

Manor Township Zoning Hearing Board Minutes

Wednesday, February 7, 2024

Time: 7:00 p.m.

Chairman, Bradley Singer called the Manor Township Zoning Hearing Board meeting to order in the Manor Township Municipal Building located at 950 West Fairway Drive, Lancaster, PA 17603 on February 7, 2024 at 7:00 p.m. Chairman Singer led those in attendance in the Pledge of Allegiance and introduced the Board.

Members Present: Bradley Singer, Dennis Funk, and Scott Ream

Staff Present: Nate Taggart and Peg Hess

Township Solicitor: Susan P Peipher

Visitors: See attached Sign-In Sheet

Re-Organization

Appointment to the Zoning Hearing Board by the Township Supervisors – Dennis Funk was appointed for a three-year term, beginning January 2, 2024 and expiring December 31, 2026.

Election of Officers

Chairman- Dennis Funk made a motion to appoint Brad Singer as Chairman and Jeff Klugh as Secretary of the Zoning Hearing Board for 2024. Scott Ream seconded, and the motion carried unanimously.

Vice Chairman – Scott Ream made a motion to appoint Dennis Funk as Vice Chairman of the Zoning Hearing Board for 2024. Brad Singer seconded, and the motion carried unanimously.

Chairman Singer commented that Scott Ream will continue in capacity of Alternate to the Board for 2024.

Set Meeting Dates

The Zoning Hearing Board will meet the first Wednesday of each month at 7:00 p.m. If there are any changes to the schedule, the meetings will be dually advertised according to the Municipalities Planning Code.

Dennis Funk made a motion to approve meeting minute dates. Scott Ream seconded, and the motion carried unanimously.

Selection of the 2024 Zoning Hearing Board Solicitor

Susan Peipher is being appointed as Solicitor for the Zoning Hearing Board for 2024. Ms. Peipher is a firm partner and practicing Attorney at the Law Firm of Blakinger Thomas PC. She worked wonderfully with the Board last year and we are thrilled about her continuing in such role.

Dennis Funk made a motion to appoint Susan Peipher Solicitor. Scott Ream seconded, and the motion carried unanimously.

Previous Month Minutes – Dennis Funk made a motion to approve the November 1, 2023 meeting minutes as they have been submitted. Scott Ream seconded, and the motion carried unanimously.

New Business

Case 1-2024

Applicant: Cellco Partnership d/b/a Verizon Wireless, 512 Township Line Road, Building 2, Floor 3, Blue Bell, PA 19422. Landowner: Ricky B. and Donna J. Vogel, 425 Shultz Rd, Washington Boro, PA 17582. The applicant is requesting variances to Sections 425-26(B), 425-61(B)(4), 425-69(B), 425-26(D), and 425-37 of the Manor Township Zoning Ordinance. The applicant is proposing to construct a 103' monopole having an overall height of 106' factoring in the height of a 3' lightning rod and associated improvements and equipment including a 10' x 26' concrete pad with canopy, equipment cabinets, standby generator, utility frame, meter bank, cable ice bridge and an 8' chain link fence in the Village (V) Zoning District. The applicant is requesting a tower setback of 43' (east) and 46' (north) (minimum required: 106') and a total lot area of 1.91 acres (minimum required 2 acres). The property in question is located at 425 Shultz Rd, Washington Boro, PA 17582, Tax ID 410-36318-0-0000 and is in the Village (V) Zone.

Solicitor Peipher read the procedural instructions on how cases before the board will be heard and decided.

Nate Taggart confirmed with Solicitor Peipher that this hearing was properly advertised in accordance with the MPC, properly posted and neighboring property owners notified of this hearing.

Attorney Richard Williams, representing Cellco Partnership d/b/a Verizon Wireless had two witnesses were sworn in; Nick Berte, a Civil Engineer from the firm that prepared the plans and Joe Ruiz, a Radio Frequency Design Engineer.

Party Status was requested by Attorney Julie Miller, who is representing the neighboring property owners of the subject property. James Ortman owns the property at 421 Shultz Road, Ken and Carol Ortman who live at 1844 Water Street, and Brenda Ortman who lives at 421 Front Street. Other neighbors, Robert and Jody Croft, 442 Shultz Road, not represented but did gain party status.

Weston Shertzer, 500 Shultz Road, who owns property directly across the street of the subject property. Attorney Williams stated for the record that Mr. Shertzer was not listed as a neighbor adjacent whereas they did not notify him previously per the Ordinance requirements. Mr. Shertzer also gained party status.

Attorney Williams explained the objective of Verizon Wireless requesting for variances associated with the construction of a new cell tower in Washington Boro. Verizon is proposing to construct a 103' monopole which would have a total height of 106' factoring in the height of

a 3' lightning rod. In addition to the tower, Verizon Wireless would install certain ground equipment such as a pad with canopy, some equipment cabinets, a generator, and a fence around the proposed facility. Communication facilities are not permitted within the (V) Village Zoning district. That is one variance being requested. The Ordinance requires that communication facilities be setback the distance equal to the height of the tower from adjacent property lines. The proposed tower does not satisfy the requirement to the east or northern property lines. Which is the second variance request. The Ordinance requirement of a property having two principal uses is 2 acres. This property is 1.91 acres, hence requiring a variance.

Attorney Williams handed out booklets to the Board for ease of explanation of the project. Nick Berte, Civil Engineer with Colliers Engineering and Design of New Jersey was called. He has been designing cell towers since 2000 and licensed in the Commonwealth of Pennsylvania. Mr. Berte confirmed the exhibits.

Exhibit #1 – The application submitted by Verizon Wireless.

Exhibit #2 – Zoning drawings of the subject property. Full size plans were presented on the easel.

The location of the subject property is between Shultz Road and Water Street. The Zoning of this property is (V)village. The current conditions of the property include a dwelling, trees, property slopes towards the river and some flat areas of grass. Uses of the adjacent parcels are residential, agricultural and grass slopes towards the river. Mr. Berte explained Exhibit #2 as Verizon Wireless creating an access road off an existing gravel road to extend up to a created 50' x 50' Leased level area. A fence compound would be created surrounded by trees. Inside fence will be a manifold, a 10' x 26' concrete pad with a generator and cabinets covered by a canopy.

The height of the cell tower will be 106' including the 3' lightning rod.

The exterior of the tower will be galvanized steel painted brown with no guide wires. The unit will be structurally adequate to handle additional carriers in the future. Access to the facility will be off the existing gravel road off Shultz Road with an extension of this gravel area. This access drive will be created following Manor Township guidelines. Maintenance vehicles will be able to maneuver around this property. There will be no increased traffic in this area as the only traffic would be the twice-a-month visit by a technician in a pick-up truck. There will be two parking spaces created on site.

The leased area will be 2500 sq ft, a 50' x 50' area. The base of the tower to the front property line is 43' to the monopole, 22' to the equipment. The north direction will be 46' to the monopole and 54' to the equipment. The west will be 115' to the monopole, 116' to the equipment. To the south the dimensions will be 247' to the monopole and 234' to the equipment. The Township Zoning Ordinance has a setback requirement of 106'. A variance has been requested for this. Verizon would like to have facility as high as possible which limits where it can be set based upon existing conditions. The setback distances are adequate for this facility. Debris or snow should not impact adjacent properties.

Exhibit #11 – Construction plans of proposed facility were presented. The facility will be built following existing local codes as well as following wireless tower standards for construction. An equipment platform will be a 10' x 26' concrete pad. On this pad will be a generator (for emergency power), and three proposed cabinets(refrigerator size). The facility will be unmanned. No sewer or water will be on site. The generator is only utilized in cases of emergency when power is lost to power the equipment and provide cell coverage. It will cycle once a month to test and will be done during normal working hours for approximately ten minutes. The noise from such will be less than 60 decibels the same as a truck idle. Exhibit #3 are the noise specs for the generator usage. The only lighting at this facility will be by switch for emergency usage and no lights will be on the tower. The facility will have a locked 8' fence surrounded by evergreen trees.

Exhibit #12 – A photo simulation analysis of the proposed facility was presented which shows a tower on the proposed property in regard to the neighboring properties. Photos were taken from all four elevations which were described. The facility will not create any noise or odor to disturb the neighboring properties. No office will be built at this location.

Attorney Williams finished with questions for Mr. Berte.

Attorney Julie Miller questioned Mr. Berte if the dwelling that was on the proposed property was occupied or what else the property was being used for currently. The dwelling looks unoccupied and there seemed to be some pipe storage. The pole on the property will only be used by Verizon Wireless currently but it is overdesigned to hold additional carriers if future needs arise. Attorney Miller inquired if Mr. Berte was aware if the Vogels owned other property in this vicinity, he was not aware. The elevation to the east of the proposed property is of a higher elevation. The proposed pole is being constructed on the northeast side of parcel. The Vogels reside on an adjoining parcel but to the southwest of this proposed parcel. Mr. Berte was questioned as to his ability to correctly describe Exhibit #11 since he himself did not personally prepare. He was also asked about Exhibit #3, airborne noise analysis, prepared by Onsite Energy, and the noise created when the generator tests once a month. Inquiry of Exhibit #12 photographs were discussed and the visual from the tower to the adjacent property owners. No photographs were taken from the adjacent properties looking at the proposed tower. The engineers do not have permission to be on other properties when preparing exhibits, which is why no pictures from other properties were taken. Attorney Miller asked if anyone has seen the existing spring house structure on the proposed property. No, it was not seen.

Mr. Croft inquired if any groundwater testing has been done yet. There has not as this will be addressed in the stormwater management design. Mr. Croft inquired about the fuel supply for the generator which will be fueled by a double-lined tank with an alarm.

Dennis Funk inquired if an evaluation was done to construct this compound somewhere else on proposed property where it would meet all of our Ordinances. They had but this location was determined by the approval of the owner and elevation of property for coverage.

Scott Ream inquired how large the underground fuel tank was. It is a 203-gallon diesel tank.

Attorney Miller asked for a description of a double walled tank. The tank has an inner tank that has an alarm on. He has never heard of a tank leakage.

Attorney Williams called Mr. Joe Ruiz to be sworn in.

Joe Ruiz, a radio frequency engineer and consultant from Morgantown, PA. He has been designing networks, like this for 30 years working all over the US, Canada, and South America. He has been a witness in over 100 hearings assisting in creating over 15,000 towers. Mr. Ruiz explained that wireless coverage needs to overlap from one site to the next so there are no gaps in coverage. This has become more relevant as homes have removed their landlines relying on in-building coverage as well as outside coverage. Verizon Wireless has licensing in the Lancaster area for reliable service. Manor Township has a gap in wireless service down in the Washington Boro and River Road area. Exhibit #4 was described as Federal Communications Wireless Communications Radio Station Authorization as an example of a license Verizon Wireless has in the area showing frequencies that Verizon operates on. Each carrier has its own spectrum. Every 10 years the FCC requires carriers to show they offer reliable services, especially for emergency services. Reliable service is described as having coverage within the footprint of the license area. Verizon Wireless is experiencing a lack of reliable service within Manor Township. Exhibit #5 was presented as a Radio Frequency Design Analysis. This was prepared by Andrew Peterson, engineer at DBM Engineering. Attorney Miller objected to this witness as he had not prepared such report. Attorney William's explained that as this is a Zoning Hearing, formal rules of evidence do not apply and in-depth questions will be asked to Mr. Ruiz to explain the analysis. Solicitor Peipher suggested allowing the testimony and if Attorney Miller wanted to object to the admission of evidence, it would be considered at that time. Mr. Ruiz reviewed the proposal to make sure it meets exactly the objective of the site that was chosen. Mr. Ruiz described the topographical map of the area, Exhibit #13. There is a low level of service along a low area on River Road between the ridge and the river. Signals get blocked by the terrain and the trees on the terrain. Shadowing can become an issue with site locations. The proposed location does an excellent job of covering approximately 2 ½ miles of the section on River Road with low service. It would be hard to cover this area if moved to the north or the east because radio energy of this low level does not penetrate through the ground or trees very well. Feasibly, the tower could be moved further south but this would move the coverage and the proposed site offers maximum opportunity for the needed overlapping coverage. Moving further south, a taller tower would be likely. The proposed site offers in-building and on-street coverage solving Verizon Wireless' lack of reliable service in Manor Township. Adding more antennas or radios to existing facilities would not solve this problem. There are no other structures in this area whereas they could add their tower to meet these objectives. The proposed tower will be 99'. Two reasons for this height are a higher tower will not give coverage needed because of the topography and interference with other frequencies of cell sites. Capacity and coverage are analyzed to determine the best height. On the tower will be no more than twelve antennas. The antennas will be 12" by 8' tall. No interference with emergency frequencies should occur. Exhibit #6, was identified as the Interference Analysis Proposed of Telecommunication Facility, prepared by Andrew Petersohn, and reviewed by Mr. Ruiz. Mr. Ruiz explained in the summary of findings is there is no potential exists for the manifestation of harmful interference. Exhibit #7, was identified as Electromagnetic Exposure

Analysis, prepared by Andrew Petersohn, and reviewed by Mr. Ruiz. The summary of findings states the cumulative radio frequencies exposure would be less than 2.4 percent of the allowable FCC limits. The FCC requires that this analysis be overly conservative, which they have done. Exhibit #8 was presented as FAA Notice Criteria Tool Screening. Paragraph two states as summary of findings that lighting and/or marking of the facility will not be required. Exhibit #9 was submitted as Pa Bureau of Aviation Screening and the summary of findings states this facility is not identified as an obstruction under Pa aviation code. A notice of proposed construction or alteration was submitted to the Pa Dept of Transportation. Mr. Ruiz was asked to explain why this property was chosen as a cell tower site. When the analysis was done in this area, areas of dropped calls and emergency calls not going through meant there was a gap in coverage. The topography of this area creates a very small search range. After a review of the area looking for obstructions and other cell tower options, landowners are contacted to find a willing landlord and evaluate zoning. This property meets these objectives.

Attorney Miller asked Mr. Ruiz if the Vogels were asked about using their property at 1852 Water Street which is southwest of the proposed cell tower location. He was not aware of such. Attorney Miller asked if Mr. Ruiz was aware that the Vogels own 7 parcels within Washington Boro. He was not. The tower could not go further north than proposed because the tower would become higher creating shadows decreasing coverage. 450 Shultz Road is southeast of the proposed site. He could not answer if Verizon Wireless inquired about the tower on this property. Mr. Ruiz commented that there is an infinite amount of people they could have talked to in this specific area but when they found a willing landlord and started the tower application, other communications stopped. This area has a very limited area of possible tower locations based upon all the criteria. Mr. Ruiz was asked if 1830 Shultz Road could be a possible location for the tower. He agreed that it would be possible, but the application was for 425 Shultz Road. Attorney Miller stated that 10 North Street and 1830 Water Street, which are owned by the Vogels, are adjacent to each other and no one else. It was stated that there could be other zoning implications that could impede a cell tower at those locations. Clarification was requested about the alarm that is on the generator. Any issue within the compound would send an alarm to the main control center. It is not audible.

Mr. Shertzer inquired where the closest towers currently were. The Central Manor tower and Lake Clarke tower were located on a map. Because of the terrain in this area, a new tower is needed as increasing the height of an existing tower will not meet the objectives. Mr. Shertzer asked about the range of a typical tower. The range differs based upon terrain. This area is very rocky with trees limiting the range. The proposed tower is projected to add coverage of 2 ½ miles on River Road. Mr. Shertzer asked if properties further south were considered that would meet this coverage. Moving further south deters the overlapping coverage which is needed for maximum coverage. Mr. Ruiz acknowledged that other properties were not analyzed.

Chairman Singer asked if the tower could be moved to a different location on the existing site. From a radio standpoint yes, barring any other obstruction on the property. There is none known.

Dennis Funk inquired about the 2 ½ mile coverage along River Road. In-building coverage will be bolstered in this area as this area is sparsely covered currently Both the Central Manor site

as well as the Lake Clarke site both offer poor coverage in this area. The goal of this new tower is to create one dominant server in this area. The existing Central Manor tower will be just over a mile away. In the last few years, the need has increased to have more in-building cell coverage. The new tower will create overlapping coverage. No feasibility study was done on any other properties.

The next tower south is down River Road outside of the borough. This tower is cellular but can be used for wi-fi capabilities per Scott Ream's questioning.

Attorney Williams asked for clarification about the other properties owned by the Vogels and their hinderances in using this as the cell tower site. The topography is similar to the site, most of those properties are a lot smaller than the proposed site so this would create limitations. If the tower was moved closer to the river the tower would have to be a little taller. Towers should be located closer to where the population is to allow the in-building coverage that is needed instead of less populated areas.

Attorney Miller asked if during the feasibility studies, were any other properties considered whereas not needing three variances. Mr. Ruiz answered that once the needed coverage site was determined they looked to see if any existing structures existed that they could mount to as a grain silo, water tanks, other carriers' structure. There was none. Engineering studies were done looking at stats, dropped calls, coverage areas, data service drops, not resident surveys.

Mr. Shertzer asked if there was an option of servicing the borough and building on a lot where there were no variances required and where it didn't disturb as much population while still meeting the objective. There may be other locations to the south that could be considered. A location further south was not evaluated because the coverage needed is at the current proposed site. The service objective was very focused to the site area.

Solicitor Peipher asked if a shorter tower was considered. Based upon the analysis done the proposed tower is at a minimum height to meet the objective. Because of diminishing returns, no other considerations were given to alternative designs. This tower meets the requirement with the minimal amount of equipment.

Dennis Funk asked if upgrading the Central Manor tower was considered. They did investigate that but because of the terrain and topography this would not increase the coverage objective needed. The mountain behind the proposed tower will create shadowing so coverage will be blocked. A number of new customers being served from this tower could not be given as it is dependent on the residents and Verizon subscribers driving through the area.

Scott Ream asked if Lake Clarke was looked at for an upgrade. The same topographical issues would occur with this tower also.

Attorney Williams wanted to clarify that an operations center mentioned by Mr. Ruiz was referring to the national operations center.

Attorney Williams asked for the Admission of the Exhibits. Attorney Miller pointed out that Exhibits 3, 5, 6, 7, 8, 9, and 11 were Exhibits prepared by individuals who were not present. She understands that the Board as the Founder of Fact has the ability to make credibility

determinations about witnesses, but the objection is being raised for record keeping purposes. Solicitor Peipher recommended the Board to accept Exhibits A - 13. Chairman Singer accepted.

Chairman Singer called for a five-minute recess.

Meeting reconvened the meeting.

Attorney Miller had the Ortman family sworn in. Attorney Miller called James Ortman Jr., 17 Manor Street, Washington Boro to the stand. He owns the property that adjoins 425 Shultz Road. Mr. Ortman was given Ortman Exhibit #2 and stated all subjects on the exhibit marked in blue were owned by his family members. Mr. Ortman owns 421 Shultz Road, directly beside 425 Shultz Road. It has been owned by the family for 72 years. Mr. Ortman's daughter, Kelly, lives at this property. The property at 425 Shultz Road is mostly used as storage for Mr. Vogel's plumbing business. The property has a dwelling on it, and it looks like they are doing some renovation to it as the lights are on. R&B Line Opening Services use this property for storing equipment, stone, and other material. There are two spring houses on this property, one at the northwest corner where the proposed tower is to be placed. Another is located at the dwelling. They used to be connected. Mr. Ortman has cell phone service in town. Mr. Ortman is present tonight because he is concerned about the depreciation of his property, the wildlife habitat of the area, the unsightly visual he will have. Mr. Ortman had Attorney Miller inquire about the other properties owned by the Vogels. Mr. Ortman had Attorney Miller prepare the Exhibits, map, document deeds for each highlighted parcel, and GIS information. Mr. Ortman's property is located within 43 feet of the proposed cell phone tower. The proposed tower is as far away from the Vogels' property as it can be. The property owner who lives at 1852 Water Street will not have a clear view of the tower from their property. Mr. Ortman recalls in the fall seeing people at 425 Shultz Road doing studies with balloons. Attorney Miller asked Mr. Ortman if he looked at Applicants Exhibit #12, proposed tower elevation photos from each direction. The photos do not accurately depict what will be seen from his daughter's home at 421 Shultz Road. Attorney Miller asked if Mr. Ortman remembers his inquiry whether the tower could be placed at 450 Shultz Road, which is also owned by the Vogels. The engineer stated that the tower is better served at a lower topography. Attorney Miller inquired about the topographical elevations of other Vogel properties. Mr. Ortman stated they are lower and closer to the river. Attorney Miller asked Mr. Ortman to state if the pictures in Ortman Exhibit #1 accurately depict the property. He acknowledged such. Mr. Ortman requests the Board consider the residents in the area and how it will change the neighborhood.

Attorney Williams asked Mr. Ortman about the dwelling at 425 Shultz Road and that as he understands no one is living there. Mr. Ortman uses AT&T for cell phone service. Per Exhibit # 2, Mr. Ortman identified several properties owned by the Vogels. It was acknowledged that all of these other properties are significantly smaller than the proposed property. Per Ortman Exhibit #2, Tab C, 450 Shultz Road, Mr. Ortman was asked about the moveability of the buildings on this parcel. He thought some were moveable but not the home. He did not think it would be hard to locate a cell tower on this type of property. He does not have any experience with designing cell phone facilities.

Attorney Miller asked for Brenda Ortman. Ms. Ortman lives at 20 Front Street, Washington Boro. This property information is in Orthman Exhibit #2 Tab E. Brenda stated there is a home and a small garden. The property is accessed by the alley on North Street. This property borders 425 Shultz Road. James Ortman is a second cousin to Brenda. An acknowledgment was made that Ortman Exhibit #1 were photos from her driveway looking at 425 Shultz Road. There is an open field on this property bordering her property. Ms. Ortman confirmed that the other photos in the Exhibit accurately depict the condition of the property today. She will have a direct view of the proposed tower out her back door. Ms. Ortman is concerned about seeing an ugly tower outside her door. A decrease in property value if she were to sell because of the tower. A pair of bald eagles live right there on the Shultz hill. Per Ms. Ortman it seems to her that the two tractor trailers are storage for his plumbing business and stores lawn equipment in a shed. Stone and dirt have typically been dumped on the property. Ms. Ortman asked the Board to think if this was their property would you want to look at a cell tower outside.

Attorney Williams asked Ms. Ortman about Ortman Exhibit #1, photograph 25, if the railroad lines were currently being used and how far away it was from her property. She was not sure. The question was asked if she thought having an active railway could have an adverse effect on her property value. She did not think so.

Attorney Miller asked Ms. Ortman if she had any issues with her cell phone service. The answer was no, and her carrier is Verizon.

Attorney Miller asked Carol Ortman, 1844 Water Street to testify. Ms. Ortman confirmed her home on Ortman Exhibit #2. Mr. Ken Ortman, her husband, and herself have owned this property for 40 years. They are directly adjacent to 425 Schultz Road. When they exit their back door, they look at 425 Schultz Road which is a field with trailers, stone, pipes, sheds, equipment, a backhoe, a burn pit, and a home that seems to be under renovation. Confirmation was made that the pictures in Ortman Exhibit #1 were current conditions of 425 Schultz Road. The cell tower will be in clear view walking out their back door. Mrs. Ortman does not understand why the tower needs to be right there as it will be in full view to all the adjacent property owners. Mrs. Ortman echoes the other testimony that she also does not want to see a tower as she exits her door. Her request is to deny the variances.

Attorney Miller had no further witnesses and asked the Board to admit her Exhibits. Solicitor Peipher admitted Ortman Exhibits # 1, 2, and 3 with a note that Exhibit 2 has sub exhibits A – F.

Mr. Croft lives in the bi-level across from the proposed cell tower site. The tower would be in his direct view. Mr. Croft is concerned about his property value being diminished. The area that is being covered seems small and it is a rural area. Mr. Croft understands from earlier discussion that Verizon said the tower off Prospect Road would solve the problems down in the borough. Mr. Croft asked for the Board to consider the neighbors concerns, where will this stop. Mr. Croft is a Verizon customer and has no problem with reception.

The meeting was opened for public comment. There was none.

Attorney Williams presented closing statements. This is an application by Verizon Wireless requesting three variances. What has to be kept in mind, this application is not only covered by

the municipalities planning code, but also by Federal law. Federal law provides that an action by a municipality can't have the effect of prohibiting wireless service. Under the third circuit court of appeals, a decision by the Board can't have the effect of materially inhibiting the provision of wireless service. One, if an applicant is trying to increase wireless capacity, or secondly, is coverage, which is what we are dealing with here. As the reports of the map show, there is a significant coverage issue within Washington Boro. A lot of this is driven by the topography within the area. So, because of this and Verizon Wireless's needs and the location of other sites around the periphery, the tower needs to be located in this particular property. So, as a result of this a denial of application would have the effect of materially inhibiting the introduction of wireless service. This was established based on the testimony and evidence given. The testimony from the neighbors to the application state that it might affect their view and property value, however, under Pennsylvania law, aesthetics is not a major consideration associated with Zoning cases. As a result, Attorney Williams requests the Board to grant the variances.

Attorney Miller presented closing statements. Attorney Miller agrees that aesthetics is not relevant and generally not considered in Zoning cases. Federal law does govern this. However, Federal law does not preclude and certainly does not exclude a Zoning Hearing Board from exercising the powers that are provided to it under the Municipalities Planning Code. In fact, there is case law that says that the Zoning Hearing Board is allowed to go through a zoning analysis any time someone is coming to ask for a cell phone tower. There is a case, Sea Towers LLC vs. Zoning Hearing Board of Logan Township. In which case the commonwealth court upheld that the Zoning Hearing Board, the trial court abused its discretion by upholding a Zoning Hearing Boards approval of a position of a cell phone tower without going through the complete zoning analysis. The law in Pennsylvania is that the Board has the duty to uphold and interpret the Zoning Ordinance. The Zoning Ordinance sets forth very specific requirements when you are asking for a variance. In this case, it is a use variance. It's not a use that's provided for or permitted within this Zoning district. The applicant has to demonstrate that this property is suffered from such hardship that is created by the Zoning ordinance. There has been no testimony about this. In fact, no word was mentioned about hardship by the applicant. The reason is because there is none and the property is being used in conformity with the Zoning ordinance. There are no unique physical circumstances or conditions about the property that keeps it from being used. It is being used productively, there is a business being operated. There has been no proof by the applicant that the property has such physical circumstances or conditions that is not possible that it can be developed in strict conformity with the provisions of the Zoning ordinance. The variance if not authorized will alter the essential character of the neighborhood. None of the people that live in Washington Boro testified that they suffer from loss of cell phone. There has been no demonstration that there is a coverage gap that needs to be addressed by placing a tower right where it is proposed, or that the property suffers so much hardship. For those reasons, it is requested that the Zoning Hearing Board deny the variances that are requested.

Chairman Singer requested a 5-minute break. Chairman Singer reconvened the meeting.

Solicitor Peipher stated that the Board would like to take 45 days after the close of the hearing to render their decision. The invitation was made for the parties to submit a written memorandum addressing the case law, federal law, and the application to Zoning Ordinance. Solicitor Peipher suggested they be received by her within 2 weeks. The Board will convene in March to make a decision. This submission is voluntary.

Dennis Funk made a motion for the testimony to be closed. Scott Ream seconded. The vote was unanimous, testimony was closed.

Scott Ream made a motion to adjourn the meeting. Dennis Funk seconded, and the meeting adjourned at 9:44 pm.

Respectfully Submitted,

Jeffrey Klugh
Secretary

Recording Secretary
Peg Hess