

Holland Township Board of Adjustment
Minutes of the November 18, 2020 Meeting

The meeting was called to order by the Chairman, William Martin:

“I call to order the November 18, 2020 Meeting of the Holland Township Board of Adjustment. Adequate notice of this meeting was given pursuant to the Open Public Meeting Act Law by the Planning Board Secretary on December 13, 2019 by:

1. Posting such notice on the bulletin board at the Municipal Building.
2. Published in the December 13, 2019 issue of the Hunterdon County Democrat
3. Faxed to the Express Times for informational purposes only.

HOLLAND TOWNSHIP BOARD OF ADJUSTMENT
PUBLIC NOTICE
TOWNSHIP OF HOLLAND

NOTICE OF CHANGE OF FORMAT OF REGULAR TOWNSHIP BOARD OF ADJUSTMENT MEETING AND PUBLIC PARTICIPATION FOR THE MEETING SCHEDULED FOR 7:30 PM WEDNESDAY NOVEMBER 18, 2020

PLEASE TAKE NOTICE.
THE MEETING FORMAT HAS BEEN CHANGED FROM IN-PERSON ATTENDANCE AT THE MUNICIPAL BUILDING, 61 CHURCH ROAD, TO TELECONFERENCE DUE TO COVID-19 OUTBREAK AND THE STATE OF EMERGENCY DECLARED BY GOVERNOR MURPHY.

IN LIEU OF IN-PERSON ATTENDANCE, THE PUBLIC MAY ATTEND THIS MEETING VIA TELECONFERENCING AND COMMENT DURING THE DESIGNATED PUBLIC COMMENT PORTION IN COMPLIANCE WITH THE OPEN PUBLIC MEETINGS ACT.

OFFICIAL ACTION TO BE TAKEN

TO JOIN THE MEETING FROM A COMPUTER::

<https://zoom.us/j/92231949736?pwd=SjVqdzVTNk5lZmFmWjc0YzlRZ0drUT09>

Phone:
1 646 558 8656
Meeting ID: 922 3194 9736
Passcode: 230578

Flag Salute:

Chairman Martin invited everyone present to join in reciting the “Pledge of Allegiance”.

Identification of those at the podium for the benefit of the recording machine:

Present: Jerry Bowers, Ginger Crawford, , Peter Kanakaris, William Martin, Kelley O’Such, Gail Rader, Blake Width., Esq for David Pierce, Esq.,(who arrived 8:22pm) Robert Martucci, Engineer, Court Reporter Lucille Grozinski, CSR, Kendra Lelie, Substitute Planner (cell application) and Maria Elena Jennette Kozak, Secretary.

Absent: Bill Ethem. As per Chairman Martin, the following professional was excused: Darlene Green, Planner

Planning Board Members filling in for Board of Adjustment Recused Members:

David Grossmueller, Mike Keady, Nickolas Moustakas and Dan Rader

Guest present: N/A

Let the record show there is a quorum.

Minutes: A motion was made by Gail Rader and seconded by Peter Kanakris to dispense with the reading of the September 30, 2020 and October 28, 2020 minutes and approve as presented. All present were in favor. No one was opposed. Motion carried.

New Business:

There was no new business on the agenda this evening.

Old Business

There was no Old Business scheduled to be discussed on the agenda.

Completeness

There was no completeness reviews scheduled on the agenda at this time.

Public Hearing

We had some members leave: Jerry Bowers, Bill Ethem, Peter Kanakaris and Bill Martin. The members mentioned had to recuse themselves.

Board Member Ginger Crawford will step into the role of Acting Chairman.

Planning Board Members David Grossmueller, Mike Keady, Nickolas Moustakas and Dan Rader are filling in for Board of Adjustment members that need to recuse themselves for the following application.

- New Cingular Wireless PCS (AT&T) – Block 19 Lot 12.01 – 707 Riegelsville Road – Preliminary & Final Site Plan Approval – New Cell Tower – Rec'd into our office August 6, 2020. The 45-day completeness review deadline is September 20, 2020. Deemed Complete August 26, 2020- Public Hearing September 30, 2020 and carried to October 28, 2020 - Board Action Needed.

Attorney Judith Fairweather is present for the application.

The Proofs of publication were scanned to Attorney Pierce and the board has jurisdiction. Hard copies were delivered to Town Hall for the file.

Kelley O'Such stated that he reviewed the recording of November 18, 2020 and Peter Kanakaris left the meeting and was not involved with the application. Attorney Width stated that Attorney Pierce also reviewed the recording of the October 28, 2020 meeting and agreed that Board Member Kanakaris did not participate in the Public Hearing for the cell tower application as he left the meeting.

Attorney Fairweather asked Appraiser Mark Tinder to be sworn in as a witness.

Witness Mark Tinder – sworn in by Court Reporter Grozinski. Appraiser Tinder stated that his address is 29 Somerset St, Floor 2 Somerset NJ. He is state certified, licensed in 1990 and a full time appraiser since 1996. He has appeared before many boards in the state, including Holland Township (approximately 15 years ago and it was a cell tower application). Other areas he has served include: condemnation commissions, tax appeal hearings, qualified by the state agriculture department committee for farmland approval work and the Green Acres committee of the State DEP. All agreed to accept Appraiser Tinder as an Expert witness.

Appraiser Tinder submitted three studies: Springfield, Hawthorne and Hillsborough.

Appraiser Tinder stated that he has read the transcripts of the hearings and understands the concerns and what was being requested. He recognized potential impacts on neighbors with a cell tower application. The potential impacts can be positive and negative. He recognized the characters if use being proposed as passive. A cell tower does not generate noise associated with normal operations on site, there are no odors, there is no traffic, there are no lights and there is no burden on a municipal service. The surrounding area will remain the same with residential use. This means that there is not an overall change to the property. It is not uncommon to see a cell tower on property within a residential area. There is not impact on the vegetation in the area and trees are not usually removed. In his 25 years he has never seen an installation of this type that has had a measurable value impact on new residential properties. That does not say it does not exist but he has studied a lot of cell towers over the years and he has not seen an impact. He has seen people object to them and express resistance to buying a home near one. Based on

his studies however, it is his conclusion that there is no reasonable potential value impact that would be associated with the use presented.

Appraiser Tinder discussed the Springfield Township study presented. The property listed for \$537,500.00 and sold in 2019 for the list amount. It took 8 days to sell. He stated that he made typical adjustments like any other appraisal. You look at square footage differences, site area differences, site locations or extra features such as finished basements etc. The grid is similar to a residential appraisal. There is not an adjustment for the view. The property 4 Hawthorn Ave in Springfield is approximately 180 feet to the nearby 150' monopole cell tower. The range of values was \$523450.00 to \$541350.00 and the property sold for \$537500.00. The theory is that the home on 4 Hawthorne Ave was in close proximity to the cell tower (the cell tower is on a Fire Company site) and it sold in 8 days from listing. An aerial photograph was presented and shows the view. Comparative sales were also presented with the range of adjusted values having an average of \$535,000.00 which is almost what the home sold for. Based on this, Appraiser Tinder drew the conclusion that the existence of the monopole cell tower had no impact on the market value of the property since it sold for full price within a week.

Mike Keady expressed concerns that the studies were for locations not in Hunterdon County and not in a town similar to Holland Township. He expressed that it is a different person who purchases River property. We have charm on the property.

Appraiser Tinder responded that people in their own areas consider their property to also have charm. Appraiser Tinder also stated that he has found it difficult to do a comparison in rural settings as the sales have not really existed to study. He has looked at other places to see patterns. The marketplace itself has not exhibited a negative impact of a cell tower on neighboring property.

Kelley O'Such asked Appraiser Tinder to explain measureable.

Appraiser Tinder stated that market evidence is the proof. You need to find a suitable location, locate comparable in the area and show the competition in a tight range.

Attorney Width asked if Appraiser Tinder knew when the monopole cell towers were installed into each study. Appraiser tinder did not know the answer but was happy to follow up if the board wanted him to. He believed that most of the nearby homes predated the monopole but would need to confirm.

Appraiser Tinder then discussed 37 Union Street in Hawthorne Borough. This property went to contract on July of 2019 and closed in October of 2019. It was on the market for 15 days before going to contract at over \$10,000.00 over list price. This means there were multiple offers. The range of adjusted values was from \$340,000.00 to under \$370,000.00 with the property selling for \$360,000.00. The aerial photo showed the location of the property to the nearby monopole.

Appraiser Tinder asked if he should discuss the third property presented and Mike Keady and Kelley O'Such stated they did not think it was necessary.

Board questions:

With no questions being offered at this time the meeting was opened to the public.

Betsy Lentz – Asked if Appraiser Tinder submitted three studies but had done more.

Appraiser Tinder stated that he submitted three but has done many studies over his approximate 25 year career. Ms. Lentz then asked if they were all done in eastern NJ with the response being that he has done studies throughout the state. Ms. Lentz then asked if they were in populated areas. Appraiser Tinder said that yes however as mentioned in testimony, it is difficult to find a good study in a rural setting. Ms. Lentz questioned comparisons of a view of the tower vs not of the tower. Appraiser Tinder explained his studies. Tower heights were also discussed with Springfield being 150', Hawthorne being 129' and Hillsborough being 150' however Appraiser Tinder explained that he has done studies of higher towers. In recent years, he has focused on the monopoles. Ms. Lentz asked if all the studies were done on behalf of cell phone companies and Appraiser Tinder explained that the exhibits were relating to the application but he has performed studies for

his own as he also does relocation appraisals. He also explained he likes to be informed on issues that relate to values.

Richard Giantisco questioned whether the Appraiser has studied 100 percent of all situations of cell towers and neighborhoods around them. Appraiser Tinder responded that he has not and referenced his own testimony that he has studied dozens in the State of New Jersey. Mr. Giantisco had more questions about the studies. Appraiser Tinder referenced his testimony and how the three examples submitted do not represent his full work that he has been doing this for over 20 years in NJ. Mr. Giantisco asked if he did appraisals in PA with the response being no. Mr. Giantisco discussed the subject properties not being comparable to Old River Road in Holland Township which brought up discussions of the view in the area and that being a selling point of the homes in the area. Appraiser Tinder responded that his studies were not similar in the view of the Delaware River but he also explained that the monopole is not in the direction of the River and that the monopole is on the other side of the tracks and not near the street. Appraiser Tinder mentioned that he did look at the area and measured where Mr. Giantisco home is relative to the monopole and it's about 390 feet from the 150' monopole. More discussions took place about the view.

Ms. Good – resident on Old River Road for over 40 years – Ms. Good discussed the classification of the area as Historic Village and how the comparisons are not similar. She also expressed her opinion that she has excellent cell service and how she does not understand why this is being done. Attorney Fairweather had an objection that Appraiser Tinder is not the witness to discuss the application.

Mr. Lubar – What percentage of Appraiser Tinder's appraisals are commissioned by AT&T Cingular? Appraiser Tinder and Attorney Fairweather stated that they are from the same town but Appraiser Tinder responded that AT& T has provided only a tiny fraction of the overall income of his business. He owns his own appraisal company and he does a lot of relocation work. He does a lot of commercial and industrial appraisals. He also does farmland preservation with Hunterdon County being a client of his. He did the Route 519 realignment project and appraised about two dozen properties along 519 for that road realignment. He also does equitable distribution for marital assets. He has worked for telecommunication companies other than AT&T but they only represent a small fraction of his total income as an appraiser.

David Turner – had more questions about the properties being presented are not rural settings and that the comparisons are not the same. Appraiser Tinder stated that the mechanics of a home sale in New Jersey are really the same everywhere. You have a home listed on multiple listings, there are showings, open houses, and offers are made. Parameters are similar, each location and each property has a something to offer. The River is beautiful but home buying public comes to look at your home and they decide the negative impact of conditions in the area. Appraiser Tinder stated that he believes the marketplace makes itself known.

Valerie Sivilli – Asked if Appraiser Tinder ever sold a property in NJ with the response from Appraiser Tinder being he is an appraiser not a realtor. She asked what town he lives in with the response that he lives in Bridgewater. Ms. Sivilli then stated that an interesting type of person lives near the River.

Ms. Good – she recognized that if she wanted to sell her house that it probably would sell however the community in the area lends itself to a different person who lives in the area. It is a tight knit community.

Public Witness as presented by Mr. Turner

David T Anderson was sworn in by Court Reporter Grozinski. He is a certified real estate appraiser in New Jersey and Pennsylvania with only doing appraisals in Hunterdon and Bucks County. His address is 3726 River Road, Lumberville PA 18933. Mr. Anderson explained that he has been specializing in residential housing for 45 years. He does a lot of work for banks, mortgage companies and attorneys. He has done work in Hunterdon County, Holland Township. He had an appraisal company in Kinnelon NJ with 7 appraisers working under him. He is currently independent and works from his home in Lumberville.

There were no questions from the board.

Mr. Turner asked Appraiser Anderson his thoughts about a cell tower in the area.

Appraiser Anderson responded that he has not done a lot of cell towers because most of the properties he does are in residential zones. In his opinion, cell towers are usually not in residential zones. He has done properties impacted by water towers. And the properties have shown a lost value. He has done properties near high power electric lines within view and even if 500 yards away then he has seen an adverse effect on value and marketability. He stated as for this property, people in the area know the railroad tracks exist but now you are adding something else to the neighborhood. In this case you are adding a tower to an existing established area. He lives on the Delaware River and understands the view. He did not perform any studies for review.

Board member Rader asked if Appraiser Anderson went to the area and looked in comparison to where the tower will go and Appraiser Anderson stated he did about 2 weeks ago. He saw the firehouse and stopped to visit a friend who is remodeling a twin house on Old River Road. He stated he rode around to get a feel for the area and did look at Mr. Turner's home as well. He said the area is similar to the area he actually lives in. He could not envision a cell tower popping up in either area. He has not come across studies of cell towers in areas near the River in rural settings. It has been his experience that cell towers are usually in the woods or on preserved land or township owned land that is not in a residential area, especially historic areas.

Attorney Fairweather asked Appraiser Anderson if he was aware that every FCC licensed carrier has to supply coverage everywhere in NJ and that there are antennas and in many cases towers in residential areas? Appraiser Anderson said he normally does not see them in residential areas in Hunterdon and Bucks County. Attorney Fairweather asked Appraiser Anderson if he was aware that AT&T has built towers in residential areas in Hunterdon County with Appraiser Anderson responding that he had not come across them. Attorney Fairweather asked Appraiser Anderson if he was aware that on some preserved areas in the state such as Farmland that there are regulations against building towers there. Appraiser Anderson responded that he did not know that.

Appraiser Anderson was thanked for his time. No one had further questions.

Attorney Fairweather stated that she understood the feelings expressed with a potential tower going up in the River community. She reminded everyone that the carrier's FCC license requires that the carrier provide coverage everywhere regardless if another carrier has better coverage. The tower is to provide coverage in an area where their people found to be a gap in coverage and the location is not a residential home but a fire house where the tower will provide 911 for FirstNet and things like that. More people are using wireless communications. People are not using landlines like before. Attorney Fairweather shared her understanding of how hard it is for a municipality to approve a cell tower application being built near residential homes. She knows that the application had variances associated with it. The reason for the tower is that there is not enough coverage. The fire house is a passive use property. There is no burden put onto the municipality. There is no odor. There is no requirement for utilities such as water or sewer. There is no increase to the school. There is no increase to the use of the roads. Someone visits the site every six to eight weeks. The positive criteria are that the licensed carrier is filling in a gap. You will see the tower. A monopole is proposed. They are happy to make it a tree pole if the board requests that. Attorney Fairweather thanked the board for their understanding of the project and asked the board to approve the application.

Public Comment

Dr Marion Kyde – 1510 Cannon Road Oslo PA – represents the lower Delaware Wild and Scenic Management Council and is Vice Chairman. She sent comments but was told she had to speak at the meeting. The following is what was submitted and what was discussed at the meeting this evening.

**Holland Township, PA Proposed Cell Tower LDWSR Comments
Zoning Board of Adjustment Virtual Hearing
Carried to Wed., Oct. 28, 2020 at 7:30 PM**

My name is Dr. Marion M. Kyde. I live at 1510 Cannon Road, Oslo, PA. I represent the Lower Delaware Wild and Scenic River Management Council and serve as Vice Chair.

The Lower Delaware was designated as a federal Wild and Scenic River twenty years ago. It has a formal management plan, written and approved by the New Jersey and Pennsylvania communities it borders, designed to protect the qualities for which it was designated. More information on the activities of our Council and the Wild and Scenic River can be found at www.lowerdelawarewildandscenic.org.

The six goals for the plan include those of protecting open space and natural resources. Scenic vistas and scenic views are included in natural resources.

The Management Council has several reservations and comments about this project:

- 1) The materials provided do not mention how much of a height variance is being sought. Since cell towers are usually, if not always, many feet above the surrounding structures, this will absolutely be at odds with the visual experience from the river. We oppose this variance.
- 2) The applicant claims, quote, “no detriment to the public good”. We feel the views cape from the river will absolutely be compromised for the thousands of citizens recreating on and near the river and for those viewing the tower from the Pennsylvania side of the Delaware.
- 3) The applicant seeks variances to avoid showing existing features and elevations. We feel that these details are important when considering the effect of the cell tower on the surrounding area. We hope that the applicant will provide them.
- 4) No flood plain boundaries are noted in the drawings. We are strongly opposed to this plan if the tower, the base and/or the fencing are located in or close to the flood plain.
- 5) The applicant seeks a waiver from any landscaping. At the very least, the fencing at the base of the tower should be buffered by greenery sufficient to hide it. In other words, the plantings should be situated to ameliorate this impact.
- 6) We strongly suggest that sightings from points along the river be examined to see how badly the tower will impact the visual qualities of our scenic river and that these details be required for this application.
- 7) If you choose to move ahead with an approval for this cell tower, please ask for a design that fits into the landscape and so does not take away from the viewscape.

Thank you for your consideration.

Engineer Martucci had some follow up questions which included asking if Holland Township has endorsed this organization as a regulatory agency as he found no evidence supporting the support of Holland Township. Ms. Kyde state that they are not a regulatory agency and we have a representative to this group. Ms. Kyde did not know who our representative is but said that the organization meets 4 times per year with November 30th being the next meeting on Zoom. All are welcome to participate. Funding for Wild and Scenic is thru the Federal Wild and Scenic River Fund. Wild and Scenic is part of the National Park Service. All communities along the River have input into what is going on.

Planner Lelie had some comments. A height variance was requested and is d (6) and the planner for the applicant went through the proofs for the height variance. Discussions about plantings came up and Planner Lelie referencing her notes stated that the applicant is willing to do plantings in front of the compound. Planner Lelie looking at the map of the lower Delaware stated about 30 municipalities are covering the area and asked Ms. Kyde if she was aware of any cell towers in any of the 30 municipalities? Ms. Kyde did not know of any but said there could be some.

Dwight Pederson resident on Brook Hill Drive in Holland Township and Sworn in by Court Reporter Grozinski. He stated that he is also on the Environmental Commission. He added comment that the Musconetcong River is also in close proximity of the site. The

Department of Interior recently designated that as a National water trail. The Department of Interior is also close to designating the lower Musconetcong as a Wild and Scenic River. When that happens then National Park Service is involved and would review applications.

Robert Lubar was affirmed by Court Reporter Grozinski. Mr. Lubar repeated his opinion that granting the cell tower application is not in the best interest of Holland Township. He does not believe granting 9 variances is a reasonable request of an applicant. He still believes they should look at alternate sites which is part of the criteria the board needs to review. He still believes there is a lapse in the process at the expense of the residents. He also did not appreciate the appraisers' comparisons. They did not compare to Holland Township.

Valerie Sivilli was affirmed by Court Reporter Grozinski. Ms. Sivilli talked about 911 and asked if it changes the status in town. She also questioned why we never heard from the Delaware River Keeper network. She also expressed that she is not anti-tower just not along the River but if you have to put it up then just put up the monopole and not the fake tree.

Deborah Good – 175 Old River Road – sworn in by Court Reporter Grozinski. Ms. Good referenced Article 6 regarding telecommunications towers and antennas and how everyone needs to read it carefully. It is there to protect residential areas. Ms. Good believes that AT&T can share a tower elsewhere. She also believes 9 variances are a lot.

Richard Giantisco – 37 Old River Road – sworn in by Court Reporter Grozinski. Mr. Giantisco does not believe coverage is sufficient for granting the cell tower application. Mr. Giantisco also did not believe the comparisons shared by Appraiser Tinder were the best for Holland Township and a cell tower along the River. The properties are not similar to Holland Township.

David Turner – sworn in by Court Reporter Grozinski. Mr. Turner referred to Planner Lelie's report dated September 23, 2020. He explained that when understanding the impact of negative criteria that the board needs to consider is this protecting the residential area and can the applicant locate the tower to a nonresidential area. He said the consideration needs to be to minimizing the total number of towers in the community. By ordinance, the township strongly supports joint use of new and existing tower sites. The proposed tower is to be on property that is the only property explored as an option. He strongly suggests another site be looked at and co-location be explored.

Betsy Lentz – sworn in by Court Reporter Grozinski. Ms. Lentz agrees with all before her that not enough evidence has been presented to justify the application. Another site should be looked at. She believes the property values will go down. There are too many variances being requested before the board. Ms. Lentz stated that there other sites more suitable for this application such as the old mill property.

Dwight Pederson – Sworn in by Court Reporter Grozinski. Code 100-36 talks about the applicant looking at other locations and he did not see where the applicant has put that on the record. Acting Chairman Crawford stated that there was testimony early in the proceedings.

With no other comments from the public, a motion was made by Mike Keady and seconded by Gail Rader to close the public portion of the hearing. All present were in favor of the motion. Motion carried.

Board discussion.

Attorney Pierce stated that Ms. Lelie provided an excellent summary in her memo of September 23. The positive criteria need to be satisfied as well as the negative criteria. The courts have ruled that if the applicant proves that they have a FCC license then they have demonstrated that they are promoting the public welfare by installing a new tower. The applicant is required to demonstrate that the site is well suited for the proposed use. The board must consider if the applicant demonstrated a need for the facility to cover the gap in coverage, and those qualities of the site accommodate the use and limit negative impacts from the use, that's not otherwise permitted in the ordinance. As for negative, there is a

test. The board needs to identify the public interest at stake, identify the detrimental impacts that will result from granting the variances. The applicant must prove that the use will not create a substantial detriment to the zone plan and zoning ordinance. The applicant's planner provided testimony. Property values are not something the board should consider. In this case, experts provided testimony.

Mike Keady questions the law. He asked everyone to look at 100-36 and stated the goals:

§ 100-36 Wireless telecommunications towers and antennas.

A. Purpose.

(1)The purpose of this section is to establish general guidelines and regulations for the siting of wireless communications towers and antennas.

The goals of this section are to

(a)Protect residential areas and land uses from potential adverse impacts of towers and antennas.

(b)Encourage the location of towers in nonresidential areas.

(c)Minimize the total number of towers throughout the community.

(d)Strongly encourage the joint use of new and existing tower sites as a primary option rather than construction of additional single-use towers.

(e)Encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal.

(f) Encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas through careful design, siting, landscape screening and innovative camouflaging techniques.

(g) Enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively and efficiently.

(h) Consider the public health and safety of communication towers.

Mike Keady also asked everyone to look at the Village Residential permitted uses ordinance.

§ 100-48 Permitted uses.

In the VR Village Residential District, no lot or structure shall have as a principal use, and no structure shall be located, relocated, erected, constructed, reconstructed, enlarged or structurally altered for the purpose of any principal use, except the following:

A. Single-family dwellings.

B. Post offices on lots of at least two acres.

C. Conversion of an existing building to a boutique for clothing, accessory or craft sales, provided that no exterior alterations to the structure are involved.

D. Conversion of an existing building to an art gallery, art studio or antique store, provided that no exterior alterations to the structure are involved.

E. Conversion of an existing building to a tailoring, dressmaking or shoe repair establishment, provided that no exterior or alterations to the structure are involved.

F. Churches and other houses of worship and cemeteries on lots of at least five acres.

Chairman Crawford stated that the negative criteria are looked at to prove that there is no substantial detriment to our zoning or our ordinance or code book. This project requires 9 variances. That is a lot. She also thinks we need to take into account the people impacted. We usually do not have the amount of people present as we have seen in this application. Everyone present has been passionate about this project. Chairman Crawford would like members of the board to express their thoughts.

Ms. Rader – Township ordinances have been referred to and asked Mr. Pierce to weigh in.

Attorney Pierce stated that in regards to the negative criteria the board can take into account the requirement that the applicant demonstrate that the variances can be granted without substantial detriment to the zone plan, the purpose and intent of the zone plan and ordinances. The applicant cannot use the property for the tower without the variances. If they did not need the variances then they would not be before the board. The board needs to determine what the detriments are associated with the project and the zone plan and ordinances.

David Grossmueller – nine variances appear to be a lot but he understands why they are being requested. He had more questions regarding SHPO. There is an application submitted. The other concern is the lack of geotechnical borings especially in the area where there is karst topography.

Kelley O'Such – he believes the applicant proved the public benefit. The FCC license basically proves that they need the tower. It fills in the gap. The applicant's planner said they looked at other sites but this was the best site. He believes the detriment is visual. He stated that he believed enough testimony has been given and he will be voting in favor of the application.

Nickolas Moustakas – He agrees with Mr. O'Such. AT&T met all the variances requirements. He expressed concern over the opinions of the neighbors however, that is not a legal standing. He will be voting in favor of this application.

Gail Rader – this is a difficult application and our responsibilities as board members are difficult. It is difficult for the neighbors in town to understand the legal criteria in making decisions. It is hard to separate the emotions.

Dan Rader – He agrees with everyone. He is not a fan of the application but feels like you have to approve the application.

Attorney Pierce reminded everyone that this is a use variance and that the applicant needs five members of the board to grant the use variance. If they only receive 4 then they do not get approval. Attorney Pierce worked on compiling a list of conditions as the hearing took place and include but not limited to: submission of a copy of the FCC license, submission of plans and engineering report documenting the structure is designed to support three carriers and subject to review and approval of board engineer, supplying a geotechnical investigation to determine suitability of dry well system for stormwater runoff as reviewed and approved by board engineer, design a installation subject to review and approval of board engineer of dry well system or alternative stormwater runoff for improvements and designs for three carriers prior to issuance of building permits, revised plans to show stormwater system approved by board engineer, compliance with all building codes, installation of landscape plantings as determined by board planner after site visit and review, revision of plans, submission of revised plans subject to review and approval of board engineer, adding a note detailing precautions to protect the septic system and other improvements during construction, show striping and no parking signage in paved area next to proposed gravel drive, show landscape plantings as approved by board planner, add note that foundation of improvements will not extend past property line. The board has to determine a monopole of monopine.

Board members discussed this. The public interjected that they preferred the monopine. Board members started to agree to the monopine. Board Secretary Kozak asked for a 5 minute break as the system had some technical difficulties.

After five minutes the meeting resumed. Some more discussion took place about the monopole and the monopine. For the record with notes. In favor of a monopine are Mrs. Rader, Mr. Rader and Mr. Grossmueller. In favor of a monopole are Ms. Crawford and Mr. Keady. Mr. O'Such and Mr. Moustakas can go either way.

A motion was made by Kelley O'Such to approve the application with conditions outlined above with the tower being a monopine (with the applicant looking at monopine alternatives to make it as attractive as possible) and was seconded by Gail Rader. At a roll call vote, all present were in favor of the motion with the exception of Mike Keady who was opposed.

Motion carried. (Six in favor and one opposed).

Attorney Fairweather thanked everyone. Acting Chairman Crawford thanked everyone as well and explained that the decision was a hard decision and that sometime the board has to follow the law. This application was an example of that. Gail Rader thanked all the neighbors who came out and participated. Gail Rader suggested that they also attend township committee meetings as changes to ordinances start at that level.

Planner Lelie had a question on housekeeping with the height variance. She believed they voted on the d(1) variance. Attorney Pierce stated that the other variances are submitted within the d(1) variance but we can add a motion. Dan Rader made a motion to approve all the variances submitted and Kelley O'Such seconded the motion. At a roll call vote all present were in favor of the motion with the exception of Mike Keady who was opposed. Motion carried (6 yes and 1 no).

Acting Chairman Crawford thanked everyone again.

Resolution

Appeal – Larry Seibel – Block 12 Lot 1.02 – 177 Mt Joy Rd – barn/garage conversion Home Occupation Office – denial letter of Zoning Officer issued September 9, 2020 – Board action taken September 30, 2020 – Attorney Pierce prepared a resolution for Consideration - Board Action Needed. Attorney Pierce prepared the resolution and it was distributed to the board members, professionals and the applicant.

RESOLUTION 2020-00_

THE ZONING BOARD OF ADJUSTMENT OF THE TOWNSHIP OF HOLLAND

RESOLUTION DENYING AN APPEAL FROM THE DECISION OF THE ZONING OFFICER FOR BLOCK 12 LOT 1.02, LAWRENCE SEIBEL

WHEREAS, Lawrence Seibel, 177 Mount Joy Road, Milford, New Jersey (the “Applicant”), the owner of Block 12, Lot 1.02, has applied to the Holland Township Board of Adjustment (the “Board”) for an appeal of the Zoning Officer’s decision not to issue a zoning permit for a proposed home occupation in a detached accessory structure on Block 12, Lot 1.02, located on Mount Joy Road, in the Township of Holland, County of Hunterdon, State of New Jersey (the “Subject Property”);

WHEREAS, The Subject Property is situated in Holland Township’s Residential “R-5” zone;

WHEREAS, the appeal, dated September 24, 2020, was filed on or about September 25, 2020 (the “Appeal”);

WHEREAS, the Applicant proposes to convert a detached accessory building into a home occupation office on the Subject Property;

WHEREAS, the Zoning Officer denied the zoning permit;

WHEREAS, Applicant appeals the decision of the Zoning Officer and seeks a reversal of that decision by the Board;

WHEREAS, the following documents were submitted with regard to the application, are on file with the board, and are part of the record in this matter:

1. Application for Variance Relief, dated September 24, 2020, including the following:
 - a. Site Walk Authorization;
 - b. Fee Calculation Form; and
 - c. IRS Form W-9; and
2. Correspondence dated September 9, 2020, from Maria Elena Jennette Kozak, Holland Township Land Use Administrator denying Applicant's zoning permit;

WHEREAS, a public hearing was held on the Appeal on September 30, 2020, at which hearing appeared the Applicant, Lawrence Seibel, who was represented by Michael Castagna, Esq.;

WHEREAS, the following individuals appeared at and provided testimony or objections during the public hearing:

Lawrence Seibel;

WHEREAS, the Board of Adjustment of Holland Township having reviewed the Appeal, and the Board having heard and considered the evidence and testimony given by the Applicant, and members of the public in attendance, and the Board having heard from the Township's professionals, Robert Martucci, P.E., Darlene Green, P.P., A.I.C.P., and David R. Pierce, Esq., with respect to the Application, the Board makes the following findings of fact:

1. The Applicant proposes to convert an existing detached accessory barn on the Subject Property into a home occupation use as his office space.
2. The Applicant proposes to add a "powder room" including a shower and wet bar to the existing barn.
3. The Applicant also proposes to add a porch to the existing barn and replacing the existing garage door with a man door.
4. The Zoning Officer denied the zoning permit, finding that: a) structural alterations to accommodate a home occupation are not permitted under the zoning ordinance; b) the structure would be converted by appearance from a barn to a small residential cottage; and c) the home occupation use of the detached barn with the amenities proposed would not be customary and incidental to the principal use of the property

for residential use.

5. The Subject Property is located in the R-5 zoning district.

WHEREAS, the Board of Adjustment of Holland Township, having reviewed the Application and Exhibits submitted by the Applicant, and having heard and considered the evidence and testimony given by the Applicant, the Applicant's attorney, the objector's attorney and having heard from its own professionals with respect to the Application, hereby makes the following

Conclusions of Law:

1. Home occupations are a permitted accessory use in the R-5 zone pursuant to Section 100-45E, which states:

Home occupations, as defined in this Part 1, in the R-5 District only and subject to the limitations expressed in the definition of home occupation in § 100-6 and the following limitations:

- (1) **Except for the retail sale of farm produce, which may occur from a seasonal stand, such occupation shall be conducted entirely within the confines of the dwelling on the lot.**
- (2) Seasonal stands for the retail sale of farm produce shall be set back at least 50 feet from the traveled way of the street. An off-street parking area accommodating at least three automobiles and not more than five automobiles shall be provided in the area of the stand, which parking area need not be paved.
- (3) No article or product shall be sold or offered for sale unless the same is produced on the lot.
- (4) Except as to seasonal farm stands, no clients or customers shall be received on a regular or scheduled basis if the same would involve more than two clients or customers on the premises at any one time.
- (5) Except for permitted signs and except for seasonal stands for the retail sale of farm produce, no physical evidence of the home occupation or home professional office shall be visible from off the site. (emphasis added).

2. Section 100-45E also incorporates the limitations/restrictions contained in Section 100-6 regarding home occupations.
3. Section 100-6 provides that a home occupation is defined as : A legal occupation conducted within a dwelling used as such, and/or in other existing buildings on a lot whose principal use is for residential purposes, provided that:

A. The occupation is carried on solely by the residents of such dwelling for financial or other remuneration as a use clearly incidental to and secondary to the residential use of the dwelling for domestic housekeeping and involves the employment of no person in such occupation who does not reside in such dwelling.

B. Not more than 25% of the total floor area of such dwelling shall be devoted to such occupation and at least 1,000 square feet of such dwelling remains for domestic housekeeping after 25% has been

deducted. (Multiple "home occupations" may be permitted, provided that the minimum of 1,000 square feet remains and the limitation of 25% is not exceeded by all such occupations.) **Provided that the foregoing provisions of this Subsection B are met, a "home occupation" may also be conducted in a garage (whether or not attached to the house) or in any already existing building which is not a dwelling on the lot.** No new building or addition to an existing building shall be constructed and utilized for a "home occupation." In calculating the floor area of the dwelling, for the purposes of this Subsection B, the area of any attached garage shall not be included.

C. There shall be no display of goods offered for sale in connection with such occupation which is visible from any street or adjoining lot, except as is permitted in § 100-45E.

D. No power equipment which is used to fabricate or manufacture a product for sale shall be used in such employment or occupation. (This shall not be construed to mean usual office equipment, such as typewriters, photocopiers and the like, which produce letters, reports, etc.) Also, no equipment or process shall be used in such employment or occupation which creates noise, vibration, glare, fumes, odors or electrical interference detectable to the normal senses off the lot; and in the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receiver off the lot or causes fluctuations in line voltage off the lot. No trucks or mechanized construction or earth moving equipment used in such employment or occupation shall be parked or kept on the lot; provided, however, that no more than two motor vehicles, which may be automobiles or pickup, panel or van-type trucks which do not exceed 2,000 pounds capacity, may be parked or kept on the lot when used in connection with a home occupation conducted from the lot.

E. The dwelling in which said occupation is carried on shall retain an exterior which is characteristic of a building used for residential purposes. **No structural changes to accommodate the "home occupation" shall be permitted, unless such changes are customary and normal for a dwelling used for residential purposes** (emphasis added).

4. These two ordinances may appear to be in conflict, with Section 100-45E providing that other than retail sales of farm produce, all home occupation activities must take place within the dwelling on the lot, and Section 100-6B allowing the use of buildings other than the dwelling to be used for a home occupation. The Board will resolve this apparent conflict, however, by applying principles of statutory interpretation.
5. When interpreting a zoning ordinance, the New Jersey Supreme Court has ruled that the specific provisions contained in the ordinance take precedence over the general provisions of the ordinance. W. Kingwlsy v. Wes Outdoor Advertising Co., 55 N.J. 336 (1970).

6. Portions of the ordinance dealing with the same subject matter are to be read together and as forming a single legislative enactment. Clifton v. Passaic County Board of Taxation, 28 N.J. 411 (1958).
7. Applying these principles in mind, the provisions of Section 100-45E, being specific to the accessory uses permitted in the R-5 zoning district, would take precedence over the general provisions of Section 100-6, which simply define a home occupation for purposes of the entire zoning ordinance. Based upon this analysis, in the R-5 zoning district all home occupations except retail sale of farm produce must occur within the dwelling and not in any other building on the lot. It appears to the Board that the Township Committee specifically intended to adopt such a restriction because it is embodied in the more specific ordinance provision applicable to home occupations within the R-5 zoning district. The language in Section 100-45E specifically acknowledges the definition of home occupation and the provisions of Section 100-6, but intentionally imposes additional limitations specific to the R-5 zoning district.
8. This interpretation is supported by a review of other sections of the zoning ordinance. In particular, Section 100-49B provides that home occupations are also a permitted accessory use within the VR Village Residential zoning district, stating:

Home occupations and home professional offices as defined in this Part 1, subject to the following limitations:

- (1) _____ Such occupation shall be conducted entirely **within the confines of a building.**
- (2) _____ No more than one person, other than a resident on the premises, shall be employed in said office or occupation.
- (3) _____ No article or product shall be sold or offered for sale unless the same is produced on the premises, except that antiques may be sold as a home occupation in the VR District.
- (4) _____ No machinery, equipment or operation shall cause interference with radio or television reception or cause any other form of electrical disturbance in the area, create any noise which is discernible beyond the limits of the property, produce any gas, fumes, dust, odor or other air pollution, heat or movement of air.
- (5) _____ No clients or customers shall be received on a regular or scheduled basis if the same would involve more than one client or customer on the premises at any one time.

(6) Except for permitted signs, no physical evidence of the home occupation or home professional office shall be visible from off the site. (emphasis added).

9. Under Section 100-49B there is no restriction or limitation requiring the home occupation to be conducted within the dwelling; it may be carried on “within the confines of a building.” Thus, for the VR zoning district the Township Committee adopted an ordinance allowing home occupations to be carried on in any building on the residential lot while it decided to require home occupations other than the retail sale of farm produce be carried on only within the dwelling in the R-5 zone.
10. Based upon the foregoing analysis, the Board finds that home occupations other than the retail sale of farm produce are not permitted in accessory buildings in the R-5 zoning district.

WHEREAS, on September 30, 2020, the Board of Adjustment of Holland Township voted with respect to the Application and the attendant requested relief as follows:

1. TO DENY THE APPEAL

ROLL CALL VOTE

Board Member	Motion	Second	Ayes	Nays	Abstain	Absent/Ineligible
Gerard Bowers	X		X			
Ginger Crawford		X	X			
Bill Ethem			X			
Peter Kanakaris			X			
William Martin			X			
Kelley O'Such						X
Gail Rader			X			
Michael Welsh						X

Motion Carried By Vote of: Six Ayes to Zero Nays

THIS RESOLUTION OF THE BOARD IS ADOPTED ON OCTOBER 28, 2020

ROLL CALL VOTE

Board Member	Motion	Second	Ayes	Nays	Abstain	Absent/Ineligible
Jerry Bowers						
Ginger Crawford						
Bill Ethem						
Peter Kanakaris						
William Martin						
Kelley O'Such						X
Gail Rader						
Michael Welsh						X

Motion Carried By Vote of: _____ Ayes to _____ Nays

ATTEST:

 Maria Elena Jennette Kozak, Secretary
 Township of Holland Land Use Administrator

 William Martin , Chairman
 Township of Holland Board of Adjustment

A motion was made by Jerry Bowers and seconded by Gail Rader to memorialize the resolution as presented. At a roll call vote, all present were in favor of the motion. Motion carried.

- Keith Bodder – Block 10 Lot 44.03 – 2 Gardner Way – Variance (Garage) – Rec’d into our office August 5, 2020. The 45-day completeness review deadline is September 19, 2020. Deemed complete with conditions August 26, 2020. Approved with conditions September 30, 2020 – Board Attorney prepared resolution to be memorialized. Board Action Needed.

Attorney Pierce prepared the resolution and it was distributed to the board members, professionals and the applicant.

**RESOLUTION 2020-00_
THE ZONING BOARD OF ADJUSTMENT
OF THE TOWNSHIP OF HOLLAND
RESOLUTION APPROVING A VARIANCE TO PERMIT
TWO GARAGE STRUCTURES ON A SINGLE LOT
BLOCK 10 LOT 44.03
LOCATED ON GARDNER WAY,
BY APPLICANT, KEITH BODDER**

WHEREAS, Keith Bodder, 2 Gardner Way (the “Applicant”), owner of Block 10, Lot 44.03, has applied to the Holland Township Board of Adjustment (the “Board”) for variance relief for, Block 10, Lot 44.03, located on Gardner Way, in the Township of Holland, County of Hunterdon, State of New Jersey (the “Subject Property”);

WHEREAS, The Subject Property is situated in Holland Township’s Residential “R-5” zone;

WHEREAS, the application, dated August 5, 2020, was filed on or about August 5, 2020 (the “Application”);

WHEREAS, the Applicant received a zoning permit to construct, and has constructed, a new three car detached garage on the Subject Property, the Applicant now proposes to leave garage doors on an attached two car garage and convert it into a combination of living space and storage shed;

WHEREAS, the Applicant seeks the following relief from the Township of Holland Land Use Ordinance:

1. Variance relief under N.J.S.A. 40:55-70c(2) from Section 100-45A, which provides that residential lots may contain a single garage as an accessory structure and use.

WHEREAS, the current Application was the subject of a completeness hearing on Wednesday, August 26, 2020, at which time the Board, on recommendation of the Board Engineer, deemed the Application conditionally complete;

WHEREAS, the Applicant subsequently satisfied the conditions of the completeness determination;

WHEREAS, the following documents were submitted with regard to the application, are on file with the board, and are part of the record in this matter:

4. Application for Variance Relief, undated and filed on August 5, 2020, including the following:
 - a. Attachment entitled “Detail of the exact nature of the application;”
 - b. “Original Plan” floor plan drawing of the two car garage;
 - c. “New Plan” floor plan drawing of the two car garage;
 - d. Fee Calculation Form;
 - e. IRS Form W-9;
 - f. Site Walk Authorization;
 - g. Checklist for Determining Completeness of Application;
 - h. Survey, undated;
 - i. Plans for the three car garage, undated, consisting of the following:
 1. “Floor Plan”;
 2. “Concrete Plan”;
 3. “2nd Floor Plan”;
 4. “Roof Framing”;
 5. “Section Detail”; and
 6. Architectural rendering;
 - j. Zoning Permit, dated August 15, 2019;
 - k. Development Fee calculation, dated August 15, 2019;
 - l. Deed from Billie Gardner to Keith Bodder and Suzanne Bodder, dated December 31, 2002 and recorded in Deed Book 2054 at Page 940 in the Hunterdon County Clerk’s office
5. Holland Township Tax Assessor’s “Certified List of Property Owners Within 200 Feet,” dated August 6, 2020;
6. Letter from Robert Martucci, P.E. of Martucci Engineering, LLC, to Holland Township Zoning Board, dated August 17, 2020;
7. Letter from Darlene Green, P.P., AICP of Maser Consulting, Inc. to Holland Township Zoning Board, dated August 18, 2020;
8. Proof of Service/Publication Package including Affidavit of Publication dated September 17, 2020 evidencing a September 17, 2020 publication in the *Hunterdon County*

Democrat, and Certified Mail receipts dated September 10, 2020;

WHEREAS, the Applicant having satisfied all jurisdictional requirements and the Board having jurisdiction to proceed, a public hearing was held on the Application on September 30, 2020, at which hearing appeared the Applicant, Keith Bodder;

WHEREAS, the following individuals appeared at and provided testimony or objections during the public hearing:

Keith Bodder;

WHEREAS, the Board of Adjustment of Holland Township having reviewed the Application and Exhibits submitted by the Applicant, and the Board having heard and considered the evidence and testimony given by the Applicant, and members of the public in attendance, and the Board having heard from the Township's professionals, Robert Martucci, P.E., Darlene Green, P.P., A.I.C.P., and David R. Pierce, Esq., with respect to the Application, the Board makes the following findings of fact:

1. The Board has jurisdiction to proceed as all necessary notices were served and published in accordance with law;
2. All taxes for the Subject Property have been paid;
3. Application fees were paid, and review escrows established;
4. The Applicant is the Owner of the Subject Property and is authorized to seek the relief herein requested;
5. The Application has been deemed complete;
6. Keith Bodder, after being duly sworn according to law, testified during the hearing, and which testimony is part of the record in this matter, that:
 - A. He is owner of the Subject Property.
 - B. He was previously issued a zoning permit and construction permit to convert the existing attached two car garage into living space for his mother-in-law and construct a new detached three car garage on the Subject Property.
 - C. The new detached three car garage has been constructed.
 - D. Due to changes in the Applicant's mother-in-law's health, it is no longer necessary to devote the entirety of the attached two car garage to her living space.
 - E. Accordingly, the Applicant proposes to reduce the area of the living space in the attached two-car garage, keep the garage doors and devote the remaining

portion of the attached two car garage to a storage shed for storage of lawn mowers and tractors, tools, or even motorcycles.

- F. The existing attached two car garage is approximately 20 feet deep and the Applicant proposes to keep an area that is 12 feet, 4 inches deep as the storage area and the remainder of the space would be converted to living space.
- G. The proposed storage area is not deep enough to accommodate parking a normal sized vehicle.
- H. There are no other sheds present on the Subject Property.
- I. The Applicant's mother-in-law will access the new living space from the interior of the existing dwelling.
- J. There is or will be a fire barrier of a double layer of sheet rock between the new living space and the proposed storage portion of the attached two car garage.

WHEREAS, the Board of Adjustment of Holland Township, having reviewed the Application and Exhibits submitted by the Applicant, and having heard and considered the evidence and testimony given by the Applicant and having heard from its own professionals with respect to the Application, hereby makes the following **Conclusions of Law**:

1. The Board of Adjustment of Holland Township has jurisdiction in this matter with all required parties having been properly noticed in accordance with law;
2. Section 100-45A, provides that the following is permitted as an accessory use within the R-5 zoning district: "One private garage intended to be used, and used, to store or house automobiles, trucks or similar motor vehicles, for the use of the residents of the lot on which it is located, and their guests and lessees."
3. "C" **Variance**: N.J.S.A. 40:55D-70c, and specifically, N.J.S.A. 40:55D-70c(1) and (2), establishes the Applicant's burden with respect to satisfying both the positive and the negative criteria attendant to this Application. To satisfy the "positive" criteria, the use must demonstrate either that: a) there is a hardship or practical difficulty to the developer in complying with a standard in the ordinance due to the exceptional narrowness, shallowness or shape of a specific piece of property, exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or some other extraordinary or exceptional situation uniquely

affecting the property itself or the structures lawfully existing upon it; or b) the granting of the variance would promote some purpose of the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq., and the benefits of approving the variance would substantially outweigh any detriment;

8. **The Positive Criteria / Promote Purposes of Zoning :** The Board finds as a matter of law that, the Subject Property is a unique property and that the proposed variance would promote the Municipal Land Use Law purpose of encouraging coordination of the various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land;
9. **The Negative Criteria / Substantial Detriment to the Public Good:** The Board finds as a matter of law that, provided the conditions imposed are complied with, the proposed grant of the variances requested will not result in any substantial detriment to the public good. The proposed development will not result in any physical change in the Subject Property nor its appearance. There will be no substantial adverse impact to neighboring properties. As a result of the foregoing, there is little to no detriment associated with the proposed improvements should the variances be granted.
10. **The Negative Criteria/Substantial Impairment of Intent and Purpose of the Zone Plan and Zoning Ordinance:** The Board finds as a matter of law that the granting of the requested variances will not substantially impair the intent and purpose of the zone plan and Land Use Ordinance of Holland Township. The requested relief essentially allows a cosmetic and convenient access device, garage doors, to be utilized in connection with residential and storage uses. Such a cosmetic non-conformity has no substantive impact on the zone plan or zoning ordinance.
11. **Weighing the Benefits Against the Detriments** The benefit resulting from the approval of the application clearly outweighs any potentially negative impact on Holland Township, although no substantial negative impact was noted by the Board.

WHEREAS, on September 30, 2020, the Board of Adjustment of Holland Township voted with respect to the Application and the attendant requested relief as follows:

1. **TO GRANT THE FOLLOWING:**
 - A. Variance relief under N.J.S.A. 40:55D-70c(2) from Section 100-45A, which

provides that only a single garage is permitted as an accessory use within the R-5 zoning district;

2. SPECIFICALLY CONDITIONED UPON THE FOLLOWING:

- A. Neither the Applicant nor any future owner of the Subject Property shall erect or construct any additional sheds on the Subject Property without receiving variance approval from this board;
- B. Neither the Applicant nor any future owner of the Subject Property shall cause, permit or suffer any change in use or configuration of the attached former two car garage without receiving variance approval from this Board;
- C. The Applicant shall record a copy of this Memorializing Resolution in the lands records maintained by the Hunterdon County Clerk so as to provide notice of the foregoing conditions to future owners of the Subject Property and shall submit a copy of the recorded Memorializing Resolution prior to issuance of a Certificate of Occupancy;
- D. The final plans shall conform with this approval and the testimony and plans upon which it is based and shall include notes as specified above;
- E. All site work shall be inspected by the Board Engineer or his designee for conformance with the approved plan. Any proposed deviations from the approved site plan must be either pre-approved by the Board Engineer as field changed or shall be resubmitted to and approved by the Zoning Board, if the deviations are deemed by the Board Engineer to be significant enough to require such approval.
- F. This approval shall be subject to all State, County and Township statutes, ordinances, rules and regulations affecting development in the Township, County and State;
- G. The approval herein memorialized shall not constitute, nor be construed to constitute any approval, direct or indirect, of any aspect of the proposed improvements which is subject to the jurisdiction of any third-party agencies and require review and approval(s) by any third-party agencies;
- H. Applicant shall apply for and obtain any and all Township, County, State and Federal permits as may be required for any aspect of the construction as contemplated by this Application;

- I. Applicant shall comply with all other applicable rules, regulations and ordinances of the Township of Holland, the effect of this decision being merely to relax the zoning requirements and restrictions to the specific extent forth herein;
- J. The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the approvals, terms and conditions set forth herein;
- K. That Applicant shall pay all outstanding and /or required review, inspection, and professional escrow fees to the Township of Holland. Neither the Board nor its employees or professionals shall perform any service in furtherance of this approval if there is a deficiency in any escrow or inspection fee account. The Applicant shall be under a continuing duty to maintain a positive balance in all accounts until all conditions of this Resolution have been satisfied and all charges have been paid;
- L. All performance requirements as set forth in the findings of fact herein shall be satisfied by the Applicant as a condition of this approval whether or not repeated at length as conditions in this section of the Resolution; and
- M. The terms and conditions of this approval shall be binding upon the Applicant, and the Applicant's successors in interest and assigns. Further, each of the terms and conditions of this approval are material elements of the approval based upon the submission of the Application and the Subject Property in its entirety, and the non-compliance with any term or condition by the Applicant or their successors or assigns shall be deemed a material default subjecting the Application to revocation of this approval. The request to change any single condition, since all conditions are integrally related, shall cause the entire Application to the Board of Adjustment to be reopened for re-consideration and possible re-approval subject to new terms and conditions in addition to those terms and conditions presently existing in this approval.

ROLL CALL VOTE

Board Member	Motion	Second	Ayes	Nays	Abstain	Absent/Ineligible
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Gerard Bowers	X		X			
Ginger Crawford			X			
Bill Ethem			X			
Peter Kanakaris			X			
William Martin			X			
Kelley O'Such		X	X			
Gail Rader			X			
Michael Welsh						X

Motion Carried By Vote of: Seven Ayes to Zero Nays

THIS RESOLUTION OF THE BOARD IS ADOPTED ON OCTOBER 28, 2020

ROLL CALL VOTE

Board Member	Motion	Second	Ayes	Nays	Abstain	Absent/Ineligible
Jerry Bowers						
Ginger Crawford						
Bill Ethem						
Peter Kanakaris						
William Martin						
Kelley O'Such						
Gail Rader						
Michael Welsh						X

Motion Carried By Vote of: _____ Ayes to _____ Nays

ATTEST:

 Maria Elena Jennette Kozak, Secretary
 Township of Holland Board of Adjustment

 William Martin, Chairman
 Township of Holland Board of Adjustment

A motion was made by Kelly O'Such and seconded by Jerry Bowers to approve the resolution as presented. Gail Rader asked if there were any questions. Keith Bodder had a question about the sheds. He stated that he spoke with others with similar applications and they did not have to do this and he is asking why he or a future resident would have to go thru such extremes to add more shed space. Attorney Width was present for Attorney Pierce and he explained that every resolution is special and this resolution is based on that you the applicant presented thru testimony. The board is within their powers to require this. It does not matter if it was not in a resolution of another applicant as each application stands on its own merit. It is at the discretion of the board. Gail Rader asked if Keith Bodder understood that the board will be voting on this resolution and the resolution will be binding. Keith Bodder responded that he understood. Chairman Martin also stated that the board has also asked applicant's to take things down in the past. Kelley O'Such asked if the board can change the wording and Gail Rader responded that the board had discussion and this application stands on its own and not to be compared to others. This situation morphed from a zoning permit vacating the existing garage and creating all livable space into a board application using part of the garage as livable space and keeping the existing garage doors to create part of the garage as a shed. Attorney Width reminded the board that they voted on this and the resolution presented needs to be memorialized. You are confirming what you approved. Intentions do not usually tie into what was voted on. It is his opinion that you cannot change. Jerry Bowers reminded the board that the actions took place at the public hearing when the applicant received approval with conditions. The shed was built into the application based on what the applicant submitted. Chairman Martin also reminded the board that this was to be memorialized at the last scheduled meeting but the applicant asked for an extension for some clarification.

At a roll call vote, all present voted in favor of the motion. Motion carried.

Public Comment

Chairman Martin requested Secretary Kozak to unmute everyone for public comment. All were asked if they had any comments at this time and no one had comment.

Board Member Comment

There were no board member comments at this time.

Dan Rader made a motion to adjourn. Motion carried.

Meeting ended at 10:25 p.m.

Respectfully submitted,

Maria Elena Jennette Kozak
Maria Elena Jennette Kozak

Secretary