

meters off the ground. What they supply to the Board is a courtesy to indicate how well in compliance they are. The applicant is at .08% so they are 120 times under the FCC standard for emissions. They have also testified that they are using all FCC-approved equipment. In terms of coverage Dr. Eisenstein referenced Exhibit A-3 which is one of the coverage maps Mr. Stern presented. Based on what he sees on Exhibit A-3, they do have a gap in the area around the proposed site. Dr. Eisenstein referenced Exhibit A-4 which shows the site implemented and how it appropriately fills in the gap area. The 129 foot antenna height would be the minimum necessary. In the future, everything that you see on a wireless device will be data. Right now it is about 50% of what people do. The need for additional data is going to go up. He referenced Exhibit A-1. They need to accommodate the data and to accommodate the data they need a site closer to where the users are. Dr. Eisenstein is in agreement with Mr. Stern, the applicant's engineer, and feels he did a correct job of presenting the information.

Mr. Kirch referenced Open Signal, a crowd-source application. The cell phone sends a signal to the cloud testing what your signal strength is.

There was discussion about how Open Signal is cloud based and not necessarily site specific.

Dr. Eisenstein testified that he had the app open and was receiving information from other townships within the area. There are many factors that will affect a signal at any one time. His recommendation as an expert in the field would be that the Board not accept it as testimony.

Mr. Kirch pointed out that the 3rd Circuit Court has accepted it as evidence of whether there was a gap or not. He will provide the case to Mr. Drollas.

Mr. Kirch asked what happens when they go to 5G, since . They say it requires more towers.

Dr. Eisenstein confirmed that hypothetically they are going to need a lot more towers. If and when Verizon gets a license from the FCC at one of the very high frequencies they will have to make an application and come before the Board.

Ms. Goldman noted that at a prior meeting Mr. Stern agreed to provide new drive test data after launching AWS at the Rocky Hill and Belle Mead 2 sites. Mr. Ferraro said they have not turned those sites on yet so the data provided to the Board is still accurate. When the information becomes available they will provide it.

Ms. Goldman testified that for a Board to consider the use variance and the height variance there are two court cases that govern telecommunication variances. They are Smart SMR v. Fair Lawn Board of Adjustment and Sica v. Wall Township Board of Adjustment. Since the applicant has testified they hold four FCC licenses for the four different bandwidths they have been found to satisfy the positive criteria. The Board must also find that the site is particularly suitable for the tower. In order to do this Verizon has to identify that there is a gap in the coverage, the minimum required signal strength, that alternative sites, heights and technologies have been presented and then ultimately that the site is suitable. Dr. Eisenstein and Mr. Stern have provided testimony that there is a gap in coverage and that they were using an appropriate signal strength. Mr. Stern provided testimony that the first priority locations would not solve the issue of the gap because of either their location or their height. Mr. Stern and Mr. Moss provided testimony that they looked at some of the second priority locations and none of the second priority locations that are within the search radius were suitable or available. They also provided testimony that the proposed tower height is the minimum needed. Mr. Stern provided testimony on the DAS network and its availability as alternative technology. Due to the Township requirement of underground utilities there is a lack of existing utility poles that Verizon would be able to use in order to run the service. They would have to install approximately 85 utility poles and would need variances for many of them. In terms of site suitability the applicant has provided testimony that there are no first or second priority locations and this site is central in the gap of coverage area.

When looking at the negative criteria there is no requirement for an enhanced quality of proof so the Board has to balance the positive and negative criteria. The first step is to identify if the public interest is at stake and make a finding of how compelling of a public interest that is. The second step is to identify the detrimental effects that may ensue from granting the use or height variance. The third step is to identify if any reasonable conditions can be imposed to mitigate some of those effects, such as a stealth tower or landscaping. The fourth test is to balance the positive and negative criteria. Verizon holds the four FCC licenses and are proposing to improve wireless service which is the public interest at stake. The proposal does not meet all of the setbacks required as part of the wireless telecommunications conditional standards. Although this proposal is a use variance, the conditional standards are guidance for the Board. The proposal does not meet the minimum leased area requirement, the distance to the lot line, distance to a dwelling or distance to the residential district. There is also a detriment from the tower height and design. The tower will be 137 feet which is over what is permitted

in the zone and is 2 feet over the maximum height allowed per the wireless telecommunications ordinance. There is also a detriment based on the removal of the 47 trees. Based on the area of disturbance they would be required to plant 9 trees. They are proposing 15 American Holly trees as the buffer of the compound area but are not proposing the 9 required trees. There is impairment to the zone plan and zoning ordinance because it is not a permitted use in the zone.

The next step is what reasonable conditions the Board could impose to eliminate those detriments. One is for setbacks. The applicant has agreed to relocate the facility to the north end of the building reducing its visual impacts to the Route 206 corridor and the neighborhood to the east. They are replacing the equipment shelters with equipment cabinets and they are reducing the generator to 20 KW. They are going to add branching to the pole so there is an overlap of the existing tree canopy and they have agreed to work with the Township Landscape Architect to provide tree plantings and replacement trees for the trees to be removed and to add more trees along Route 206.

The last step is balancing the positive and negative. The applicant has provided a number of factors to reduce the visual impacts. They have relocated it and raised the fence height around the compound to help screen it.

The Board took a five minute recess.

Mr. Ferraro summarized the application. It is the applicant's position that the applicant has met the burden of proof for the granting of the variances. The particular suitability of this site is not at issue from the standpoint of a radio frequency perspective. There is a need for this facility to alleviate the coverage gap as well as the capacity deficiency in the area. While there are certain provisions of the wireless ordinance this facility does not meet the applicant has investigated every first-priority and second-priority location in town. None of them are either available or would be feasible as an alternative. The detriments from the facility are relatively minor based upon the testimony from the planner. An extensive visual analysis was prepared with over 33 views and there were only 8 where the crane test was visible. These facilities are unmanned. They don't create noise, traffic or drainage issues. The Board has been very proactive in making sure that all the visibility is mitigated to the greatest extent possible. While there are deviations in the application there is a significant need so the public interest at stake is significant.

The meeting was opened to the public.

Robert Kirch stated that one of the areas that was suitable was the Convatec site. The applicant wrote to the owner of record at the time which was Convatec and never got an answer. The Township is buying that property. The Township has not cooperated and has not stepped forward to offer their services to mitigate this. A recent article in the Wall Street Journal found that one of ten towers tested exceeded the maximum FCC emissions. He asked that there be periodic testing of the emissions by a certified testing facility as a condition of any approval. There should also be a condition that any colicators are required to have the same camouflaging and that any of the requirements the Board makes be passed on to anybody else that the applicant passes ownership on to.

Ellen Nussbaum reiterated Mr. Kirch's displeasure with not further investigating the Convatec site. The Township could significantly benefit from the revenue from that site. The Board should reconsider an available appropriate site that would benefit the township and cause less distress to the residents in the immediate area. She has roughly 75-100 signatures on a petition opposing this site. There is not enough research that indicates property values are not negatively affected in close proximity to cell towers and the Board should take that into consideration.

Wilbert Donnay, 85 Opossum Road, asked if the Board would consider postponing the vote to allow time to research Mr. Kirch's question. He read a letter from his wife and him into the record opposing the cell tower due to its negative impact on the landscape of their property and the potential reduction of their home value.

Ann LaPlante, 36 Charleston Drive, agreed that other sites need to be considered. This will impact the landscape of the area and the property values. She is also concerned with the health risks.

Mr. Sciascia, 95 Opossum Road also opposed the application. He works from home and does not have bad service. He agreed the Convatec site should be investigated. Large mature trees will be removed and it will take a long time for the new trees to grow that large.

There being no further public comment, a motion to close the public hearing was made by Mr. Post and seconded by Mr. Kristjanson. The motion carried unanimously.

Mr. Campeas proposed as a condition of any approval that Verizon create a fund for the neighboring property's to use for buffering.

Mr. Ferraro said the applicant could make a contribution to the Township's tree bank and agreed to talk to the Township Landscape Architect.

Ms. Goldman testified that until Verizon works out the Landscape plan with Mr. Bartolone the deficit number of trees is not known and the dollar amount can't be determined.

Chairman DeRochi said this would be an additional requirement the Board is considering.

Mr. Ferraro said Verizon will not agree to set up a fund for the neighbors to use. It has to be tied to some type of calculation or ordinance. Verizon would prefer to landscape the subject property extensively so there is no visibility offsite. Even if Verizon sets up the fund there is no mechanism for the Township to use the municipal funds to plant on private property. Verizon wants to make sure that if they post money in the tree bank it will be used to plant trees to address the concern and not plant them elsewhere in the Township.

There was discussion that the Board could modify the tree planting waiver granted and require a contribution to the tree bank. The waiver would be granted with the exception of 50 trees.

Mr. Campeas said it is the Board's responsibility to vote on what was presented to the Board. There are too many unknowns about the Convatec site like the timetable and the use of the land.

Mr. Kristjanson made a motion to approve the application subject to all the conditions and seconded by Mr. Campeas. The motion was carried on the following roll call vote:

Ayes: Kristjanson, Post, O'Brien, Campeas, Wu and DeRochi

Nays: Fedun

There being no further business to come before the Board, the meeting was adjourned at 10:00 p.m.