

**Lower Paxton Township**  
**Zoning Hearing Board**

August 27, 2020

**Members Present:**

David Dowling

Allen Hansen

Greg Sirb

Jeff Staub

Mark Emery

Ron Reeder

Also, In Attendance: James Turner, Amanda Zerbe, Kristi Focht

**Docket 1433**

Applicant: Cingular Wireless, LLC (AT&T Mobility)

Address: 200 North Warner Road

King of Prussia, PA 19406

Property Owner: PPL Electric Utilities Corp

Property: 2801 Commerce Drive

Harrisburg, PA

Applicant: For a Variance to operate a commercial communications tower on the property and the applicant also seeks a variance from minimum setback requirements along the west side of the parcel.

Application Paid: June 26, 2020

Property Posted: August 19, 2020

Advertised: Appeared in the Hummelstown Sun on August 5, 2020 and August 19, 2020. And was advertised on the Township website and Township media accounts.

The Hearing Began at 7:00 p.m.

Mr. Schubert noted he is the attorney present tonight for the applicant, Cingular Wireless LLC, also known as AT&T Mobility. He noted he has two witnesses, Christopher Lash, Project Manager of Jacobs Communication and Shawn Paul who is the radio frequency expert. He noted this is an application for a use variance. He noted the cell cite is in the Business General District.

Mr. Dowling noted that the district is Business Campus. He explained that before Mr. Schuler continues any further, he must swear in the witnesses that will be giving testimony.

Mr. Dowling swore in applicants Christopher Lash and Shawn Paul.

Mr. Dowling swore in Amanda Zerbe, Zoning Officer.

Mr. Dowling questioned Ms. Zerbe on what Township Ordinance is at issue.

Ms. Zerbe answered section 203.402 A16B, for a free-standing tower not being in the requirements and Section 203.306B2, and a dimensional variance for the setback at the west end of the property.

Mr. Dowling noted to Mr. Schubert that he understood his client wishes to construct a cell tower in a part of the Township that is zoned Business Campus and cell towers are not allowed in Business Campus. He questioned if that is correct.

Mr. Schubert answered that is correct.

Mr. Dowling requested Mr. Schubert to tell the Board why a variance from the ordinance should be granted by this Board.

Mr. Schubert noted the variance should be granted. He explained the hardship they have is the technology itself. He continued that AT&T is a telecommunications provider and they can not pick and choose locations for cell sites where coverage is needed. He noted that base coverage is needed where I81 and I83 come together and there is quite a bit of business activity and a lot of the businesses need advanced coverage. He noted that Mr. Paul was driving by that area and had a dropped call in that area.

Mr. Dowling noted that when he visited the property it appeared to him there is a cell tower directly behind the substation, noting the distance to be 100 yards. He noted that had one antenna on it. He questioned if that was accurate.

Mr. Schubert answered that was correct. He explained that tower is a PennDOT tower. He noted that Mr. Lash and Mr. Paul will testify that based upon their experience, that specific tower is slender and would not support the antenna.

Mr. Dowling questioned how many cell towers are in a two to three-mile radius of the proposed cell tower in Lower Paxton and Susquehanna within the I81 I83 interstate corridor.

Mr. Paul explained he cannot speak on all existing towers, but he can speak on the towers that AT&T are currently located on. Mr. Paul answered that within a two-mile radius of the proposed facility there are six where AT&T are collocated on a structure. He continued that in close proximity provide the coverage would be the I81 split. He noted the towers located on the proposed property were evaluated and it was determined the height was not adequate given the lay of the area. He noted to a roof top cite located at 4000 Crums Mill Road and that location is to far to the East and the elevation of that property is lower that what is necessary.

Mr. Sirb questioned Ms. Zerbe if PP&L came in before or after that area was zoned Business Campus.

Ms. Zerbe answered she did not know the answer to that. She noted she would have to pull the permits.

Mr. Sirb noted that he has been on this Board for so long and he does not remember granting a variance for that. He noted he assumed that was allowable. He questioned the tower that is there with PennDOT, he noted that is not the same as what your tower is.

Mr. Schubert noted that is a different frequency. He noted what AT&T needs is antenna placement support.

Mr. Dowling questioned if the applicant currently owns the property.

Mr. Schubert answered no. He explained they have a lease agreement, continuing that AT&T has a master lease agreement with PPL. He noted that wherever they can regulate the property there is a master lease.

Mr. Dowling requested Mr. Schubert to continue with his testimony.

Mr. Schubert noted he has some exhibit packets that they will be able to follow along with the testimony.

Mr. Schubert requested Mr. Lash to state his business address for the record.

Mr. Lash answered 200 North Warner Road King of Prussia Pennsylvania.

Mr. Schubert questioned Mr. Lash who he is employed by.

Mr. Lash answered Jacobs Telecommunication.

Mr. Schubert questioned Mr. Lash what is does in Jacobs Telecommunications.

Mr. Lash answered he is the Senior Project Manager on the new site projects between Jacobs and AT&T.

Mr. Schubert questioned Mr. Lash how Jacobs is connected to AT&T.

Mr. Lash answered Jacobs has a master contract with them noting they span from above New York to below D.C. and Virginia and the Carolinas. He explained they do various jobs from new cite builds, upgrades to towers, emergency work, and everything in between.

Mr. Schubert questioned Mr. Lash if he was authorized to testify on behalf of AT&T tonight.

Mr. Lash answered yes.

Mr. Schubert questioned Mr. Lash if he has testified on prior occasions for AT&T.

Mr. Lash answered yes.

Mr. Schubert questioned Mr. Lash as to his duties as project manager.

Mr. Lash answered that his main duty is to handle the project from start to finish, assign work to those experts that are needed, work with the engineer firms both external and internal, work with AT&T and their project managers to get the project from start to finish.

Mr. Schubert questioned Mr. Lash if he was involved with this project and engaging with he radio frequency expert and the civil site engineer.

Mr. Lash answered yes that is correct.

Mr. Schubert questioned Mr. Lash if he oversaw their work on this project.

Mr. Lash answered yes.

Mr. Schubert questioned Mr. Lash on his experience with handling this type of project management with telecommunications facilities.

Mr. Lash answered that with telecommunications facilities it has been thirteen years in various project manager in roles from project manager to senior project manager.

Mr. Schubert questioned if Mr. Lash could remember the number of cell cites he has worked on in that capacity.

Mr. Lash answered that his first year was 434. He continued that from then on thousands.

Mr. Schubert questioned Mr. Lash that in his role of project manager is he familiar with building codes and design codes that go into the design construction, installation, and maintenance of these facilities.

Mr. Lash answered yes.

Mr. Schubert questioned Mr. Lash as to what factors go into selecting a viable telecommunications site.

Mr. Lash answered the first factor is where AT&T needs the site to expand their coverage or do not have coverage, or if the First Net project is involved. He explained First Net is for First Responders. He noted wherever they need a site we go to a large part of Pennsylvania,

Delaware, and a couple counties in Maryland. He noted as Mr. Paul has noted to a dropped call, they go in for the State and the DCNR, Federal Government and depending on the area for First Net. He noted it just all depends on where there is not enough coverage and that is where they step in to find a location. Mr. Lash explained they try to find a location where there are similar things happening like PP&L because there is already there.

Mr. Schubert noted that First Net is Emergency Services, Fire Police, EMT, State, Local, Federal.

Mr. Lash noted it goes all the way to from the Township or Municipal level to the Federal Government.

Mr. Schubert questioned that this facility is to help facilitate that First Net Network.

Mr. Lash answered it would. He noted that anyone who has First Net Network would be able to connect to it.

Mr. Schubert noted to AT&T having issues with base coverage in that area. He noted that Mr. Paul will be able to give testimony of that. Mr. Schubert questioned Mr. Lash if the site was a site that was identified as being a site within an area that would provide coverage that is needed.

Mr. Lash answered yes.

Mr. Schubert questioned Mr. Lash if he was familiar with the property.

Mr. Lash answered yes. He explained it is a fairly new substation compared to the other properties that PP&L owns. He noted it is very updated and modernized.

Mr. Schubert questioned Mr. Lash if he is aware that the property is within the Business Campus District.

Mr. Lash answered yes.

Mr. Schubert noted to A2 in the packet. He questioned Mr. Lash if this was the tax guard.

Mr. Lash answered yes.

Mr. Schubert questioned that under the tax parcel PP&L owns 90 parcels.

Mr. Lash answered correct.

Mr. Schubert noted it was the Deed that was recorded in the Court House.

Mr. Lash answered correct.

Mr. Schubert questioned Mr. Lash on the present use of the property.

Mr. Lash answered currently there are electric power lines running through the property and in the past five to seven years there was a large substation put on the property.

Mr. Schubert noted his was showing exhibit A3, showing trees on the property.

Mr. Lash answered correct.

Mr. Schubert noted that looking off Commerce Drive in a southern direction.

Mr. Lash answered correct.

Mr. Schubert noted this is labeled as the access drive to the PP&L substation.

Mr. Lash answered correct.

Mr. Schubert noted on the exhibit the high poles supporting power lines in the area.

Mr. Lash answered yes.

Mr. Schubert noted to the exhibit and noted the proposed AT&T tower.

Mr. Lash answered correct.

Mr. Schubert questioned Mr. Lash that the proposed tower is located 325 feet from the road.

Mr. Lash answered that is correct.

Mr. Schubert requested Mr. Lash to explain the vegetation located on the property.

Mr. Lash answered that when the substation was put in PP&L cut the land down to the back where they put a basin in to where the interstate is. He noted that in the past five to seven years the property has changed.

Mr. Schubert questioned the perimeter of the property and the maturity of the trees.

Mr. Lash answered there are when you are looking in at the right-hand side of the property there are some mature existing trees between us and the next existing property.

Mr. Schubert questioned that the next property is a single-story office.

Mr. Lash answered yes.

Mr. Schubert noted that the application and the installation of the new tower to support AT&T network.

Mr. Lash answered correct.

Mr. Schubert questioned Mr. Lash if he was involved in considering any other properties. Mr. Schubert requested Mr. Lash to review with the Board if there were any other properties and if they involved and buildings or existing structures.

Mr. Lash explained that Jacobs was given this project at least three years ago. He noted that they did work with PennDOT to get the tower that was being discussed early he noted it did not work out with them due to the fact their tower would not support them. He explained they have been with PP&L on this design, noting this is the best piece of ground they could find that AT&T could go and give them the coverage they would need.

Mr. Schubert questioned with regard to the power poles that are existing the reason that AT&T could not or would not use those.

Mr. Lash explained that PP&L has went through some management changes over the last two years and the gentleman they were originally working with is no longer with PP&L and PP&L has a new project manager. He explained the new direction from PP&L and the merger companies that are above them is to not place the antennas on the power poles any more because of future generation and larger poles. He noted to exhibit with Sprint shed tower, Commerce Drive, Mr. Lash noted they removed themselves because they could not expand and put the weight on the old poles. Mr. Lash noted they did evaluate that pole, but it would not hold the weight for what they needed it to do. He noted they looked at every option to make this site work.

Mr. Schubert questioned if it were fair to say that if they were able to find an existing tall structure, AT&T would favor using that.

Mr. Lash answered absolutely. Mr. Lash noted that the cost and time is much less. He explained that with First Net and the technology things need to be closer causing them to have more towers.

Mr. Schubert questioned that building a tower would be the option of a last resort.

Mr. Lash answered yes. He noted it is the most expensive option.

Mr. Schubert noted to exhibit A4. He noted to reference to his opening comments that he has a master license with PP&L, he noted he would like to show the Board a redacted copy of that from May 23, 1997. He noted that it is 32 pages and they have included only the signature page. Mr. Schubert questioned Mr. Lash if that is correct.

Mr. Lash answered correct.

Mr. Schubert questioned Mr. Lash if it was his understanding that AT&T and PP&L are operating under that agreement.

Mr. Lash answered yes.

Mr. Schubert questioned Mr. Lash if the agreement is being used to the full force of the effect.

Mr. Lash answered yes.

Mr. Schubert questioned Mr. Lash if the agreement authorizes AT&T to use PP&L properties.

Mr. Lash answered correct.

Mr. Schubert continued his question once those specific terms are worked out.

Mr. Lash answered yes. He noted they currently have multiple sites.

Mr. Schubert noted Mr. Lash made reference to a co-location. He questioned if that is location of additional provider antennas to infrastructure.

Mr. Lash answered that is correct.

Mr. Schubert noted that under the ordinance there is a requirement that any new structure be made available for other wireless providers. He questioned Mr. Lash if that is something AT&T does and is willing to do in this application.

Mr. Lash answered yes.

Mr. Schubert referred to exhibit A5 noting it is a letter, on Jacobs Letterhead dated August 26, 2020, with regard to colocation. Mr. Schubert questioned Mr. Lash if this letter sets forth AT&T's colocation policy for any existing structures that it might have in offering colocations to other wireless providers.

Mr. Lash answered yes it does.

Mr. Schubert questioned Mr. Lash the policy generated by providers.

Mr. Lash answered they attempt to build a four-carrier tower so that they can go and then Verizon and T-Mobile and Sprint can go on it. He noted they do it in multiple areas and can get lucky enough were Verizon and AT&T are sitting side by side working together. He explained they would do this for cost sharing. He noted that in this case it is just AT&T right now.

Mr. Schubert questioned Mr. Lash that is it possible for other providers to go on.

Mr. Lash answered yes. He noted it was designed for that.

Mr. Schubert noted to exhibit A12 the site plans that were submitted with the application. He questioned Mr. Lash if they were the site plans prepared for Colonial Park Mall.

Mr. Lash answered that is correct.

Mr. Schubert questioned Mr. Lash as to why it is named Colonial Park Mall when they are not near Colonial Park Mall.

Mr. Lash explained that the AT&T engineers choose the names of the sites, he noted they pick it and it does not have anything to do with the location of the site.

Mr. Schubert noted to the site plan of the property. He requested Mr. Lash to speak about what is proposed as far as access, the location of the tower.

Mr. Dowling questioned Mr. Schuler if all those factors and testimony contained in the exhibits and the application.

Mr. Schubert answered they are absolutely.

Mr. Dowling noted he would like Mr. Schubert to focus on given the fact that your client does not own the property, how do they meet the five requirements for a variance and in particular, how do you show there is a hardship to your client if your client does not yet own the land and

more importantly, why should the Board deviate from the Township Ordinance when it sells cell towers are not allowed here.

Mr. Schubert noted he can generally answer those questions in a legal nature. He continued with regard to the 5 criteria that are listed, he noted he would point out to the Board which he feels is very significant, with regard to his application that there is a proviso that leads into those 5 criteria. Mr. Schubert continued that the proviso talks about the relevance in any given case. He continued that all these 5 criteria have to be analyzed relevant to the application being presented here tonight. Mr. Schubert noted to the issue of ownership of property, he explained that under the Municipalities Planning Code and the definition of an applicant and a developer, the developer does not need to own the property all they need to do is have an interest in the land and that is the underlying lease agreement was present to the Board. He continued that the PP&L lease would give them the relevant interest to the land. Mr. Schubert noted the lease to the land is 25 years. He continued that under that agreement with PP&L, AT&T has a 25-year ability of remaining on that property with the possibility of a future extension of the lease. He explained that in the event the lease would end there is a provision that AT&T would have to remove the facility. Mr. Schubert continued with regard to the hardship issue, he noted Mr. Paul could talk more specifically with regard to a radio frequency standpoint. He explained that a telecommunications use is not the same use as a gas station or hotel or a business where you can plot down wherever you want to. He explained this use is similar to a public utility use, he noted to a water utility use. He explained that a water authority cannot pick and chose their location to make a water tank work due to gravity. He continued that unlike a municipal utility like a water company, this applicate is similar where they cannot pick and choose there location due to radio waves. He noted Mr. Paul would be able to explain that better. He noted that there is a significant gap in coverage in this area, noting Mr. Lash existing sites that will not work, the last option is to build a tower to be able to fill in that gap in coverage. Mr. Schubert noted the uniqueness in the situation is the physics that dictate the technology.

Mr. Dowling noted that argument could be made with a non-conforming piece of property if it simply high along the interstate. Mr. Dowling noted that the ordinance said it is not allowed.

Mr. Schubert answered right. He explained that the analysis comes down to whether the ordinance would result in effective prohibition of the technology. He explained that this would get into Federal Law. He noted that within the application they have requested a Validity Variance. He noted the does not like to go down the path of a Validity Variance due to the standpoint he would have to get into a more technical argument with Federal Law. He noted the Federal Law and the 1996 Telecommunications Act, that law establishes that municipality essentially has to provide for this type of use and not prohibit. He continued that if Mr. Paul's testimony is there is a significant gap in coverage and AT&T needs to fill in and this is a tower that would fill in that gap then the Township should authorize that as a variance from its regulations.

Mr. Dowling noted he was not sure it that would because they have six or more towers in the area.

Mr. Sirb noted he does not buy that at type of argument. He noted he could buy the argument of the lease agreement but to state the fact that you have a validity argument with the amount of towers. Mr. Sirb questioned how they would have a significant gap.

Mr. Schubert noted Mr. Paul would be able to answer that.

Mr. Sirb requested Mr. Paul to explain to him what a significant gap is when there are seven towers in that area.

Mr. Paul noted that with in a two-mile radius AT&T is co located on six structures. He noted the locations of the co locations is located on relativity short structures.

Mr. Sirb questioned Mr. Paul if the shorter structure referred to shorter coverage or shorter distance.

Mr. Paul answered shorter structure. He explained the ground elevations around those sites hinder the ability to provide adequate coverage to the areas being covered. Mr. Paul noted those area to to the I81/I83 split, Colonial Road, The Shops at Susquehanna. He continued that even though AT&T is co located on six structures if the structure is lower to the ground the coverage is not as far. He explained that 20 to 30 years ago when cellular coverage first became available cell structures were located on the mountain tops and those sites would propagate 20 to 30 miles because those towers had direct site. He noted that as more and more people use cellular technology those site were exhausted and those wireless carriers decommissioned the use of those structures and have started to build structures shorter in height and within close proximity to the target area. He noted the closeness of the proximity to the target area is critical when selecting the location for a new tower. Mr. Paul noted that AT&T is located on six structures in a two-mile radius but given the height of those towers and the topology surrounding that gives challenges to be able to cover the area. Mr. Paul noted he did bring propagation maps.

Mr. Sirb questioned Mr. Paul's use of the word significant gap. He questioned if that referred to one mile or two miles.

Mr. Schubert noted to the exhibit and the report that was prepared.

Mr. Schubert questioned Mr. Paul if he prepared the report.

Mr. Paul answered yes.

Mr. Schubert questioned Mr. Paul on the maps that have been incorporated, naming Figure 1 and Figure 2 that show existing coverage and proposed coverage. Mr. Schubert noted to them being on page five and six.

Mr. Paul answered that is correct.

Mr. Schubert questioned Mr. Paul if he has a large map of the exhibits.

Mr. Paul answered he does.

Mr. Schubert questioned Mr. Paul if he could discuss what these plans show in the report and tell the Board the significant gap in coverage.

Mr. Paul referred to page five. He noted to the three colors on the map, noting green blue and orange. He explained that the maps were created using an industry standard software tool taking into account the ground elevation, clutter (structures), and the existing structures AT&T currently has. He noted that the tower is built within the software tool and runs the analysis to determine if the coverage will be adequate. He noted the last thing AT&T wants to do would be to build a new structure and find is does not provide the coverage. He continues by explain the three colors on the map. He began with green noting it represents the ingoing coverage and if an AT&T customer was in green, they would have a high level of coverage. He continued with blue, noting it represents vehicle coverage. Mr. Paul continued with orange, noting orange represents where customers can use their handset on the street, noting not within a home, not within a vehicle. He explained the reason for the three differences is because when you step foot into your home or business the coverage is reduced because there is a structure that needs to be penetrated as well as vehicle. Mr. Paul referred to the dots on the map as well. He noted the pink dot represents where the proposed tower would be located, and the black dots represent existing AT&T sites that are transmitting presently. He noted when you look at page 5 of the existing coverage that map shows all the information without the proposed facility. He noted that page five shows the coverage the customer would experience today. He noted to page six and the proposed coverage noting the only difference is the proposed facility has been turned on and you can see the additional coverage in green. Mr. Paul noted to define significant area that is lacking in coverage is somewhat subjective to what the criteria is. He noted that due to the business in the area there is a significant lack in coverage. He noted that this site will not only be operating for the AT&T consumers but for the First Responders. Mr. Paul noted that in their contract AT&T must provide adequate coverage for their paying subscribers and the FCC monitors that very closely.

Mr. Emery noted he feels Mr. Paul was not explaining significant gap or adequate coverage earlier. He questioned that Mr. Paul mentioned reliable is a term he is using that someone can not get any coverage.

Mr. Paul answered yes and no. He explained there are areas were there is coverage but and AT&T would not be able to gain access to the network. He explained that if a customer goes to hit send and the call does not go through that is not reliable service.

Mr. Schubert questioned Mr. Paul if that would include when you get the spinning wheel for data.

Mr. Emery noted he is referring to a phone call because Mr. Paul talks about a phone call.

Mr. Emery noted he travels this area daily and he can not think of a time when he dropped a phone call in the 20 some years. He questioned that with what Mr. Paul is saying is without this people will not be able to make phone calls or simply not be able to access data.

Mr. Paul answered both. He referred to the map and the coverage show. He explained that if a customer is in an area where there is orange showing, if they would go inside their home, they may not be able to place a call or have access to the internet. He noted AT&T provides multiple services to their customers. He noted that as design engineers they do not look exclusively for customers to just be able to place a call because AT&T uses various frequencies. Mr. Paul questioned Mr. Emery if he was able to answer his question.

Mr. Emery answered yes. He noted he appreciates that AT&T wants to provide coverage for their customers. He questioned if this should be a decision made by the Board of Supervisors as this is a service that needs to be provided to the citizens and change their zoning accordingly.

Mr. Schubert questioned Mr. Paul with regard to his service and experience along the highways, he noted he is not sure if that is an AT&T phone.

Mr. Emery noted that to no offense it is not. He noted it is Verizon.

Mr. Schubert noted they are here for AT&T.

Mr. Schubert noted to the developing technology for phone calls from 3G to voice over LTE. He requested Mr. Paul to describe what that is.

Mr. Paul explained that AT&T is transitioning its voice services to LTE which is a voice over the data network. He noted that as placing a call they are all the same now but at some point in the future accessing yahoo.com would be treated the same as placing a phone call with the frequencies and how the phone call would be handled through the data network. He noted the proposed tower will be built in order to support the 5<sup>th</sup> Generation technology and in addition to that would support the First Net which again is in fact is AT&T's exclusive with the Federal Government to provide those services for First Responders as a result of the unfortunate events of 9/11 and the First Responders were not able to use their 800 megahertz handsets, they would go to their AT&T phone and could not gain access. He noted the technology will allow any First Responder using First Net access to the network regardless of location.

Mr. Dowling noted they would pause in testimony for questions by the Board as it relates to the variance application.

Mr. Sirb questioned that there are some residents in the Township that if they live in the orange coded area they cannot access the internet.

Mr. Paul answered that was correct.

Mr. Dowling questioned if that was true why the Board would not know about that. He noted the Township would get complaint after complaint if they did not have any service. He noted that have heard nothing.

Mr. Sirb questioned if Verizon has that and AT&T just does not have it.

Mr. Paul answered that Verizon and AT&T networks are different. He noted it is not just where the sites are located but the technologies. He noted it is difficult to compare the networks. Mr. Paul noted the cannot answer defiantly but AT&T probably has received complaints from their customers about their service. He noted the is just one customer and would not call them over one dropped call but he may if he was traveling it every single day. Mr. Paul continued that based upon his experience he would not call his local Township. He noted First Responders may be more apt to call the Township. He noted this is his speculation as being a customer and knowing the company.

Mr. Sirb questioned Ms. Zerbe if the Township has received any calls from the First Responders about a dead zone.

Ms. Zerbe noted all the Township phones are with Verizon.

Mr. Lash questioned what the Police and the Fire Trucks run on. He questioned if they were First Net.

Ms. Zerbe answered she did not know.

Mr. Lash explained they are doing some things up in State College and the area and three or four Townships have switched their cars to AT&T because of First Net Service. He explained the whole Police car runs off of First Net. He noted they are adding lots of site there. He noted he does not know if Lower Paxton Township does yet and at some point they might. He noted that the State Police are on this. He noted that is some areas they have to place additional sites for the State Trooper cars.

Mr. Paul explained the propagation maps. He noted that AT&T spent millions of dollars to keeping this tool accurate in addition to AT&T looks to see where their dropped calls are located. He noted he does not have anything to represent that this evening.

Mr. Hansen noted that is a question he had would be to see the area of the dropped calls. He noted the company must have that data. He questioned Mr. Paul if he had that data tonight.

Mr. Paul answered not necessarily.

Mr. Hansen noted that it seems that AT&T is having trouble with coverage.

Mr. Paul noted to the coverage maps and the information that is used and one of the criteria would be dropped calls. He noted the dropped calls are not represented on the maps because the map shows the need for this facility. He compared the difference from page five and six, noting the significant increase in green coverage where clients and Frist Responders would have

coverage. He noted customers are transiting from home phones, noting that 60% of homes do not have a home phone and rely solely on their mobile device.

Mr. Dowling questioned that the proposed property is owned by PP&L and PP&L is using that as a substation.

Mr. Schubert answered correct.

Mr. Dowling questioned how this Board can say that this property cannot be used for any other purposed and it has to grant a variance when the property is already being used commercially. He noted this is a second use to the same property, when the owner of the property is already using it commercially.

Mr. Schubert noted that it not unusual where this type of use that only requires a small amount of area and power lines from this use, it is more the rule than the exception.

Mr. Dowling noted this is not the Board's first cellular tower. He noted that normally the property owners have said this property has no other use and the only thing they can put on it is a cell tower noting that is when they have legitimate argument of a hardship. He noted here the property is in use and the request is for another use. He noted he is struggling to see how this places a hardship other than economic.

Mr. Schubert referred to his opening and that is similar to a validity variance. He noted that it is common with this type of use it is used in common with other existing uses. He noted it is common from a stand point of because of the physics of how these facilities have to be dropped in with the network that the radio frequency can not just pick and choose a location freely. He noted he may have to call Ms. Zerbe to see how far away the first permissible district is. Mr. Schubert noted that with the validity variance he may have to ask a few more questions.

Mr. Dowling noted he has not filed for that type of variance.

Mr. Schbert noted that a validity variance is a different type of variance. He explained he has asked for a variance and as asked for relief and interpretations under the code.

Mr. Dowling noted he saw that. He commented he feels that is to big to be allowed tonight.

Mr. Sirb noted he agreed with Mr. Dowling that it is to big. He noted that if Mr. Schubert wanted to have validity discussed that should have been clearly marked on the applicant.

Mr. Sirb noted he does not hear from the residents of this Township not the Emergency Responders, Police or Fire that we have an issue. He continued that if they had an issue that the Fire or Police are having an issue than he could see that and that would need to be fixed.

Ms. Zerbe noted that Kristi just reminded her that our Police use Verizon modems in their police cars.

Mr. Paul noted that not all AT&T customers live within the Township.

Mr. Sirb noted that the variance is within this Township.

Mr. Paul answered he understood.

Mr. Sirb noted that is what he is concerned with the Township.

Mr. Schubert questioned Mr. Paul if the relief is not granted by the Board tonight will that inhibit AT&T's coverage it needs to its customers and to the First Net Responders.

Mr. Paul answered yes it would.

Mr. Staub noted his concern is with what was stated earlier. He noted that Verizon coverage is adequate. He suggested the applicant to co located their antenna on the Verizon tower and not worry about this particular site.

Mr. Schubert answered they are not here for Verizon. He noted this is an AT&T application. He noted they have their own network.

Mr. Schubert continued that is sound like the Board is saying that they would like some additional information noting to the dropped calls and performance standards. He explained he spoke with Mr. Lash and if the Board would allow he would be happy to ask for a continuance and come back next month with more information and if there is a concern that the issue of the validity variance was not raised before the Board he will ask the Solicitor and Ms. Zerbe to advertise for that reason and amend the application. He noted he does not think it is necessary.

Mr. Sirb continued that beside the dropped calls he would like to see dropped calls withing the Township. He noted he is not interested in an AT&T customer from California can not make a call. He noted that it is affecting the Township that will influence his vote as a Township guy. He noted that it does not affect his vote if someone from New York has a dropped call, he noted that is AT&T's problem.

Mr. Emery questioned where is the closest point that you can get to the Township where it is allowed, and it is possible to run a propagation map from those spots and show the Board the difference.

Mr. Schubert noted he would call Ms. Zerbe.

Mr. Dowling requested if the applicant is requesting a continuance, he would like them to map out every cell tower in the Township and who is on them and how tall they are and whether they have the space.

Mr. Schubert answered they can not do that because they do not know the other providers network. He noted this is just for AT&T. He noted he feels that is over and above. He noted they can provide to the Township AT&T sites both in and out of the Township.

Mr. Dowling questioned if there is an existing pole with space on it why could you not relocate on that.

Mr. Schubert noted to what they would be able to do. He explained there is an FCC tool that every provider is to register a tower. He noted if they it is properly registered; they can provide that.

Mr. Dowling questioned Mr. Schubert if they are requesting a continuance of the hearing.

Mr. Schubert answered he is.

Mr. Dowling questioned if any member of the Board have any questions or comments.

None was heard.

Mr. Dowling granted the continuance. He noted to the applicant they will need to speak with the Township on what data they will need.

Mr. Schubert answered he would be happy to do that.

Mr. Dowling noted that if Mr. Schubert is going to requested to extra variance, he would like to know about it to be able research it. Mr. Dowling noted the request for the variance was granted.

This hearing ended at 8:10 p.m.

Respectfully Submitted,

*Kristi Focht*

Kristi Focht

Recording Secretary

Lower Paxton Township  
Zoning Hearing Board

August 27, 2020

**Members Present:**

- David Dowling
- Allen Hansen
- Greg Sirb
- Jeff Staub
- Mark Emery
- Ron Reeder

Also, In Attendance: James Turner, Steve Stine, Amanda Zerbe, Nick Gehret, Kristi Focht

**Docket 1434**

Applicant: Triple Crown Corporation Inc of BVR Apartments LLP

Address: 5351 Jaycee Avenue  
Harrisburg, PA 17112

Property Owner: Triple Crown Corporation

Property: 1100, 1110, 1120. 1130 Alexandra Lane  
Harrisburg, PA

Applicant: Is appealing the zoning officer’s determination regarding the number of units allowed per building. Alternatively, the applicant seeks a special exception to permit a reduction in the number of parking spaces required for the buildings.

Application Paid: July 31, 2020

Property Posted: August 19, 2020

Advertised: Appeared in the Hummelstown Sun on August 5, 2020 and August 19, 2020. And was advertised on the Township website and Township media accounts.

The Hearing Began at 8:16 p.m.

Mr. Dowling noted that there are two matters before the Board with the Triple Crown Application. He explained one is the Vested Right case and the other is the request for the zoning variance. He noted the Zoning Board will hear the Vested Right case first. He noted they have seen and heard the applicant's summary but have not heard the Township on the Vested Right case. He requested the Applicant and the Township each take a few minutes to give a summary of the Vested Rights case.

Mr. Staub questioned his appropriateness to participate in this hearing. He explained that he has had a business relationship with the Applicant in the past. He noted he currently does not have any business with the Applicant and does see any in the future.

Mr. Dowling noted he cannot answer that question.

Mr. Fortney noted that the applicant has no objections.

Mr. Dowling questioned how long ago was the last.

Mr. Staub answered two years ago.

Mr. Dowling questioned if any member of the Board had an issue.

No response was heard.

Mr. Dowling noted the Applicant is fine and the Township is fine.

Mr. Fortney noted that he had previously discussed with Mr. Stein the preference to put the Vested Rights aside for the moment and have the number of units per building evaluated by the Board on a variance basis and then if the Board would grant that variance the applicant would withdraw the Vested Rights.

Mr. Dowling questioned what would happen if the Board would not grant the variance.

Mr. Fortney answered they would have to get into the Vested Rights.

Mr. Dowling noted they will do the Vested Rights first. He explained the Board will have to hear a lot of the same testimony as to how all this unfolded.

Mr. Fortney noted that they would have to explain some of that to the Board and there would be Vested Rights as part of the background and explanation.

Mr. Dowling questioned the Townships position.

Mr. Stine explained when he spoke to Mr. Fortney, they thought was best to proceed with the variance first.

Mr. Dowling noted that with the being the preference of both sides, Mr. Dowling requested an opening statement and noted he would like to hear facts dealing with how we got here.

Mr. Fortney introduced himself and the Applicants Mark DiSanto, Chris DiSanto, and Craig Mellott. Mr. Fortney explained BVR Apartments is the owner of the apartment buildings in Blue Ridge Village. He noted there are two issues that need to be delt. He explained the first is to the number of units in the apartment buildings. He noted that all the apartment buildings are the same and contain 46 units. He noted to the RRD and the limit of number of units in apartment buildings in a residential retirement development to 40 units. He noted they have 46. Mr. Fortney noted that Mr. DiSanto will testify to is they began working on the redevelopment of Blue Ridge site in 2017. He continued that they came before the Board of Supervisors, the Board of Supervisors

noted they had desired to have a mixed use type of project that would provide for aging because there were no other comparable developments in the Township where you can progress from one housing type to another and ultimately get into an assisting living facility and stay within the Township. He continued to explain that they followed the ordinances and started to modify the provision. Mr. Forney noted the plans were submitted and approved in 2018 and between final plan approval for the first phase which included the apartments in the time frame of September 2018 to the time first building permit was submitted in March of 2019, the leasing office realized there was a significant demand for studio apartments.

Mr. Dowling questioned what leasing office.

Mr. Fortney answered Triple Crown Leasing office. He explained there was a desire to accommodate studio apartments within in the buildings. He noted that buildings that have been constructed are the same design, same footprint, same general layout as a project that was done in East Pennsboro Township. He noted the modifications were made by taking some space away from taking a two-bedroom unit and squeezing in a studio. He explained the individuals in the leasing office who were leading the effort knew enough to look into the Zoning Ordinance and they confirmed there would be six extra units per building, total of 24 units, and the project would still comply with the maximum density of an R-1. He noted what they missed was the 40 unit per building limitation. He continued this progressed to building applications identified in writing to show 46 units, each application showed 46 units and the floor plans that were attached to the building permits also showed 46 units. He noted the building permits were approved for all four buildings, noting two are completed and occupied, 1 is about 90% complete and building number four is about 75% complete. He noted that at some point during the construction process, noting to early July, both the Township and the developer noticed the 40 limit per unit limitation and the buildings were not compliable. He noted they filed an appeal based on the Vested Rights and the Variance dealing with the number of units per building. Mr. Fortney noted to the second request of relief, noting the same amount of parking on the approved plans. He noted that when you add additional units and not additional parking, they are not complaint with the overall number of spaces. Mr. Fortney noted the testimony provided would not that adding additional spaces would only add more impervious coverage because the ordinance has two standards for apartment parking, noting one is 2 spaces per unit and in the RRD it is 2.25 spaces per unit. He noted that in the exhibit they have provided is a parking evaluation done by Traffic Planning and Design that shows that the parking for under the ITE would be 1.47 spaces and the required in a comparable project that was counted on the West Shore that was actually counted was 1.3. He explained the information shown will show 2 spaces per unit. He explained they will have more than 100 spaces that ITE would require, they would be able to satisfy the general RRD standard for multi-family. He noted they are requested relief to limit the parking spaces from 414 to 370.

Mr. Dowling requested the Township to give their opening argument.

Ms. Zerbe noted that she would be going through the timeline from the Township's perspective. She began on March 6, 2019 Triple Crown Corporation dropped off a zoning permit for review noting the Zoning Permit was dropped off ahead of the building permit and was reviewed at Nick DiSanto's request in order to move forward with financing. Ms. Zerbe noted Mr. DiSanto had noted the lenders needed proof the apartments were permitted in order to gain financing. She continued that upon review the plan page, noting to the exhibit in the packet Blue Ridge Village, Phase I, page 5, noting the Zoning Officer found the building was not compliant with the ordinance and the Zoning Officer contacted Nic DiSanto and asked the permit application be revised to reflect the ordinance requirements. Ms. Zerbe continued that on March 12, 2019, Triple Crown Corporation dropped off a new zoning permit for review and the zoning permit was issued on March 18, 2019 based on the

plot plan provided. She continued that the plot plan provided attached to the permit application was the same sheet 5 subdivision plan for Blue Ridge Village. She continued that the plan provided for the zoning permit showing 4 buildings with 40 units, the allowable number of units under the RRD section of the ordinance.

Mr. Dowling questioned when the zoning permit was filed by the applicant.

Ms. Zerbe answered the first zoning permit was filed on March 6.

Mr. Dowling noted that the height was wrong.

Ms. Zerbe noted the height was wrong and a new permit was brought in on March 12<sup>th</sup>.

Mr. Dowling questioned how many units per building was on the March 12<sup>th</sup> zoning permit.

Ms. Zerbe answered 40.

Mr. Dowling noted that was complaint with the ordinance.

Ms. Zerbe answered right.

Mr. Dowling requested Ms. Zerbe to continue her testimony.

Ms. Zerbe continued that on March 28, 2019 the building permit application for all four units was dropped off at the Township building for review and the permits were sent to Approved Code Services noting Approved Code Service is the Townships commercial building reviewer and inspector. Ms. Zerbe continued that the four permit applications were signed by Nic DiSanto the same Triple Crown Corporation noting the same staff that signed the zoning permit and the building permits were released to Triple Crown on June 12, 2019 and a Certificate of Occupancy for building one was issued by Approved Code Services on May 8, 2020. She explained the issue of the extra units was discovered when the Sewer Authority received the Certificate of Occupancy from ACS to begin sewer billing. She noted that on June 12 an email was sent to Mark DiSanto stating there was a zoning issue as it appeared, they had constructed 46 units. She noted that was the first time the zoning office noticed the building permit was submitted with 46 units.

Mr. Dowling questioned the date for the zoning permit.

Ms. Zerbe answered the zoning permit was issued on March 18, 2019.

Mr. Dowling questioned that had 40 units.

Ms. Zerbe answered correct.

Mr. Dowling questioned when the building permit was submitted that had 46.

Ms. Zerbe answered ten days later March 28, 2019. She explained the zoning permit had already been issued and then the building permits came in on March 28<sup>th</sup>.

Mr. Dowling questioned the zoning permit complied, but the building permit did not.

Ms. Zerbe answered correct. She noted it is a separate department and she did not see that permit.

Mr. Dowling questioned if there was anything else.

Ms. Zerbe answered no.

Mr. Dowling noted the applicant will now begin the testimony.

Mr. Dowling swore in Craig Mellott and Mark DiSanto.

Mr. Dowling requested Ms. Zerbe to tell what ordinances are at issue.

Ms. Zerbe answered 203.319f8, additional dwelling units and 203.602f parking reduction.

Mr. Dowling noted to Mr. Fortney that the easiest way to streamline this is to hold off on the traffic engineer to determine if the variance is granted. He noted if the variance is not going to be granted for the extra six units then we do not need the parking testimony. He continued if the Board would like to hear the traffic engineer, they will hear that. Mr. Dowling noted that the expert would probably testify to the affect that based on previous projects the parking that is current is sufficient.

Mr. Fortney answered correct.

Mr. Fortney requested Mark to identify himself for the record.

Mr. DiSanto introduced himself as Mark DiSanto of Triple Crown Rental Corporation.

Mr. Fortney questioned Mr. DiSanto if Triple Crown is the contractor for Blue Ridge Village Apartments.

Mr. DiSanto answered yes, we are.

Mr. Fortney explained he had provided a little bit of background information to the Board. He requested Mr. DiSanto to talk to the Board about how this project started.

Mr. DiSanto explained that the ownership of Blue Ridge Country Club, BRCCLP, and with the decline of the market they decided to approach the Township and get a plan for the development of the property. He noted they talked about a mixed-use community, where you could go from single family homes to apartments to assisted living. He explained that as the plan was approved all four types of housing was approved on the property. He noted that they worked with the institutional zoning and rewrite certain parts and created a living and walkable aging in place community. Mr. DiSanto continued that the amendment was adopted in September of 2017 and subdivision plans were submitted in 2018 and construction started in 2019 and the Certificates of Occupancy for buildings one and two and then they found out about the issue.

Mr. Fortney noted to the plan displayed on the screen. He noted he will identify as exhibit A1 building documents for building one, exhibit A2 building documents for building two, exhibit A3 building documents for building three, and exhibit A4 building documents for building four, exhibit A5 is the transmittal letter and application form, exhibit A6 subdivision plan for Blue Ridge Village and he noted he handed to the Board this evening three additional exhibits. He noted those to be phasing plan of the approved subdivision plan, exhibit A8 is the apartment parking plan and exhibit A9 is the parking evaluation.

Mr. Fortney referred to the screen and exhibit A7, he questioned if that shows the phasing plan.

Mr. DiSanto answered yes.

Mr. Fortney requested Mr. DiSanto to walk the Board through the plan.

Mr. DiSanto used a pointer and explained one section being commercial.

Mr. Stine questioned if that section was along Linglestown Road.

Mr. DiSanto answered that it was along Linglestown Road. He explained the building to the East is the CVS and the next building coming West is where Starbucks, Jersey Mikes and Great Clips and the third building coming to the West is where the Tide Drycleaner and AT&T is already open and the next two lots are vacant. He noted the lot farthest from the West was sold and is under construction for the assisted living community, noting that it will have 98 beds. Mr. DiSanto continued with the plan, circling the most western portion noting building one which is fully occupied, building two which is Certificate of Occupancy issued and is 75% occupied, building three is 90% complete and will deliver in September and building four will deliver in the month of October. He noted the clubhouse, swimming pool, playground, and grill areas, noting the amenity package to the community. He continued and showed Phase I of the townhouses and the building is under construction by Ryan Homes. He noted the single-family homes under construction in Phase I by Ryan Homes. He noted that the plan has the single-family homes, the townhomes, apartments and assisted living with easy walking to commercial buildings. He noted there was great demand for the apartments.

Mr. Fortney referred to another screen, identifying exhibit A6 as the copy of the approved subdivision plan that focuses on the apartment units, he questioned if that was correct.

Mr. DiSanto answered yes.

Mr. Fortney requested Mr. DiSanto to walk the Board through the apartments noting the spaces.

Mr. DiSanto used a pointer to show the parking in the different areas. He noted the existing parking count is 361 units.

Mr. Fortney questioned if each building has the same design.

Mr. DiSanto explained that it was mentioned previously that a prototype was built in East Pennsboro Township with 40 units. He noted that these buildings are the exact length, width, and height and square footage as what was built in East Pennsboro. He noted that building can contain 40 and when the process started in 2017 that is what they thought they would be building.

Mr. Fortney noted that the plan identifies the building as four stories, 15,000 square footprint and specifically say 40 units.

Mr. DiSanto answered correct.

Mr. Fortney noted that now there are 46 units in the buildings. He requested Mr. DiSanto to explain what happened.

Mr. DiSanto explained that the leasing staff saw a demand for studio apartments they met with the design department and did some reconfiguration. He noted that they are will under the allowable density for the entire property. He noted the entire density is 637 units noting with the additional 24 they are only at 449 units. He continued that at his company they employ about 250 people, noting that his staff in good faith knowing what the markets were, checked the zoning and understood there was significant density allowance and went forward and modify the plans by taking some of the two bedroom narrow them and on the second, third and fourth floor on opposite sides of the hallway they put a studio. He explained that there are two studios on each of the second, third and fourth floors making it 6 studios per building.

Mr. Fortney questioned if Mr. DiSanto was changing the dimension of the building.

Mr. DiSanto answered it is all internal.

Mr. Sirb questioned that the footprint does not change at all.

Mr. DiSanto answered not at all.

Mr. Sirb questioned they added studio apartments because that is what is selling.

Mr. DiSanto noted that was a huge demand generator and the studios have been the first items to be leased. He noted that even building three that does not have a Certificate of Occupancy, yet every studio is leased.

Mr. Sirb questioned Ms. Zerbe that if she would have seen a footprint change would that have been a red light to go off.

Ms. Zerbe answered yes.

Mr. Sirb noted that the footprint does not change just the units changed.

Ms. Zerbe noted they were never notified they were changing the number of units.

Mr. Sirb questioned Mr. DiSanto if something had gotten looked over on the leasing. He noted because the building did not change noting internally extra space was squeezed in.

Mr. DiSanto answered that what happened was good faith attempts to follow the ordinance and it was missed by accident on both sides by both the Township and the developer Triple Crown. He noted that they did ask for the zoning at 40 but the staff was working on the design to 46 not knowing there are two different permit applications. He continued that nothing was hidden in the building permits, noting 46 units were shown on the building permits and plumbing permits. He noted all the data showed 46 and the staff thought they complied with the overall density of the zoning. He stated it was an honest mistake. He noted the Township missed it as well but did note there is a lot of things, they look at each day. He noted the zoning was missed but not the density.

Mr. Dowling questioned the ten-day window with the application for zoning that was correct and then ten days later we have the building permit that has 46 units. He questioned whether the Township can rely upon the accuracy of the building permit to comply with the zoning permit. He questioned if Triple Crown knew this only allowed for 40 units.

Mr. Fortney answered that the individual submitting the application did not know about the 40 units because they had 46.

Mr. Dowling questioned if it was the same person.

Ms. Zerbe answered yes.

Mr. Fortney questioned the same person for what.

Ms. Zerbe explained it was the same person that signed the zoning permit and the building permit.

Mr. Dowling noted he is confused if there is one person signing the correct application at 40 and ten days later that same person is signing the building permit with 6 more units per building.

Mr. DiSanto explained that many times documents come to him for signatures and you rely on the person who filled those documents out and you execute. He noted he signs these all the time and he does not verify, that he relies on his staff to properly execute that.

Mr. Fortney requested to make a clarification.

Mr. Dowling agreed.

Mr. Fortney noted that the zoning permit that was submitted included a site plan. He noted that you take the approved land development plan, make a copy and attach it. He noted that floor plans were also attached to the zoning permit.

Ms. Zerbe commented that floor plans were not included.

Mr. Fortney noted he has an application that says it was but noted he will not dispute that with Ms. Zerbe. He noted that when you are submitting the zoning permit application and you are looking at it on a site plan and it has already been approved on a land development plan he explained it does not account for what is happening on the inside of the building. He noted they were not changing anything on the outside.

Mr. Emery commented that they are changing something on the outside noting they need more parking. He continued that Mr. Fortney said he did not know it but says he must have known it because you would have had to change your parking count at that point.

Mr. Fortney answered yes with the overall number of spaces.

Mr. Emery noted they would have known it then.

Mr. Fortney remarked it may not have been very well thought out and issues that were missed. He explained they are the last people that want to have units that are done, and they cannot use. He noted that the forty-limit unit was missed, and the parking was missed.

Mr. Emery noted they would have known at the point because they would have to change the outside.

Mr. Fortney noted that with the Vested Rights aside and on a practical level you can make mistakes. He noted that in all the applications that were submitted they said 46 units. He noted that Ms. Zerbe did not look at it because she had no reason to. He noted that it was out front saying 46 units. He noted that Approved Code saw the 46 units on the floor plans during the review. He noted they were not hiding what they were trying to do.

Mr. Sirb noted that mistakes were made. He noted he would like to get to the point of the variance.

Mr. Stine noted that the building is up.

Mr. Dowling noted they have not heard testimony of when these two bedrooms were converted and one building is 90% and another is 75.

Mr. Fortney stated they can get to that right now.

Mr. Dowling noted that he feels the testimony of how it happened is important because it goes the variance and if the hardship was created by the applicant.

Mr. Fortney noted to Mr. DiSanto that the leasing office found a way to provide studios but shortening two-bedroom units and squeezing in two studio apartments on three floors. He questioned Mr. DiSanto if that was correct.

Mr. DiSanto answered correct.

Mr. Fortney questioned Mr. DiSanto if separate building applications were submitted for each building.

Mr. DiSanto answered yes. He noted one application for each building showing 46 units and the plumbing permits the same.

Mr. Fortney questioned Mr. DiSanto that each of the applications identified in writing 46 proposed units in each of the buildings.

Mr. DiSanto answered yes.

Mr. Fortney questioned Mr. DiSanto that he also submitted floor plans that showed 46 units in each of the buildings.

Mr. DiSanto answered yes.

Mr. Fortney questioned Mr. DiSanto if the building permits were approved.

Mr. DiSanto answered yes, they were approved. He noted they received the permits in March of 2019 and then did not have communication with the Township until June of 2020 noting a 16-month lag.

Mr. Fortney questioned Mr. DiSanto on the time since they have discovered there was an issue, was there any type of way to misrepresent or sneak in additional units.

Mr. DiSanto answered absolutely not on our end. He noted this was simply an honest mistake where staff from our company clearly thought they were under the allowable density, clearly submitted stating 46 units on the permits and paying the fees for the appropriate uses. He noted it was not until the zoning issue came up and two of the Certificate of Occupancies were issued.

Mr. Fortney questioned Mr. DiSanto on the status of the construction of the four buildings and the Certificate of Occupancy.

Mr. DiSanto answered building one Certificate of Occupancy issued and 100 percent occupied; building two Certificate of Occupancy Issued and about 85% leased and 60% occupied; building three is 90% completed and will do this month of September and will be ready for the Certificate of Occupancy he noted that building is about 50% preleased; and building four is 75% complete and will deliver in October for a Certificate of Occupancy.

Mr. Fortney questioned the approximate construction cost for each building.

Mr. DiSanto answered slightly over 5 million dollars.

Mr. Dowling questioned that the mistake was brought to Triple Crown by the Township.

Mr. DiSanto answered yes it was.

Mr. Dowling questioned when this was realized.

Mr. DiSanto noted that based on Ms. Zerbe's testimony and email was sent June 10<sup>th</sup> and he believes that is accurate.

Mr. Dowling questioned if Triple Crown stopped work on June 10<sup>th</sup>.

Mr. DiSanto answered no. He explained they met with the Township and had some discussion and agreed this was the approach to come to the Zoning Hearing Board.

Mr. Dowling questioned why the work was not stopped.

Mr. DiSanto answered that two of the buildings had been completed.

Mr. Dowling noted to take the two completed buildings out.

Mr. DiSanto explained that building three was fully leased to tenants.

Mr. Fortney questioned Mr. DiSanto on where the buildings were in the construction process.

Mr. DiSanto answered it might have been 75%. He explained that when you look at the total project cost, they had spent 17 to 18 million dollars and were far along in the construction process.

Mr. Dowling questioned that the Township learns of the issue, contacts Triple Crown and Triple Crown continues to build out the building.

Mr. DiSanto answered yes. He noted they had dialog with the Township through the process.

Mr. Sirb questioned why the stop work order was not issued.

Ms. Zerbe explained that building and zoning are two separate departments. She noted they were getting their buildings inspected and that was in accordance to their plan. She noted zoning will not stop their building process. She explained the conversation was they would not lease the 24 units in building four until they had their hearing.

Mr. Sirb questioned that they continued to build and the Township was aware of that.

Ms. Zerbe answered that there were no violations with the building they were building in accordance with their plan.

Mr. Fortney continued with testimony. He noted that each building cost 5 million dollars. He questioned the cost of the units.

Mr. DiSanto answered that the cost of each of the studio unit is slightly over \$100,000 noting they are the smallest.

Mr. Fortney questioned that was the cost for the fit-out, plumbing, electrical, fixtures, etc.

Mr. DiSanto answered yes. He explained they have separate electrical panel boxes, separate kitchens, separate bathrooms.

Mr. Fortney questioned Mr. DiSanto on the type of dimensional variance he requested.

Mr. DiSanto answered that is correct.

Mr. Fortney questioned Mr. DiSanto on the unique physical characteristics of the property. He questioned if it was non-conforming based on the number of units.

Mr. DiSanto answered yes.

Mr. Fortney questioned that a non-conforming can be a unique physical circumstance and how you got there. He questioned if Mr. DiSanto got there through an issue with building permits.

Mr. DiSanto answered yes.

Mr. Fortney questioned if the unique physical circumstance creates a hardship.

Mr. DiSanto answered yes. He explained to modify or take them out is significant from a design and cost aspect.

Mr. Fortney noted the financial hardship. He questioned Mr. DiSanto on the cost to make the buildings comply with the 40-unit limitation.

Mr. DiSanto answered that this is the economic hardship. He explained that if you took a studio out you would add it to the two bedroom and you would have to knock out walls, tear out kitchens and arrange it to an awkward two bedroom unit. He noted the cost would estimate to be \$40,000.

Mr. Forney questioned the cost for each building.

Mr. DiSanto answered \$240,000.

Mr. Dowling suggested that an option out be not to lease them and just leave them alone.

Mr. DiSanto noted that creates another economic hardship with the rent being associated with these studios being rented for around \$900 a month. He explained if you lost the 24 units times \$900 a month times 12 that would be about \$260,000 loss of income.

Mr. Dowling questioned the cost to rent a two-bedroom apartment.

Mr. DiSanto answered they are around \$1,400 to \$1,500 range.

Mr. Dowling noted that there are two bedrooms and studios.

Mr. DiSanto added there are one bedroom as well. He explained they are on each end noting a total of 8.

Mr. Fortney noted to the creation of the hardship. He questioned who applied for the permit.

Mr. DiSanto answered Triple Crown Corporation.

Mr. Fortney questioned if Triple Crown is pushing the Vested Rights.

Mr. DiSanto answered that the owner from the apartments is different that Triple Crown.

Mr. Fortney rephrased that the Vested Rights is from the Triple Crown Corporation.

Mr. DiSanto answered yes.

Mr. Fortney questioned that the owner of Blue Ridge Village Apartments LP is separate.

Mr. DiSanto answered yes.

Mr. Fortney questioned that the owner has separate interests.

Mr. DiSanto answered yes.

Mr. Dowling questioned the ownership of the apartment buildings.

Mr. DiSanto answered that is a group of Trusts and noted some of the parties are related but legally different.

Mr. Fortney questioned who the owner of Triple Crown is.

Mr. DiSanto answered that from a stockholder it is himself and Chris DiSanto.

Mr. Fortney questioned if the owner of the Blue Ridge Apartments LP is requesting the variance.

Mr. DiSanto answered yes.

Mr. Fortney noted that even with the different entities, the hardships and Triple Crown not identifying the 40-unit limit but also inspections.

Mr. DiSanto answered yes.

Mr. Fortney questioned if granting the variance for the six additional units per building would alter the character of the neighborhood.

Mr. DiSanto answered absolutely not. He noted the building size has not changed at all and noted they are enhancing by offering to the unique demands.

Mr. Fortney questioned Mr. DiSanto if the variance is the minimum variance for relief.

Mr. DiSanto answered yes.

Mr. Fortney noted that is the testimony for the variance.

Mr. Dowling questioned Mr. Stine if he had any questions.

Mr. Stine answered he did not. He noted they are not here to oppose the variance.

Ms. Zerbe noted she wanted to answer Mr. Sirb's question from earlier on why there is no stop work order. She explained there is nothing that grants her the stop work order under the zoning ordinance.

Mr. Sirb responded that Ms. Zerbe is exactly right. He noted that is a Township issue and explained that she should have a vested right, so these things do not happen. He noted that building one and two are complete and he does not want to kick people out. He noted mistakes were made.

Mr. Dowling noted this is not a Board to fix problems noting this board is here to determine if a variance should be granted or not.

Mr. Sirb noted they need to grant the variance with the minimalist. He noted that the Board is stuck and questioned what would happen to the tenants.

Mr. Dowling questioned if any members of the Board had a question.

Mr. Emery agreed that no one is throwing anyone out of building one and two. He noted he feels they have the ability to split the variance request up between the four units. He requested Mr. DiSanto to give more information about June 10<sup>th</sup> and building three noting the percentage of completion and the rental unit percentage.

Mr. DiSanto answered that from his recollection all the studios were rented in building three and the building was 75% complete.

Mr. Emery requested more specifics on the studio units. He questioned if the kitchens were in, questioning how far along the project was.

Mr. DiSanto answered that he was sure rough in with electrical was in the walls, plumbing was in the walls, HVAC systems were fully installed. He explained that in a building like this you finish the top floor and work your way down to the first floor.

Mr. Emery questioned the same question in regard to building four.

Mr. DiSanto answered from his recollection they were fully drywalled, HVAC in place, and waiting for the finishes like cabinets and carpet.

Mr. Dowling questioned who the construction manager was as the units were being built.

Mr. DiSanto answered the superintendent John Rice.

Mr. Dowling questioned if someone from Triple Crown was there each day looking at it.

Mr. DiSanto answered John Rice works for Triple Crown.

Mr. Dowling questioned if John Rice would know that only 40 units are allowed.

Mr. DiSanto answered no. He explained there is a project manager assigned if they have the permit, he assumes it is right and is calling Approved Code Services. He noted Approved Code Service is probably onsite at least three times a week and through this there is never an interruption to get building inspections done and getting the Certificate of Occupancy. He explained that until that letter on June 10<sup>th</sup> no one thought there was a problem.

Mr. Dowling questioned if Nic DiSanto was on the property or inspecting at all.

Mr. DiSanto answered at times but not on a daily basis.

Mr. Dowling questioned that he submitted the zoning application with 40 units, would he have known that only 40 are allowed.

Mr. DiSanto answered he signed the application but that could have been brought by the design department because they needed it signed for the financing purposes and he signed as an officer of the company.

Mr. Dowling referred back to the ten-day window from when it was correct to when it was not correct noting he is troubled by that. He questioned if there were blueprints showing 40 units.

Mr. Fortney answered there were land development sheets. He noted that nothing changed in those ten days. He explained that with the permit you would make a small copy of the of the plan with the permit. He noted this was approved with the land development plan. He explained that in the meantime as they were working on the design and submitting the building plans, they had not caught up noting they are two separate things.

Mr. Dowling questioned Mr. DiSanto on who at Triple Crown knew that only 40 units were allowed.

Mr. DiSanto answered he and Mr. Fortney knew when they were drafting the ordinance and they thought they would be building the prototypical building like what was previously built in East Pennsboro Township. He explained that between that time the marketing staff and design staff met and created a new plan. Mr. DiSanto noted he knew of the 40 units from back in 2017.

Mr. Dowling questioned Mr. DiSanto if they knew they were building 46 units at the start of construction.

Mr. DiSanto answered he did not know of the change until Ms. Zerbe told him in June of 2020 that they were over the density.

Mr. Sirb questioned Ms. Zerbe when the sewer caught the extra units why construction was not stopped.

Ms. Zerbe answered they are two separate departments. She explained the Sewer Authority is billing for the number of units and they questioned Ms. Zerbe on why they had a permit for 40 units and the Certificate of Occupancy said 46. She noted when they found this the buildings were already built and she as a zoning officer does not have the ability to stop the building and the building department does not have the ability to stop the building when they are building 46 units when the permit says 46 units.

Mr. Stine noted that when the building inspector gets that building permit, they have no zoning information.

Ms. Zerbe noted the building inspectors do not look for zoning information.

Mr. Sirb noted that when you are looking for the crack in the case is that is where it is. Mr. Sirb continued that there is no mechanism to stop construction.

Mr. Stine noted that technically there is no zoning violation until they have people try to occupy the units.

Mr. DiSanto noted that they had conversations with the Township and decided that the best course of action was to come to the Zoning Hearing Board. He noted they did not thumb their nose at the Township.

Mr. Sirb questioned if Mr. DiSanto if he ever felt there was a stop order given.

Mr. DiSanto explained that the whole they were in contact with the Township. He noted that coming to the Zoning Hearing Board is the best way to get things resolved.

Mr. Dowling questioned if there were any questions by the Board.

Mr. Sirb noted that he felt Ms. Zerbe could issue a cease and assist.

Mr. Stine explained that the building inspector did not know it was an error.

Mr. Zerbe noted that the person that inspects the building is not an employee of the Township noting it is a third-party agency. She explained they do not see the land development plans they only see the building plans.

Mr. Staub questioned if they would deny the variance.

Mr. Stine answered they would go ahead with the Vested Rights.

Mr. Fortney noted they are here to reconcile everything. He explained that they did not want to spend the time to debating that. He noted that when you are looking at the variance and all the mistakes that were made, he noted they have a unique physical circumstance. He noted this nonconformity was not created by bad faith; it is non-conformity with the issue of the permits. He explained the applicant understands that the Board does not want to be in this position, and they are simply asking the Board to grant the variance.

Mr. Dowling noted that it is odd that nobody picked this up in 19 months. He noted that this does not change the character of the neighborhood but the one hang up is the hardship created by the applicant because it is their mistake. He explained he understands the Township issues the permit and the Township relies on that to be consistent with the ordinance noting Triple Crown helped to prepare. He noted he does not feel that the last

element is met, and they do not want to throw anyone out. He noted he does not feel it is the Zoning Hearing Boards job to fix this.

Mr. Fortney commented this variance is different. He explained that in this case there was never any intention or in any way to do anything in violation of the ordinance. He explained this was created by a mistake that was not caught by anyone. He noted it is partly the applicant and partly the process. He explained that the actual owner who owns the buildings and Triple Crown are two separate legal entities.

Mr. Dowling questioned if Triple Crown applied for the zoning permit.

Mr. Fortney answered correct.

Mr. Dowling questioned that the building permit was filed by Triple Crown.

Mr. Fortney answered yes.

Mr. Dowling questioned if the Board had any further questions.

No response was heard.

Mr. Sirb questioned Ms. Zerbe on any issues with the construction.

Ms. Zerbe answered they are working through the sewer issues.

Mr. Sirb noted that the parking issue needs to be resolved and Triple Crown must pay the price for it.

Mr. Dowling noted that they first need to decide to grant the variance on the number of units. Mr. Dowling noted that if the variance is denied they would then go to the Vested Rights position.

Mr. Dowling noted they will take a vote on the number of units is granted or denied.

Mr. Dowling questioned if a board member wished to make a motion as it relates to the number of units per building and the number of units allowed.

Mr. Sirb motioned to approve the number of units.

Mr. Emery seconded the motion.

Mr. Dowling questioned if any member of the board wished to make a comment.

Mr. Staub commented that the lenders dropped the ball as well. He explained that lenders like to have paper and they may have missed the extra units.

Mr. Dowling requested Mr. Turner to conduct a roll call vote: Mr. Hansen, no; Mr. Emery, aye; Mr. Staub, aye; Mr. Sirb, aye; Mr. Dowling, no.

Mr. Dowling noted the application has been granted.

Mr. Dowling noted they will begin discussion on the parking. Mr. Dowling requested a summary of how many were on the plan, how many were supposed to be there and then testimony.

Mr. Fortney noted that 361 spaces exist on site noting that is what is approved on the plan. He explained the parking requirement in the RRD. He noted that what the testimony will show is that they could add spaces, but

they believe they would only be adding spaces to follow parking requirements and not parking demand. He noted that Greg Mellott is ready to testify on parking and traffic.

Mr. Dowling requested the applicant to focus in on the four buildings and not for the entire project.

Mr. Fortney noted that when he speaks of 370 spaces that is just for the apartments.

Mr. Dowling requested Mr. Fortney to use the display screen and show the Board on the plan where the parking is located.

Mr. Fortney pointed all the parking areas on the screen.

Mr. Dowling questioned the additional nine spaces that were added.

Mr. Fortney showed those additional spaces on the display screen.

Mr. Dowling noted that the testimony is with little difficulty they can move the parking to 370 and the 370 for the apartment complex, the expert would say that is enough.

Mr. Fortney added these spaces are a higher number count out of the RRD.

Mr. Sirb questioned Ms. Zerbe on what the apartment would need for parking.

Ms. Zerbe answered that Mr. Fortney just addressed that on the plan noting 363 spaces.

Mr. Fortney clarified that for the units 414 spaces.

Mr. Dowling questioned if that would be with the additional units.

Mr. Fortney answered correct.

Mr. Stine added that the units that were added are studio apartments with one person.

Mr. Sirb noted that he would like to have 24 spaces. He questioned if the applicant could give him 24 spaces.

Mr. DiSanto answered that by adding the nine additional spaces that meets the ordinance of two spaces per multi family unit.

Mr. Dowling questioned that these four buildings were not part of the community development.

Mr. DiSanto answered correct. He explained the zoning in this area requires 2.25 spaces per unit.

Mr. Dowling questioned if in a year or so they could see if the parking is working and if it is not working they will require more spaces to be added. He noted they tentatively approve it and revisit.

Mr. Stine answered it is a special exception and the Board could make that as a condition.

Mr. Fortney commented that was fair and they are confident on their end on the parking demand.

Mr. Dowling noted he does not want to alter the area of impervious coverage.

Ms. Zerbe noted that if you look at what is required in other districts only two spaces are required. She noted that with how it is being presented it appears they will have enough parking spaces the way it is. She noted it would be problematic to add more impervious coverage.

Mr. Dowling noted he would like a review mechanism in case they are wrong.

Mr. Sirb questioned if the review mechanism is for just the four buildings or the whole property.

Mr. Dowling answered just the four buildings.

Mr. Fortney suggested the study should be done no earlier than six months after full occupancy of all of the buildings and no later than twelve months and they would do a parking analysis to demonstrate that 370 spaces is sufficient.

Mr. Dowling questioned how the Township will verify that.

Mr. Turner answered they would require the applicant to submit a report.

Mr. Dowling noted they could hear testimony from the expert about parking or the Board can say 370 is complaint and they will review this and if all is fine then it will become fine.

Mr. Dowling questioned what the Board would like to do.

Mr. Fortney noted that what Mr. Dowling outlined is fine with the applicant.

Mr. Sirb noted he does not have a problem with this. He requested the expense be at Triple Crown and not to the Township. He noted the Township has the right to approve or disapprove it. He noted if it is disapproved it comes back to the Board.

Mr. Dowling commented the Board would decide then how many spaces are needed.

Mr. Staub questioned that would be a condition attached to the Special Exception.

Mr. Dowling questioned if a board member wished to make a motion.

Mr. Sirb motioned to approve the parking at 370 and a study will be done six to twelve months after full occupancy, paid by the applicant and reviewed by the Township and the Township has the right to approve or disapprove, if disapprove the applicant must appear before the Zoning Board.

Mr. Hansen seconded the motion.

Mr. Dowling questioned if the Board had any further discussion.

No response was heard.

Mr. Dowling requested Mr. Turner to conduct a roll call vote: Mr. Hansen, aye; Mr. Emery, aye; Mr. Staub, aye; Mr. Sirb, aye; Mr. Dowling, aye.

Mr. Dowling noted it has been granted.

This hearing ended at 9:55 p.m.

Respectfully Submitted,

*Kristi Focht*

Kristi Focht

Recording Secretary