

**TOWNSHIP OF MAHWAH
BOARD OF ADJUSTMENT**

MEETING MINUTES

OCTOBER 4, 2023

The combined public/work session meeting of the Board of Adjustment of the Township of Mahwah was called to order at 7:32 p.m. by Mr. Jackson, Chairman, with the reading of the opening statement followed by the flag salute and a reminder that Board of Adjustment meetings are being videotaped and broadcast live. It was noted that adequate notice of the meeting was provided.

These minutes are a synopsis of the meeting. A verbatim audio tape recording is on file with the Board Secretary at the Board of Adjustment Office, 475 Corporate Drive, Mahwah, NJ.

PRESENT: Mr. Calijone
Mr. Cannava -7:34 p.m. Arrival
Mr. Coplin
Mr. Jackson
Mr. Kearney
Mr. Lockwood
Mr. Sitar
Mr. Taylor

ABSENT: Mr. Martin

ATTORNEY: Mr. Ben R. Cascio, Esq.

PROFESSIONALS: Ms. Kristin Russell, PP, Colliers Engineering & Design
Mr. Michael J. Kelly, PE, Township Engineer

ADMINISTRATIVE OFFICER: Ms. Geraldine Entrup

I. APPROVAL OF BILLS:

Ben Cascio, Esq	September 6 & 20, 2023	Meeting Attendance	\$500.00
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A motion to approve the bills for Mr. Ben Cascio, Esq was made by Mr. Kearney and seconded by Mr. Lockwood.

A roll call vote revealed 8 aye votes by Mr. Calijone, Mr. Cannava, Mr. Coplin, Mr. Jackson, Mr. Kearney, Mr. Lockwood, Mr. Sitar and Mr. Taylor.

II. APPROVAL OF MINUTES:

1. MINUTES OF SEPTEMBER 20, 2023

A motion to approve was made by Mr. Cannava, seconded by Mr. Sitar. All eligible Members voted in favor.

III. MEMORIALIZING RESOLUTIONS:

None to Present.

IV. OPEN TO THE PUBLIC:

Mr. Jackson opened the meeting to the Public for general questions or statements. No members of the Public participated.

V. PUBLIC HEARING(S):

**1. DOCKET #1341-12 – ADPP ENTERPRISES, INC.
231 ROUTE 17 NORTH, BLOCK 59, LOT 21.01**

Application for Conditional Use Variance, Bulk Variances and Waivers; Preliminary and Final Site Plan; Soil Movement for over 1,000 cubic yards of movement for the proposed construction of a gas station/convenience store with a drive-through.

Mr. Jackson read into record a letter dated September 25, 2023 from the applicant's attorney, Mr. Bruce Whitaker requesting the hearing of this Application be adjourned to December 6, 2023. No further Notice is required.

**2. DOCKET #1552-23 – John Musinski AIA/Cheryl Bacillo (Owner)
119 SHERWOOD AVENUE, BLOCK 50, LOTS 19 & 20**

Application for C Variances for front and rear yard setbacks for a proposed portico roof over existing platform and proposed deck in rear of dwelling.

Mr. Jackson stated into record that the hearing of this Application is adjourned to October 18, 2023. No further Notice is required.

**3. DOCKET #1545-23 – DRW NX INFRASTRUCTURE LLC
BEAR SWAMP ROAD, BLOCK 1, LOT 61**

Application for Preliminary and Final Site Plan with Use Variance application for a Pre-Engineered, unattended mobile microwave and municipal emergency communications radio antenna tower, including related communications equipment.

Ms. Meryl Gonchar, Mr. Josh Koodray and Mr. Victor Herlinsky with Sills, Cummis & Gross located at 1 Riverfront Plaza Newark, NJ 07102 representing the Applicant approached. Ms. Gonchar is requesting a Special Meeting to be held and suggested either November 16, 2023 or November 29, 2023 as potential dates. While the Board is determining their availability to attend either date, Ms. Gonchar is requesting this application be carried to the October 18, 2023 regularly scheduled Board of Adjustment meeting with no further notice required. A decision on the Special Meeting date will be announced at the October 18, 2023 Board of Adjustment meeting.

**4. DOCKET #1532-22 – NYSE GROUP, INC.
1700 MACARTHUR BOULEVARD, BLOCK 139, LOT 4**

The Applicant is seeking Conditional Use Variance relief and Preliminary and Final Site Plan approval from the Township Board of Adjustment to remove the existing 160-foot monopole and equipment enclosure and install 2 180-foot lattice towers with each having microwave dish antennas and a 360 s.f. equipment enclosure.

Ms. Geraldine Entrup read into record Mr. Cannava has viewed and listened to the prior Public Hearing held on August 2, 2023 for this applicant.

Mr. Michael Lavigne, Esq. with Fox Rothschild, LLP located at 49 Market Street Morristown, NJ 07960 representing the Applicant approached. Mr. Lavigne provided a brief review of the prior Public Hearings and explained the purpose for their appearance.

Mr. Jamie Brown, Owner and Principal of Yotta Services LLC approached, already having been sworn in at the prior meeting, to review key concerns with original plans and proposals. Mr. Brown explained the different research completed to determine the updated proposals being presented to the Board. Further Mr. Brown detailed the different design options considered for this project.

Mr. Brown explained the total anticipated number of antennas to be installed is between 34 and 38, collective between both towers. The physical capacity of the towers is 66 antennas. The proposed total number of antennas will be well below full capacity.

Mr. Jackson asked if the anticipated number of antennas to be installed is a concrete number or only an estimate. Mr. Brown explained the 34 to 38 antennas is only an estimate based on research done; there have been no applications or firm requests to dictate a definitive number of antennas.

Mr. Kearney asked if this project could be done with towers that are not as tall. Mr. Brown explained there are technical limitations of the towers. Mr. Brown further explained there needs to be a minimum amount of space between each antenna in order for them to function properly, and they need to be strategically placed in order to avoid interference.

At this time there were no further questions for Mr. Brown.

Mr. Daniel Mollin, Chief In-House Counsel with NYSE Group, Inc, approached to help further clarify the topic of Fair Sharing. Mr. Mollin explained the proposed towers are designed to provide fair sharing to those using antennas on the towers. Each client would have one antenna on the tower, however that particular client can be serving several of their own customers.

Mr. Matt Lang, Managing Director with Intercontinental Exchange (ICE) located at 55 E 52st Street New York, NY 10055, approached and explained the applicant is trying to move to a new service offering with their proposal which will ensure connectivity equality being for each to broadcast their information.

Mr. Jackson asked why the FCC has not reached out to the Township to review this proposal as they would be involved in the tower approvals through their own standards. Mr. Mollin explained the FCC would not be involved at this stage of the planning; the first step is to get Township approval then plans are presented to the FCC. Once the FCC reviews the proposal, they can deem what is fair and allowable. Further discussion around the FCC and being fair continued.

Mr. Coplin wanted to confirm that the proposal is due to potential demand and need and the applicant is not being forced to construct the two towers. Mr. Brown confirmed yes, the applicant is not being forced into this project.

Mr. Kelly asked what the intent is if the business climate should change and there is a need for 150 antennas instead of their current request. Mr. Mollin stated they cannot predict the future and the demand may rise. The plans and proposal presented to the Board were put together through research based on the current market. The applicant has no intention of coming back before the Board. Mr. Kelly explained the Board needs to consider the proposal being presented and not focus on it being fair and equal for the potential users of the tower.

At this time there were no further questions from the Board and the Chaiman opened to the public.

Ms. Allison Ponath residing at 33 Swan Road, Ramsey, NJ 07446 approached to ask if this project is approved and the need for more antennas should arise, would the FCC be involved at that point. Mr. Mollin explained the FCC is always involved, however there would need to be a complaint made by a user or community to have the FCC interject or perform their own inspection.

Mr. Jackson called for a recess at 9:26 p.m.; meeting reconvened at 9:33 p.m.

Mr. Paul Ricci, PP with Ricci Planning located at 177 Monmouth Avenue Atlantic Highlands, NJ 07716 approached, already having been sworn in at the prior meeting. Mr. Ricci reviewed each of the updated simulated photos taken and the strategy used for taking the images. Mr. Ricci explained the images of the proposed towers are adjusted so they would stand out more in his images; they will not be as prominent when constructed.

Mr. Sitar asked if there are any images that show the towers with the proposed color to be used. Mr. Ricci stated he did not have an image showing the exact color of the proposed towers; however, the new towers would match the coloring of the current tower that exists.

Mr. Coplin wanted to know would the proposed towers be more visible if there were no leaves on the trees. Mr. Ricci stated there are no simulations with no leaves on the trees. Mr. Lavigne acknowledged the Board's prior requests to view simulated photos that would show no leaves on the trees; they were unable to produce those images. Mr. Lavigne stated since it is already October, Mr. Ricci can go back out over the next few weeks to take images showing no leaves on the trees as the leaves will begin to come off soon.

The Board made requests of different images they would need to see in order to have different vantage points clearly shown.

Ms. Ponath approached again to provide her testimony and was sworn in by Mr. Cascio. Ms. Ponath requested the new simulated photos show Swan Road to properly depict the view point from that location.

At this time Mr. Lavigne requested a continuance of the application to allow time to produce the simulated photos being requested. Mr. Jackson stated the Application will be carried to December 20, 2023; no further notice is required.

VI. WORK SESSION:

1. NEW BUSINESS:

Mr. Cascio stated a decision regarding Mahwah Business Park was sent out by the Superior Court; additionally, Mr. Cascio explained the case briefly and decision reached by the courts. It was encouraged that the Board review the settlement agreement and more clarification will follow from Mr. Cascio. Copies of the settlement agreement were sent out to the Board via email from Ms. Entrup.

Mr. Kearney asked if the Board was being more accommodating now for Special Meeting requests; Mr. Lockwood stated he did believe DRW NX Infrastructure has enough of a hardship to be able to request a Special Meeting. Mr. Jackson explained as a result of there only being one meeting in the month of November, the Board can be more accommodating to the applicant.

VII. ADJOURNMENT:

A motion to adjourn was made by Mr. Kearney, seconded by Mr. Lockwood. All voted in favor. The meeting adjourned at 10:17 p.m.

These minutes were prepared by Michelle Sheydwasser, Board of Adjustment Recording Secretary. The minutes were provided to the Board of Adjustment for approval at the Regular Meeting to be held on October 18, 2023.