

**MINUTES
Of the Township of West Milford
Zoning Board of Adjustment**

**April 17, 2006
Special Meeting**

7:36 p.m.

Linda Lutz, Principal Planner/Board Secretary, opened the meeting with the reading of the legal notice.

1. Pledge

Mr. Brady asked all attendees to join him in the recitation of the Pledge of Allegiance.

2. Roll Call

Present: Ada Erik, Joseph Giannini, Daniel Jurkovic, Ed Spirko, Francis Hannan and Robert Brady.
Stephen Glatt, Board Attorney; Richard McFadden, Township Engineer; Linda Lutz, Board Planner and Secretary.

Absent: Arthur McQuaid

Resigned: Thomas Lemanowicz (not present)

3. Applications

Case called at 7:37 p.m.

Omnipoint Communications, Inc.	Complete	12-30-05
Use Variance #0540-0726	Deadline	04-29-06

Preliminary & Final Site Plan #0520-0224

Bulk Variance #0530-0727

Block 14102; Lot 1

Center Island, Route 23; R-4 Zone

Request for use variance relief from the MLUL C.40:55D-70d and,

Requests for preliminary and final site plan relief to enable a new, unmanned, wireless telecommunications facility.

Mr. Brady announced that there is a six-member Board this evening.

The applicant was represented by Michael Learn, Esq.

Sworn witnesses on behalf of the applicant:

David Karlebach, P.P., 38 East Ridgewood Ave., #396, Ridgewood, NJ

Daniel J. Collins, 14 Ridgedale Ave., Cedar Knolls, NJ

Russell Warnet, AIA, 600 Parsippany Rd., Parsippany, NJ

Gagan Bhandari, radio frequency engineer, 4 Sylvan Way, Parsippany, NJ

Sworn witness on behalf of the Board:

Ross Sorci, 8100 Corporate Dr., Lanham, MD

List of exhibits presented:

A-1 Photograph showing existing conditions vs. the same photo altered to show a proposed condition.

A-2 Photograph showing existing conditions vs. the same photo altered to show a proposed condition.

A-3 Photograph showing existing conditions vs. the same photo altered to show a proposed condition.

A-4 Pinnacle Telecom Group report dated October 13, 2005.

A-5 Sheet Z-3 of the site plan prepared by Dewberry-Goodkind, Inc. (November 9, 2005).

A-6 Sheet Z-6 of the site plan prepared by Dewberry-Goodkind, Inc. (November 9, 2005).

- A-7 Propagation map without coverage shown.
- A-8 Propagation map with coverage shown.
- A-9 Terrain map of area.
- A-10 Environmental Impact Statement prepared by David Karlebach, P.P., dated December 2005.

David Karlebach, P.P., was called and sworn. He gave his credentials and the Board accepted him as an expert witness in Planning. Mr. Karlebach discussed Exhibits A-1, A-2 and A-3, explaining that they show the minimal visual impact that will result from the addition of this wireless telecommunications facility.

Daniel Collins was called and sworn. He gave his credentials and the Board accepted him as an expert witness in radio frequency emissions standards. Mr. Collins explained the FCC standards for safe, acceptable continuous human exposure to radio frequency fields. He further explained how this proposed project meets or exceeds those standards. Mr. Collins submitted into evidence Exhibit A-4.

Russell Warnet, AIA, was called and sworn. He gave his credentials and the Board accepted him as an expert witness in architecture. Mr. Warnet discussed Exhibit A-5 and Exhibit A-6. Mr. Warnet explained in detail the site planning issues, including how the antennas will be mounted to the roof, how the utilities will be hooked up to the antennas and equipment cabinets. In response to issues raised in the Township Planners' report, Mr. Warnet showed to the Board the opaque material that will enclose the antennas. He also stated that the warning/emergency sign is to be placed on the rooftop and so will be visible from the roof only. It is 1 foot wide and 9 inches high. Mr. Spirko asked why the antennas are proposed for the rooftop, as opposed to close to the wall. Mr. Warnet stated that that idea was studied, but it was determined that the rooftop placement was the most innocuous, rather than having it project from the side of the building. He indicated that there will be no emergency power source.

Gagan Bhandari was called and sworn. He gave his credentials and the Board accepted him as an expert witness in radio frequency engineering. Mr. Bhandari explained that Omnipoint Communications is also known as T-Mobile. Mr. Bhandari discussed Exhibits A-7 and A-8, explaining that they show the existing coverage in the area and the coverage that will exist if this site is installed. Mr. Bhandari stated that the FCC license requires T-Mobile to provide reliable coverage in the area covered by the license. Mr. Learn clarified by stating that when there is a gap in coverage the licensee makes the best efforts to cover that gap for seamless, reliable coverage. In response to questions from Mr. Learn, Mr. Bhandari discussed how this proposal relates to the enhanced 911, or E-911 mandate of the federal government. The gap being covered by this proposal enables T-Mobile to comply with E-911.

The Board noted that even with the addition of these proposed antennas, there remains another large gap in the vicinity of this facility. The Board questioned how the company will be able to comply with the FCC mandate for coverage. Mr. Jurkovic asked what height tower will cover that gap. Mr. Bhandari discussed Exhibit A-9, a terrain map, showing that the terrain would probably preclude covering that gap. Ms. Erik suggested that collocation on the existing tower on Blakely Lane could serve T-Mobile's needs. Mr. Jurkovic concurred, suggesting the Blakely Lane tower site should have been evaluated.

Mr. Learn offered to return to the Board with more information.

The Board called Mr. Sorci, who was sworn. He gave his credentials and Mr. Learn had no problems with accepting him as an expert in radio frequency engineering. Mr. Sorci opined that there is a need for this site to fill the gap they discussed. He stated the site is well suited to accomplish closing that gap. He acknowledged that another site will be necessary to fill the rest of the gap to the north. His opinion at this time is that the Blakely Lane site alone will not suffice to cover the entire gap on Route 23. He explained that more goes into the equation than pure height.

A question arose regarding the FCC mandate for coverage. It is open to interpretation. It is his opinion that this company has already met its requirement for “seamless, reliable” coverage. Mr. Sorci stated that 911 calls work across carriers.

David Karlebach, P.P., was re-called and understood he was previously sworn. He stated he did an analysis of the site and how it relates to the ordinance and master plan documents. He indicated he had prepared an Environmental and Community Impact Statement, which was re-submitted as Exhibit A-10. He stated that the proposal fits squarely with the intent and purpose of the zoning ordinance. He stated that, while the ordinance permits the use, it does not contemplate it within the proposed design in the R-4 zone. He stated, however, that the design fits with the existing built environment, which happens, in this case, not to be in the R-4 zone. If this site were in a commercial zone, it would meet the ordinance criteria.

He discussed the four-part balancing test set forth in the *Sica* case. He also stated that, in the *Smart SMR of New York, Inc. v. Borough of Fair Lawn Board of Adjustment* case, the Supreme Court found that the mere issuance of an FCC license should suffice for a carrier to establish that a general welfare purpose is served. Further, the Court drew a distinction between rawland sites and sites for which a new tower is not necessary.

Step 1. Determine the public interest at stake. This step is satisfied because the carrier holds the FCC license. It must be shown that the site is particularly suited for the use. He opined that it is because:

- a. Mr. Bhandari has shown that there is inadequate signal strength in the area;
- b. the site is centrally located in an area of deficient service;
- c. there is an existing structure on which the applicant can mount the antennas;
- d. there is no new structure required, which would have a far greater community impact;
- e. although it is a residential zone, the site is already developed with a non-residential use and it is extremely unlikely that it will ever be developed with anything but a non-residential because it is in the median of a State highway;
- f. because it located along Route 23, it will serve the traveling public;
- g. because it is a previously developed site, it eliminates site planning issues that the Board would normally have to deal with;

Step 2. Identify detrimental effects that would ensue from the granting of this variance.

- a. no increase population;
- b. no demand on municipal services;
- c. no traffic impact;
- d. it is a passive land use;
- e. no noise, vibrations, noise, glare, odors, dust or other objectionable influences.

He stated that the only impact from a facility like this would be if there is an adverse visual impact onto the surrounding area. He opined that his prior testimony with respect to Exhibits A-1, A-2 and A-3 adequately addressed that issue. The nearest residential site is approximately 680 feet away in Jefferson Township.

Step 3. The Board may impose reasonable conditions to mitigate any impact. He believes the applicant has already addressed that by proposing the enclosure to conceal the antennas.

Step 4. The Board is to determine, on balance, whether the positive attributes of the application outweigh the negative. He stated the scales tip heavily in favor of the positive benefits that are conferred because there are no negative impacts. The public benefits are safe, secure, on-demand communications; enhanced 911 emergency communications; increased work productivity and efficiency; and other benefits.

There is no substantial detriment to the zone plan and zoning ordinance. The project fits with the intent of the ordinance.

Mr. Jurkovic asked if it would be prudent, if this is such an ideal site, to enable collocation.

Mr. Warnet was re-called and stated that he believes another carrier could collocate but the facility might have to be enlarged or raised.

Mr. Brady opened the matter to the public. No one wished to be heard.

Motion by Ms. Erik to close the public portion.

Second by Mr. Giannini.

On voice vote, all were in favor.

Motion carried.

Mr. Learn indicated he would rely on the record.

Ms. Erik stated she believes the applicant has proved that coverage is necessary. However, a gap still exists. She believes that there is no way that the existing tower on Blakely Lane can be used for tonight's application.

Mr. Jurkovic stated he took exception to the lack of testimony regarding alternate sites. He wanted to make a point to the applicant that, when it comes to the Board with these applications, it has an obligation to consider alternate sites. He also stressed the importance of relying on expert testimony on which to draw conclusions.

Motion by Mr. Giannini to approve the use variance and preliminary and final site plan with bulk variance for these reasons: no new tower necessary, the facility is along Route 23 so it serves the residents of West Milford and the traveling public, it will occupy an existing building that is already a non-residential use, it will be concealed so it is not visible to the public, it is a passive use and it will not have an impact on the landscape.

Second by Mr. Hannan. Mr. Hannan added that the applicant has shown that there are positives to the community in terms of coverage, there will be no detriment in terms of employees using the site, no noise, no other problems, the radio frequency emissions fall well under the maximum permitted, there is no detriment to the community from traffic or other municipal services being used.

Roll call vote:

Yes: Ada Erik, Joseph Giannini, Daniel Jurkovic, Ed Spirko, Francis Hannan, Robert Brady.

No: None.

Motion carried.

9:12 p.m. to 9:36 p.m. Break.

Case called at 9:37 p.m.

Omnipoint Communications, Inc.

Complete 01-03-06

Use Variance #0540-0706

Deadline 05-03-06

Preliminary & Final Site Plan #0520-0214

Block 12501; Lot 26

666 Macopin Road; R-3 Zone

Request for use variance relief from the MLUL C.40:55D-70d and,

Requests for preliminary and final site plan relief to enable collocation of a wireless telecommunications facility.

The applicant was represented by Constantine Stamos, Esq., from the firm Price, Meese, Shulman & D'Arminio.

Sworn witnesses:

David Karlebach, P.P., 38 East Ridgewood Ave., #396, Ridgewood, NJ

Daniel J. Collins, 14 Ridgedale Ave., Cedar Knolls, NJ

Russell Warnet, AIA, 600 Parsippany Rd., Parsippany, NJ
Gagan Bhandari, radio frequency engineer, 4 Sylvan Way, Parsippany, NJ

List of exhibits presented:

- A-1 Sheet Z-3 of the site plan, October 10, 2005.
- A-2 Pinnacle Telecom Group report dated June 14, 2005.
- A-3 A map of existing coverage from on-air sites in the area.
- A-4 A map of what coverage will be if the antennas are placed at 103 feet.
- A-5 A map of what coverage will be if the antennas are placed at 85 feet.

Mr. Glatt asked to talk to Mr. Stamos off the record. Upon their return, Mr. Glatt advised Mr. Stamos on the record that Mr. Giannini had, several years ago, once been represented by Mr. Stamos' firm, not related to any zoning matter. Mr. Giannini indicated he could fairly decide this case on its merits, citing no conflict of interest. Mr. Stamos indicated he had no objection to Mr. Giannini hearing and voting on the case.

Mr. Stamos indicated that he has spoken with the Board's radio frequency engineer, Mr. Sorci. He stated that Mr. Sorci believes Omnipoint Communications, Inc. can locate its antennas within the separation between Sprint's antennas, which are at 94 feet to the center line and Verizon's antennas, which are at 78 feet to the center line. He indicated Omnipoint would be willing to eliminate the extension and locate the antennas within that space in order to avoid extension of the tower.

Discussion ensued regarding jurisdiction based on that change, and Mr. Stamos determined that he would proceed with the application as it was filed.

Russell Warnet, AIA, was called and Mr. Glatt stated that he was previously sworn. Mr. Warnet described the existing conditions at the proposed site. Mr. Warnet referenced Exhibit A-1. He verified that the as-built height of the subject tower is 96 feet and that revised plans would be submitted to reflect that. Sprint is proposing to place its antennas at 94 feet (to the centerline of the antennas). The extension would still allow for Omnipoint to locate at 102 feet to the centerline. Camouflaging would also be extended.

He then indicated that the cabinets and underground utilities would be located within the existing compound. The generator will be for emergency use only and it will not be stored on-site. The Environmental Commission's suggestion for the emergency generator's pad to be gravel is acceptable.

He stated the tower underwent a structural analysis and it was found that it can support the extension. The project will not emit any noise, smoke, odor, glare or dust. The noise that will be produced by the generator would meet the noise requirements of the State of New Jersey.

In response to questioning from the Board, Mr. Warnet indicated that the height of the pole would be 103 feet.

The generator will not be placed on the inside of the compound because there is not space for it.

In response to questioning from the Board's radio frequency expert, Mr. Sorci, Mr. Warnet indicated that other carriers might have their own generators. Mr. Sorci commented that the noise could, therefore, be greater than anticipated by him in his studies for the single generator to be used by Omnipoint.

Mr. Sorci asked what the total height of the structure, including the camouflage, will be. Mr. Warnet answered that the branches on the extension of the pole would extend slightly past the top of the pole – they would be up at about 105 feet or 106 feet.

Mr. Warnet indicated he would correct the EIS to reflect that the generator will be outside the compound and that the driveway is gravel. He further indicated that the changes in the report do not change his opinion set forth in the EIS.

Mr. Warnet indicated that the emergency sign is shown on sheet Z-3 of the site plan.

Mr. Daniel Collins was called. Mr. Glatt indicated that he was previously sworn. Mr. Collins submitted to the Board Exhibit A-2 and explained the FCC standards for exposure limits. He further explained how this proposed project meets or exceeds those standards.

Mr. Gagan Bhandari was called. Mr. Glatt indicated that he was previously sworn. Mr. Bhandari stated that Omnipoint/T-Mobile is licensed by the FCC to provide wireless service and Omnipoint has sites around West Milford that create existing coverage. He further stated that there is a gap in coverage in the area adjacent to the proposed location. Mr. Bhandari submitted Exhibit A-3 (the map of existing coverage from on-air sites in the area) and Exhibit A-4 (the map of what coverage will be if the antenna is placed at 103 feet). He explained how reliable coverage would be gained if this site were to come on air (shown on Exhibit A-4). He indicated that providing coverage is dependent on the height of the structure.

In response to questioning from the Board, Mr. Bhandari submitted Exhibit A-5, which shows what coverage will be if the antennas are placed at 85 feet, and explained the coverage difference. Mr. Jurkovic suggested that the exhibits be placed on plastic overlays so that it would be much easier for to see the distinction on the coverage areas.

Mr. Jurkovic questioned if the reduction in coverage at the lower height would substantially impact the ability to provide coverage to the targeted area, especially given that the area is virtually uninhabited and untravelled. Mr. Jurkovic questioned if Omnipoint has a build-out plan because he questioned if a future facility might provide coverage to the gap that might exist if the antennas were placed at 85 feet.

In response to questioning from Mr. Jurkovic, Mr. Bhandari indicated that, if Sprint were to present a propagation model off of this tower at the same height, the coverage area would be almost the same.

In response, Mr. Jurkovic suggested that there are other existing towers where Omnipoint, if they do not collocate on those towers, needs to consider at least doing so and exploring whether it is appropriate or not. He opined that Mr. Sorci's recommendation about the height should be followed.

A discussion ensued about the applicant presenting a build-out plan.

Mr. Stamos indicated he had one more witness, that being his planner. Mr. Glatt advised he would not get reached tonight. He stated that Mr. Spirko would not be at the next meeting that this application could be heard. He stated that Mr. McQuaid would, however. Mr. Stamos asked that Mr. McQuaid read the transcript. Mr. Glatt asked that Mr. Stamos bring back all of his witnesses. Mr. Glatt noted that, when he inquired earlier if there were anyone interested in this matter, a woman raised her hand. He stated he did not know if she is in favor or against, but that same person just got up and walked out.

Mr. Brady announced that the application is being carried to the April 25, 2006 meeting and that no further notice or advertising is necessary. [*See next page.*]

Case ended at 10:47 p.m.

4. Minutes

Motion by Ms. Erik to approve the minutes of the June 28, 2005 closed session portion of the meeting.

Second by Mr. Giannini.

On voice vote, all were in favor.

Motion carried.

Mr. Brady indicated that Mr. Hannan was not present at the subject meeting and so did not vote on the approval of the minutes.

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Motion by Ms. Erik to approve the minutes of the July 12, 2005 closed session portion of the meeting.

Second by Mr. Jurkovic.

On voice vote, all were in favor.

Motion carried.

Mr. Brady indicated that Mr. Hannan was not present at the subject meeting and so did not vote on the approval of the minutes.

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Motion by Ms. Erik to approve the minutes of the December 20, 2005 closed session portion of the meeting.

Second by Mr. Jurkovic.

On voice vote, all were in favor.

Motion carried.

Mr. Brady indicated that Mr. Hannan was not present at the subject meeting and so did not vote on the approval of the minutes.

5. Miscellaneous Items

Mrs. Lutz conveyed a message from the Historic Preservation Commission's Secretary. The Historic Preservation Commission (HPC) received a grant that enabled it to hire a Historic Preservation expert to provide input and learning for the Township Council and Subcommittees of the Council on the benefits of Historic Preservation. Accordingly, the HPC is holding a training session on Saturday, May 13, 2006 at 9:00 a.m. to which the Zoning Board of Adjustment is invited.

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At this point, the member of the public who had indicated that she was interested in the **Omnipoint/Apshawa Firehouse** application came back to the main meeting room. Mr. Glatt advised her that while she was gone, there was no additional testimony taken, and that the application was carried to next Tuesday evening (April 25, 2006). She apologized for the interruption.

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Mr. Hannan asked the Planner if she had an update on the mandatory training issue. She stated the rules have not been enacted. Once the rules are enacted, the time periods start and the State must develop approved programs from which to certify the trainers.

6. Adjournment

10:52 p.m.

Motion by Ms. Erik to adjourn.

Second by [inaudible].

On voice vote, all were in favor.

Motion carried.

Respectfully submitted,

Linda M. Lutz, P.P.
Zoning Board of Adjustment Secretary