

**Ganges Township Zoning Board of Appeals
Final Meeting Minutes for January 24, 2024
Ganges Township Hall
119th Avenue and 64th Street
Fennville, MI, Allegan County**

CALL TO ORDER

Carol **Josefowicz** called the meeting to order at 6:00PM.

Present:

Carol **Josefowicz**
Dale **Pierson**
Dick **Hutchins**
Pamela **Jenewein**
Tasha **Smalley**
Jennifer **Goodrich**

Audience:

Ron **Bultje** – Dickinson Wright PLLC
Robert **LaBelle** 216 Barton Ave, Terre Haute IN
Royce **Low** 216 Barton Ave, Terre Haute IN
Fred **Low** 216 Barton Ave, Terre Haute IN
Jeff **Decker** 6947 114th Ave
Sue **Poolman** 7021 114th Ave
Jim **Gonzales** 1819 Lakeshore Dr.
Diane **Slayer** PO Box 85 Glenn MI
Scott **Wall** 6872 114th Ave
Heidi **Hollenbeck-Wall** 6872 114th Ave
Devin **Schindler** – Warner Norcross + Judd LLP
Mark & Tracey **Feldkamp** 6846 114th Ave
Franklin & Deborah **Fetzer** 6831 114th Ave

APPROVAL OF MEETING AGENDA

A motion was made by **Pierson** to approve the agenda. **Hutchins** seconded the motion. Motion passed.

APPROVAL OF MEETING MINUTES

A motion was made by **Pierson** to approve the December 04, 2023 regular meeting minutes. **Jenewein** seconded the motion. Motion passed.

PUBLIC COMMENT – None

NEW BUSINESS

a. **Election of Officers**

A motion was made by **Pierson** to elect **Josefowicz** as the Chairperson. **Jenewein** seconded the motion. Motion passed.

A motion was made by **Josefowicz** to elect **Jenewein** as the Secretary. **Pierson** seconded the motion. Motion passed.

OLD BUSINESS

a. Ronald and Rhonda **Naumann** – 6851 114th Ave – #07-029-049-00

The property owners are being represented by the applicant Fred **Low** with Chaille Tower Consultants of IN. They are requesting a dimensional variance to construct a cell tower closer than 500’ from the boundary of a residence (14.06DD#5). Approximate cell tower location would be 200’ from the west property line, 270’ from the south property line, and 460’ from the east property line. **Josefowicz** would like the record to show that the **Naumann**’s have not attended this meeting, or any of the previous meetings regarding this variance.

Attorney Rob **LaBelle** re-presented the Verizon cell tower setback variance request. **LaBelle** re-iterated that the Federal Telecommunications Act of 1996 states that a State or local government shall not prohibit or have the effect of prohibiting the provision of personal wireless services. **Josefowicz** stated that she does not think that the applicant has provided enough proof that no other cell tower location would provide coverage without a significant gap, and/or that they cannot co-locate on an existing tower to provide coverage without a significant gap, and/or shown that repeaters would not provide adequate coverage.

LaBelle re-iterated that the Federal Telecommunications Act of 1996 requires that the State or local government act upon a request for authorization to place, construct, or modify personal wireless service facilities within a reasonable time (shot clock). **Bultje** reminded **LaBelle** that they had agreed to put a hold on that timeline when the applicants were trying to gain access to the rear of the property via Jim **Gonzales'** property.

LaBelle went on to remind the ZBA that the Telecommunications Act also preempts State and local government regulation of the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions. **LaBelle** remarked that the applicant only needed to meet two standards, demonstrate a gap in the coverage and show good faith in attempting to find a less intrusive alternative. The applicants have tried to move the tower further back on the property but cannot get access because of wetlands located on the property.

Josefowicz asked if the applicants had tried to get a permit from Environment, Great Lakes, and Energy - State of Michigan (EGLE) to work in the wetlands. **Pierson** asked if the applicants had looked into the wetlands mitigation process. **LaBelle** responded that EGLE would only give permission to do so if there was no feasible alternative; the proposed location would be considered a feasible alternative. **Bultje** replied that denying the variance request would eliminate the proposed location as a feasible alternative.

Josefowicz asked if there was any other way to gain access to the rear of the property. **LaBelle** stated that the wetlands span the entire property from East to West.

LaBelle stated that the mono-pole type construction, without guide wires, is very unobtrusive; and since it will be less than 200' tall it will not be required to have a light on top. **LaBelle** commented that the objectors do not want this tower anywhere on the property and that moving to another property would only change the faces in the crowd.

LaBelle believes that the proposal meets the criteria and that the variance is necessary to preserve a valuable property right. **Josefowicz** reminded **LaBelle** that financial gain is not a reason to grant a variance and asked how much the **Naumann's** were being paid. **LaBelle** declined to comment on the contract value.

LaBelle recapped his comments from previous meetings; 70% of homes do not have landlines, 90% of 911 calls come in via cell phones, and that cell phone towers do not fall. **LaBelle** added that people under 35 want connectivity.

LaBelle's opinion is that this property is uniquely situated in the perfect location and if not approved it would be considered an Effective Prohibition. **LaBelle** also stated that studies show there will be little to no impact on the neighbor's property values.

LaBelle commented that the applicant should not have to endlessly search for alternative locations and that any decision by a State or local facilities shall be in writing and supported by substantial evidence contained in a written record.

PUBLIC COMMENT –

Devin **Schindler**, an attorney representing Scott & Heidi **Wall**, stated the applicants have a number of viable options which obviate the need to place the tower in a location that looms over the **Wall's** home. **Schindler** has experience in land use planning and constitutional issues and in that capacity has reviewed hundreds of tower site applications. He presented four primary reasons the variance application should be denied. First, the applicant can achieve adequate coverage by co-locating on an existing structure. Second, the applicant has refused to explore options to minimize the variance request; like obtaining a wetland permit from the EGLE. Third, the applicant's practical difficulty is self-created, as there are other nearby lots that are large enough to fit the tower without needing as much/or any variances. Finally, the applicant cannot establish that the variance would not be detrimental to adjacent properties; such as the **Wall's** and Tracey **Davis'** Bed & Breakfast. * See November 22, 2023 letter from **Schindler** to the Ganges Township ZBA.

Scott **Wall** commented that he believes a culvert could be placed in the wetlands so that an access drive could be installed to access the Northern side of the property, so that the tower could be moved further back from the road. **Wall** also believes the location would be detrimental to the Bed & Breakfast business and will deter **Gonzales** from building a home on his property.

Jeff **Decker** stated that he had witnessed the high water table flooding into other nearby footing excavations over the years and wondered if the tower wouldn't have similar problems. **Decker** also commented that he did not see any problem with the coverage in the area. **Decker** also expressed concern about 5G making people and animals sick.

LaBelle responded that all of the towers are engineered for the site and conditions. **Josefowicz** asked if any soil borings had been obtained for this property. **LaBelle** responded that they do not do that until the Special Land Use (SLU) has been approved.

LaBelle restated that Verizon has an obligation to provide better coverage. **LaBelle** commented that the property value study looked at 1000 homes in five different states, not just urban areas. **LaBelle** also remarked that Verizon has been doing this for a very long time and has a lot of experience with where and how the towers should be constructed.

Tracey **Davis** commented that there was already work being done in the Road Right of Way. **Smalley** responded that a permit had been pulled with the Road Commission to install fiber optic cable. **Davis** lamented that Glenn was such a picturesque community and that the tower would be a detriment to that.

Heidi **Hollenbeck-Wall** stated she also has adequate cell coverage in the area, seeing no need for improvement. **Hollenbeck-Wall** wants to know who, from the state, said that it is not likely that the EGLE would grant a permit to work in the wetland.

Josefowicz went over the Facts of Finding, concluding that:

For a variance to be granted, all of the following standards must be satisfied.

1. There are exceptional or extraordinary circumstances or conditions applying to the property in question that do not apply generally to other properties in the same zoning district. Exceptional or extraordinary circumstances or conditions include any of the following: a) exceptional narrowness, shallowness or shape of a specific property on the effective date of the Ordinance; b) exceptional topographic conditions or other extraordinary situation on the land, building or structure; or c) any other physical situation on the land building or structure deemed by the ZBA to be extraordinary.

This parcel is located in a Res/Ag District. The zoning requirements for this property are as follows:

- Minimum lot area 1.5 acres;
- Minimum lot width 150 ft.;
- Front setback 40 feet;
- Rear setback 30 feet;
- Side setback 15 feet;
- Lot coverage 15%;
- Maximum building height 35 feet.

The applicant states that the lot is too narrow. However, the lot is 661 feet wide or more than four times the minimum lot width. The property has a total of 38 acres, which is substantial. This is not a narrow lot.

The applicant states that wetlands prevent the tower from being located to the northern edge of the property, which would move it away from the homes in the area; however, no documentation was provided to the ZBA for verification of wetlands. The only documentation submitted by the applicant regarding wetlands was submitted on November 7, 2023, and it included an October 6, 2023 letter from G2 Consulting Group, stating that the “proposed alternate location” for the tower would “likely” be denied by EGLE because of the wetland. A “likely” denial is not an adequate reason to not try. Further, the letter does not state that there is no other location on the lot for the tower which would not require an EGLE permit and would not require a zoning variance.

The applicant claims that other locations of the tower on the lot would adversely affect bats on the lot. Again, no documentation was provided to the ZBA to verify this claim.

Further, there are other towers in the vicinity. The applicant has not established that it cannot co-locate on one of these other towers and obtain proper coverage. Nor has the applicant provided documentation to show that repeaters would not provide adequate coverage and eliminate the need for an additional tower (a repeater will amplify the signal from an existing tower and provide greater coverage without a new tower).

2. The variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and in the vicinity. The possibility of increased financial return shall not itself be deemed sufficient to warrant a variance.

The ability to erect a cell tower on one’s property is not a substantial property right. Few property owners are able to do that, and none have been permitted who do not meet the separation requirement. There are many uses for this property that the applicant could pursue which would meet building codes and zoning requirements.

Zoning Section 14-30 DD # 5 reads as follows:

No communication tower or antenna shall be located closer than five hundred (500) feet from the boundary of an existing residential use or district. This requirement may be waived by the Planning Commission if one (1) of the following conditions are met:

- The proposed communication facility is located on an existing communication tower; or
- The communication tower is to serve solely a governmental or educational institution.

In this case, neither of the two conditions are met.

3. The variance will not be significantly detrimental to adjacent property and the surrounding neighborhood.

The applicant has not established by evidence submitted to the ZBA that the applicant has a significant gap in its cell coverage; that the proposed tower is the least intrusive means to fill such a significant gap; and that the application would satisfy the radio frequency standards of the FCC. Thus, a variance would be detrimental to the adjacent property and surrounding neighborhood.

4. The variance will not impair the intent and purpose of the Ordinance.

For the reasons cited in item 3, this fourth standard is not met.

5. The immediate practical difficulty causing the need for the variance request was not created by any affirmative action of the applicant.

The applicant did create the need for the variance. There are many options for the applicant to develop the property that do not require a variance. Further, the applicant has not shown that no other cell tower location would provide coverage without a significant gap.

6. The reasons set forth in the application justify the granting of the variance and the variance is the minimum variance necessary.

For all of the reasons given in item 1 through item 5, this standard is not met.

If the ZBA agrees that none of the standards for a variance have been met, and given that all of the standards for a variance request must be met to obtain a variance, the ZBA should consider a motion to deny the variance.

Josefowicz made a motion to deny the applicant's variance request based on tonight's discussion and the November 22, 2023 letter from **Schindler. Hutchins** seconded the motion. (3-0) Motion passed.

PUBLIC COMMENT –

Jeff **Decker** commented that there was nothing on the Township website about this meeting. **Smalley** replied that she would check into that with Township clerk.

ADJOURNMENT

Hutchins made a motion to adjourn meeting. **Josefowicz** seconded the motion. (3-0) Motion passed.
Meeting Adjourned at 7:36 PM.

*Respectfully Submitted,
Jennifer Goodrich
Ganges Township Recording Secretary*