

PUBLIC HEARING
BOARD OF ZONING APPEALS
July 23, 2009

The Austintown Township Board of Zoning Appeals held a Public Hearing on Thursday, July 23, 2009, at the Township Building, 82 Ohltown Road, Austintown, Ohio, for consideration of Appeal Cases 2009-12-A and 2009-15-A.

The following Board members were in attendance:

Mr. Robert Satterlee – Chairman
Mr. Joe Koch – Vice Chairman
Dr. Thomas Stellers
Mrs. Dawn Owens
Mr. William Glaros

Chair Satterlee opened the public hearing at 7:12 P.M. All testimony in the following cases given under oath or affirmation. Court Reporter in attendance, complete transcript taken of the hearing.

Motion by Dr. Stellers to **APPROVE** the minutes of the June 25, 2009 hearing. Seconded by Mr. Glaros.

Roll call vote: Mr. Glaros – YES; Dr. Stellers – YES; Mrs. Owens – YES; Mr. Koch – Abstain; Mr. Satterlee – YES.

APPEAL CASE 2009-12-A

Atty. David A. D’Apolito, 4800 Market Street, Suite A, Boardman, Ohio, 44512, on behalf of Rebecca Mixon, 4604 New Road, Austintown, Ohio, 44515 for review of a mathematical error in the motion voted on at the public hearing held on June 25, 2009.

Zoning Inspector Darren Crivelli advised the Board of Appeals that the motion from the June 25, 2009 hearing had a mathematical error regarding the setback of the fence.

2009-12-A – Atty. David A. D’Apolito

Motion by Mr. Koch to rescind the motion from the June 25, 2009 hearing. Seconded by Mrs. Owens.

Roll call vote: Mr. Glaros – YES; Dr. Stellers – YES; Mrs. Owens – YES; Mr. Koch – Abstain; Mr. Satterlee – YES.

Motion by Mr. Koch to approve a variance of 10 feet to allow placement of the fence 35 feet from the center of the road. Seconded by Mr. Glaros.

Roll call vote: Mr. Glaros – YES; Dr. Stellers – YES; Mrs. Owens – YES; Mr. Koch – Abstain; Mr. Satterlee – YES.

APPEAL CASE 2009-15-A

David S. Mellott, 2895 Penny Lane, Austintown, Ohio, 44515, appeals from the decision of the Austintown Township Zoning Inspector and request a variance from the terms of Article I-Definitions: “Rear Yards”, Article VI-Residence R-1 District, Section 601-Permitted Uses, and Article XVII-Section 1703-Height Exceptions, of the Austintown Township Zoning Ordinance, as amended through May 24, 2007, to allow a second radio tower to remain as placed within the rear yard. A letter of violation dated May 26, 2009 stipulates three amateur towers placed within the rear yard. Per Article XVII-Section 1703-Height Exceptions, only one tower is permitted on a parcel of land regardless of overall height. Said property is zoned as a Residence R-1 District in Austintown Township, Mahoning County, State of Ohio.

Zoning Inspector Darren Crivelli read the applicant’s letter into the case record, referenced a site plan, a letter of zoning violation for junk and debris dated May 26, 2009, a letter of zoning violation for multiple towers dated May 26, 2009, a letter dated September 18, 2006 from Mr. Mellot to Zoning Inspector Kurilla advising the towers will be removed, a letter of violation dated September 8, 2006 issued by Zoning Inspector Kurilla, Violation Notice No. 062 issued on September 18, 2006 by Zoning Inspector Kurilla, a letter of violation dated August 8, 2006 issued by Zoning Inspector Kurilla, a copy of the Austintown Township Zoning Ordinance as amended through September 10, 1984, the case mailing list, and two plat maps prepared by the Zoning Office, and a total of 19 pages of photographs.

Chairperson Satterlee stated the mailing list of those property owners notified for Case 2009-15-A would be incorporated into the case record.

David Mellott, 2895 Penny Lane entered into the record Exhibit “A” and stated he has been a resident at this location for 23 years. He read a definition of the word “tower” and “antenna” and reviewed drawings and pictures differentiating between a tower and antenna contained in Exhibit “A”. He described the buffering put in place in the rear yard to camouflage the structures and reviewed FFC regulations regarding amateur radio operators with emphasis on this being a hobby and not a commercial business. When Spring Meadow was built he installed a buffer to prevent problems with his new neighbors. He disputed the Zoning Inspector’s interpretation of Article 17-Height Exceptions and stated it focuses on height and commercial properties. Stated the towers are not commercial towers and he has not altered the use of his property from residential to commercial. This is a hobby with no commercial activity. Further stated that the ordinance mentions churches, which are mostly on commercial properties. Zoning Inspector Crivelli stated that Mr. Mellott is entitled to “one” tower of unlimited height.

Mr. Mellot disagreed with the interpretation. Zoning Inspector Crivelli stated that the word tower in the referenced section is not written in the plural, but rather the singular. Mr. Mellot asked if the township would prohibit a church that wants more than one steeple. Zoning inspector Crivelli responded that churches are conditionally permitted uses, thus, they would have to apply for a conditional use permit and appear before the Board of Appeals for approval. Mr. Mellot stated he has not altered his property other than to put a couple of towers which are easily removed if he decides to move from the location.

Mr. Satterlee asked about the use of the tower structure at the rear of the yard. Mr. Mellot stated it was an antenna and it is used for the hobby. He then explained the spectrum of frequencies he can use and no one antenna can cover the entire spectrum. The antennas on the towers rotate to enhance their operational capacities. Depending on conditions, the antennas are vertical or horizontal during communications. He needs the versatility to operate a number of different types of antennas depending on conditions present. There are no limitations by the FCC as to where he can operate and the reason for amateur radio is to enhance technical advancement and to have a core of emergency operators for emergency situation such as Katrina and September 11th. Stated when Mr. Kurilla first approached him about debris in the yard it was mostly amateur radio towers and antenna parts he accumulated to experiment with.

Mr. Satterlee asked if the tower in the rear is operational. Mr. Mellot said he uses it but it is not operational as this point due to his having to replace his testing equipment. He recounted his conversation with Mr. Kurilla who required him to get rid of anything he was not using, so the antenna was put up at that time to use it as he did not want to get rid of it. It was placed back towards the trees so no one could see it and no one from Spring Meadow has complained about it.

Dr. Stellers asked if the antenna was on a section of tower. Mr. Mellot responded that the antenna was on a lightweight section of tower and the rest of the structure is aluminum mast sticking out of the top and there is also, as highlighted on the diagram with the dimensions, stubs that stick out of it that allow it to work on different frequencies.

Mr. Satterlee inquired about the first antenna as you approach the back yard. Mr. Mellot described it as a Rohn 45 and he described another antenna he put up temporarily to talk with friends in Pennsylvania. There are four towers total, two operational and two un-operational. Stated in 1986 he placed three towers the first year he lived at the home. The tower 61 feet from the house is a replacement for the first tower he constructed. In September 2003 he put an addition on the home and zoning had no complaints about the towers at that time. He reviewed the size of his property. The towers do not affect property values as evidenced by new home construction in Spring Meadow. A new homeowner on the north side has just moved in knowing the towers are there. Mr. Mellot stated he did not understand why after twenty years there were no formal complaints made. Now all of a sudden there is a complaint. He does not believe this resulted from a complaint about junk and debris. The towers have been constructed according to manufacture's specifications. The towers have never fallen down in all the years they

have been up. He described safety issues he has addressed and the guide wires. There are other amateur radio operators who have multiple towers. Stated that not having a building permit is not a valid issue. He has cables that feed all the antennas. The cables are now underground as his wife and neighbors did not like looking at the cables strung in the air from tower to tower. The towers are metal flowers and he doesn't understand why there should be a problem. Stated the tower against the home has been there since he moved in. The second tower back, the Rohn 25, was put up first, the one closest to the house was put up second.

Mrs. Owens asked how many towers were there the day he moved in. Mr. Mellot responded none. He stated he could see why some would think his towers are eyesores. He then mentioned other eyesores such as the water tower, the Mahoning County communications tower next to the old water tower, and the RCA 450 tower. He mentioned there are minimal FCC regulations he has to comply with. He is licensed with the FCC.

Mr. Koch asked when the middle tower was constructed. Mr. Mellot responded 1986. Mr. Koch inquired about the other tower. Mr. Mellot stated 1986. Mr. Koch asked Zoning Inspector Crivelli if there had been any issues prior to 2006. The record indicates that in 2006 he did disagree with Zoning Inspector Kurilla's letter of violation but did write a letter to Mr. Kurilla stating he would take the towers down. Zoning Inspector Crivelli further advised that he discussed the matter with Mr. Kurilla regarding the number of towers and was advised that Mr. Mellot complied with the letter of violation from 2006. Mr. Mellot stated that the towers do not go up and down periodically. Mr. Koch asked about the time frame to construct a tower. Mr. Mellot stated a tower can be constructed in days, long enough to dig the hole, pour the concrete, set the base, and get it going. Zoning Inspector Crivelli read a portion of the letter Mr. Mellot mailed to Mr. Kurilla in 2006 wherein he states under protest he will remove the towers. Mr. Mellot responded that those were not the towers that are the subject of this hearing. Those three towers were temporary towers he was experimenting with when Mr. Kurilla came out and told him he could not make his back yard look like WKBN radio station. Zoning Inspector Crivelli affirmed that is what Mr. Kurilla told him. Mr. Mellot stated that is an illustration of what he does with his hobby and it does appear extreme and apologized for it. Mr. Koch asked if at one time he had as many as five towers in his backyard. Mr. Mellot responded on a temporary basis he put up three additional towers. The sole purpose was to support a diamond shaped antenna that could not be supported on his property without the extra towers. Mr. Kurilla approached him about it and he agreed to take them down. He also stated he built a fence to hide materials he did not wish to dispose of. He builds antennas and the antennas do not stay up on a permanent basis.

Mrs. Owens asked if he intended to add more antennas. Mr. Mellot stated he would not add more antennas. Mrs. Owens quoted his letter of application which stated he may change the antennas or add more from time to time. Mr. Mellot stated yes but not on a permanent basis. He may add more antennas to the two existing towers but would not add more towers.

Mr. Koch asked if there were a series of complaints or just one. Zoning Inspector Crivelli stated the Township received a complaint regarding the general condition of the property and the towers. When Mr. Harris inspected the property he recalled this was the same violation from 2006. The complainant stated the towers go up and down with no oversight from the government. Zoning Inspector Crivelli conferred with Mr. Kurilla regarding this matter and also downloaded federal regulations which discourage local communities from implementing height restrictions. The Federal Government recommends local jurisdictions provide for variance or conditional use if height restrictions are implemented. Zoning Inspector Crivelli further stated Mr. Mellot is entitled to one tower with no height restrictions. Mr. Mellot stated the first time he was cited he did clean up debris that wasn't relevant to the hobby including tires and a five-gallon drum.

Mr. Sattellee inquired about the structure attached to the south wall the house. Mr. Mellot stated he was using that structure for the local communication and he is currently using three towers for the hobby.

Mr. Koch asked about his membership in a network of emergency responders. Mr. Mellot stated he voluntary participants in a sky watch for tornados when weather warnings come up in Spring and Summer. Has taken part in community events such as the event for a fallen officer two weeks ago and helps coordinate communications with police departments within the county.

Mr. Koch asked if has a separate power source. Mr. Mellot stated he has a dual fuel generator sitting in his driveway for emergency power for the home. He also uses the generator for emergency preparedness drills such as the one held in Canfield a few weeks ago.

Mr. Koch asked if all the junk and debris has been removed. Mr. Mellot advised that it was removed. Mrs. Owens asked if the debris is be coming back. Mr. Mellot responded no. Over the years other amateur radio operators have come to him to take towers down, some passed away and their families wanted to get rid of them. So he would remove a tower and keep it for his own personal use. He intends to move someplace else where he will have more property to put up the towers he wants. Periodically neighbors have made some references to what the towers did to them physically, but otherwise no neighbor complained directly to him about the towers. Stated he is passionate about his hobby and he does not complain about other neighbors, such as parties going on until two in the morning at Spring Meadow.

David Beatty, 5560 Kirk Road spoke in favor of the appeal. Stated for years he had multiple towers. He does emergency communications for this community and Dave helps him out. Whenever amateur radio hobbyists have problems they call Dave for help. He has been doing this since he moved into the property. He had three towers at another property he once owned back in 1969. This is nothing new in the area, he has been doing this for years.

Michael McCleery, 3835 Cannon Road spoke in favor of the request and stated during disaster amateur radio operators are often called upon to help safety services. He described a recent incident in California where information was relayed across county about families affected by the disaster.

Mike Maiorania, 2902 Penny Lane spoke in favor of the request. Has lived in his house for five years and has had no problems with the towers. The towers have not affected his way of living, TV's, or anything. The debris in the yard should be kept a separate issue. Asked the Board to make a decision on the towers so we can end this neighborhood issue tonight. The towers are not an eyesore and Dave is a good neighbor.

Brian Mellot, 2895 Penny Lane spoke in support of his father. His dad has been through a lot and really stepped up to the plate for us. A couple of people are always giving him a hard time. Stated he is twenty-two years old and played football at YSU and is the proudest Austintown resident there is. Stated he has a 42 inch flat screen TV in his bedroom that has the best picture in town. He has friends who rely on his father for technical advice. His dad would never put anything up in this community that would hurt or bother someone. His father has busted his butt for these people. He knows the rules are the rules but 23 or 26 years sets a precedent. The towers don't affect TV's, anyone's health, or anything else. The towers may be eyesores on occasion but there is currently an eyesore in his backyard. He appreciates the Board hearing the case and he is proud of his mom and dad and the neighbors that are here. His dad will work with the Board to resolve this. He has a four year old niece who runs around there and his dad would not put anything up there that would hurt someone. If you ever need advice on technology his dad is the guy to ask.

Kimberly Glaros, 2911 Penny Lane, stated the towers are an eyesore but thanked Mr. Mellot for cleaning up the mess. She wants him to go by the zoning rules. Mr. Satterlee asked if she was speaking for or against the request. She stated she was speaking against the appeal.

Joann Goldcamp, 2885 Penny Lane spoke in favor of the request. She just moved in last September and has no complaints. The way the yards are nobody really uses the back yards. She just goes to her back yard to cut the grass. People are not back there playing or doing things and the towers do not bother her. She never thought anything about the junk back there. She figures people do stuff, they have hobbies, and have no place to store their stuff and this never bothered us.

Pete Packard, 2894 Penny Lane lives across the street from the Mellots and spoke in favor of the request. He has been there 19 years. The Mellots are good neighbors and the towers don't bother him. He has been in their backyard recently and it is clean and he does not see any problems.

No one else in attendance to speak for the request.

Kimberly Glaros said she lives there and sits on her deck and looks at the towers but is glad they removed the debris from the yard. Wants zoning to go by zoning rules. Have the towers been inspected? Are they safe? Have the antennas been inspected? She has no problems with Dave and Cathy and yes they do have a party every couple years in their backyard. Mr. Satterlee asked if she has been in the Mellot's backyard and looked at the towers. Mrs. Glaros answered no, but still wanted to know if the towers are safe, especially since the rear yards are very wet. Can a wind storm pull them out? Could they fall? Mr. Satterlee viewed them and expressed his opinion that they are anchored the same way guide wires are anchored to telephone poles. Mr. Satterlee was impressed with the way they were anchored down. Mr. Satterlee expressed his opinion they were safe but stated he would have concerns regarding rust around the towers. Mrs. Glaros expressed concern about the number of antennas he may construct. She also stated she is not related to Bill Glaros. Mr. Koch explained to her that appearing before the Board is the avenue of relief for Mr. Mellot. She sees the antennas since there are no trees blocking them. She has concerns about the number of antennas and towers there. The towers were there when she moved in. Mr. Koch stated that this lot is over 400 feet deep and it may be a generic interpretation to have one tower per lot considering the size of this lot. Mr. Glaros has never seen any health problems or problems with her TV. She would like to see the property free of debris. Mr. Koch stated he thought Mr. Mellot was very qualified as an installer of the towers. She did not want to see Mr. Mellot place 15 antennas in his yard.

Mr. Koch asked Mr. Mellot about specifications of the towers and 75 mile an hour winds. Mr. Mellot stated the Rohn 25 has three guide wires which exceed specifications and he climbs the towers. The towers have been up for 23 years and they haven't come down except one time for some maintenance. If one of the towers should fall it will not hit a nearby home.

IdaBelle DeHoff, 2905 Penny Lane spoke against the request. She stated the towers are knocking out her TV and appliances. There are too many antennas. Mr. Satterlee asked Mr. Beatty if this was possible. Mr. Beatty stated no it was not possible. Mr. Satterlee asked Mr. Beatty specifically if the towers could affect her TV. Mr. Beatty said if she had problems with her connectors the towers may interfere with the TV. He has 23 antennas and no one in his 43 years complained about TV interference. Mr. Satterlee asked Miss DeHoff if she was air or cable. She responded Direct TV. Mr. Beatty stated any problems are the result of not getting a good signal, it has nothing to do with amateur radio. Miss DeHoff stated at night bright flashes of light emit from the antennas and are knocking out her battery operated appliances such as her smoke alarm. Mr. Mellot stated no light emits since radio frequencies are invisible. He does not practice his hobby 24/7. Although his antennas rotate her satellite dish points south. Mr. Koch asked how often does he use his equipment. Mr. Mellot responded not much now that he is unemployed. He is doing anything he can to survive. He could not give a number of hours he operates but stated whenever he gets an opportunity to. The system is shut down when not in use. The FCC sets guidelines regarding how much power he can use based on the height of the antennas and proximity of nearby homes. He is allowed up to 1,000 watts of power on the lower frequencies. He does not own anything that powerful. His radios are all

stock radios. The most powerful radio he owns is 100 watts. Miss DeHoff stated that one time her appliances all went out. An Ohio Edison guy told her the antennas are doing something to her appliances. Mr. Koch asked if she had an electrician look at her appliances. She stated no but somebody went near the towers with a beeper and it went off a lot near the antennas. She has replaced three furnaces. She could hear Cathy (Mellot) talking on the furnace.

No one else in attendance to speak against the request.

Cathy Mellot, 2896 Penny Lane stated she has lived with her husband for 30 years. When they talk about their TV going out they do call us and ask if Dave could turn the antenna, which he did, and their TV has been beautiful ever since. I don't understand. They call us and ask us to turn it, he does, and everything is fine.

Mike Maiorania stated he is an electrician and that his and nearby houses are on the same transformer. He had to install surge protectors to protect his appliances and electronic equipment from the power surges caused by the transformer and advised that could be the cause of Mrs. DeHoff's problems.

The Board recessed into executive session.

2009-15-A – David S. Mellott

Motion by Mr. Koch to approve a variance to allow the second free-standing radio tower to remain as placed within the rear yard but the third existing tower placed near the easterly rear property line is to be permanently removed. Seconded by Mrs. Owens.

Roll call vote: Mr. Glaros – YES; Dr. Stellers – YES; Mrs. Owens – YES; Mr. Koch – YES; Mr. Satterlee – YES.

There being nothing further to come before the Board, the meeting was adjourned at 8:47 P.M.

AUSTINTOWN BOARD OF ZONING APPEALS

DARREN L. CRIVELLI, ZONING INSPECTOR

APPROVED: _____
ROBERT SATTERLEE, Chair

DATED: _____