

**ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP**

APPLICATION NO. Z-10-18 : HEARING DATE: November 16, 2010  
:  
APPLICATION OF: :  
Metro PCS, LLC :  
:  
PROPERTY: :  
2857 Egypt Road :  
Audubon, PA 19407 :  
Parcel No. 43-00-03694-00-7 :

**OPINION, DECISION AND ORDER OF THE  
LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD**

Applicant Metro PCS, LLC (hereinafter referred to as the "Applicant") filed an application requesting a variance under Section 143-36 and Section 143-250.B(2) of the Lower Providence Township Zoning Ordinance to allow for co-location of a telecommunications facility in the R2 Residential District, and an interpretation under Section 143-250.C(1) that a height variance is not required, or in the alternative a variance from Section 143-250.E(2), for a proposed 10-foot expansion of the existing 120-foot monopole, with mounted antennas. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on November 16, 2010 at the Lower Providence Township Building. All of the members of the Zoning Hearing Board except for James Dougherty were present as well as the Solicitor and the Court Reporter.

**FINDINGS OF FACT**

1. The Applicant is Metro PCS, LLC, with an address at 510 Virginia Drive, Fort Washington, PA 19034.
2. The subject property is located at 2857 Egypt Road, Audubon, PA 19407, with a Parcel No. of 43-00-03694-00-7 (the "Property").

3. The owner of the Property is Lower Providence Rod and Gun Club. The Applicant is proceeding with this application with regard to co-location of a telecommunications facility at the existing wireless telecommunications facility/site on the Property pursuant to a Site License Agreement with Mobilitie Investments II, LLC, which is the tenant on the Property and owner of the existing monopole/tower pursuant to Assignment and Assumption of Prime Lease granting it all rights, title and interest under the Site Lease between T-Mobile Northeast, LLC and Lower Providence Gun Club. See Exhibit A-4, including notarized letter of authorization for Applicant.

4. The lot size is approximately 47.8 acres.

5. The applicable zoning is R2.

6. The Applicant was represented by Nicholas A. Cuce, Esquire, Riley Riper Hollin & Colagrecio, 717 Constitution Drive, Suite 210, Exton, PA 19341.

7. The property is presently occupied by an existing wireless telecommunications site and facility including an approximately 120 feet tall monopole tower.

8. The Applicant proposes to install a ten feet long extension to the 120-foot tower bringing the tower height to a total of 130 feet. The Applicant also proposes to install six antennas at the top of the extension to the existing tower (three proposed/three future), the tops of which would be at an elevation of 132.3 feet.

9. Applicant also proposes to install three equipment cabinets on top of a 10 feet by 16 feet concrete pad to be placed within a proposed 15 feet by 30 feet expansion of the existing fenced compound at the base of the tower. There would be chain link fencing at a height of 8 feet to match what exists at the site. Applicant would use the existing access and parking at the site.

10. The existing monopole tower can structurally support the proposed extension and new antennas, according to testimony at the hearing on behalf of the Applicant by a professional engineer. Further, the facility will be designed in accordance with all applicable safety and industry standards and will comply with all appropriate building codes. In addition, the tower will withstand the effects of wind according to applicable safety and industry standards. See Exhibit A-16.

11. According to testimony by a radio frequency expert on behalf of the Applicant, the installation of the proposed new antennas on the proposed extension to the existing tower is necessary to enable sufficient wireless coverage for the Applicant. The proposed antennas are to be mounted at the minimum height to function satisfactorily and achieve the Applicant's coverage objectives.

12. The addition of the new antennas on the proposed extension to the existing tower is necessary because of the hardship created by the physical characteristics of the land, existing structures, the rolling topography, vegetative cover and the limitation of the technology by which radio signals are propagated. This is the best location for a telecommunications facility to fill the Applicant's coverage gap.

13. The Applicant currently is unable to provide reliable coverage in that area, which means it is not meeting the requirements of its FCC license.

14. The Applicant's propagation analysis presented at the hearing (Exhibits A-9, A-10, and A-11) demonstrated that the addition of the proposed new antennas to the existing tower is necessary to provide wireless telecommunications coverage, and that the height of the proposed antennas is the minimum height necessary for them to perform their function.

15. According to testimony by Applicant's site acquisition consultant, the addition of the proposed new antennas to the existing tower will avoid any need to construct a new tower elsewhere in the Township, and is the least intrusive means of filling the Applicant's gap in coverage.

16. The use of the proposed additional antennas would not interfere with the neighboring emergency communications facility or electronic communications. See Exhibit A-12.

17. The Applicant is licensed by the FCC to operate the telecommunications facility. See Exhibit A-8.

#### **DISCUSSION/CONCLUSIONS OF LAW**

1. The Applicant has standing to appear before the Board.

2. Denial of the requested variances will impose an unnecessary hardship upon the Applicant, including preventing it from complying with FCC mandates regarding reliable coverage.

3. The hardship is not self imposed, and is due to the unique topographical features of the Property, where the proposed site is the best or only available site in the area that will provide reliable coverage and the addition of the proposed new antennas mounted on the proposed ten-foot extension is necessary to provide coverage.

4. The authorization of the requested variances is necessary to enable the reasonable use of the Property.

5. The grant of the requested variances will not alter the essential character of the neighborhood or the zoning district in which it is located, will not substantially impair the

appropriate use of adjacent properties and will not be detrimental to the public welfare. In addition, the requested variance represents the minimum variance that will afford relief.

The Applicant is seeking variances under Section 143-36 and Section 143-250.B(2) of the Lower Providence Township Zoning Ordinance to allow for co-location of a wireless telecommunications facility in the R2 Residential District, and an interpretation under Section 143-250.C(1) that a height variance is not required, or in the alternative a variance from Section 143-250.E(2), for a proposed 10-foot extension of the existing 120-foot wireless telecommunications monopole/tower, with mounted antennas. The Applicant's request is for relief in the nature of a use variance and a dimensional variance.

Differing standards apply to use and dimensional variances. Generally, a variance requires the applicant to show that unnecessary hardship will result if a variance is denied and that the proposed use will not be contrary to public interest. Hertzberg v. Zoning Bd. Of Pittsburgh, 554 Pa. 249, 257, 721 A.2d 43, 47 (1998) (citing Allegheny West Civic Council, Inc. v. Zoning Bd. Of Adjustment of the City of Pittsburgh, 547 Pa. 163, 167, 689 A.2d 225, 227 (1997)).

The Supreme Court in Hertzberg held that the Zoning Hearing Board must, at the beginning of its analysis of an appeal from the terms of the Zoning Ordinance, determine whether the requested relief is for a use variance or a dimensional variance. Id. at 263-64, 721 A.2d at 50. The quantum of proof that is required to establish unnecessary hardship is lesser when a dimensional variance, as opposed to a use variance, is sought. Id. at 258-59, 721 A.2d at 47-48. It is only the stringency of the standard in proving an unnecessary hardship that varies, depending on whether a use or dimensional variance is sought. Great Valley School District v. Zoning Hearing Board of East Whiteland Township, 863 A.2d 74, 83 (Pa. Commw. 2004),

appeal denied, 583 Pa. 675, 876 A.2d 398 (2005) (citing Zappala Group, Inc. v. Zoning Hearing Board of the Town of McCandless, 810 A.2d 708, 710-11 (Pa. Commw. 2002), appeal denied, 573 Pa. 718, 828 A.2d 351 (2003)); The Friendship Preservation Group, Inc. v. Zoning Hearing Board of Adjustment of the City of Pittsburgh, 808 A.2d 327 (Pa. Commw. 2002); Cardamone v. Whitpain Township Zoning Hearing Board, 771 A.2d 103 (Pa. Commw. 2001).

Despite the trend to apply a relaxed standard to dimensional variances Pennsylvania case law is clear in its approach to the issuing of variances and demands that the reasons for granting a variance must be substantial, serious, and compelling. POA Company v. Findlay Township Zoning Hearing Board, 551 Pa. 689, 713 A.2d 70 (1998); Evans v. Zoning Hearing Board of the Borough of Spring City, 732 A.2d 686 (Pa. Commw. 1999); Soteneanos, Inc. v. Zoning Board of Adjustment of the City of Pittsburgh, 711 A.2d 549 (Pa. Commw. 1998). Moreover, variances from zoning codes should be granted sparingly and only under exceptional circumstances; a variance should not be granted simply because such a grant would permit the owner to obtain greater profit from or use of the property. Commonwealth v. Zoning Hearing Board of Susquehanna, 677 A.2d 853 (Pa. Commw. 1996).

In order to grant a variance, the Board must make the findings set forth in § 910.2 of the Municipalities Planning Code, 53 P.S. § 10912.2, where relevant. See Hertzberg, 554 Pa. at 256-57. 721 A.2d at 46-47. The law established by the Pennsylvania courts further establishes these standards, stated in full herein. See Alpine Inc. v. Abington Township Zoning Hearing Board, 654 A.2d 186 (Pa. Commw. 1995); Appeal of Lester M. Prang, Inc., 169 Pa. Commw. 626, 647 A.2d 279 (1994). The findings that the Board must make, where relevant, in granting a variance as set forth in the Municipalities Planning Code are as follows:

(1) That there are unique circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located.

(2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

(3) That such unnecessary hardship has not been created by the applicant.

(4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.

(5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

The Applicant has demonstrated, and the Board finds and concludes, that the Applicant will suffer unnecessary hardship if the requested variance is not granted; that the unnecessary hardship is due to the unique physical circumstances or conditions relating to the Property, and that the authorization of a variance is therefore necessary to enable the reasonable use of the Property; that the unnecessary hardship was not created by the Applicant; that the requested variance will not alter the essential character of the neighborhood or district in which the Property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare; and that the requested variance is

the minimum that will afford relief and will represent the least modification possible of the applicable zoning code provisions.

The Applicant has demonstrated unnecessary hardship. Per FCC mandate the Applicant must operate within its frequency band and provide reliable coverage to subscribers. The proposed addition of the new antennas on a proposed 10-foot extension to the existing monopole tower is necessary to fill a gap in the Applicant's coverage and provide wireless telecommunications coverage in the area, because of the topography in this area. Pursuant to evidence at the hearing this is the best location to fill the coverage gap.

Also, the hardship arises from the unique topography of the Property; it is not self-created. Without the variance requested the Applicant will not be able to make reasonable use of the Property.

The requested variance represents the minimum relief necessary. The proposed attachment of the antennas to the proposed ten-foot extension of the existing 120-foot tall tower is at the minimum height necessary to fill the Applicant's coverage gap. The co-location of the Applicant's antennas on the existing tower (with the proposed 10-foot extension) will eliminate any need for construction of an additional wireless telecommunications tower in the Township. The proposed additional antennas on the proposed ten-foot extension of the existing tower are the least intrusive means of filling the Applicant's coverage gap.

The granting of the requested variance will not alter the essential character of the neighborhood or the zoning district in which it is located, will not substantially impair the appropriate use of adjacent properties and will not be detrimental to the public welfare. The variance is for additional antennas to be mounted on a ten-foot extension of an existing 120-foot



wireless telecommunications monopole/tower. The proposed ground mounted equipment will be installed in the proposed expansion of the existing fence-enclosed area.

### **DECISION**

The following is the decision of the Lower Providence Township Zoning Hearing Board by a vote of 4-0:

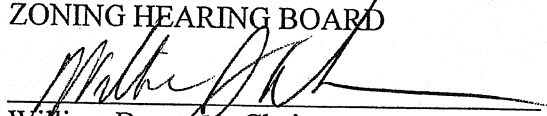
The Applicant's request for relief, specifically the variances from the Lower Providence Township Zoning Ordinance to permit the installation of antennas mounted upon a ten-foot extension of an existing wireless telecommunications monopole tower, the tops of which will be at a height of 132.3 feet, and installation of accompanying ground mounted telecommunications equipment, is granted.

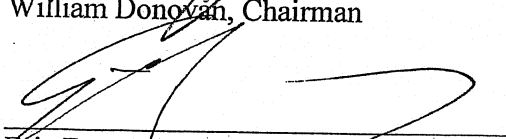
Dated: December 30, 2010

**ORDER**

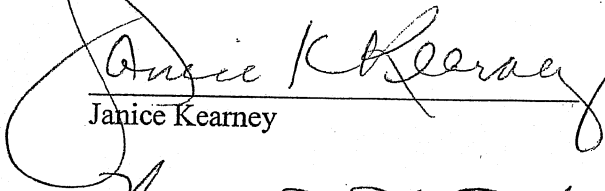
The foregoing Findings, Discussion and Decision are hereby approved and ordered.

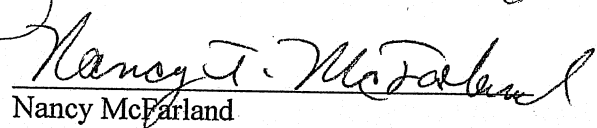
LOWER PROVIDENCE TOWNSHIP  
ZONING HEARING BOARD

  
William Donovan, Chairman

  
Eric Frey, Vice Chairman

  
James E. Dougherty

  
Janice Kearney

  
Nancy McFarland

**NOTE TO APPLICANT**

There is a thirty (30) day period after the date of a decision for an aggrieved person to file an appeal in the Court of Common Pleas of Montgomery County to contest an approval or denial by the Zoning Hearing Board. If the Applicant has been granted Zoning Hearing Board approval, the Applicant may take action on said approval during the thirty (30) day appeal period; however, the Applicant will do so at his or her own risk. If the Applicant received Zoning Hearing Board approval, the Applicant must secure all applicable permits from Lower Providence Township within one (1) year of the date of the approval or the decision granting approval.