

## **FERGUSON TOWNSHIP ZONING HEARING BOARD**

### **Regular Meeting**

**Tuesday, August 22, 2017**

**7:00 pm**

#### **I. ATTENDENCE**

The Zoning Hearing Board held its regular meeting on Tuesday, August 22, 2017 at the Ferguson Township Municipal Building. In attendance were:

##### **Board:**

Michael Twomley—Chairman  
Karen English—Vice Chair, absent  
Swamy Ananheswaran—Secretary, absent  
Michael MacNeely  
Susan Buda  
Charles Farrell—Alternate  
Marc Friedenberga—Alternate  
Irene Miller—Alternate

##### **Staff:**

Jeffery Ressler, Zoning Administrator  
Jeffery Stover, ZHB Solicitor

Other in attendance included: Marcella Bell, Recording Secretary; Ray Stolinis, Planning & Zoning Director; Justin Bloust, TowerCo 2013 LLC.; Avery Fann, TowerCo 2013 LLC.; Michael Grab, TowerCo 2013 LLC.; Joe and Lois Dionisio, Eugene H. Corl; Joe Lichty, Russian Church of Christ; Matt and Eugene Corl; Eugene H. Corl; Gary Lucas, TowerCo 2013 LLC.; Oleg Gishchenko, Russian Church of Christ; and two residents in attendance for the Russian Church of Christ variance requests.

#### **II. SWEARING IN OF THOSE THAT WISH TO TESTIFY**

Nine individuals stood to be sworn in. Mr. Twomley stated that Mr. Farrell and Mr. Friedenberga will stand in as a core voting member of the Board due to absences.

#### **III. TOWERCO 2013 LLC. – REQUEST FOR VARIANCE CONTINUED**

Mr. Ressler stated that the property that is the subject of this hearing is located at 500 Science Park Road, tax parcel number 24-004-021B-0000. The property is owned by SDR Holdings LLC. The property is located in the IRD Zoning District. The applicants proposed to install a 119-foot tall Monopole Wireless Communication Tower, located 120 feet from the rear property boundary, 200 feet from the southeast property boundary, and 450 feet from the front property line. The Zoning Ordinance in Chapter 27-209.4.A and Chapter 27-209.4(D)(3) requires the minimum setback for a tower based WCF and accompanying buildings to be a minimum of 500 feet from the nearest adjoining property line. The applicants are requesting a variance to Chapter 27-209.4.A and Chapter 27-209.4(D)(3) to reduce the minimum setback from the nearest adjacent property line from 500 feet to 1 foot for every foot of tower height. There have not been any other variance requests for this property.

Attorney Grab, representing TowerCo, introduced himself and reiterated that the applicant is a wireless telecommunication company that is proposing to construct a 119-foot monopole at 500 Science Park Road. This use is permitted in the IRD. He explained that the applicant complies with each of the criteria in the zoning ordinance that relates to a wireless telecommunication facility, aside from the 500-foot setback from all property lines. The applicant is requesting dimensional variances from the

setback requirement. The dimensional variances are as follows: a 380-foot variance from the west property line, a 50-foot variance from the east property line, and 300-foot variance from the south property line. No variance is required for the setback at the north property line. Attorney Grab stated that the hardship in this case is based upon the current configuration of the property. The property is 14.1 acres, but even if the applicant had the ability to place this proposed WCF anywhere on the property, there is nowhere on the property that the WCF could be placed to meet the setback requirements for each property line. In this case, the applicant has placed the tower at least a one-to-one foot setback from all property lines. The proposed tower is 119 feet and the closest property line is 120 feet. The applicant has also designed the tower to ensure that in the highly unlikely event that the tower collapses, it will fall 50 feet from its base. Attorney Grab presented the lease, exhibit 1, which gives the applicant the legal authority to proceed this evening. He then called his first witness, Mr. Gary Lucas, project engineer for NB+C Engineering. Mr. Lucas stated that he has been working in the WCF field for five years and has designed several hundred towers such as the one being presented tonight. The Board members recognized that Mr. Lucas is an expert in wireless communication facility site design.

Mr. Lucas referred to the zoning drawings and described the site layout and design. He explained that there is a large building on the right side of the property and utility easements on the left side of the property. There is also a 60x60 foot compound on the left rear side of the property. Mr. Lucas showed the area where the monopole is proposed to be located. He clarified that the facility itself is unmanned with no water or sewer service and there is adequate access to the proposed facility location for construction and maintenance through the parking lot. Mr. Lucas described the dimensions from the base of the tower to the property lines. There is 450 feet from the east property line to the base, 200 feet from the south property line, and 120 feet from the west property line. The north property line is 500 feet from the base and complies with the required 500-foot setback in the zoning ordinance. Mr. Lucas referred to the structural design report, exhibit 2, and clarified that the existing structures on the property prohibit the tower from being placed anywhere other than where it is being proposed. Mr. Lucas stated that due to the layout of the property, there is nowhere else to place the tower on the site without a variance. Mr. Lucas agreed that the design of the tower would ensure that if it collapses, it would fall within a 50-foot radius.

Attorney Grab called his second witness, Avery Fann, a civil engineer with a concentration in structural engineering employed by Kimley-Horn Engineering. Attorney Grab provided exhibit 3, Mr. Fann's resume. Mr. Fann has been involved with close to 1,000 structural analyses and reviews related to monopoles. The Board agreed that Mr. Fann was qualified to give testimony relating to the structural analysis of the monopole tower. Attorney Grab stated that Mr. Fann prepared a structural analysis of the proposed monopole tower based on the site and provided the report to the Board. Mr. Fann stated that he sits on the TR14 Committee that maintains and develops standards for telecommunication towers. Based on the site location, there are site specific perimeters that the applicant had to abide by based on regulations. Mr. Fann stated that in addition to standards based on the site and monopole tower, there are also standards for co-locators on the monopole. When providing a structural

analysis, one has to look at the pole itself and find the highest ration, which would account for the lowest factor of safety. Mr. Fann explained that the analysis found that the weakest point of the monopole tower is 50 feet from its base. If the monopole were to fall, the pole shaft would hinge and fall straight into itself. When it all came down, the monopole would fall within the compound. Mr. Fann stated that monopole towers are very flexible and resilient. The foundation of the monopole tower is specific to the geotechnical study done on the soil at the site. Mr. Fann reiterated that even if the monopole tower fell like a tree, it would not cross property lines, would fall within the compound area, and does not pose any danger to any building.

In response to a few questions from the Board members, Mr. Fann explained that even though the site location is unique, the monopole design is a standard design, with the exception that should it happen, the tower has been designed to ensure that it will collapse within a 50-foot radius. Regarding wind carry as the monopole falls, Mr. Fann explained that as the pole falls, it will hinge and fall straight down. The coax cables that run inside the tower will actually keep it from falling more than 50 feet away. There would not be any electrical dangers from the coax cables if the tower were to fall. Mr. Fann stated that there have been towers similar to the one being proposed that have collapsed; however, it was due to lack of maintenance and not design flaws. Mr. Fann went on to say that tower failures are few and far between, and if they do fall, it is due to lack of maintenance. Attorney Grab explained that TowerCo will be responsible for the maintenance of this monopole tower and per the ordinance, will have to send periodic reports to Ferguson Township. Since this is TowerCo's source of revenue, they will absolutely maintain the monopole and the co-locators would also perform their own maintenance.

A motion was made by Ms. Buda and seconded by Mr. MacNeely to grant the variance to Chapter 27-209.4.A and Chapter 27-209.4(D)(3) to reduce the minimum setback from the nearest adjacent property line from 500 feet to 1 foot for every foot of tower height. The motion carried unanimously.

#### **IV. RUSSIAN CHURCH OF CHRIST – REQUEST FOR A VARIANCE**

Mr. Ressler stated that the property that is the subject of this hearing is located at 3645 West College Avenue, tax parcel 24-004-078-0000. The property is owned by the Russian Church of Christ and is located in the RA district. The applicants have constructed a volleyball court with lights and fencing in a Zone A mapped flood zone and riparian buffer without zoning approval. The applicants are requesting a variance to the Floodplain conservation requirements of the Zoning Ordinance Chapter 27-801.C, to permit the volleyball court, light poles, and fencing in the floodplain. Chapter 27-801.C prohibits all new construction in a floodplain. The applicants are requesting a variance to Chapter 27-213.3 Permitted Uses, to permit the volleyball court, lampposts, and fencing in the riparian buffer yard. A volleyball court, light poles, and fencing are not permitted uses in the riparian buffer. The applicants have constructed a gravel roadway across the Zone A mapped flood zone without zoning approval. The applicants are requesting a variance to Chapter 24-801.C to permit the gravel driveway across the floodplain. The applicants have constructed a community garden on the property without zoning approval. The Zoning Ordinance Chapter 27-



204.MM does not permit a community garden in the RA zoning district. The applicants are requesting a variance to be permitted to keep the community garden on the site. There have been two other variance requests for the property. Both variance requests that were granted were for relief from the buffer yard standards. Mr. Ressler referred to a memo from Mr. Scott Brown, stormwater management consultant for Ferguson Township.

Mr. Joe Lichty, engineer for the Russian Church of Christ, introduced himself and gave testimony regarding the community garden, the volleyball court and light poles, and the gravel road. He explained that since there is not access to the property in question aside from West College Avenue, a gravel road was constructed so members of the church could travel to the community garden more efficiently. Mr. Lichty stated that the hardship for the Russian Church of Christ lies on the fact that the owners were unaware they could not have a community garden on the property. He explained that a community garden is an agricultural use, but it's not allowed in the RA zone. Mr. Lichty referred to Mr. Brown's memo and stated that he can provide an analysis demonstrating that the access roadway will not create accelerated erosion in the drainage way downstream of the crossing. Mr. Lichty explained that if the Board denies the variance for the gravel road, he will get the necessary permits or waivers from the Department of Environmental Protection (DEP) regarding the Chapter 105 requirements. Mr. Lichty stated that he will submit the required permitting with the plan as well as design calculations for the erosion calculations downstream.

In response to a question from Mr. MacNeely, Mr. Lichty stated that he can provide an elevation map of the property that was submitted with the original land development plan.

Mr. Pribulka gave testimony on behalf of the Board of Supervisors. The Board is in opposition to two of the three requested variances applied for by the Russian Church of Christ. The Board of Supervisors took a position of neutrality for the variance sought from Chapter 27, section 301 RA district, with regard to the community garden present at the site. Both variances opposed by the Board relate to Chapter 27, Section 801, Floodplain Conservation. The Board's position of opposition to these variances is largely due to the fact that the facilities from which relief is requested – the unpaved roadway and sand volleyball court – were constructed in violation of the Township's ordinance prior to variances being requested.

In addition, as noted in the analysis provided by Mr. Brown, the applicant should be required to demonstrate that the roadway will not accelerate downstream erosion in the drainage way. Part of the intent of the floodplain conservation ordinance is to prohibit certain uses and structures unless it can be demonstrated they do not present the hazard of pollution, erosion, and sedimentation of floodplains and watercourses. Since this analysis has not been completed by the applicant, the Board of Supervisors opposes this variance.

In response to a few questions from the Board members regarding the community garden, Mr. Lichty explained that the members of the church use the produce from the garden for their own use, but they also use it for congregation meals. Mr. Gishchenko

went on to explain that most of the members of their church live in apartments, so the church allows the members to use the land to grow the garden. The members all share the produce and use it in celebrations. Mr. Gishchenko stated that members of the church do not pay a rental fee for the garden. Mr. Gishchenko explained to be become a member of the church, one is baptized and essentially become part owners of the church. He clarified that the garden is not open to the public for use.

There was discussion among Board members regarding the definition of community garden and whether this community garden falls under the Zoning Ordinance definition.

A motion was made by Mr. MacNeely and seconded by Ms. Miller to grant the variance to Chapter 27-204.MM to allow a community garden in the RA zoning district. The motion failed 2-3.

Ms. Buda encouraged the applicant to apply for a text amendment to allow community gardens in the RA district.

After some discussion, Mr. Friedenberg made a motion and Ms. Miller seconded to reopen the vote on the variance to Chapter 27-204.MM relating to community gardens.

A motion was made by Mr. MacNeely and seconded by Ms. Buda to grant the variance to Chapter 27-204.MM to allow a community garden in the RA zoning district. The motion carried 3-2.

After some discussion among the members regarding the remaining two variances, there was consensus that the applicant should provide an analysis demonstrating that the access roadway will not create accelerated erosion in the drainage way downstream of the crossing.

A motion was made by Ms. Miller and seconded by Ms. Buda to table the two remaining variance requests by the Russian Church of Christ until the engineer can provide more evidence. The motion carried unanimously.

## **V. EUGENE H. CORL – REQUEST FOR A VARIANCE**

Mr. Ressler stated that the property that is the subject of this hearing is located at 3745 West College Avenue, tax parcel 24-004-78A-0001. The property is owned by Eugene Corl and is located in the RA zoning district. The property is a non-conforming farm tract. The applicant is proposing to construct a 40x80 farm implement shed and the required setback for the property is 100 feet. The proposed shed would be approximately 47 feet from the side property boundary and would be in line with existing house and storage building. The required side yard setback is 100 feet. The applicant is requesting a variance to the setback requirements of Chapter 27-301, table 301 to locate the implement shed as shown on the plans. There is also an area of Zone A floodplain along the rear property boundary. A zone A floodplain shows the approximate location and boundaries and does not show the elevations of the floodplain. The Zoning Ordinance Chapter 27-801 permits the Township to require a detailed study to be performed by the applicant to determine elevation of the

floodplain. The applicant is requesting a variance to not be required to determine the elevation of the floodplain. Chapter 801.1.I of the Zoning Ordinance requires that a use buffer of 50 feet be maintained from the permitted use to the edge of the floodplain. The applicants are requesting a variance to Chapter 801.1.I. There has been one other variance request that was granted in September 1994.

Mr. Matt Corl stated that the size of the implementation storage building would be most practical to store the big farm equipment in. He explained that the equipment that will be stored in the shed is already sitting on the area that it's being proposed. Mr. Corl stated that the implementation storage building would help clean up the property. The corner of the new shed will almost meet the other shed on the property, so there would be no further encroaching into the setback than there already is.

In response to a question from Ms. Buda regarding the orientation of the proposed building, Mr. Corl stated that they would not be able to bring the equipment into the storage building if it was turned, the building would be in the floodplain, and it would be closer to the property line. The equipment is 45 feet long.

Mr. and Mrs. Dionisio explained that they are neighbors to Matt and Gene Corl and are in support of their variance request. They stated that there is a lot of commercial activity happening around their property, so they would support the Corls to maintain agriculture.

In response to a question from Mr. MacNeely, Attorney Stover stated that the applicants are not asking for relief from building in a floodplain—they are asking for relief from having to establish the exact location of the floodplain elevations due to the 20-foot drop on the property.

A motion was made by Mr. MacNeely and seconded by Ms. Miller to grant the variance requests from Chapter 27-301, table 301 and Chapter 801.1.I. The motion carried unanimously.

**VI. APPROVAL OF THE MEETING MINUTES FROM THE JUNE 27, 2017 REGULAR MEETING.**

Ms. Buda provided a few grammatical corrections for the June Zoning Hearing Board meeting minutes.

A motion was made by Mr. Twomley and seconded by Ms. Miller to approve the corrected June 27, 2017 Zoning Hearing Board meeting minutes. The motion carried unanimously.

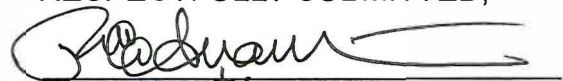
**VII. ADJOURNMENT**

Mr. Stolas stated that at the Zoning Hearing Board meeting in September, there will be a training on ballistics defense shields 15 minutes prior to the 7:00 meeting. He explained that a police officer will be present to go through the procedure. Mr. Stolas also stated that at the next meeting, staff will review the policy on emails for boards and commissions. The Zoning Hearing Board members will be asked to sign an acknowledgement form after the policy is reviewed.

Mr. Ressler stated that in October he and Mr. Stolas will be attending a conference that falls on the fourth week of the month. Also during November and December, the Zoning Hearing Board meetings usually change due to the holidays. He's asking Board members to look at all three months for alternate meeting dates, and there will be a more in-depth discussion at the September meeting.

With no further business to come before the Zoning Hearing Board the August 22, 2017 meeting adjourned at 9:01 p.m.

RESPECTFULLY SUBMITTED,



Swamy Anantheswaran,  
Secretary For the Zoning Hearing  
Board

Date approved by the Board: October 17, 2017

