

PEQUANNOCK TOWNSHIP BOARD OF ADJUSTMENT  
MEMORIALIZING RESOLUTION  
T- Mobile Northeast, LLC  
30 Hillview Road, Pequannock Township, NJ  
Block 4201 Lots 1 & 2  
Block 3803 Lot 20

WHEREAS, the applicant is a prospective tenant on the subject property located at 30 Hillview Road, Pequannock Township, New Jersey, Block 4201, Lots 1 & 2 and Block 3803, Lot 20 located in the I-3 zone district; and

WHEREAS, the applicant has requested approval to construct and maintain a 99' high telecommunications monopole with an array of 9 panel antennas together with equipment cabinets on a ground level steel platform at the base of the monopole, which will require the following approvals:

1. Use variance pursuant to N.J.S.A. 40:55D-70d(3) to permit the construction of a 99' wireless telecommunications monopole which does not meet all of the conditions of the municipal ordinance for a conditional use; and
2. A site plan approval; and
3. Issuance of a flood plain development permit; and
4. Granting of the following waivers from checklist requirements:
  - a) Surface water management plan; and
  - b) Soil Erosion and Sediment Control plan; and
  - c) Environmental Impact Study; and
  - d) Landscaping details for required screening and buffering; and

WHEREAS, testimony was taken at public hearings on December 2, January 20, March 3, April 7, and May 5, 2011 at which time the Board took sworn testimony and both the applicant's witnesses 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. In addition to the application forms for variances, preliminary and final site plan approval and a flood plain development permit, the Board has received and considered the following documents:

1. A seven page plan prepared by KMB Design Group dated December 17, 2009 and most recently revised August 25, 2010 identified on the title page as "T-Mobil Northeast L.L.C., site name: Grow Rite Garden Center";
2. A four page plan prepared by KMB Design Group dated 2/10/2011; and
3. A four page NJDEP Permit drawings prepared by KMB Design Group dated May 28, 2010;
4. A ten page Visual Impact Study prepared by Penmoni Associates Inc. dated February 12, 2010;
5. A twelve page Radio Frequency Report prepared by Ben Shidfar dated December 8, 2009;
6. A seventeen page Antenna Site FCC RF Compliance Assessment and Report prepared by Pinnacle Telecom Group dated December 14, 2009;
7. A seven page Technical Evaluation of a Proposed T-Mobile Wireless Communications Facility at 30 Hillview Road, Pequannock, NJ prepared by Ross R. Sorci dated November 12, 2010;
8. A ten page Supplemental Report dated November 18, 2010, prepared by Ben Shidfar, responding to the Radio Frequency report filed by Ross Sorci;
9. An eleven page Planning Report prepared by Penmoni Associates, Inc. dated February 12, 2010;
10. A two page structural design opinion letter prepared by KMB Design Group dated August 5, 2010;
11. A one page chart of cell towers within Pequannock Township.
12. An ariel photograph of Pequannock and surrounding area marked Exhibit A-1 at the 12/2/10 hearing; and
13. A six page document entitled FAA Analysis/Determinations marked Exhibit A-2 at the 1/20/11 public hearing; and
14. A four page document on the letterhead of the Federal Aviation Administration Fort Worth Texas marked Exhibit A-3 at the 1/20/11 public hearing; and

15. A ten page document consisting of five letters from the Federal Aviation Administration marked Exhibit A-4 at the 1/20/11 public hearing; and
16. A large board mounted map of the Pequannock area showing the coverage gap in question and containing two overlay maps marked Exhibit A-5 at the 1/20/11 public hearing; and
17. A five page document entitled NJ06181C-FAA Graphics marked Exhibit A-6 at the 3/3/11 public hearing; and
18. A scan test drive chart for the subject property with a 100 ft. monopole marked Exhibit A-7 at the 3/3/11 public hearing; and
19. A chart showing the results of a continuous wave test with a 100 ft. monopole on the subject property marked Exhibit A-8 at the 3/3/11 public hearing; and
20. A composite chart consisting of both Exhibits A-7 and A-8 showing the results of a 100 ft. monopole on the subject property marked Exhibit A-9 at the 3/3/11 public hearing; and
21. A chart showing the results of both a continuous wave and drive by scan test for the subject property with an 80 ft. monopole marked Exhibit A-10 at the 3/3/11 public hearing; and
22. A chart showing the combined results of a scan drive and continuous wave test with an 80 ft. monopole on the subject property marked Exhibit A-11 at the 3/3/11 public hearing; and
23. A two page document on the letterhead of the Federal Aviation Administration marked Exhibit A-12 at the 4/7/11 public hearing; and
24. A two page document on the letterhead of the Federal Aviation Administration marked Exhibit A-13 at the 4/7/11 public hearing; and
25. A eight page document entitled "Permit" on the letterhead of the State of New Jersey Department of Environmental Protection marked Exhibit A-14 at the 4/7/11 public hearing; and
26. An exhibit posted on a large board showing various examples of monopoles which have been modified to look like trees marked Exhibit A-15 at the 4/7/11 public hearing; and
27. A one page document showing a large balloon at an elevation of 100 ft. marked Exhibit A-16 at the 4/7/11 public hearing; and

28. An 11 in. by 17 in. document consisting of two photographs showing tree style monopoles marked Exhibit A-17 at the 4/7/11 public hearing; and
  29. A 4 in. x 6 in. photograph dated March 11, 2011 marked Exhibit O-1 at the 4/7/11 public hearing; and
  30. A 4 in. x 6 in. photograph dated March 11, 2011 marked Exhibit O-2 at the 4/7/11 public hearing; and
  31. A 4 in. x 6 in. photograph dated March 11, 2011 marked Exhibit O-3 at the 4/7/11 public hearing.
  32. A three page report of Eileen Banyra, PP, AICP, the Board's planning consultant.
3. T-Mobile Northeast LLC ("T-Mobile") is licensed by the Federal Communications Commission ("FCC") to provide personal communication services including wireless telephone, data and other communication services. T-Mobile's license area is the New York region, including Morris County, New Jersey. Wireless communication licensees are required by federal law to provide seamless, reliable coverage within their service licensed area in both vehicles as well as in buildings.
  4. T-Mobile currently has unreliable coverage in certain areas in the Township of Pequannock as described in items 5 and 8 of paragraph 2 above. The applicant proposes to improve coverage in those areas by constructing a new 99' tall telecommunications monopole with an array of nine (9) panel antennas. The equipment cabinets would be located on a new steel platform at grade level within a 22'x18' fenced in compound. While the application is for one carrier at the present time, the plans reflect that the monopole could accommodate at least an additional two carriers below the antennas proposed by this applicant.
  5. This is an unmanned facility which is checked every 4-6 weeks by a single individual driving a van type vehicle. The facility requires no sewer or water connection and no additional parking is proposed because the equipment enclosure is reasonably close to existing parking. The site is designed for a future co-location by other telecommunications carriers and there is ample room for other equipment enclosures at the base of the monopole. Lighting is required by the FAA for this pole at the top. There will be reasonable lighting on the equipment platform for the servicing of the equipment at night, if that should be necessary.
  6. The site is located in the Pompton, Pequannock, Wanaque and Ramapo watershed and drains into the East Ditch, which drains to the south into Beaver Brook, a tributary of the Pompton River. The flood hazard elevation at the property is 181.08 (NAVD 88). The project area elevation is 177.7 (NAVD 88).

7. The site is located on the east side of Hillview Road and is bordered by a wooded area and recreational lands to the north, wooded areas and residential properties to the east and wooded areas and horticultural uses to the south and wooded areas and industrial uses to the west. A tree line exists along the north, east and south property lines, acting as a buffer to the adjoining development. Three small surface ponds are located behind the existing development, near the eastern property line. These three ponds are a component of a watering system used by the onsite nursery. There is a large above ground storage tank along the rear of the nursery building which is used as a holding tank for freshwater as part of the nursery's watering system. There is a second tank at the northeast corner of the nursery building which contains fuel oil for the onsite equipment (backhoes, front-end loader, etc.)
8. The property is a flat, generally rectangular parcel located in the southwest corner of the Township. The south property line of subject property forms a portion of the south boundary line of the Township and the west property line of the subject property forms a portion of the west boundary line of the Township. The site is currently used for a retail/wholesale garden nursery business with a substantial amount of outside storage of product and equipment. The southeast corner of the subject property is encumbered with wetlands. There is a drainage detention basin in the northeast part of the property which is very close to the proposed location of the monopole equipment enclosure.
9. The applicant has received an NJDEP flood hazard area individual permit. Consequently, the environmental concerns regarding the nearby wetlands have been satisfied. The proposed location of the monopole is located in an area which has already been developed for commercial purposes. No additional paving, roadways or other impervious coverage is proposed other than the construction of the monopole and the equipment platform.
10. On the west side of Hillview Road beginning at approximately the north side of the subject property is the southerly end of the Lincoln Park Airport runway. The Lincoln Park Airport is a small airport servicing primarily small private planes for local and regional transportation and recreational aviation.
11. The applicant submitted to the Board the written determination from the Federal Aviation Administration (FAA) confirming that the FAA has reached a determination that no hazard to air navigation exists for a monopole height of 100' of ground level at the proposed location. The applicant also submitted five alternate locations on subject property to the FAA for determination of hazard to air navigation. Of the five alternate locations the FAA stated that it would approve a height of 2' above ground level at three alternate locations, 71' above ground level at one alternate location and 76' above ground level at the final proposed location. At the request of the Board two additional possible alternate locations were also submitted to the FAA for determination. The results of that submission are found on exhibits A-12 and A-13, both of which would have been

approved by the FAA at 71' and 76' above ground level elevation. Based upon the evidence presented the proposed location is the only place on the subject property where a monopole of 99' is permitted by FAA regulations.

12. In 2009 the Township adopted a comprehensive amendment to the zoning ordinance specifically regulating wireless communication towers. [§189.07.060 Regulations for wireless communication towers and antennas.] Subsection C. (2) lists the permitted locations for proposed towers within the Township in order of priority. Those prioritized locations are as follows:

- (a) 1st priority - on existing wireless communication towers;
- (b) 2nd priority- properties located in the C3 and C4 zone districts;
- (c) 3rd priority - land and or structures owned by the Township of Pequannock with the consent of the Township Council prior to hearing by a Board;
- (d) 4th priority - properties located in the I-2 and I-3 zone district; and I-1 zone district as follows: Block 4402, Lots 6, 7,8, 9, 10. These specific properties provide adequate setback from residential properties that make them reasonable and viable candidates for future cell tower construction.

13. Complicating the ordinance regulations is subsection B of the ordinance which reads as follows:

- B. Prohibited Uses in residential zone or use.  
Wireless telecommunication towers, antennas and related facilities are prohibited uses within all residential zones or adjacent to a residential use.

The difficulty in interpreting that section is that the third priority location is “ zone district I-3,” but every lot in the I-3 zone is immediately adjacent to a residential zone. Since there is a general rule in statutory interpretation that the more specific the statute controls the more general, in this particular case the Board interprets the ordinance as permitting monopole towers in the I-3 zone, even though each of the lots in that zone are adjacent to a residential zone.

14. The dimensional requirements and regulations for monopole construction are set forth in Subsections C.(3) and C.(4). This application meets all of those dimensional requirements except that the applicant proposes no landscaping around the equipment enclosure. It should be noted that the equipment enclosure is located well within the confines of a commercially used lot, which is fully developed, and will have very limited off site visibility.

15. Numerous members of the public appeared to testify at the May public hearing. They raised serious questions about the onsite conditions on the subject property and the significant drainage on their own properties fronting on Greenview Avenue as a result of conditions on the subject property. Moreover, the objectors testimony clearly linked the drainage problem on their own lots with activities on the subject property.
16. One objector was represented by counsel who presented a professional planner who testified that the subject property is grossly inappropriate for the construction of a monopole. The specific objection related to the proposed location of the pole immediately adjacent to an existing detention basin. If the solution to the existing drainage problems includes enlarging that drainage detention basin, there may not be sufficient room to enlarge the drainage detention basin. In other words, the proposed location of the monopole could interfere with a correction of the existing drainage problem.
17. The objectors unanimously objected to the appearance of the monopole particularly in view of the fact that the region surrounding subject property is very flat and there is virtually no way to ameliorate the adverse visual impact of the pole.

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

1. The applicant has failed to meet its burden under N.J.S.A.40:55D-70d(2) to convince a super majority of the Board (5 affirmative votes) that a use variance should be granted pursuant to the case of *Razberry's Inc. v. Kingwood Township Expressed Tp., 250 NJ Super.324(1991)*, to permit the intensification of the existing nonconforming of a garden center on subject property. The specific problem identified by those not in favor of the application relates to the proposed location of the monopole immediately adjacent to a drainage detention basin on subject property. Testimony indicated that there is a serious onsite and offsite drainage problem which does not appear to be corrected by the existing drainage facilities onsite. The location of the pole as proposed could interfere with the ability of the land owner to correct the drainage problem with the pole immediately adjacent to the drainage detention basin. Therefore, the members voting against the application were concerned that there would be a serious adverse impact of permitting the pole to be constructed where proposed.

2. The applicant has also failed in its burden to convince a super majority of the Board that a use variance should be granted pursuant to N.J.S.A. 40:55D-70d(3) for a deviation from the specifications required for conditional uses in this zone in that the monopole is proposed to be erected on a lot which is immediately adjacent to a residential zone and residentially used properties. The specific objection relates to the visual impact of the proposed monopole on the residences. Because of the flat terrain in this area the pole would be especially visible in a way that could not be remedied.

3. The Board members opposing the location point to the proposed location of the monopole as interfering with the ability of the landowner to correct the onsite drainage problem therefore it would be inappropriate to permit the construction of a monopole as proposed.

4. Those voting in opposition to the application find that the application could not 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 2nd day of June, 2011 that it now ratifies, memorializes and adopts the action taken at its meeting on May 5, 2011 denying the application of T-Mobile.

  
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Linda Zacharenko, Secretary

PEQUANNOCK TOWNSHIP BOARD OF ADJUSTMENT  
MEMORIALIZING RESOLUTION  
WILLA EVERSON  
14 SCHELLING TERRACE  
Block 2202, Lot 3

WHEREAS, the applicant is the attorney-in-fact for Eleanor Winklbauer who is the owner of property located at 14 Schelling Terrace, Pequannock Twp, New Jersey, Block 2202, Lot 3, located in the R-11 zone district; and

WHEREAS, the applicant proposes to construct an addition to the existing single family house which will create a dimensional variance for a front yard setback of 43.3' instead of the required 50' in order to add a front porch to the existing structure; and

WHEREAS, testimony was taken at a public hearing on May 5, 2011, at which time 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 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, triangular parcel located at the north terminus of the Schelling Terrace cul-de-sac. The property is presently improved with one story frame dwelling to which the applicant intends to add additional footprint as well as a second floor. The house is presently unoccupied and in a deteriorated state of repair. It is the applicant's intention to occupy the premises after the completion of the proposed addition and renovation of the structure.
3. The lot area of the subject property substantially exceeds the minimum required in this zone. However, because of the shape of the property and the location of the existing house, the addition of a front porch would intrude into the required front yard setback.
4. The existing house is a sixty year old, one story ranch style dwelling with two bedrooms, one and one half baths, a full basement, an attached garage, and a rear facing porch. The lot is relatively flat at the front portion, and slopes gradually toward the rear behind the house. As indicated on the site plan, the existing dwelling sits on a slight knoll where it is entirely out of the 100 year flood plain.
5. Because the lot area is more than three times the required minimum the impervious lot coverage, and the building coverage percentages are very low. The side and rear yards are fully

conforming. Only the existing front yard is slightly sub-standard from the tabular requirement in that it is 49.3 ft where 50 ft. (or average setback on the block) is required.

6. The proposed addition adds floor space at the first floor level (588 sq.ft.) plus the front porch and rear sun porch causing a total footprint increase of 915 sq. ft. Also proposed is an entirely new second story which totals 1,312 sq. ft. The design conforms with all of the bulk requirements except for the front yard due to the front porch. The proposed front yard setback is 43.3 ft where 50 ft. is required. This is very close to the two existing adjacent dwellings which average approximately 45.7 ft.

7. Because of the position of the existing dwelling, and the already non-conforming front yard setback, there is no way to create an open front porch without causing a further encroachment on the front yard, thereby necessitating the variance.

8. Because the first floor addition is partially in the 100 year flood plain, the new building would be on piers, or on flood proof (vented) foundations. Any volume created by the foundation will be mitigated by removing an equivalent volume of earth from the site.

9. No members of the public appeared to testify at the public hearing of this application.

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

1. The applicant has sustained her 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.

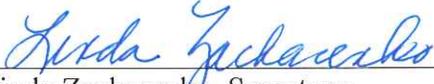
2. The requested variance can be granted without substantial detriment to the zone plan, zoning ordinance or the public good.

NOW THEREFORE BE IT RESOLVED by the Board of Adjustment of the Township of Pequannock this 2nd day of June, 2011 that it now ratifies, memorializes and adopts the action taken at its meeting on May 5, 2011 granting the application of Willa Everson, attorney-in-fact for Eleanor Winklbauer, for a front yard setback of 43.3' 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 Stephen V. Carrozza, Architect, dated March 16, 2011, and the testimony given at the public hearing on May 5, 2011.

2. 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 the Township of Pequannock at its regular meeting on June 2, 2011.

  
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Linda Zacharenko, Secretary