

**RESOLUTION
ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF LIVINGSTON
NEW JERSEY**

Application #: 2017-4-PFSPV
Decided: May 23, 2017
Memorialized: June 27, 2017

Motion by: Mr. Hochberg
Second to approve by: Mr. Vieira

Summary of the Application

The Applicant proposes to install nine wireless communication antennas on an existing PSE&G tower used for electric transmission located on South Orange Avenue by the Livingston Mall, and to site the related telecommunications equipment cabinets near the base of the tower. The Applicant was represented by David Soloway, Esq. of Vogel, Chait, Collins & Schneider.

Findings and Conclusions

- 1) The Applicant is New York SMSA LP d/b/a/ Verizon Wireless.
- 2) The property is known as PSE&G Steel Tower #4/3-1 Roseland-Metuchen Transmission Line on South Orange Avenue, and taxed as Block 6002, Lot 2.
- 3) The proposed site is located in the DS Zone (Designated Shopping Zone District).
- 4) The Applicant has satisfied the statutory procedural requirements of service and publication of notice, and there are no taxes or assessments due or arrearages.
- 5) Violations of the following Livingston Zoning Ordinances were noted:
 - a) This is a non-permitted use in this zone, and requires a use variance.
 - b) Section 170-113D (1) - Maximum height - 35 feet permitted, 136 feet proposed; a 101-foot variance is requested.
 - c) Section 170-113D (2)(a) - Setback from any other district boundary - 200 feet required; < 200 feet proposed.
- 6) The following persons were sworn in, and testified on behalf of the Applicant:
 - a) Alec Norris of Maser Consulting PA, a civil engineer;
 - b) Glen Pierson, a radio frequency engineer; and
 - c) William F. Masters, a professional planner.

1. Glen Pierson testified on behalf of the Applicant, and established that the Applicant suffered a gap in service that would be remedied by the proposed antenna. A report and pictorial exhibits were submitted into evidence concerning the gap in service, and the proposed remedy. Mr. Pierson further testified that the proposed facility would be in

compliance with FCC and NJDEP requirements. The testimony established that the facility would emit radio frequency radiation at less under the standard permitted by both the FCC and the NJDEP.

2. Alec Norris testified as to the site plan, and provided pictorial renditions of the tower with and without the proposed installation from various vantage points. He testified that the public would not notice the installation and that it was unobtrusive. He noted that an existing electrical transmission tower located at the property already had antennas for cell phone service.

3. William Masters, the Applicant's planner opined that the antennas would have no detrimental effect due to their location. He testified that the positive criteria were satisfied by the FCC License of the Applicant, and that the site was particularly suited for this use as it was adjacent to Livingston Mall and Eisenhower Parkway, a major transportation roadway and location with high volume mobile and data of use. He opined that the Application satisfied the positive criteria, and that there would be no substantial detriment to the public good and no impairment of the zoning ordinance as a result of the installation of the antennas.

4. The Applicant agreed to the conditions and recommendations set forth in the Township Planner's report, other than the recommendation to provide landscaping, because the owner of the electrical transmission tower, PSE&G, does not permit landscaping. The Applicant agreed to install "permahedge screening" to the chain link fence that will surround the equipment to screen it.

5. The Applicant also agreed to comply with all applicable standard conditions for preliminary and final site plan approval.

Findings and Conclusions of the Board

1. The Applicant has satisfied the statutory requirements of N.J.S.A. 40:55D-70(d)(1) for the use variance for this use in the DS zone. The Applicant has satisfied the statutory requirements of N.J.S.A. 40:55D-70(d)(1) for the setback variance. The Applicant satisfied the statutory requirements of N.J.S.A. 40:55D-70(d)(6) for the use variance with respect to height. The tower already exceeds the height limit and adding the antennas that will not be noticed will have no substantial detriment to the public good.

2. The Board was satisfied that this site is suited for the purpose of providing commercial services to its customers, and the failure to meet the condition of being 200 feet from an adjoining zone does not disqualify this use at this location. Due to the suitability of this site, its practical invisibility from the public and lack of interference with the health or welfare of the public and its promotion of the general welfare, the Board finds that the use, setback and height variances are appropriate under these circumstances.

3. With regard to the negative criteria under N.J.S.A. 40:55D-70(d)(1), the Board accepted the reports that showed that there was a substantial gap and that the proposed radio

frequency emissions would be well below FCC and New Jersey DEP standards. Based on the testimony and evidence, the Board determined that health and safety would not be an issue if the proposed variances were granted.

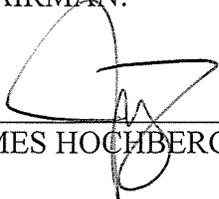
4. Based on the testimony and evidence and weighing the positive and negative criteria, the Board determined that there would be no substantial detriment to the public welfare or good and there will not be any substantial impairment of the intent and purpose of the zone plan and zoning ordinance if the proposed conditional use and bulk variances detailed above were granted.

Based on the foregoing, after weighing the equities of the matter and considering the various factors referred to herein, the Board determined that the grant of the use variance, height variance, bulk variance and preliminary and final site plan approval will not be a substantial detriment to the public good and there will not be an impairment of the zoning plan or municipal zoning ordinance and the granting of preliminary and final site plan approval are consistent with good planning standards. The Board voted unanimously seven to none to approve the application and the variances requested.

Now, therefore, be it **RESOLVED** for the reasons set forth above and on the record that the application herein submitted for the D (3) conditional use and D (6) height use variance, preliminary and final site plan and other bulk variances variance are granted and approved, subject to the terms and conditions set forth herein and consistent with the plans and application submitted and as testified to at the hearings before the Board. This approval is subject to the necessary review of the Township Engineer and all other requirements of the Township ordinances, building code, county and State laws and regulations and the right of appeal by any interested party. This approval is subject to the following conditions:

1. The Applicant shall comply with the recommendations in the Township Planner's memorandum dated April 7, 2017, other than landscaping.
2. The applicant shall comply with the applicable portions of the Standard Conditions.

CHAIRMAN:



JAMES HOCHBERG

I hereby certify this to be a true and accurate copy of the Resolution adopted by the Zoning Board of Adjustment of the Township of Livingston on May 23, 2017 by the affirmative votes of Mr. Hochberg, Mr. Nardone, Ms. Hwang, Mr. Vieira, Mr. Bier, Mr. Resnick and Ms. Tabak-Fass being all the Members present and eligible to vote.

PLANNING ADMINISTRATOR:



JACKIE COOMBS-HOLLIS

Prepared by: Alan Ozarow, Esq.