

PEQUANNOCK TOWNSHIP BOARD OF ADJUSTMENT
MEMORIALIZING RESOLUTION
T-MOBILE NORTHEAST, LLC
f/k/a OMNIPPOINT COMMUNICATIONS, INC.
97 West Parkway
Pompton Plains, NJ 07444
Block 2402, Lot 1

WHEREAS, the applicant is prospective lessee of rooftop space at Chilton Memorial Hospital, 97 West Parkway, Pompton Plains, New Jersey 07444, Block 2402, Lot 1 located in the R-22 zone district; and

WHEREAS, the applicant seeks a use variance pursuant to N.J.S.A. 40:55(D)-70(d)(1), and preliminary and final approval of its site plan and waiver of requirements for certain site plan details and storm water management review; and

WHEREAS, testimony was taken at a public hearing on November 5, 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 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. In addition to the application forms for a use variance and site plan approval, the Board has also reviewed and considered the following documentary evidence:
 - (i) A 6-page Site Plan prepared by CMX, dated 4/22/09 and most recently revised 5/14/09; and
 - (ii) A 7-page Planning Report prepared by Pennoni Associates, Inc., dated 9/17/09; and
 - (iii) A 11-page Radio Frequency Report prepared by T-Mobile Northeast, LLC, dated 9/14/09; and
 - (iv) A 17-page Antenna Site FCC RF Compliance and Assessment Report prepared by Pinnacle Telecom Group, dated June 8, 2009; and
 - (v) A color coded copy of page Z-2 of the Site Plan which was introduced as Exhibit A-1 at the public hearing; and
 - (vi) Letter from Peter Donahue to Ray Solis on the letterhead of Chilton Memorial Hospital which was marked Exhibit A-2 at the public hearing; and
 - (vii) Photographs mounted on both sides of boards depicting existing and proposed conditions of Chilton Memorial Hospital taken from various angles around the building and marked Exhibits A-4 through A-10; and
 - (ix) A 5-page planning memorandum prepared by the Board Planning Consultant, Eileen Banyra, PP, AICP; and
 - (x) A 1-page exemption notice on the letterhead of Morris County Planning Board, dated 9/23/09.

3. The subject property is a 22.9 acre site located in the R-22 zone fronting on West Parkway. It is presently improved with a hospital campus including multiple structures, both primary and accessory, parking facilities, drainage facilities, internal circulation roadways and the like, all as depicted on the survey of existing conditions prepared by CMX referred to as item 1 in paragraph 2 above. Hospitals are permitted as a conditional use in this zone, but telecommunications facilities are not permitted.

4. The area surrounding the hospital is almost entirely improved. To the east is the Pequannock Township High School located in the R-15 zone. To the north is a residential neighborhood and Whipple Road. To the west is Township property and a drainage feature known as the East or "Big" ditch. To the south is an additional 16 acre lot also owned by the hospital. The land surrounding the site is primarily residential and uses ancillary to residential use. Testimony indicated that the nearest residentially used property is 300' north of the subject property and 700' south of the subject property. Directly across the street is the Pequannock Township High School, but between the school building itself and the subject property are extensive athletic fields, hundreds of feet in depth.

5. The applicant is licensed by the Federal Communications Commission (FCC) to provide wireless communications services in this area of the country. The applicant is presently providing such services in the region of Pequannock Township and has several nearby cellular communication sites. However, this form of telecommunications technology uses low power radio wave transmission, for which a grid of regularly spaced reception transmission facilities is required. The number of transmission sites required for that grid varies depending upon topography, the volume of calls in a given region and the ability to provide a strong enough signal to service not only mobile users, but also in-building users within the area of the cell site.

6. The applicant has two other cell sites in the Township, which were identified and displayed on Exhibit A-3. That exhibit showed in green the extent of existing in-building coverage provided by those sites and in an orange/brick color the mobile coverage of those sites. There is an extensive coverage gap shown in the middle of the Township. The proposed location on the roof of Chilton Memorial Hospital is in the approximate center of the coverage gap area. Testimony indicated and the overlay to Exhibit A-3 showed that the proposed antenna arrays on the hospital site would not entirely eliminate the existing coverage deficiency in the gap area, but would substantially mitigate the gap. It might be possible to achieve greater coverage in the gap area by raising the height of the antennae array, but because this structure is located very near an existing airport, the additional height would require FAA review and might very well require lighting for flight way safety, which in a residential zone such as the one in which this site is located, might pose a substantial detriment to the proposal.

7. One of the public benefits to wireless communication service is the availability of 911 emergency communication. In fact, an upgrade is currently in progress for the 911 system and mobile phone units to integrate with GPS technology so that the location of the cell phone requiring 911 assistance can be identified by the 911 system.

8. The applicant proposes to locate wireless antennae and equipment on the top of the existing five story hospital. There would be a total of 12 antennae divided into four sectors with three antennae in each sector. Additionally, a 12' x 22' equipment cabinet would be located on the

roof. The antennae and equipment platform are proposed to be screened with stealth panels. There is no monopole associated with this submission and no accessory structure or fencing located elsewhere on the grounds.

9. The site is located in the R-22 Residential Zone District, which is one of six single family residential districts in the Township. Since the construction of the existing antenna array the Township has adopted an amendment to the zoning ordinance, section 189.07.060, which prohibits telephone communications towers, antenna array and related facilities in all residential districts. Because the existing building is five stories high and that height is permitted for hospitals in this zone as a conditional use, no height variance is required even though in a residential zone the height of the proposed antennae would exceed the maximum height limitation. In fact, the existing penthouses on the roof of the hospital are 70' or higher, and the proposed highest point of this antenna array and related facilities would be 67'.

10. The proposed antennae and related equipment would be completely enclosed in stealth panels. The stealth panels are a modern product which appears to have the consistency of styrofoam and can be molded to look like a brick wall. The effect would be that of a perimeter wall around the equipment having the appearance of brick. However, because of the nature of the stealth material the antennae are able to transmit through the panels. There would be cable trays and power lines along the roof, but they would not be visible from the ground. No signs are proposed and no lighting is proposed except for one spotlight to permit the servicing of the equipment. That service spotlight would be on a timer so that it would only illuminate during the time set by the service provider.

11. Access to the equipment and antennae is provided by a stairway from inside one of the existing penthouses. There is no generator for the equipment, but there is a battery back-up in the event that the hard wired electrical connection fails. The batteries are sealed and require no service.

12. The equipment ballast holding the equipment weighs approximately 2000 lbs. and therefore provides adequate protection against high winds. CMX conducted a structural analysis of the building to ensure that the roof can carry that weight. That analysis confirmed the adequate strength of the roof.

13. At the request of the Township the applicant requested the right to store the equipment inside the hospital structure. The applicant produced a letter marked A-2 in evidence at the public hearing from the hospital stating that the hospital would not permit anything to be constructed on the inside of the hospital building. Chilton Memorial Hospital, as all hospitals in this region, is in a constant state of facility upgrade and, therefore, cannot predict whether such space would be needed for hospital use or not.

14. One member of the public appeared to testify in connection with this application. He raised concerns about the potential health hazard of radio waves. Counsel for the Board advised the public that in a published opinion the New Jersey Supreme Court entered a finding that there is no credible evidence that any health hazard exists with respect to the type and intensity of the radio waves emitted by the proposed transmission facilities. Consequently, as a matter of law, the Court

has removed that consideration from applications of this type. Moreover, testimony indicated that the nearest antennae array would be at least 300 feet from the nearest residential property.

Based upon 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(1) to permit the installation an antennae array for telecommunications transmissions as described in the application and the documents submitted therewith and the testimony at the public hearing. Although the proposed use is not one that inherently benefits the public good, the subject property is particularly suited to the proposed use. It is particularly suitable because of the size of the parcel, the distance that the antennae array will be from any residential structures and existence of a 5-story hospital building eliminates the need for a stand alone monopole. Because of the location of the antennae on the rooftop, and the existing penthouses on that rooftop, the antennae will be virtually undetectable offsite.

2. The Board concludes that the antennae will serve a beneficial public purpose of eliminating an existing service gap in the transmission of wireless communications. The existence of the service deficiency also adds to the particular suitability of this site because it is in the approximate center of the transmission gap area.

3. The only detrimental impact disclosed by testimony and documentary evidence is a very minimal visual impact. Commercial style transmission equipment is not particularly attractive in a residential zone. However, because of the height of the existing building, the existence of penthouse structures on the rooftop and the applicant's agreement to make every effort to blend the antennae array with the background colors, that detrimental impact becomes de minimis. It should also be noted that the current ordinance mandates co-location of telecommunications facilities whenever possible.

4. Because all proposed construction will be on the hospital roof, there is no reason why the Board should not grant the applicant's requested waiver of the requirements for certain site plan details and storm water management review.

5. Based upon the totality of the circumstances and the evidence presented in connection with this application, the Board concludes that the benefits of granting the requested variance substantially exceed any detriment which there might be.

6. The applicant has also produced the enhanced quality of proof required by the opinion in the *Medici v. BPR Co.* case that the grant of this variance is not inconsistent with the intent and purpose of the master plan or the municipal zoning ordinance. The applicant has satisfactorily reconciled the grant of this variance with the omission of this particular use from the ordinance. The general nature of telecommunications facilities continues to change on a regular basis. Consequently, it is not possible for the Township to stay current with a zoning ordinance that is updated on a regular basis. Moreover, the Township has no way of knowing in advance the grid alignment of the various telecommunications companies, nor does it have any way of knowing in advance what property owners would be willing to enter into arrangements with the telecommunication companies for cell sites. Consequently, there is no practical way that the Township can draft a zoning ordinance which would be reasonable under all circumstances for all

zone districts. It is sufficient to say in this case that there is nothing about the present proposal which in any way compromises or contradicts the master plan, zoning ordinance or zone district.

NOW THEREFORE BE IT RESOLVED by the Board of Adjustment of the Township of Pequannock this 3rd day of December, 2009 that it now memorializes, ratifies and adopts the action taken at its meeting on November 5, 2009, granting the application of T-Mobile Northeast, LLC f/k/a Omnipoint Communications, Inc. for a use variance to permit the construction of telecommunication facilities on the roof of Chilton Memorial Hospital and for preliminary and final approval of its site plan and waiver of the requirements for certain site plan details and storm water management review as described in the application documents, exhibits presented at the public hearing and testimony presented with this application, subject to the following conditions:

1. All construction shall be in substantial conformity with the plans filed with the application, prepared by CMX, most recently revised 5/14/09, and the testimony given at the public hearing on November 5, 2009.

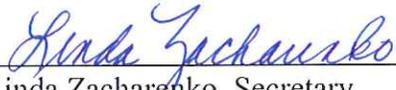
2. If at any time in the future, the equipment and/or antennae array permitted by this application become obsolete or for any other reason are no longer in use, the applicant shall remove this equipment as promptly as reasonably possible.

3. This application has been granted upon the testimony that installation of the new antennae will not interfere with transmissions from existing telecommunications facilities on the hospital. The applicant shall remain responsible to eliminate any such interference as might occur in the future and to cease operation if such future interference cannot be substantially mitigated or eliminated.

4. In accordance with the testimony given at the public hearing, the applicant shall surround the antennae and related equipment with stealth panels, the final external appearance of which shall remain subject to the reasonable review and approval of the Board planner to ensure that the equipment enclosure as nearly as possible blends into the background colors of the nearby rooftop facilities, in order to minimize the visibility of these facilities offsite.

5. 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 December 3, 2009, by a vote of 8 to 0.



Linda Zacharenko, Secretary
1/19/10