

APRIL 13, 2010 MINUTES
OAKLAND BOARD OF ADJUSTMENT
OAKLAND COUNCIL CHAMBERS – 8:00 P.M.
PUBLIC MEETING

Pursuant to Chapter 231, Public Law 1975 (Open Public Meetings Act) adequate notice of this meeting has been provided by:

- Adoption of an annual schedule of meetings
- Posting a copy of same at Borough Hall
- Forwarding a copy of same to the Record
- Mailing a copy to any person requesting same

FLAG SALUTE, MEETING OPENED AT 8:02 P.M.

ROLL CALL: Present: Messrs. Chadwick, Johnson, Smid, Wegman,
Schneeweiss, Jensen and Chairman Lepre.
Absent: Mr. Haas

Also in attendance, Mr. Matthew Cavaliere, Esq. (Board Attorney).

PUBLIC MEETING BEGINS:

1. **Ryan** – 12 Arrowhead Road, Block 5606, Lot 10. Public hearing for a side and rear yard setback.

Members conducted a site inspection for the property. Mr. Wegman reported that the property, located in a RA-2 zone, was light in traffic. Chairman Lepre reviewed the comments from the various departments and reviewed zoning issues. He indicated that there is an affidavit to verify that the dwelling would remain a four-bedroom dwelling.

Mrs. Mary-Louise Schaffer and Mr. Albert Martorano, a licensed architect in Ringwood, New Jersey were sworn in. Mr. Martorano reviewed his credentials and the Board accepted his qualifications.

Mr. Martorano testified that the parents of his client own the home and have offered her and her family to move in and live with them. He explained that the home is large enough to accommodate Mrs. Schaffer and her family. However, the applicant would like to propose a single-story addition to include a playroom for the children. The addition would be located in the rear of the property and not visible to the neighbors.

A discussion ensued concerning two large pine trees and whether the applicant plans to remove them. Mrs. Schaffer explained that they would be removing the bigger tree but the smaller tree would remain.

Motioned by Mr. Jensen and seconded by Mr. Smid, to open the meeting to the public regarding matters concerning the Ryan application was voted unanimously by the Board.

No comments.

Motioned by Mr. Jensen and seconded by Mr. Wegman, to close the meeting to the public regarding matters concerning the Ryan application was voted unanimously by the Board.

Chairman Lepre entertained a motion.

Motioned by Mr. Jensen and seconded by Mr. Johnson, to approve the Ryan application.

Roll Call Vote: Ayes: Messrs. Chadwick, Johnson, Smid, Wegman,
 Schneeweiss, Jensen and Chairman Lepre.
 Nays: None
 Abstain: None
 Absent: Mr. Haas

2. **MetroPCS, NY, LLC (2)** – Thornton Road, Block 3204, Lot 7.01, Cell T01. Continued public hearing for a preliminary and final site plan for a conditional use and use variance.

Chairman Lepre announced that MetroPCS, NY, LLC (2) requested to carry their application to the next available meeting. He informed the Board that the agenda was full for May, so the application would have to be carried to the June 8, 2010 public hearing.

Motioned by Mr. Jensen and seconded by Mr. Smid, to carry the MetroPCS, NY, LLC (2) application to the June 8, 2010 public hearing was unanimously voted by the Board.

MEMORIALIZATIONS:

1. **Weidmuller** – 214 Manito Avenue, Block 3304, Lot 4. Approval for a rear yard setback.

Motioned by Mr. Wegman and seconded by Mr. Jensen, to memorialize the above resolution of approval.

Roll Call Vote: Ayes: Messrs. Johnson, Smid, Wegman, Jensen and Chairman
 Lepre.
 Nays: None
 Abstain: None
 Absent: Mr. Haas

2. **Faren** – 41 Algonquin Trail, Block 5404, Lot 21. Approval for a side yard setback.

Motioned by Mr. Wegman and seconded by Mr. Jensen, to memorialize the above resolution of approval as amended.

Roll Call Vote: Ayes: Messrs. Johnson, Smid, Wegman, Jensen and Chairman Lepre.
Nays: None
Abstain: None
Absent: Mr. Haas

3. MetroPCS, NY, LLC (1) – 97 Yawpo Avenue, Block 4101, Lot 1, Cell T01.
Approval for a preliminary and final site plan for a conditional use and use variance.

Motioned Mr. Wegman and seconded by Mr. Smid, to memorialize the above resolution of approval as amended.

Roll Call Vote: Ayes: Messrs. Johnson, Smid, Wegman, Jensen and Chairman Lepre.
Nays: None
Abstain: None
Absent: Mr. Haas

PAYMENT OF BILLS:

Motioned by Mr. Jensen and seconded by Mr. Smid, to pay bills subject to the availability of funds, was voted unanimously by the Board.

APPROVAL OF MINUTES:

Motioned by Mr. Jensen and seconded by Mr. Wegman, to approve the March 9, 2010 minutes as amended was voted unanimously by the Board.

OLD BUSINESS:

Chairman Lepre listed all the items requested by the Board that have yet to be furnished by the Borough.

Mr. Chadwick questioned the procedure the Board would be following when MetroPCS, NY, LLC (2) returned back before the Board.

Chairman Lepre updated Board members on the status of the MetroPCS, NY, LLC (2) application. He explained that at the hearing last month there was a split vote, two nays and three ayes. In the event of a "D" variance, the applicant is required to receive at least 5 yes votes.

Chairman Lepre indicated that the two members that voted "no" have substantial feelings in regards to the height of the antenna and the structural stability of the monopole. However, the Borough's ordinance states that this is a designated location for the monopole. In order to stand firm with a rejection of the application, the Board would need to be prepared with a strong argument because this application will appeal the Boards decision.

Chairman Lepre informed the Board that if the decision remains the same and the applicant does appeal the decision, it becomes the Borough's responsibility as well as the taxpayers.

Mr. Cavaliere explained that at last month's hearing, Mr. Meese was not aware of the absent Board members and asked if the Board would reconsider with further testimony or agree to carry the application to the following hearing. By carrying the application, it would offer the applicant more votes which may or may not have an impact on the decision.

Mr. Cavaliere explained to the Board that absent members are required to listen to recording and sign an affidavit in order to vote. He indicated, for the record, that both absent Board members have listened to the recording and have signed an affidavit.

Mr. Cavaliere informed the Board that the applicant would not start their testimony from the beginning but would supplement with further testimony in the areas of question by their hired professionals.

Mr. Chadwick indicated that while listening to the recording, he got the sense from the opposing Board members that their concerns were of a structural nature. Chairman Lepre responded that the structural nature was also a concern.

A discussion ensued by the two Board members that voted down the application expressing their reasons. Mr. Johnson stressed that perhaps by taking an opposing stand of his concern on the stability of the pole, it would force the cellular companies to improve their technology. Mr. Smid expressed his concerns were with the stability of the monopole and if it were to fall down, it could fall upon the water tower.

The Board questioned if they would be permitted to ask questions concerning the prior testimony. Mr. Cavaliere responded that the Board would be permitted to ask any questions pertaining to the application.

Mr. Chadwick explained that he had researched and read the ordinance informing the Board that there are new construction codes for the design of monopoles. He added that there would be nothing holding them back from taking it down and reconstructing a new monopole.

A discussion ensued concerning the percentage of allowable height. Mr. Johnson expressed that 105% is allowable but the extension would bring the percentage to 110%. Chairman Lepre explained that he questioned the engineer what the factor was and the engineer never answered that question. Sometimes engineers work with qualifiers that could extend over 20 percent of the allowable height. Mr. Chadwick agreed that he was familiar with this.

Mr. Cavaliere expressed that this was a strange ordinance which should be looked at administratively and modified reflecting the current legal thinking. He stressed that this is a difficult ordinance to defend.

Fred Schneeweiss, questioned the status of the Zohra application. He expressed that there has been machines and activity at the site and supposedly they have received permits. Mr. Smid informed the Board that Building Department has receive all required

approvals from New Jersey Department of Environmental Protection (NJDEP) and Highlands.

Mr. Schneewiess questioned the status of the accessory building at the horse farm on Ramapo Valley Road. A discussion ensued that Mayor and Council have passed resolution appealing the judge's decision.

Mr. Schneeweiss questioned the status of Reed Academy. A discussion ensued concerning that Reed Academy is a non-profit organization supported by donations and fundraising. Currently at the site, trees have been marked and a bypass water line has been moved. They continue to be protected by the Extension Act for now.

The Board questioned techniques and procedures that may help with zoning.

NEW BUSINESS:

None

MEETING ADJOURNED:

Motioned by Mr. Jensen and seconded by Mr. Smid, to adjourn the public meeting at 8:45 p.m. was voted unanimously by the Board.

Respectfully submitted by,

Kathlyn Gurney/Board Administrative Assistant