

# **BERNARDS TOWNSHIP**

## **ZONING BOARD OF ADJUSTMENT**

**MINUTES** v3  
Special Meeting  
June 22, 2020

### **CALL TO ORDER**

Vice Chairman Zaidel called the meeting to order at 7:32 PM.

### **FLAG SALUTE**

**OPEN PUBLIC MEETINGS STATEMENT** – Vice Chairman Zaidel read the following statement:

"In accordance with the requirements of the Open Public Meetings Law, notice of this special meeting of the Board of Adjustment of the Township of Bernards was posted on the bulletin board in the reception hall of the Municipal Building, Collyer Lane, Basking Ridge, New Jersey, was sent to the Bernardsville News, Whippany, NJ, and the Courier News, Bridgewater, NJ, and was filed with the Township Clerk all on June 18, 2020 and was electronically mailed to all those people who have requested individual notice.

The following procedure has been adopted by the Bernards Township Board of Adjustment. There will be no new cases heard after 10:00 PM and no new witnesses or testimony heard after 10:30 PM.

This meeting will be held in person in the Warren Craft Meeting Room. In addition, the public will be able to view the meeting live on Optimum/Cablevision TV – Channel 15 and Verizon FIOS TV – Channel 35 and the meeting will also be streamed live for those interested in watching on their computers. The link will be available at 7:30 PM by clicking on the "Watch the Meeting Live" icon on the Bernards Township homepage.

Questions/comments from Bernards Township residents will be accepted only during the public questions/comments periods of the meeting. Those questions/comments may be offered in person at the hearing or by calling 908-930-3434. If you have an iPhone, please use "Facetime" for your call. You will be required to provide your name and address and be sworn in prior to making comments."

### **ROLL CALL:**

Members Present: Eorio, Genirs, Humbert, Pochtar, Tancredi, Zaidel  
Members Absent: Breslin (recused), Juwana, Kraus  
Also Present: Board Attorney, Steven K. Warner, Esq.; Township Planner, David Schley, PP, AICP;  
Board Engineer, Thomas J. Quinn, PE, CME; Board Secretary, Cyndi Kiefer

On motion made by Ms. Genirs, seconded by Mr. Eorio, all eligible in favor and carried, the absences of Mr. Juwana and Mr. Kraus were excused.

### **APPROVAL OF MINUTES**

[April 29, 2020 – Special Session \(virtual\)](#) – On motion by Ms. Pochtar, seconded by Mr. Tancredi, all eligible in favor and carried, the minutes were adopted as drafted. Abstention for absence: Eorio

### **APPROVAL OF RESOLUTION**

[Sweet Pea Farms I LLC; ZB20-004](#); Block 11501, Lot 3.03; 48 Kings Ridge Road; Bulk Variances (approved) – Mr. Tancredi moved to approve the resolution as drafted. Ms. Pochtar seconded.

Roll call: Aye: Eorio, Pochtar, Tancredi, Zaidel  
Nay: NONE  
Ineligible: Genirs, Humbert

Motion carried.

**PUBLIC HEARING**

[New York SMSA LLP d/b/a Verizon Wireless](#); Block 803, Lots 2, 3, 5, 6, and 23; 300 North Maple Avenue; Preliminary/Final Site Plan, Use (d-1) Variance, Bulk Variances; ZB20-001 (continued from 06/11/2020)

Present: Richard L. Schneider, Esq., Attorney for the Applicant  
Frank Colasurdo, RA, Architect for the Applicant  
Christopher Lanna, Environmental Consultant for the Applicant  
William F. Masters, Jr., PP, Planner for the Applicant  
Andrew M. Petersohn, PE, Engineer for the Applicant

Richard L. Schneider, Esq., attorney with the firm of *Vogel, Chait, Collins & Schneider PC*, Morristown, NJ, entered his appearance on behalf of the Applicant and gave a brief summary of what had transpired at the previous meeting (06/11/2020). He stated that all four (4) of the Applicant's witnesses had completed their testimony and the Board, its professionals and the public had completed their questioning of the first three (3). The Board had had the opportunity to question the final witness, William F. Masters, jr. PP during the previous meeting however due to the late hour, public questioning of Mr. Master's testimony was carried to this meeting.

Mr. Warner listed the dates of the previous hearings and stated that they had all been properly noticed and carried, therefore the Board had jurisdiction to hear the application. He stated that the ex parte communications that had been submitted to the Board Secretary, by law could not be considered by the Board unless they are introduced into evidence in person under oath during an open public meeting.

Vice Chairman Zaidel opened the hearing to the public for the purpose of questioning Mr. Masters and imposed a 5-minute time limit for each individual.

Izabela Trachtenbroit, 21 Brentwood Court, asked why Verizon is not installing nodes at its headquarters at 295 North Maple Avenue. Mr. Schneider advised that that location had received approval for 16 nodes during a Planning Board hearing held earlier in the year. Ms. Trachtenbroit then asked about safety issues. Mr. Schneider responded that those questions had been addressed at previous hearings by David Stern, PE (radio frequency engineer) and Andrew M. Petersohn, PE (electromagnetic field compliance expert). Finally, he stated that the Federal Communications Commission (FCC) has preempted that issue by removing electromagnetic field (EMF) compliance from the purview of local land use boards and that the Applicant's sole burden is to prove strict compliance with the FCC's guidelines which, he opined, had been demonstrated by Mr. Petersohn previously.

Barbara Chorazykiewicz, 195 Madisonville Road, asked why the nodes are being installed in residential areas. Mr. Masters stated that none of the nodes will be located in residential zones.

Lorena Ratz, 27 Brentwood Court, asked why she had received notice. Mr. Warner responded that all property owners located within 200 feet of the perimeter of the subject property are required by law to receive personal notice.

Hearing no further questions from either the public present in the room or via telephone, that portion of the hearing was closed.

In response to requests by the public at the last meeting, Mr. Schneider stated that the Applicant would stipulate, as a condition of approval, to conducting a one-time post-construction operational test within 60 days after completion of the installation to ensure that EMF levels are in compliance. Mr. Schneider confirmed that the Applicant would not object to the test results being posted on the Township's website.

Vice Chairman Zaidel opened the hearing to the public for comments. The following residents were duly sworn and spoke in opposition to the application based on safety concerns:

Lawrence Trachtenbroit, 21 Brentwood Court  
Jaroslaw and Barbara Chorazykiewicz, 195 Madisonville Road  
Izabela Trachtenbroit, 21 Brentwood Court  
William Ratz, 27 Brentwood Court  
Caryn M. Simmons, 262 North Maple Avenue (via telephone with no visual with permission from Mr. Schneider)  
David Berger, 28 Brentwood Court

Todd Edelstein, 172 Riverside Drive, asked that the Board ask for a stipulation that a shield be placed behind each node to protect residential areas.

Dr. Ratz stated that at the last meeting (06/11/2020), a board member was overheard making derogatory comments about those members of the public speaking out against the application and he asked that she refrain from voting on the application. Mr. Warner stated that he had spoken to the Board Member that Dr. Ratz was referring to and Mr. Warner concluded that the Board Member did not have a disqualifying conflict of interest, nor did the Board Member demonstrate bias as against the neighboring objectors in favor of the application, and could decide the application objectively on the merits based solely on the evidence presented. Dr. Ratz disagreed.

Hearing no further comments from either the public present in the room or via telephone, that portion of the hearing was closed.

Mr. Warner reviewed the conditions stipulated to by the Applicant. A discussion ensued as to whether the Applicant would also stipulate to planting trees between Node #15 and the adjacent residential properties.

\* \* \* *The Open Session was recessed at 8:57 PM and reconvened at 9:08 PM.* \* \* \*

Mr. Schneider stipulated, as conditions of approval, to the installation of onsite supplemental landscaping in consultation with the Township Planner, to comments made in Mr. Schley's and Mr. Quinn's memos and to those conditions as stated during testimony.

Mr. Schneider briefly summarized the testimony presented in support of the application, reminding the Board that the FCC stated that it was not fair or appropriate for the Board to assess the credibility of studies or articles about this type of technology. The FCC had also articulated EMF exposure level standards and if those standards are met, as he opined had been proven here, the Board cannot base a denial on EMF levels.

Mr. Schneider confirmed that the Applicant wished to proceed with a vote even though there were only six (6) eligible members present and approval would require a super-majority of five (5) affirmative votes.

After deliberating, the Board concluded that the Applicant had satisfied the positive and negative criteria required for "c(2)" or benefits vs. detriments" variances and had demonstrated an entitlement to the requested d(1) use variance relief under the less restrictive Sica standards and the more restrictive Medici standards of proof. Mr. Tancredi moved to direct the Board Attorney to draft a resolution memorializing the Board's decision to grant preliminary and final site plan approval and to grant the variance relief requested by the Applicant subject to the conditions stipulated to by the Applicant and as stated during deliberations. Mr. Humbert seconded.

Roll call:	Aye:	Eorio, Genirs, Humbert, Pochtar, Tancredi, Zaidel.
	Nay:	NONE

Motion carried.

Mr. Schneider requested that the Board allow the installation of Nodes #12 #13, #14 and #43 *at the Applicant's own risk* prior to the adoption of the memorializing resolution. Mr. Schley and Mr. Quinn saw no administrative concerns and a straw poll of the Board indicated that the members supported the request.

**COMMENTS FROM MEMBERS OR STAFF** – Vice Chairman Zaidel thanked the Board for its work.

### **ADJOURN**

On motion by Mr. Eorio, seconded by Ms. Genirs, all in favor and carried, the meeting was adjourned at 9:47 PM.

Respectfully submitted,

Cyndi Kiefer, Secretary  
Zoning Board of Adjustment

*Adopted as drafted 08-05-2020*

07/15/2020 v3 dssw