

AGENDA
Regular Meeting
Borough of Watchung
Board of Adjustment
May 14, 2020 | 7:30 PM

IN ORDER TO COMPLY WITH THE EXECUTIVE ORDERS SIGNED BY THE GOVERNOR, AND IN AN EFFORT TO FOLLOW BEST PRACTICES RECOMMENDED BY THE CDC, THIS MEETING WILL BE HELD VIRTUALLY FOR ALL BOARD MEMBERS, BOARD PROFESSIONALS, THE APPLICANT, THE APPLICANT'S PROFESSIONALS, INTERESTED PARTIES AND MEMBERS OF THE PUBLIC.

TO VIRTUALLY ATTEND THIS MEETING, FOLLOW THE INSTRUCTIONS BELOW:

To call into the meeting, dial 1 (872) 240-3412. It will prompt you for an access code. Type 592870653#. You do not need an audio pin, so just press #.

To access the meeting using an iPhone or iPad, you can download the GoToMeeting app from the app store for free. You have to type in the meeting ID 592870653. You can enter your name. Board members, professionals and applicants should enter their full name so everyone on the call will see you as present.

To access the meeting with a PC, go to
<https://global.gotomeeting.com/join/592870653>

The Agenda and Applicant's Plans are available for download from the Borough website or will be emailed upon request. You may request a copy of the agenda and/or plans by emailing tsnyder@watchungnj.gov. You may also access the applicant's plans by clicking the hyperlink below in the Agenda.

1. CALL TO ORDER

NOTICE OF THIS REGULAR MEETING HAS BEEN GIVEN PURSUANT TO THE OPEN PUBLIC MEETINGS ACT N. J. S. A. 10:4-6 ET. SEQ.

IN ORDER TO COMPLY WITH THE EXECUTIVE ORDERS SIGNED BY THE GOVERNOR, AND IN AN EFFORT TO FOLLOW BEST PRACTICES RECOMMENDED BY THE CDC, THIS MEETING IS BEING HELD VIRTUALLY FOR ALL BOARD MEMBERS, BOARD PROFESSIONALS, THE APPLICANT, THE APPLICANT'S PROFESSIONALS, INTERESTED PARTIES AND MEMBERS OF THE PUBLIC.

NOTICE HAS BEEN POSTED ON BOROUGH WEBSITE AND HAS BEEN GIVEN TO THE ECHOES SENTINEL, COURIER NEWS AND THE STAR LEDGER. NOTICE HAS BEEN FILED WITH THE BOROUGH CLERK. THE FOLLOWING IS THE AGENDA TO THE EXTENT KNOWN:

2. FLAG SALUTE

3. ROLL CALL

4. MINUTES

Regular Meeting Minutes, April 13, 2020 (ATTACHED)

5. RESOLUTION BA 20-R11 (ATTACHED)

CASE NO. : BA 20-03

Watchung Borough – EMS Communications Tower

Address: 272-280 Bonnie Burn Road

Block 76.01, Lot 9.01

Decision: 4/13/20

For access to the plans for the below references applications, [Click Here](#).

6. CASE NO.: BA 20-01; MILLERS

ADDRESS: 1640 US RT. 22

BUILDING E

BLOCK: 6101 LOT: 5

Represented By: Patrick J. McNamara, Esq.

HD ZONE

Expiration Date: 8/13/20

Summary: The Applicant is seeking site plan approval for new construction of a restaurant to replace the previously approved Zinburger (Approved 11/8/18). The Applicant will also seek such other variances, exceptions and/or design waivers as maybe required upon an analysis of the plans and the testimony at the public hearing.

7. CASE NO.: BA 20-02; CHICK-FIL-A

ADDRESS: 1640 US RT. 22

BUILDING D

BLOCK: 6101 LOT: 5

Represented By: Patrick J. McNamara, Esq.

HD ZONE

Expiration Date: 8/13/20

Summary: The Applicant proposes outdoor dining. The Applicant will also seek such other variances, exceptions and/or design waivers as maybe required upon an analysis of the plans and the testimony at the public hearing.

8. ADJOURNMENT

The next Regular Meeting is Thursday, June 11, 2020.

BOROUGH OF WATCHUNG
BOARD OF ADJUSTMENT
DANIEL CRONHEIM, CHAIRMAN

Regular Meeting
April 13, 2020

Chairman Cronheim called the Regular Meeting to order at 7:34 p.m. Board members present were Mr. Hunsinger, Mr. Kita, Ms. Fetchner, Mr. Gunther, Mr. Taraschi and Mr. Hanlon. Also present were Steven K. Warner, Esq., Board Attorney, David A. Stires, P.E., Board Engineer and Theresa Snyder, Board Clerk. There were no members from the public present.

Chairman Cronheim read the statement indicating the meeting was being conducted according to the Sunshine Law, the Municipal Land Use Law requirements, and the recording of the Minutes as required by law. He also stated that in order to comply with the executive orders signed by the governor, and in an effort to follow best practices recommended by the CDC, the meeting was being held virtually for all board members, board professionals, the applicant, the applicant's professionals, interested parties and members of the public. The Board members identified themselves for the record.

APPROVAL OF MINUTES

On motion by Ms. Fetchner, seconded by Chairman Cronheim, the March 12, 2020, Regular Meeting Minutes were accepted and carried on voice vote.

RESOLUTION BA 20-R10

CASE NO.: BA19-10; STIRLING CIRCLE

ADDRESS: 53 STIRLING ROAD

BLOCK: 2402 LOT: 2

BB ZONE

Approved: 3/12/20

On motion by Chairman Cronheim, seconded by Mr. Gunther, the Board adopted the Resolution based on the following roll call vote:

Roll Call:

Ayes: Mr. Hunsinger, Mr. Kita, Ms. Fetchner,
Mr. Gunther, Mr. Taraschi, Mr. Hanlon
and Chairman Cronheim

Nays:

Not Eligible:

Abstain:

Absent: Mr. Brown

CASE NO.: BA 20-03; EMS TOWER

Courtesy Reasonableness Review of Borough of Watchung request to relocate/construct new EMS tower at Weldon Quarry

Address: 272-280 Bonnie Burn Rd

Block: 7601 Lots: 9.01 & 9.02

Denis G. Murphy, Esq., entered his appearance on behalf of the Borough. Both David A. Stires, PE, Board Engineer and Planner and Thomas J. Herits, PE, Borough Engineer were also sworn in to give testimony.

Mr. Warner, Board Attorney, explained that the Borough is not bound by the Municipal Land Use Law and further to that, the Borough is exempt from zoning regulations. However, it was necessary for the Borough to go before the Board for a reasonableness review. He also noted that although not necessary, sufficient notice was served giving the Board jurisdiction to act.

Mr. Murphy explained that the Borough was seeking to enter a lease agreement with Weldon Material, Inc. for a telecommunication tower to be used by emergency services. The location of the tower would be in QU Zone.

Mr. Herits testified that there is an existing EMS communications tower on the Weldon property which needs to be relocated. He further testified that the tower will be constructed in four sections and have a 6 foot chainlink fence surrounding it. He testified that Weldon would assume responsibility of constructing the tower. He explained the following exhibits:

- EXHIBIT A-1: Partial Site Plans
- EXHIBIT A-2: Compound Plan and Elevation View
- EXHIBIT A-3: Tower Plan
- EXHIBIT A-4: RFQ Information Sheet
- EXHIBIT A-5: Zoning Denial

On question of the Board, Mr. Herits testified that the tower will be designed to withstand high winds and seismic activity. He also said that there were no plans to include landscaping. His recommendation was to not include landscaping to give clear access to the tower and surrounding area.

There were no comments from the public.

On motion by Ms. Fetchner, seconded by Mr. Gunther, The Board affirmed the reasonableness of this application based on the following roll call vote:

Roll Call:

Ayes: Mr. Hunsinger, Mr. Kita, Ms. Fetchner,
Mr. Gunther, Mr. Taraschi, Mr. Hanlon
and Chairman Cronheim

Nays:

Not Eligible:

Abstain:

Absent: Mr. Brown

ADJOURN

On motion by Chairman Cronheim, seconded by Mr. Hunsinger, the Board unanimously voted to adjourn the meeting at 8:27 p.m.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Theresa Snyder', written in a cursive style.

Theresa Snyder
Board Clerk

BOROUGH OF WATCHUNG
BOARD OF ADJUSTMENT

APPLICATION NO. 2020-03
Watchung Borough – EMS Communications Tower
Address: 272-280 Bonnie Burn Road
Block 76.01, Lot 9.01

RESOLUTION BA 20-R11

WHEREAS, the Borough of Watchung (the “Borough”) seeks a courtesy “reasonableness” review of the Borough’s exercise of its authority as to the relocation, construction, operation and maintenance of a 150 foot communications tower to be used by the Police Department and other emergency service providers of the Borough, to be relocated to a different portion of property identified as Block 76.01, Lot 9.01 on the Tax Map of the Borough, more commonly known as 272-280 Bonnie Burn Road (the “Property”); and

WHEREAS, the Board of Adjustment (the “Board”), at a properly noticed public meeting, made the following findings and determinations with respect to the above-captioned application:

1. The Board Attorney explained that generally municipalities are exempt from zoning regulations and the Municipal Land Use Law does not restrain the power of a municipality to determine where to locate municipal facilities within its borders. Thornton v. Village of Ridgewood, 17 N.J. 499, 513 (1955). He further explained that the municipality’s exemption from zoning regulations is, however, subject to a test of reasonableness, pursuant to Hills of Troy v. Parsippany, 392 N.J. Super. 593, 601-606 (Law Div. 2005), and the purpose of this presentation is for the Board to conduct such a reasonableness review. The Board Attorney also recognized that, while the Borough was not subject to the Municipal Land Use Law notice requirements applicable to private applicants for development who seek land development approvals, the Borough nevertheless timely served and published sufficient notice so as to provide the Board with jurisdiction even had the Borough been required to do so.
2. Denis G. Murphy, Esq., entered his appearance on behalf of the Borough. Mr. Murphy explained that although wireless telecommunication towers are not an explicitly permitted use in the QU Quarry (“QU”) Zone as a conditional use pursuant to Section 28-411, wireless telecommunications facilities are permitted in the QU Zone pursuant to Section 28-507(A)(2) of the Land Development Ordinance.
3. Mr. Murphy further explained that the Borough is seeking a determination as to whether the Borough reasonably exercised its authority relating to the lease of a portion of the Property from Weldon Materials, Inc. (“Weldon”), the Owner of the

Property, the use of a portion Property for the relocation, construction, operation and maintenance of a 150 foot tall EMS communications tower (the “Tower”) and the development of the surrounding 25 foot by 25 foot (625 square foot) area around the Tower.

4. David Stires, P.E., P.P., the Board Engineer and Planner, was duly sworn according to law.
5. Tom Herits, P.E., the Borough’s Consulting Engineer, was duly sworn according to law and accepted by the Board as an expert in the fields of civil engineering and professional planning. Mr. Herits testified that the existing tower must be relocated in order to allow Weldon to engage in further blasting activity. He further testified that the new Tower will be utilized by the Police Department and any other emergency service providers of the Borough, in order to better serve the residents of the Borough. Mr. Herits testified that the Tower will be located in the center of the portion of the Property being developed. He further testified that there will be an outdoor equipment pad and that the electric and telephone utility connections will be underground. Mr. Herits explained that the Tower consists of four (4) sections, and will be surrounded by a 6 foot tall chainlink fence with a 12 foot wide access gate. He further explained that the Tower must be 150 feet tall in order to provide the necessary wireless telecommunication services for the emergency responders.
6. Mr. Herits explained that the existing tower is not a permitted use in the QU Zone, but was previously approved at the Property by the Board. Mr. Herits testified that the Tower exceeds the height limitations of the QU Zone and does not comply with the required setback distance of 120% of the tower height from the adjoining property lines.
7. Mr. Herits introduced and explained the following exhibits:
 - **Exhibit A-1**: Partial Site Plans (Sheet LE-1) prepared by Maser Consulting, P.A., last revised June 14, 2019;
 - **Exhibit A-2**: Compound Plan and Elevation View (Sheet LE-2) prepared by Maser Consulting, P.A., last revised June 14, 2019;
 - **Exhibit A-3**: Tower Plan prepared by Valmont, dated June 6, 2019;
 - **Exhibit A-4**: RFQ Information Sheet for the Tower from ROHN; and
 - **Exhibit A-5**: Zoning Permit Denial dated July 2, 2019
8. On questioning regarding the structural integrity of the Tower, Mr. Herits testified that the Tower had been designed for extremely high winds and seismic activity given the location of the Tower on a site where blasting will occur. He further testified that a structural analysis had been done as to the footings and antenna and that same would be submitted as part of the permitting process.
9. On questioning as to whether landscaping was proposed, Mr. Herits testified that it was not. The Board Attorney advised that the Board could not impose conditions of

approval as the Borough was exempt from municipal zoning regulation, but could instead make recommendations as part of its reasonableness review determination.

10. Mr. Herits opined that the Borough's exercise of its authority was reasonable given the function and land use involved, the extent of the public interest to be served, and the lack of a substantial impact on the surrounding properties. Mr. Herits explained that the Tower is already located on the Property and is just being relocated to accommodate blasting activity by Weldon. He further explained that the Tower will provide a significant benefit to the public because the Tower is used by emergency personnel in the Borough. Mr. Herits opined that the proposed new location for the Tower would not have a negative impact on the adjacent properties, particularly given the location of the Property in the Quarry Zone and the surrounding dense vegetation. On questioning, Mr. Herits confirmed that the proposed location is ideal and that there are no other more appropriate locations for the Tower.
11. No member of the public commented on, or objected to, the application; and

WHEREAS, after reviewing the evidence submitted, the Board, by a vote of 7 to 0, finds that the Borough has acted reasonably in the exercise of its authority to allow for the relocation of the existing tower to a different portion of the Property given the use of the Tower for emergency personnel communications and that the relocation of the Tower will not have a negative impact on the adjacent properties, particularly given the existing dense vegetation surrounding same. See, Hills of Troy v. Parsippany, 392 N.J. Super. 593, 601-606 (Law Div. 2005). The Board recognizes that the Borough has considered alternative sites, but that the proposed location minimizes the deviation from the zone plan and the impact upon surrounding properties, particularly given the location of the Property and the fact that the terms of the lease agreement with Weldon are economically very beneficial to the Borough and its residents.

The Board further recognizes that an important aspect of the reasonableness determination is whether the Borough has afforded the public a meaningful opportunity to be heard so as to satisfy the "local consultation requirement" described in Hills of Troy. The Board finds that the public was given a meaningful opportunity to be heard on considerations, such as (1) alternative sites, (2) the costs involved, including the costs already expended on the preparation work completed at the existing planned tower location, and (3) whether another design and location may be more in conformity with its telecommunication ordinance. In this regard, the Board recognizes that no member of the public commented on, or objected to, the proposal.

WHEREAS, the Board took action on this application at its meeting on April 13, 2020, and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g); and

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Borough of Watchung, on the 14th day of May, 2020, that the request of the Borough of Watchung, for a reasonableness determination as aforesaid, be and is hereby granted, and, having heard the presentation of the Borough and the Board's professionals, and members of the public (if any), finds that its use of the Property for the proposed relocated Tower is reasonable notwithstanding that same deviates from certain provisions of the Land Development Ordinance, subject to the

following

recommendations:

1. The proposal should be subject to any applicable State and County statutes, ordinances, rules and regulations affecting development in the Borough, County, and State; and
2. The Borough should consider the provision of landscaping around the base of the Tower to mitigate the aesthetic impact of the Tower on the Property.

On Motion duly made and seconded, the Board approved the Resolution:

Roll Call

	Decision on Reasonableness Review/Presentation Date: April 13, 2020						Resolution of Memorialization Date: May 14, 2020					
Member	Motion	2nd	Aye	Nay	Abstain	Absent	Motion	2nd	Aye	Nay	Ineligible	Absent
Cronheim			X									
Hunsinger			X									
Brown						X					X	
Fechtner	X		X									
Kita			X									
Taraschi			X									
Gunther		X	X									
Hanlon Alt. #1			X									

The undersigned certifies that the foregoing is a true and accurate copy of a Resolution adopted by the Zoning Board of Adjustment of the Borough of Watchung.

THERESA SNYDER, CLERK

