

**RESOLUTION OF THE ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF LONG HILL  
MORRIS COUNTY, NEW JERSEY**

**T-MOBILE NORTHEAST LLC  
LONG HILL ROAD  
GILLETTE, NEW JERSEY 07933  
BLOCK 13908, LOT 15.01  
APPLICATION NO.: 2020-06Z**

**Hearing Date: January 19, 2021  
Board Action: January 19, 2021  
Memorialization: March 2, 2021**

WHEREAS, T-Mobile Northeast LLC (the “Applicant”) is the operator of an existing wireless telecommunications facility located on a Public Service Electric and Gas Company (“PSE&G”) electric transmission tower on property located on Long Hill Road in Gillette, identified as Block 13908, Lot 15.01 (the “Property”) on the Long Hill Township Tax Map, in the C, Conservation, zoning district; and

WHEREAS, PSE&G will be implementing a tower replacement project therefore the Applicant is required to decommission its facility and remove it from PSE&G’s transmission tower; and

WHEREAS, upon completion of PSE&G’s tower replacement project, the Applicant will place its facility on PSE&G’s new tower; and

WHEREAS, during the pendency of PSE&G’s tower replacement, the Applicant seeks to erect a temporary ballast tower that will hold the Applicant’s telecommunications facility until the Applicant is able to transfer its facility to PSE&G’s new transmission tower; and

WHEREAS, the Applicant has applied to the Long Hill Township Zoning Board of Adjustment (the “Board”) for relief to permit the Applicant to construct the temporary tower; and

WHEREAS, the Applicant requested the following relief from the Board (the “Relief Requested”):

Use variance in accordance with N.J.S.A. 40:55D-70d(1), as telecommunications towers are not permitted in the C, Conservation, zoning district;

Height variance in accordance with N.J.S.A. 40:55D-70d(6), as the 100’ proposed temporary tower exceeds the 35’ height limitation in the C, Conservation, zoning district; and

Bulk variance in accordance with N.J.S.A. 40:55D-70c, as follows:

Minimum side yard setback:  
Required: 25'; Proposed 5.4'; and

WHEREAS, the Applicant submitted the following plans and documents in support of the Application, which plans and documents were made a part of the record before the Board, as follows:

Application with checklists and addenda, dated July 28, 2021;  
Site Plan entitled, "Temporary Site NJCLT56 Preliminary and Final Site Plan Proposed Temporary Equipment and Tower at an Existing Transmission Tower" prepared by Maser Consulting P.A., dated June 4, 2020, consisting of six sheets;  
Existing Conditions Plan, prepared by Maser Consulting P.A., dated November 1, 2019, consisting of one sheet;  
Report entitled, "Evaluation of the Radiofrequency Environment in the Vicinity of the Proposed NJCLT56 A Wireless Facility", prepared by PierCon Solutions, LLC, dated July 13, 2020, consisting of eighteen pages;  
Report entitled, "Independent Radio Frequency Report Regarding a Proposed Wireless Facility for T-Mobile Northeast, LLC", prepared by PierCon Solutions, LLC, dated January 4, 2021, consisting of 13 pages;  
Six photographs entitled, "T-Mobile Photo Simulations";  
Structural Calculations Report, prepared by Vector Engineers, dated January 17, 2021, consisting of 47 pages; and

WHEREAS, the Applicant gave notice of the hearing and the Board found that the Applicant met all jurisdictional requirements enabling the Board to hear and act on the Application on the Hearing Date; and

WHEREAS, the Board considered the following reports from its experts:

Memorandum from Board Planner, Elizabeth Leheny, PP, AICP, dated January 12, 2021;

Memorandum from Board Engineering consultants, Casey & Keller, Inc., dated January 11, 2021; and

WHEREAS, during the public hearing on the Application on the Hearing Date, the Applicant, represented by attorney Edward Purcell, Esq. was given the opportunity to present testimony and legal argument, and members of the public were given an opportunity to comment on the Application; and

WHEREAS, members of the public appeared to ask questions about and to speak with regard to the Application, as more fully set forth on the record; and

WHEREAS, the Applicant presented testimony from the following individuals:

1. Alec Norris, PE, Applicant's Engineer;
2. Frances Boschulte, Applicant's Radio Frequency Engineer;

3. Timothy M. Kronk, PP, Applicant's Planner; and

WHEREAS, the Applicant introduced the Application and presented testimony to the Board as more fully set forth on the record, as follows:

1. Alec Norris presented his qualifications to the Board and was accepted as a licensed professional engineer. Mr. Norris indicated that he prepared the site plan that was submitted with the Application. Mr. Norris testified with regard to the submitted site plan and the existing conditions of the site. Mr. Norris stated that the existing PSE&G right of way extends between Long Hill Road and Hickory Tavern Road. Residential properties are located on both sides of the right of way. The existing PSE&G tower contains the telecommunications facilities of T-Mobile, AT&T and Morris County. Mr. Norris described the access drive to the location of the existing tower.

Mr. Norris explained that the proposed temporary tower will provide a place for the Applicant's facility while PSE&G replaces its transmission tower. Mr. Norris noted that the tower is numbered 12/4. Mr. Norris stated that there are no environmental concerns on the Property but there is a natural gas line near the location of the proposed tower. Mr. Norris testified that the Applicant will abide by required safety protocols and will work with the gas company to ensure that the proposed temporary tower does not affect the gas line.

Mr. Norris testified describing the proposed temporary tower. The temporary tower will be supported by ballast mount blocks on a steel frame. The ballast blocks will weigh approximately 100,000 pounds and will act as a foundation. The temporary tower will meet all applicable codes and standards including all safety standards. Mr. Norris testified that the temporary tower will be 100 feet tall and 9 antennas are proposed to be installed thereon. The top antenna will reach about 97'. Other cellular telecommunications providers will be able to collocate on T-Mobile's temporary tower. The temporary tower will be located at a higher elevation but will be shorter than the current transmission tower.

Mr. Norris testified describing the equipment and compound facilities. The compound will be 20' by 20' and the equipment will rest on that area. Technicians will visit the site every 4 to 6 weeks. Mr. Norris indicated that no ground disturbance will occur but later clarified that some minor ground disturbance will occur in order to level the ground for the ballast blocks. The tower will be located close to the side yard setback to allow PSE&G requisite space to conduct its tower replacement. No trees will be removed to accommodate the temporary tower. Mr. Norris testified that the temporary tower will be constructed before the PSE&G tower is removed in order to transition telecommunications equipment immediately. After the equipment is moved back to the new PSE&G tower, the temporary tower will be decommissioned and removed.

Mr. Norris agreed and stipulated on the record that the Applicant will comply with the Board Engineer's memorandum dated January 11, 2021. Mr. Norris agreed and stipulated on the record that the site plan will be amended to show that the temporary tower is less than 200' from a habitable structure rather than the 254' feet originally shown on the plan. Mr. Norris testified that distance between the temporary tower and habitable structures is not limited by any regulation. Mr. Norris agreed and stipulated on the record that the Applicant will install a 6 foot

fence around the perimeter of the temporary tower for security.

2. Frances Boschulte presented her qualifications to the Board and was accepted as a licensed professional radio frequency engineer. Ms. Boschulte testified discussing the process of determining coverage locations. Ms. Boschulte testified with regard to the reach of coverage of the telecommunications facility on the existing tower. Without the facility, customers will experience gaps in coverage. The temporary tower will fill any gaps in service that will exist upon the decommissioning of the telecommunications facility on the PSE&G tower and will provide better coverage due to the configuration of the tower. The decommissioning of the facility from the PSE&G tower has the potential to affect 4100 residents. Ms. Boschulte testified that there are no other areas where a tower could be located in order to provide the needed coverage.

With regard to the radio frequency environment report, Ms. Boschulte described the FCC and State standards. Ms. Boschulte testified that with T-Mobile operating at full power, the electromagnetic emissions are far below the limitations imposed by Federal and State regulations.

3. Timothy M. Kronk presented his qualifications to the Board and was accepted as a licensed professional planner. Mr. Kronk testified describing the C zoning district and stated that residential zones surround the C zone. Mr. Kronk described the relief that is required, as stated in the Relief Requested above. Mr. Kronk indicated that the telecommunications use was permitted by resolution of the Board in 1998. Mr. Kronk testified that the height variance is subsumed in the use variance.

With regard to the positive criteria, Mr. Kronk testified that the site is suitable based upon the radio frequency testimony regarding the substantial coverage that will be provided by the temporary tower. The Application promotes the general welfare as the Applicant is FCC licensed and telecommunications services are very important for the public at large. The negative criteria is based upon the visibility of the installation. The PSE&G transmission tower will be removed and there will be a net reduction in the visibility of towers during the duration of the temporary tower. On balance, the Board can grant the variances without any substantial impairment of the zone plan and the zoning ordinance.

With regard to the bulk variance, Mr. Kronk testified that the variance can be granted under the flexible c(2) standard because the proposed location is the only location made available by PSE&G for the temporary tower. Mr. Kronk testified that locating the tower in the proposed location advances the goals of the Municipal Land Use law by providing coverage and service to residents and the travelling public. The negative criteria is satisfied because there is no substantial detriment to the surrounding neighborhood or the zone plan or ordinance due to the location of the tower.

WHEREAS, the Board has made the following findings of fact and conclusions of law:

1. The Property is located in the PSE&G right of way and is designated as Lot 15.01 in Block 13908 in the C, Conservation, zoning district. The Property is currently improved with an existing PSE&G electric transmission tower. The Applicant is a telecommunications provider and Applicant's telecommunications facility is currently located on PSE&G's electric transmission tower.

PSE&G is implementing a tower replacement project and the Applicant will be required to remove its telecommunications facility during the replacement of PSE&G's tower.

2. The Applicant has applied to the Board for approval to construct a temporary tower upon which the Applicant will locate its telecommunications equipment and antennas in order to ensure that telecommunications service is not interrupted during the PSE&G tower replacement. Since the proposed temporary tower does not comply with the requirements of the zoning ordinance, the Applicant has requested relief from the Board in the form of a use variance in accordance with N.J.S.A. 40:55D-70d(1), a height variance in accordance with N.J.S.A. 40:55D-70d(6) and a bulk variance for exceeding the minimum required side yard setback in accordance with N.J.S.A. 40:55D-70c(2), as stated in the Relief Requested above.

3. All jurisdictional requirements of the Application were met and the Board proceeded to hear the Application and render its determination which is memorialized herein.

4. An applicant seeking a use variance has the burden of proving that it has satisfied the positive and negative statutory criteria in order to support an approval of such a variance. In order to satisfy the positive criteria of a d(1) use variance an applicant must prove and the Board must specifically find, in the telecommunications context, that the use would serve the general welfare because the site is particularly suitable for the proposed use. Smart SMR of New York, Inc. v. Fair Lawn Board of Adjustment, 152 NJ 309, 323 (1998). Although the Supreme Court has refrained from declaring towers and monopoles to be inherently beneficial uses, the Court recognized that they serve the general welfare "and thereby satisf[y] the positive criteria if the use is particularly suited for the proposed site." Id. at 332. With telecommunications towers, an FCC license generally establishes that the use promotes the general welfare. New Brunswick Cellular v. Borough of South Plainfield Board of Adjustment, 160 N.J. 1, 14 (1999). Carriers are also required to prove that, when balancing the proof on the positive and negative criteria, the grant of the variance would not cause substantial detriment to the public good. Smart at 332. Further, "[t]o satisfy the negative criteria, in addition to proving that the variance can be granted 'without substantial detriment to the public good,' an applicant must demonstrate through an 'enhanced quality of proof . . . that the variance sought is not inconsistent with the intent and purpose of the master plan and zoning ordinance.'" Id.

An applicant seeking a (d)(6) variance must also show that special reasons have been satisfied and that the variance can be granted without substantial detriment to the public good and without substantially impairing the intent and the purpose of the zone plan and zoning ordinance. An applicant may establish special reasons by establishing that the increase in height does not offend any purposes of the height restriction. In order to satisfy the negative criteria, an applicant must demonstrate that the height deviation does not cause substantial detriment to the public good and that the deviation can be reconciled with the municipality's determination that the height limitation be imposed on all uses in that zoning district.

5. With regard to the Applicant's request for use and height variances, the Board agrees that the height variance is subsumed within the Applicant's request for the use variance. The Board finds that the Applicant satisfies the general welfare requirement by establishing that it possesses an FCC license. With regard to site suitability, the Board finds that the Applicant's proposed temporary tower will be located in substantially the same area as the existing

transmission tower. The Board further finds, based upon the Applicant's radio frequency Engineer's testimony, that a tower at the proposed location is needed in order to maintain service and coverage. The Board finds that the public interest at stake is the availability and reliability of telecommunications service in the area. The potential impact of the tower on neighboring properties is largely related to its visibility although safety is also a factor. The Board finds that the Applicant has established that the temporary tower and any electromagnetic emissions comply with applicable Federal and State regulations as those regulations relate to safety. In addition, the Applicant has agreed to construct a fence around its equipment to ensure said equipment is enclosed and to mitigate the creation of a potential attractive nuisance. As to visibility, the Board is satisfied that the proposed tower will not differ substantially from towers that already exist in the area where the temporary tower is proposed. In addition, the proposed tower will only replace the existing transmission tower for a short period of time. With regard to the negative criteria, the Board finds that granting a variance to permit the temporary tower will not cause substantial detriment to the public good or to the intent of the zone plan and zoning ordinance. The Board notes that the telecommunications service use was approved by the Board in 1998 in resolution 98-1SZ. The Applicant currently only seeks to relocate the use onto another tower for a short period of time in order to facilitate PSE&G's upgrade of its transmission towers. The Applicant is undertaking significant expense in order to ensure that telecommunications services are available to the public during the tower replacement project. On balance, the Board finds that the temporary duration of the tower coupled with additional conditions that have been imposed herein and designed to mitigate the proposal's impact serve to limit any detriment to the public good or to the zone plan or zoning ordinance.

6. An applicant requesting a bulk variance under subsection "c" of N.J.S.A. 40:55D-70 must prove that it has satisfied both the positive and negative criteria, as well. The positive criteria in bulk variance cases may be established by the Applicant's showing that it would suffer an undue hardship if a zoning regulation were to be applied strictly because of a peculiar and unique situation relating to the property in accordance with N.J.S.A. 40:55D-70c(1). Under the c(1) standard, an applicant must prove that the need for the variance is occasioned by the unique condition of the property that constitutes the basis of the claim of hardship. Relief may not be granted where the hardship is self-created. The positive criteria may also be established by a showing that the application for variance would advance the purposes of the Municipal Land Use Law and the benefits of the deviation would substantially outweigh any detriment in accordance with N.J.S.A. 40:55D-70c(2). In order to establish the positive criteria for a c(2) variance, an applicant must show that the proposed deviation from the zoning ordinance represents a better zoning alternative and advances the purposes of the Municipal Land Use Law, as set forth in N.J.S.A. 40:55D-2. A c(2) variance should not be granted when the only purposes that will be advanced are those of the property owner. The focus of a c(2) variance is on the characteristics of the land that present an opportunity for improved zoning and planning that will benefit the community.

In order to satisfy the negative criteria for a "c" variance, an applicant must also show 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. The requirement that the grant of the variance not substantially impair the intent and the purpose of the zone plan and zoning ordinance focuses on whether the grant of the variance can be reconciled with the zoning restriction from which the applicant intends to deviate. Unlike use variances, reconciliation of a bulk or dimensional variance with the zone plan and zoning depends on whether the grounds offered to

support the variance, either under subsection c(1) or c(2), adequately justify the board's action in granting an exception from the ordinance's requirements.

7. As to the bulk variance for the deficient side yard setback, the Board finds that the location of the temporary tower in the setback promotes the purposes of the Municipal Land Use Law in that it permits enough clearance to allow the replacement of PSE&G's tower while continuing to provide telecommunications services in an area where such services are needed. As to the negative criteria, the Board finds that the Applicant's agreement with the conditions imposed herein mitigates the impact that the proposal may on the surrounding neighborhood, the zone plan and the zoning ordinance. The Board is satisfied that the benefits of the temporary location of the tower in the setback substantially outweigh any detriments.

NOW, THEREFORE, BE IT RESOLVED, on the basis of the evidence presented to it, and the foregoing findings of fact and conclusions of law, that the Board of Adjustment does hereby GRANT the Relief Requested as noted above, subject to the following:

1. The Applicants are required to comply with the following conditions:
  - a. The Applicant shall comply with the Applicant's representations to and agreements with the Board during the hearing on this Application.
  - b. The Applicant shall comply with the recommendations in the Board Engineer's report dated January 11, 2021.
  - c. The Applicant shall remove the proposed temporary tower and all equipment upon discontinuation of the temporary tower and collocation on the new PSEG tower within two years after the certificate of occupancy issues for the temporary tower.
  - d. The Applicant shall install a 6' fence on top of the ballast blocks, to the satisfaction of the Board Engineer.
  - e. The Applicant shall not conduct any excavation on the Property aside from some minor ground leveling.
  - f. The Applicant shall mark out the existing gas transmission line before work begins on the Property and shall maintain said mark outs during the entire temporary tower construction process.
  - g. As stipulated to by the Applicant, the Applicant shall only use PSE&G approved contractors for the work done on the Property as the Applicant has acknowledged that PSE&G approved contractors have experience working adjacent to natural gas transmission lines.
  - h. The Applicant shall not store any equipment or materials on the ground above the gas pipeline.
  - i. The Applicant shall ensure that all crane outriggers will be placed at least ten (10) feet from the edge of the gas pipeline.
  - j. The Applicant shall provide the gas pipeline operator fourteen (14) days' notice prior to the start of construction on the Property.

2. The grant of this Application shall not be construed to reduce, modify or eliminate any requirement of the Township of Long Hill, other Township Ordinances, the Board approval granted under Resolution 98-1SZ, or the requirements of any Township agency, board or authority, or the requirements and conditions previously imposed upon the Applicants in any approvals, as

memorialized in resolutions adopted by the Township of Long Hill Board of Adjustment or Planning Board except as specifically stated in this Resolution.

3. The grant of this Application shall not be construed to reduce, modify or eliminate any requirement of the State of New Jersey Uniform Construction Code.

4. All fees and escrows assessed by the Township of Long Hill for this Application and the Hearing shall be paid prior to the signing of the plans by the municipal officers. Thereafter, the Applicant shall pay in full any and all taxes, fees, and any other sums owed to the Township before any certificate of occupancy shall issue for the Property.

5. In accordance with the adopted ordinance provisions and the current requirements of the Township of Long Hill, to the extent applicable, the Applicant shall be required to contribute to the Township's "Affordable Housing Trust Fund" and/or otherwise address the impact of the subject application for development upon the affordable housing obligations of the Township, in a manner deemed acceptable by the Township Committee and in accordance with COAH's "Third Round Substantive Rules" and/or in accordance with enacted legislation and/or in accordance with direction from the Courts.

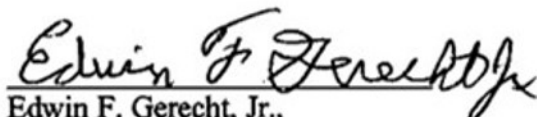
6. The approval herein memorialized shall not constitute, nor be construed to constitute, any approval, direct or indirect, of any aspect of the submitted plan or the improvements to be installed, which are subject to third-party jurisdiction and which require approvals by any third-party agencies. This Resolution of approval is specifically conditioned upon the Applicant securing the approval and permits of all other agencies having jurisdiction over the proposed development. Further, the Applicant shall provide copies of all correspondence relating to the Application, reviews, approvals and permits between the Applicants and third-party agencies from which approval and permits are required to the Planning/Zoning Coordinator of the Township of Long Hill, or designee, or any committee or individual designated by ordinance or by the Board to coordinate Resolution compliance, at the same time as such correspondence is sent or received by the Applicant.

BE IT FURTHER RESOLVED, that this Resolution, adopted on March 2, 2021, memorializes the action of the Board of Adjustment taken on the Hearing Date with the following vote: Yes: Aroneo, Grosskopf, Hain, Malloy, Rosenberg, Johnson, Gerecht; No: None; Recused: None; Not Eligible: None; Absent: Gianakis, Pesce.

ATTEST:



Debra Coonce,  
Board Secretary




Edwin F. Gerecht, Jr.,  
Chairman



<b>VOTE ON RESOLUTION</b>					
<b>MEMBER</b>	<b>YES</b>	<b>NO</b>	<b>NOT ELIGIBLE</b>	<b>ABSTAINED</b>	<b>ABSENT</b>
CHAIRMAN GERECHT	<b>X</b>				
VICE CHAIRMAN JOHNSON	<b>X</b>				
ARONEO			<b>X</b>		
GIANAKIS	<b>2<sup>ND</sup></b>				
GROSSKOPF	<b>MOTION</b>				
MALLOY	<b>X</b>				
ROSENBERG			<b>X</b>		
PESCE – ALT 1			<b>X</b>		
HAIN – ALT 2	<b>X</b>				

I hereby certify this to be a true copy of the Resolution adopted on March 2, 2021.

  
 Debra Coonce,  
 Board Secretary