

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

Case #2015-30-V

Motion to approve by: Mr. Hochberg

Second to approve by: Mr. Gilman

**FINDINGS AND CONCLUSIONS**

The Zoning Board of Adjustment of the Township of Livingston, having considered this Application and Plans filed in this matter, and the testimony and evidence presented at the hearing on July 28, 2015, makes the following findings of fact and conclusions:

1. The Applicant is **SPRINT SPECTRUM, L.P.**
2. The property is commonly known as North Livingston Avenue, Livingston, New Jersey and is taxed as Block 1103, Lot 15. The property is in the R-4 Zone.
3. The Applicant has satisfied the statutory criteria and procedural requirements of service and publication of notice, and there are no taxes or assessments due or in arrears on the property.
4. The Applicant proposes to install a wireless communication facility on an existing tower located on the subject property.
5. The Applicant was represented at the hearing by Gregory Meese, Esq., of the firm Price, Meese, Shulman and D'Arminio, P.C.
6. The proposed Application would require a use variance and bulk variances for the following violations of the Township Code:
  - (a) Section 170-88L(3)(a)[3] Side Yard Setback – 168 feet 6 inches required, 37 feet proposed; 131 foot 6 inch variance requested.
  - (b) Section 170-88L(3)(a)[3] Side Yard Setback – 168 feet 6 inches required, 108 feet proposed, 60 foot 6 inch variance requested.
  - (c) Section 170-88L(3)(a)[1] Building Height – 100 feet maximum permitted, 168 feet 6 inches proposed, 68 foot 6 inch variance requested (use variance).

7. Testifying on behalf of the Applicant at the hearing were: (a) Alec Norris, admitted as an expert in civil engineering, (b) Rosario Conelli, admitted as an expert in wireless radio transmission, (c) Meghan Hunscher, admitted as an expert in planning.
8. No members of the public appeared either in support of or in opposition to the Application.
9. The Applicant proposes to install a wireless communication transmission device on an existing PSE&G tower on property located on North Livingston Avenue. The proposed location is on a new electric transmission tower recently installed by PSE&G. Previously, the Applicant has maintained a similar facility on a PSE&G tower that was located on the easterly side of North Livingston Avenue across from this location on existing Block 1700 Lot 17. That tower is part of an older transmission line that was replaced and PSE&G required the removal of the existing Sprint wireless communication facility from that location. The relocation of the wireless device facility is necessary to provide adequate coverage to the northerly side of Livingston including Interstate Highway 280. If this facility were not permitted there would be large areas of coverage gaps that would be unsafe particularly for highway motorists. The existing wireless facility has been maintained since 1999 on that Site without any detriment to the public good.
10. The Applicant provided documentation that the existing towers currently violate the setback requirements of the Township Code and would not be increased by the proposed telecommunication equipment.
11. The height of the PSE&G tower is currently 160 feet on a 1.5 foot pad, so the height increase of 7.0 feet to 168 feet 6 inches will not be noticeable from any public area. The facility will consist of three antennae that are the same size as the former facility on the prior site. The antennae will not emit any noise and there will no noxious emissions of any type from the antennae. The facility cannot be placed any lower because it must be above the electrical transmission lines of the tower to be effective.
12. The Applicant presented proof that the proposed wireless facility, which is primarily the addition of the 3 antennae to an existing tower, comes within the findings of Smart SMR v. Fair Lawn Board of Adjustment 152 N.J. 309 (1998) in which the Supreme Court of New Jersey concluded that such a facility is an inherently beneficial use. Wireless

communications facilities serve a public interest and are licensed by the FCC and fall within existing telecommunications laws. The Site is particularly suited for a telecommunications facility due to its location outside of residential areas and adjacent to an interstate highway.

13. The Applicant has demonstrated that there is a need for this facility at this location because it will replace a prior antenna facility and remove a gap in coverage that affects this portion of Livingston, including a portion of Interstate Route 280.
14. The Applicant has demonstrated that the variance can be granted without substantial detriment to the public good and that it will not substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance. Because the antenna is being placed on an existing tower there will be no impairment of aesthetics since visibility will be minimal, if any, and the area will be buffered and fenced to provide for permanent screening.
15. The setback variances requested can be granted because existing towers are being utilized. The addition of the antennas to the tower will increase the setback violation by approximately 7 feet, because the Ordinance measures the setback requirements based upon the height of the structure. Physically the structure is not being located any closer to the property line than exist and there are no residential properties that are affected by the Application.
16. The Applicant agreed that the fencing surround the towers will have permahedge screening inserted.
17. For the reasons set forth above, there is no detriment to the public good from a grant of these variances and the intent and purpose of the Zone Plan and Zoning Ordinance will not be impaired and the benefits being gained from an approval of the variances will outweigh any detriment so that the variances, in accordance with N.J.S. 40:55D-70C(2), are appropriate.

NOW THEREFORE, be it RESOLVED by the Zoning Board of Adjustment of the Township of Livingston that the Application herein submitted is granted and approved subject to the following variances from the Township Ordinances:

- (a) Side Yard setback variance of 131 feet 6 inches from the provisions of Code Section 170-88L(3)(a)[3] is granted.
- (b) Side Yard setback of 60 feet 6 inches from the provisions of Code Section 170-88L(3)(a)[3] is granted.
- (c) A variance from the provisions of Code Section 170-88L(3)(a)[1] for 68 feet 6 inches to allow a total building height of 168 feet 6 inches is granted.

This approval is subject to the following terms and conditions:

- A: The fencing surround the towers shall be screened with permahedge screening.
- B: The Applicant shall comply with the applicable standard conditions of the Board which are annexed hereto.

This Resolution is a memorialization of the action of the Board of Adjustment of the Township of Livingston taken on July 28, 2015 in which the Board Members voted to approve the Application in accordance with and subject to the terms and conditions set forth herein and as stated on the record.

CHAIRMAN:



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JAMES HOCHBERG

Dated: August 25, 2015  
Prepared by: Richard W. Vallario, Esq.