

Dover Township
Planning Commission Minutes
October 3, 2013

Chairman Wayne Hoffman called the regular Planning Commission to order at 7:00 p.m. Members present: Monica Love, Amy Brinton, Anthony Pinto, Eric Harlacher, and alternate Carol Kauffman. Also present: Zoning Officer Georgia Sprengel, Engineer Terry Myers, Recording Secretary, and three citizens.

I. Minutes

Motion by Love, second by Pinto, to approve the minutes of the meeting of September 4, 2013. All members voted aye; motion carried.

II. Zoning Cases

A. ZHB 13-4 – Cellco Partnership/Charles and Carol Richards. Property at 2730A Emig Mill Road. Request for Variances for cell tower in the R-1 Zone, and fence exceeding 4' height in front yard.

Attorney James Strong of McNees, Wallace, and Nurick was present on behalf of the applicants (Verizon Wireless). The applicants are proposing a cell tower on this property, owned by Charles and Carol Richards, 116 acres. There's an existing paved access drive to provide access to the existing structures on the property. The southwestern side of the property is mostly wooded. Access will be via the existing driveway. The facility will be a 50' x 50' area, with an 8' tall board-on-board wood fence, completely opaque and out of sight. Tower 160' tall, monopole type, at top will be the antennae and lightning rod. There will be an equipment shelter at the base including a back-up generator and propane tank to fuel the generator.

The Richards farm is in the R-1 zone. This use is permitted only in the Commercial and Industrial Zones. Reason for the request for a tower on this property: increased consumer use puts increased demand on the existing towers. This new tower will reduce the burden on some of the surrounding existing towers. This site fits with where the traffic is highest and needs alleviation for continued sufficient service. (There was another possibility, also a farm, and the water tower in West Manchester Township; the Richards property meets the technical needs of the system the best.)

Variances requested: Section 27-404.2, to permit a cell tower in R-1 zone and Section 27-502.2.a, fencing over 4' in height in front yard (6' in side and rear yards). The applicants are requesting an 8' tall fence in the front yard. The site is nearly 1100 feet back from Emig Mill Road. This fence height will also deter vandalism or tampering with the equipment. The difference in elevation from Emig Mill Road to the site is in excess of 10 feet.

Kevin Hughes, site acquisition consultant, and Ken Farrell, Engineer, were also present.

Discussion was held on the problem with poor cell phone service in the Admire area. Mr. Strong will take those concerns to the applicants to see that this tower is indeed in the best place, and to see if anything can be done with the other towers in the area. Perhaps there are plans for additional towers in the general area. Mr. Strong noted that this tower will be available for co-location for other wireless carriers, so cell service for

other users will improve as well. He also noted that the highest use of service is in the residential areas. Also, Mr. Hughes reminded the Planning Commission that many people are using their cell phones instead of a land-line, so high-quality service is of utmost importance. Mrs. Brinton noted that new 911 technology/service will increasingly be relying on cell service.

Mr. Pinto asked why this use is prohibited in the R-1 zone in the first place. Mrs. Sprenkel noted that this is not common in a residential area; it would be rather intrusive in a development. Will this adversely affect the property owners' ability to sell this property? Perhaps, but any buyer will be able to see that there's a tower on the property.

Mr. Hoffman noted that the Township includes a large portion of R-1 zoned land with no houses on it. R-1 zoning doesn't just include residential developments.

Mr. Pinto was concerned with the impact on the current residents in the Township. How is this a hardship to require a Variance? Mr. Myers referred to Section 27-1003, to check the requirements for a Variance. It would be unlikely, under those conditions, that a Variance would be granted. However, the Telecommunications Act may give additional weight to the reasons why the Variance should be granted. He referred to a letter from Solicitor Baranski addressing this issue, notably: "If a provider cannot meet the standards for a traditional variance, then the Act allows a provider to prove that the placement of the cell tower is required to **fill a significant gap in its coverage, and the location of the cell tower is the least intrusive means to achieve that coverage.** If a provider can show this, then the application should be approved. The burden is on the provider to prove this by substantial evidence at the zoning hearing." [Emphasis in original] Mr. Myers noted that this use is permitted by Special Exception in the Conservation zone. The applicants need to prove that this site is indeed the best location for this tower and that the two commercial areas where the tower would either be permitted by right or by Special Exception would not be acceptable. They also need to prove that this location is necessary to improve the coverage for the area. Mr. Hughes noted that at the Zoning Hearing, the applicant's radio-frequency engineer will be available and will testify that this site is the best location. Could it be construed that the Township is unreasonably standing in the applicant's way to serve the public? What happens if another carrier needs to put up a tower within a short distance of this one? There could be towers popping up all over the place. The closest one could conceivably be within thousands of feet to this one. Mr. Pinto feels that the Telecommunications Act lets the applicant put up the tower, no matter what the Township says.

Mrs. Love feels that the Planning Commission members generally agree with the request/site/project, but they don't feel that the applicants have not adequately met the requirements for a Variance.

Motion by Love, second by Pinto, to recommend *denial* of the Variance request for Cellco Partnership, d/b/a Verizon Wireless to put a cell tower in the R-1 zone, due to the applicants' failure to meet the requirements for a Variance.

Discussion: if the Planning Commission recommends denial of this request for a Variance, and the Zoning Hearing Board denies the request, will the applicant stop there? Is this actually a need for the Township residents? Will the R-F engineer be able to adequately prove the hardship and need? The Planning Commission is trying to help the applicants get what they want within the parameters and limitations of the ordinance.

Mrs. Brinton sees both sides; she sees the need, but also sees that the applicants have not met the requirements for a Variance.

Vote on the motion: four ayes; *Harlacher opposed*. Motion carried.

The suggestion was reiterated that the applicants concentrate on proving to the ZHB that this location is the best.

III. **Plans**

No plans this month.

IV. **Other Business**

None at this time.

Motion by Love, second by Pinto, to adjourn. All members voted aye; motion carried. The meeting adjourned at 8:31 p.m.

Respectfully submitted,

Julie B. Maher,
Recording Secretary