

TOWNSHIP OF OCEAN
Zoning Board of Adjustment
Regular Meeting
June 18, 2009

7:30 P.M.

STATEMENT: Pursuant to the provisions of the New Jersey, Open Public Meetings Act, sending copies of the notice of meeting properly provided adequate notice of the meeting to the Times-Beacon, the Asbury Park Press and the Atlantic City Press. Notice was posted on the bulletin board in the Administration Building.

The regular meeting of the Zoning Board of Adjustment was held on the above date and time; Chairman Dennis Tredy presided and called the meeting to order.

ROLL CALL

Members Present	Nick Bonamassa	Stanley Bystrek	Edward Covitz
	Anthony Mercuro	Antonio DeAlmeida	Dennis Tredy

Members Absent: Ronald Bruno John Petrosilli

Pledge of Allegiance

Chairman Tredy asked for a motion to approve the minutes of May 21, 2009. Antonio DeAlmeida made a motion to approve and it was seconded by Nick Bonamassa. Roll Call (Ayes) DeAlmeida, Bonamassa, Bystrek, Covitz, Mercuro, Tredy.

Chairman Tredy asked for a motion to approve the bills for payment. Antonio DeAlmeida made a motion to approve the vouchers for payment and it was seconded by Nick Bonamassa. Roll Call (Ayes) DeAlmeida, Bonamassa, Bystrek, Covitz, Mercuro, Tredy.

Chairman Tredy mentioned that if anyone wanted to peruse the correspondence it is in the Board's office with the secretary.

BOARD COMMENTS

OLD BUSINESS

Resolution # 07.09.BA
Docket No. 05.09.BA
James & Lynn Kratz
216 Maplewood Road
Block 273, Lot 1.12
"C" Variance

Chairman Tredy asked for a motion to approve the resolution. Nick Bonamassa made a motion to approve the resolution. The motion was seconded by Anthony Mercuro. Roll Call: (ayes) Bonamassa, Mercuro, Bystrek, Covitz, DeAlmeida, Tredy.

Resolution # 08.09.BA
Docket No. 02.09.BA
Markian Grek
66 Pennsylvania Avenue
Block 191, Lot 11
“C” Variance

Chairman Tredy asked for a motion to approve the resolution. Antonio DeAlmeida made a motion to approve the resolution. The motion was seconded by Edward Covitz. Roll Call: (ayes) DeAlmeida, Covitz, Bonamassa, Bystrek, Tredy.

Resolution # 09.09.BA
Docket No. 17.08.BA
George Czurlanis
38 Spruce Street
Block 83, Lot 2
“C” Variance

Chairman Tredy asked for a motion to approve the resolution. Antonio DeAlmeida made a motion to approve the resolution. The motion was seconded by Nick Bonamassa. Roll Call: (ayes) DeAlmeida, Bonamassa, Bystrek, Covitz, Mercurio, Tredy.

Resolution # 10.09.BA
Docket No. 04.09.BA
Rev. John and Deborah Cherry
23 Sands Point Road
Block 92, Lot 8
“C” Variance

Chairman Tredy asked for a motion to approve the resolution. Edward Covitz made a motion to approve the resolution. The motion was seconded by Antonio DeAlmeida. Roll Call: (ayes) Covitz, DeAlmeida, Bonamassa, Bystrek, Tredy.

Resolution # 011.09.BA
Docket No. 06.09.BA
Donald & Stephanie Gebhardt
16 One Eye Way
Block 158, Lot 8
“C” Variance

Chairman Tredy asked for a motion to approve the resolution. Antonio DeAlmeida made a motion to approve the resolution. The motion was seconded by Dennis Tredy. Roll Call: (ayes) DeAlmeida, Tredy, Mercurio.

NEW BUSINESS

Docket No. 09.09.BA
Joseph Chiusolo
114 Harborage Place
Block 272, Lot 469

Attorney Rumpf spoke. Mr. Chiusolo is here. We had a brief conversation prior to the meeting. Regrettably with respect to this application, we have a situation where although all of the 200' notifications went out in a timely fashion, there is one procedural defect that being publication in the paper was a day late, nine days instead of ten days as required as statute. We were attempting to see there is anything that could be done to accommodate the applicant who is usually only here on the weekend and had to drive a considerable distance with his witnesses. Regrettably the issue of jurisdictions seems to foreclose that possibility. Out of courtesy to the applicant, what I would suggest as council to the board, is that rather than simply deeming that the applicant must re-notice in it's entirety and come back at the next meeting, I think the preference here would be for the board to carry the matter until the next meeting so that the publication can occur within that ten day statutory time period. That way the applicant at least is not required to provide the 200' notification once again since that apparently did go out correctly, although we do have one little memo that someone didn't respond which I will share with you.

Chairman Tredy: Robert and Sandra G. Roy from 115 Harborage Place the receipts never came back to the office proving that they were served. Just keep that in mind.

Mr. Chiusolo: Mr. Chairman if I may speak?

Chairman Tredy: Yeah, go ahead.

Mr. Chiusolo: I had mailed to Mrs. Clune copies of all the receipts along with the affidavit of publication to the Asbury Park Press. I have copies of all those and I know for a fact that that particular resident was notified because he had spoken with me this past weekend when I had been in the home about receiving it.

Chairman Tredy: I'm not debating whether they were notified; I'm just saying the receipt was not received. They are not in the file as of this morning anyway.

Attorney Rumpf: So if you would like to check on that and maybe you need to notice just that one additional person to make sure that it is complete.

Chairman Tredy: Perhaps you have the receipts or they weren't turned in.

Mr. Chiusolo: Chairman I mailed out all of the receipts.

Ms. O'Connor: Pardon me Mr. Chairman. They are all here; we just don't have that one.

Chairman Tredy: That's exactly right. That one is missing. So what would the procedure be on that?

Attorney Rumpf: Simply renotify that one property owner in additional to the publication of course.

Mr. Chiusolo: May I proceed with that immediately, or is that something that needs to be done ten days before the next scheduled meeting.

Attorney Rumpf: The minimum before the meeting is ten days, but yes you can proceed with that in advance.

Mr. Chiusolo: May I ask the board when the date of the next meeting is?

Chairman Tredy: We'll let Beth answer that one.

Ms. O'Connor: July 16th.

Mr. Bystrek: Mr. Chairman this notification won't carry. He has to renotify.

Attorney Rumpf: It will carry so far as the letters going out to the affected property owners. But the advertisement is something that needs to be cured.

Chairman Tredy: Okay that's all we've got.

Chairman Tredy asked for a motion to have the application carried.

Attorney Rumpf: Is that your desire Mr. Chiusolo for the board the board to carry the application to the next meeting?

Mr. Chiusolo: Yes Mr. Chairman, I have no alternative at this point but to ask the board to carry it.

Chairman Tredy: We have two things we can do. We can either open it and carry it or we can just deem it's incomplete and have them notified and this doesn't even count and you start over. I would suggest that you ask for the board to carry.

Mr. Chiusolo: Thank you. I appreciate that.

Edward Covitz made a motion to carry this application to the July 16th meeting. Mr. Mercurio seconded the motion. Roll call: (aye) Covitz, Mercurio, Bonamassa, Bystrek, DeAlmeida, Tredy.

Docket No. 07.09.BA
Metro PCSNY, LLC
Route 532 Cell Tower
Block 39, Lot 9

Mr. Mercurio recused himself and left the building.

Mr. Richard Stanzone of Hering, Dupignac, Stanzone & Dunn addressed the board. MetroPCS is a FCC licensed wireless carrier that is new to the Northeast. They have their licenses here, but they have been operating on the west coast in California and the mid-west for a number of years. The system that you are going to hear about today is operational in Northern NJ particularly, but the system is being designed and built to spread throughout the rest of the licensed area which includes Ocean County and includes Ocean Township. The proposal before you this evening is not new to you. This is the existing monopole at Block 39, Lot 9, 300 Route 532. Our proposal is to locate six antennas, at centerline height of 139' on that monopole, and we would locate our equipment on a concrete pad within a 10x16 leased area at the base within the fenced compound. Based upon the review of the application by your professionals, we are required to come before you for a Use Variance as it's not permitted in this zone which is

the EC district. We also have the existing driveway is only 12' wide and the ordinance requirement is 24' wide. Testimony will show why that and this board in the past as approved that existing driveway due to the lack of traffic I guess to the site.

Chairman Tredy inquired if Mr. Stanzione would like the board to go over the waivers first. Mr. Stanzione agreed.

Mr. Stanzione referred to the Submission Request List that comes with the ZBA application. The reason we made these waiver requests is it is an existing facility that we are doing very little to. He reviewed briefly Item #22, Item #23, Item #24, Item #25, Item #26, Item #27 – all of those there is none present. Item #29 is not applicable. Item #33, Item #34, Item #35, Item #39, Item #40, Item #42, Item #43, Item #48, Schedule "C", Item #32, Item #42, #Item #44, Item #45, none of these apply. Those are our requested waivers. The reason being is that we are constructing within the existing fenced compound a 10x16 concrete pad.

Mr. McVicar spoke that he had no objections to granting the waivers requested. Mr. McVicar only picked up on two that are applicable to the site. They were referred to in his letter dated May 15, 2009 on Page 3.

Chairman Tredy asked the board for a motion to approve the waivers as presented. Stan Bystrek made the motion to approve the waivers as presented. Antonio DeAlmeida seconded the motion. Roll Call: (ayes) Bystrek, DeAlmeida, Bonamassa, Covitz, Tredy.

Mr. Stanzione introduced his Radio Frequency Engineer, Mr. Hardik Gandhi. Mr. Gandhi was sworn in by Mr. Rumpf. Mr. Gandhi gave his background and experience. Chairman Tredy accepted his qualifications for the board as an expert. Mr. Gandhi explained that MetroPCS has been licensed by the FCC. MetroPCS has been actively seeking to provide service to New Jersey and New York. Mr. Stanzione referred to the April 6, 2009 submittal to the board which provided a copy of a report dated March 31, 2009 regarding proposed Wireless Telecommunications Facility. The report was prepared under Mr. Gandhi's direction. Exhibit A1 was marked into evidence. It is the same exhibit found in the report and was described by Mr. Gandhi. Mr. McVicar clarified that the water tower location shown on the exhibit is part of this township. It had been shown as part of Barnegat. Mr. Stanzione explained that he has spoken with Mr. McGuckin about a month ago and he said they hadn't gotten the bid specifications together for this yet. There are other carriers located on that water tower.

Mr. Stanzione repeated for Chairman Tredy that MetroPCS is licensed by the FCC on AWS band. It is different from the other cell carriers. They have been operational for a number of years in California and on the West coast. They purchased the licenses on the East coast about 2 years ago from the FCC. They first turned on their system on the East coast February 2009 in New York. They have been working their way down the East coast. There is no coverage down here yet. There are no contracts with MetroPCS phones and all minutes are unlimited. It's a basic monthly rate. It's a different type of service. Toms River has approved sites in the past six months, as well as Brick. In order to keep your licenses with the FCC regulations, you need to continually show how you intend to bring services to areas where you are licensed but not yet serving, that is one of the things Metro is doing by coming here. Metro's policy is to co-locate wherever possible. Mr. Gandhi agreed with Mr. Stanzione that this site is essential to being able to develop a system in Ocean Township and in Ocean County that will serve the customers

in this area. With the application was a report submitted by Pinnacle Telecom Group dated March 10, 2009. The purpose of this report is to show how this site complies with FCC Commission guidelines.

Chairman Tredy asked Mr. Gandhi to estimate how many other carriers could co-locate on this tower. Mr. Gandhi thought based on available height, he made an educated guess of two or three carriers. Carriers operate on much lower power than they used to.

Chairman Tredy asked if you placed the antennas on this monopole, they have to be connected to a ground station. Is there currently space within that monopole for the cable to go in, or will it have to be on the outside?

Mr. Stanzione suggested that Chairman Tredy hold that question for the Engineer when he testifies.

Mr. Rumpf asked about the frequency level that 2130-2140 megahertz, it's higher than that presently being used by Verizon, T-Mobile and the others. Is there an advantage to the higher frequency?

Mr. Gandhi answered that it's actually a disadvantage. We would have a little less footprint.

Mr. Rumpf asked if at the MetroPCS frequency would they have the same ability for data communications, smart phone, etc...or will the MetroPCS frequency only allow for cellular phone coverage.

Mr. Gandhi answered that MetroPCS can absolutely provide data services. It will be as good as what you get from cable or DSL.

Mr. Rumpf asked that they would be able to do the data communications with the antenna proposed with this application?

Mr. Gandhi answered we can transfer the same data and voice on the same antenna.

Mr. McVicar asked about the availability of other suitable existing structures in the area.

Mr. Gandhi explained that they look at all the tall available structures in the area and based on the coverage objectives, this was the best suitable candidate. To my knowledge, there isn't another tall structure within this proposed site that would be able to provide the same type coverage.

Mr. McVicar asked the availability of this tower to other potential carriers.

Mr. Stanzione answered that anyone who entered into an agreement with the owner of the tower could get space on that tower. We don't have an exclusive opportunity there, only our space is exclusive to us.

Mr. McVicar reviewed the "General Comment" portion of his letter (page 4).

Mr. Stanzione called his next witness, Mr. Gregory Nowak. Mr. Nowak was sworn in by Mr. Rumpf. Mr. Nowak provided the board with his education background. Chairman

Tredy accepted Mr. Nowak's qualifications as a professional and expert witness for the board.

Mr. Nowak spoke about sheet ZO1, and ZO2 submitted with the application, the overall site plan of the existing property, Block 39, Lot 9, Route 532. Mr. Nowak described the site in detail. The antenna will be located at the third level from the top of the pole. The height of the antenna will be 139' above grade level. The equipment at the base within 10x16 lease area, what is proposed is a 7'x10' concrete pad that will house 4 equipment cabinets. There would be two radio cabinets and two battery cabinets. Those cabinets are approximately the size of a refrigerator 2.5 x 2.5. The cabinets are made out of steel and they are weatherproof. They are monitored remotely. Mr. Stanzione referred back to Chairman Tredy's question asked prior. Cable needs to be attached from the cabinets to the antennas. Mr. Nowak referred to sheet O2, the set-up of the cabinets is run from the back of the radio cabinets, cables will come out and have a cable bridge to the existing monopole there is an existing entry porthole which the cables will enter and wrap the inside of the pole. Once they are in the pole, they are inside the pole. When they reach the antenna height, there are century ports available at that height and they will come through those.

Chairman Tredy asked if a site visit has been done. Mr. Nowak says he has visited the site and has observed what is there. The porthole is roughly 1' x 2.5 feet which will allow the cable to go through the porthole and they will be hoisted up to the antenna line.

The board and Mr. McVicar were previously provided with a structural analysis report. Subsequently, the report has been revised; Mr. Nowak has an advanced copy. With the antenna loading considered for this installation, there will be minor modifications at the base of the pole. Once those minor modifications are made, the pole will be able to structurally support the proposed improvements. Mr. Nowak accepted as a condition of any approval the board would grant, the structural report revisions would be provided to the board and the Construction Official.

Chairman Tredy asked if there are any plans for providing for an emergency generator for the antenna. Mr. Nowak answered yes; there is a fire protection cabinet which is your distribution panel. The telecommunications site needs basic services: telephone, and power. It comes into a distribution panel. It also serves as a transfer switch. The panel has a generator plug so if there is an emergency in a sense that there is power loss, there are battery cabinets which provide temporary power and within that time, there is a generator that can be brought to the site to power up the site. The generator will not be on site.

Chairman Tredy asked about the battery back up and how long would it sustain operation if there was no power? Mr. Nowak answered that it is a function of the traffic of the site. Because it's a communication facility it all depends on how many calls are being placed at that time. I would estimate that the single battery cabinet could provide six hours of backup. Enough time that if it were a continued emergency, MetroPCS would have time to come down and bring the generator.

Minor structural modifications have to be made to the base of the tower for the MetroPCS antenna. The antenna loading as it currently exists is not the antenna loading that was considered in the structural report. When the structural report was prepared, the report was considering everything that has been leased beyond what is already there on

the tower. If there is additional space or structural capability, based on that report the tower would be maxed out. Any future antennas would require a tower modification or a negotiation to unleash other carrier's space. There is leased space on the tower right now that is not being used.

A MetroPCS technician would customarily visit the site once every four to six weeks to make sure everything is working properly and to see if there is any visible signs that need attention on the tower. The driveway is 12' in width. The vehicle that the technician uses an SUV type vehicle. That is sufficient width for the technician to use the driveway. There is a work light that would be located adjacent to the power distribution panel. It would not be on all the time, there will be a manual switch. MetroPCS will request that there is a timer put on the switch so in case it is left on; the timer would eventually shut it off. The MetroPCS cabinets will be almost the same size as what is already located at the monopole.

Chairman Tredy expressed concern about safety on the site. The height of lowest peg is about 8' above the top of the existing bridge. The pegs have been removed. Chairman Tredy suggested to Mr. Rumpf that he would like something in the Resolution that states that the pegs are temporary and removed after they leave the site. The pegs will be taken with technicians when they leave. Mr. Stanzione suggested getting a letter from the tower owner as the tower owner controls access to the tower. Mr. Stanzione told the board they would be happy to try and secure a letter from the tower owner to satisfy the board. Generally all monopoles are designed to have removable pegs up to a height of at least 15' off the ground. The climbers usually bring the pegs with them.

Mr. Stanzione called Tsvia Adar, Planner. Mr. Rumpf swore in Ms. Adar. Ms. Adar gave her credentials. Chairman Tredy accepted her qualifications as an expert. Ms. Adar visited the site and reviewed the ordinance. Ms. Adar agreed that a Use Variance is needed. Ms. Adar also stated the other variances we are seeking although the existing tower is there; it does exceed the permitted height in your ordinance. Your ordinance allows 150' high tower when it has at least three carriers or more. This tower already exceeds that height. The top of the antennas are at 141' and below what is permitted in the ordinance. However, just because we are modifying an existing tower, a D6 height variance is also required in this case. There is also a bulk variance. Two of them are existing. The driveway width and the security fence. The existing conditions and the proposals aren't creating any new variances. The existing facility meets and significantly exceeds all the set-back requirements. It is also way below the impervious coverage for this zone.

Mr. Stanzione referred to the Supreme Court Decision of Smart vs. The Borough of Fair Lawn Board of Adjustment. The possession of an FCC license by MetroPCS promotes the general welfare in accordance with that Supreme Court Decision. There is currently a significant gap in service and this site will be able to close this gap and provide service and there is no other better suited site that will definitely satisfy the requirements based on this court case. It is a co-location site which is encouraged by the ordinance and the best solution to not create new towers but use an existing structure that can provide the same without additional towers. In speaking of the negative criteria, in general, we need to show that the grant of the variance will not result in substantial detriment to the public good and would not substantially impair the purpose and intent of the zone plan and the zoning ordinance. Basically, the courts view wireless sites as beneficial sites. This area is an environmentally sensitive area. Your Master Plan in general in speaking about

wireless, would like to promote preservation of the natural resources. We are proposing no additional ground disturbance and what you are creating a co-location which will have no impact on any of your environment. The visual is usually a township's concern. Visual photo simulations were included in the board's packets. All visual photos were reviewed by Ms. Adar for the board.

Mr. Stanzione inquired of Ms. Adar if based upon the review of the application, the site and the photo simulation you've done are there any reasonable conditions that you feel the board could impose on this site other than the ones that have been suggested already concerning co-location and obtaining certain letters from the landlord.

Ms. Adar answered that as a professional planner I don't see in this particular case any reason for any additional mitigation. I would definitely recommend keeping the driveway as it exists and not increase the width and may result in removal of trees which is absolutely unnecessary.

Mr. Stanzione further inquired therefore have you come to the conclusion that the variances being requested can be granted without substantial detriment to the zoning ordinance and Master Plan of the Township of Ocean?

Ms. Adar spoke absolutely. It meets the statutory requirements and the positive criteria significantly outweighs the negative and you can grant this application without any detriment to the public good to your Zoning Ordinance or Master Plan.

Mr. Rumpf asked if Mr. Stanzione felt it would be inherently beneficial use if it were to be located on municipal property. Mr. Stanzione felt it is inherently beneficial use if it's attached to an existing structure because of the case Nine-X vs. Hazlet Township that was never overturned or clarified by the Supreme Court. I can't say that it becomes inherently beneficial if it's on Township property if the township is also using the facility for township communications purposes. I think if it's solely as a rent generating function I don't think that drives it to be inherently beneficial. I think that is a result of the case out of Pasasac County that says that. If it's a township facility it also becomes an inherently beneficial use but solely as a landlord it's not. You still have to apply the Smart case. Mr. Rumpf said he wanted to get Mr. Stanzione's position on record.

Chairman Tredy asked about the entrance gate and if there is a way to have an automatic closure on the gate so that the gate swings closed. Mr. Stanzione accepted it as a recommendation that we make to the tower owner and the property owner, but we don't have the property and it's outside our leased area. Mr. Stanzione said he would have no problem sending a letter stating that the board would like to request this as a condition. Mr. McVicar said he would check into whether it was originally a condition or not that the gate remained closed.

Mr. McVicar reviewed his engineering letter. He referred to item numbers 4 and 5 on page 4. Ms. Adar reviewed again how they are complying with item number 4. Item number 5 regarding priorities. Ms. Adar stated MetroPCS is requesting a C Variance because currently they are not permitted, however, hopefully once the property is owned by the township, MetroPCS will become a priority. It will be first priority once the Township owns the property. Right now we are asking for a variance because we are not permitted. Mr. McVicar then spoke with Mr. Nowak. He asked for a clarification on the lights. Mr. Nowak said we have one light consisting of two light bulbs. One directs its

light onto the electrical panel where the service comes in and the other one lights up the area in front of the cabinets. It's the same fixture with two focus beams. Mr. McVicar asked on page 7 "Plan Revisions" if Mr. Nowak had any problems with items 1-8. Mr. Nowak said he only had one question and referred to council regarding the signature for the owner on the plans. Mr. Stanzione clarified that he will have to sign the plans. Mr. McVicar concluded his discussion.

Mr. Rumpf asked about the equipment cabinet consisting of the battery and the arrays for the communications equipment. He asked if any of the equipment ever ran hot allowing for the possibility of a fire. Mr. Nowak stated that there were fans that re-circulate the air. Is there adequate access for emergency vehicles if the need should arise to address any concerns? Mr. Nowak explained that there is a 12' wide driveway for the Fire Department to get to the site. The site is 380' off the road. Mr. Nowak was asked if the equipment that is proposed by MetroPCS will interfere with any of the other equipment that is currently on site. Mr. Gandhi answered this question as a "no". Are there any RF emissions from the ground equipment? Mr. Gandhi answered that the ground level equipment is mainly electrical and what it does is convert electrical power and transmit through the cable to the antenna. There will be no interference. Emissions, I would say it's going through the insulated cable. The only trouble you would have is if you were right in front of the antenna itself. That is where the highest emissions are and you are 140' below. The equipment operates on 24 watts, is the highest power out there. It's very insignificant.

Stan Bystrek raised a question about the use of an AM radio and if the antenna would interfere with the signal. Mr. Gandhi answered "no I don't think so".

Mr. Stanzione completed his presentation.

Chairman Tredy opened the meeting to the public.

OPEN PUBLIC

Seeing none.

Chairman Tredy closed the meeting to the public.

CLOSED PUBLIC

Chairman Tredy asked for Mr. Rumpf to frame a favorable motion. Mr. Rumpf said the board after having heard the application and testimony of all witnesses should you decide to vote in favor of the application based upon testimony as presented, I believe there were several conditions that have been agreed to by the applicant. The applicant was to attempt to obtain a notarized statement from the tower owner with regard to the accommodation of four additional co-locaters. The applicant was to supply a structural analysis report demonstrating the sufficiency of the tower as built. The applicant further agrees to install a timer on the manual switch that operates the dual light to ensure that the light turns off after any servicing or after hours or after dark. The applicant shall further attempt to secure a letter from the tower owner to ensure that all carriers are reminded that there are to be no pegs at an elevation of less than 15'. The applicant agreed to supply a full copy of the transcript from this evenings meeting to the board which will assist us with our audio difficulties this evening. The applicant will also send

a letter and provide a copy of that to the board recommending to the property owner that the gate to the driveway be equipped with a self-closing mechanism.

Antonio DeAlmeida made a motion. Ed Covitz seconded the motion. All in favor: (aye) DeAlmeida, Covitz, Bonamassa, Bystrek, Tredy.

Mr. Stanzione thanked the board for their courtesy.

Ed Covitz made a motion to adjourn the meeting. Antonio DeAlmeida seconded the motion. All in favor: (aye).

The meeting ended at 9:28 PM.

Respectfully submitted,

Beth O'Connor, ZBA (substitute) Secretary