

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

**May 23, 2006
Regular Meeting**

7:44 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, Daniel Jurkovic, Gian Severini, Ed Spirko, Francis Hannan and Robert Brady.
Jeanne McManus, Esq., substituting for Stephen Glatt, Board Attorney, who is sick; Richard McFadden, Township Engineer; Linda Lutz, Board Planner and Secretary.

Absent: Arthur McQuaid and William Lynch.

Resigned: Joseph Giannini (not present)

Mr. Brady, Board Chairman, asked Mr. Hannan to sit for an absent member. He further indicated that there is a six member Board for this evening. He then gave an overview of Board procedures.

Mr. Brady read Mr. Giannini's letter of resignation.

3. Postponements

Kristen Goldberg	Complete	01-12-06
Bulk Variance #0530-0705	Deadline	06-30-06
Block 7506; Lot 1		
10 Compass Avenue; LR Zone		

Ms. Goldberg explained that there are only four eligible voting members who are present this evening. Therefore, she is asking for a carry to June 27, 2006. She extended to the Board a 30-day extension, making the deadline in which to hear the application July 30, 2006.

Motion by Ms. Erik to carry the application to June 27, 2006.

Second by Mr. Spirko.

On voice vote, all were in favor.

Motion carried.

Mr. Brady announced that no further notice or advertising is necessary.

Marten Richardsen	Complete	04-26-06
Variance #0630-0735	Deadline	08-24-06
Block 1604; Lot 1.02 (West Milford)		
Block 61; Lot 19 (Vernon)		
Lebanon Road; LR Zone		

Ms. McManus explained that a name on the certified list of names did not have a white post office receipt associated with it. Mr. Richardsen. Mr. Richardsen stated he would look through his paperwork and re-approach the Board with his findings. [See page 8.]

4. Memorializations

Resolution 11-2006

Omnipoint Communications, Inc.

Use Variance #0540-0726
Preliminary & Final Site Plan #0520-0224
Bulk Variance #0530-0727
Block 14102; Lot 1
Center Island, Route 23; R-4 Zone

Mrs. Lutz advised that the Board Attorney had not prepared the resolution. Carry to the next meeting.

Resolution 12-2006

Sprint Spectrum, L. P.
Block 1701; Lot 59
Use Variance 0640-0730
Preliminary and Final Site Plan #0620-0226AB
776 Warwick Turnpike; LR Zone
Ross Sorci hired to provide radio frequency expertise.

Motion by Ms. Erik to memorialize the resolution.

Second by Mr. Hannan.

Roll call vote:

Yes: Ada Erik, Francis Hannan and Robert Brady.

No: none

Motion carried.

Resolution 13-2006

Vincent Lanza

Bulk Variance #0430-0673
Block 2708; Lots 1, 5 & 6
27 Flanders Road; LR Zone

Mrs. Lutz advised that the Board Attorney had not prepared the resolution. Carry to the next meeting.

Resolution 14-2006

Vincent Lanza

De Minimis Exception
Block 2708; Lots 1, 5 & 6
27 Flanders Road; LR Zone

Mrs. Lutz advised that the Board Attorney had not prepared the resolution. Carry to the next meeting.

Resolution 15-2006

Joseph Hajbura

Bulk Variance #0530-0728
Block 1207; Lot 14
Carmel Road; R-2 Zone

Mrs. Lutz advised that the Board Attorney had not prepared the resolution. Carry to the next meeting.

Resolution 16-2006

Joseph Hajbura

De Minimis Exception

Block 1207; Lot 14

Carmel Road; R-2 Zone

Mrs. Lutz advised that the Board Attorney had not prepared the resolution. Carry to the next meeting.

5. Applications

Case called at 7:58 p.m.

Omnipoint Communications, Inc. Complete 01-03-06

Use Variance #0540-0706 Deadline 05-23-06

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.

Testimony was taken at the April 17, 2006 public hearing. Seven (7) members who were present to hear testimony or who have read the transcript are Ada Erik, Joseph Giannini, Daniel Jurkovic, Arthur McQuaid, Ed Spirko, Francis Hannan and Robert Brady. Mrs. Lutz advised that with Mr. Giannini resigning and Mr. McQuaid being absent, there are five eligible voting members this evening.

The applicant was represented by Constantine Stamos, Esq. Mr. Stamos summarized the testimony presented on April 17 and continued.

Sworn witnesses on behalf of the applicant:

David Karlebach, P.P.

Christopher Nevill, P.E.

Gagan Bhandari, radio frequency engineer

Dave Collins, emissions expert, Pinnacle Telecom Group

Sworn witness on behalf of the Board:

Ross Sorci, radio frequency engineer

List of exhibits presented:

A-6 two photos taken June 7, 2005, mounted on a board, showing the existing view from 663 Macopin Road, looking northeast, and the prospective view with the extension.

A-7 two different photos taken June 7, 2005, mounted on a board, showing the existing view from 699 Macopin Road, looking southeast, and the prospective view with the extension.

A-8 two different photos taken June 7, 2005, mounted on a board, showing the existing view from 665 Macopin Road, looking east, and the prospective view with the extension.

A-9 Pinnacle Telecom Group's report revised May 23, 2006.

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 the side yard setback variance, stating it is a minor deviation from the standard. He then provided his use variance analysis, discussing the existing, surrounding land uses, the benefit to having collocation. 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. He discussed the four-part balancing test set forth in the *Sica* case.

Step 1. Determine the public interest at stake.

This step is satisfied because the carrier holds the FCC license. It also must be shown that the site is particularly suited for the use. He opined that it is because:

- a. the site is centrally located in the applicant's coverage gap area;
- b. although the site is in a residential zone, the ordinance encourages this type of treepole in this type of setting;
- c. the application will not change the number of towers in the community;
- d. 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 discussed the potential visual impacts. He presented Exhibits A-6 through A-8. He concluded that the additional height proposed does not significantly change the appearance of the treepole from surrounding areas. Further, it is preferable to constructing a new pole, which would have a greater impact.

Step 3. The Board may impose reasonable conditions to mitigate any impact.

He believes the applicant has already addressed that by proposing to continue the tree camouflage.

Step 4. The Board is to determine, on balance, whether the positive attributes of the application outweigh the negative.

He does not believe there are any negative impacts. However, if there is a visual impact, he would consider it to be very minimal. He cited the benefits:

- a. public access to the information super highway;
- b. safe, secure and on-demand communications;
- c. enhanced public safety through improved wireless communications;
- d. enhanced work productivity and efficiency.

Based on this analysis, he suggested that the benefits far outweigh any detriments. He concluded that the variance can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

In response to questions from Mr. Stamos, Mr. Karlebach stated that if the antennas were placed on the existing pole, with no expansion of the pole, then Omnipoint's antennas would be imperceptible.

A discussion arose regarding maintenance of the tower. Mr. Spirko noted that the branches were falling off. Mr. Stamos indicated that the tower is owned by Sprint Spectrum.

In response to questioning from the Board, Mr. Stamos succinctly stated the tower's measurements. Mr. Hannan specifically asked for the actual height of the tower is; what the proposed height is; and the proposed height of the antennas. Mr. Stamos stated that the height of the tower is 96 feet. The proposed height is 102.5 feet.

Christopher Nevill, P.E., was called and sworn. He gave his credentials and the Board accepted him as an expert witness in engineering. He stated that the measurement to the top of the antennas would be 105 above grade level. The camouflage would be sufficient to cover the antennas. He reiterated Mr. Warnet's testimony that the existing height of the tower is 96 feet and someone else added that that measurement is to the top of the pole. Then Mr. Nevill stated that the height of the pole is 94 feet but the 96-foot measurement is to the top of the antennas.

Mr. Stamos stated he would comply with Mr. McFadden's report.

Ms. Erik asked for the overlay exhibit that was discussed last month. She anticipated seeing an overlay that showed the coverage difference between the antennas being placed at 86 feet vs. 105 feet. The applicant did not recall the request.

Mr. Stamos re-called Mr. Bhandari. Previously sworn, accepted and under oath, he discussed the coverage that would be achieved at 86 feet vs. the proposed height.

Mrs. Lutz asked if the applicant had prepared the tree growth analysis, as recommended in the Planning Department's report. Mr. Karlebach stated he had not, because it cannot be done.

Mr. Brady asked about maintenance of the site and asked if there would be a cooperative effort among the pole owner and the other carriers. Mr. Stamos responded that he would apprise Sprint; that, technically, it is an enforcement issue. If approved, the installation of Omnipoint will have the sufficient branches and camouflaging in place.

The Board called Mr. Sorci, who was sworn. He gave his credentials and Mr. Stamos had no problems with accepting him as an expert in radio frequency engineering. Mr. Sorci stated he agrees that the applicant has a need for a new facility. A gap will still exist. He reiterated that he had asked for a comparative study at 85 to 86 feet. He opined that there is no significant difference in the coverage gap between the antenna heights of 102 feet and 85 to 86 feet. Therefore, he sees no reason to increase the height of the structure to provide for Omnipoint's service. A centerline antenna height of 86 feet reasonably accommodates the applicant's needs. If Omnipoint could agree to that, it would be a reasonable compromise.

Mr. Stamos asked Mr. Sorci if he had read the revised radio frequency compliance report that had been prepared by Pinnacle Telecom Group. Mr. Sorci stated he had and that he agreed with the findings.

Dave Collins was called and sworn. He gave his credentials and the Board accepted him as an expert witness in radio frequency emissions. Mr. Collins discussed the difference in the radio frequency levels between 86 and 102 feet and stated that the project remains in compliance. He further stated that the levels are reduced as a result of the antennas being placed at 86 feet. He submitted the revised report as Exhibit A-9. Mr. Sorci stated he had no disagreement with Mr. Collins' testimony.

The matter was open to the public, at which time the Board heard from one person.

Jennifer Fleming, 640 Macopin Road, West Milford, was sworn. She raised issues regarding the visual impact of the existing pole. She voiced opposition to the plan owing to health issues (radio frequency emissions), the aesthetic impact from the expansion, structural integrity of the tower and her property values. Ms. Fleming presented radio frequency emissions documents that were presented to the [Planning] Board for the AT&T

application and questioned how the statistics present on behalf of that application and this current Omnipoint application could be so different.

Mr. Jurkovic apprised her that the FCC precludes Boards from denying an application based on radio frequency hazards.

Mr. Sorci was called to address some of Ms. Fleming's concerns.

No one else wished to be heard.

Motion by Ms. Erik to close the public portion.

Second by Mr. Hannan.

On voice vote, all were in favor.

Motion carried.

In summation, Mr. Stamos stated that Mr. Sorci agrees with Mr. Bhandari's opinion that there is a gap in coverage. This site, at either of the heights discussed, would fill in a gap in coverage. Omnipoint has agreed to provide a signed, sealed structural analysis. The compliance expert provided testimony that the proposal is well below the FCC emissions limits. The planner discussed the minimal visual impact. Omnipoint would agree to a condition that camouflage be added and that Omnipoint will instruct Sprint to perform maintenance on the site.

Mr. Hannan stated that the difference in coverage between the two study heights does not warrant extension of the pole. He believed the antennas should be placed 86 feet.

Mr. Jurkovic re-iterated the concerns regarding maintenance. Camouflage branches falling off the treepole is cause for safety concerns and aesthetic concerns.

Mr. Brady asked the Zoning Officer, who happened to be in the room, to take the necessary enforcement steps with the pole owner.

Mr. Jurkovic further stated that his concern extends to testimony provided by applicants. He stated he hears testimony that towers can withstand wind gusts of up to 80 miles per hour. However, the parts that are attached to it cannot. It is a question of credibility of testimony provided.

Mr. Jurkovic asked the Chairman if this Board could send to the Planning Board a letter advising it of the Zoning Board of Adjustment's observations – that the testimony as to the wind gusts strength of the towers may not necessarily include the camouflage components of the towers and that both Boards need to start questioning the strength of the camouflage as well as the tower itself. Mr. Brady indicated the Board Planner/Secretary could compose such a letter and added that the Zoning Board of Adjustment and surrounding neighbors would appreciate if the Planning Board, since the pole originated with it, were to see ask for enforcement of site maintenance.

Motion by Mr. Jurkovic to approve the use variance for the expansion of a pre-existing, non-conforming use for the wireless telecommunications facility, with the antennas being at a height of 86 feet (no extension of the treepole) based on the testimony provided by the applicant: it needs coverage in the area; and based on the testimony provided by the applicant's and the Board's radio frequency experts: that the applicant can adequately cover the area at 86 feet.

Second by Ms. Erik.

Roll call vote:

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

No: none

Motion carried.

Motion by Mr. Jurkovic to approve preliminary and final site plan to enable the collocation of the wireless telecommunications facility for the reasons stated for the use variance conditioned the centerline of the antennas being located at a height of 86 feet and the request of the Township engineer that a structural analysis will be provided.

Second by Ms. Erik.

Roll call vote:

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

No: none

Motion carried.

Case ended at 9:26 p.m.

9:26 p.m.

Discussion on the issue of maintenance of the previous applicant's site continued.

Motion by Mr. Spriko to have Mrs. Lutz write a letter to the Planning Board addressing our concern that the camouflage is falling off the tower and in addition to having them review what maintenance is involved, it would be important to for them to review what is required on the maintenance part of that agreement.

Second by Ms. Erik.

Mr. Hannan asked, Who enforces? Mrs. Lutz stated that the Zoning Officer has the responsibility of enforcing a Board's conditions of approval. Accordingly, Mr. Hannan asked if the recommendation could include sending a letter to Sprint that there is a maintenance issue. Mr. Brady clarified that the motion was to go to the entity that approved the cell tower because it might be out of our jurisdiction, or at least an affront to the Planning Board, if we were to send out requests for enforcement. Mrs. Lutz added the mechanism is in place now because the responsibility rests with the Zoning Officer. All this Board is really doing is asking that the Zoning Officer see to this complaint. She stated that the Planning Board is not really involved – it is an around way back to the Zoning Officer. Mr. Brady stated the intent is a courtesy to the Planning Board – to make it aware of the issue and give the approving body the ability to call for enforcement.

On voice vote, all were in favor.

Motion carried.

9:32 p.m.

9:32 p.m. to 9:56 p.m. Break.

Case called at 9:57

Vincent Lanza

Complete 12-08-05

De Minimis Exception

Deadline 07-06-06

Bulk Variance #0530-0717

Block 206; Lot 14.02

Lookover Drive; LR Zone

Request for *de minimis* exception from the Residential Site Improvement Standards N.J.A.C. 5:21-3.1 and,

Request for bulk variance relief for lot area, lot frontage, lot depth, front yard setback, rear yard setback and relief from the MLUL C.40:55D-35 requirement that no permit for the erection of any building or structure shall be issued unless the lot abuts a public street giving access to such proposed building or structure, to enable the construction of a new home.

Testimony was taken at the April 25, 2006 public hearing. Four (4) members who were present to hear testimony were Ada Erik, Arthur McQuaid, Francis Hannan and Robert Brady.

Mrs. Lutz indicated that after the last hearing of April 25, 2006, Mr. Lanza came to realize that, despite his requesting a Certified Notification List for the correct block and lot, the Tax Assessor's office generated an incorrect list (using the incorrect lot number). She noted for the Board that Mr. Lanza had taken it upon himself to notice using the corrected list. Mrs. Lutz indicated that she called Mr. Glatt to apprise him of the situation and he ruled that Mr. Lanza would have to start over with his testimony. Mr. Lanza argued that he did not understand Mr. Glatt to have ruled in that way. Ms. McManus stated she confirmed that with Mr. Glatt today. Ms. McManus explained the legal reason for the ruling. Mr. Lanza offered his legal interpretation of the Municipal Land Use Law in response. Mr. Lanza asked if there was anyone in the audience who was interested in his application, which there were. Accordingly, he requested a carry to provide him time to have his engineer present.

Ms. McManus asked about the easement along lot 14.01 that benefits lot 14.02. She asked him to submit the documents referred to in the title insurance letter (which he had previously submitted) that created the easement in the first place.

Applicant gave to the Board an additional 30 days in which to hear the application, making the Board's deadline August 5, 2006.

Motion by Ms. Erik to carry the application to the June 27, 2006 meeting.

Second by Mr. Spirko.

On voice vote, all were in favor.

Motion carried.

Case ended at 10:04 p.m.

Case called at 10:04 p.m.

Sprint Spectrum, L. P. Complete 04-06-06

Use Variance #0640-0730 Deadline 08-04-06

Preliminary & Final Site Plan #0620-0226AB

Block 1701; Lot 59

776 Warwick Turnpike; LR Zone

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

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

The applicant was represented by Gregory J. Czura, Esq.

10:04 p.m.

The Board asked Mr. Czura to pause a moment to allow **Mr. Richardsen** to approach the Board. Ms. McManus noted that there are two clerical errors on the tax list and that, clearly, one of the tax list names did not have the white receipt proving notice had been sent. Ms. McManus recommended that only that name had to be noticed.

Motion by Ms. Erik to carry the application to the June 27, 2006 meeting with no further advertising being necessary, and no further notice being necessary other than to the name that was missed.

Second by Mr. Jurkovic.

On voice vote, all were in favor.

Motion carried.

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10:08 p.m.

Mr. Czura continued with his introductory remarks. He indicated that the presentation will include testimony from Dave Collins, radio frequency emissions expert; Rhoan Gordon, radio frequency expert; Saseen, site engineer; and David Karlebach, P.P.

Sworn witnesses:

Dave Collins, radio frequency emissions expert
Rhoan Gordon, radio frequency expert

List of exhibits presented:

- A-1 "Actix" measurement map of Upper Greenwood Lake area, showing the gap from an empirical data point of view, entitled Sprint Wireless Network Current Coverage
 - A-2 map showing coverage (antennas at 90 feet high), entitled Sprint Wireless Network
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10:26 p.m.

Mr. Brady called the following applicants, advising them that they would not be reached this evening and so are carried to the June 27, 2006 meeting. He stated that no further notice or advertising is necessary.

Siobhan and Donald Partington

Appeal #0680-0736

Block 11103; Lot 5.02

Snake Den Road; R-4 Zone

Nancy and Roy Ruys

Bulk Variance #0630-0738

Block 6503; Lot 1

19 Coolidge Terr.; R-1 Zone

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10:27 p.m.

Dave Collins was called and sworn. He gave his credentials and the Board accepted him as an expert witness in radio frequency emissions. 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.

In response to questioning from the Board, Mr. Collins stated that the different types of antennas are a function of each carrier having different requirements for their own network.

Rhoan Gordon was called and sworn. He gave his credentials and the Board accepted him as an expert witness in radio frequency engineering. He stated that Sprint Spectrum, L. P. has a license issued by the FCC. He indicated that his charge from Sprint was to fix a gap in the coverage to serve a center of population. He indicated that the service that exists is unreliable in general and does not provide E-911 requirements. He stated that a crew performed a drive test to gather empirical data that show what the coverage would be from the 90-foot-high level, the existing "real estate" available on the pole. Finding that the 90-foot-high level was inadequate, his crew ran the drive test from the 130-foot-high level, which provided the needed coverage.

Mr. Gordon discussed Exhibit A-1. The map shows the Upper Greenwood Lake area and the collected data are plotted on the map, showing the gap. He discussed in detail the color representations.

He then submitted Exhibit A-2. Mr. Gordon explained it shows the current network. He stated it further shows gaps in coverage for the Sprint network from 90 feet.

Owing to the lateness of the hour, Mr. Czura ended his presentation for the evening. Mr. Brady announced that the application would be carried to the June 27, 2006 meeting and no further notice or advertising is necessary.

Case ended at 10:59 p.m.

6. Minutes

Motion by Ms. Erik to approve the minutes of the April 17, 2006 special meeting.

Second by Mr. Spirko

On voice vote, all were in favor, except that Mr. Brady indicated Mr. Severini was not present at the subject meeting and so did not vote on the approval of the minutes.

On voice vote, all were in favor.

Motion carried.

Motion by Ms. Erik to approve the minutes of the April 25, 2006 meeting.

Second by Mr. Hannan.

Mr. Brady indicated that Mr. Spirko, Mr. Severini and Mr. Jurkovic were not present at the subject meeting and so did not vote on the approval of the minutes.

On voice vote, all were in favor.

Motion carried.

7. Communications

Letter from Edward M. McDonough, Senior Real Estate Representative for Orange and Rockland Utilities, Inc., addressed to the Zoning Board Chair, dated May 8, 2006, requesting participation in Orange and Rockland's efforts to promote safe work environments with respect to construction workers' contact with overhead transmission and distribution facilities. [*Read and filed; no discussion*]

8. Miscellaneous Items

Mr. Hannan indicated that he went to the Historic Preservation Commission's workshop and stated it was excellent. He also found the training session afterwards to be useful.

9. Adjournment

11:01 p.m.

Motion by Mr. Hannan to adjourn.

Second by Mr. Jurkovic.

On voice vote, all were in favor.

Motion carried.

Respectfully submitted,

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