**BOROUGH OF INTERLAKEN**

**MINUTES- PLANNING BOARD**

**FEBRUARY 27, 20237:30 P.M.**

**BOROUGH HALL, 100 GRASSMERE AVENUE**

 A meeting of the PLANNING BOARD of the Borough of Interlaken, Monmouth County, New Jersey was held on February 27, 2022, at 7:30 p.m. in the Borough Hall.

 Chairman Papp opened the meeting, announced that the meeting was being held in accordance with the Open Public Meeting Act and that Notice of the meeting had been published in the Coaster. The announcement was followed by the Pledge of Allegiance.

ROLL CALL:

Present: Vice Chairwoman Umfrid, Ms. Dalton, Mr. Weaver, Ms. Kapp and Ms. Heinz

Also Present: Special Planning Board Counsel, Sanford Brown, Planning Board Engineer/Planner Peter Avakian and Planning Board Secretary Gina Kneser

Absent: Chairman Papp, Mr. Blasucci, Mr. Tilton, Mr. Wasilishen and Ms. Kane

UPON MOTION of Ms. Heinz seconded by Ms. Dalton carried, the Board approved the minutes of the February 23, 2022, meeting.

ROLL CALL:

In Favor: Vice Chairwoman Umfrid, Ms. Dalton, Mr. Weaver, Ms. Kapp and Ms. Heinz

Opposed: None

Ineligible: None

Abstain: None

Absent: Chairman Papp, Mr. Blasucci, Mr. Tilton, Mr. Wasilishen and Ms. Kane

Ms. Kapp was sworn in by Special Counsel Brown.

MEMORIALIZATION

The Board considered the memorialization of the resolution for 200 Bridlemere Avenue.

Jersey Central Power & Light

Utility Pole

Borough of Interlaken Right of Way

Wickapecko Drive

Special Counsel Brown noted that there were several minor non substantive changes to clean up the resolution that were requested by the Applicant’s Attorney, Mr. Beyel which do not affect the terms of the resolution. Special Counsel Brown noted that on page 6 of the resolution, the depth of the foundation was corrected to be 24ft.

Special Counsel Brown noted that Board Engineer/Planner Avakian will review final documents submitted by JCP&L and will monitor the project.

**BOROUGH OF INTERLAKEN PLANNING BOARD**

**RESOLUTION GRANTING USE VARIANCE TO JCP&L**

**REGARDING WICKAPECKO DRIVE, INTERLAKEN, NEW JERSEY**

**WHEREAS,** Jersey Central Power & Light Company, hereinafter referred to as “Applicant”, has appealed from a denial by the Interlaken Borough Zoning Officer for permission to install a utility pole (“Monopole”) including within easements granted to the Applicant by the owners of Lots known as 50 Wickapecko Drive and 737 Bridlemere Ave. both in the Borough of Interlaken, County of Monmouth, andState of New Jersey (collectively the two “Lots” shall also be identified as the “Property”; the two easements on the Lots shall be identified collectively as the “Easements”; and the area within the Easements shall be identified collectively as the “Easement Area”); and

**WHEREAS,** after proper notice, public hearings on the within application were held on December 19, 2022 (the “December Hearing”) and January 23, 2022 (the “January Hearing”) at the Interlaken Borough Hall at which time the Applicant was represented by John P. Beyel, Esq of the law firm of McElroy Deutsch (“Counsel for Applicant”); and

**WHEREAS,** the Board has considered the report of the Board Engineer & Planner, Peter R. Avakian P.E., P.P., dated September 7, 2022 (the “Report”)marked into Evidence as Exhibit B-1; and

**WHEREAS**, the Applicant filed with its application, various documents which were referred to by Mr. Avakian in his Report but were not marked at the hearings, as follows:

* A boundary survey for Block 30, Lots 22.01, 22.02. and 22.07 consisting of one (l) sheet prepared by David R. Avery, P.L.S. of Langan Engineering and Environmental Services, Inc., dated July 12, 2022, with no revisions;
* A dimension and bar schedule foundation and anchor bolt orientation plan consisting of two (2) sheets prepared by Jeffrey P. Irons, P.E. of First Energy Transmission Design, dated July 2021, with the latest revisions dated July 2022;
* A transmission line standard drilled caisson foundation details with anchor bolts plan consisting of one (1) prepared by Jefferey P. Irons, P.E. of First Energy Transmission Design, dated May 12, 2013, with the latest revisions dated August 10, 2020;
* A pole and foundation detail consisting of one (1) sheet prepared by First Energy Transmission Design, dated June 2022, with no revisions;
* A pole detail plan consisting of one (l) sheet prepared by Sabre Industries, dated September 8, 2021, with the latest revisions dated October 12, 2022; and

**WHEREAS**, the following exhibits, all on white boards, were offered by the Applicant during the December Hearing, marked into evidence and considered by the Board:

* A-1 “JC 121326” Substation Area Map, dated 10/7/22;
* A-2 “JC 121326” General Overview Map, no date;
* A-3 “JC 121326” Circuit Overview, dated 10/9/22, with revisions dated 12/5/22;
* A-4 “STR # 218 Exhibit”, steel Monopole, sheet 2/2, dated 10/7/22, revised 12/5/22;
* A-5 Site Plan by Boswell Engineering, dated 11/1/22 (“Original Plan”);
* A-6,(a)to(f) Photographs of various metal and large/high wooden utility poles in general area of the Property; and

**WHEREAS**, the following exhibits, were offered by the Applicant at the January Hearing, marked into evidence and considered by the Board:

* A-7 Easement dated March 23, 2021 filed with the Monmouth County Clerk, from the owners of the Lot known as 50 Wickapecko Drive, Ferdinand M. Gentile and Diana W. Gentile(the “Gentiles”, to the Applicant;
* A-8 Easement dated March 18, 2021 filed with the Monmouth County Clerk from the owners of the Lot known as 737 Bridlemere Ave., Michele F. LoConte and Luanne J. Fiorillo (the “Bridlemere Ave. Owners”), to the Applicant;
* A-9 Consent executed by the Gentiles, dated January 16 2023 for the filing of the application(the “Consent”);
* A-10 Modified Site Plan by Boswell Engineering, revised through 1-20-23(“Revised Plan”).

**NOW THEREFORE**, the Planning Board of the Borough of Interlaken makes the following findings of fact:

**VARIANCE RELIEF – THRESHOLD CONCLUSION**

1. The Property is located in the (R-A Zone) Single-Family Residential Zone of the Borough of Interlaken.
2. A denial from the Borough Zoning Officer was received by the Applicant, stating that the installation of a proposed Monopole required a variance for height.
3. At the beginning of the December Hearing, Mr. Avakian in referring to his Report advised that after consulting with the Applicant’s Planner that it was his and the Applicant’s Planner’s opinion that a height variance was not applicable and that the only use variance required was a d(1) variance for a use not permitted in the zone.
4. In accordance with Interlaken Ordinance Section 26-4., a “Structure” is any combination of materials forming a construction, assembly or erection, the use of which requires location upon the ground or attachment to something having a location upon the ground, including among other things, buildings, trailers, tanks towers, walls, signs, radio towers, swimming pools, platforms, decks, garages, and sheds. A "Structure" shall not include below-ground utilities, fences, curbs, sidewalks, or driveways.
5. The proposed Monopole is a “Structure”. However, it is not a “Building” as defined under the Ordinance and so there is no height limitation for poles which otherwise would apply to Buildings.
6. The Board agrees with opinions of the two Planners that the proposed use is not permitted, that a d(l) use variance is required but that no other variances are required for consideration by the Board.

**DUE PROCESS AS TO OWNERS OF THE EASEMENTS**

1. At the December Hearing, Board members expressed concern that while the Applicant had properly served property owners as required pursuant to N.J.S.A. 40:55D-12, that the Applicant had not provided Consents to filing the application from both Owners of the Lots granting the Easements nor was it evident from the representations by Counsel for the Applicant that those Owners were cognizant of the scope of the project proposed by the Applicant. As a result, the Board asked the Applicant to take certain due diligence steps and the Counsel to the Applicant agreed to do so. The Board finds that the steps taken as represented by Counsel for the Applicant in reaching to both of those Owners sufficiently satisfied due process concerns expressed by the Board at the December Hearing. This satisfaction is based in part because the Gentiles appeared at the January Hearing and were provided the full opportunity to express any concerns or objections they had to the application.

**APPLICANT’S PROOFS AT DECEMBER HEARING**

1. At the December Hearing, the Board heard sworn testimony from four expert witnesses presented by the Applicant:

- Mr. Andrew Horn, a Professional Engineer from West Virginia, who was Supervisor to the Transmission Planning Group and an expert in the planning of electric transmission systems for the future, opined as to international, national and regional codes which the Applicant was required to comply with for the construction of electrical transmission lines and systems; stated that the project subject of the application was a sub transmission project to help alleviate a significant negative event in the greater Monmouth County area (“Project”) ; that the Project would fortify the underlying electrical grid system which is between the Allenhurst substation and the Neptune Oceanview substation by building another circuit to facilitate and boost up the area in order to provide redundancy so that if an existing major transmission line was disabled, there would be parallel subsidiary lines which can continue to provide adequate electricity to the area which includes Interlaken.

- Ms. Morgan Meehan, a Professional Engineer from Pennsylvania who is the Supervisor of the Transmission Projects Group for Applicant’s parent company and a Design Engineer for this Project opined that: the design of the particular galvanized steel Monopole for installation on the Property, shown on Exhibit A-4, conformed with all national electrical safety codes; that the Monopole was necessary as to -- height which is 75 feet, which has the smallest permitted radius at its base of 3 feet-nine inches; and as to its concrete foundation which has the smallest permitted radius of 6 feet and a depth of 24 feet(the “Foundation”); that the Monopole needs to string electric wires which are at a 90-degree angle between Darlene Ave. to the West of the Property (located in the Township of Ocean, which wires run East/West) and Wickapecko Drive in Interlaken including along the Property (which wires runs North/South) and that by using the specified metal Monopole, guide wires which are presently located on the Gentiles’ Lot, will no longer be needed.

- Mr. Jeffrey L. Morris, PLS, PE,PP a N.J. licensed Professional Engineer from Boswell Engineering testified about the Original Plan, A-5., and that:

-- the Monopole and Foundation was planned to be installed completely or substantially within the right-of-way of Wickapecko Drive on the Property (the “Right of Way”) with only an encroachment of the Foundation into the Easement Area of up to three(3) inches.

-- the Project also includes a beam guide rail approximately 115 feet in length and 3 feet high along Wickapecko Drive totally within the Right-of-Way with the portion of the lead attenuator to the south of the Monopole being far longer than the lag attenuator to the north (“Guide Rail”);

-- the Project will include an 8" solid white shoulder line (“Shoulder”);

(collectively, the Guide Rail and Shoulder shall be identified as the “Appurtenances”)

-- the Guide Rail could be eliminated if the Monopole was moved at least fifteen (15) feet from the edge of the roadway.

-Ms. Meehan responded to questions from Board members by opining that the Monopole could not be relocated fifteen feet from the roadway to avoid installing the Guardrail because such a shift in location would prohibitively impact the loading on the adjacent structure to the monopole because the angle on the north-south wires on the Wickapecko Drive line would be too far out of alignment.

- Mr. James W. Higgins, a N.J. licensed Professional Planner opined that the proposed use was inherently beneficial as the Project was a part of an electrical transmission line system that promotes the general welfare and promotes the safe provision of electrical service. As such he opined that the Sica standards applied and in relying on the testimony of the other three Applicant’s experts and the documents of record, that the four prongs of the Sica test had been clearly satisfied and that the application must be approved.

**JURISDICTION OF THE BOROUGH COUNCIL**

1. At the December hearing, the Board expressed concern about the safety of not having a sidewalk constructed within the Right-of-Way along the entire length of Wickapecko Drive to the Township of Ocean border, especially due to the location of the Guiderail.
2. Counsel for the Applicant took the position that only the Borough Council had jurisdiction to consider the location of the Monopole and Appurtenances and a sidewalk (collectively identified as the “Improvements”) within the Right-of-Way, however he agreed to appear to the Borough Council for whatever relief or approval the Council deemed appropriate regarding such Improvements.
3. At the January Hearing, Counsel for the Applicant provided a summary of his appearance, along with Applicant’s expert Jeffrey Morris, before the Borough Council at its January Workshop meeting at which time the Improvements were discussed.
4. At the January hearing, Mr. Avakian confirmed the accuracy of the representations of the Counsel for the Applicant at the Borough Council meeting as he was in attendance and provided commentary as Borough Engineer. He advised the Borough Council was (1)reluctantly resigned to agree to the installation of the Guide Rail as proposed based on the representations of the Applicant’s Engineer that N.J.D.O.T. standards required same; and(2) strongly in favor of having the Foundation moved from the Right-of-Way as best as possible so that a four-foot-wide sidewalk could be constructed and that the Council was interested a sidewalk constructed at some time in the near future from the corner of Wickapecko Drive and Bridlemere Ave. north to northern border of the Gentiles’ Lot (length of the sidewalk identified also as “entire length”). Mr. Avakian also read into the record, a portion of SidewalkOrdinance18-2.1:
 ”The owner or owners of land in front of all streets, roads and highways in the Borough … , where there is no sidewalk or curbing, shall construct sidewalks and curbing along said streets, roadways and highways in accordance with provisions of this section and the plans and specifications on file in the office of the Borough Clerk.”
5. At the January Hearing, the Applicant presented testimony from Mr. Morris regarding the Revised Plan, Exhibit A-10, which reflected the Applicant’s efforts to comply with the Borough Council’s recommendations at its January Workshop meeting with the relocation of the Monopole and therefore Foundation further to the East and therefore further into the Easement Area.

**APPLICANT’S PROOFS & STIPULATIONS AT JANUARY HEARING**

14. At the January Hearing, Applicant stipulated it would:

- install at its own cost and expense and as part of the Project, a sidewalk for the entire length;

- plant landscaping on the interior side of the Guide Rail for its full length and would submit a proposed detailed landscaping plan to the Board Engineer and subject to his approval, with the understanding the Applicant would be required if requested by the Board Engineer, to enter into a maintenance bond for the plantings for a standard number of years.

**OBJECTIONS TO THE APPLICATION**

15. At the January Hearing, the Gentiles testified they would not have executed the Easement (A-7) or the Consent (A-9), if they knew that the application would include the proposed Guide Rail and/or a sidewalk in front of their Lot; that having the Guide Rail would be detrimental to the aesthetics and the value of their Lot, that there was a detriment to having the sidewalk constructed even if the Applicant agreed to pay for the construction because in the long term they would be responsible for the sidewalk under the applicable Borough Ordinance.

1. While the Board sympathizes with the concerns expressed by the Gentiles about the impact on their Lot caused by the Guide Rail, the Board finds it is constrained to agree it is necessary to install based on the representations of Mr. Morris and Counsel for the Applicant that the Applicant has no option but to construct the Guide Rail due to N.J.D.O.T. mandate; and the Board notes that the numerous potential alternatives discussed at both the December and January Hearings could not be implemented or required and for the reasons argued by Counsel for the Applicant and Applicant’s experts, which positions were not contradicted by expert testimony.
2. The Board has no jurisdiction to make any findings whether or not the Gentiles were adequately informed of the scope of the proposed improvements before they entered into the Easement Agreement or whether the compensation received for entering into the Easement Agreement should have included an amount to fairly compensate for the negative impact caused by the installation of the Guiderail, as generally argued by the Gentiles.
3. As to the Gentile’s objection to the sidewalk, the Board will grant the relief as offered and stipulated to by the Applicant without prejudice to any right which the Gentiles might have to appear before the Borough Council to attempt to convince the Council that the sidewalk should not be constructed by the Applicant as set forth in this Resolution, although the Board requests that if the Gentiles are permitted to appear before the Council, that they provide written notice to the Board Secretary of such intention

**LEGAL ANALYSIS**

1. This application requires a use variance pursuant to N.J.S.A. 40:55D-70.d.(1). Testimony is required to demonstrate that the application satisfies the positive and negative criteria of the Municipal Land Use Law for the granting of the use variance relief. To obtain a d(l) use variance, the Applicant must show that the proposal meets several criteria:

A. 1) Positive Criteria

 (a) The Board agrees with the Applicant’s Planner, that the proposed use is inherently beneficial pursuant to Sica v. Wall Township Board of Adjustment, 127 N.J.152(1992).

 2) Negative Criteria

 (a) As an inherently beneficial use, the four prong Sica test applies to this application:

(i) As to the First Prong, the Board agrees with the Applicant’s Planner that the Project will provide a great benefit to the regional public which includes Interlaken as it is a part of an upgrade of the electrical transmission system which will prove critical redundancy and added resilience.

(ii) As to the Second Prong, the Board finds that the negative impact of allowing the encroachment of the Foundation within the Easements is minimal.

(iii) As to the Third Prong, the Board finds that the scope of review of the relief requested by the Applicant must consider not only the impact of the technical variance for extending the Foundation into the Easement Area but also the collateral impacts caused by the installation of the requisite Guiderail and the construction of the sidewalk. As such, the Board concludes the Applicant has offered sufficient mitigation which includes:

- the color coating of the galvanized metallic surface of the Monopole, which will be more aesthetically pleasing;

- the construction of the sidewalk within the Right-of-Way at the cost and expense of the Applicant which will result in compliance with the Ordinance requiring sidewalks on Borough lots and which will greatly add to the safety of pedestrian traffic over the Right-of-Way especially due to the installation of the Guide Rail.

- the planting of landscaping within the interior side of the Guide Rail along its length which will ameliorate some of the negative visual impact of the mass and look of the Guide Rail.

(iv) As to the Fourth Prong, the Board must weigh the positive and negative criteria to determine whether, on balance, the grant of the variance would cause a substantial detriment to the public good. The Board agrees with the Applicant’s Planner and finds that the Applicant has provided sufficient credible proofs to satisfy its burden under the Fourth Prong.

**BOARD CONCLUSIONS**

**NOW, THEREFORE, BE IT RESOLVED** by the Planning Board of the Borough of Interlaken that the application for a use variance to construct the proposed Project, in accordance with the application and the Revised Plan submitted at the January Hearing and approved as set forth in this Resolution is granted based on the satisfaction of the positive criteria and the satisfaction of the four prongs under the Sica test and based on the testimony of the Applicant’s experts and substantiating documents of record and the concurring opinion of the Board Planner and Engineer.

**SPECIFIC CONDITIONS**

Approval of the relief granted is subject to the Applicant satisfying the following Specific Conditions:

A. Final plans for all improvements proposed shall be submitted to the Borough Engineer and subject to his approval including but not limited as to the following details:

1. color coating and location on the Monopole;
2. sidewalk;
3. plantings for the interior side of the Guide Rail along its entire length.
4. the approved coating shall be applied to the Monopole prior to or during the installation of the Monopole on the Property.
5. The approved sidewalk shall be installed by the Applicant prior to the issuance of any final construction permit, except the Applicant shall have no such obligation to so construct if the Borough Council determines prior to the issuance of the construction permit for the installation of the Monopole, that the Borough does not desire Applicant to install a sidewalk as set forth in this Resolution.
6. The approved landscaping shall be planted at the same time as the Guide Rail is installed, subject to weather conditions as approved by the Board Engineer.
7. Posting of a performance bond and engineering inspection fees in insure construction and planting in complete conformance with final approved plans and conditions of this Resolution.

**GENERAL CONDITIONS**

Approval of the relief granted herein is subject to the Applicant satisfying the following General Conditions:

1. Publication of a notice of this decision in the official newspaper serving the Borough of Interlaken and return of proof of publication to the Board Secretary.
2. Payment by the Applicant of all taxes, escrows including for the Board of Adjustment proceedings and assessments to date and through to the completion of the improvements subject of this approval. No building permit or certificate of occupancy is to be issued until proof is furnished to the Board Secretary that there are no taxes, escrows or assessments due or delinquent on the property in question.
3. The obtaining of all property building permits for construction, and construction in accordance with the documents marked at the hearings, and in compliance with the testimony and stipulations of the Applicant and the Applicant’s experts at the hearings.
4. Compliance with the requirements of all governmental agencies having jurisdiction over the development of the Property.
5. Pursuant to Ordinance Section 25-3, Applicant shall have one year from the date of this Resolution to start construction, otherwise this variance approval shall expire one year from the date hereof.
6. The Applicant must comply with all representations made on the record.

 **BE IT FURTHER RESOLVED** that a copy of this Resolution, certified by the Secretary of the Planning Board of the Borough of Interlaken to be a true copy, be forwarded to the Borough Construction Official, the Borough Clerk, the Borough Tax Assessor and Collector and the Applicants herein; and

 **BE IT FURTHER RESOLVED** that this Resolution shall serve as the decision of the Board at its meeting on January 23, 2023.

The foregoing Resolution was offered by Mr. Weaver and seconded by Ms. Dalton and adopted on Roll Call by the following vote:

ROLL CALL:

In Favor: Vice Chairwoman Umfrid, Ms. Dalton, Mr. Weaver and Ms. Heinz

Opposed: None

Abstained: None

Ineligible: Ms. Kapp

Absent: Chairman Papp, Councilman Blasucci, Mr. Tilton, Mr. Wasilishen and Ms. Kane

Mr. Beyel, JCP&L Attorney, was present at the meeting and thanked the Board.

 UPON MOTION of Mr. Weaver, seconded by Ms. Kane, carried, the Board adjourned the meeting.

In Favor: Vice Chairwoman Umfrid, Ms. Dalton, Mr. Weaver, Ms. Kapp and Ms. Heinz

Opposed: None

Ineligible: None

Abstain: None

Absent: Chairman Papp, Mr. Blasucci, Mr. Tilton, Mr. Wasilishen, and Ms. Kane

 Approved: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Katherine Umfrid, Vice Chairwoman

Attest:

 Gina Kneser, Secretary