

TOWNSHIP OF BERKELEY
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING AGENDA
MARCH 24, 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. OLD/NEW BUSINESS:
- F. AGENDA:

1. **O'LEARY** **BOA#10-5306 (Carried from 3/10/10 - Failed to Notice)**

Variance(s) requested: Bulk Variances
Project: Dwelling Addition
Block(s): 907 Lot(s): 109.02, 110-112
Address: 15 Laurel Ave. Zone: R-100

Denial Reads: The Applicant proposes to construct an addition to a single-family dwelling to contain a 3-stop elevator and a new bathroom that will leave a 9 foot side yard setback where 10 feet is required and a 24.2 foot combined side yard setback where 30 feet is required.

2. **OMNIPOINT (T-MOBILE)** **BOA#08-5237 (Carried from 2/24/10)**

Variance(s) requested: Use Variance/Height Variance/Major Site Plan
Project: Cellular Antennae Tower
Block(s): 837.03 Lot(s): 7.01
Address: Woodland Road Zone: R-MF/R-90

Denial Reads: The Applicant is proposing to install a telecommunications antennae at a height of 120 ft. +/- on a new 120 ft. +/- high mono-pole tower extendable to 140 ft. +/- on Lot 7.01 in Block 837.03 at the rear of the existing St. Barnabas Church property. Other proposed ground improvements include ground equipment, cable bridge, underground electrical cable, and 6 ft. high chain link fence.

- G. RESOLUTIONS TO BE ADOPTED.
- H. APPROVAL OF MEETING MINUTES.
- I. ADJOURNMENT: Next meeting of the Board of Adjustment will be on April 14, 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: February 1, 2010

RE: **O'Leary – Review #1**
Application: Dwelling Addition
Block: 907, Lots 109.02, 110-112
Fronting on: 15 Laurel Avenue
Zoning District: R-100
Plan: Building Plot Plan prepare by Horn, Tyson and Yoder, Inc.
BOA#: 10-5306
Our File No.: PBAZ0907.01/ 600.01

In accordance with your request, 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 that the applicant proposes to "construct an addition to a SFD to contain a 3-stop elevator and a new bathroom that will leave a 9' side yard setback where 10' is required and a 24.2' combined side yard setback where 30' is required". The applicant has indicated that the elevator and handicap bathroom are being constructed for medical reasons. The lot in question is located on the southern side of Laurel Avenue within the R-100 zone.
2. R-100 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	10,000 sf	10,080 sf	10,080 sf	<input type="checkbox"/>
Min. Lot Frontage	100 ft	70 ft	70 ft	Pre-existing/non-conforming
Front Yard Setback	35 ft	49.3 ft	49.3 ft	<input type="checkbox"/>
Rear Yard Setback	30	42 ft	42 ft	<input type="checkbox"/>
Side Yard Setback	10 ft	15 ft	9 ft	<input checked="" type="checkbox"/>
Combined Side Yard	30 ft	30.2 ft	24.2 ft	<input checked="" type="checkbox"/>
Max. Lot Cover	25%	17%+/-	18%+/-	<input type="checkbox"/>
Max. Building Height	35 ft	< 35 ft	< 35 ft	<input type="checkbox"/>

B. GENERAL REVIEW COMMENTS

1. The applicant should provide a description of the proposed addition. The applicant should also provide testimony to the board regarding the need to expand the structure into the sideyard setback.





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2. Pursuant to the MLUL Section 40:55D-70, the Board of Adjustment may grant a bulk variance request if :
- 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.

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 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.
 - ii. The proposed grading if any, will not impact adjacent property and that the plan as submitted is a true and accurate representation of the existing and proposed improvements on the site.
 - iii. Payment all outstanding professional review fees of the Board and the Township.
 - b. The Applicant providing the following to the Building Department at time of application for a building permit:
 - i. The applicant submitting for a grading permit in accordance with Section 11-1.5.
 - ii. The applicant submitting architectural plans of the proposed addition, to show compliance with building codes.

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
Thomas and Cynthia O'Leary- Applicant



JOHN H. ALLGAIR, 1983-01
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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: December 8, 2009

RE: **T-Mobile Northeast, LLC (OmniPoint Communications, Inc.) – Review #2**
Application: Cellular Antennae Tower
Block: 837.03, Lot 7.01
Fronting on: Woodland Road
Zoning District: R-MF/R-90
Plan: Use Variance/Site Plan – Block 837.03, prepared by French and Parrello
dated June 10, 2008, last revised November 24, 2009
BOA#: 08-5327
Our File No.: PBAZ0837.03/600.01

In accordance with your request, our office has reviewed the following variance/site plan application submitted for the above referenced property for completeness. The following comments are offered with regard to same:

PROJECT OVERVIEW

The applicant is proposing to install a telecommunications antennae at a height of 120'± on a new 120' ± foot high mono-pole tower extendable to 140' ± on Lot 7.01 in Block 837.03 at the rear of the existing St. Barnabas Church property. Other proposed ground improvements include ground equipment, cable bridge, underground electrical cable, and 6' high chain link fence.

The 45.5 ± acre site is split by the R-90 Residential Zone and the R-MF Residential Multi Family Zone where cellular communication towers and facilities are not permitted. The proposed tower facility will be within the R-MF Zone at the rear of the side.

The existing site in the area of the proposed facility is bounded by commercial to the north and east, single family dwellings on the west and the remainder of Lot 7.01 on the south.

The plans indicate vehicle access and underground utility access for the proposed facility is from Route 9 (Atlantic City Boulevard) over and thru adjacent Lot 7.02 in Block 837.02 owned by others along on existing bituminous access drive. The existing conditions map indicates the presence of an existing access easement through Lot 7.02 in favor of Lot 7.01.

ZONING ISSUES

Since the proposed location of the cell tower is in the R-MF-6 zone where cell towers are not a permitted, accessory or a conditional use, the applicant will require a use variance. 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 the granting of the Use Variance. The Board could impose additional conditions on the site including landscaping, which could better integrate the use with surrounding uses. Consequently, the applicant must demonstrate the following:





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1. Positive Criteria

- a. That the site is particularly suited to the use.
- b. There are special reasons that allow a departure from the zoning regulations in this particular case. In general, to show special reason, 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).

2. Negative Criteria

- a. 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.
- b. 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.

DISCUSSION ITEMS

1. 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. The applicant should be prepared to discuss the following:
 - a. Per Section 35-127.12a, a freestanding cellular telecommunication tower shall be located at a distance to any property line of at least one and one-half (1 ½) times the height of the tower structure (210 feet). The tower is 53 ±, 104± and 130 ± respectively, from the adjacent property lines, and as such, applicant has requested waivers from same. The applicant should consider other locations on site for the tower; i.e. closer to the church facilities, which would appear to exceed the 210' setback distance.
 - b. Per Section 35-127.12b, earth tone colors are required to a height of 50 feet and sky blue above 50 feet. The applicant is proposing same on the plans.
 - c. Per Section 35-127-12b, the applicant is required to provide screening and should discuss waiver requests for same, specifically discussing the existing wooded areas on-site and adjacent to the site relative to screening of the existing residential uses to the west of the property.
 - d. Per Section 35-127.12 h, three adjacent off-street parking spaces shall be provided for service vehicles. The plans show a 16' wide gravel access drive, 15' turn-around area and gravel parking area which together could be used to park three (3) vehicles.
 - e. Per Section 35-127.12 j, the area around the base of the tower shall be secured with a six (6) foot chain link fence. The applicant has provided same.





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- f. Per Section 35-127.12 k, all towers shall comply with applicable Airport Hazard Regulations and shall be subject to approvals from the Federal Aviation Administration for location, height and lighting. The applicant should discuss compliance with same.
 - g. Per Section 35-127.12 l, upon cessation of use, the antenna and equipment shall be removed and all underground utilities deactivated within a one (1) year period.
 - h. Per Section 35-127.12 m, the applicant shall provide documentation that the proposed antenna have electromagnetic emissions within the safety standards established by the ANSI, latest amendment, or any other superseding state or national standard. The applicant has submitted a report indicating compliance with same.
2. In addition, the applicant should be prepared to discuss the following:
- a. The applicant should provide provisions for lightning arresting and proper grounding for the proposed antennae and cables situated on the proposed tower and accessory structures.
 - b. Whether the proposed tower will in fact improve telecommunications services, and that the existing coverage and/or capacity is inadequate. This could be in the form of a Comprehensive Service Plan and/or existing tower inventory.
 - c. That no other existing towers or technologies exist to meet the applicant's needs.
 - d. Whether an evaluation of the structural integrity of the proposed tower has been performed with regard to the weight, wind loads, and ice buildup.
 - e. How frequently the tower will be visited, anticipated technicians, equipment, and duration of service.
 - f. Anticipated future carriers and whether there is enough room on the site to support these carriers.
 - g. Submission of a Traffic Impact Statement. The applicant has indicated only one (1) vehicle is required to maintain the facility and is requesting a waiver for submission of a traffic impact report. We have no objection to same.
 - h. The applicant has provided an Environmental Impact Statement. In addition, an antenna site FCC RF Compliance Assessment Report has been submitted by the applicant indicating Compliance with FCC RF and New Jersey State Requirements.

SITE PLAN REVIEW:

1. The applicant should provide an access and utility easement and/or agreement in favor of Omnipoint Communications and/or the utility company over Lot 7.02 for the proposed facility utilities.
2. Route 9 is a state highway and access and construction within the right-of-way is subject to review and approval of the New Jersey State Department of Transportation.





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3. The applicant should show the zone boundaries and zones on the 1"=200' overall site plan.
4. The following construction details should be added to the plans, if applicable:
 - a. Mono-pole tower foundation
 - b. Tree and shrub planting details
 - c. Pavement trench repair
 - d. Clarify work light detail (appears a CAD layer is turned off)
5. The applicant should provide results of soil boring and geotechnical soil foundation analysis for the tower foundation at the time of application for a building permit.

OTHER AGENCY APPROVAL ISSUES

1. The applicant should discuss approvals by all other agencies having jurisdiction including the following, if required:
 - a. Federal Communications Commission
 - b. Ocean County Planning Board
 - c. Ocean County Soil Conservation District
 - d. Federal Aviation Agency

Copies of applications and approvals or certifications, waivers or letters of no interest as may be required should be provided as a condition of final approval and prior to the site disturbance.

Any approval should be contingent upon the submission of revised engineer's reports and plans in accordance with the above comments; the applicant acquiring all necessary access and construction easements and/or agreements over adjacent properties; submission and approval by the Township of a sequence of construction and contractor's staging plan prior to site disturbance, proof of approval or waivers from all agencies having jurisdiction; the applicant paying all applicable affordable housing fees, if any; the applicant paying all outstanding review fees of the Board and Township and the applicant's engineer submitting an estimate of improvement cost of the project in order that necessary bonds and inspection fees can be calculated.

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

RJR/rpr/blr

cc: Edward Liston, Esq. - Board Attorney
C/O – Frank Ferraro, Esq.
French and Parrello

