

ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF LONG HILL

Application No. 98-15Z

RESOLUTION

WHEREAS, OMNIPOINT COMMUNICATIONS, INC. has applied to the Zoning Board of Adjustment of the Township of Long Hill for use and bulk variances and preliminary and final site plan approval in conjunction with a proposal to install wireless communications antennas at the top of an existing tower (thereby increasing its height by some ten (10) feet) and to install a small equipment cabinet and related improvements at the base of the tower, with respect to property known as Block 195, Lot 15.01 on the Township Tax Map, located within a Public Service Electric & Gas Company right-of-way to the south of the intersection of Hickory Tavern Road and Long View Terrace, which premises are in a C (Conservation) Zone; and

WHEREAS, the Board, after carefully considering the evidence presented by the applicant and of the adjoining property owners and other interested parties, has made the following factual findings and conclusions:

1. The subject property, located in the "C" Conservation Zone, is a 150 foot wide strip containing a Public Service and Gas Company ("PSE&G") right-of-way. It is presently improved with a 123 foot high PSE&G electric line tower. PSE&G has authorized Omnipoint Communications ("Omnipoint") to make this application, which seeks permission to install some antennas at the top of the existing tower and a small electronics equipment cabinet and surrounding fencing at the base of the tower.

2. The application entails the following variances from requirements in the Township Zoning Ordinance (the "Ordinance"):

(a) The proposed use is not a permitted one in the C Zone, pursuant to Section 122.1 of the Ordinance. As such, a use variance is required under N.J.S.A. 40:55D-70(d).

(b) Pursuant to Section 131, the Schedule of Bulk Requirements in the Ordinance, the height limit in the Zone is 35 feet. The existing tower is 123 feet high and the proposed antennas at its top will extend the total height to some 133 feet. The requested height variance also falls within the criteria of N.J.S.A. 40:55D-70(d).

(c) Pursuant to the aforementioned Schedule in the Ordinance, the minimum required lot width in the Zone, as measured along the street line, is 250 feet. The lot width of the PSE&G right-of-way is 150 feet and it has only some 50 feet of frontage along Hickory Tavern Road. This involves a bulk variance within the criteria of N.J.S.A. 40:55D-70(c).

3. The application also requires site plan approval pursuant to Section 162.2 of the Ordinance.

4. The property, the existing PSE&G tower and the proposed new Omnipoint facilities are more particularly depicted on plans (consisting of Sheets S-1 and Z-1) prepared by Arcnet Architects, Inc. dated June 10, 1998 and June 15, 1998, last revised to July 16, 1998, same consisting of two (2) sheets.

5. Omnipoint presented expert witness testimony from several individuals in support of its application. Christopher Olson, Omnipoint's radio frequency engineer, was the first witness to testify on its behalf. He explained that a radio frequency engineer determines where base station locations are needed in order to provide seamless coverage. Mr. Olson currently serves as the person who sites facilities for Omnipoint. The witness stated that Omnipoint is a personal communications service ("PCS") provider, which is a wireless phone service similar to that of cellular companies. It requires

many small coverage areas and lower power base station sites throughout the network to be served. The Omnipoint system is 100% digital. Omnipoint is licensed by the Federal Communications Commission ("F.C.C.") and its PCS service is similar to that of a public utility. Apart from being able to speak to others, Omnipoint's customers can send messages to and from the Internet. There are also voice mail, data and paging services. Mr. Olson noted that at present the applicant's coverage in Long Hill is "very spotty". Omnipoint relies on a line of sight technology. As such, the existing PSE&G tower, which covers both sides of a hill, will fill an essential servicing need for the applicant. A computerized program has projected what the coverage would be in the future (i.e. after installation of the proposed facilities) based upon terrain, height of the structure and a propagation model. The proposed new installation will fill a gap in service in the northeasterly and easterly portions of the Township. There will still be a gap in coverage in the westerly portion of the municipality, and the applicant is looking for other sites to fill this need.

Mr. Olson also explained that there is a need to mount the three (3) proposed antennas above the existing tower in order to get the proper orientation without the structure of the tower itself blocking the signal. Each of the antennas will point in a different direction. The radio frequency engineer stated that radio transmissions from the antennas will not cause interference with other equipment that may be operating in the area. Omnipoint operates on only a certain frequency which others do not utilize. There will be no excessive noise generated from the facility, according to the witness. The only sound will be the "low hum" from a fan within the door of the equipment cabinet, which noise will not even be equivalent to that of an air conditioner.

Mr. Olson indicated that the facility will be unmanned, with the site being connected back to the applicant's switching office with actual wired telephone lines. It will be monitored (remotely) 24 hours a day and, in the event of an equipment outage, a technician would be dispatched to the site. Otherwise, service personnel will visit the site approximately once a month to do routine maintenance. The witness stated that Omnipoint will be the first carrier, and the only one that he knew of, on the existing tower. There would be no problem -- apart from a need to keep a certain distance from other carriers' antennas -- with other companies co-locating on the site.

6. Bruno J. Sutter, an architect with Arcnet, described in detail the facilities proposed for the site. There will be three (3) dual pol antennas, each of which will be 56 inches high and mounted on a galvanized steel pole. The overall added height at the top of the tower will be some 9'8". At the base of the tower, there will be a 12' X 12' fenced in area surrounded by an 8 foot high chain link fence. Within this compound, there will be a 5'4" high, by 3' wide, by 3'4" deep equipment cabinet and an even smaller electrical panel box. The compound will be located near the easterly leg of the tower, underneath the actual structure. The antennas will be off white in color, which will blend in with the sky; the equipment cabinet will be beige or sand tone in color. The architect said that electrical service for the facilities will be taken from an existing pole along Hickory Tavern Road, and will need to be overhead at least at its start. He said that as little vegetation as possible will be removed and most of the area will be left in its natural state. No trees of any significance (i.e. 4" to 6" or greater in diameter) should have to be removed. Service vehicles will park just off of Long Hill Road, some 600 feet away from the tower. The witness noted that the applicant is aware of the location of existing and proposed gas pipelines

in the area, and he said that it will not be necessary for vehicles to drive over the pipelines.

7. Alice Fahy-Elwood, a health physicist with Bell Labs, testified with regard to the safety of the radio frequency emissions from the site. She reviewed the data and conclusions on the subject which are contained in a written report prepared for the applicant. Ms. Fahy-Elwood said that the study which had been performed made "worst case assumptions" by assuming that the site would operate continuously at maximum power and with all of its channels going continuously. The results of the analysis indicate that the maximum level of radio frequency ("RF") energy to which the public may be exposed would be below all applicable health and safety limits. Specifically, the maximum level of RF energy from all proposed transmitters would be less than 0.005% of the safety criteria established by the F.C.C. Moreover, the RF level would be less than 0.001% of New Jersey Administrative Code limits.

8. William F. Masters, a professional planner, was the final expert to testify for the applicant. Utilizing a photo display board, the witness noted that the proposed new antennas at the top of the existing tower will have a minimal or even insignificant visual impact. The 12' X 12' enclosed compound area will occupy only some 4½% of the area inside the legs of the tower, according to the planner. While there will be a need to clear a 12 foot wide strip to gain access to the tower for construction purposes, this area could be restored with new vegetation. The planner cited a leading decision of the New Jersey Supreme Court which draws a sharp distinction between installations requiring new monopoles or towers and those where antennas are merely appended to existing structures, such as in the instant case. He said that the latter situation may involve an inherently beneficial usage. In any event, Mr. Masters maintained that the subject site is particularly suited for the

proposed use since it is centrally located within the search area and since it fills a gap in radio frequency coverage. There will not be any need to construct a new free-standing support structure for the antennas. The planner also felt that the existing PSE&G public utility usage and the proposed Omnipoint use would be compatible from a land use perspective. There should not be any significant impact on the environment or any substantial detriment to surrounding properties.

Mr. Masters said that the height variance is not based so much on a radio frequency requirement as it is upon the need for the antennas to clear the existing tower so as to avoid signal interference. He felt that the proposed antennas would be a rather insignificant addition to the tower given its mass in relationship to the dimensions of the antennas. The lot width variance pertains to an existing situation which will not be changed by the application. Both the new antennas and the equipment cabinet will be contained entirely within the footprint area of the existing tower, so there will be no adverse impacts in terms of setbacks or proximity to the side yards.

9. A few interested citizens offered some comments about the applicant's proposal. One nearby resident noted her concern over the fact that construction vehicles would be using an area in close proximity to her property. Another person stated that approval of the Omnipoint application would lead to other similar requests throughout the Township.

10. The Board has received and considered reports on the application from the Township Planning Consultant and the Township Engineer. Michael J. Tobia, the Township Planner, commented as follows with respect to the Omnipoint proposal:

"The clear and significant advantage to the application is that the existing PSE&G tower obviates the need for a new tower structure, which might have an adverse visual impact on the area. Traffic is not an issue as these facilities are unmanned and maintenance visits are limited to once or twice a month. Public health concerns are regulated by the

State, and radio and television interference issues by the F.C.C. Buffering and landscaping seem unnecessary given the existing vegetation in the area."

The Board has also received a standard letter from the Morris County Planning Board which notes that the proposal will have no adverse effect upon County roads and/or County drainage facilities.

11. After reviewing the evidence submitted, the Board concludes that the applicant has sustained its burden of showing special reasons to warrant a grant of the requested use variance. The proposed wireless communication facilities are important for the general welfare in that they will serve the public's need for reliable and prompt transmission of information. As such, the proposal may very well be considered an inherently beneficial one. In any case, the site selected is one which is particularly well suited. As noted by the Township Planner, the utilization of the existing PSE&G tower obviates any need for a new tower structure, which might have an adverse visual impact upon the area. Additionally, the Board finds that the purposes of the Municipal Land Use Law will be advanced by the requested deviations from the zoning requirements and that the benefits to be derived therefrom will substantially outweigh any detriments associated therewith. For the reasons stated by the applicant's planner, the requested variances for height and lot width are also warranted. The addition of Omnipoint's antennas to the top of the tower will barely be noticeable. The lot width will not be affected by this application.

12. The Board also finds that the applicant has demonstrated that the requested relief 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 right-of-way upon which the PSE&G tower is located is well wooded, and the applicant is amenable to installing additional plantings to replace any trees which may

have to be removed during construction of the Omnipoint facilities.

13. Finally, the Board is satisfied with the proposed site plan, subject to the conditions set forth below -- which conditions should serve to lessen any (minor) impacts which might otherwise result from the applicant's proposal.

WHEREAS, the Board took action on this application at its meeting on January 5, 1999, and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g):

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Long Hill, on this 6th day of April, 1999, that the application of Omnipoint Communications, Inc. for use and bulk variances and preliminary and final site plan approval, as aforesaid, be granted subject to the following conditions:

1. The plans shall be revised in the following respects, or calculations and data shall be supplied, all of which shall be satisfactory to the Township Engineer:

(a) Note that the decibel level at the site will not exceed that allowed under applicable noise standards or regulations.

(b) Note that there will be no audible alarms at the building or at the site.

(c) Note that the site shall only be accessed from Long Hill Road (i.e. rather than from Hickory Tavern Road).

(d) Note that the fencing at the property will not have barbed wire.

(e) Note that the applicant will supply the Township Police Department with a key to the locked gate at the site.



(f) Note that the electrical service to the facilities shall be installed underground at locations where the Township Engineer deems same to be feasible.

(g) Note that, following construction/installation of the proposed facilities, a meeting shall be held at the site between representatives of the applicant, the Township Engineer and a representative of the Township Shade Tree Committee at which meeting discussion shall be held and agreement reached as to the installation of replacement plantings for areas which may have been disturbed. It is understood that, since access to the facilities will still be required after construction, the replacement plantings (or all of such plantings) will not necessarily have to be in the same location as the vegetation which had been removed during construction. The Township Officials shall have the final decision-making authority as concerns the addition/installation of all such plantings.

(h) Provide for installation of a small sign at the site which will contain an emergency telephone number.

2. Applicant shall post with the Township sufficient funds to satisfy any deficiency in the developer's escrow account.

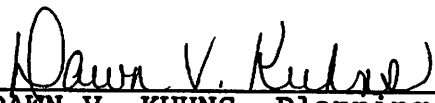
All conditions shall be satisfied prior to signing of the plans by the Board Officers and prior to the issuance of any building permit.

ROLL CALL VOTE:

Those in Favor: Mr. Scherer, Ms. Buffa, Mr. Behr, Mr. Spinello and Mr. Neville.

Those Opposed: None.

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Long Hill at its meeting on April 6, 1999, as copied from the Minutes of said meeting.

  
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DAWN V. KUHNS, Planning and  
Zoning Administrator

Dated: April 14, 1999