KNOWLTON TOWNSHIP LAND USE BOARD

RESOLUTION OF MEMORIALIZATION

Denied: 5/28/2024
Memorialized: 7/23/2024

IN THE MATTER OF TOWER CO 2013
MINOR SITE PLAN AND "D" AND "C"
VARIANCE APPLICATION
LOT 9 & 9.02, BLOCK 60
APPLICATION NO.

WHEREAS, Tower Co 2013 (from now on known as the "Applicant") applied to this Board for Minor site plan approval and bulk and use variances approval with the Township of Knowlton Land Use LUB (hereinafter known as the "LUB"), and

WHEREAS, the application was deemed conditionally complete on November 28, 2023, and

WHEREAS, public hearings with notice were held on January 23, March 26, and May 28, 2024, at which time the LUB rendered its decision on the application in accordance with the requirements of N.J.S.A. 40:55D-10(g) and

WHEREAS, it has been determined that the Applicant has complied with all of the rules, regulations, and requirements of the LUB and that all of the required provisions of compliance have been filed with the LUB and

WHEREAS, the LUB has received as part of the hearing process the following testimony and documentary evidence submitted by the

Applicant and its consultants, the LUB staff, and members of the public:

The Applicant has permission from the Lions Club, which owns the property known as Lot 9 & 9.02 in Block 60 on the Township of Knowlton tax map. The street address for the subject property is 3 Valley Street, Knowlton, New Jersey. The Applicant seeks a minor site plan together with "C" and "D" variance relief and design waivers.

The LUB incorporated the testimony and comments of its conflict Professional Engineer and Planner, Mr. Christopher Nusser. The LUB also incorporated the Planning and Engineer reports dated January 5, 2024, and March 22, 2024, from French & Parrello.

The following submittals were made to the board and its professionals:

1. Transmittal Letter from Hambro & Mitchell dated November 3, 2023.
2. Knowlton Township Land Development Application dated November 3, 2023
3. Knowlton Township's Checklists F, G, and H
4. Written Waiver Requests prepared by Colliers
5. Photographs of existing property
6. TowerCo Photo Simulations for proposed Monopole
7. Electromagnetic Exposure Analysis prepared by DBM Eng dated Oct 5, 2023
8. 200-ft property owner request dated November 1, 2023
9. Letter requesting tax status of subject lot dated November 1, 2023
10. Corporate Disclosure Statement
11. Comprehensive Plan Letter prepared by Colliers dated October 26, 2023
12. RF Design prepared by DBM Engineering dated November

3, 2023
13. FAA Analysis prepared by DBM Engineering dated November 3, 2023
14. Non-Interference Certification prepared by DBM Engineering dated November 3, 2023
15. Cultural Resources Survey of property prepared by Chronicle Heritage dated Oct 19, 2023
16. Natural Resources Review prepared by EBI Consulting, dated August 24, 2023
17. Phase 1 Environmental Site Assessment prepared by EBI Consulting dated August 22, 2023
18. Notice of Proposed Cell Tower sent August 18, 2023
19. Site Plans prepared by Colliers revised on February 29, 2024
20. Photo Simulations for proposed Monopole (Original Location) prepared by Colliers dated February 28, 2024
21. Photo Simulations for proposed Monopole (Alternate Location) prepared by Colliers dated February 28, 2024
22. Letter regarding generator sound volume prepared by Colliers dated March 14, 2024

James Mitchell, Esq. from the firm of Hambro and Mitchell, represented the applicant. The application is for a new wireless facility for Verizon to use, located at the existing Lions Club facility at 3 Valley Street, Block 60, Lots 9 and 9.02 in the VR zone.

The applicant had three witnesses supporting its application: a civil engineer, a radio design engineer, and a professional planner. The civil engineer, Stephanie Mulhern, was sworn in and qualified as an expert in civil engineering. Ms. Mulhern noted that the project is proposed in the Village Residential Zone. The project runs along Route 46 and Valley St. The egress is 3 Valley Street Block 60 Lot 9.

The first location submitted came to be known as site A. The

proposed compound will comprise a 50x50 fenced telecommunications compound with a gravel surface. In the center will be the monopole, which will be 135′ in height and 140′ to the lightning rod. Also, inside the compound will be a generator and telecommunications systems. The site's existing use is a pavilion owned by the Lion's Club. There will be no changes to the existing site. The monopole will be designed for 12 antennas. The facility will be amenable to co-location if necessary.

Ms. Mulhern referred to sheet Z-5, showing the equipment will be on a steel platform consisting of 3 cabinets and the generator. It will be raised to 3.5′ to get above the FEMA requirement. There will be no clearing of the property.

The applicant requires a front yard setback and the maximum building height (sheet Z-3). The permitted height in this zone is 35′.

This unmanned sight will be visited approximately every 4 to 6 weeks for maintenance and general inspections. It is remotely monitored. An alarm system is heard at the Verizon facility. The generator will run periodically as a maintenance cycle that is also unmanned.

The site access (sheet Z-3) will come from Clarence Rd via the existing driveway. It will be improved with gravel on top. A gravel turn-around area will also be on the compound's north side

in the property's corner. Utility connections will be electric services, which will be provided underground.

The backup power generator will not exceed any noise levels or restrictions at exercise. There is a 65-decibel limit; at exercise, it will be at zero load, under that limit, and run during the daytime hours. Lighting is proposed for the equipment, and maintenance technicians only turn it on manually. It is also on a timer, so it cannot be left on. She does not foresee any adverse impacts from the proposed facility.

Ms. Mulhern presented various exhibits of photo simulations of the proposed tower for site A from various locations around the subject property. The simulations depict the red balloon centered in the view from Valley St.

Board members had questions regarding the location chosen on the site. There was concern over the impact on the adjoining residents. The applicant indicated that the location was primarily the landowner's preference. It would also take advantage of the existing driveway.

The next witness, Andrew Petersohn, was sworn in. Mr. Petersohn is qualified as an expert in electrical engineering specializing in wireless telecommunications. Mr. Petersohn then showed a map of the southern portion of the township and surrounding area. The map showed surrounding roadways and Verizon Wireless-specific

information on existing sites. There are also depictions showing reliable coverage; two coverage thresholds are shown. Green areas showed a stronger signal to penetrate a building. The less reliable service was shown in yellow.

There was also a relief map and topographical map, which showed aggressive terrain down to the river. He said the aggressive terrain is causing the issue here, or at least partly. It was explained that terrain features significantly impede the propagation of all radio frequency signals. There are issues with the low-lying areas along the river, both on the New Jersey and Pennsylvania sides. There is a 2.5-mile stretch of unreliable service on and around Rt 46. The focus of this facility is to address that deficiency.

Mr. Petersohn continued there are about 8,000 vehicles per day on Rt 46. He showed an annual average daily traffic count screen graph from NJDOT's website marked A-2. That count is where they propose the tower, this segment of Rt 46. Through propagation modeling, the applicant could examine the proposed facility at various antenna heights. At the 130-foot level, the applicant can cure the in-building and in-vehicle coverage issues along Rt 46. This also adds significant coverage to the Pennsylvania side as well. This is the minimum height needed to address the coverage gap. He continued that there is a lot of terrain to the northeast,

which limits the ability of the facility to cover that way further into the township.

Mr. Petersohn referred to the surrounding terrain map marked as A-3. It shows aggressive terrain heading northeast into the township that limits the propagation of the sight in that direction. On the Pennsylvania side, increased terrain is heading away from the water, but it stays flatter than on the Jersey side.

Mr. Petersohn stated Verizon always prefers to co-locate on existing structures. The township ordinance requires them to examine existing tall structures. An existing monopole is less than a mile to the south along Rt 46. There is also a wireless co-locater on the utility structure 1.5 miles to the northeast and a tower facility north of Rt 80 that Diamond Communications has established. He said Verizon is interested in co-locating on that in the future to address their issues along Rt 80, but it won't help with the issue the current proposal is designed to fix.

Mr. Petersohn said that the facility to the south on Rt 46 was examined, and they found structural issues that would not allow Verizon's equipment to co-locate there. If it were "beefed up," they could establish a site there. The structure could not support Verizon; it would have to be upgraded. If it was upgraded, it could help them reach 106 feet. He has been told there may be three carriers on that tower now but does not know. But that wouldn't

address the issues to the north; there would still be a gap for in-vehicle coverage. So, they would still need a site further north along Rt 46.

The next witness, Mr. Marco Paredes, was sworn in he is employed by Redes Development. He is the site acquisition person and was hired by Verizon Wireless to do their real estate work for towers and building locations. He said in March of 2022, Verizon Wireless contacted them about the tower on Ramsaysburg Road (south on Rt 46) specifically because it was an existing location, and typically, that is where carriers want to build. Verizon requested to go to 140, which was denied.

They had a sight walk, and during that, it was revealed there were some foundation issues with the tower. If Verizon wanted to go on the tower, it would have to spend an excessive amount of money to resolve the tower.

Verizon decided to find another location. Mr. Paredes was then asked to work with TowerCo to help with a build-to-suit tower location. He looked at several locations. One was the campground, where towers are conditionally permitted by local ordinance. He spoke to the landlord there, and they could not agree financially.

The applicant returned at the March hearing and submitted updated photo simulations, for an alternate location on the Lion's Club property (Location B). Ms. Mulhern reviewed the alternate

location B, some 135 feet south of location A, and showed a new rendering (Exhibit 1 sheet Z-2) of the proposed alternate location. The exhibit showed the compound moved to the south 185 feet to try to get out of the view line of the existing residential home. The steel platform to get it up out of the flood zone is slightly larger. She went over some additional proposed landscaping. There will also be a steel canopy to go over some of the cellular equipment.

Ms. Mulhern then went over the sound volume summary for the generator operation. Ms. Mulhern said the generator maintenance cycles are typically every 2 weeks for 30 to 60 minutes and during daylight hours.

Ms. Mulhern further testified that the top of the canopy from the ground would be about 9.5 feet from the top of the equipment. Elevation views were shown on exhibit 3 (sheet Z-5) the canopy is 14.5 feet. The diameter of the pole was discussed. The design is for 57 inches.

The next witness, Bryan Grebis, was sworn in and went over his credentials as an electrical engineer with a telecommunications specialty. Mr. Grebis showed a radio frequency coverage map for Verizon (exhibit 4). This shows existing sites and the proposed site (now referred to as site B). The map shows areas of white, which indicate less than reliable coverage; areas

of yellow are reliable in-vehicle coverage; and the green areas represent reliable in-building coverage. He then showed a map of the proposed coverage with the addition of site B. He said this shows continuous coverage from the northwest to the southeast and fills the coverage gap completely. He then went over FCC limits saying if the tower was putting out as much power as possible, they would only be at 3.2% of the applicable FCC limit. Even in the worst-case scenario they are still approximately 30 times below the FCC limit of what's mandated 100% safe for 100% of the population. Under normal circumstances a measurement would be 1000 times below because things are fluctuating constantly and as needed, using the lowest power possible. An actual measurement in the field could be as low as .03% of the safe limit set by the FCC. Regarding Pennsylvania sites they investigated; any sites that could potentially be used as a cell tower location were too far from the area that needs coverage. There were three studies, and these sites were about 1.5 to 2 miles away. They wouldn't provide coverage here to address the gap due to trees and terrain. It was then opened to the public for questions. Ralph Smith asked about the tower's location and what area it was supposed to cover.

Mr. Grebis explained the reason the gap is there is because it is in the valley, so in order to cover the gap they would need to place the tower in the valley. The surrounding sites are not getting into the valley due to surrounding trees and mountains.

Signals cannot bend down; they travel in a straight line from the height that it is.

At the May meeting Ms. Mulhern, who was previously sworn in, then went over the revised photos. The original location is designated as A, the revised location is designated as B and shows additional landscaping, and the new proposed location requested at the previous meeting is designated as C.

The new exhibit for location C puts the compound at the southernmost portion of the property. The access would be from Valley Street. Flood elevations at this site are comparable to site B. A platform would still be proposed. The distance from location C monopole to Valley Street is 45 feet. The distance from location C monopole to Route 46 is the same as locations A and B.

Ms. Mulhern reviewed the 360-degree photos which were taken from where the monopole would be placed at each site. She also reviewed photo simulations for location B. Additional photos were added showing how the tower would look from Valley Street and northbound and southbound on Route 46. They included views from the homes on Valley Street and the school.

Ms. Mulhern went over the photo simulations for location C. These included photos heading south down Valley Street, Route 46, and the school. The photo simulations include the compound with a canopy and ground equipment with landscaping around it.

Ms. Mulhern stated that the canopy is eight feet off the platform. The top of the steel platform is three and a half feet high, so the top of the canopy is fourteen and a half feet above ground level. If additional carriers came on, the compound would remain the same size. The tower could be built to support up to three more carriers.

The distance between site A and site C is 800 feet.

Ms. Mulhern then spoke regarding flood elevations. Location C is about the same flood elevation, but topographic surveys have not been done yet.

There were concerns that location C is the parking area for the pavilion with existing vehicular and pedestrian traffic. Ms. Mulhern noted this was conceptual, and they haven't decided on an ingress and egress yet. It added the compound could be made rectangular to allow more unencumbered property.

The next witness, Brian Seidel, was sworn in and qualified as a professional planner. He then went over exhibit C2 "Context Aerial". This exhibit showed the subject property outlined in yellow, along with local roads and zoning designations. The Village Residential Zone, where the subject property is located, is outlined in black. To the east is the FPD zone, and to the west is the C-1 zone. He explained that communication towers are permitted everywhere in Knowlton Township except in village

and residential districts. The subject property is located between two acceptable zones. Location C is only 44 to 45 feet on either side of an acceptable zoning district.

Mr. Seidel testified that positive criteria for this use variance need to show that the site is particularly suited for the use. He believes there was testimony to support this, reassuring the audience about the proposed tower's legal compliance.

Mr. Seidel believes that location C would likely be the most preferred in reducing visibility from residential areas due to the vegetation and topography. It would also be 650 feet away from the one residential property and 346 feet from the next property, minimizing the impact on the community. Another aspect of the positive criteria is that the variance needs to show it will advance the purpose of zoning and enhance the general welfare. Verizon Wireless, as per their FCC license, needs to cover gaps in coverage. This proposed tower would not only fulfill this requirement but also promote health, safety, and welfare, and provide an efficient use of land, thereby benefiting the community at large.

Regarding negative criteria, Mr. Seidel opined that there would be no detriment to the zoning ordinance; the applicant complies with the stated criteria for wireless communications and addresses concerns listed in the master plan regarding safety. He

believed there was no detriment to the public good. This is passive use and has no traffic impacts. The structure would be available for co-location by additional carriers to prevent the possibility of additional structures in the immediate area. The only possible negative impact he sees is the visual impact. Still, he believes the applicant has addressed that adequately by exploring the site's three locations.

The board planner commented on the purposes of zoning. He agreed that a FCC license would satisfy the positive criteria and support the general welfare. He questioned the preference for location C. He feels this is more visible to the traveling public. He also asked about the impact of placing it in a parking lot. The board planner had concerns about when the Lions Club has events; location C would be heavily used. The location of the compound and proposed landscaping trees would impede sight distance during parking and persons walking.

Considerable concerns were raised by board members and members of the public who spoke at the various meetings.

Major concerns brought by the public include the following:

- The proposed location is near the school and on social club property that hosts social events, creating an attractive nuisance.
- The negative visual impact of having the site directly on a state highway was limited to no buffer.
- Many members of the public raised their concerns about safety due to the transmission of radiofrequency energy.

- There is a negative impact on the surrounding residences because of the commercial activity so close.
- The negative visual impact on the community.
- Safety concerns regarding the potential of the structure failing and the resulting property damage to neighbors.
- Concerns were raised about potential damage to adjoining properties during construction due to the limited access to the property.

WHEREAS, the LUB, in reviewing the foregoing testimony and documentary evidence, makes the following findings of fact and conclusions:

The property is in the VR-Village Residential Zone District. The zone principally permits single-family homes, farms, parks, municipal facilities, and community residences. The applicant is requesting a D1 Use Variance for the facility.

Telecommunications antenna facilities are governed by Section 11-329 of the local ordinance. The ordinance requires the submission of a comprehensive plan. The plan must contain, at a minimum, a complete presentation on each of the following topics:

1. Existing service. The applicant shall address whether its subscribers can receive adequate service from cellular antennas outside of Knowlton Township's borders.
2. Existing antenna locations. The applicant shall graphically depict the location of existing cellular antennas in Knowlton Township and explain how the proposed cellular antenna interacts with them.
3. Collocation. The applicant shall demonstrate all existing structures that are available for location of the proposed cellular antennas. If the application does not utilize any existing structure and instead proposed the construction

of a new cellular tower, the applicant shall demonstrate either that it is impossible to obtain similar proposed signal coverage by collocating the cellular antennas on existing structures or that no such structures are available.

4. Knowlton Township coverage. The applicant shall set forth its strategy for providing the fullest possible signal coverage within the borders of Knowlton Township. The applicant shall additionally demonstrate how the proposed cellular antennas advance its strategy for fullest possible signal coverage within the borders of Knowlton Township.

5. Emissions standards. The applicant shall set forth the applicable emission standards set by the Federal Communications Commission and all other applicable technical requirements of other federal and/or state governmental agencies with appropriate jurisdiction. The applicant shall demonstrate that the proposed cellular antennas meet all such technical emission standards.

6. Actual emissions. The applicant shall submit a full report of aggregate emissions of its own cellular antennas and of all other cellular antennas located on the same structure once the proposed cellular antennas are in operation.

7. Municipal property preference. The applicant shall demonstrate whether the proposed cellular antennas can be located on municipally owned property.

8. Architectural harmony. The applicant shall demonstrate how its proposed cellular antennas and/or cellular towers are designed to blend in with their surroundings and be as visually unintrusive and as inconspicuous as possible.

9. Written notice to other service providers. The applicant shall supply copies of correspondence to all other owners and/or operators and/or providers of cellular antennas, wireless communication services and/or cellular towers regarding inquiry as to availability of existing cellular tower space and whether the construction of an additional cellular tower is required.

10. Appearance. The applicant shall demonstrate how the proposed location of the cellular tower attempts to minimize the visual prominence and solitary appearance of the cellular tower when viewed from either residential areas or from the public right-of-way.

11. Cellular tower design. The applicant shall demonstrate that the proposed cellular tower design is the safest and least visually intrusive design and the design most accommodating for collocation of other cellular antennas. If a monopole design is not submitted, the applicant shall demonstrate why the submitted design is superior to a monopole design.

The Applicant requires "C" and "D" variance relief, minor site plan approval, and exceptions/design waivers regarding its application.

The variance relief needed is from:

1. Ordinance section 11-271G permits no more than one principal structure or use on a lot.
2. Ordinance Section 11-283 (D6) requires that such fences not be within the front yard.
3. Ordinance Section 11-283 (A&B) Maximum height or wire fence of 4 feet.
4. D(1) to permit use where the same is not permitted in the zone Ordinance Section 11-329.3A.
5. Ordinance Section 11-304 setback rear yard and maximum height.
6. Relief from Section 11-329 governing cell towers in town.

The applicant asked the Board to bifurcate its application and vote on the D variance for location C, subject to a return to the board with a satisfactory site plan application. The Board notes that in applications of this type seeking significant relief by way of a D variance and C variances, the applicant bears the burden of proof.

It is the applicant's burden to show it can satisfy the positive and negative criteria required under the law for the grant of a D1 variance. Generally, there are sufficient "special reasons" or positive criteria for the grant of a d variance under two broad circumstances: (1) when the refusal to allow the project would impose on the applicant an undue hardship and/or (2) when a proposed project carries out a purpose of zoning as defined in N.J.S. 40:55D-2. The Board based on Smart SMR v Fair Lawn Bd of Adj.,. 152 NJ at 336, must accept that the positive criteria are met as it is clear that Verizon does, in fact, have an FCC license.

The applicant must still meet the negative criteria under the Municipal Land Use Law and applicable New Jersey case law. The applicant must demonstrate the suitability of the location for the applied use, namely, a location for a cell tower. AWACS v. Clemonton Bd. of Adj., 160 N.J. at 25. Site suitability has to be determined both from the viewpoint of the applicant and from the viewpoint of the municipality. Northeast v. West Paterson Zoning Bd. of Adj., 327 N.J. Super. 476, 497-498 (App. Div. 2000). From the viewpoint of the municipality, the fact that this use would be conditionally approved in zones joining the site mere feet away on both sides of the lot must be considered as a negative for the applicant.

Also, the fact that the proposal will not significantly increase cellular coverage for the residents of Knowlton in the area but is predominantly designed for the thousands of cars traveling in the 2.5-mile area of Rt 46 must be considered. Local ordinance regarding cell towers requires that there be improved coverage for the residence of Knowlton. This is clearly not the case with this application

Next, the negative criteria require that the variance can be granted "without substantial detriment to the public good." In this respect, the focus is on the variance's effect on the surrounding properties. The board must evaluate the impact of the proposed use variances e upon the adjacent properties and determine whether or not it will cause such damage to the neighborhood's character as to constitute a "substantial detriment to the public good." *See* Yahnel v. Bd. of Adjust. of Jamesburg, 79 N.J. Super. 509, 519 (App. Div.), certif. den. 41 N.J. 116 (1963).

The key is the term "substantially". The board must weigh the zoning benefits from the variance against the zoning harms. In Jacoby v. Englewood Cliffs Zon. Bd. of Adjustment, 442 N.J. Super. 450 (App. Div. 2015), the court significantly increased the area constituting the "surrounding properties" when evaluating the first prong of the negative criteria to mean all reasonable vantage points, thereby requiring a board to not only consider the effect

the proposed structure would have on the municipality or immediate vicinity but also on the region.

The proposed location is an extremely rural area along State Highway 46. There are adjoining recreational activities such as camping grounds and residential dwellings. The zoning district allows residential and recreational uses. The location of this tower, which is so close to the State Highway surrounded by the area's rural and residential nature, is inappropriate.

Medici v. BPR Co., 107 N.J. 1, 5 (1987) has made it clear that municipalities should make zoning decisions by ordinance rather than by variance. Therefore, a focal point of this prong of the negative criteria is the extent to which a grant of the variance would constitute an arrogation of the governing body and planning board authority. The Court stated that "[t]he added requirement that a board must reconcile a proposed use variance with the provisions of the master plan and zoning ordinance will emphasize that the negative criteria constitute an essential `safeguard' to prevent the improper exercise of the variance power."

The board considered the applicant's testimony, the public concerns raised by the applicant, and comments made by board members. The board finds that the Applicant's witnesses, including but not limited to their professional planner, about the "d"

variance are not convincing. The board determines that the applicant has failed to meet its burden under the Municipal Land Use Law and associated case law to be granted the relief requested.

As noted in the testimony, specifically of the applicant's own planners, cellular communication towers are a conditionally approved use in most of the municipality. Cell towers are specifically excluded from two zones in the municipality including the zone in question here. Further, the Board notes that this application could have been approved for conditional use under the local ordinance on either side of the subject property mere feet away.

The only reason given by the applicant for not locating this use in a zone where it would have been a conditionally approved use was their inability to obtain a financially favorable land lease. The testimony of the radiofrequency engineer presented no reasons why, other than financial land lease arrangements, this site cannot be located in one of the adjacent properties where it would have been an approved conditional use.

The RF testimony claimed that moving this site some 800 feet from its original (location A) to the last proposed site (location C) would have had no negative impact on the proposed coverage area sought to be improved by this proposal. Therefore, a less significant distance relocation to one of the adjoining properties to this site would not have negatively impacted the

coverage goals of this application.

While the board acknowledged there seemed to be a coverage gap along State Highway 46 of the proxy to 2½ miles the RF testimony indicated there would be no other significant coverage improvements for municipal residents, as is one of the goals of the local ordinance requirements for cell towers.

The Board was also greatly concerned about location C and the safety issues associated with using the property. Location C would be in an area currently actively used when the property owner has events at the site. Traffic flow and pedestrian access to this area would be of great concern if this facility were located as proposed at location C. The safety concerns are exasperated because the property is exceptionally narrow around proposed location C.

NOW, THEREFORE, BE IT RESOLVED that the Land Use LUB of the Township of Knowlton does hereby **DENY** the Use Variance for failing to sustain its burden of proof for the relief required.

The undersigned certifies that the preceding is a true copy of the action taken by the Land Use LUB of the Township of Knowlton at its regular meeting of May 28, 2024.

Doreen Apgar, Secretary

Vote to Grant D Variance: Baley - yes, Mathez - yes, O'Neill - no, Smith - no, Starrs - no, Werner - no, Taylor - yes.

KNOWLTON LAND USE BOARD
RESOLUTION OF MEMORIALIZATION

Decided: 06/25/2024
Memorialized: 07/23/2024

IN THE MATTER OF Belvidere, New Jersey
Congregation of Jehovah's Witnesses
APPROVAL EXTENTION APPLICATION
BLOCK 68, LOT 10.01
APPLICATION NO. ZB21-002

WHEREAS, an application has been made to this Board by Belvidere, New Jersey Congregation of Jehovah's Witnesses, through a letter dated June 4, 2024, from Durmeriss Cruver-Smith Esq. This application requests the extension of an approval by the Zoning Board of Adjustment, approved on August 3, 2021, and memorialized on September 7, 2021. The subject property is known as Block 68 Lot 10.01, as depicted on the Tax Maps of the Knowlton Township, and

WHEREAS, the Board deemed the application complete, and

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Township of Knowlton as follows:

ACCEPTED FACTS

Upon due consideration, the Board found it appropriate to grant the extension for one year from the original approval date. Therefore, said approval is now valid through August 2, 2025.

The hearing was opened to the Public without comment.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of Knowlton Township that the grant of an extension of the approval through August 2, 2025, is appropriate and, **therefore, is GRANTED.**

This approval is subject to the following terms and conditions:

1. This approval is subject to the approval of the Warren County Planning Board and any other governmental agency properly exercising jurisdiction and powers concerning it, together with the performance of any terms and conditions of such approval if such approvals are necessary.
2. The Applicant is required to reimburse the municipality for all costs and fees incurred by it in the disposition of this application, including, but not limited to, the expenses attributable to the review of this application by the Board's professional consultants, as well as the preparation of this Resolution.
3. All taxes and fees shall be paid on the property in question as a condition of this application, and no permit shall be issued before such fees and taxes are paid in full.
4. All the terms and conditions of the original resolution memorializing September 7, 2021, attached hereto and made a part hereof.

Adopted this 23rd day of July 2024 by a majority of the members of the Board present at such meeting who voted for the action taken on June 25, 2024

Knowlton Land Use Board

By: Doreen Apgar

Doreen Apgar, Secretary

MEMBERS VOTING IN FAVOR OF THE ACTION TAKEN: 7

OPPOSED: None

ABSTAIN: None

MEMBERS RECUSING THEMSELVES: None

2023/03777/GTG/GTG-

ORIGINAL

KNOWLTON TOWNSHIP ZONING BOARD OF ADJUSTMENT
RESOLUTION OF MEMORIALIZATION

Approved: August 3, 2021
Memorialized: September 7, 2021

IN THE MATTER OF
BELVIDERE, N.J. CONGREGATION OF
JEHOVAH'S WITNESSES
BLOCK 68, LOT 10.01
MINOR SITE PLAN AND CONDITIONAL
USE AND C VARIANCE
APPLICATION NO. ZB21-002

WHEREAS, Belvidere, N.J. Congregation of Jehovah's Witnesses (hereinafter known as the "Applicant") filed an application for minor site plan, conditional use "d(3)" variance, flexible "c(2)" variance and design waiver approval with the Township of Knowlton Zoning Board of Adjustment (hereinafter known as the "Zoning Board") on April 25, 2021, and

WHEREAS, the application was deemed complete on May 21, 2021, and

WHEREAS, public hearing with notice was held on August 3, 2021, at which time the Zoning Board rendered its decision on the application in accordance with the requirements of N.J.S.A. 40:55D-10(g), and

WHEREAS, due to the public health emergency necessitated by the Covid-19 pandemic, pursuant to the Executive Orders of the Governor of the State of New Jersey, public gatherings have been limited in size, space, location and duration, and

WHEREAS, due to the public health emergency necessitated by the Covid-19 pandemic,

pursuant to the Executive Orders of the Governor of the State of New Jersey, public bodies, such as the Board, are expressly authorized by law to conduct public meetings remotely through the use of audio and video technology, and

WHEREAS, due to the public health emergency necessitated by the Covid-19 pandemic, it was the decision of the Board that it was in the best interests of the Board, the Township of Knowlton, the Applicant and the public for this Application to proceed without further delay, consistent with the Executive Orders of the Governor of the State of New Jersey, and

WHEREAS, the Board was of the opinion, after consultation with its professionals, that the Board could consider this Application remotely and that its consideration would not be impeded whatsoever by considering the Application remotely, and

WHEREAS, the Applicant appeared virtually before the Zoning Board at a regular Meeting on August 3, 2021, and,

WHEREAS, it has been determined that the Applicant has complied with all of the rules, regulations and requirements of the Zoning Board for purposes of filing the application and that all of the required provisions of said compliance have been filed with the Zoning Board, and

WHEREAS, the Zoning Board has received as part of the hearing process the following testimony and documentary evidence submitted by the Applicant and its Consultants, the Zoning Board Staff, and members of the public:

The Applicant is the owner of property known as Block 68, Lot 10.01 on the Tax Map of

the Township of Knowlton. It is approximately three (3) acres and is also designated as 35 Ramseyburg Road, Knowlton, New Jersey 07865. The property is located in the FPD Zone. Currently, there is a Kingdom Hall used by Applicant onsite. They seek to construct an internal access drive and an ADA compliant parking area located in the front yard. Because front yard parking is not permitted for conditional uses in the Farmland Preservation Zone under Knowlton Township Ordinance Section 11-300(B)(4), Applicant requires a conditional use "d(3)" variance. Applicant also requests flexible "c" variances from Ordinance Section 11-296(L), which requires impervious coverage no more than 15%, and Ordinance Section 11-244, which requires a minimum 50-foot front yard parking setback. Applicant is seeking design waivers associated with parking space size (Ordinance Section 11-245), access drive width (Ordinance Section 11-247) and curb face height (Ordinance Section 11-250). Finally, Applicant is seeking minor site plan approval.

Mr. Arthur Van Eck is a trustee of the Jehovah's Witnesses Congregation, and has been a member for 37 years. He indicated that the congregation has owned the property since 1975. It is actually a combined congregation. Belvidere Congregation has 137 members and the Delaware River Portuguese Congregation has 57 members. Mr. Van Eck testified that the congregation will meet for Bible instruction, will provide free Bible studies, provide a disaster relief training program and other public works.

He advised the Board that they are seeking to construct ADA compliant parking along

with a sidewalk from the ADA parking into the building, as well as some additional lights both on the building and in the parking area. Because the existing parking area is not ADA compliant and there are steep slopes in the existing parking area, the ADA compliant parking is necessary.

Mr. Michael Textores, a Professional Engineer in the State of New Jersey, testified on behalf of the Applicant. He described the existing conditions indicating a one-story meeting hall with a 29-ft. access drive to an existing parking area that accommodates sixty (60) cars. The property is serviced by septic and well. The property is also impacted by wetlands, a 300-ft. riparian buffer and a flood hazard area.

The engineer then outlined the proposal which includes three (3) ADA compliant parking spaces and an 18-ft. access drive. The Applicant proposed a landscape buffer for the parking area. Mr. Textores indicated that there is proposed a 12-ft. high pole with light fixture for the parking area on the eastern side of the lot. There will also be three (3) wall-mounted lights on the building, one (1) by the parking area, one (1) to the east and one (1) to the west. The wall-mounted lights are for purposes of security. He also described a 5-ft. wide sidewalk accessing the ADA parking from the building.

With regard to the lights, there were questions raised as to whether or not the lights onsite would be left on. Mr. Textores indicated that all pole lights will be on a timer and that the security lights on the building will be on from dusk to dawn.

He also noted that the project is subject to DEP approval.

With regard to the conditional use variance, he noted that the church is a conditional use in the ordinance and that no parking in the front yard was allowed. He indicated that there is no other location onsite since there is already existing parking on the property and the balance of the property is occupied by either critical areas such as wetlands, flood hazard or other limitations as well as the building.

With regard to the "c(2)" variance for impervious coverage, he noted that the existing impervious coverage is 20.4%. With the new parking lot, it will increase to 22.6% whereas the ordinance allows for 15%. With regard to the "c(2)" variance for minimum front yard parking setback, he stated that the Township Ordinance requires a 50-foot setback, but in one (1) area, the new parking lot would have a six (6) foot setback. The rest of the lot has a greater setback but does not meet the 50-foot requirement. He noted, however, that the ADA parking is a benefit to the members of the community and advances a purpose of zoning which is health, safety and welfare. He also noted that the parking will be screened so as to minimize its impact.

There are also some design waivers requested by the Applicant. They included a design waiver for the size of the parking stall. He noted that these accessible parking stalls would be 8x18 as compared to the requirement of 9x18. However, he did indicate that each stall will have a minimum 5-ft. wide access aisle area. There is also a design waiver requested for the width of the driveway which is required to be 24-ft. and they are proposing 18-ft. He indicated that there are only three (3) parking spaces and there is no additional area for the parking drive. Therefore,

it will be an undue burden on the property to require the 24-ft access drive. He also indicated the turning radii for the parking area will be supplied as part of the approval. He also discussed design waivers regarding the curb face. There is a requirement for a six (6) inch curb face versus a four (4) inch curb face. He testified that the four (4) inch is a better alternative for the ADA parking due to the reduced length of the sidewalk ramp required.

Ms. Angela Knowles, a Professional Planner, testified. She noted that based upon a review of Knowlton Township planning and zoning documents including the 2009 Re-Examination Report of the Master Plan for Knowlton Township, she did not believe that there is any alternative to the location of the ADA compliant parking facility. It advances the purposes of zoning with health, safety and welfare providing accessory handicap access to the building which is not currently present. She did not believe that there was any substantial detriment to the public good since the parking lot was being screened and that there was no substantial detriment to the intent and purpose of the Zone Plan or the Zoning Ordinance. In her opinion, the benefits of providing the accessory ADA parking outweighed any detriment. She also believed that the project overall is an inherently beneficial use and therefore the positive criteria is met and the negative criteria is a balancing act in accordance with the Sica case.

With regard to design waivers, Ms. Knowles stated each met the standard that design waivers could be granted if there was undue hardship placed upon the Applicant. She noted that there is undue hardship because the property is impacted by environmental constraints and that

the ADA parking is necessary and appropriate and given the environmental constraints, the only location for the ADA parking is where it is proposed.

In addition to the testimonial evidence, the Applicant submitted the following documentary evidence:

A-1 An aerial dated 2/22/20.

The meeting was opened to the public and no public comment was received.

WHEREAS, the Zoning Board, in reviewing the foregoing testimony and documentary evidence, makes the following findings of fact and conclusions:

The Applicant is seeking a minor site plan, "c" variances, design waivers and a "d(3)" variance. The "d(3)" variance is interpreted by the case of Coventry Square v. Westwood Zoning Board of Adjustment, 138 N.J. 285 (1994). Our Supreme Court has interpreted the standard to be different from the Medici case. The Coventry Square standard is for the Board to acknowledge that a conditional use is a permitted use. The court went on to indicate further that imposing the same burden of proof approving special reasons as is the case in other use variances would be inappropriate and does not adequately reflect the differences between prohibited use which is seeking entrance into a zone in which the governing body has decided not to allow them and conditional uses which the governing body has decided to allow in that zone on certain conditions. Therefore, the standard for conditional use variance is that the Applicant must show that the site will accommodate the problems associated with the use even though the proposal

does not comply with the conditions of the ordinance established to address those problems.

The Board has reviewed the testimony of the Applicant and its witnesses and has found that the Applicant has met the positive conditional use standard. The addition of the ADA parking does not adversely affect the site and is accommodated adequately in the site by the provision for landscaping and the minimization of impervious coverage. The Board also finds that there is no substantial detriment to the public good in that the Applicant has agreed that the pole lights will be set on a timer to minimize adverse impacts on surrounding properties. Further, the Board finds that there is no substantial detriment to the intent and purpose of the Zone Plan or the Zoning Ordinance since the Ordinance and the Zone Plan do promote the health, safety and welfare of the community and the proposal for ADA parking is in furtherance of that goal.

With regard to the "c" variances, the "c(2)" criteria is such that the Applicant must establish that a purpose of zoning is advanced and that the benefits of the deviation outweigh any detriments. The Board further finds in this case that the addition of the ADA parking is an advancement of Purpose A of N.J.S.A. 40:55D-2 by advancing health, safety and welfare. The congregation's existing parking does not accommodate ADA parking and is needed for additional parking for elderly and handicapped members and guests. Thus, the variances associated with the minimum front yard parking setback and the maximum impervious coverage do meet the standard of the "c(2)" variance. The Board also finds that there is no substantial

detriment since the Applicant is providing landscaping and is minimizing the amount of light that is being proposed onsite.

With regard to the design waivers, the Applicant has offered the fact that for each there would be undue hardship if the design waivers are denied. The Board finds that given the environmentally sensitive nature of the site, that there would be undue hardship in requiring the standard parking space size, access drive width and curb height.

With regard to the minor site plan, the Board finds that the Applicant meets the standards of the ordinance.

NOW, THEREFORE, BE IT RESOLVED that the Zoning Board of Adjustment of the Township of Knowlton does hereby approve the "d(3)" variance for the location of the ADA compliant parking in the front yard as well as the "c(2)" variances for maximum impervious coverage and minimum front yard parking setback, as well as the design waivers that have been requested for the reasons expressed hereinbefore and in accordance with a map entitled "Minor Site Plan" prepared for 35 Ramseyburg Road prepared by Van Cleef Engineering Associates, Phillipsburg, NJ consisting of nine (9) sheets and dated February 5, 2021 and revised to April 26, 2021.

This approval is subject to the following terms and conditions:

1. This approval is subject to all outside agency review, including but not limited to the New Jersey Department of Environmental Protection.

2. The Applicant shall provide appropriate turning radius information to the Board Engineer for review and approval.
3. All pole lights shall be on timers set so that they will have minimal adverse effect upon surrounding properties.
4. This approval is subject to the payment of all appropriate fees and taxes.

The undersigned does hereby certify that the foregoing is a true copy of the action taken by the Zoning Board of Adjustment of the Township of Knowlton at its regular meeting of August 3, 2021.

RWT 8-16-21, 9-3-21