

CITY OF BURTON
REGULAR ZONING BOARD OF APPEALS MEETING MINUTES
JULY 18, 2013, 5:00 P.M., COUNCIL CHAMBERS
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Chairman Steve Welch called the Meeting to order at 5:00 p.m.

MEMBERS PRESENT: Walls, Weatherford, Parker, Olsen, Parker, Welch and Haskins.

MEMBERS ABSENT: Hynes.

OTHERS PRESENT: A. Abbey, Deputy Planning Official and L. Young, Clerk's Office.

Walls moved and Mr. Parker seconded to approve the Regular ZBA Meeting minutes of May 16, 2013 at 5:00 p.m. Motion carried 7-0.

NEW APPLICATION:

1. ZBA #13-14
Inc./

BY: American Towers LLC. f/k/a American Tower,
New Cingular Wireless PCS, LLC.
d/b/a AT&T Mobility.
10059 Bergin Rd.
Howell, MI. 48843

RE: Fenton Rd.
Parcel #59-30-300-001, RM Zoned.

FOR: To construct a 110 ft. stealth monopole
tower in an RM district. (5 votes required)

Wallace Haley, 10059 Bergin, said he is here tonight representing American Tower and AT&T. He introduced Greg Mercier from American Tower in Boston who came in tonight for this meeting. Obviously you have a large submittal in front of you and he doesn't want to go through it line item by line item. First of all, I am intimately familiar with this site because our office did the zoning work for AT&T for this site. We have been leasing and zoning information for all the wireless carriers except for Verizon for going on 20 years so I have a pretty good history and even history in the City of Burton years ago where I worked with Mr. Austin and Mayor Smiley to place a tower on Municipal property. We had discussed it with a private landlord, met with the folks and worked with them so I am very familiar with the fact that the City of Burton prefers that if we do towers in the area that you try to find a Municipal piece of property. I was aware of that even back when we were dealing with AT&T for this site so this is why this unfolded the way it did. A little bit of background on the sight is T-Mobile actually started this at that point in time before this tower was built and had worked with the South Flint Plaza LLC. folks and worked with the City of Flint and to place it on the parcel that we're here tonight to discuss. It was surveyed at that point in time. The surveyor said the City of Flint and T-Mobile went off to the City of Flint and got their Special Land Use for the sight and then turned around and decided that financially they could not build the site at that point. AT&T who we were representing at the time had the similar need in this area so we stepped in and entered into a lease with South Flint Plaza on behalf of AT&T and took it back into Flint for zoning. Because it had already received a Special Land Use permit we didn't have to go on behalf of AT&T to get that Special Land Use because it had already been granted and we took our site plans back in and carrying the

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same surveyor which was evidently an error as to the actual where that parcel lies and got that approved. So the reality of it is we got with the City of Flint, got it approved, went to their building permit processor to get that tower approved and evidently at that point in time not one single person in that chain discovered the surveyor was incorrect and that surveyor was in fact now in the City of Burton. That is historically how we got here.

Mr. Welch asked if they paid the surveyor.

Mr. Haley said he believed the surveyor got paid. I think Greg was the one who found out that at some point in time that parcel, independent of the rest of the South Flint Plaza, had been annexed into the City of Burton. Somehow the paper work didn't follow and flow with the surveyor. We are in a unique situation where we are applying for this tower as if it is brand new however the reality of it is we all know this tower exists. Normally in a meeting like this I'd be showing a photo simulation of our site so tonight I brought forth a very beautiful photo simulation that actually looks very much like the real thing. Beyond that, the submittal address is very much the various different points and why this variance should be granted. There is one additional point he thinks needs to be brought out relative to those reasons. We know Verizon was approved for its site and will be building its tower on that site. One of the justifications for allowing this tower to be on this site also is the fact that given the current state of the market neither Verizon's tower nor American Tower can accommodate all of those carriers for colocation on a single tower on this unipole style tower, the stealth tower that is being built here. In reality one of the additional reasons we should look at and evaluate it for a variance is it would be better to have the two towers on the same parcel and there is no reason the full capacity of the industry as it exists today could not be handled by both of those towers so it would be very unlikely that someone else in that point in time would come to you for a tower down the street or even remotely in that area so that's another point I did want to make tonight.

AUDIENCE PARTICIPATION: None.

Mrs. Abbey said as you know the tower has existed for 2 years and since we didn't know about it that goes to show that no one has ever complained about it at least to the City of Burton. I spoke with the Building Inspector at the City of Flint when this all came about and he also said he has not received any complaints to their department about the tower or anything about it so given those items, not the fact that it just exists but the fact that it exists and no one has ever complained about it we would recommend approval on it.

Mr. Welch said for the record at the main meeting there were adjoining property owners that did complain. The only complaint was that all the security lights were disconnected and lines were cut so they don't have any security lights back there anymore and what people are doing is jumping the fence and hanging out back there because all the security lights are gone. They were against the Verizon because of what happens back there and that wasn't Verizon's fault at all but the construction people who put that tower up that cut all the power lines.

BOARD DISCUSSION:

Mr. Haley said we can address the security lights with the landlord. He asked that on the condition of the motion that if it was truly our fault that we will work to get that as a legitimate

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condition but if it is not our fault and the landlord has made his own individual decision relative to that then he doesn't have a lot of sway in that.

Mr. Walls asked if they ever light their own territory or don't you normally light it up?

Mr. Haley said most places don't want us to. There are often times they put a light above the shelter in the doorway for maintenance people to come in and that is usually on a switch because most people usually complain they don't want a bright light. This seems to be a greater issue on security lighting on the back of the mall.

Mr. Walls said it's the mall people that would probably have to push it to come back on. I agree with you and understand where you are coming from, I would hate to say that it can't be finished because the gentleman doesn't want to put any lights on but I guess what we need from you is a good faith effort to put the lights back on.

Mr. Haley said I don't mess with anybody. If we say we are going to look at it then we are going to look at it and the reality sounds like if somebody cut a wire while doing construction then someone should have complained and said that needed to be fixed.

Mr. Welch said Mr. Hatch was told the lines were cut by the construction crew.

Mr. Haley said the only comment he would make is that, not so much for the condition for a variance because I don't know if that is a legitimate condition for a variance but a Special Land Use permit and the kinds of tests we have to go through probably won't be forgotten and it is probably a legitimate Special Land Use that the lighting must be provided for and that could include the back of the mall.

Mr. Welch said I am assuming these people got the same notification and they are not here today.

Mr. Haley said he will use the representative for American Tower and will work together to look into that and determine why those lights are no longer on.

Mr. Parker appreciated Mr. Walls not wanting to include the stipulation of security lights being on but at the same time when we had this last meeting for Verizon to put up a tower those 2 gentlemen also went to the City of Flint meeting and they tried to have somebody hear what they wanted to say about the vandalism occurring in their neighborhood because the lights around there were disconnected for some reason by American Tower so I guess if we don't address it here, when does it get addressed.

Mr. Welch said at the Planning Meeting.

Mr. Parker said he was under the understanding that Planning, as long as they meet the requirements by Planning then there is no redress from Planning. The only way you can get

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redress is from this Body because this Body is the one that can pretty much put any restrictions on an application that they want to. If they go to Planning and they meet all the requirements of the Ordinance by Planning then it has to be approved and I don't know about the City Council. As long as he has sat on this Board everyone has told me this is the Body that has more legal authority than the other 2 combined and so my question is, these 2 gentlemen were here, Tom Heider and Gary Hatch who both live on Mandeville and both stated that before this tower was put up they had some lights back there and after the tower was put up they went to the mall and other people and couldn't get anybody to listen to what they had to say. He thinks this is the Board that needs to address that. I appreciate the fact that this gentleman says he's going to do everything he can to take care of it but we still have these 2 gentlemen that were here and if they live on Mandeville then the rest of those residents on Mandeville are probably still having problems with people in their backyards if the security lighting is not there anymore and I still feel this Board is the one to address that.

Mr. Welch said the residents said there are vagrants hanging out because it's dark back there and people wander through the yards.

Mr. Parker said when Verizon was here to apply for their permit these gentlemen said this happened and we realize you have nothing to do with it and Verizon said they would have a meeting with the mall and would hook them back up. Maybe they did that and this has been taken care of because those gentlemen aren't here.

Mr. Haley said Mr. Mercier, who is the client bound by the conditions doesn't have a problem with working on the lights. The only condition he would ask is that the condition be such that if it was in fact done at the original construction and a bi-product of the tower. Otherwise he's a little hand tied to make the landlord totally capitulate that security light. I don't know if the lights are back there or if vandals have torn them off so if it can be conditioned upon if things were torn down. He has no problem with that. He is worried about if it is something totally out of our control and he doesn't have a condition for a variance that he cannot fulfill.

Mr. Welch asked Mrs. Abbey if there has been any feedback from the men that were here or Verizon.

Mrs. Abbey said no but she has only been back for a few weeks so they probably haven't even gotten to that point.

Mr. Welch said Verizon shook those men's hands saying they would take care of it and they were happy.

Mrs. Abbey said you could say if it's not already taken care of this would be a condition of their variance. You could make them put security lights on their portion of their property instead of telling them to fix the lights on another parcel and that would get you the same result you are looking to get.

Mr. Walls asked if we put it in the motion to provide security lights can it be that there are lights but you don't light up the whole neighborhood.

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Mr. Haley said the issue becomes what kind of lighting, if it's a 10 ft. light pole with a directed security light toward the parking lot. It's just to provide some lighting behind the mall. He can make it better in the area we are at. We can figure out a way to do this and that can be part of site plan approval in front of the City Council and at the Planning Meeting. As long as that condition carries forward that's part of our obligation for a site plan.

Mr. Parker said what I am trying to accomplish is, we had an entity other than this company come before us to apply for a variance and they got grief over this tower company building their tower and it didn't really have anything to do with their application but these 2 guys were saying this has changed and we can't get any address of what has happened to us. From that stand point, I understand he doesn't want restrictions to where he has to put up new lights back there because these guys said we used to have lights and now we don't but I don't know that any of us sitting on this Board really know what the real answer to this is. I know they talked to us at that meeting and there was some notes taken. If I lived on Mandeville I would want to have a conversation with him. I'm not so sure that's not what needs to happen, is for this entity to have a conversation with these men and ask what was there before and what can we do now.

Mr. Welch said there were lights on the back of the building and the lines were cut. Now there is no lighting and there are vagrants hanging out at the back of the building at night and walking through their yard. That's the problem. I understand their situation because if it's not cut and the landlord just doesn't want to put lights up then they have no control over that.

Mr. Parker said Mr. Haley said they don't like to put lighting on these because most people that had a cell tower prefer that we not light it because that way it's distracting from a neighborhood to have lights in it. A lot of parking lots have had to change their lighting so it's not directly lighting on the lot and not the neighborhood on the back of the lot. I don't want him to have to put up lights because then the neighbors are going to complain that how come this guy put these lights up. He doesn't know what the answer is but we have constituents on Mandeville that had a problem with losing light and now they have vagrancy and that needs to be addressed.

Mr. Walls asked were not these citizens notified of this. If they are notified and don't show up, they would have had a chance to discuss this.

Mrs. Abbey said this property and equipment is more than 110 ft. away from these residential homes so by them putting security lights on top of the building it is not going to shine into the residential homes. It's only going to provide for additional lighting in that back area to keep people from hanging out around a tower. I don't think by having them be required to put some lighting on their equipment that it's going to affect the residential homes other than it's going to keep people out from behind the plaza.

Mr. Haskins said it is going to depend on how they hang it and what kind of the lights they put up. Lights can go a lot further than 110 ft.

Mrs. Abbey said their intention is only to light the back of the parking lot.

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Mr. Haley said there is a lot next to their compound already in the parking lot so maybe adding another light on the other side and broadcasting it down the back of the building might get you more.

Mr. Parker said in the pictures it shows one and maybe that's the one that the light got cut. It's unfortunate those gentlemen aren't here but they went to the City of Flint and Burton and maybe they just gave up.

Mr. Welch said they were happy when they left.

Mr. Haley said you can direct lighting anywhere. That's just a technology issue for the lighting. As we move through this process they will be going back to the landlord, which is also Verizon's landlord.

Mr. Welch said if you communicate with Verizon they may have already addressed that because they were going to go back to the landlord and take care of it.

Mr. Haley said he would be calling Doug Webber at Verizon to ask if and when they figured out a way of addressing that and was it already handled. If you want to condition us on providing lighting in our compound that can at least clear up a blind spot in that area we don't have a problem with that. We'll gladly do that and hopefully appease those gentlemen and in the meantime we'll try to find out what is really going on with what happened.

Mr. Haskins would go as far as to say instead of some I would go sufficient to appease them.

Mr. Walls said he would accept sufficient lighting.

Mr. Parker noticed in the application that Item #7 gives us licensing requirements. It looks like there are 5 different licenses on that tower. He asked is it just a condition of the FCC that for each set of antennas on that tower you have to have a license for each set.

Mr. Haley responded I don't believe that is correct. Basically there are different technology types such as PCS Cingular, LTE, so New Cingular Wireless is just an entity of AT&T so different panels within the array have different licenses. They each have different frequencies.

Mr. Welch said on the application it said the dimensional setback requirements but that does not apply here.

Mr. Parker asked is this just a use variance to put this tower up in an R-M area, correct?

Mr. Haskins asked if we deny it are they going to take it down or just pay a fine?

BOARD RECOMMENDATIONS AND/OR ACTION:

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Walls moved and Weatherford seconded to approve ZBA #13-14 with the stipulation that they will provide sufficient security lighting provided on the vicinity of the property.
Motion carried 7-0.

AUDIENCE PARTICIPATION: None.

BOARD DISCUSSION:

Mr. Welch said it has been brought to his attention that there has been call in's for filling in for the Board members. What happens is the member calls and then changes their mind that they can make it now after the person has already made arrangements to fill in. So out of courtesy if you do call and cannot make a meeting and they call one of the alternates to come in and they have made arrangements to attend that meeting that if the full time ZBA member changes their mind it is up to the option of the alternate if they want to give it up or not but once they call the alternate they have made arrangements that they have to attend that meeting. There have been a few times this has happened and it was brought to his attention.

Mr. Walls agreed because basically you told him to leave the house to come here for the meeting and I don't think the alternate should have to sit here for every meeting thinking maybe I might get to sit on it but if he gets called and shows up, he'd be the one that should get the say.

Mr. Welch said the point that was made to me was even if he gets called and makes arrangements and the day before they call him back and say they don't need you now, well he's already been called.

Mr. Haskins asked how this can be so difficult. If a Board Member can't make it then they can't make it. I understand the Board Member saying they can't make it but the last minute saying they can make it. There have been many meetings I can't make and I call and I don't switch my mind. I know for a fact I can't make it.

Mr. Parker didn't know there was a problem with that.

The next regularly scheduled meeting of the Zoning Board of Appeals will be held on **Thursday, August 1, 2013 at 5:00 p.m.**

Meeting adjourned at 5:43 p.m.

ms