



**TOWNSHIP OF GALLOWAY
DEPARTMENT OF COMMUNITY DEVELOPMENT
PLANNING AND ZONING BOARDS**

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Pamela K. Alleyne
Planning/Zoning Board Administrator

MINUTES
PLANNING BOARD MEETING
February 4, 2010

The meeting was called to order at 7:00 PM. Ken Sooy chaired the meeting.

Present: Cox, Guercioni, Jones, Kleiner, Lucarelli, Mannis, Purdy, Sooy
and Tilton

Absent: Bruno and Sperling

Completeness:

#18-09 Howard Huettl

Prelim & Final 10 Lot Major Subdivision Complete

#19-09 Raddev, LLC 3 Lot Minor Subdivision Complete

Site Plan

#17-09 Cell-Co Partnership -Verion

Second Avenue

B. 876 L. 3

Minor Site Plan and Conditional Use

Zoning District: CH Commercial Highway

Proposed: The applicant is requesting a conditional use and minor site plan approval to add an additional cellular user to the existing tower. The existing tower was approved in 2001 by use variance before the Zoning Board of Adjustments prior to the Township adopting an ordinance regulating cellular towers. The tower currently contains antennas for Sprint/Nextel, AT&T and Cricket. The applicant proposes to add six (6) antennae arrays at a height of 90 feet and an associated equipment shelter.

Exhibits:

A-1 Map coverage without antennae

A-2 Map coverage with antennae

A-3 Aerial photo of site

Tom Darcy represents the applicant. Certification from a certified engineer verifying the structural integrity will be provided during the building permit stage. Also will provide that information to the Planning Board file.

David Stern, Radio Frequency Engineer explains the lack of existing coverage and the proposed coverage after antennae are added.

James Kyle, Planner no variances are required for the site. However some waivers were requested. The waivers were granted in previous approval. Therefore testimony is not needed as indicated by the Board Planner.

David Balma, Civil Engineer the site is located near the corner of the intersection of Second Avenue and White Horse Pike, near the newly built Country Inn and Suites. The six (6) equipment 3' x3' x6' tall cabinets will be located on a 10' x 20' slab with a 9' ice shield over the platform. There will be a natural gas powered generator which meets the noise level ordinance requirements of DEP. The site will be visited once a month by a technician. The distance between the tower and the nearest building is 128' separation.

The tower was constructed before the hotel. The applicant will replace some of the dying landscaping on Second Avenue. The applicant will provide a detail on final compliance plans identifying which plants have to be replaced.

Marco Paredes, Verizon representative

Professionals Comments:

Craig Hurlless comments on his report dated January 28, 2010 the improvements to the site are minimal with no additional issues with traffic, parking circulation grading and utilities.

Tiffany CuvIELLO comments on her report dated January 28, 2010. Landscaping was required along Second Avenue in 2006 when new antenna arrays were constructed. Some of the material has died and should be replaced

No Public Comments

Motion to approve application #17-09 Cellco- Partnership- Verizon. Minor Site Plan & Conditional Use was made Mannis by 2nd by Tilton. Those voting in favor: Cox, Guercioni, Jones, Kleiner, Lucarelli, Mannis, Purdy, Sooy and Tilton

Board Discussion:

#39-08 Antebi Associates

Jack Plackter represents the applicant

Exhibits:

A-1 10/25/07 Decision & Resolution Preliminary

A-2 12/18/08 Decision & Resolution Final

A-3 Pinelands No Call Up Letter

A-4 Building Permits Construction/ Sewer

A-5 Building Floor Plan

A-6 State of NJ Lease Approval

A-7 Estimate of Cost to date

A-8 Mayor Bassford letter of Support

A-9 Timeline of Construction

A-10 Municipal Inspections

A-11 Transcript of Planning Board meeting December 18, 2008

A-12 Professional Reports- T. CuvIELlo and Kevin Dixon

A-13 Northfield, NJ Zoning of FBI office

A-14 Elizabeth-NJ Zoning of parole Board district office

Kelly Ann Kennedy, Associate

Sean Acay, Deputy Director of the NJ Division of Parole

Jim Goodwin, Applicant

Dr. Antebi, Applicant

Start Tape # 1 count 925. End tape # 1 count 1170.

Jack Plackter the applicant made a complete presentation, what is a parole office was never an issue before this board. On December 18, 2008 it clearly stated that it was a corrections office. A floor plan was submitted that clearly stated that it was a corrections office. There are corrections offices throughout the state of New Jersey and they are always in the business zone. It has been some suggestions that this is a law enforcement facility that issue never came up before this board not raised by the board engineer, planner. There is no definition of what a law enforcement facility is in the Galloway Township ordinance. Historically these offices are located in a business zone they are like an FBI office or a prosecutor office. They are operated like an office. A law enforcement office would be like a police station open 24 hours a day they have a jail, they bring in prisoners. This facility has business hours. Yes parolees come to the office there are 750 parolees that are supervised. About 30 a day come in. That's no different from 30 visitors a day for an office. According to the floor plan that was prepared and produced at the hearing before there are interview rooms there are no jails, there are infrequently arrests. If a parolee comes in and they have outstanding warrants the parolee officer makes the arrest which is one half of 1% of the parolees who come in. They transport them to whatever law enforcement facility whether it is Atlantic County jail or the Galloway Township police office. There is no holding cell. They have a bench in one of the offices and they ask the parolee or the offender to sit down and they take him away. None of the applicants' professionals misled anyone at the December 18, 2008 meeting. The board did not ask a lot of questions. There were three pages of transcript that dealt with traffic and how much traffic the building would generate. The use was never an issue. It did not come up until October 26, 2009 and that was after the applicant got all their permits and approvals the building permit inspection file indicates state parole office. Nothing came up until recently when the applicant spent a lot of money. A lot of the neighbors have a problem with the facility now. Even if its debatable meaning it's a close call if it turns out later that it was an institutional use if then the applicant relies on that and it's unclear on good faith then it's unfair for the Municipality or Planning Board to take away the applicant ability to proceed. The applicant has spent millions of dollars they are liable on loans. They have an approval from the state commission on leasing.

The lease is not signed yet because the Department of Corrections is concerned that they may not be able to occupy the building. Finally and most importantly there is case law Farrell vs Estell Manor that says that the State Department of Corrections is not even subject to local zoning. The applicant is entitled to have the stop work order lifted. And this matter should not be reopened because they do not believe that they misled the board.

Start Tape # 1 count 1218. End tape # 1 count 1566.

Sean Acay, Assistant Director of the NJ Division of Parole. Serves the director by managing the day to day operations of the agenda. The agency has over 400 parole officers and supervisors across the state.

Supervise over 16,000 offenders across the state of New Jersey. His job is to make sure that every part of the operation runs as smoothly as possible meaning the managing the management of buildings, vehicles, and personnel.

Operation Plan: The property is to be leased to the New Jersey State Parole Board for its use as District Office #8. This office like other district offices in the state would function as an administrative center for parole supervisors, parole officers, and support staff. Parole supervisors and officers at this district would be responsible for the administration of approximately seven hundred fifty (750) parolees. Approximately twenty four (24) parole officers, six (6) parole supervisors and four (4) administrative assistants would be assigned to this office.

At least 75% of the parole officers' job duties are preformed outside the district office. Most days the office would be open weekdays 8am - 5pm. Two designated weeks per month the office would remain open until 7pm. On average approximately thirty (30) parolees would report to the property daily.

The parole officers are dressed in plain clothes. No uniforms.

Parole offenders are taken to the Atlantic County jail.

About average of three to five arrests a month.

Bulk of the work is meeting with and processing the offenders, completing paperwork. In other area the parole offices are located in office buildings they share space with other professionals such as attorneys, state office building with other agencies and doctors. No evidence of any adverse community impact in any of the communities that they are located. No evidence of increased crime in the areas where the offices are located.

Offenders who are arrested are taken into a supervisor' s office because only those offices have walls and doors and they are placed on a bench and handcuffed to the bench until the time for transport. If there are any issues willing to work with the community. If a problem occurs then they have a tipline that can be utilized.

Start Tape # 1 count 1598. End tape # 1 count 3262.

Dan Kwapinski, Engineer the exhibits are introduced and explained. The site plan was amended at the December 18, 2008 meeting to remove the retail and make the building single story. The building was reduced from a 9,600 sq ft building with two stories to 9,300 sq ft with one story for a one tenant office use. Exhibit A-5 is the architectural schematic floor plan that indicated proposed the new office for the NJ Department of Corrections that was submitted to the Planning Board at the December 18, 2008 hearing. The date on the plan is July 30, 2008. A-5 shows the layout and it shows interview rooms, work stations, small group counseling rooms, offices, secured evidence rooms, storage, kitchenette and conference room and it does not indicate any kind of holding room or jail. In his opinion in reviewing the approvals was it clear in the facts and documents that the approval was for the NJ Department of Corrections for Parole. It was clearly stated during the testimony at the Planning Board hearing. After receiving township approval the applicant started securing bonds and proceeding with other approval. He did everything to start the construction process. At the December 18, 2008 Planning Board meeting according to the transcript traffic patterns were discussed. He indicated that it was questioned by a board member that civilians would be going into the building it is his opinion using the word civilian the board member already knew that it is not the public. It was known that the tenant was a state corrections program. The use was always portrayed. Never did it come up that possibly the application should be heard at the Zoning Board because of the use not being allowed in the HC-1 zone. A law enforcement facility is generally open 24 hours a day. This site is not. It' s an office. The hours of operation are 9-5pm. Performing administrative types of work.

Start Tape # 1 count 3270. End tape # 1 count 3392.

Mike Fitzgerald questions the floor plan submitted and entered as Exhibit A-5. That floor plan was not the plan that was submitted to the Planning Board at the December 18, 2008 meeting. The plan that is in our file has a different letter and has fewer details on the floor plan. The plan submitted was DD-1 and Exhibit A-5 number is SK-1.

It' s similar but not the same. The Decision and Resolution also identifies the plan submitted as DD-1. Exhibit SK-1 was possibly submitted as part of the building permit. The plan was however prepared 7/30/08 however was not submitted as part of the Planning Board application. There is no dispute that it was clear that the Department of Corrections was leasing the building and it was Parole Offices. The impression that was given from the discussion was not use related but site plan issues regarding parking and access and driveway issues as it related to the White Horse Pike and the question that came up was if people coming and going vs. office people in which people would come to work and stay all day. There was no mention of people coming and going not saying parolees are public or not. The board would have looked at the site differently at the driveway, parking and traffic circulation if it were known that people were coming and going. One issue regarding this board' s review and whether there was a misrepresentation or mistake of facts that goes to the Site plan approval and second question is of the use and that does not necessary require that there was a misrepresentation but the use now being proposed by the applicant for that site one that complies with the zoning? The opinion from the Zoning Office is that it does not. The zoning is now in dispute and not sure it' s an issue that this board can resolve. If it' s in dispute then the Zoning Board needs to address it in as an interpretation. The record has been made tonight there are difference from letters shown previously regarding how the use was understood to be and clarification needed to be provided as to how it will be operated. The question is whether or not it is institutional or office.

Start Tape # 1 count 3481. End tape # 1 count 3576.

Tiffany CuvIELLO comments on the letter she gave Jill Gougher all premised upon an October 7, 2009 with Mrs. Gougher, the Police Chief Moran and Mr. Acay that provided additional information as to how the use would operate which lead to the determination that it was more of a law enforcement agency and not what was represented as Administrative offices to the Planning Board. They indicated that they would have would have the presence of both armed corrections officers, parolees a holding area to secure parole violators, rooms to be utilized for urine collection and analysis and an assertion that it is highly probable that arrests would occur. This information came out way after they started construction and something that they did not provide to the Planning Board or anyone in the township.

They never received or requested a Zoning permit approval when they submitted to the construction office so the details to this information did not come out until after this October 7, 2009 meeting. Subsequent to this meeting the ordinance and information provided was reviewed and indicated that it does not appear to be a permitted use in the Highway Commercial zone if indeed those activities are to occur and that it should be heard at the Zoning Board.

Start Tape # 1 count 3659. End tape # 1 count 4065.

Questions from Mike Fitzgerald:

Can you explain the status of the parole officers' are they not law enforcement officers' ? They absolutely are law enforcement officers'. So it's staffed by law enforcement officers but it is not a law enforcement facility? That is the applicant's position.

Plackter: Even if it is a law enforcement facility at the time of approval it was debatable and it turns out now somehow Galloway Township is going to define and tell us that it's a law enforcement facility almost a year after the fact and after a lot of money was spent it is not fair.

Fitzgerald: The testimony tonight of terms of designing the building there was no knowledge of whether parolees would be coming to the site or not.

Plackter: The testimony was I do not think that either Mr. Callaghan or Mr. Kwapinski on the night of the hearing knew the total operation at the site.

Kwapinski: Did not have any contact with the state when designing the building. Maybe the architect did because the floor plan was designed by him. He was given parameters by the applicant outlying where he wanted the door and the parking and a drop off area. The site design is the same as any office.

Goodwin: The state had its own project manager and they gave him certain sizes to layout certain rooms and they had to make the rooms in the sections that we had. After the preliminary plans we had to fine tune it because the state wanted all kinds of voice recorders and electronics which were not in the project. After four or five or six submissions the final plan was prepared and then submitted to the building department

for permits. The state gave them a booklet telling us where each room had to be. And that was what they worked the booklet had to fit into the capsule that we had.

Fitzgerald: At what point did you become aware of how the site would be operated in terms of parolee access.

Goodwin: He had no idea at what was going on. It did not bother him because the town knew we were coming and when the meeting was had make sure that they let them know the Department of Corrections is coming here. So we won't have to come back again if there is any problem. After the two million dollars put into the building what happens now? Who will give us the money back?

Cuviello: One thing that is clear, it's clear that it wasn't clear what was happening in December. In the transcript Callaghan stated "...removed all commercial it will be all professional." "The tenant is the State Corrections program; it will be either corrections bureau people who handle the paperwork for the corrections." That was the tone of the meeting and that is what the applicant believed to be the operation. So if that's what the applicant testimony tonight is that they believed. If there are parolee officers and parolees coming to this building 30 plus a day, there are going to be arrests possibly made, if they are going to be collecting urine samples and monitoring parolees that is not what was discussed in December and not what they represented to the board.

Fitzgerald: The understanding was the use was to be state workers doing paperwork whether it is the corrections department or whatever department is an office use vs. the type of operation described becomes institutional.

Cuviello: With all respect to where all the other parolee offices maybe located we do not know the approval process, what the ordinance said, we don't know if their ordinance has under institutional uses has law enforcement agencies. Mr. Acay said that they are licensed law enforcement officers. Mr. Kwapinski said that they are similar to a detective agency. A detective agency does not have people under the authority and regulation and control of the Department of Corrections and out on parole in order to be monitored, supervised and possibly arrested and transported to a correctional facility. A detective agency

is defined in our ordinance as a business service use. They told us that they are all professional office. That was what the board was told and is what is on their site plan what was on their application that is what is in the transcript and in the public notice. Even if the board feels that it a permitted use as a business service use if that is something that is determined or interpreted or understood I think it's a Zoning Board interpretation of whether this is a law enforcement or a business service use not a Planning board action. Under its powers the Planning Board does not have the authority to interpret what a use is. It is under the power of a Zoning Board or the courts in terms of permitted or not permitted uses. Even if the applicant believe that they are a business service use and they are a detective agency they told us professional office they told us there would be no public coming to the site, the public is perceived to be anyone coming to the site and that was clear in the traffic analysis because the whole point was how many people would be coming to the site that would not be working at the site. That was the whole context of the traffic conversation. So there is a clear difference from what was understood in December of 2008 to what was being told this evening.

Start Tape # 1 count 4065. End tape # 1 count .

The only members that were present the night of the meeting were Mr. Jones and Mr. Sooy.

However a transcript was provided and each board member not present has signed a waiver indicating that they have either read the transcript provided or have viewed the tape to the December 18, 2008 Planning Board meeting.

Board members questions:

Mr. Jones questioned the hours the parolees arrive and the length of their stay. On average 30 parolees per day, what is the maximum? The operations plan indicated 34 employees are at the site. There are 47 parking spaces available so there are open spaces for the parolees. Is that enough? Explain the arrest process?

Mr. Acay: The office would open at 8am in the morning and the parolees would arrive any time during those business hours. The length of stay on average about 15 minutes. The office will be open twice a month until 7pm. The 30 parolees is the average. One day you may have 4 and one day you may have 20. This is a field supervision operation so reporting is not really the core of how

we do supervision. Reporting is done on cases when we have a reason to have someone report to the office, there is something that we need to go over with them. They need to meet with the supervisor, there must be some reason. Supervision is done mainly in the field. 30 parolees a day does not mean that they are arriving at once. People are reporting throughout the day.

They are not going to absorb the 13 parking spaces. If they even drove there. The arrest process generally if one is made when they come in they would be escorted into a supervisor's office search them process them and sit them down while they wait to be transported to the either a residential treatment facility (technical parole violators) or in some cases they would go directly to a jail if a facility is not available. If there is a new crime that is alleged that they have committed or subject for local warrants then they would be transported to the proper police department to be processed and then they would go off to jail.

Mr. Jones states that his recollection of the meeting and verified by the transcript was the biggest concern was the traffic coming in and out and he would not have felt comfortable if he knew that in addition to the office personnel there would be additional visitors every day. It was understood that there would be just the parole officers handling their paperwork. I'm not saying that there was intentional misleading But there was certainly an omission of the true nature of the use of this building when it came before the board.

Mr. Sooy states that he does not recall hearing the word parolee mentioned that night. What was in the transcript read was what was assumed was an office for parole officers' only.

Mr. Guerioni asks if they ever work past 5pm.

Mr. Acay: The business hours for the office. Officers' flex their work schedules to accomplish field supervision. Officers' may come in early or working into the evening to see the offenders at different times at their residences or employment. The office is only open during business hours to allow offenders to report.

During the other hours the officers would be using the secured entrance signing out vehicles to go out. Twice a month the office is open late.

Ms. Tilton: Asks questions of Mr. Kwapinski concerning the design of the site. The layout plans were dated July of 2008 and the application was presented to the board December 2008 is it normal for you to design a site and not take a look at the floor plans or the architectural plans to help design the site in order to make a presentation to the board. Did you have knowledge of the floor plan prior to the December 2008 meeting? Did you come up with the assumption of what the use would happen to be? Questioned the secure area? Any people in the secure area? In your opinion this is not a law enforcement agency do you feel that it is something similar? I believe that it is misleading since you had a floor plan prior to the meeting

Mr. Kwapinski: The architect indicates to us where they want the doors and where they want the entrances and drop off to be. I do not always have the specific use. I do the site plan and site layout. As the architect found out the more specific use he did not come back to me. The owner did not have tenant under lease agreement at that time. They were trying to get the tenant. His concerns are the ingress/egress/stormwater/parking. I did have knowledge to the floor plan prior to the meeting. Does not look at the floor plan to see what the individual use would be. I looked at the door location.

Mr. Acay: No people in the secured area. Any parolees detained are put in an office on a bench.

Mr. Plackter: These are law enforcement officers' . We did not think it was clear from the Galloway ordinance that it' s a law enforcement facility. It' s not defined. If someone would have asked the Board the question how this thing is operated. If someone had asked Mr. Callaghan what operations the Department of Corrections had. If that questioned had been asked and if he did not have the answer he certainly would have said I will get you someone from the Department of Corrections then this would have all been cleared up. If we misled you when asked if there were going to be parolees here and we said no then I can understand you taking the action that I think you are going to take tonight. Under the circumstances it was not clear.

Mr. Callaghan: We did not know how the this parole board was going to operate. They had an office in Atlantic City. We did not know

whether that office was staying in Atlantic City. We did not know if they were closing that office and moving to Galloway. We did not know if there were moving parole officers' to Galloway and still maintaining Atlantic City for parolees' appointments. This was December of last year. Mr. Goodwin had meetings with them were up until they had a operations plan now they did not know they were closing Atlantic City until a month ago because of the state budget and the 10 million dollars shortfall of the state and economic crisis. When we made application we were negotiating with them for the initial lease. But I did not know how they were going to physically use the property.

Fitzgerald: It all fairness we cannot resolve that question of who knew what when. I do not believe that the board should have to. The real question is whether or not the information provided to the Board if it was full and accurate or whether there was substantive information that perhaps innocent mistake or lack of knowledge was a party to the board. Because there was a real concern regarding the driveway access and circulation and that related to who was going to be there employees that stay there all day or people coming and going. And there was a honest impression left that is related to but not identical to the question of what is the use. When the all the information was on the table as to how the building would operate the determination was made by the Zoning Office that this use was not permitted. As their engineer indicated many times projects come in which they do not know who the tenant will be and they do not know what the operation will be but its approved as a generic office. And this could have been a office for the Department of Corrections and if that fell through it could have been for some other State office or private office. As long as it was an office and as long as it was not intensive public use coming and going it would have complied with the original approval but once the information got fully developed and known which came through plans from the construction office and meetings with the police chief. It became apparent that it was not just an office but it' s institutional.

Plackter: In terms of insensitivity of use there has been no testimony of evidence of any kind that there is not going to be any more traffic that a normal business use.

Craig Hurless: The traffic should not be an issue tonight. The board should be totally focused on whether it is a permitted use or not. As to whether the board had jurisdiction with regards to the permitted use.

Board Questions concerned the traffic, when the applicant knew what and when, questioned the institutional use vs. office building; as well as the definition of a law enforcement agency and a parole office.

Mr. Goodwin and Dr. Antebi, applicants both expressed opposition to the board action. Questioned the reason as to why they were issued building permits if the Department of Corrections was not a permitted use. Contends that they have spent an enormous amount of money thus far and it is not fair.

Motion to rescind the #39-08 Amended Preliminary and Final Site Plan and variances approval was made Jones by 2nd by Cox.

Those voting in favor: Cox, Guercioni, Jones, Mannis, Purdy, Sooy and Tilton

Recused: Lucarelli and Kleiner

The Planning Board has decided that the use proposed by the applicant is an institutional use not permitted in the HC-1 Highway Commercial Zoning District and the Planning Board is without further jurisdiction unless the Zoning Board of Adjustment determines pursuant to an interpretation under N. J. S. A 40:55D-70(b) that the use is in fact permitted.

Meeting adjourned at 10:30 pm.