

WEXFORD COUNTY ZONING BOARD OF APPEALS
Meeting Minutes: Monday, July 21, 2014
Human Services Building; 401 N. Lake Street
7:00 PM

1. **Call to Order:** Chairperson Monroe called the meeting to order at 7:00 pm.
2. **Roll Call:** Prebay, Swank, Wiersma, Adams, Vice Chairperson, and Monroe - Chairperson were present.
3. **Approval of the Agenda:** Motion was made by Wiersma, with support by Adams, to approve the agenda as presented. Motion carried with all in favor.
4. **Approval of the July 15, 2013 Minutes:** Motion was made by Swank, with support by Wiersma, to approve the July 15, 2013 Minutes as presented. Motion carried with all in favor.
5. **Correspondence not related to public hearing(s):** *[None]*
6. **New Business:** *[None]*
7. **Old Business**
 - (a) **PZBA #14-001:** Request for a variance from the zoning district side yard setback requirement of 15 feet. This project is located on property located on 378 Gitchegumee Drive along the east side of Lake Gitchegumee in Hanover Township.
 - i. **Open Public Hearing and Review Request:** Chairperson Monroe opened the public hearing. Richard Warren said that he needs a garage for snow removal and storage; he owns 1 ½ lots and would like to keep the yard clean.
 - ii. **Acknowledge Written/E-mail Comments Received:** An email was received from George Belliel, who owns an adjacent lot and objects to a six foot setback, but would accept a 10 or 12 foot side yard setback.
 - iii. **Receive Public Comments:** *[None]*
 - iv. **Close Public Hearing for Board Comments**
 - A. Wiersma visited the site and reported that the septic tank appears to prevent the garage from going in the allowed building area of the lot. Wiersma also noted that other nearby structures are close to lot lines.
 - B. Adams asked if a 10 foot setback would work for the applicant.
 - v. **Consider Motion:** Motion was made by Swank, with support by Wiersma, to approve PZBA14-001 as requested by the applicant. Motion carried by a 4-1 roll call vote. (Adams voted in opposition)

Beverly Monroe declared a conflict of interest as she already voted on the special use permits that are subject to appeal under items (b) and (c) below, so she recused herself from the table. Motion was made by Wiersma, with support by Swank, to have Monroe abstain from participation in items #7(a) and (b). Motion carried with all in favor. Adams took over as acting Chairperson.

- (b) **PZBA14-002:** Appeal of decision by Planning Commission to approve request for the erection of a 250-foot wireless cell tower and equipment shelter. This project site is located near the northeast corner of S. 29 Road and M-115 Hwy. and is accessed by a driveway located just north of the residence on said corner.

i. **Open Public Hearing and Review Request:** Vice-chairperson Adams opened the public hearing to take public input. The Zoning Board of Appeals reviewed the staff report and information packet, which included Planning Commission minutes, site plan, and various correspondence.

ii. **Acknowledge Written/E-mail Comments Received:** *[None]*

iii. **Receive Public Comments:**

- A. Pat Donovan, 2069 S. 29 Road, stated that the Planning Commission did not follow Section 1.3, which states that the ordinance shall be held to the minimum requirements for promoting the public health, morals, safety, and welfare, and Article 3A.1, which states that the purpose of the ordinance is to minimize the total number of towers, encourage co-location, minimize the visual impact through creative design, camouflaging, consider the public health and safety. ~~(1)~~ and ~~(4)~~3A.4 by not considering the minimum restrictions necessary to protect neighboring property owners and allowing the tower to be along a principal arterial roadway. Donovan also stated that the Planning Commission did not require the applicant to use shielded lighting on the tower.
- B. Michael Boyd, 631 Autumn Road, represents Selma Township. He asked why the neighbors had to pay an application fee to appeal the decision by the Planning Commission and why the existing tower on 29 Road was not considered.
- C. Heidi Oldfield, 2177 South 29 Road, lives less than one quarter mile from the site. She asked Verizon to use the existing tower up the road and asked the Zoning Board of Appeals to uphold the zoning laws
- D. John Knapp, 2345 South 29 Road, lives in front of the site. He stated that the neighbor doesn't live there and wouldn't have to look at the tower. Verizon should consider co-locating on the existing tower up the road.
- E. Tom Schwartz, 2547 East 32 Road, wondered if Selma Township owned land in the area. He is also ~~against~~ for the appeal and is a township trustee.
- F. Robert LaBelle, along with Robert ~~Przybylo~~ Pry and their RF engineer, provided a coverage map that showed lack of coverage even if the existing tower on 29 Road was utilized. LaBelle, once again, explained that the Telecommunications Act give deference to the need for cell phone coverage and does not allow communities to deny the construction of cell phone towers where the need exists, unless they can show substantial evidence that the towers are not needed or would cause harm to the area. The tower on 29 Road was considered, but would still require the two towers to be built to address gaps in coverage, especially to the north and in the hilly areas. LaBelle explained that the towers need to be close enough to communicate with each other and prevent interference. He also argued that the cell tower would be located at least a thousand feet off the road and would not be very visible to traffic. Lastly, LaBelle responded to complaints about lighting by saying that it would already be pointed upward in accordance with FCC regulation.
- G. John Knapp asked how AT&T can manage to provide good coverage in the same area with existing towers. LaBelle said that Verizon is not privy to competitor's information and explained that each company is sold a certain amount of bandwidth, making it hard to compare one to the other. Adams responded that the FCC regulates the frequencies allowed and allocates certain bandwidths to each company, so comparing AT&T to

Verizon in terms of coverage is not really an apples to apples comparison.

H. Oldfield stated that she spoke to the FCC and was told that they would not override local zoning

iv. **Close Public Hearing for Board Comments:**

A. Prebay asked if the engineer look that alternative sites. Bob Przybylo explained that their siting process led them to these particular locations because they most effectively fill in gaps in coverage. Bob ~~Przybylo~~ ~~Pry~~ also explained that the search ring us small and limits them to a few potential sites.

B. Wiersma commented that the setback and separation requirements of the wireless communications ordinance should be upheld unless the Zoning Board of Appeals and the Planning Commission show evidence otherwise.

C. Swank asked why Verizon did not consider sites on Forest Service land. LaBelle explained that using the Forest Service land would not remedy the concerns of the property owners.

v. **Consider Motion:** Motion was made by Wiersma, with support by Swank, to uphold the appeal based on fact that adequate consideration of increased setbacks, lesser tower height, and alternate siting/co-location was not made. The motion carried by a 3-1 roll call vote, with Adams voting in opposition.

(c) **PZBA14-003:** Appeal of decision by Planning Commission to approve request for the erection of a 300-foot wireless cell tower and equipment shelter. This project site is located along the south side of E. 24 Road, between N. 29 Road and N. 27 ¼ Road and is accessed by a driveway located just east of the old schoolhouse.

i. **Open Public Hearing and Review Request:**

ii. **Acknowledge Written/E-mail Comments Received:** Letters were received by Fletcher, Heald and Hildreth and by Carolyn Wilson in opposition to the request.

iii. **Receive Public Comments:**

A. Wendell Johnson, representing John Wilson, stated that the neighbors went to the meeting and expected deliberations but found none; he stated that there was no evidence that the site was the least intrusive. Johnson also stated that the Planning Commission appeared to be intimidated by the attorney for Verizon. Johnson noted that the site was not marked for the Planning Commission members, making it difficult to make an informed decision; the burden of proof is on Verizon to show that the service is essential. Johnson claimed that the tower would be located closer to his client's property line than indicated on site plan and stated that the fall zone would encroach on his property. He also stated that environmental concerns not related to signal interference were allowed to be considered by the Planning Commission, including the fact that there are wetlands on the property that feed into nearby Lake Meauwataka. He also stated that the property owner lives in Lansing and won't have to look at the tower from his residence. The decision will be appealed by his client if made in favor of Verizon.

B. Randy Zietz, of East 24 Road, stated that he was approached by Verizon about putting a tower on his property, but opted out after Verizon would not allow the tower to be further off the road.

- C. John Wilson, the appellant, talked about how his family has owned the property over several generations and that his dad attended the one room school nearby. He stated that he lives in Chicago and is restoring the farm.
- D. LaBelle stated that the Planning Commission minutes were poorly written and did not capture the full deliberations behind their decision to approve both sites. LaBelle explained that the Sixth Circuit Court of Appeals has ruled that there must be substantial evidence of record to show that a tower is not needed and giving deference to the need for adequate coverage; he also argued that federal wetland regulations would prevent construction of the tower if their standards were not met. LaBelle stated that their phase 1 environmental review was approved and that diesel fuel will not be used. The Zietz property was considered, but would not have met the setback requirements either.
- E. Bob Przybylo stated that the separation and setback requirements were considered by the Planning Commission, but were found to be unnecessarily burdensome for the applicant's site selection process. The RF engineer handed out a propagation map showing that the existing Michigan bell tower would not meet the signal requirements for the area and that the two towers would still be necessary. It was shown during Hurricane Katrina that coverage is essential for emergency responders in the event of a natural disaster.
- F. Kenda Wheat lives on South 39 Road and travels to the area often. She stated that she had an auto accident in an area near the proposed site that has poor coverage. The neighbors that helped her could not call out to 911 unless they walked to a specific location on the property. She stated that coverage is poor in much of the area and she frequently drops calls.
- G. Michael Green, who is also the Zoning Administrator, stated that he lives across the street from the proposed tower. He also reported that coverage is poor in the whole area, and is in fact nonexistent in many areas to the north towards Kingsley.
- H. LaBelle stated that the Wilson property is not listed as in historical property and is not given any special protections as a result.

iv. **Close Public Hearing for Board Comments:** Wiersma stated that the record shows the Planning Commission did not consider all the factors and is not convinced that alternative sites were considered

v. **Consider Motion:** Motion was made by a Wiersma, with support by [Swank](#) [Prebay](#), to uphold the appeal on the same basis as the last appeal that was heard. Motion failed by a 2-2 tie vote. [Green asked for a vote on remanding to the Planning Commission.](#) A second motion was made by Adams, with support by Swank, to remand the decision to the Planning Commission for further review. Motion carried by a 3-1 roll call vote, with Wiersma voting against

~~v.~~ [Monroe resumed her position as Chairperson.](#)

8. **Other Business:** [None]

9. **Public Comment:** Monroe asked where the authority to remand decisions to the Planning Commission is. LaBelle stated that Article 11 of the Zoning Ordinance gives them that authority. [Pat Donovan requested that minutes and agendas be posted online on the county website.](#)

10. **Adjournment:** Motion was made by Monroe, with support by Adams, to adjourn the meeting at

8:50 pm. Motion carried with all in favor.

Respectfully Submitted by:

Michael Green, Zoning Administrator

Beverly Monroe, Chairperson