

**MINUTES
ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF CHATHAM
APRIL 13, 2022**

Mr. Vivona called the Regular Meeting of the Zoning Board of Adjustment to order at 7:30 PM.

Adequate Notice of the meetings of the Zoning Board of Adjustment of the Township of Chatham was given as required by the Open Public Meetings Act as follows: Notice in the form of a Resolution setting forth the schedule of meetings for the year 2022, and January, 2023 was published in the Chatham Courier and the Morris County Daily Record, a copy filed with the Municipal Clerk and a copy placed on the bulletin board in the main hallway of the Municipal Building.

Roll Call

Answering present to the roll call were Mr. Vivona, Mr. Weston, Mr. Borsinger and Mr. McHugh .

Mr. Fitt, Mr. Silva and Mr. Sood were absent.

Also present were Planner Joanna Slagle filling in for Planner Frank Banisch, Engineer Dan Honoshowsky filling in for Board Engineer John Ruschke and Board Attorney Amanda Wolfe.

Mr. Vivona announced that two members of the Board have resigned, which has created an additional two vacancies.

Hearings

Calendar BOA-22-006- Concept Review: T-MOBILE Northeast LLC – 300 Shunpike Road (March 31, 2022) Block: 95 Lot: 18.01 Upgrade of an Existing FCC Licensed Wireless Telecommunication Facility.

Frank Ferraro, an attorney representing the applicant, was present to provide an overview of the application.

Ms. Wolfe provided her legal opinion the applicant could have complied with the Eligible Facilities Request, and this application is for the replacement of equipment. Ms. Wolfe said that she and Mr. Ferraro reached a compromise that a concept review would be conducted so that the Board could provide feedback on how the equipment replacement will function. Ms. Wolfe also stated that this is for an existing telecommunication facility for which antennas will be replaced.

Mr. Weston noted that the height of the new antennas will be imperceptible to the public. He agreed that concept review would be appropriate.

Ms. Wolfe stated that proper notice was provided and the Board has jurisdiction. The Board professionals were sworn in to give testimony. Also sworn in was Nick Barile, who is the applicant's engineer. Mr. Barile provided his qualifications and was accepted as an expert.

Mr. Ferraro provided an overview of the application. He stated that T-Mobile submitted a Zoning Permit application, and it is the applicant's opinion that under Federal law the upgrade meets the criteria for administrative approval. Mr. Ferraro further stated that the application is an eligible facilities request because it is an existing facility that has already received Board review and approval, and the proposed change is not a significant change. The proposed change is for the existing 9 antennas to be replaced by 9 new antennas. Mr. Ferraro said that the concept review was devised so that the public can be made aware of the proposal and the Board can ask any questions.

Mr. Barile described the existing conditions. He also described the proposed new cabinets that will be placed within the existing pad and within the existing compound. There will not be any change to the height or width of the tower, and there will not be more than three cabinets. Mr. Barile also confirmed that there will not be any excavation outside the T-Mobile lease area. There will not be any violations of the original approval. Mr. Barile stated that his firm will submit the necessary drawings and other documents for the zoning permit application. The existing tower will be able to accommodate the upgrades and future collocation.

Mr. Ferraro said that the Board either recommend that the Board either recommend issuance of the zoning permit or indicate that they do not have any objection to the permit's issuance. He also stated that the FCC has a rule that action on the application must be taken within 60 days of the submission of the application, which was submitted on March 15th.

Mr. Vivona asked if the proposed antennas are larger than the existing antennas. Mr. Ferraro said that they are 8 feet in height, compared to the current antennas which are 7.8 feet. He noted that one antenna is shorter but wider. Mr. Vivona said that there was trouble getting the site passed the first time.

Ms. Wolfe asked if the antennas will be painted a light gray color consistent with the prior approval. Mr. Ferraro said that they will be. Ms. Wolfe asked if the light brown lattice security fencing is still in good condition. Mr. Barile said that it is in acceptable condition, and is only three years old. Ms. Wolfe asked if there is any objection to stipulating to the conditions recommended in the Board Engineer's review memo. Ms. Wolfe asked if the landscape will be evaluated as well, and Mr. Ferraro confirmed that it will. Mr. Ferraro also stated that future collocation will not be inhibited. The coaxial cables will be within the tower.

Mr. Borsinger asked if the applicant is aware of any pending collocation. Mr. Ferraro stated that they are not aware of any at this time.

Mr. Weston asked if there are any cooling issues with the new cabinets. Mr. Barile said that they will have internal cooling fans similar to a computer or a refrigerator.

Mr. Vivona opened the floor to the public for comment. Seeing no public comment, Mr. Vivona closed the floor to the public.

Mr. Vivona that the only condition is that the fence is maintained and the landscaping is checked.

Mr. Borsinger moved to approve the application. Mr. Weston seconded the motion.

Roll Call: Mr. Vivona, Aye; Mr. Weston, Aye; Mr. Borsinger, Aye; Mr. Fitt, Absent; Mr. McHugh, Aye; Mr. Silva, Absent; Mr. Sood, Absent.

Resolutions

22-20

RESOLUTION BOA 22-0020

RESOLUTION AUTHORIZING THE AWARD OF A NON-FAIR AND OPEN CONTRACT FOR ZONING BOARD OF ADJUSTMENT CONSULTING LEGAL SERVICES WITH AMANDA C. WOLFE, ESQ. OF POST POLAK, P.A. FOR 2022

WHEREAS, the Zoning Board of Adjustment of the Township of Chatham has a need to acquire the legal services for the Chatham Township Zoning Board of Adjustment as a non-fair and open contract pursuant to the provisions of N.J.S.A. 19:44A-20.5; and,

WHEREAS, the Chief Financial Officer has determined and certified in writing that the value of the contract will exceed \$17,500; and,

WHEREAS, the anticipated term of this contract is from May 1, 2022 through December 31, 2022 and,

WHEREAS, POST POLAK, P.A. has completed and submitted a Business Entity Disclosure Certification which certifies that **POST POLAK, P.A.** has not made any reportable contributions to a political or candidate committee in the Township of Chatham in the previous one year, and that the contract will prohibit the **POST POLAK, P.A.** from making any reportable contributions through the term of the contract; and

WHEREAS, the Chief Financial Officer has determined that sufficient funds are or will be available upon adoption of the budget for year 2022; and

NOW THEREFORE, BE IT RESOLVED that subject to the Zoning Board of Adjustment's review and approval of the Contract for Professional Services to the Township of Chatham authorizes the Mayor and Clerk to enter into a contract with Amanda C. Wolfe of **POST POLAK, P.A.** as described herein; and,

BE IT FURTHER RESOLVED that the Business Disclosure Entity Certification and the Determination of Value be placed on file with this resolution; and

BE IT FURTHER RESOLVED that this contract is awarded without formal competitive bidding as a "Professional Service" in accordance with 40A: 11-5 (1) (a) of the Local Public Contracts Law because the services required are those of a recognized profession for which bid specifications are not appropriate or required; and

BE IT FURTHER RESOLVED that a copy of this resolution as well as the Contract shall be placed on file with the Clerk of the Township of Chatham; and

BE IT FURTHER RESOLVED that a notice of this resolution shall be printed as provided by law in the Chatham Courier.

Mr. Borsinger moved to adopt Resolution 22-0020. Mr. McHugh seconded the motion.

Roll Call: Mr. Vivona, Aye; Mr. Weston, Aye; Mr. Borsinger, Aye; Mr. Fitt, Absent; Mr. McHugh, Aye; Mr. Silva, Absent; Mr. Sood, Absent.

2022-0016

**RESOLUTION 22-0016
2021 ANNUAL REPORT**

WHEREAS, N.J.S.A. 40:55D-70.1 requires the Zoning Board of Adjustment of the Township of Chatham (“Board”), to annually review its decisions on appeals and applications for variances, prepare a report on its findings regarding the Land Development Regulations of the Township of Chatham (“Ordinance”) provisions implicated in same, and adopt, by resolution, its recommendation for amendments or revisions to the Ordinance; and

WHEREAS, N.J.S.A. 40:55D-70.1 further requires the Board to send copies of the Annual Report to the Township Committee of the Township of Chatham (“Township Committee”) and the Planning Board of the Township of Chatham (“Planning Board”); and

NOW, THEREFORE, BE IT RESOLVED by the Board, that the attached Annual Report for the period of January 1, 2021 through December 31, 2021, be, and hereby is, adopted as the Annual Report of this Board; and

BE IT FURTHER RESOLVED, that copies of this Resolution and the attached Report shall be submitted to the Township Council and the Planning Board.

Ms. Wolfe stated that the only change made was that sample ordinances would be provided.

Mr. Vivona asked if there is a date for the Annual Report to be presented. Mrs. Tsimboukis stated that a copy of the report will be provided to the Mayor, and she will let Mr. Vivona know if a presentation will be made at a Township Committee meeting.

Mr. Vivona said that the recommendations are regarding corner lots, home occupations, the number of hard copies submitted, and wanting a zoom account for the Board. He also said he would like to appear in person at a Township Committee meeting.

Mr. McHugh moved to adopt Resolution 22-0016. Mr. Weston seconded the motion.

Roll Call: Mr. Vivona, Aye; Mr. Weston, Aye; Mr. Borsinger, Aye; Mr. Fitt, Absent; Mr. McHugh, Aye; Mr. Silva, Absent; Mr. Sood, Absent.

Mr. Weston moved to adjourn at 8:00 PM. Mr. Borsinger seconded the motion, and the motion carried unanimously.

Gregory J. LaConte
Recording Secretary