

PEQUANNOCK TOWNSHIP BOARD OF ADJUSTMENT
MEMORIALIZING RESOLUTION

MetroPCS New York, LLC
8 Industrial Road
Block 4402, Lot 8

WHEREAS, the applicant is a prospective tenant of the property located at 8 Industrial Road, Pequannock Township, New Jersey, Block 4402, Lot 8, located in the I-1 zone district; and

WHEREAS, the applicant proposes to construct a vertical extension of an existing monopole from the height of 130' to 140', which does not meet the following standards for the conditional use section of the ordinance:

1. A minimum 50' rear yard set back is required whereas the applicant proposes a 6" rear yard setback;
2. The maximum height of 130' is permitted whereas the applicant proposes an overall height of 140';
3. A side yard of no less than 30' is required whereas 6.5' is proposed; and

The applicant also seeks preliminary and final approval of a site plan; and

WHEREAS, testimony was taken at a public hearing on July 16, 2009, at which the Board took sworn testimony and the applicant and the public were afforded the opportunity to be heard and participate in the application and to make comments; and

WHEREAS, the Board has reviewed and considered all of the evidence and the testimony at the public hearing from which the Board makes the following factual findings:

1. All proper public notice has been given in accordance with the municipal land use law.
2. The Board has reviewed and considered the following exhibits which were made part of the file before the public hearing:
 1. Five page plan prepared by M.T.M. Design Group dated October 21, 2008 most recently revised 4/1/09; and
 2. Memorandum prepared by the law offices of James K. Pryor, Esq.: and
 3. Seven page planning report prepared by David Karlebach, PP, PC dated May 2009; and

4. Structural analysis report prepared by GBD Associates bearing the name of T-Mobile and MetroPCS, dated October 6, 2008, consisting of a five page report and sixteen pages of attachments; and
 5. "Antenna Site FCC RF Compliance Assessment and Report" prepared by Pinnacle Telecom Group dated June 11, 2009 consisting of eighteen pages; and
 6. Seven page planning report prepared by the Board planner, Eileen F. Banyra, PP, AICP, dated July 14, 2009; and
 7. One page engineering report prepared by Crew Engineers, Inc. dated July 16, 2009; and
 8. One page planning report prepared by Morris County Planning Board dated April 15, 2009; and
3. The Board has also considered the following documents which were introduced into evidence at the time of the public hearing on July 16, 2009 and marked as follows:
- A-1. RF coverage map showing areas proposed to be covered by other cell sites and an overlay showing areas proposed to be covered by the subject property; and
 - A-2. Two photos on a board, left view showing existing condition and right view showing the pole as extended with the proposed antenna; and
 - A-3. Two photos on a board showing additional views of existing and proposed conditions.
 - A-4. Two photos on a board showing additional views of existing and proposed conditions.
4. The subject property is a flat, generally rectangular lot, approximately one acre in area, located on the west side of Industrial Road, and presently improved with a one story, 8,600 square foot industrial building, a 1,500 square foot pole barn and an existing 130' high communication monopole which currently supports antenna arrays for three communication carriers together with the related equipment cabinets on raised platforms located behind the main building. This site was the subject of numerous zoning violations for outdoor storage and was required to cleanup and landscape the property as part of prior zoning approvals. The approval received was condition on periodic inspections for compliance with the ordinances on outdoor storage and require the installation of the 6' high PVC fence around the property and certain wetlands. Once again, the property suffers from poor maintenance, which was not addressed at the public hearing, but which was reported in the Board planners report. Since no response was made to the Board planners report, the Board accepts the report as accurately depicting the current conditions on site.

5. MetroPCS is a start-up communication network which is not yet in operation in the North Jersey area. It is in the process of acquiring the rights to locate antenna arrays in a grid format to begin operations in the near future. Part of that proposed grid of communication sites, it proposes to install a wireless telecommunications base station facility on the subject property by extending the 130' monopole which exists on the property an additional 10' from 130' to 140', with a reservation for the Township owned whip antennas at the top. The operational radio equipment would be stored in cabinets to be installed at the base of the monopole on a new 10' by 16' steel platform which would be 10' above ground level. The facility would use electric and telephone service similar to that of a single family home. Access to the compound would be achieved by the existing driveway. The proposed project does not require any additional building area.

6. As originally proposed by the applicant, the equipment platform would be located in the northwest corner of the site and would have approximately 0.5' from the rear property line. However, at the request of the Board the applicant agreed to rotate the long access of the equipment platform from east/west to north/south, there by gaining an additional 6' of rear yard setback. Although this does not eliminate the need for a variance it significantly it diminishes the violation.

7. The proposed side yard of the equipment platform remains at 6.5'. However, the industrial building which is the main structure on this site remains 3.4' from the north sideline and therefore the side yard violation is deminimus in the overall development of the site.

8. The applicant proposes to located six additional antenna arrays to the extension of the existing monopole at the height 135', which would cause the top of the Township whip antennae to be 141.75'. The applicant's planner, David Karlebach, presented three exhibits marked A-2, A-3 and A-4, showing three different views of the existing monopole, both as presently constructed and as it would appear if the proposed additional 10' were constructed.

9. The equipment platform is located entirely behind a large industrial building and is a approximately 270' from the street, there is negligible visual impact from the additional equipment platform.

10. There is very minimal maintenance associated with the equipment cabinets. Visits are scheduled every four to six weeks. The existing space can be comfortably shared with the other carries on site. There is one parking space associated with all of the equipment platforms and that parking space provides adequate parking for all needs. There is a problem alert system built into the equipment on the platform which notifies the applicant when there is a problem with any of the equipment or if any of the equipment cabinets are opened. There will be a single light on the equipment platform which will be operated by an onsite switch. The light is set on a timer so that it will automatically extinguish one hour after activation. No change is proposed in any of the existing light and no other additional lighting is proposed other then the single light for this platform.

11. The proposed extension is narrower than the existing pole. The applicant will

provide additional structural support for the pole that will not be visible but will provide adequate strengthening for the additional height of the pole and the additional antenna array.

12. The Board accepts the report of its engineering firm, Crew Engineers, Inc., that no additional restrictions are required for flood plain protection or net zero fill requirements.

13. At the public hearing, the applicant agreed to install additional landscaping along the north side line and rear lot line of the site to improve the height of landscaping so that it will cover the height on the equipment platforms. That landscaping should be satisfactory to the Board planner and engineer and appropriate to the location of the landscaping on the site.

14. No members of the public appeared to testify in connection with this application .

Based on the above factual findings the Board has reached the following conclusions:

1. The applicant has sustained its burden under N.J.S.A. 40:55D-70d(3) to show that special reasons exist to permit the extension of the existing monopole from 130' to 140' as described in the application and documents submitted therewith and the testimony at the public hearing. Those special reasons include the following:

- * The proposed use is one which has been declared by the Supreme Court of the State of New Jersey to be an inherently beneficial use.
- * The proposed use is conditionally allowed in this zone, although subject to certain standards which this proposal does not meet. The primary reason bringing this application before the board is the limitation of monopoles to 130', whereas the applicant proposes a 140'. In view of the total height allowed, the additional height requested by the height of this applicant is a relatively minimal deviation.
- * There is an existing monopole on which the applicant proposes to co-locate its antennae with three other communications companies. Co-location is explicitly encouraged by the zoning ordinance.
- * The subject property is located in an industrial zone and the nearest residence is approximately 500' away. The use is compatible with the other uses in the I zone district and is less intense than many of those uses. Based upon all of these factors the subject property is particularly suited to the proposed use.
- * The testimony indicated that there is an exponential increase in the use of wireless communications based in part on the expanded use of texting and telephone usage. In recent years, there has been a significant movement away from land base telephone systems to wireless systems.

- * There is no noise, light, glare, odor, dust or vehicular traffic associated with the proposed use. There is only a single vehicle once or twice month, which is far less traffic than would normally be anticipated by other industrial uses.

3. On balance, the Board concludes that the relatively minimal extension of this monopole from 130' to 140' is preferable to construction of another monopole at a different location in order to accommodate this applicant.

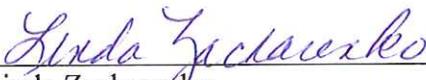
4. The requested variances can be granted without substantial detriment to the zone plan, zoning ordinances or the public good.

NOW THEREFORE BE IT RESOLVED by the Board of Adjustment of the Township of Pequannock this ^{3rd} ~~6th~~ day of ^{September} ~~August~~, 2009 that it now ratifies, memorializes and adopts the action taken at its meeting on July 16, 2009 granting the application of MetroPCS New York, LLC to co-locate an antenna array on a monopole having a total pole height of 140' in stead of the 130' permitted, and construct an equipment platform having a side yard setback of 6.5' instead of the required 30' and a rear yard setback of 6.5' instead of the required 30', subject to the following conditions:

1. All construction shall be in substantial conformity with the plans filed with the application prepared by TM Design Group, Inc. dated October 21, 2008 and most recently revised April 1, 2009 and as modified by the testimony given at the public hearing on July 16, 2009.
2. The equipment platform shall be rotated as described at the hearing, with the long axis of the platform being north/south.
3. The applicant shall provide additional landscaping reasonably acceptable to the Board planner and engineer which is anticipated to grow to a height of 15 to 20' within a reasonable period of time. Such landscaping should take into account the area available for landscaping on this fairly tight corner of this property.
4. The light on the platform shall be on an automatic timer to extinguish no more than one hour from ignition.
5. The ship ladder access to the platform shall be moved to south side of the platform in order to minimize intrusion into the rear yard.
6. No permits and/or certificate of occupancy shall be issued for the construction permitted by this resolution, unless and until all fees, costs and escrows required in connection with this application have been paid in full.

7. Prior to the issuance of any building permit or other authority to begin construction in connection with the variances granted herein, the owner of the subject property shall be required to meet all current property maintenance requirements which apply to this site.
8. If the antenna array permitted by this resolution shall become obsolete, or if for any reason the applicant or any successor in interest shall abandon its use for two consecutive years or longer, this applicant or its successor in interest, as the case may be, shall remove at its own expense the antenna array from this monopole within 60 days of the expiration of said two years of non-use.

I hereby certify that the above is a true copy of a resolution adopted by the Board of Adjustment of the Township of Pequannock at its meeting on September 3, 2009 by vote of 5 to 0.



Linda Zacharenko

PEQUANNOCK TOWNSHIP BOARD OF ADJUSTMENT
MEMORIALIZING RESOLUTION
Dennis J. and Linda McMahon Fry
663 Newark Pompton Turnpike
Block 1304, Lot 8

WHEREAS, the applicants are the owners of the property located at 663 Newark Pompton Turnpike, Block 1304, Lot 4, located in the R-11 zone district; and

WHEREAS, the applicants propose to construct an addition to an existing single family residence which would have a front yard setback from the Newark Pompton Turnpike of 46 feet 10 ½ inches instead of the required 50 feet and would have a second front yard setback from Hopper Avenue of 28 feet 7 inches instead of the required 50 feet; and

WHEREAS, testimony was taken at a public hearing on July 16, 2009 at which time the Board took sworn testimony and both the applicant and the public were afforded the opportunity to be heard and participate in the application and to make comments; and

WHEREAS, the Board has reviewed and considered all of the evidence and the testimony at the public hearings from which the Board makes the following factual findings:

1. All proper public notice has been given in accordance with the municipal land use law.
2. The subject property is a flat rectangular lot with 180 feet frontage on the Newark Pompton Turnpike and a depth of 90' fronting on Hopper Avenue, and is presently improved with a two-story single family residence. There is a existing front porch shown on the document marked Exhibit A-1, which appears to have a 35' front yard setback. Consequently, the proposed front yard setback of the addition would be greater than the current front yard setback of the house .
3. The residence is serviced by a two-car garage on the south side of the house with a driveway to Hopper Avenue. The applicants propose to construct a second floor addition over the existing garage and add a one-story garage to the south side of the house, thereby reducing the second front yard facing Hopper Avenue from 49' 7" to 28' 7". The applicants propose to convert the existing garage space to a family room and to construct an additional bedroom and sitting room above the proposed family room.
4. There are three existing bedrooms on the second floor of the house. The applicants propose to convert a relatively small bedroom, 8' 6" x 10' 10 ½" into a laundry room and add a new large bedroom of 20' x 17' 8".
5. The violation which brings this matter before the board is the intrusion of the new garage into the second front yard facing Hopper Avenue. The entire project could be built without any variances if it were not for the garage, because the second floor addition would only vertically extend the existing facade. Testimony indicated that along Hopper Avenue on this side of the street the front yard setbacks of other houses are inconsistent. Some houses are closer to the street while others are setback farther. Consequently, the intrusion of this new garage will have very little impact on the street scape.
6. Two residents of the neighborhood, one directly behind the subject property to the

rear and the other directly across Hopper Avenue from the subject property, appeared at the public hearing and testified in favor of the application. Both neighbors testified that the granting of the requested variances would not have any detrimental impact upon the neighborhood.

7. Board members questioned the adequacy of the existing septic system and whether any improvement was required. However, testimony indicated that the house is an existing three bedroom house and will remain a three bedroom house due to the conversion of one of the three existing bedroom to a laundry room. Consequently, the testimony offered was that no change is required to the septic system because the number of bedroom remains the same.

8. No members of the public other than the two neighbors mentioned above appeared to testify in connection with this application.

Based upon the above factual findings, the Board has reached the following conclusions:

1. The applicants have sustained their burden under N.J.S.A. 40:55D - 70c(1) (a) that by reason of shape of this specific piece of property there is a zoning hardship and the strict enforcement of the setback requirements of the zoning ordinance would impose exceptional practical difficulties to this property. The front yard setback requirement in this zone is 50 feet and the rear yard setback requirement is 30 feet. Since the property is only 100 feet deep, that leaves a building envelope depth of 20 feet. It would not be possible to construct an addition to this property without a variance for either a rear yard or a secondary front yard. The applicants have chosen the location for the addition in a place which has the least overall detriment. It should be noted that the property has a lot area of 17,800 square feet substantially exceeding the 11,250 square feet required. In addition, the location of the septic system on the north side of the house makes it impossible to construct this addition there.

2. The applicants have sustained their burden under N.J.S.A. 40:55D-70c(2) in that the benefits of granting the requested variance substantially exceed any detriment which there may be and the Board finds that there is no detriment. The benefits to the public are the enhanced visual environment in the neighborhood and additional ratables to the Township.

3. The requested variance can be granted without substantial detriment to the zone plan, zoning ordinance or the public good.

NOW THEREFORE BE IT RESOLVED by the Board of Adjustment of the Township of Pequannock this ^{31st} ~~6th~~ day of ^{September} ~~August~~, 2009 that it now memorializes, ratifies and adopts the action taken at its meeting on the 16th day of July, 2009 granting the application of Dennis J. and Linda McMahon Fry for permission to construct an addition having a front yard setback of 46' 10 1/2" instead of the required 50' and a secondary front yard setback of 28' 7" instead of the required 50', subject to the following conditions:

1. All construction shall be in substantial conformity with the plans filed with the application, prepared by Richard J. Trautwein, AIA, dated June 18, 2009 and the testimony given at the public hearing on July 16, 2009.

2. The architectural plan and site plan submitted with the application shall be revised

as follows:

- A. The septic system as show on Exhibit A-1 should be added to the site plan as shown on the Trautwein architectural plans; and
- B. The zoning chart on the architectural plans shall be revised to show that the variances are for a front yard setback and a secondary front yard setback, not a side yard setback; and
- C. The list of proper owners within 200 feet of the subject property shall be added to the architectural plan in the vicinity of the site plan.

3. The applicants shall apply to the health department for a written confirmation that the proposed addition does not require any modification to the existing septic system.

4. No permits and/or certificate of occupancy shall be issued for the construction permitted by this resolution, unless and until all fees, costs and escrows required in connection with this application have been paid in full.

I hereby certify that the above is a true copy of a resolution adopted by the Board of Adjustment of the Township of Pequannock at its regular meeting on September 3, 2009 by a vote of 5 to 0.



Linda Zacharenko