

HARDING TOWNSHIP BOARD OF ADJUSTMENT MINUTES
REGULAR MEETING
JUNE 16, 2022
7:00 PM

CALL TO ORDER AND STATEMENT OF COMPLIANCE

The Board Chair, Mr. Flanagan called the regular meeting of the Board of Adjustment to order at 7:00 and announced that adequate notice of the meeting had been made in accordance with the New Jersey State Open Public Meetings Act.

PLEDGE OF ALLEGIANCE

REGULAR MEETING

ROLL

Ms. Taglairino called the roll. It went as follows:

Mr. Cammarata	Present	Mr. Newlin	Present ^{until 7:45}	Mr. Maselli	Excused
Mr. Addonizio	Present	Ms. Sovolos	Present	Mr. Boyan	Present
Mr. Rosenbaum	Excused	Mr. Symonds	Present	Mr. Flanagan	Present

Board Attorney, Mr. Hall, Board Engineer, Mr. Fox and Ms. Taglairino were also present. Mr. Mlenak was present on the phone for the adoption of the Verizon resolution.

ADMINISTRATIVE

Mr. Flanagan announced the following scheduling & procedural matters:

<u>Application BOA #18-21</u>	529 Waterfront Properties, LLC 595 Van Beuren Road, B5/L8 Appeal of Tree Officer Decision (Pending Notice)
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<u>Application BOA# 14-20</u>	Donald & Eliza Murphy 49 Meyersville Road, B55/L5 (Adjourned to the July 21, 2022 meeting).
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<u>Application BOA# 16-21</u>	Ronald & Judith Preiss 110 Village Road, B15/L10.03, R-1 Zone (Adjourned to the July 21, 2022 meeting).
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MINUTES

May 10, 2022 and May 19, 2022

Mr. Flanagan made a motion to approve the May 10, 2022 and May 19, 2022 minutes as written. It was seconded by Mr. Symonds. On a voice vote all were in favor of approving the minutes.

RESOLUTIONS

Application BOA# 01-22

Jason & Debra Fowler
66 Anthony Wayne Road, B26.01/L21, R-1 Zone

Mr. Addonizio made a motion to adopt Resolution BOA# 01-22 Fowler. The motion was seconded by Mr. Cammarata. The vote went as follows:

For: Cammarata and Addonizio

Against: None

Ms. Sovolos noted that she was not in favor of this application due to the mass.

Application BOA# 17-18

New York SMSA Ltd. Partnership d/b/a Verizon Wireless
8 Millbrook Road, B17/L1, PL Zone

Mr. Symonds made a motion to adopt Resolution BOA# 17-18 Verizon. The motion was seconded by Ms. Sovolos. The vote went as follows:

For: Sovolos, Symonds, Newlin & Addonizio

Against: None

The resolutions are appended to the minutes.

OLD BUSINESS

Application BOA# 02-22

Daniel Cotter & Caren Khoo
566 Tempe Wick, B34/L8, R-R Zone
Applicant is requesting variance relief for a side setback and expansion of a non-conforming structure as per N.J.S.A.40:55D-70(c) and a conditional use variance for a proposed accessory structure as per N.J.S.A.40:55D-70(d).

Presenting:

Nicole Magdziak, Attorney

Pat Burke, Architect

Ryan Smith, Engineer

- Ms. Magdziak presented a revised plan removing the balcony and adding a Juliette balcony that does not affect the setbacks.

Mr. Flanagan made a motion to approve the application. The motion was seconded by Mr. Newlin. A roll call vote went as follows:

For: Cammarata, Flanagan, Newlin, Symonds, Sovolos, Boyan and Addonizio.

Against: None

Application BOA# 04-22

Kunal Singh
95 Pleasantville Road, B15/L21.04, R-1 Zone
Applicant is requesting variance relief for a front setback and expansion of a non-conforming structure as per N.J.S.A.40:55D-70(c)

Presenting:
Nicole Magdziak, Attorney
Pat Burke, Architect
Ryan Smith, Engineer

Mr. Symonds recused himself from the application.

- Ms. Magdziak presented revised plans for the property.
- Mr. Flanagan summarized the applicant's prior position and the Board's position noting the removal of the lean-to, swapped the shed for a kennel, and revised the plan to include the prior full patio dimensions.
- Mr. Flanagan noted that the Board gave clear direction at the last meeting as to what could be considered for the lot coverage.

The application will be carried until the July 21, 2022 meeting no further notice.

Application BOA# 16-18

Phil Poto
52 Blue Mill Road, B16/L20
Discuss plans and process.

Presenting:
Phil Poto, Owner
Chris Miseo, Architect

Ms. Miseo and Mr. Poto were sworn in for testimony.
Mr. Newlin recused.

Mr. Newlin left the meeting at 7:45.

Ms. Miseo testified as to the deteriorative conditions of the structure once they sheet rock was removed.

The Board discussed the unauthorized removal of the dwelling at 52 Blue Mill Road and what procedural expectation is for going forward with the property. The Board requested that the applicant return with a new application for the property.

NEW BUSINESS

Application BOA# 05-22

Grant & Meghan Wentworth
29 Sand Spring Lane, B 22/L3
Applicant is requesting variance relief for height as per
N.J.S.A.40:55D-70(c)

Presenting:
Nicole Magdziak, Attorney
Grant Wentworth, Owner
Robert Moschello, Engineer
Sam Mitchell, Architect

Mr. Wentworth and Mr. Moschello were sworn in for testimony.

- Mr. Wentworth noted that he is the recent owner of the property and is looking to construct a Georgian style home.
- Mr. Moschello presented the existing and proposed conditions for the property.
- Mr. Moschello presented Exhibit A-1, an aerial photo of the property.
- Mr. Moschello presented Exhibit A-2, the site plan for the property.
- Mr. Moschello noted the distinguishing features and trees that exist on the property that guided the siting of the new construction.
- Mr. Moschello noted that the variance for height is driven by the grading on the property.
- Mr. Mitchell presented Exhibit A-3, elevations for the proposed construction.
- Mr. Mitchell presented Exhibit A-4, photos depicting the proposed Georgian style of the construction.
- The Board discussed the hardships and noted the applicant's effort to save the existing trees.

Mr. Flanagan made a motion to approve the application with a deed restriction for no further subdivision of the property. The motion was seconded by Ms. Sovolos. A roll call vote went as follows:

For: Sovolos, Flanagan, Symonds, Cammarata, Boyan and Addonizio

Against: None

The Board took a break from 8:56 to 9:01.

After the break the roll call went as follows:

Present: Sovolos, Flanagan, Symonds, Cammarata, Boyan and Addonizio

Application BOA# 06-22

John & Joy Dalena

204 Blue Mill Road, B9/3.01

Applicant is requesting variance relief for a front setback, building coverage, lot coverage and existing non-conforming structure as per N.J.S.A.40:55D-70(c)

Presenting:

Joy Dalena, Owner

Carolyn Young, Architect

Ms. Dalena and Ms. Young were sworn in for testimony.

- Ms. Dalena noted that the plan was to construct a covered porch over an existing courtyard.
- Ms. Young presented proposed plans for the covered porch.
- Ms. Young presented Exhibit A-1, a photo of the house under renovation, A-2. A photo of the north side of the house facing Blue Mill Road, A-3 a photo of the east side with the garages and entry and A-4, a photo after the renovation to date.
- Ms. Young noted that the variances are for building coverage and lot coverage.

A site inspection was scheduled for July 5, 2022 at 6:30 pm.

OTHER BUSINESS

None

ADJOURNMENT

Mr. Flanagan adjourned the meeting at 9:39

Lori Taglairino

Respectfully submitted by Lori Taglairino, Board of Adjustment Secretary

HARDING TOWNSHIP BOARD OF ADJUSTMENT RESOLUTION

Jason & Deborah Fowler - Application No. 001-22
66 Anthony Wayne Road - Block 26.01, Lot 21
Adopted June 16, 2022

WHEREAS, Jason and Deborah Fowler applied to the Harding Township Board of Adjustment for variances from Section 225-122(F) of the Land Use and Development Ordinance, which requires 100' minimum side setbacks, and from Section 225-115(B), which prohibits the enlargement of certain nonconforming structures, in order to permit construction of residence additions, additional/relocated accessory structures, and interior modifications to their nonconforming residence on a lot located in a R-1 Zone at 66 Anthony Wayne Road and designated on the Township Tax Map as Block 26.01, Lot 21; and

WHEREAS, the Board of Adjustment conducted a public hearing on the application at a meeting on May 19, 2022 at the Harding Township Municipal Building, for which public notice and notice by applicants were given as required by law; and

WHEREAS, the Board of Adjustment determined that a site inspection was not necessary based on the characteristics of this particular property and proposal; and

WHEREAS, the Board of Adjustment considered the testimony and exhibits presented during the public hearing; and

WHEREAS, at the meeting on May 19, 2022, the Board of Adjustment adopted an oral resolution approving the variance application, subject to certain conditions and based on findings and conclusions as memorialized herein;

NOW, THEREFORE, BE IT RESOLVED by the Harding Township Board of Adjustment, this 16th day of June 2022, that approval of the variance application of Jason and Deborah Fowler is hereby memorialized as follows:

Findings of Fact and Statement of Reasons

1. The applicants' property is located in a R-1 Zone at 66 Anthony Wayne Road. The property has a lot size of 4.09 acres that exceeds the 3 acre minimum.
2. The property is improved with a single-family residence that is nonconforming due to side setbacks of 71.5' and 77.1', as shown on a variance plan prepared by H2M Associates, Inc., dated December 2, 2021 and last revised March 25, 2022.
3. The applicants proposed to renovate and enlarge the residence by construction of a 2 story and second story addition to the east side, west side and rear, a covered porch addition to the rear, new covered front entry porch, adding and relocating various accessory structures, and interior renovation and reconfiguration of the residence. As part of the project, a shed attached to the back of the residence would be removed. The proposed improvements were shown on the variance plans and on architectural plans prepared by Edwin Heinle Architects, last dated February 28, 2022. Principal changes included enlargement of the attached garage, provision of a master bedroom suite and enlarged bedrooms on the second floor, construction of a second interior stairway and significant modification of the exterior appearance.
4. This property was the subject of Application No. 4-17 approved by the Board of Adjustment as memorialized by a resolution adopted on May 18, 2017 that granted similar variance relief. The current applicants obtained that approval, but they never implemented the approval, and it expired.
5. The proposed improvements would maintain the nonconforming minimum setback from the west (right) side lot line of 77.1', requiring variance relief from the 100' minimum in Section 225-122(F).
6. The proposed improvements would have a minimum setback from the east (left) side lot line of 73' following removal of the attached shed that has a slightly lesser side setback of 71.5', requiring variance relief from the 100' minimum in Section 225-122(F).
7. A proposed A/C condenser unit would have a minimum setback from the east side lot line of 73', the relocated hot tub would have a minimum setback from the east side lot line of 76', the proposed patio would have a minimum setback from the east side lot line of 84', and the pergola would have a minimum setback from the east side lot line of 92', requiring variance relief from the 100' minimum in Section 225-122(F).
8. Proposed new and relocated A/C condenser units would have a minimum setback from the west side lot line of 84', requiring variance relief from the 100' minimum in Section 225-122(F).

9. The proposed additions to the residence require a variance from Section 225-115(B) to allow enlargement of a nonconforming structure.
10. The applicants were represented in proceedings before the Board of Adjustment by Frederick B. Zelley, Esq., of Bisogno, Loeffler & Zelley, L.L.C.
11. Testimony in support of the application was provided by engineer Richard Schommer, architect Edwin Heinle and applicant Jason Fowler. They testified that the residence additions and renovations were intended to provide 3 usable garage bays, address the interior design and layout that does not provide efficient living areas in relation to modern standards and expectations and provide an enhanced exterior appearance.
12. Mr. Schommer testified concerning the unusual shape of the applicants' property and the nonconforming location of the residence that essentially precludes modification of the residence without variance relief. He also testified as to limited visibility of the residence from neighboring properties due to the topography and existing natural screening.
13. No member of the public or neighbor objected to the application.
14. The necessity for the requested variances for the side setback requirements and to permit enlargement of the nonconforming residence is attributable to the unusual lot shape and the nonconforming location of the residence and its orientation on the lot. The side setbacks for the additions will not be significantly different than the current nonconforming side setbacks for the residence.
15. The enlarged residence will continue to comply with the building area and lot coverage ratio requirements.
16. The width and size of the current attached garage does not adequately accommodate 2 vehicles. This design deficiency will be eliminated by the improvements that will provide 3 usable garage bays.
17. The addition and related improvements will significantly enhance the appearance and functional utility of the applicants' residence. The improvements will provide larger bedrooms, while continuing to limit the number of bedrooms to 5.
18. The topography and existing vegetation provide adequate visual screening from the abutting residential properties.
19. Under these particular circumstances, the proposed improvements will not result in any adverse impacts on adjacent properties.
20. In the case of this specific property, its unusual shape, the orientation of the residence and its nonconforming side setbacks, and the location and characteristics of existing and proposed improvements, strict application of the zoning requirements would impose peculiar and exceptional practical difficulties on the applicants by precluding the proposed additions and accessory structures, thus making variance relief appropriate pursuant to N.J.S.A. 40:55D-70(c)(1).
21. The variance relief requested by the applicants can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Master Plan and Zoning Ordinance of the Township of Harding.

Description of Variances

1. A variance is hereby granted from the 100' minimum side setback requirement in Section 225-122(F) of the Land Use and Development Ordinance to permit additions to the residence that will maintain the nonconforming minimum setback from the west (right) side lot line of 77.1', as shown on the variance plan prepared by H2M Associates, Inc., dated December 2, 2021 and last revised March 25, 2022, and on architectural plans prepared by Edwin Heinle Architects, last dated February 28, 2022.
2. A variance is hereby granted from the 100' minimum side setback requirement in Section 225-122(F) of the Ordinance to permit additions to the residence with a minimum setback from the east side lot line of 73' (following removal of the attached shed), as shown on the variance plan and architectural plans.
3. Variance relief is hereby granted from the 100' minimum side setback requirement in Section 225-122(F) of the Ordinance to permit a proposed A/C unit with a minimum setback from the east side lot line of 73', a relocated hot tub with a minimum setback from the east side lot line of 76', a proposed patio with a minimum setback from the east side lot line of 84', and a pergola with a minimum setback from the east side lot line of 92', as shown on the variance plan and architectural plans.
4. Variance relief is hereby granted from the 100' minimum side setback requirement in Section 225-122(F) of the Ordinance to permit proposed new and relocated A/C units with a minimum setback from the west side lot line of 84', as shown on the variance plan and architectural plans.
5. A variance is hereby granted from the restriction against enlargement of certain nonconforming structures in Section 225-115(B) of the Ordinance to allow enlargement of the applicants' nonconforming residence, as shown on the variance plan and architectural plans.

Variance Conditions

These variances are granted subject to the following conditions:

1. The applicants shall obtain Health Department approval, a building permit and any other necessary approvals.
2. Any outstanding property taxes, application fees and technical review fees shall be paid prior to issuance of a building permit and certificate of occupancy.

3. These variances are based on and authorize only the specific proposed improvements as set forth in the testimony and plans. New or amended variance approval may be required for any materially different improvements.
4. In accordance with Section 225-35(C)(1) of the Ordinance, these variances shall expire unless the authorized construction is commenced within one year from the date of this resolution and is subsequently pursued in a reasonably diligent manner.

Vote on Resolutions

For the Oral Resolution: Maselli, Rosenbaum, Addonizio & Cammarata.

Against the Oral Resolution: Sovolos.

HARDING TOWNSHIP BOARD OF ADJUSTMENT

RESOLUTION

Denial of Use Variance & Site Plan Approval

New York SMSA Limited Partnership d/b/a Verizon Wireless

Application No. BOA 17-18

8 Millbrook Road - Block 17, Lot 1

Adopted June 16, 2022

WHEREAS, New York SMSA Limited Partnership d/b/a Verizon Wireless ("**Verizon**") applied to the Harding Township Board of Adjustment ("**Board of Adjustment**") for a variance pursuant to *N.J.S.A. 40:55D-70(d)(1)* from Section 225-151 of the Land Use and Development Ordinance, which prohibits wireless telecommunications towers in the PL Zone, to permit construction of a 140' high wireless telecommunications tower with a fenced equipment compound at the base of the tower within a leased area of approximately 1,620 square feet on property containing the Township's Department of Public Works and associated improvements as well as a historical structure that will remain, that is located in the PL Zone, at 8 Millbrook Road and is designated on the Township Tax Map as Lot 1 in Block 17 ("**DPW Property**"); and

WHEREAS, pursuant to Township Ordinance No. 06-15, adopted by the Township Committee on December 14, 2015, the Township solicited sealed bids for a lease agreement over a portion of the DPW Property for the development and placement of a wireless communications facility (the "**Township RFP**"); and

WHEREAS, the Township RFP required, inter alia, that the successful bidder "shall be required to obtain final site plan approval for the installation of the communication facility and tower from the Township's Board of Adjustment, including a use variance if required"; and

WHEREAS, Verizon was the sole bidder in response to the Township RFP and executed a lease agreement with the Township dated June 14, 2018 (the "**Lease**"), which stated that it was "contingent upon [Verizon] obtaining all certificates, permits and other approvals, including site plan approval and use variance from the Township of Harding Zoning Board of Adjustment and any and all necessary approvals from the New Jersey Historic Preservation Office, as the Property is located within the Township's Historic District . . . [.]"

WHEREAS, accordingly, Verizon's application sought preliminary and final site plan approval pursuant to a site plan set prepared by James C. Murawski of E2 Project Management LLC, dated October 25, 2018, revised through March 4, 2019, consisting of a title page, tax/zoning map and property owners list sheet, overall site plan, enlarged site plan and elevation, equipment details, construction details, and landscape plan (collectively, the "**Site Plan**"); and

WHEREAS, the Board of Adjustment deemed the initial application to be complete at a meeting on December 20, 2018, at the Harding Township Municipal Building, for which public notice and notice by applicants were given as required by law; and

WHEREAS, the Board of Adjustment conducted a public hearing on the initial application at regular and special meetings that took place either in person at the Harding Township Municipal Building, virtually using the Zoom platform as a result of the ongoing Coronavirus 2019 pandemic, or a hybrid (as indicated below) for which public notice was given as required by law on the following dates:

December 20, 2018 (In Person);
January 17, 2019 (In Person);
February 21, 2019 (In Person);
March 21, 2019 (In Person);
April 18, 2019 (In Person);
May 16, 2019 (In Person);
July 18, 2019 (In Person);
September 19, 2019 (In Person);

October 17, 2019 (In Person);
September 17, 2020 (Hybrid);
November 19, 2020 (Virtual);
December 17, 2020 (Virtual);
January 21, 2021 (Virtual);
February 18, 2021 (Virtual);
March 18, 2021 (Virtual);
April 15, 2021 (Virtual);
May 20, 2021 (Virtual);
June 17, 2021 (Virtual);
July 15, 2021 (In Person);
August 30, 2021 (In Person);
September 30, 2021 (In Person);
October 21, 2021 (In Person);
November 18, 2021 (In Person);
December 16, 2021 (In Person);
February 17, 2022 (In Person);
March 31, 2022 (In Person);
May 10, 2022 (In Person); and

WHEREAS, the Board of Adjustment conducted site inspections of the DPW Property and surrounding residential properties in connection with the application at special meetings on January 27, 2019, and July 10, 2021, for which public notice was given as required by law; and

WHEREAS, the Board of Adjustment considered the evidence and testimony presented during the entire public hearing process; and

WHEREAS, at the meeting on May 10, 2022, the Board of Adjustment denied the application for preliminary and final site plan approval with *N.J.S.A. 40:55D-70(d)* use variance relief on a vote of 5 to 2, which resulted in denial of the application.

NOW, THEREFORE, BE IT RESOLVED by the Harding Township Board of Adjustment, this 16th day of June 2022, that the Board of Adjustment's denial of the application of New York SMSA Limited Partnership d/b/a Verizon Wireless for preliminary and final major site plan approval and *N.J.S.A. 40:55D-70(d)* variance relief is hereby memorialized as follows:

Findings of Fact and Statement of Reasons

1. Richard L. Schneider, Esq., of Vogel, Chait, Collins & Schneider, PC, represented Verizon in this application.
2. Robert F. Simon, Esq., of Herold Law, PA, represented the following individuals and entities objecting to the application during all or select portions of the public hearing process: SGSL, LLC (owner of 6 Coppertree Lane), Harsh and Nina Bansal (residents of 6 Coppertree Lane), Michael and Susan Koenke (22 Coppertree Lane), David and Eunice Conine (7 Lees Hill Road), Brian and Christine McKittrick (4 Millbrook Road), Livio Saganic and Christel Engel (32 Millbrook Road), James M. Carifa and Sarah G. Conine (140 Lees Hill Road), and Ted Cotton (16 Millbrook Road) (collectively, the "**Objectors**").
3. In support of Verizon's application, Verizon entered the following exhibits into the record:
 - A-1: Township RFP Bid Specifications for the DPW Property due November 22, 2016
 - A-2: Executed Lease Agreement between Verizon and the Township dated June 14, 2018
 - A-3: Harding 3 Existing Verizon Wireless 800/700 LTE Rural and Suburban Coverage Maps, dated August 28, 2018
 - A-4: Harding 3 Existing Verizon Wireless 1900/2100 LTE Rural and Suburban Coverage Maps
 - A-5: Harding 3 Proposed Verizon Wireless 800/700 LTE Rural and Suburban Coverage Maps
 - A-6: Harding 3 Proposed Verizon Wireless 1900/2100 LTE Rural and Suburban Coverage Maps
 - A-7: Boundary/Partial Topographical Survey prepared by Richard S. Hudson, E2 Project Management, LLC, dated July 22, 2017
 - A-8: Verizon proposal e-mail communication from Ms. Diane Enright to Mr. Chris Martin dated April 10, 2019
 - A-9: E-mail exchanges between Ms. Diane Enright to Mr. Chris Martin dated June 20, 2019
 - A-10: E-mail with attached letter from Mr. Jim Geswelli to Ms. Diane Enright dated August 12, 2019
 - A-11: Letter of rejection to Ms. Enright from Reverend Brian C. Sullivan dated July 18, 2019
 - A-12: E-mail exchanges between Ms. Diane Enright and Mr. Matthew Spelker dated May 28, 2019
 - A-13: T-Mobile exhibits pertaining to Church steeple evaluation
 - A-14: E-mail from Mr. Heston Allocco, Delegate to the New Vernon Volunteer Fire Department, to Ms. Diane Enright dated August 21, 2019

- A-15: Complete set of e-mail exchanges between Ms. Enright and representatives of the New Vernon Volunteer Fire Department
- A-16: Photograph of Bell Tower at the New Vernon Presbyterian Church
- A-17: Photograph of Steeple at the New Vernon Presbyterian Church
- A-18: Photograph of Bell Tower at the New Vernon Presbyterian Church
- A-19: Propagation Plot for the New Vernon Presbyterian Church at 33 feet for 2100/1900 frequency bands
- A-20: Propagation Plot for the New Vernon Presbyterian Church at 33 feet for 800/700 frequency bands
- A-21: PierCon Solutions report entitled "Supplemental Report, Site ID: 'Harding 3'", dated March 3, 2020
- A-22: E-Mail from Mr. Jim Geswelli to Ms. Diane Enright dated September 16, 2020
- A-23: Letter from Ms. Diane Enright to Mr. Jim Geswelli dated October 16, 2020
- A-24: Letter from Ms. Diane Enright to New Vernon Volunteer Fire Department dated November 17, 2020
- A-25: Scanned data of dB levels of service at 700 megahertz frequency band
- A-26: Scanned data of dB levels of service at 2100 megahertz frequency band
- A-27: PierCon Solutions report entitled "Supplemental Harding 3", dated January 18, 2021
- A-28: Aerial photograph of subject area from Google
- A-29: Photo simulation of proposed wireless communications tower designed as a stealth tree at 120'
- A-30: Photo simulation of proposed wireless communications tower designed as a flagless flagpole at 120'
- A-31: Correspondence from Mr. Schneider to Mr. Falzarano dated September 27, 2019, and reply correspondence dated October 15, 2019
- A-32: Photo simulation of proposed wireless communications tower designed as a stealth tree at 80'
- A-33: Photo simulation of proposed wireless communications tower designed as a flagless flagpole at 80'
- A-34: Revised Site Plan

4. In support of Verizon's application, Verizon presented testimony by the following individuals¹:

4.1. Ms. Frances Boschulte of Piercon Solutions, who was accepted as an expert in radiofrequency engineering, testified during the public hearing on January 17, 2019, February 21, 2019, March 21, 2019, October 17, 2019, September 17, 2020, November 19, 2020, December 17, 2020, January 21, 2021, and February 18, 2021. Ms. Boschulte was also subjected to cross-examination by Mr. Simon on February 21, 2019, March 21, 2019, November 19, 2020, December 17, 2020 and January 21, 2021. Ms. Boschulte testified, in part, as follows:

4.1.1. Ms. Boschulte, through Piercon Solutions, was hired by Verizon to conduct radiofrequency analyses concerning the proposed wireless communications tower. Ms. Boschulte performed site inspections, reviewed the land development ordinances of the Township (but not the Master Plan), received and reviewed engineering data from Verizon necessary to conduct her analysis, prepared and reviewed initial propagation maps and reports submitted to the Board of Adjustment (Exhibits A-3, A-4, A-5, A-6), and conferred with Dr. Eisenstein.

4.1.2. Ms. Boschulte provided the Board of Adjustment with a general overview of how a wireless network operates, explained the four (4) frequency bands in which Verizon is licensed to operate (800 megahertz, 700 megahertz, 1900 megahertz, and 2100 megahertz), explained the purpose and import of the propagation maps and reports she prepared, the evolution of wireless service which now includes data (of which Verizon currently operates under a 4G LTE network), and the standards for determining service strength at a reliable signal level that would allow a seamless, uninterrupted data connection within a building.

4.1.3. Ms. Boschulte testified concerning the extent of a gap in the geographic area in which Verizon currently provides adequate wireless telecommunications services, the absence of viable alternate sites for construction of a monopole or installation of antennas on existing structures, and the manner in which the proposed wireless communications tower would address this coverage gap.

4.1.4. Ms. Boschulte indicated that she used a computer model to map coverage strengths, as confirmed by actual measurements from equipment in vehicles travelling on the surrounding roads, as set forth in her reports. At the request of the Board of Adjustment and Dr. Eisenstein, additional studies were performed to show the impact on the coverage gap if the tower height were lower, as shown on mapping exhibits presented during the hearing process.

4.1.5. Ms. Boschulte concluded that there existed a significant gap in Verizon's service area that could be filled by construction of a wireless communications tower at the DPW Property. While the application called for 140' in height for the wireless communications tower, Ms. Boschulte testified that the tower could be reduced in height to 120' with nearly the same result than at 140' in height. Accordingly, Verizon advised the Board of Adjustment that 120' in height would be acceptable to it should the Board of Adjustment approve at such lower height.

4.1.6. With respect to signal strength, Ms. Boschulte opined that the signal level necessary to meet that standard was a neg 95 dBm signal strength level.

¹ The summaries of the testimony provided by the witnesses identified in this resolution are not reflective of all testimony provided relative to the Board of Adjustment's determinations in this matter. A record of the full testimony provided in this application are set forth in the transcripts of the public hearing meetings that are part of the record and are incorporated into this resolution.

4.1.7. With respect to alternative sites, and upon request of the Board of Adjustment, Ms. Boschulte testified that she evaluated alternative sites within the gap for the potential location of the wireless telecommunications facility including the New Vernon Fire Department site, the Harding Township Elementary School, the Church of Christ the King, the New Vernon Presbyterian Church, and the Township municipal building.

4.1.8. Ms. Boschulte did not evaluate any alternative sites for the application prior to her initial testimony in this application. When she did perform such analysis, she propagated a tower at each alternative site at 120' with the exception of the New Vernon Presbyterian Church, which she originally propagated at 60' and then upon learning of the Church's interest only in incorporating the antennas in the steeple/cupola, propagated the Church at 33'. Ms. Boschulte propagated a tower at the Harding Township Elementary School in the middle of the circular parking lot in front of the school entrance. Based upon these propagation studies, Ms. Boschulte opined that the DPW Property would nonetheless provide the most coverage.

4.1.9. With respect to the New Vernon Presbyterian Church, Ms. Boschulte testified that the steeple/cupola located in the bell tower could not accommodate the equipment necessary to fill the significant gap, based upon the data provided to Verizon from a prior investigation by T-Mobile (Exhibit A-13), the physical structure of the bell tower evidenced in photographs presented to the Board of Adjustment (Exhibits A-16, A-17, and A-18), and propagations maps at 33 feet and a 4' antenna (which Ms. Boschulte testified would be the maximum antenna size possible to be located within the steeple) (Exhibits A-19 and A-20).

4.1.10. On cross-examination, Ms. Boschulte acknowledged that Verizon had planned to supplement the proposed wireless communications tower with the deployment of outdoor distributed antenna systems ("ODAS") nodes including on poles located within the public right-of-way. However, Verizon did not submit the application with any information pertaining to the planned use of such ODAS nodes. It was not until cross-examination and a subsequent information request by the Board of Adjustment that Verizon provided its ODAS plans relevant to this application. Ms. Boschulte was not aware of the Township's 2014 ordinance permitting ODAS nodes in the public right-of-way throughout the Township. While Ms. Boschulte did not perform any formal due diligence with respect to the potential impact of ODAS nodes in the public right-of-way, Verizon did perform an analyze potential locations for the nodes if a tower was approved at 100' or 120' (Exhibit A-27).

4.1.11. Ms. Boschulte provided the Board of Adjustment with an overview of the technical capabilities of the wireless communications tower to allow for co-location of other carriers in the future.

4.1.12. Ms. Boschulte testified that electromagnetic frequency (EMF) emissions associated with operation of the proposed wireless communications tower would comply with applicable State and Federal health regulations.

4.1.13. Ms. Boschulte testified that all equipment proposed to be used in the wireless communications facility would be FCC-certified equipment.

4.1.14. At the request of the Board of Adjustment and Dr. Eisenstein, Ms. Boschulte prepared a supplemental report entitled "Supplemental Report, Site ID: 'Harding 3'", dated March 3, 2020 (Exhibit A-21). In performing the supplemental report, Ms. Boschulte testified that some of the information contained in Exhibits A-3, A-4, A-5, and A-6 have changed. To complete the supplemental report, a new independent drive test and CW Continuous Wave test was conducted on February 14, 2020 to evaluate existing coverage and determine the minimum height for the proposed facility. The exhibits to the Supplemental Report included new propagation plots at each of the four frequency bands at 120', 100' and 80'. At 120', Ms. Boschulte testified that most of the roads within the gap were covered including the building structures, the Harding Township Elementary School, the New Vernon Volunteer Fire Department, the Municipal Building and the Post Office. At 100', Verizon would lose partial coverage at the Elementary School at 2100 megahertz (but would not lose any significant coverage at 700/800 megahertz) and most of the coverage on Glen Alpin Road, and half of the coverage along Long Hill Road. At 80', Verizon would lose all of the Elementary School, all of Glen Alpin Road, most of the coverage gained on Long Hill Road, and part of Lees Hill Road. With respect to any identified gaps in coverage at the higher frequencies at the Elementary School, it was discussed that there were commercially feasible and available technologies such as ODAS nodes or small cell technologies that had not been explored by Verizon but reasonably could or should be considered to remediate such higher frequency coverage gaps.

4.1.15. In response to questioning regarding the service level on cross-examination, Ms. Boschulte prepared Exhibits A-25 and A-26 demonstrating the current dBm RSRP levels throughout the gap area at 700 megahertz and 2100 megahertz, respectively. Ms. Boschulte later supplemented such data with a supplemental report entitled "Supplemental Harding 3" (Exhibit A-27) including several additional exhibits mirroring the format of A-25 and A-26 at projected services levels at 120', 100', and 80'.

4.1.16. Ms. Boschulte also testified regarding dropped call data received from Verizon and included in Exhibit A-27. Ms. Boschulte testified that such data was for just 4G, so would include a drop in service from 4G to 3G as a dropped call.

4.2. Mr. James Murawski of E2 Project Management LLC, who was accepted by the Board of Adjustment as an expert in civil engineering, testified during the public hearing on April 17, 2019, May 16, 2019 and March 31, 2022. Mr. Murawski was also subject to cross-examination by Mr. Simon on April 17, 2019 and May 16, 2019. Mr. Murawski testified, in part, as follows:

4.2.1. Ms. Murawski, through E2 Project Management LLC, was hired by Verizon to prepare the Site Plan for this application.

4.2.2. Mr. Murawski introduced the existing conditions of the DPW Property and discussed proposed improvements as part of the application as set forth on the Site Plan.

4.2.3. Mr. Murawski testified that the equipment compound had been sized to accommodate up to 3 other providers of wireless communications services consistent with the number of licensed carriers.

4.2.4. Mr. Murawski described the design of the proposed tower as a stealth tree pole, and described the differences in design to that of a monopole or flagless flag pole design. Mr. Murawski testified that stealth tree designs required additional 6' of branching on top of the height of the tower.

4.2.5. Mr. Murawski identified the landscaping that was proposed to be included as part of the application.

4.2.6. Mr. Murawski testified as to the sound associated with the proposed generator and concluded that the generator would comply with all requisite noise regulations.

4.2.7. Mr. Murawski testified that Verizon was proposing an 8', wood-board composite, board-on-board fence around the perimeter of the wireless communications facility compound, with two 6' gates at either end.

4.2.8. Mr. Murawski testified that no water or sewer service is required for the proposed facility and that maintenance of the facility would only be required approximately once every four to six weeks.

4.2.9. Mr. Murawski testified as to the operational nature of the Department of Public Works use on the DPW Property.

4.2.10. Mr. Murawski testified that the PL Zone has no bulk standards. On cross-examination, Mr. Murawski testified as to the impervious coverage, which would increase to 43% of the property, and the setbacks to adjacent lot lines. Mr. Murawski further testified that he did not know whether the DPW Property had any stormwater management controls on the site.

4.2.11. Mr. Murawski originally testified that 12 trees would be removed as part of the application.

4.2.12. Mr. Murawski predicted that the soil conditions of the DPW Property would make it unlikely that the wireless communications facility could be relocated further away from residential property lines using the proposed construction techniques, however Verizon did not perform any geotechnical analysis to confirm this prediction during the public hearing process. Verizon's counsel also advised that Verizon would not accept a condition of approval to relocate the proposed wireless communications facility to provide a setback of at least 78' from the nearest residential lot line.

4.3. Ms. Diane Enright of Network Building and Consulting testified during the public hearing on July 18, 2019, October 17, 2019, and November 19, 2020. Ms. Enright was also subject to cross-examination by Mr. Simon on October 17, 2019 and November 19, 2020. Ms. Enright testified, in part, as follows:

4.3.1. Ms. Enright testified that she performs site acquisition services to wireless carriers such as Verizon.

4.3.2. Ms. Enright testified that Verizon retained Network Building and Consulting to investigate and perform feasibility analysis for the four (4) potential alternative locations for the proposed wireless communications facility raised by the Board of Adjustment. Ms. Enright testified that she was not engaged to identify any other properties or search for other available alternative sites.

4.3.3. Mr. Enright testified that based upon her verbal and e-mail communications (Exhibits A-8, A-9 A-10, A-14, A-23, and A-24) with Chris Martin, President of the New Vernon Volunteer Fire Department, and Jim Geswelli, representative of the Board of Governors of the New Vernon Volunteer Fire Department, that the New Vernon Volunteer Fire Department site was not available due to the financial considerations demanded by the New Vernon Volunteer Fire Department.

4.3.4. Ms. Enright testified that based upon her verbal and e-mail communications (Exhibit A-11) with Reverend Brian C. Sullivan of the Church of Christ the King, that the Church of Christ the King was not available as the Church had no interest in negotiating a lease with Verizon. The rejection letter referenced by Father Sullivan specifically referenced a 140' tower.

4.3.5. Ms. Enright testified that based upon her verbal and e-mail communications (Exhibit A-12) with Matthew Spelker, Superintendent of the Harding School District, and two School Board Members, that the Harding Township Elementary School was not available as the School District had no interest in negotiating a lease with Verizon. Ms. Enright testified that the proposal to the School District proposed the location of the wireless communications facility to be located "closer to the street" in the center of the circular drive.

4.3.6. Ms. Enright testified that based upon her verbal communications with Thomas Ludwig of the New Vernon Presbyterian Church, that the New Vernon Presbyterian Church was not available as the Church had no interest in negotiating a lease with Verizon for property other than in the Church steeple and based upon exhibits prepared by T-Mobile for a prior application (Exhibit A-13).

4.3.7. Ms. Enright testified that she did not explore the possibility of placing the wireless communications facility at the Township Municipal Building.

4.4. Mr. William Masters who was accepted by the Board of Adjustment as an expert in professional planning, testified during the public hearing on March 18, 2021, April 15, 2021, and May 20, 2021. Mr. Masters was also subject to cross-examination by Mr. Simon on April 15, 2021, and May 20, 2021. Mr. Masters also answered questions by Mr. Neil O'Donnell, Ms. LeslieAnne Wade, and Ms. Christel Engel on May 20, 2021. Mr. Masters testified, in part, as follows:

4.4.1. Mr. Masters testified that in preparation for his testimony, he reviewed the application, zoning drawings, radiofrequency reports, attended all public hearings, reviewed the Township's land development ordinance, Master Plan, and Master Plan Re-Examination Report, reviewed the Historic Preservation Plan Element dated March 14, 2015, reviewed the New Vernon Village Redevelopment Plan, reviewed the Village Plan Study Committee report dated March 17, 2006, reviewed Township Planner Mertz's review letter dated January 10, 2019, and reviewed the Lease.

4.4.2. Mr. Masters attended a crane test at the DPW Property commissioned by Verizon on February 27, 2018.

4.4.3. Based upon the crane test, Mr. Masters performed a series of photo simulations of the proposed wireless communications monopole tower depicting the tower at a height of 120' with branching at 126' as a stealth tree (Exhibit A-29) and as a flagless flagpole (Exhibit A-30).

4.4.4. Mr. Masters testified as to the irregular shape of the DPW Property.

4.4.5. Mr. Masters identified and testified to each prong of the standard established by our Supreme Court in *Sica v. Wall Township Board of Adjustment*, 127 N.J. 152 (1992). With respect to the first prong, Mr. Masters testified that the application fills a service area for Verizon and noted the public purpose in being able to provide coverage to areas such as the Elementary School, the Municipal Building, and portions of Route 287. As to the second prong, Mr. Masters acknowledged that the visual impact of the tower is the principal detrimental impact. As to the third prong, Mr. Masters proposed that by designing the tower as a stealth tree or flagless flagpole, it mitigates some of the negative conditions. As to the balancing test of the fourth prong, Mr. Masters opined that weighing the public interest with the negative conditions as mitigated by the design condition, it weighs in favor of approval of the application.

4.4.6. Mr. Masters testified that he has never testified with respect to a wireless communication tower proposed to be located within a historic district or redevelopment area, nor was he aware of any tower being approved within an historic district in his 27-year long career. Mr. Masters testified that a wireless communications monopole tower was approved to be constructed in Franklin Township that is located approximately 500' away from an historic district.

4.4.7. Mr. Masters testified that he has not testified with respect to a wireless communication tower proposed to be located within 100' of a residential property in the prior 10 years, nor was he aware of any tower being approved within 100' of a residential property.

4.4.8. Mr. Masters testified that he did not perform any analysis for any alternative sites for the proposed wireless communications facility.

4.4.9. Mr. Masters testified that he did not perform any analysis for any alternative technologies such as ODAS as a tool for mitigation or otherwise concerning the proposed wireless communications facility.

4.5. Chief Eric Heller, the Township's Chief of Police, testified during the public hearing on September 17, 2020. Chief Heller was also subject to cross-examination by Mr. Simon on September 17, 2020. Chief Heller testified as to the need for additional wireless service in the gap proposed to be filled by Verizon. Specifically, Chief Heller identified the Harding Township Elementary School as a site with very low wireless coverage which, he opined, makes it difficult for emergency responders in the event of an emergency at the Elementary School.

5. In opposition to the application, the Objectors entered the following exhibits into the record:

- O-1: Crane Operator Certification
- O-2: Series of photographs taken from 32 Millbrook Road
- O-3: Series of photographs taken during crane test from 6 Coppertree Lane
- O-4: Series of images and photographs prepared by Mr. Peter Steck
- O-5: Series of photograph simulations organized by Mr. Steck (re-purposing Exhibits A-29 and A-30)

- O-6: Handout from Mr. Harsh Bansal
- O-7: Series of photographs on photo boards taken from 32 Millbrook Road
- O-8: Series of photographs taken from 28 Millbrook Road
- O-9: Handout from Mr. Steck dated April 28, 2022 consisting of sheets P-1 through P-6

6. In opposition to the application, the Objectors presented testimony by the following individuals:

6.1. Mr. Peter Steck who was accepted by the Board of Adjustment as an expert in professional planning, testified during the public hearing on July 15, 2021, August 30, 2021, September 30, 2021, and October 21, 2021. Mr. Steck was also subject to cross-examination by Mr. Schneider on September 30, 2021 and October 21, 2021. Mr. Steck testified, in part, as follows:

6.1.1. Mr. Steck testified that in preparation for his testimony, he reviewed the application, zoning drawings, radiofrequency reports, attended or read the transcripts of all public hearings, reviewed the Township's land development ordinance, Master Plan, and Master Plan Re-Examination Report, reviewed the Historic Preservation Plan Element dated March 14, 2015, reviewed the New Vernon Village Redevelopment Plan, reviewed the Lease, and attended the July 10, 2021 site visit and crane test (a certification of the crane operator certifying as to the height of the crane during the July 10, 2021 test was entered into evidence as Exhibit O-1).

6.1.2. Mr. Steck testified as to the irregular shape of the DPW Property and noted the uses and its location within the locally designated New Vernon Historic District and located adjacent to Federal and State designated historic districts.

6.1.3. With respect to the historic district, Mr. Steck noted that the DPW Property is labeled a "key contributing property" within the New Vernon Historic District.

6.1.4. Mr. Steck testified that the proposed replacement trees will not be sufficient to screen the tower, but rather only sufficient to screen the equipment and only after the passage of time to allow the trees to grow to a mature height.

6.1.5. Mr. Steck testified that, in his opinion, the application was required to obtain not only a use variance for the wireless communications facility since that use is not permitted in the PL Zone, but also a second use variance for having multiple principal uses on a site, which Mr. Steck concludes would be subject to a higher standard requiring an enhanced burden of proof under *Medici*.

6.1.6. Mr. Steck testified that the PL Zone was adopted with recognition that historic factors are at play within the PL Zone and, as such, Section 225-151 of the Township's land development ordinance authorizes the Township Committee to renovate and adaptively reuse existing buildings "in order to preserve historic structures on sites in the Public Land Zone".

6.1.7. Mr. Steck testified that the Township permits wireless communications facilities in the OB Zone or the B-2 Zone under Section 225-175 of the Township's land development ordinance. Mr. Steck testified that no residential properties border the OB Zone or the B-2 Zone. Under Section 225-175, wireless communications facilities are not permitted within 1,000' of a National Historic District or property or within 100' of a residential property or residential zone. Further, the land development ordinance provides as a goal to minimize the use of large towers by encouraging the location of small antennas on or in the existing structures within the OB Zone or B-2 Zone.

6.1.8. Mr. Steck testified that the goal of Section 225-175 is to limit the impact of wireless communications towers on both residential and historic areas.

6.1.9. Mr. Steck testified that, in his opinion, the objectives of the Master Plan (including its Historic Preservation Element) and the Township's land development ordinance express a clear public policy against the placement of a wireless communications tower at the DPW Property.

6.1.10. With respect to the *Sica* balancing test, Mr. Steck opined that Verizon had not met its burden. Mr. Steck testified that Verizon simply identified the aesthetic criteria as the negative conditions associated with the proposed tower. In contrast, Mr. Steck opined that the impact to the clear goals and objectives of the municipal Master Plan and land development ordinance not to have wireless communications towers located within the vicinity of historic districts (especially one that is identified as a "key contributing property") or residential areas is a significant negative impact that balances out in favor of a denial of the application.

6.2. Mr. Livo Saganic, owner of 32 Millbrook Road, testified during the public hearing on July 17, 2021 and November 18, 2021. Mr. Saganic testified against the application citing its negative aesthetic qualities. Mr. Saganic utilized photographs taken by him evidencing viewpoints towards the DPW Property from his property at 32 Millbrook Road (Exhibits O-2 and O-7).

6.3. Mr. Harsh Bansal, owner of 6 Coppertree Lane, testified during the public hearing on July 17, 2021 and November 18, 2021. Mr. Bansal testified against the application citing its negative aesthetic qualities. Mr. Bansal utilized photographs taken by him during the February 2018 crane test from viewpoints at his property at 6 Coppertree Lane (Exhibit O-3).

6.4. Mr. Simon also called several additional witnesses in opposition to the application who testified on November 18, 2021. These witnesses included Mr. Michael Koeneke (22 Coppertree Lane), Mr. David Conine, Mr. James Carifa, Ms. Cara Conine, Mrs. Eunice Conine, and Miss Nora Carifa (7 Lees Hill Road), and Mr. Brian McKittrick and Ms. Christina McKittrick (14 Millbrook Road). In sum, the witnesses opposed the application due to the negative impacts it will have on their properties from an aesthetic point-of-view, a life safety point-of-view, their property values, and the impact on the historic and residential nature of the area.

6.5. Mr. Michael Einreinhof, a professional photographer, testified during the public hearing on July 17, 2021. Mr. Einreinhof was also subject to cross-examination by Mr. Schneider on July 17, 2021. Mr. Einreinhof testified, in part, about photo simulations he prepared to demonstrate the proposed wireless communications tower from alternative viewpoints than presented by Mr. Masters. Originally, the Objectors sought to admit the photographs as Exhibit O-1, however the admissibility of Exhibit O-1 was called into question by the Board of Adjustment and it was later abandoned by Mr. Simon. Mr. Einreinhof's proposed Exhibit O-1 was not accepted into the record nor considered by the Board of Adjustment in its deliberation of the application.

7. Verizon is an FCC-licensed wireless communications service provider.
8. The DPW Property is owned by the Township of Harding, has frontage on Millbrook Avenue, and is located within the PL Zone.
9. The PL Zone does not permit wireless telecommunications facilities as either a permitted use or a conditional use.
10. While the Township entered into a lease with Verizon for the proposed wireless communications facility on the DPW Property, the Township Committee chose not to amend the zoning of the PL Zone to permit such use or to amend the New Vernon Village Redevelopment Plan for which the DPW Property is subject to permit such use.
11. The DPW Property contains a historic structure of significant importance, the 18th-century Tunnis-Ellicks property, which serves as the headquarters of the Harding Township Historical Society and its museum, and the Township's Department of Public Works, which includes several buildings, a salt storage shed, recycling sheds, vehicle fueling facility, and associated improvements as well as an historical structure that will remain.
12. The DPW Property is located within the Township's Tempe Wick Historic District. The property is also located adjacent to a Federal and State registered historic district. As a consequence, the federal National Historic Preservation Act requires potential historic preservation impacts to be taken into account through a process involving the State Historic Preservation Office ("SHPO"). This process is commonly referred to as Section 106 review, and it is independent of the municipal land use approval process engaged in by the Board of Adjustment.
13. The application required variance relief pursuant to *N.J.S.A. 40:55D-70(d)(1)* as wireless communications facilities are not permitted within the PL Zone.
14. The application also required preliminary and final major site plan approval.
15. The Board of Adjustment Attorney, Steven G. Mlenak, Esq., provided an overview of legal criteria applicable to this type of application under New Jersey case law in a memorandum dated August 26, 2021, and he provided oral guidance throughout the public hearing process.
16. Township Planner McKinley Mertz, P.P., commented on the application in memoranda dated January 10, 2019, and August 19, 2021. Ms. Mertz attended the public hearing sessions and provided comments and answered questions throughout.
17. Township Engineer Paul Fox, P.E., commented on the application in memoranda dated December 14, 2018 and January 15, 2019. Mr. Fox attended the public hearing sessions and provided comments and answered questions.
18. The Board of Adjustment retained at the applicants' expense Bruce Eisenstein, Ph.D., a radiofrequency engineer, to review the application materials, consider the technical testimony and independently advise the Board of Adjustment. Dr. Eisenstein attended a number of the public hearing sessions and provided comments and answered questions.
19. During the course of the public hearing, as it related to the New Vernon Fire Department as a potential alternative site, discussion was had relative to a potential conflict of interest of Board Member Alf Newlin. At the conclusion of such discussion, all parties, including Mr. Newlin, the Board of Adjustment, Mr. Schneider and Mr. Simon agreed on the record that Mr. Newlin had no disqualifying conflict of interest and, accordingly, Mr. Newlin did not recuse himself from the public hearing.
20. Despite Ms. Boschulte testifying as to Verizon's plans to supplement the proposed wireless communications tower with the deployment of ODAS, neither Ms. Boschulte nor any other witness presented by Verizon testified as to the specifics

of such a plan, nor did Verizon investigate the possibility of ODAS as a supplement to reduce the height of the proposed tower or as a supplement to allow for the tower to be located on an alternate site.

21. In addition to the Objectors who testified in opposition to the Application (as set forth above), the following interested parties testified during the public hearing on November 18, 2021: Ms. Fran Frigerio (10 Primrose Trail), Mr. Chris Gant (68 Youngs Road), Mr. Kristen Peterson (24 Lees Hill Road), Mr. Bruce Wild (11 Millbrook Road), Mr. John Wilkerson (10 Long Hill Road), Mr. Neil O'Donnell (28 Millbrook Road), who entered photographs taken from his property towards the DPW Property into the record as Exhibit O-8, Mr. Steve Schade (960 Mt. Kemble Avenue), Ms. Jane Riley (17 Youngs Road), Ms. Rosemary Dangler (Summit, New Jersey), Mr. Mary Prendergast (618 Van Beuren Road), Ms. Sarit Katz (Long Hill Road), Mr. Jeffrey Flamme (5 Village Road), Ms. Aja Blanco (14 Lees Hill Road), Mr. Mark DiMonica (Madison, New Jersey), Mr. Peter Finkle (Sand Spring Road), Mr. Brian Riley (68 Youngs Road), and Ms. Elizabeth Kramer (51 Fox Hunt Road). In sum, the witnesses opposed the application due to the negative impacts it will have on their properties from an aesthetic point-of-view, a life safety point-of-view, their property values, and the impact on the historic and residential nature of the area.

22. At the public hearing on November 18, 2021, Mr. Schneider and Mr. Simon gave summations of their respective positions on the application to the Board of Adjustment.

23. At the public hearing on December 16, 2021, the Board of Adjustment deliberated on the application and, upon the request of Verizon, conducted a straw poll of the Board Members which were indicative of a potential denial of the application. In response, Verizon asked that the hearing be adjourned to allow Verizon time to consider proposing either a lower tower height and/or an alternative location on the DPW Property to increase the setbacks to the residential lot lines, as well as address other issues raised by the Board, all as conditions of approval. The Board of Adjustment agreed to provide Verizon such opportunity and the hearing was adjourned.

24. During the public hearing on February 17, 2022, Verizon advised the Board of Adjustment that it was willing to accept, as a condition of approval, a reduced height of the wireless communications tower to 80' or 86' if the Board of Adjustment preferred a stealth tree design to allow for branching. It also presented a revised site plan as Exhibit A-34 depicting the wireless communications facility in a slightly revised location within the lease area on the DPW Property.

25. During the public hearing on March 31, 2022 and May 10, 2022, Verizon presented additional testimony by Mr. Murawski and Mr. Masters supplementing their prior testimony as it relates to a tower at 80', as follows:

25.1. On March 31, 2022, Mr. Murawski introduced a revised site plan exhibit (Exhibit A-34) showing the proposed wireless communications tower slightly relocated away from the nearest residential property lines, showing a tower as it would be situated at 80', and a revised tree removal plan in which only 7 trees would be removed. Mr. Murawski was subjected to cross-examination by Mr. Simon on March 31, 2022 and received questioning from Ms. Sarah Conine (7 Lees Hill Road) regarding the proximity of the tower to residential buildings.

25.2. On March 31, 2022, Mr. Masters introduced new photo simulation exhibits depicting the proposed tower at 80' in either a stealth tree (Exhibit A-32) or flagless flagpole (Exhibit A-33) design. He further testified as to the impact on the *Sica* balancing test by reducing the height of the tower to 80'. Mr. Masters opined that the reduction in height would serve to further mitigate the negative impacts on the tower, while admitting that in doing so, reducing the coverage that will be provided has a negative impact on the public interest (first prong of the *Sica* balancing test). Mr. Masters was subjected to cross-examination by Mr. Simon on March 31, 2022 and May 10, 2022. Mr. Masters conceded on cross-examination that the photographs used to produce the photo simulation were from 2018 and that he had not undertaken an analysis to determine whether the trees depicted in the photographs still exist. Mr. Masters also received questions from Ms. Frances Frigerio, Mr. Neil O'Donnell, Ms. Leslie Ann Wade, and Ms. Christina McKittrick.

26. On May 10, 2022, Mr. Simon, on behalf of the Objectors, recalled Mr. Steck (who appeared at the hearing virtually via Zoom due to testing positive for Covid-19). Mr. Steck introduced a new handout (Exhibit O-9) which addresses the proposed relocation of the tower within the DPW Property and reduced height to 80'. Mr. Steck noted that the proposed compound has been reduced under Verizon's proposal by about half and improved the setbacks slightly as it pertains to 28 Millbrook Road and by about 25' from 7 Lees Hill Road. Still, Mr. Steck concluded that these efforts did not do enough to mitigate the height and visual impact of the proposed tower. With up to 3 additional co-locating carriers, the compound could double back to its original size. With respect to the trees proposed to be saved, three are already dead, meaning that Verizon will only be saving two trees under the new proposal and more trees would likely have to be removed if co-locating carriers are added. Under the revised proposal, the tower will still be approximately 58' from 28 Millbrook Road and 110' from 7 Lees Hill Road. With respect to the impact to the *Sica* balancing test, Mr. Steck opined that the public interest is diminished due to the reduction in coverage (especially in one frequency band at the Elementary School) and mitigation efforts by Verizon remain insufficient to balance the application in favor of an approval. Accordingly, Mr. Steck concluded that Verizon has failed to meet its burden of proof and the application should be denied. Finally, Mr. Steck concluded that at a height of 80', the Applicant has failed to demonstrate particular suitability of the site as it had not undertaken any analysis of alternative sites or technologies at 80' in height. Mr. Schneider had no questions for Mr. Steck. Mr. Steck answered questions from the following members of the public: Mr. Christel Engel (32 Millbrook Road), Mr. Neil O'Donnell (28 Millbrook Road), and Mr. Jeff Spencer (White Dear Lane).

27. Following the additional testimony provided on March 31, 2022, and May 10, 2022, the following members of the public made public comments: Mr. Steve Schade (960 Mt. Kemble Avenue), Mr. Michael Koeneke (22 Coppertree Lane), Ms. Sarah Conine (7 Lees Hill Road), Miss. Nora Carifa (7 Lees Hill Road), Mr. Harsh Bansal (6 Coppertree Lane), Ms. Shauna Ratliff (Long Hill Road), Mr. Neil O'Donnell (28 Millbrook Road), Mr. Christel Engel (32 Millbrook Road), Mr. James Carifa (7 Lees Hill Road), Ms. Aja Blanco (14 Lees Hill Road), Ms. Jane Riley (17 Youngs Road), and Ms. Meghan Lyon (Village Road). All members of the public spoke against the application, even with the revisions proposed by Verizon.

28. In total, including the Objectors, a total of 29 members of the public testified against the application. There were no members of the public that testified in support of the application.

29. The New Jersey Supreme Court has held that an applicant demonstrates that a wireless communications facility promotes the general welfare if the applicant holds an FCC license to provide wireless service. *Smart SMR v. Fair Lawn Board of Adjustment*, 152 N.J. 309, 336 (1998). Unlike typical inherently beneficial uses, wireless communications facility applicants must still prove that the proposed site is particularly suited for the proposed wireless communications facility. In order to prove particular site suitability, the applicant must prove (i) that there is a gap in their wireless service, (ii) the signal strength level necessary to fill the gap, (iii) that the placement of the antennas at the subject location and at the proposed height will improve mobile wireless communications by filling the gap in service, and (iv) whether the same result could be achieved by placing the antennas on some other existing structure, using different technologies, or by erecting the tower in a more suitable alternate site.

30. The applicant has the burden to prove “that the proposed facility is the least intrusive means of filling a gap with a reasonable level of service.” *Cellular Tel. d/b/a AT&T Wireless v. Ho-Ho-Kus Board of Adj.*, 197 F.3d. 64, 70 (3d Cir. 1999). Whether a site is particularly suitable does not require an applicant to demonstrate that there are no other viable locations for the project. *Price v. Himeji*, 214 N.J. 263, 292-293 (2013). Rather, the carrier must show a “reasonable and good faith effort to find an alternative, less-intrusive site.” *Ocean County Cellular Telephone Co. v. Lakewood Board of Adj.*, 35 N.J. Super. 514, 528 (App. Div. 2002). Thus, the applicant must demonstrate, and the Board must agree, that the applicant’s site, of all the sites proffered by the applicant as “alternative sites,” is particularly suited for the placement of a wireless communications facility.

31. An applicant must also demonstrate the so-called negative criteria in order for the Board of Adjustment to issue a “d(1)” “use” variance. Pursuant to the last unlettered paragraph of *N.J.S.A. 40:55D-70*, “no variance or other relief can be granted without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and zoning ordinance.” For applications involving wireless communications facilities, the courts have adopted the *Sica* balancing test, for evaluating evidence presented under the negative criteria prong. The first prong of the *Sica* balancing test is to identify the public interest. The second prong is to identify the detrimental effects. The third prong is to determine whether reasonable conditions can reduce detrimental effects. The fourth prong is to balance the public interest with the detrimental effects, as mitigated by the reasonable conditions. Thus, for an application to be approved, the Board must balance the positive and negative criteria and determine whether, on the balance, the “d” variances can be granted without causing substantial detriment to the public good and substantial impairment to the intent and purpose of the zone plan and the zoning ordinance. *Sica, Id.* at 166.

32. The Board of Adjustment carefully considered all objections and concerns, and for the reasons set forth on the record and herein, the Board of Adjustment ultimately concluded that Verizon failed to satisfy either the positive or negative criteria as required for relief under *N.J.S.A. 40:55D-70(d)(1)*. With respect to the positive criteria, Verizon has failed to demonstrate that the DPW Property is particularly suited for the proposed use. With respect to the negative criteria, when balancing the public interest with the negative impacts resulting from the proposed wireless communications facility, it balances in favor of denying the application. The Board of Adjustment further concluded that the negative impact could not be mitigated by conditions imposed on the approval that would result in a different finding. Each of the five (5) Board Members that voted to deny the application based their vote on one or more of the following critical factors:

32.1. Verizon approached the Township with interest in leasing an area of the DPW Property. While the Township Committee acquiesced to such request and entered into the Lease with Verizon, it had the opportunity to amend the PL Zone to permit or conditionally permit wireless communications facilities, amend the New Vernon Village Redevelopment Plan to permit wireless communications facilities, or appear as the applicant before the Board of Adjustment pursuant to applicable case law. The Township Committee chose not to do so. Rather, the Township Committee expressly mandated in both the Township RFP and the Lease that Verizon be required to satisfy the necessary proofs of a d(1) use variance through a public process before the Board of Adjustment.

32.2. Verizon failed to undertake a reasonable and good faith effort to identify an alternative less intrusive site for the proposed wireless communications facility. With respect to the Harding Township Elementary School, the Board of Adjustment is not satisfied that Verizon explored all potential locations or tower heights with the Harding Township School District. Of note, the Board found that there was a significant amount of undeveloped land owned by the Elementary School in the rear of the School that went unexplored or underexplored by Verizon with the Board of Education. The record includes communications with the Superintendent and members of the Board of Adjustment for a tower located within the front circular driveway of the School, and not with respect to locations in the rear of the property. Further, the School District was not re-engaged about a tower at a lower height and/or an alternative location. While the Board of Adjustment accepts that the New Vernon Volunteer Fire Department, the Township Municipal Building, the New Vernon Presbyterian Church and the Church of Christ the King were not available at 120', Verizon failed to re-engage the owners of such alternative sites at lower heights or even at 120' after significant

time had passed since the initial outreach. Finally, the record reveals that the Applicant made no independent investigation of other alternative sites that could fill the service gap, relying only on the potential sites brought up by the Board of Adjustment and others during the course of the public hearing. Verizon therefore failed to demonstrate that the DPW Property was particularly suited for the proposed use.

32.3. Verizon failed to undertake a reasonable and good faith effort to identify alternative less intrusive technologies for the proposed wireless communications facility. With respect to ODAS, small cell installations, or other potential technologies mentioned throughout the hearing, Verizon failed to demonstrate that the use of such technologies could not mitigate the necessary height of the proposed tower. Verizon also failed to demonstrate that it made a reasonable and good faith effort into determining whether raising the height of existing Verizon facilities could serve as an alternative to the proposed tower. Verizon therefore failed to demonstrate that the DPW Property was particularly suited for the proposed use.

32.4. Approval of the application would substantially impair the intent and purpose of both the Master Plan and Zoning Ordinance of the Township. When balanced against the public need for the proposed tower, the presence of the tower at the DPW Property contravenes the Master Plan and Zoning Ordinance to a degree that weighs in favor of a denial. With respect to the Master Plan Land Use Element, the application contravenes Objective One (preservation of the rural historic character and high quality natural environment) and Objective Seven (perpetuation of the established pattern of development) thereof. In addition, the Master Plan provides, as it relates to wireless telecommunications, "The Township has established reasonable standards for the installation of wireless telecommunications facilities so that the need of communications services can be balanced against the Township's important land use goals and objectives, especially the goals of preserving the Township's rural residential and historic character. Of particular concern is the visual impact of large towers on the Township's historic rural character and landscape. As a general policy, a scattered network of small antennas placed in or upon existing structures should be encouraged. However if a tower is necessary to provide adequate coverage it should be located in commercial areas where there will be non-substantial impact on adjacent residential or historic areas." Verizon therefore failed to demonstrate that the DPW Property was particularly suited for the proposed use. Further, the public benefit of the proposed tower does not outweigh the impairment to the Master Plan and Zoning Ordinance that would result from an approval.

32.5. The DPW Property is located in the New Vernon Redevelopment Area and the New Vernon Historic District. None of the experts that testified during the public hearing for this application could ever recall a wireless communications tower being constructed within 1,000' of an historic district, let alone on property located within an historic district, or adjacent to a Federal or State registered historic district. Of significant relevance, the DPW Property is identified as a "key contributing property" by the Township's Historic Preservation Plan, the proposed tower would be near the Tunnis-Ellicks house, and the expressed provisions of the Master Plan and Zoning Ordinance strongly discourage placement of a wireless communications tower within 1,000 feet of the New Vernon Historic District. Verizon therefore failed to demonstrate that the DPW Property was particularly suited for the proposed use. Further, the public benefit of the proposed tower does not outweigh the impairment to the New Vernon Historic District that would result from an approval.

32.6. The Township's Wireless Telecommunications Ordinance permits small cell sites in all zones except the PL Zone, which the Board of Adjustment interprets as an expression of the Township's goal to especially prohibit wireless communications facilities in the PL Zone. Further, that Ordinance provides that one of its goals is "to limit the impact of wireless telecommunications towers, antennas, and facilities on residential and historic areas. To minimize the use of large towers by encouraging the location of relatively small antennas on or in existing structures, especially on public or quasi-public property." Verizon therefore failed to demonstrate that the DPW Property was particularly suited for the proposed use. Further, the public benefit of the proposed tower does not outweigh the impairment to the Township's Zoning Ordinance that would result from an approval.

32.7. The visibility of the wireless communications tower from adjacent residential areas would constitute a significant negative impact to those properties and the surrounding area. The visual photo simulations submitted by Verizon were acknowledged to be imprecise with respect to the location of the proposed tower and did not account for trees planned to be removed by Verizon. To the contrary, the crane test performed by the Objectors on July 10, 2021, demonstrated the significant negative visual impact facing the residential properties should the application be approved. The public benefit of the proposed tower does not outweigh the significant negative visual impairment to the adjacent residential properties that would result from an approval.

32.8. The Board of Adjustment finds that the proposed setbacks to the neighboring residential properties are wholly insufficient for the height of the tower. The public benefit of the proposed tower does not outweigh the negative impact to the adjacent residential properties that would result from an approval and the proposed tower located as near as 58' from the nearest property line.

32.9. The proposed landscaping by Verizon was wholly insufficient to buffer the residential areas from the proposed wireless communications facility. With respect to the loss of trees, and the potential loss of additional trees upon co-location by additional carriers, Verizon has not proposed to satisfy the requirements of Section 225-26D of the Township Ordinance. The public benefit of the proposed tower does not outweigh the impairment to the Township's Zoning Ordinance that would result from an approval.

32.10. The proposed wireless communications facility constitutes a life safety and property risk with its closest setback to residential properties being only 58' (when calculating using Verizon's amended site plan set forth in Exhibit A-

34). A tower between 80' and 140' has a drop zone that crosses multiple residential properties. The drop zone would also include the DPW Property facilities, including the fueling station and propane tank area, and the Tunnis-Ellicks house. The public benefit of the proposed tower does not outweigh the life safety and property risk that would result from an approval.

32.11. The Zoning Ordinance prohibits access roads exceeding 500' in length. While the DPW Property has an existing access road in excess of that limitation, this application would exacerbate that condition by 75' in length.

32.12. Since the application as proposed was denied, the Board of Adjustment did not need to reach a conclusion during the public hearing as to whether an additional use variance pursuant to *N.J.S.A. 40:55D-70(d)(1)* for multiple principal uses on a single lot was required and, if so, whether such additional variance was subject to the enhanced burden of proof as set forth in the *Medici* case as proffered by the Objectors. The Board of Adjustment nevertheless finds that if such variance relief was required, Verizon has failed to satisfy its burden to obtain such relief for the reasons set forth above.

33. An oral resolution to approve the application with mitigating conditions failed by a vote of 5 to 2 at the meeting on May 10, 2022, which was 3 votes short of the 5 affirmative votes required for approval, thus resulting in denial of the application.

Vote on Resolutions

For the Oral Approval Resolution: Rosenbaum & Flanagan.

Against the Oral Approval Resolution: Sovolos, Maselli, Symonds, Newlin & Addonizio.

For the Form of the Written Resolutions: Sovolos, Symonds, Newlin & Addonizio

Against the Form of the Written Resolution: None