

**BOROUGH OF WESTWOOD  
PLANNING BOARD MINUTES  
REGULAR PUBLIC MEETING  
July 28, 2022**

**APPROVED 9/8/22**

**1. OPENING OF THE MEETING**

The meeting was called to order at approximately 8:00 p.m.

Open Public Meetings Law Statement:

This meeting, which conforms with the Open Public Meetings Law, Chapter 231, Public Laws of 1975, is a **Regular** Public Meeting of the Planning Board.

Notices have been filed with our local official newspapers and posted on the municipal bulletin board.

**2. PLEDGE OF ALLEGIANCE**

**3. ROLL CALL:**

**PRESENT:** Jaymee Hodges, Chairman  
Dan Olivier, Vice-Chairman  
Mayor Raymond Arroyo  
William Martin  
Keith Doell  
Anthony Zorovich  
Yash Risbud  
Beth Staples, Alt. #1

**ALSO PRESENT:**

Thomas Randall, Esq., Board Attorney  
By Steven Paul, Esq.  
Ed Snieckus, Burgis Associates, Board Planner  
Louis Raimondi, Board Engineer

**ABSENT:** Ann Costello (excused absence)  
Christopher Montana, Councilmember  
(excused absence)  
Kristy Dougherty, Alt. #2 (excused absence)

**4. OPEN TO PUBLIC ON NON-AGENDA ITEMS:** A motion to open to public was made by Dan Olivier, seconded by William Martin, and carried.

5. **MINUTES:** The Minutes of the **7/28/22** meeting were approved on motion made by Dan Olivier, seconded by Mayor Arroyo, and carried unanimously on roll call vote.

6. **CORRESPONDENCE:** None

7. **RESOLUTIONS:** None

8. **PENDING NEW BUSINESS:**

1. **T-Mobile Northeast, LLC-93 Center Avenue - Site plan Approval with Bulk Variances to Install a 25KW Diesel Generator**  
Frank Ferrara, Esq. represented the applicant. Ed Snieckus, submitted a Memo dated 7/19/22, which he reviewed. The application was for a site plan waiver, and in the alternative, Minor Site Plan approval, to install an emergency backup generator at an existing wireless telecommunications facility in the rear of the Borough Fire House, located at 93 Center Avenue. The proposal will install a 25kw diesel-fired generator with associated equipment for emergency backup for the FCC-licensed T-Mobile equipment currently housed at the facility. The area of the generator will be located on an existing, concrete slab, fenced enclosure. The property is in the CO-Central Office Zone District.

Mr. Snieckus further stated in his Memo that Pursuant to 40:55D-46.2 of the Municipal Land Use Law (MLUL), and the Federal Communications Commission Wireless Facility requirements regarding a substantial change under section 47 C.F.R. § 1.6.100.(b)(7), an application for development to collate wireless communications equipment on a wireless communications support structure or in the existing compound shall not be subject to plan review, provided the application meets the certain requirements. The MLUL exemption criteria under 40:55D-46.2a-c. Mr. Snieckus stated the application complies. He had no issue with applicant's request for a waiver of photographs. Mr. Snieckus recommended a review by Board Counsel as to whether the FCC regulations exempts the structure from variance relief.

Site Plans prepared by Comex Consultants, last revised to 3/03/22, and a Site Survey prepared by Anthony M. DeVizio, dated 1/24/22 were submitted.

Chairman Hodges deferred to the Board Attorney as to procedure. Steven Paul, Esq. advised the Board should hear from Mr. Snieckus as to his findings and analysis, giving the background per his Memo dated 7/19/22. If applicant wants to submit their case under the FCC Rule, and their attorney is ready, the Board can hear the matter.

Frank Ferrara, Esq., of Ferrara and Stamos, represented the applicant. He agreed with Mr. Snieckus' Memo, and they are seeking a waiver of site plan approval based on the regulations discussed. They are not changing the tower, there are no concealed areas, and they are not expanding. Further, there is no excavation. Under the Federal regulations, the question is whether the tower complies with the prior approval, and he is not aware of any conditions of the prior approval. When you analyze this under the Federal laws, you review the criteria, and whether there is a regulation they are not complying with, but there are none that he has found. He submits they are not in violation, and this qualifies them for an exemption from any local zoning regulations and allows them to obtain a zoning permit. Under the MLUL, it is a permitted use, so they comply with the regulations. Under NJ law, the question is do you create a variance. That is the grey area. With respect to the 15' setback or accessory building, it appears to comply. He is not sure if the provision was meant to apply for an emergency standby generator. 15' would be pretty far. there is also a generator 2' off the firehouse building. This is not exacerbating any conditions and that generator is much closer to the building. They clearly meet the Federal legislature for site plan. If the Board were to agree it would allow them to file for building permits, etc. They would not have to notice for a public hearing. The Board can act under the Federal regs and grant approval for this generator.

Mr. Raimondi commented when the tower was built, an easement was created by the Borough of Westwood for access to the tower monopole area. This is not shown on the survey. The survey should be updated. This generator is outside the easement. He asked if another easement would be necessary. Mr. Ferrara commented they have a lease with the Borough. Mr. Martin did not see why they would need to amend the easement. Mr. Olivier stated this question should have been brought up before the meeting.

Mr. Snieckus commented if we find it is exempt, then it is up to the Mayor and Council to determine if they have the rights to that certain area. Mr. Ferrara commented with a ground easement, it would be very unusual not to have access, and this is their amendment. Mr. Snieckus noted the signed lease agreement from 12/21 is an exhibit to their application. The plan shows where the activity will be.

Mr. Stevens advised the question is whether this falls under the exemption. If it falls under the exemption, then the easement would not be dispositive in any way. The Board agrees it is exempt and does not require a full hearing under the process. This might

be a time the Board may want to mention certain preferences on details of the generator's installation. Ms. Staples asked about the operation and design of the generator. Chairman Hodges stated they could run two-to-three days on this generator. The Board discussed a motion. Mr. Martin asked if the survey should show the easement and asked if the Mayor and Council still needs to review. He was concerned about the decibel study, as it does not seem to conform. Mr. Snieckus believed if it was an emergency situation, it would not matter. The regulations set certain levels during the day. Mayor Arroyo asked if there was a sound enclosure. Mr. Ferrara stated it is usually built in. The generator report shows the decibel levels to be complied with. It will be close to the upper limits of the ordinance. When operating during emergencies it is exempt. He is sure his client would have no problem with an enclosure and can provide specs to the Building Department.

Mr. Stevens stated if the Board wished to proceed with finding it exempt, he can take this back to the office to determine whether any further review should be made by the Mayor and Council prior to the Building Department issuing a permit. Mr. Martin stated this is listed under pending new business and not a public hearing and was concerned about interested parties. He asked if there was notice given. Mr. Stevens stated procedurally this is not an application. It is a determination of whether the matter requires a hearing or not if it is an exemption. Major Arroyo stated there is no testimony, and it is not an application. If the termed inaction was that is not an exemption, then it would be determined to be a formal application with publication and proceed to a hearing with notice. Chairman Hodges commented we are trying to see if they are exempt and comply with the regulations, and Federal law governs. If there were any interested parties, having the agenda, they could comment during the open to public portion. Mr. Ferrara stated they could provide a stringent sound-attenuation cover.

The Chairman stated we need to come to a decision and called for a motion to accept this as an exemption from the normal application process due to the FCC rulings. This is with the advice and opinion of the Board professionals.

A motion for a waiver to the site plan and that it is exempt from the application process as to the installation of the generator as stated, was made by Dan Olivier and seconded by Yash Risbud. Chairman Hodges, being a member of the Fire Department, asked if there was a possibility of relocating the generator near the fence, as they use the area for equipment. Mr. Ferrara did not think they could change the locations, due to the lease with

the Borough. The plans before the Board are the ones that will be presented to the Building Department. He would check. There were no further questions, comments or discussions. On roll call vote, Dan Olivier, William Martin, Anthony Zorovich, Keith Doell, Yash Risbud, Mayor Arroyo, Beth Staples, and Jaymee Hodges voted yes, based on advice of the Board Professionals.

**9. VARIANCES, SUBDIVISIONS AND/OR SITE PLANS:**

SWEARING IN OF BOARD PROFESSIONALS FOR PUBLIC HEARINGS

**10. DISCUSSION:**

**1. Adoption of Procedural Rules & By-Laws** - Noted for approval - Carried to the next meeting;

There were no further questions, comments or discussions and none from the public.

**11. ADJOURNMENT** - On motions, made seconded and carried, the meeting was adjourned at approximately 9:20 p.m.

**Respectfully submitted,**

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**MARY R. VERDUCCI, Paralegal**  
**Planning Board Secretary**