

SUMMIT TOWNSHIP ZONING BOARD OF APPEALS

July 11, 2002

MEMBERS PRESENT: Kevin Thomson, Chairman; James Brunner; Larry Dunn; Kathy Lincoln, Secretary; Ken Strobel, Planning Commission Liaison; Peg Oman; Scott Elliott, Township Board Liaison; John Worden, Summit Township Zoning Administrator; and William Thompson, Township Attorney.

The meeting was called to order by Chairman K. Thomson, on Thursday, July 11, 2002 at 7:00 p.m., in the meeting room at the Township Hall.

A motion was made by K. Thomson, supported by L. Dunn, to approve the minutes of the April 11, 2002, meeting as written. Motion carried unanimously.

CASE #02-07-0020 – 1526 Devonshire – Front Yard Setback for Porch – Larry and Jean Larson

A public hearing was held on July 11, 2002, on the request of Larry and Jean Larson for a nine-foot front yard variance.

Mr. Larson stated they wanted to replace the front porch with a deck.

K. Thomson asked if it would be possible to keep with the same foot print as the porch, requiring an eight-foot rather than a nine-foot front yard variance.

L. Dunn asked which the direction the steps would be pointing.

Mr. Larson said they were to be shifted towards the driveway.

K. Lincoln wanted to know who owned the "island".

J. Worden said it belonged to the Jackson County Road Commission.

K. Thomson asked if there had been any correspondence from the neighbors.

J. Worden said no.

K. Thompson asked if there was anyone in the audience to speak. There was not.

A motion was made by K. Thomson, supported by L. Dunn, to grant a nine foot front yard variance as provided for under Section 7.3. inclusive of A 1-5. The motion carried unanimously.

CASE # 02-07-0019 – Hearing on Remand from Michigan Court of Appeals – Century Cellunet AKA Centurytel

A public hearing was held on July 11, 2002 on the matter of Century Cellunet AKA Centurytel. This matter is on remand from the Michigan Court of Appeals.

K. Thomson introduced the Board to the Court Recorder.

J. Worden passed out three new documents submitted by Lee Brown to address the issue.

K. Thomson asked why they had not received these documents earlier.

J. Worden stated Lee Brown had submitted the documents at the start of the hearing and the material from Mr. Fahey was received the previous day and time did not permit distribution to the Board Members prior to the meeting.

K. Thomson said this matter had been remanded from the Michigan Court of Appeals. The Township Zoning Ordinance did not allow for the expansion of the tower. The Court said the Summit Township Zoning Ordinance must have a provision in it for consideration of hardships and practical difficulties in the expansion of nonconformities.

W. Fahey, of Foster, Swift, Collins, & Smith, P.C., Attorney at Law. 313 South Washington Square, Lansing, MI spoke for CenturyTel. He gave an overview of the case.

The Court stated Section 5.7.3 was invalid and the Township was to review the ordinance to allow for the extension of a non-conforming use.

J. Worden stated that Section 5.5.9 g 3 (o) had been adopted properly and modification and co-location on existing towers was permitted and therefore the only non-conformance was the setback requirement.

K. Thomson asked why "Section O" hadn't been mentioned at the Michigan Court of Appeals.

W. Fahey said they did not know it had existed.

W. Thompson said he had sent notice to the Court and had been ignored.

W. Fahey spoke of the changes in the Telecommunication Industry and the need to upgrade the facility with that new technology in order to stay competitive in the business.

J. Brown asked if the original application from 1999 had been modified.

W. Fahey said the size of the panels had changed, they were smaller.

K. Strobel asked if the noise level would be any different.

W. Fahey said this was the first tower where there had been a question of noise. What was being planned should not change the noise level.

L. Dunn wanted to know the number of towers with this type of antennas.

Guy Link, CenturyTel, said they had 50 to 60 like this. There are some in the Grand Rapids area.

W. Fahey said in the future there would be more carriers wanting to co-locate on the tower.

J. Worden said that a site plan would be submitted to the Planning Commission. The applicant would have to demonstrate that the tower can hold additional carriers, and that the applicant would not have to come before the Zoning Board of Appeals.

K. Strobel asked if the towers of the future would be shorter or taller.

W. Fahey said that would be a trade off. Taller towers – less of them, shorter towers – more of them.

J. Worden said subsequent to the adoption of the ordinance the airport now has control over the height of structures in a ten-mile radius of the airport.

K. Thomson asked if there had been any petitions in support.

J. Worden said no.

K. Thompson asked if there was anyone from the audience to speak.

L. Arnoff, 3310 Spring Arbor Road said the addition of the three antennas was only a portion of what CenturyTel wants to do. She wanted to know if they were exceeding 10% of the value of the structure. The ordinance allows for co-location on conforming uses. CenturyTel has a history of not allowing other providers to co-locate.

K. Thomson said that Section 5.7.3 C is applicable to repair.

L. Arnoff said it is also applicable to repair.

Maddie Brown, 2525 Spring Arbor Road said the tower is especially noisy when it is windy.

K. Thompson asked if anyone had undertaken a study in the neighborhood to check the noise of the fire trucks and the traffic on Spring Arbor Road.

M. Brown said there is no problem with that noise.

Lee Brown, 2525 Spring Arbor Road said that if CenturyTel lost this case they would approach the County Parks Department about putting up a tower at Cascade.

He also gave a brief history of the tower and ordinance and complained about the noise.

K. Thomson asked if he questioned whether Section O had been passed properly.

Janet Brown, 2525 Spring Arbor Road, said Section O had not been published in the paper as it should have been. The Township chose to do a text version and Section O had been omitted. Therefore it had not been legally adopted.

K. Thomson asked if there were any section in the Ordinance the panels would not meet.

L. Brown said they would be a visual obstruction.

W. Thompson asked L. Brown where he lived in relation to the tower.

L. Brown said 99 feet from the tower.

J. Brown said because of the tower their property had been devalued according to the Tax Tribunal. Section 1.3.A states the ordinance is to preserve the value of the property. A practical alternative would be to relocate the tower.

K. Thomson said relocation of the tower is not the issue.

J. Brown said it is because of the hardship to them.

K. Thomson stated he represents the County Park and the Cascade Park is subject to the Township's Zoning Ordinance.

J. Brown said she had presented the idea of the tower on County Park property and they are interested in having the tower on their property. She also said the application can not be changed and they are asking for a different antenna.

K. Thomson did not agree.

J. Brown said that CenturyTel created the hardship when they located in a residential area.

K. Thomson stated they were dealing with a practical difficulty.

J. Brown reaffirmed that Section O had not been adopted and discussed the referendum that had been voted down.

K. Thomson gave CenturyTel an opportunity for a brief rebuttal.

B. Fahey stated CenturyTel does allow for co-location, this is not a hardship case but a practical difficulty case. 60-foot tall evergreen trees surround the site. The only noise study done was the one by the Township. The tower had been built prior to the setback requirements. The ordinance allows for additional facilities if the set back is the only violation.

A motion was made by K. Lincoln, supported by P. Oman, to deny the variance request based on Section 5.7.3 A. No nonconforming use of a structure shall be enlarged, expanded, extended, or altered except in changing the use of such structure to a use permitted in the district in which such structure is located. Further, denying this request is not causing any unnecessary hardship to CenturyTel. Further, denying this request follows the policy of the state and its communities that use property not conforming to municipal zoning ordinances be gradually eliminated.

K. Thompson and K. Lincoln discussed the motion. K Thompson stated the Michigan Court of Appeals stated Section 5.7.3 violates a section of MCL 125.286, by denying the extension or expansion of a nonconforming use.

A roll call vote was taken.

K. Strobel	Yes
S. Elliott	No
J. Brunner	No
K. Lincoln	Yes
K. Thompson	No
P. Oman	Yes
L. Dunn	No

The motion failed.

A motion was made by K. Thomson, supported by J. Brunner to move that pursuant to Section 5.5.9(g)(3)(o) of the Summit Township Ordinance, the applicant be permitted to add additional antennas to its tower and alternatively a variance be granted to permit installation based on the practical difficulties demonstrated by applicant, namely, the advances in technology mandating the addition of the CDMA antennas.

J. Brunner stated the Board was operating under the instruction of the Court of Appeals. The Zoning Board of Appeals must come up with a reasonable provision.

K. Lincoln believes the Board is putting more emphasis on the needs of the company rather than the needs of the residents.

A roll call vote was taken.

K. Strobel	Yes
S. Elliott	Yes
J. Brunner	Yes
K. Lincoln	No
K. Thompson	Yes
P. Oman	Yes
L. Dunn	Yes

The motion carried. K. Lincoln was opposed.

K. Thompson asked W Thompson to write the necessary resolution.

There being no further business to come before the Zoning Board of Appeals, a motion was made by K. Thompson and supported by K. Strobel to adjourn the meeting. The motion carried unanimously. The meeting was adjourned at 9:30 p.m.

Respectfully submitted,

Peg Oman, Secretary
Zoning Board of Appeals