

## **04/12/11 Zoning Board Minutes**

### ZONING BOARD OF APPEALS

The hearing on Tuesday, April 12, 2011 was called to order by Chairman Harrington at 7:05 PM.

Members present: Harry Kaczmarek also: Joe Colern, Bldg Inspector  
Greg Kalinowski Phyllis Todoro, Town Attorney  
Michael Komorek  
Robert Schafer  
Donald Trzepakz  
Alfred Harrington, Chairman

After Roll Call, the Clerk read the Notice of Public Hearing for Appeals Case #1191 for Omnipoint Communications, Inc., 103 Monarch Drive, Liverpool, who is requesting an extension of the variance for 881 Schultz Road granted in Appeals case #1085 issued on 12/11/07 in connection with construction of a 170 foot monopole in a residential C/agricultural zoned area §59A-9(A)(6)

In the matter of Appeals Case #1191 Attorney Morgan Graham from Phillips Lytle LLP spoke on behalf of T-Mobile and Omnipoint Communications, Inc. and advised the Board that everything is identical to the past correspondence submit for the original approval. The before and after pictures are all still the same. The variance was granted for the construction and all the same materials are going to be used, a special use permit and the building permit were granted and then shortly after T-Mobile lost the funding for the project. The variance expired and they are now seeking reinstatement of the extension of the variance.

The proposed site work was extensive throughout town at various locations. It was determined that 881 Schultz Road was the best location for the site and a request for a reinstatement of the variance extension is being requested at this time.

Mr. Komorek asked that as of this date why wasn't there supplemental information submitted for other municipal locations to be reconsidered. Atty. Graham advised that this was the best site for their location of the tower.

Chairman Harrington asked about new technology that would change the height of the tower and about the safety requirements of a cell tower. Atty. Graham advised that there are no new items at this time and the safety features are within FCC safety compliance guidelines. Also at the base of the tower do not allow for any climbing on the tower.

Mr. Komorek stated that in the past three years there have been changes in US and world wide technology studies and finds it hard to believe nothing has changed. Atty. Graham advised there are continued studies and discussion being done and the technology continues to be studied. The equipment is the same as the original equipment that was going to be used three years ago.

Mr. Komorek added that he finds it rather difficult that they would use four year old technology and why it took four years for the project to get started. Atty. Graham advised that the equipment would be complaint with FCC rules and regulations from a safety stand point. The site itself has not changed and that the variance had a year expiration with the consideration of an extension. Funding was lost and delayed the process from starting.

Mr. Colern spoke about how the Zoning Board has heard cases in the past for extensions and continuances. The Zoning Board has looked at each case individually and looks at all the facts for the case to issue a determination.

Atty. Graham mentioned all the various sites that were recommended and turned down for the tower. The Zoning Board only received the site of 881 Schultz Road for the proposal of where the tower would be constructed.

Mr. Komorek mentioned that a lot of variables have changed with the other locations that were proposed. The changes since 2007 have been significant in all the other sites that were being considered back then.

Atty. Graham brought up that the project has not changed and how personnel changes would allow a change in the project at this time. From a coverage stand point the 881 Schultz Road is still the best location for the tower. Mr. Komorek remarked that no other avenues were looked into with the paperwork that was submitted recently regarding a hardship for the 881 Schultz Road address. There were no other attempts to look at other

site and that it had to be located at 881 Schultz Road. The other sites that were proposed in the beginning would have required a higher tower at the various locations.

The only issue that Mr. Trzepakz has is that the equipment is four years old and studies have come out that the current regulations are not potentially safe for cell towers. Atty. Graham mentioned that the tower will be compliant with FCC regulations and guidelines.

No one spoke for the project

The following spoke against the project:

Attorney David Jaworski representing Mr. & Mrs. Corigliano spoke about the timing of this project. In 2007 it had to be exercised to one year, in 2009 a second building permit was issued and lapsed on Oct 22, 2009. When a building permit lapses it is void. For a period of a year and a half there was no existence of the project taken place. The request for extension is improper and that the process should be started again from the beginning.

Mr. Corigliano spoke about the tower going up almost right in his back yard. The concerns of having a cell tower on residential properties and not on commercial properties. The fact that other cell companies are doing fine coverage wise without having huge cell towers in residential back yards. The health risks with cell towers are still being investigated and are unknown.

Tim Moeller of 1601 Rice Road spoke just to mention that this weekend was the first time he heard of a cell tower going up 1000 feet from his home.

Nicole Kraus of 1641 Rice Road spoke about the concern of the resale value of our homes. Most concerns are the safety concerns of cell towers.

Mike Kraus of 1641 Rice Road spoke about the address of 881 Schultz Road is not technically the address as to where the cell tower may be located.

Mike Pauly of 2150 Woodard Road spoke about the environmental impact of putting up a cell tower.

Hank Zmich of 1910 Girdle Road spoke about the aesthetics of putting up a cell tower in

his neighborhood.

Atty. Graham again spoke regarding the people that spoke against the project. He mentioned in terms of the cell phone carriers there can not be a preference in a carrier, it needs to be diversified.

Mr. Komorek asked with T-Mobile the height of the tower is based on FCC issued frequency, how it is justified and that it is a self induced hardship that has been created. The company is asking the public to bear the hardship. His interpretation is that there is no variance due to expiration of the original variance. Every variance has a one year expiration and there are no exceptions.

Mr. Komorek made the motion: In the matter related to information supplied in appeals case #1191 for Omnipoint Communications, Inc., 103 Monarch Drive, Liverpool, who is requesting an extension of the variance for 881 Schultz Road granted in Appeals case #1085 issued on 12/11/07 in connection with construction of a 170 foot monopole in a residential C/agricultural zoned area §59A-9(A)(6), I move that the request be denied based on a new variance be submitted based on inherent changes in technology, potential equipment specifications changes, potential safety issues, and studies of alternate sites for placement, including but not limited to municipal properties. This submission package to the Zoning Board of Appeals needs to be compiled with current data and information. Seconded by Mr. Schafer. Ayes: 5 Nays: 0

The minutes of the last meeting of March 8, 2011 were approved.

The only communications at this time is regarding training classes, looking into where they are being offered and when. Kerry will advise the Board when more information is available.

There being no further business, the meeting was adjourned at 8:34 PM.

Respectfully submitted,

Kerry A. Galuski  
Secretary-Clerk

