreed the tower is near the maximum capacity.

Chr. Kuntz opened the application to the public and seeing none, closed the public portion.

Chr. Kuntz opened to the board members for questions.

Mbr. Schoner inquired about the radio frequency numbers. The attorney for the applicant responded that the analysis included all existing antennas combined with the proposed. Mbr. Schoner was satisfied.

Mbr. Filauro commented that her questions had been answered.

Mbr. Buie inquired about the rear fence being in need of repair and then questioned Sara's professional ability to respond to the structural integrity of the tower as an architect. Applicant agreed to provide a report as to the condition of approval. Ms. Marabella testified to 15 years of experience and that the report was signed off on by the structural engineer.

Mayor Husa had no further questions.

Chr. Kuntz commented on the radio emissions standards used and inquired about the antennas transmitting and/or receiving. Mr. Mujtaba confirmed that all six antennas will transmit and receive as is typical of wireless towers. Chr. Kuntz then inquired about possible interference of heights. Mr. Mujtaba responded that the Intermodulation studies report can clarify any concerns regarding interference. Mr. Nidle added that FCC regulations ensure that there is no interference and if there was, the interference would need to be remediated lose of license would occur. The 10' difference in height is a general rule of thumb as a 10' separation from center line to center line as a guideline. When not possible to achieve 10' a study is performed to ensure. The applicant confirmed that their testimony confirms that there is no interference.

Chr. Kuntz inquired about prior un-built antennas for other carriers. Ed Buzak, Board Attorney expanded upon the chairwoman's question and inquired about AT&T's prior un-built approval. Ms. Marabella responded that the analysis reflects the tower at 105% capacity including AT&T's un-built antenna and that this is acceptable overloading for a stand alone tower.

Mbr. Nienstadt indicated that his questions had been answered.

Mbr. Maffei inquired about the battery backup becoming a backup generator. The applicant responded that only a battery backup would be required.

Mbr. Schmitt had none.

Mbr. Buie inquired about the currently owner of the tower and removal of the antennas in the case of bankruptcy. The applicant indicated that the owner is Crown Castle who leases to MetroPCS and that the ordinance addresses removal of the antennas. Nick Rosania confirmed that no bond or performance guarantees are obtained. Mr. Denzler confirmed that the ordinance requires a performance bond for the removal of the antennas.

Mbr. Filauro inquired on who governs the capacities and changes. Larry Schylen, Esq. responded that the carrier would have to comply with the structural requirements and ultimate capacity.

Chr. Kuntz inquired about a cooling fan being included. Ms. Marabella confirmed that the cabinet would include a fan to cool the unit.

Ed Buzak, Esq. provided a brief recap and conditions of approval to include the ordinance requirements including the repair of the compound fence and that the Intermodal report be provided prior to the adoption of the resolution.

A motion to **approve** this application with conditions was made by Mbr. Buie, seconded by Mbr. Nienstadt and unanimously agreed upon by all voting members.

ROLL CALL: Ayes – Buie, Nienstadt, Filauro, Maffei, Schoner, Hussa, Kuntz

PSP/FSPV 09-07 LLD, LLC
Block, 51005 Lot 3
300 Route 46 West, Mosswood Trail, Lakewood Drive

Ted Einhorn, Esq. of Einhorn & Harris (165 East Main Street) represented the applicant and provided an overview. Applicant is requesting amended preliminary and final site plan approval with variance relief to construct a one-story expansion of the existing restaurant and an outdoor seasonal dining including an expanded off-street parking requiring variance relief for parking front yard setback and parking space quantity.

Capacity will be increased by 6 seats and 8 parking spaces. Unique in having three front yards and approximately 930 sq. ft. Current configuration handicapped access for wheelchairs is accommodated through access via the restaurant kitchen. The proposed will allow for proper handicap entrance and bathrooms to become ADA compliant. Currently the restrooms are grandfathered. The proposal includes aesthetic and landscaping improvements.

Angelo Locantore, Partner LLD, LLC (300 Route 46) with brother Anthony was present and sworn in. Mr. Locantore testified to the lack of handicap access and restroom facilities. Total capacity of 118, approximately 12 employees, 11 seats at the bar, 95 seats remaining. Room that seats 24 to be eliminated for restroom renovations and new conference room that will seat 30. Mr. Locantore provided an overview of the proposed outdoor deck using the floor plans (Exhibit A-1) and testified that the outdoor area would not have outdoor bands or cooking. Reservations would not be taken for outdoor seating so that those dining inside have the option of outdoor dining. A Site Plan was entered as Exhibit A-2 to reflect parking. Parking overflow exists around the holidays. When parking concerns are anticipated, valet parking is used. A verbal arrangement with Lake Arrowhead for parking was referenced by the applicant.

Mr. Einhorn, referenced a neighbor, Ms. Plyshin who was present had voiced concern with the dumpster location. The applicant will move the dumpster closer to the building to address this concern. The originally proposed location of the dumpster will allow for one additional parking space. The anticipated Lake Arrowhead agreement will allow for two additional parking spot locations. Testimony continued to the hours of operation. Monday through Thursday 11:30-10:00, Friday's 11:30-11:00, Saturdays 4:00-11:00 and Sunday 3:00-9:00. Garbage is picked up on Mondays, Wednesday and Fridays around 10:00 a.m. and the recycling is picked up earlier.

Mr. Einhorn referenced Bill Denzler's Planning Report dated October 21, 2009 regarding noise, smoke and fumes. Mr. Locantore confirmed that the kitchen will remain the same, modification is not proposed. To date, there have been no complaints from the municipality regarding noise, smoke or fumes.

Louis Edward Barbieri, AIA, PP (123 East Main Street) was present, sworn in and accepted as a professional witness. Mr. Barbieri provided an overview of the application using the Floor Plan marked (Exhibit A-3 not provided to board) along with Exhibit A-1. Mr. Barbieri reviewed the proposed plans that included additional banquet rooms, ADA compliant restrooms and a rear storage area with overhead door to provide a covered and enclosed area that will clean up and remove existing deliveries in the parking lot.

Ted Einhorn, Esq. inquired about the parking as it relates to the outdoor seating. Lou Barbieri responded, and indicated that reservations could not be made for the outdoor seating area. Only reservations would be taken for the two floors indoors and if weather permitting, customers could be seated outside. Overview included exterior elevations of the building (Exhibit A-4). The proposed screened deck will be completely screened off from Route 46. The view of the screened deck from Lake Arrowhead would have a partial wall. Photographs of the buildings rear (Exhibits A-5A and A-5B) were referenced to show the existing parking lot that would be cleaned up and improved by the proposal. Only the Mosswood Trail will accommodate the addition to gain handicapped access and will require a variance due to the narrowness of the property.

Outdoor dining is not part of the parking requirements as reservations will only be made for inside seating. Due to the topography of the property, only Mosswood Trail will provide handicapped accessibility. Due to narrowness of the property, any parking on Mosswood Trail will require a variance for front yard setback. Stacked parking was discussed to accommodate twelve employees that use approximately seven vehicles on any given day. The stacked parking requires relief for no access to an aisle. Parking spots 17, 66 and 67 were referenced for a stacked parking area. This would leave eight stacked parking spaces (6 and 2 that may be accessible). Conversations are taking place with Lake

Arrowhead on entering into an agreement to accommodate parking for larger affairs. A written agreement has not been finalized yet. Nine or ten parking spaces are currently proposed, with valet parking as an option for busy nights. Mr. Barbieri indicated that only six additional seats were being added to the restaurant requiring an anticipated three additional vehicles on a good day of business. Based upon their testimony, the applicant does not agree with the planner's report regarding parking requirements for the outdoor dining area.

Alfred A. Stewart, Jr. of Stewart Surveying & Engineering (25 Pine Street, Suite 3, Rockaway) was present, sworn in and accepted as professional expert by the board. The rear area will be paved to replace the current stone. Assuming approval, construction would be in two phases while the restaurant remains open. The lavatories will be first and the deck can be added at any point during construction. Parking should have been amended as noted. GiGi Malletalle of the NJDEP, confirmed that Lake Arrowhead is classified as FW2 and only 50' buffer under the NJDEP Standards. The existing building is a distance of 64' from Lake Arrowhead with the proposed improvements are at 85'. Soil movement removal during excavation. Application listed a proposed 103 cubic yards to be removed. Reconsidered with a placement of basement under the outdoor seating area increasing soil removal to 300 cubic yards equating to 20 truck loads.

Referenced Township Engineer's report regarding lighting and Mr. Stewart referenced the amended plans (Exhibit A-2) to review the lighting reconfiguration to shielded lighting and shoebox type fixture on the building on overhead door.

Chr. Kuntz opened the application to the professionals for comments.

Nick Rosania, Township Engineer spoke positively of having viable businesses in Denville. He commented on the positive improvements of the proposed handicapped access, restrooms and storage. Voiced concern for lighting and recommended shoeboxes for future parking lights on the site. It was suggested that perhaps all non-concealed lighting be addressed in the field.

On behalf of the applicant, Ted Einhorn, Esq. agreed that the existing lighting could be addressed in the field with the Township Engineer.

William Denzler, Township Planner inquired about the dormers shown on the architectural drawings. Mr. Barbieri indicated that they were decorative in nature. Mr. Denzler sought clarification of the dumpster relocation for the neighbors. Mr. Stewart indicated that the dumpster would be relocated to the southwest corner of the building and the enclosure would remain the same size and would not have any impact to the handicapped access.

Chr. Kuntz opened the application to the public.

Amy Plyshtin and Mark Czyzewski residents at 18 Mosswood Trail (Lot 78) were present and sworn in. The residents indicated that the dumpster concern has been addressed but concern for parking still exists. Overflow to narrow street and single file vehicles passing through. Understood that overflow situations of parking on the street being hardship but would be undesirable if on a daily basis. Voiced concerns with Lake Arrowhead agreement.

Chr. Kuntz closed the public portion after seeing no other members of the public were present.

Chr. Kuntz opened the application to the board members.

Mbr. Schmitt referenced the basement and inquired about the existing retaining wall. Louis Barbieri spoke to existing bushes being temporarily removed during construction. Mbr. Schmitt suggested tapering and lowering the retaining wall and inquired about the outdoor dining area lighting. Applicant confirmed that there would be no storage underneath the deck and that existing exhaust fans would be screened. Mbr. Schmitt had site plan questions and inquired about the drainage. Stewart confirmed that the drainage pattern would remain the same and would flow over the grassy area.

Mbr. Maffei commented on number of parking spaces and voice lighting questions. Mr. Barbieri spoke to possible changes on the utility pole for change in lighting or removal of pole and lighting relocation to the building. Mbr. Maffei indicated that the plans were good.

Mbr. Nienstadt echoed the Mbr. Maffei's comment to the quality of the improvements and inquired about snow removal. The applicant responded that they have a contract for snow removal.

Mayor Husa sought clarification on the parking and quantity of parking spaces. Mayor Husa also voiced some thoughts regarding possible alternatives of angled parking and a possible parking garage. Mr. Barbieri responded to difficulties on alternatives being safety concerns as well as ordinance restrictions.

Mr. Buie spoke to concerns about the outdoor deck causing further loss of parking. Agreed that the improvements to the restaurant were good and the restrooms are great but that the plan is overcrowded and suggested compromising by eliminating the outdoor dining deck. Mr. Buie also commented on the need to have directional signs for handicapped parking.

Mbr. Filauvo voiced concern for the lighting and inquired about the shoebox lighting. Mr. Stewart responded that one on the rear of the building is proposed and possible utility pole removal. Mr. Barbieri spoke to having something along the walkway and recessed lighting under the overhead and one light near the kitchen. Mbr. Filauvo emphasized the need to mitigate overflow of the lighting through the

neighborhood. Mbr. Filauro inquired about surface drainage. Mbr. Barbieri indicated that storm water would be collected from gutters into leaders underground and not on the surface.

Mbr. Schoner inquired about extension of plantings to provide additional screening of the dumpster. Mr. Stewart indicated that additional screening could be provided. Mbr. Schoner also received confirmation that there would be no access to the building from the storage area. Mr. Barbieri confirmed.

Chr. Kuntz agreed that the plan was great and voiced concern for parking. Chr. Kuntz agreed with Mbr. Buie about the outdoor dining. Chr. Kuntz indicated that there were many changes that needed to be incorporated and the need for lighting and landscaping plans as well.

Ed Buzak, Board Attorney indicated that conditions of approval would include: Screening of exhaust fans and roof tops, fencing, lighting, landscaping, parking lot space locations to be revised, deck lighting and lighting plan to be submitted and for parking lot, area under deck to be finished to be determined, exhaust fan screening, air conditioning condenser screening, existing fence along Route 46 to remain, shoebox lighting and/or supplemental lighting, referenced drainage and incorporating gutters and leaders, relocation and adequate screening of the dumpster, inclusion of a basement, soil movement revisions, directional signage for handicapped parking. In addition, applicant to provide a clarification of all variances, new, existing and those that are aggravated.

Chr. Kuntz announced that this application would be **carried** to December 9, 2009 without further notice.

ADJOURNMENT

Motion to adjourn.

Denean Probasco, Board Secretary

Date adopted