

TOWNSHIP OF BERKELEY  
ZONING BOARD OF ADJUSTMENT  
REGULAR MEETING AGENDA  
FEBRUARY 10, 2010  
7:00 PM PUBLIC HEARING

- A. SALUTE TO THE FLAG
- B. ROLL CALL, DECLARATION OF QUORUM
- C. SUNSHINE ACT STATEMENT: This meeting was advertised in the Asbury Park Press, and posted on the Township's bulletin board as required by the "Open Public Meeting Act".
- D. Please be advised that there is to be **NO SMOKING** in this building in accordance with New Jersey Legislation.
- E. THE ORDER IN WHICH MATTERS WILL BE HEARD WILL BE SUBJECT TO CHANGE BASED ON THE CHAIRMAN'S DISCRETION.
- F. OLD/NEW BUSINESS:
- G. AGENDA:

1. **FRANCESE** **BOA#08-5244**

Variance(s) requested: Bulk Variances  
Project: SFD on an Undersized Lot Fronting on Unimproved Rd  
Block(s): 378 Lot(s): 17  
Address: Amsterdam Ave. Zone: R-150  
Denial Reads: The applicant proposes to erect a single-family dwelling on an unimproved road leaving a combined side yard setback of 20.33 feet where 25 feet is required and having a lot area of 7,500 s.f. where 15,000 s.f. is required.

2. **MetroPCS New York** **BOA#09-5289**

Variance(s) requested: Use Variance  
Project: Co-locate Wireless Antennas and Equipment  
Block(s): 974 Lot(s): 1  
Address: Station Road Zone: R-200  
Denial Reads: The Applicant plans to expand a communications facility previously approved by BOA #06-5100 and is not permitted by recently revised Ordinance 35-135.A.B. Applicant proposing to install wireless telecommunications antennae and GPS antennae at elevation 123+/- feet on an existing 154 foot high water tank situated on a 3.45 +/- acre site. Also proposing outdoor equipment cabinets on new concrete pad, cable bridge, and technician parking area.

- H. RESOLUTIONS TO BE ADOPTED.
- I. APPROVAL OF MEETING MINUTES.
- J. ADJOURNMENT: Next meeting of the Board of Adjustment will be on February 24, 2010 at 7:00 PM



MEMO TO: Berkeley Township Zoning Board of Adjustment  
 FROM: Robert J. Russo, P.E., P.P., C.M.E.,  
 Office of the Zoning Board of Adjustment Engineer and Planner

DATE: January 7, 2010

RE: **Francese - Review #1**  
**Application: Single-family dwelling on an undersized lot on Unimproved Road**  
**Block: 378 Lot(s): 17 Plan Title: Boundary and Survey**  
**Fronting on: Amsterdam Avenue Prepared By: George W. Henn, Inc.**  
**Berkeley, New Jersey Dated: July 15, 2008**  
**Zoning District: R-150 Plan Title: Variance Plan for Frank Francese**  
**Prepared By: PDS, LLC**  
**Date: May 18, 2009/Revised October 27, 2009**

BOA#: 08-5244  
 Our File No.: PBAZ0378.01/600.01

In accordance with your request and the provisions of Section 35-20, our office has reviewed the following variance application submitted for the above referenced property. The following comments are offered with regard to the same:

**A. PROJECT OVERVIEW**

1. The denial states the applicant proposes to "erect a single-family dwelling on an unimproved road leaving a combined side yard setback of 20.33 feet where 25 feet is required and having a lot area of 7,500 s.f. where 15,000 s.f. is required". The site is located on the northern side of Amsterdam Avenue with in the R-150 zone. In addition, the plan show zero frontage on an improved road where 150 feet is required. The plan shows 50 feet of frontage along Amsterdam Avenue (unimproved). The applicant is requesting a waiver for the 50 foot of lot frontage on the unimproved road. It should be noted that the plan indicates that the existing roadway surface is a dirt roadway.

**2. R-150 Zone Requirements and Variances Requested (as per Schedule I, Section 35-95)**

<u>Primary Use</u>	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>	<u>Variance Requested</u>
Min. Lot Area	15,000 sf	7,500 sf	7,500 sf	<input checked="" type="checkbox"/>
Min. Lot Frontage	100 ft	50 ft	50 ft	<input checked="" type="checkbox"/>
Front Yard Setback	35 ft	N/A	69.1 ft	<input type="checkbox"/>
Rear Yard Setback	30 ft	N/A	30 ft	<input type="checkbox"/>
Side Yard Setback	10 ft	N/A	10 ft	<input type="checkbox"/>
Combined Side Yard	25 ft	N/A	20.33 ft	<input checked="" type="checkbox"/>
Max. Lot Coverage by Building	25%	N/A	20.1 %	<input type="checkbox"/>
Max. Building Height	35 ft	N/A	<35 ft	<input type="checkbox"/>
Min. Floor Area	*	N/A	2,716 sf	<input type="checkbox"/>





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**B. General Review Comments**

1. The applicant should provide documentation of a good faith effort to acquire sufficient adjoining lands to achieve a conforming lot, or by offering to sell the non-conforming property to adjacent owners.
2. The applicant's engineer has indicated in their October 30, 2009 response letter that the applicant is requesting a waiver from improving the existing gravel roadway and instead wishes to make a contribution into the Roadway Trust Fund. Please note that the Survey and Variance plan submitted indicate that the existing roadway is "dirt". A field observation has verified same. In accordance with Section 17-5.1 of the ordinance, at a minimum every principal building shall be built upon a lot with frontage upon a public street improved to meet the Township requirement for improved public streets or for which such improvements have been guaranteed by the posting of a performance guarantee:

For the Boards clarification, pursuant to 17-5.6 in no event shall the applicant be required to provide less than the following minimum requirements:

- a. The roadway width must be at least thirty (30) feet.
- b. The entire roadway width shall consist of six (6) inches of DGA, bituminous base course, and bituminous surface course.
- c. The newly paved street shall provide direct access to an approved, improved public street to protect the health, safety and welfare of all future residents and to ensure proper vehicular access by police, fire, first aid and other emergency and essential services.

The Board should note items a, b and c represent the minimum requirements, and could request the applicant provide additional items such as curb, sidewalk and street lighting to at a minimum to protect the health safety and welfare of residents.

It is recognized that, in rare cases, exceptional and extraordinary conditions or the uniqueness of a particular lot may require the waiver of frontage upon a fully improved street. The Board may consider and waive strict compliance with this requirement, if requested by the applicant

3. The applicant has requested a waiver from making payment into the Drainage Trust Fund in accordance with Sections 17-5.6 (g) and 35-72.7.
4. The applicant should provide sizing calculations to verify that the proposed drywell will have adequate capacity.
5. Pursuant to the Tree Removal/Replacement Ordinance, where a lot or tract is proposed to be developed for use as a single family residence and the property is not part of an approved plan, the owner must submit a tree removal plan for approval. A plan to clear no more than 50% of the side and rear yard setbacks for the zone shall be submitted to the Zoning Officer.
6. The proposed lot is to be served by public water and by a private septic system.
7. Pursuant to the MLUL Section 40:55D-70, the Board of Adjustment may grant a bulk variance request if:





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- c.(1) where (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or (b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation pursuant to article 8 of this act would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property.
- c.(2) where in an application or appeal relating to a specific piece of property the purposes of this act...would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment

It has to be determined whether the property in question meets any or all of the reasons established in the MLUL to permit the granting of the variance and whether the enforcement of the Berkeley Township General Ordinances will cause undue hardship to the property owner.

8. The applicant should provide testimony to satisfy both the positive and negative criteria of the Municipal Land Use Law, such that:
  - a. The proposed use is particularly suited to the particular property
  - b. There are special reasons that allow a departure from the zoning regulations in this particular case. The granting of a variance must be shown to implement one or more of the purposes of the MLUL 40:55D-2.
  - c. The variance can be granted without substantial detriment to the public good.
  - d. The variance will not substantially impair the intent and purpose of the zoning plan and ordinance.
9. The applicant has indicated there are no wetland areas within 150 feet of the site. The applicant is requesting a waiver from providing an NJDEP Presence / Absence Letter of Interpretation (LOI).

**C. MISCELLANEOUS**

1. Should the Zoning Board of Adjustment grant the relief requested by the applicant, approval of this application should be conditioned upon the following:
  - a. The applicant resubmitting for review by the Zoning Board of Adjustment Engineer a plan which includes those items covered above and discussed at the Board meeting.
  - b. The applicant certifying to the following:
    - i. The proposed structure should not encroach into existing easements (i.e. shade tree, utility, drainage, etc.) without proper consent from the Township and shall not encroach upon individual septic systems or disposal fields.
    - ii. The proposed grading, if any, will not impact adjacent property; that the plan as submitted is a true and accurate representation of the existing and proposed improvements on the site, and payment all outstanding professional review fees of the Board and the Township.
  - c. The applicant providing the following to the Building Department at time of application for a building permit:





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- i. The applicant making payment into the Roadway Trust Fund for improvements to Amsterdam Avenue including the applicants fair share of the costs for street lighting, curbs, sidewalks, grading, paving, shade trees and soil stabilization.
- ii. The applicant making payment into the Drainage Trust Fund in accordance with Sections 17-5.6 (g) and 35-72.7, unless the Board waives strict compliance with this requirement.
- iii. The applicant providing a proposed street lighting plan indicating lighting in conformance with the illumination Engineering Society of North America (IESNA) standards.
- iv. The applicant submitting for a grading permit in accordance with Section 11-1.5.
- v. The applicant submitting architectural plans of the proposed dwelling, to show compliance with building codes.
- vi. The applicant submitting a Tree Removal / Replacement Plan in accordance with Ordinance 03-25-0AB.
- vii. Proof of approval and/or waivers from all agencies having jurisdiction including:
  1. Ocean County Board of Health
  2. Ocean County Soil Conservation
  3. Ocean County Planning Board
  4. Berkeley Township Municipal Utilities Authority

The right is reserved to present additional comments pending the receipt of revised plans and/or the testimony of the Applicant before the Board.

Should you have any questions regarding this matter, please contact Kristie Armour at (732) 462-7400 Extension 130.

RJR/rr

cc: Edward Liston, Esq. - Board Attorney  
Frank Francese - Applicant  
William A. Stevens, P.P., P.E.  
Gregory J. Hock, Esq.



JOHN H. ALLGAIR, 1983-01  
DAVID J. SAMUEL, P.E., P.P.  
JOHN J. STEFANI, P.E., L.S., P.P.  
JAY B. CORNELL, P.E., P.P.  
MICHAEL J. McCLELLAND, P.E., P.P.  
GREGORY R. VALES, P.E., P.P.



TIMOTHY W. GILLEN, P.E., P.P.  
BRUCE M. KOCH, P.E., P.P.  
ERNEST J. PETERS, JR., P.E., P.P.  
LOUIS J. PLOSKONKA, P.E.  
TREVOR J. TAYLOR, P.E.  
BEHRAMTURAN, P.E.

MEMO TO: Berkeley Township Zoning Board of Adjustment

FROM: Robert J. Russo, P.E., P.P., C.M.E.,  
Office of the Zoning Board of Adjustment Engineer and Planner

DATE: January 25, 2010

RE: **MetroPCS New York – Review #1**  
**Application: Co-locate Wireless Antennas and Equipment – Use Variance**  
**Block: 974 Lot 1**  
**Fronting on: Station Road**  
**Zoning District: R-200**  
**BOA#: 09-5289**  
**Our File No.: PBAZ0947.04/600.01**

In accordance with your request, our office has reviewed the plans prepared by Innovative Engineering, Inc. dated March 16, 2009 with latest revision date of October 22, 2009, submitted for the above referenced application. The following comments are offered with regard to the same.

1. Application

The denial states that the "applicant to expand a communications facility previously approved by BOA (#06-5100) and is not allowed by recently revised ordinance 35-135.A.B".

The applicant is proposing to install wireless telecommunications antennae and GPS antennae at elevation 123+/- feet on an existing 157+/- ft high water tank situated on Lot 1 in Block 947, a 3.45+/- acre site located in the R-200 Residential zone. Other proposed ground improvements include outdoor equipment cabinets on a new concrete pad, cable bridge and technician parking area.

2. Location

The site is located on the north side of Station Road and currently contains Berkeley Township Municipal Utility Authority facilities. Pursuant to Section 35-96.2, Cellular Telecommunications Facilities are not specifically listed as a permitted principal or conditional use in the R-200 zone, thereby requiring a d.1. Use Variance. The existing water tower is currently co-located by other wireless communication providers.

**Concerning review of the plans for compliance with the Site Plan and Zoning ordinances of the Township, we have the following comments:**

3. Zoning Issues

- a. Pursuant to Section 35-96.2, Cellular Telecommunications Facilities are not specifically listed as a permitted principal or conditional use in the R-200 zone, thereby requiring a Use Variance.
- b. As with any Use Variance, testimony is required to demonstrate that the applicant satisfies the positive and negative criteria of the Municipal Land Use Law for granting of the Use Variance as follows:





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i. Positive Criteria

1. That the site is particularly suited to the use.
2. There are special reasons that allow a departure from the zoning regulations in this particular case. In general, to show special reasons, the grant of a variance must be shown to implement one or more of the purposes of the Municipal Land Use Law (NJSA 40:55D-2).

ii. Negative Criteria

1. That the variance can be granted without substantial detriment to the public good. This requires an evaluation of the impact of the proposed use on surrounding properties and a determination as to whether or not it causes such damage to the character of the neighborhood as to constitute a substantial detriment to the public good.
2. That the variance will not substantially impair the intent and purpose of the zoning plan and ordinance. Consistent with requirements of the Medici case, the applicant needs to provide an enhanced quality of proof that the use variance sought is not inconsistent with the intent and purpose of the Master Plan and Zoning Ordinance.

c. Although this is not a conditional use variance application, the conditions outlined in Section 35-127.12 – Cellular Communications Towers and Facilities, may be used as a guide:

- i. **Section 35-127.12.e** – The co-location of a cellular antenna on an existing water tower, silo or equivalent vertical structure, including an existing cellular, radio or television tower, is permitted without the need to meet conditions b., c. and d of this section, provided that the height of the existing structure is not increased as a result of the attachment of the cellular structure. *The applicant is not proposing to increase the height of the water tower.*
- ii. **Section 35-127.12.i** - As independent freestanding facilities on separate sites will not be accessible to the public, the lighting permitted shall be the minimum required to protect the public welfare. Facilities sited on existing developed sites shall be incorporated into the lighting and landscaping plans of those sites. *The applicant should discuss provisions for lighting.*
- iii. **Section 35-127.12.k** – All towers shall comply with applicable Airport Hazard Regulations and shall be subject to approval from the Federal Aviation Administration for location, height and lighting to prevent interference with the operation of the R.J. Miller Airport or otherwise threaten the public safety. *The applicant should discuss compliance with F.A.A.*





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- iv. **Section 35-127.12.l** – Upon cessation of use of the tower site for the approved or preexisting conditional use, the tower structure and antenna shall be removed within one (1) year, subject to FCC concurrence. In the case of co-located antenna on preexisting vertical structures, this provision shall apply to the antenna only.
- v. **Section 35-127.12.m** – The applicant will provide documentation that the proposed communications facility will have electromagnetic emissions within the safety standards established by the American National Standards Institute (ANSI: c.95.1-1992) as amended or any superseding State or national standard in effect on the date the conditional use permit application is submitted to the Board. (Ord. No. 92-27 § 118-18.11). *Applicant should discuss compliance with same.*
- d. The applicant has requested a waiver from the requirement of submitting an Environmental Impact Statement (EIS). We have no objection to the waiver of the EIS in light of the proposed minimum disturbance to the existing site.

4. Site Plan:

- a. The applicant should discuss compliance with the following: *Section 35-38.3.g* - Bureau of Fire Prevention approval, if required.
- b. On site gravel areas should be replenished and re-groomed, if necessary as part of the site work. A note should be provided on the construction plan regarding the contractor's responsibility for same.
- c. Sufficient clearance, width, and height between the MetroPCS Wireless ground facilities, including the proposed cable bridge, and the tank in order to provide access for the Authority vehicles should be coordinated with the property owner. In addition, there should also be sufficient clearance between the ground facilities and the tank to provide for sand blasting and recoating of the tank.
- d. The applicant should discuss the need to supplement existing wooded areas in the vicinity of the proposed construction to provide adequate screening from adjacent properties.

5. Other Agency Approvals

- a. The applicant should discuss approvals by all other agencies having jurisdiction, if require, including the following:
  - i. Ocean County Planning Board
  - ii. Federal Aviation Administration
  - iii. Berkeley Township Municipal Utilities Authority.





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- b. Copies of permits, applications, approvals or certifications waivers, or letters of no interest for all other agencies having jurisdiction, as may be required, should be provided as a condition of final approval and prior to the site disturbance.

6. Discussion Items

- a. Whether the proposed antennae will in fact improve telecommunications services, and that the existing capacity is inadequate. This could be in the form of a Comprehensive Service Plan and/or existing tower inventory.
- b. That no other existing towers or technologies exist to meet the applicant's needs.
- c. Whether an evaluation of the structural integrity has been performed with regard to the weight, wind loads, and ice buildup.
- d. How frequently the tower will be visited, anticipated technicians, equipment, and duration of service.
- e. Potential negative impacts of the proposed facility on the operation and maintenance of the existing water tower and appurtenances.
- f. Provisions for lightning arresting and proper grounding for the proposed antennae and cables situated on the water tank should be discussed by the applicant.

Summary

Any approval should be contingent upon the submission of revised engineer's reports and plans in accordance with the above comments; proof of approval or waivers from all agencies having jurisdiction; Berkeley Township Municipal Utility Authority approval; the applicant complying with all of the recommendations of the Board; and the applicant's payment of any outstanding professional fees of the Board and the Township.

The right is reserved to present additional comments pending the receipt of revised plans and/or the testimony of the Applicant before the Board.

Should you have any questions regarding this matter, please do not hesitate to contact this office.

RJR/rr

cc: Edward Liston, Esq. - Board Attorney  
MetroPCS - Applicant  
Lynne A. Dunn, Esq. - Applicants Attorney  
Innovative Engineering

