
**MINUTES OF SYMMES TOWNSHIP BOARD OF ZONING APPEALS
REGULAR MEETING
FEBRUARY 6, 2017**

The meeting was called to order at 7:00 p.m. Members of the Commission present were: Mr. Fowler, Ms. Harlow, Mr. Havill, Mr. Ruehlmann and Mr. Wolfe.

Also present were: Bryan Snyder, Hamilton County Zoning Inspector and Luanne Felter, Zoning Secretary.

All those that wished to provide testimony to the Board were sworn in by the Chairperson.

ELECTION OF OFFICERS

MR. RUEHLMANN made a motion to nominate Don Misrach as Chairperson for 2017.

MR. WOLFE seconded the motion and the roll call vote was as follows: Mr. Fowler – ‘aye’; Ms. Harlow – ‘aye’; Mr. Havill – ‘aye’; Mr. Ruehlmann – ‘aye’ and Mr. Wolfe – ‘aye’.

MR. WOLFE made a motion to appoint Ron Ruehlmann as Vice Chairperson for 2017.

MS. HARLOW seconded the motion and the roll call vote was as follows: Mr. Fowler – ‘aye’; Ms. Harlow – ‘aye’; Mr. Havill – ‘aye’; Mr. Ruehlmann – ‘aye’ and Mr. Wolfe – ‘aye’.

PUBLIC HEARING

MR. RUEHLMANN convened the public hearing for BZA 2017-01 for the Montgomery Community Church Telecommunication Tower at 11251 Montgomery Road.

MR. SNYDER stated that the applicant is requesting a Conditional Use to permit construction of a new telecommunication tower at Montgomery Community Church, 11251 Montgomery Road, which is Zoned “A” Residence. The proposed tower would be 150 feet in height and constructed with a three-sided panel style that would include three smaller poles with screen panels near the top connecting the three poles and shielding the proposed antennas from view. Around the base of the tower would be a 3,000 square-foot lease area that would include a 240 square-foot equipment pad with a canopy cover and other equipment for the tower. The lease area would be accessed by a gravel driveway leading back to the proposed tower location from the rear of the existing church parking lot and would be enclosed by a 6-foot chain link fence with privacy slats. A retaining wall would be constructed on the east side of the area to provide a level pad for the location. Existing mature vegetation would be preserved along all four sides of the proposed lease area.

The Zoning Resolution requires consideration of the following criteria and staff findings:

Section 385(a) states in part that the proposed use and development shall comply with the spirit and intention of the Zoning Resolution and with district purposes. The proposed telecommunication tower would be consistent with the spirit and intent of the Zoning Resolution in that such towers are permissible in single-family zoning districts, provided that they comply with the additional standards contained within the Zoning Resolution.

Section 385(b) states that the proposed use and development shall not have an adverse effect upon adjacent property, or the public health, safety, morals and general welfare. The proposed telecommunication tower would not likely have an adverse effect on the

immediately adjacent uses which include a daycare, office building, a school and the existing church development. However, the proposed tower would be visible to homes on Vicksburg Drive, Snider Road, Avant Lane and a single-family home on Montgomery Road.

Section 385(c) states that the proposed use and development should respect, to the greatest extent practicable, the natural, scenic, and historic features of significant public interest. There are no known features of significant public interest.

Section 385(d) states that the proposed use and development shall, as applicable, be consistent with objectives, policies and plans related to land use adopted by Symmes Township Trustees. The majority of the church property, including the area of the proposed telecommunication tower, is designated as Public/Semi-Public/Institutional on the adopted Symmes Township Land Use Plan. The adopted plan does not contain any reference to telecommunication towers, so the plan would not be applicable to the proposed development.

Section 393.1(a) states that a telecommunications site may be permitted in all zoning districts subject to the requirements set forth herein. Findings related to these requirements are as follows.

Section 393.1(b) states, in part, that if a telecommunications company proposes to place a telecommunications tower in an area zoned for residential use, the applicant must establish that the tower will have a minimum setback of 200 feet from the base of the tower or any guy wire anchors to the property line. The proposed telecommunication tower would be located less than 200 feet from the western and southern property line which is occupied by an existing school development. Therefore, a variance would be required to approve the tower in the proposed location.

Section 393.1(c) states that micro antennas not exceeding five feet in height may be placed on any existing conforming buildings in any zoning district. This section is not applicable to the proposed telecommunication tower.

Section 393.1(d) states that except for buildings, fences and parking areas essential to the operation of a particular telecommunications tower, all other uses accessory to the telecommunications antenna and towers including, but not limited to, business offices, maintenance depots, and materials and general vehicle storage, are prohibited from the site unless otherwise permitted in the zoning district in which the telecommunications antenna and/or tower is located. The proposed telecommunication tower would not include any of the above listed accessory uses.

Section 393.2(a) states that the telecommunications company shall demonstrate, using the latest technological evidence, why the tower must be placed in a proposed location in order to serve its necessary function in the company's grid system. The applicant has submitted two aerial maps with boundaries shown surrounding the proposed telecommunication tower site. However, neither of these aerial maps includes any title or legend and the boundaries shown are not labeled. Therefore, it is not clear if either of these maps, which show different boundaries, is supposed to identify the "allowable zone" required. Furthermore, the radio frequency report written by the radio frequency engineer demonstrates that there is a need for additional capacity for Verizon Wireless in this general area but does not indicate a specific allowable area other than to say that the telecommunication tower would offer Verizon Wireless "the best solution to relieve the existing service gap and will allow for the service antennas to be an ideal elevation to provide coverage to a larger radius with minimal obstruction from natural terrain, buildings, and trees while maintaining an appropriate distance from other towers currently containing Verizon services."

Section 393.2(b) states in part that if a telecommunications company proposes to build a tower, it is required to demonstrate that it has contacted the owners of nearby tall structures within the allowable zone, asked for permission to install the antenna on those structures and was denied for either non-economic reasons or that a clearly unreasonable economic demand was made, by the property owner, based on prevailing market values. The applicant has submitted a series of maps (Abutters Map) that identify all structures within the area surrounding the proposed tower location with building heights identified. Per the project narrative included in the application letter, there are two structures over 35 feet in height in the area that are not residences and neither location met the height needs of the project. Also, the applicant has stated in the project narrative that there are no other telecommunication sites near the proposed tower. However, maps appear to show that the nearest towers are located near the intersection of I-275 and Montgomery Road, near the intersection of I-71 and I-275, and in several locations along Fields Ertel Road.

Section 393.2(c) states that the applicant must demonstrate that all reasonable means have been undertaken to avoid any undue negative impact caused by the “clustering” of telecommunications towers within an area zoned for residential use. The applicant has stated in the project narrative that there are no other telecommunication sites near the proposed tower. Maps were submitted to demonstrate the locations of surrounding facilities and it appears that the nearest towers are located near the intersection of I-275 and Montgomery Road, near the intersection of I-71 and I-275, and in several locations along Fields Ertel Road. There do not appear to be any standalone telecommunication towers in the immediate vicinity of the proposed location. However, the maps submitted with the request are not clearly labeled and are confusing because they show more information than just the locations of surrounding towers.

Section 393.2(d) states that the Board may deny the application to construct a new telecommunications tower in an area zoned for residential use if the applicant has not made a good faith effort to mount the telecommunications antenna on existing structures. The radio frequency report submitted with the application and the project narrative both indicate that there are no other suitable existing structures on which the antenna can be mounted, though the project narrative does include errors.

Section 393.2(e) states that an applicant must demonstrate that technically suitable and feasible sites are not available in an area other than an area zoned for residential use and that the site is located in the least restrictive district that includes a technically suitable and feasible site. All areas surrounding this site are zoned for residential use since the former “E” Retail and “O” Office zoning districts were clarified/reclassified as residential districts in 2008. The only areas zoned for other than residential use remaining in Symmes Township are those that are zoned for industrial and riverfront uses. However, the “E” and “O” Residence districts and the “EE” and “OO” Planned Residence districts are certainly less restrictive than the “A” Residence districts, given the permissible uses in each district. Though the applicant has stated that the proposed location is the ideal location, there has been no evidence submitted that demonstrates that there are no feasible sites located in the less restrictive districts surrounding the site in Symmes Township. Additionally, there has been no evidence submitted that there are no feasible sites in the non-residential area of the Vintage Club development in the adjacent jurisdiction of the City of Montgomery. The project narrative simply states that many properties in both jurisdictions were reviewed and determined to not be viable from a radio frequency standpoint.

Section 393.2(f) states that the applicant shall demonstrate that the tower is the minimum height required to function satisfactorily and to accommodate the co-location requirements. The radio frequency report states that the height is the minimum necessary to provide the service necessary for the network. However, there has been no evidence submitted to support

this claim. Additionally, the applicant has proposed the three sided tower with stealth panels and a “Welcome to Symmes Township” sign with the Symmes Township logo following the required pre-application meeting with the Symmes Township Zoning Administrator.

MR. FOWLER wanted to know what purpose the sign would serve and wondered if the residents would even like it.

MR. SNYDER stated that gateway signage was discussed at the pre-application meeting and the applicant agreed to look into providing signage on the tower and what style could best accomplish this goal. The applicant submitted the proposed plans based on this meeting. However, the applicant seemed to be open to several styles of tower, including the monopole design. A variance would be required for the three-sided panel style tower.

He continued with the following:

Section 393.2(g) states that all telecommunication towers shall be fitted with anti-climbing devices as approved by the manufacturers. Furthermore, the applicant shall demonstrate that the proposed telecommunications tower and its antenna are safe and that the surrounding properties will not be negatively affected by tower failure, falling ice or other debris, electromagnetic fields or radio frequency interference. However, if the specific safety issue in question is determined to be regulated by either Federal Communications Commission (FCC) regulations or applicable building code regulations, and the operation or construction is in compliance with such regulations, then this requirement for safety shall be deemed to have been met. The proposed tower, if approved, would be required to receive a building permit and comply with all associated safety regulations at the time of construction. The applicant has indicated in the project narrative that as a condition of approval the applicant would agree to remove the last 10 feet of climbing pegs and submit a radio frequency compliance report with the building permit application.

Section 393.2 (h) states that for reasons of aesthetics and public safety, telecommunication facilities shall be effectively screened on each side. Screening shall consist of a solid masonry wall or solid fence, not less than four nor more than six feet in height, a tight screen or hardy evergreen shrubbery, or natural or existing screening not less than four feet in height. The use of razor or barbed wire is prohibited. Screening walls and fences shall be located not less than 30 feet from each property line. Spaces between any screening device and adjacent property lines shall be buffered by use of landscape plant materials including, but not limited to, grass, hardy shrubs, evergreen ground cover, etc. All screening devices and landscape materials shall be maintained in good condition. The proposed tower location would be inside of a fenced area that would be located 30 feet from all property lines and would include privacy slats in the six foot high chain link fence and existing natural screening greater than four feet in height. The proposed screening would comply with this section.

Section 393.2(i) states in part that in order to reduce the number of telecommunications antenna support structures needed in the Township in the future, the owner of an existing telecommunications tower shall not unreasonably deny a request to accommodate other uses, including other telecommunications companies, and the telecommunications antenna of local police, fire, and ambulance departments. The owner of an existing telecommunications tower may request reasonable compensation for the use of the telecommunications tower. For the purposes of encouraging co-location of cellular or wireless antenna and other uses, telecommunications towers at 150 feet in height or taller shall be designed, engineered, and constructed to support telecommunications antennas installed by three or more telecommunications service users. In addition, an applicant must demonstrate that the area acquired by lease or otherwise acquired for the use and construction of the telecommunications tower and accessory structures is sufficient in size to accommodate any

additional structures that may be required if additional users are added to the telecommunications tower. The applicant has stated that the proposed telecommunications tower would be able to provide space for Verizon Wireless and up to three additional co-locations in compliance with this section. An agreement to allow co-locations in accordance with the language above could be required as part of any approval.

Section 393.2(j) states that the telecommunications company must demonstrate to the Township that it is licensed by the FCC. The applicant has not submitted an FCC license for the use of the proposed tower.

Section 393.2(k) states that if the telecommunications site is fully automated, adequate parking shall be required for maintenance workers. The proposed telecommunication tower site plan does include a proposed gravel parking/turnaround area near the gate to the fenced equipment area. However, no gravel parking areas and access drives are permitted. Therefore, a variance to this section would be required. The applicant has not shown any specific parking spaces on the plan and has not provided the number of employees working on the largest shift.

Section 393.2(l) states in part that telecommunication towers under 200 feet in height shall be painted silver or have a galvanized finish retained or be finished with a neutral color matching its background in order to reduce visual impact and shall demonstrate that the proposed telecommunications tower is the least aesthetically intrusive facility for the neighborhood and function. Furthermore, no telecommunications tower or antenna and accessory buildings and structures shall contain any signage. As stated before, the applicant has proposed the "Welcome to Symmes Township" sign with the Symmes Township logo following the required pre-application meeting with the Symmes Township Zoning Administrator where gateway signage was discussed. Signage was not a requirement of the applicant. Technically, allowing signage on the proposed telecommunication tower would require a variance to this section. No details have been provided as to the color of the tower poles or panels except for the colors of the signage. The remainder of the structures on the site would be screened by existing vegetation and would have no impact on the architectural uniformity of the surrounding area.

Section 393.2(m) states in part that a full site plan shall be required for all proposed telecommunications sites, except telecommunications antennas to be placed on existing structures. The applicant has submitted site plans that include all of the required elements of this section.

Section 393.4(a) states that no telecommunications tower shall be permitted on any lot on which any non-conforming building or structure is located nor upon which any non-conforming use or activity is occurring without first obtaining a variance from the Symmes Township Board of Appeals. The existing church use on the property has been approved by the Board of Zoning Appeals and there are no nonconforming uses, buildings, or structures existing on the site.

Section 393.4(b) states that no telecommunications tower shall be constructed, replaced, or altered without first obtaining the applicable building permit. The proposed telecommunications tower would be subject to building permit requirements if approved.

Section 393.4(c) states that proof shall be provided by the applicant in a form satisfactory to the Board that the proposal has been approved by all agencies and governmental entities with jurisdiction, and conforms to all applicable requirements of the Ohio Department of Transportation, Federal Aviation Administration, the Federal Communications Commission or the successors to their respective functions. The applicant has submitted a Certificate of

AM Regulatory Compliance related to AM broadcast stations and a Determination of No Hazard to Air Navigation from the Federal Aviation Administration. The project narrative states that all additional regulatory documents can be provided as a condition of approval.

Section 393.4(d) states that any special Zoning Certificate issued under this section shall be revocable and may be revoked after notice and hearing if any continuing condition of the Zoning Certificate has been violated and is not remedied within 30 days of written notice from the Township Zoning Inspector. This section would apply to the proposed tower if approved.

Section 393.4(e) states that if it is determined that any provision of this Resolution is inconsistent with Section 519.211 of the Ohio Revised Code, then the Resolution shall be interpreted and applied in a manner most consistent with Section 519.211. There are no known issues of consistency between the Zoning Resolution and ORC Section 519.211 and there is no “zoning exemption” as stated in the project narrative.

MR. HAVILL wanted to know if the Board has legal authority to hear the case.

MR. SNYDER stated that the Board can continue the case to seek legal advice but suggests that they let the applicant speak first to see if he can answer some of their questions.

JESSE STYLES (2530 Superior Avenue, #303, Cleveland 44114) stated that the development process for the proposed telecommunication tower is fluid. He prefers the case be continued so he can address the concerns and provide the additional information needed.

MR. RUEHLMANN wanted to know if the applicant would be willing to meet with residents to hear their concerns.

MR. STYLES agreed.

MS. FELTER offered to send the applicant a copy of the attendance sheet so he can get in touch with the residents.

MR. RUEHLMANN suggested that the Township also provide the residents in attendance with a copy of the Staff Report.

MR. SNYDER stated that he had made the applicant aware of the concerns and deficiencies identified in the Staff Report on December 15, 2016.

MR. WOLFE made a motion to continue BZA 2017-01, Montgomery Community Church Telecommunication Tower, until March 6, 2017.

MR. HAVILL seconded the motion and the roll call vote was as follows:

Mr. Fowler – ‘aye’, Ms. Harlow – ‘aye’, Mr. Havill – ‘aye’, Mr. Ruehlmann – ‘aye’ and Mr. Wolfe – ‘aye’.

ADMINISTRATIVE MATTERS

MS. FELTER noted that minutes of the October 3, 2016, November 7, 2016 and December 5, 2016 minutes need to be approved.

MR. RUEHLMANN noted that only two people who attended the October 3, 2016 meeting are present and suggested the minutes be tabled until the next meeting. The Board agreed.

MR. WOLFE made a motion to approve the minutes of the November 7, 2016 meeting.
MR. HAVILL seconded the motion and the roll call vote was as follows:

Mr. Fowler – ‘aye’, Ms. Harlow – ‘aye’, Mr. Havill – ‘aye’, Mr. Ruehlmann – ‘aye’ and
Mr. Wolfe – ‘aye’.

MR. HAVILL made a motion to approve the minutes of the December 5, 2016 meeting.
MR. FOWLER seconded the motion and the roll call vote was as follows:

Mr. Fowler – ‘aye’, Ms. Harlow – ‘aye’, Mr. Havill – ‘aye’, Mr. Ruehlmann and
Mr. Wolfe – ‘aye’.

ADJOURNMENT

The meeting adjourned at 8:25pm.

Approved: _____
Luanne Felter, Secretary