

**GREEN TOWNSHIP ZONING BOARD OF ADJUSTMENT  
RESOLUTION MEMORIALIZING THE GRANT OF  
VARIOUS CONDITIONAL USE VARIANCES PURSUANT TO  
N.J.S.A. 40:55D-70(d.) (3), A DRIVEWAY SETBACK WAIVER  
AND PRELIMINARY AND  
FINAL SITE PLAN APPROVALS,  
SUBJECT TO CERTAIN CONDITIONS, TO  
APPLICATION NO. BA 1501  
CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS  
(BLOCK 5, LOT 2.02 – 140 SHOTWELL ROAD)**

**WHEREAS**, application having been made on January 29, 2015, to the Green Township Zoning Board of Adjustment, by Cellco Partnership d/b/a Verizon Wireless, having its office and place of business at 141 Industrial Parkway, Branchburg, New Jersey 08876, said application having been submitted by the applicant's attorney, David H. Soloway, Esq., of the firm of Vogel, Chait, Collins and Schneider, said application originally seeking a use or *special reasons* variance approval pursuant to the Municipal Land Use Law, particularly N.J.S.A. 40:55D-70(d.) (1) in that, as stated in the legal notice published and disseminated: ... *because wireless communications facilities are not a permitted use or conditional use in the AR 5/2 Agricultural Residential Zone District in which the property is located*, said application having been subsequently amended to seek a conditional use variance pursuant to N.J.S.A. 40:55D-70(d.) (3) and preliminary and final site plan approvals, in order to establish, on property owned by the Shotwell Partnership, LLC, a limited liability company in which Mr. Ralph Shotwell is a principal, having its office and place of business at 140 Shotwell Road, Newton (Green Township), Newton, NJ 07860, said property known and designated as Block 5, Lot 2.02, on the Green Township Tax Map and said property being commonly known as 140 Shotwell Road, Tranquility, New Jersey, and said property being located within the AR 5/2 Agricultural Residential Zone District, the proposal being to construct a galvanized monopole-style tower, having an overall height of 140 feet, exclusive of an 8 foot lighting rod on the top thereof, in order to enhance the cellular service in the area of Green Township proposed for additional *reliable* signal coverage, and;

**WHEREAS**, in support of the application for the grant of the conditional use variances, as aforesaid, the applicant having submitted, in addition to the completed application form and requisite completeness checklist, a plat entitled: *Verizon Wireless Communication Facility, "Fredon 2", 140 Shotwell Road, Green Township, N.J.*, said plats prepared by Christopher E. Nevill, P.E., P.P. of Avoca Engineers and Architects, LLC of Piscataway, NJ, said plats dated April 15, 2015, being constituted of eight (8) sheets, inclusive of the title sheet and having been revised on: September 1, 2014; October 10, 2014; October 14, 2014; December 2, 2014; December 12, 2014; February 19, 2015 and April 15, 2015; a report entitled: *Stormwater Runoff Calculations Prepared for Cellco Partnership d/b/a Verizon Wireless, Fredon 2 Site, Block 5, Lot 2.02, 140 Shotwell Road, Green Township, N.J.*, said calculations prepared by Christopher E. Nevill, P.E., of Avoca Engineers and Architects, LLC; a report entitled: *Independent Radio Frequency Report Regarding a Proposed Wireless Communication Facility for Cellco Partnership, Site ID: Fredon 2, 140 Shotwell Road, Newton, NJ 08760, Sussex County*, said

report prepared by Frances Boschulte, Senior Radio Frequency (RF) Engineer of PierCon Solutions, LLC of Lincoln Park, NJ, said report dated October 7, 2014; a report entitled: *Analysis of the Predicted Radio Frequency Environment in the Vicinity of a Proposed Verizon Wireless Communication Facility, Fredon 2, On a 140' Monopole at 140 Shotwell Road, Green Township, N.J., 07860, Located in the County of Sussex*, prepared by PierCon Solutions, LLC and dated October 7, 2014; a report entitled: *Environmental Impact Statement (EIS) Proposed Verizon Wireless Facility, Fredon 2, Block 5, Lot 2.02, 140 Shotwell Road, Green Township, Sussex County, NJ*, said report dated December 15, 2014 and prepared by Michael Muller, Senior Environment Scientist of E2 Project Management of Rockaway, NJ; a series of nine (9) photographs of the subject property, including an aerial photograph thereof and photographs of the *balloon* test simulations at the proposed tower height and a series of photographs on which the proposed tower has been computer-enhanced from those same perspectives; and,

**WHEREAS**, the applicant having appeared before the Board at its regular meetings convened on February 5, 2015 (completeness determination) for the purposed of presenting to the Board a general overview of the proposed application and, more particularly, to have the Board review and rule upon the waivers sought and the completeness of said application, the Board having determined to grant the completeness waivers and find the application as a *complete* application; and,

**WHEREAS**, hearings were held upon the application at the following meetings of the Board of Adjustment:

- February 5, 2015
- April 2, 2015
- May 7, 2015

**WHEREAS**, John P. Miller, P.E., P.P., C.M.E., the Green Township engineer and the Green Township Zoning Board of Adjustment engineer, having reviewed the application and rendered reports thereon dated: January 29, 2015 and March 4, 2015; and,

**WHEREAS**, Jessica C. Caldwell, P.P., the Board of Adjustment planning consultant, having reviewed the application and rendered a report thereon dated January 30, 2015; and,

**WHEREAS**, as a result of the application made to it, the Board's consideration of the plats, reports and other documents submitted in support thereof and the testimony provided by the applicant's professionals at the hearings held thereon at the regular meetings of the Board convened on (February 5, 2015; April 2, 2015 and May 7, 2015), as aforesaid, the Green Township Zoning Board of Adjustment does herewith make the following basic **FINDINGS OF FACT**:

1. The applicant is Cellco Partnership d/b/a Verizon Wireless, which has its office and place of business at 141 Industrial Parkway, Branchburg, NJ 08876.
2. The property which is the subject of the application and which is owned by Shotwell Partnership, LLC, is known and designated as Block 5, Lot 2.02, on the Green Township Tax Map and is commonly known as 140 Shotwell Road, Andover, NJ.
3. The subject property contains a total area of 68.3 acres and has frontage upon, existing driveway access to and is located on the easterly side of Shotwell Road, a/k/a County Route 608.
4. The subject property is located in the AR 5/2 Agricultural Residential Zone District wherein Section 30-82.11 of the Land Development Ordinance establishes *wireless communications towers* as a (permitted) conditional use, subject to the terms, specifications and conditions contained therein.
5. The applicant proposes to establish on the southeasterly portion of the subject property and at a (topographic) high point of the property, a wireless equipment compound and a wireless (cellular) monopole.
6. Although the proposed use and structure are a type of permitted use, i.e., a conditional use, the applicant seeks deviation from several *standards and specifications* which pertain, solely, to the conditional use, thereby necessitating conditional use variance approvals pursuant to the MLUL, particularly N.J.S.A. 40:55D-70(d.)(3), particularly as follows:
  - **Tower Height:** A maximum tower height of 140 feet is permitted provided, however, that pursuant to Section 30-82.11(f.) (2) a tower height not exceeding 198 feet is permitted if more than one set of commercial antennas are co-located (or to be co-located) thereon. No such co-location is presently proposed, thereby necessitating the conditional use variance with respect to tower height.
  - **Tower Setback:** Section 30-82.11(f.) (8) requires towers to be set back to the more restrictive requirement of the Zone District or the height of the structure, whichever is greater. In that the Zone District (AR 5/2) requires a 200 foot front yard setback, a 140 foot side yard setback and a 140 foot rear yard setback, the tower complies with the front yard setback requirement, same having a proposed front yard setback of 870.1 feet and complies with the

minimum rear yard setback (140 feet required, 1,223.9 feet proposed) but does not satisfy the minimum (140 foot) side yard setback in that the overall height of the tower, to wit: 148 feet, deviates, slightly, from that setback requirement in that the proposed tower will have a side yard setback of 142.7 feet.

- **Shelter Separation:** Section 30-82.11(f.)(4) requires the equipment shelter to be located a minimum distance of eight (8) feet from the tower, whereas 15.5 feet is proposed, thereby being a conforming separation distance.
- **Landscape Plantings:** Section 30-82.11(f.)(3) requires the establishment of evergreen landscape plantings around the proposed compound area, the applicant proposing no such plantings. Accordingly, this is a *deviation from the standard and specification pertaining solely to conditional use*, thereby necessitating *conditional use variance approval*, as has been sought.

7. As detailed on Sheet SP-2 of the site plan plat submitted and as identified hereinabove, the following improvements are proposed to be constructed:

- A 12' x 26' wireless communication shelter.
- A 7' high chain-link fence surrounding the (60' x 60') "compound" area.
- A 140' galvanized steel monopole to support 12 antennae with *proposed RRH behind (typical of 12)*.
- An 8' lighting rod on the top of the monopole which (safety) appurtenance violates the maximum (140 foot) height limitation, one of the conditional use standards for which conditional use variance approval has been sought.
- The (12' x 26') equipment shelter will be supported by two (2) air conditioning units located on the northwesterly end thereof and by a diesel generator fueled by an on-site diesel fuel storage tank.

8. The applicant's radio frequency engineer, Glenn Pierson, presented to the Board at the public hearing held on April 2, 2015, a computer-generated *signal propagation model* showing existing Verizon Wireless cellular

communications coverage in the Township of Green and how that coverage would be enhanced by the proposed new cellular tower facility.

9. The Zoning Board of Adjustment herewith fairly characterizes this signal enhancement as *significant*, if not massive, and concludes that it clearly demonstrates the necessity for and benefits of the proposed facility for which the application has been submitted.
10. Section 30-82.11 of the Green Township Land Development Ordinance permits and regulates wireless communication facilities as *conditional uses*.
11. As detailed in the *Rider to the Application*, the following is a summary of the application:
  - Cellco Partnership d/b/a Verizon Wireless applies to the Zoning Board of Adjustment for permission to construction a wireless communication facility on property located at 140 Shotwell Road, Block 5, Lot 2.02, on the Green Township Tax Map.
  - The proposed facility will consist of a 140 foot high monopole, with 12 panel antennas in three (3) sectors of four (4) antennas each located at the top.
  - The monopole will be designed in a manner to allow other wireless carriers to co-locate their facilities.
  - The application also proposes a 12' x 26' equipment shelter to house the supporting equipment utilized for the facility, which will be located within the compound surrounded by a 7' high chain-link fence.
  - The proposed facility is located in the AR 5/2 Agricultural Residential Zone District.
12. Section 30-82.11 *Wireless Communications Towers* provides, generally, that: *Wherever permitted in this Chapter, wireless communication towers and facilities shall conform to the following regulations...*
13. Section 30-82.11d. *Locational Priorities* establishes locational priorities 1 through 4. These locational priorities are as follows:

- Priority 1: *Antennas shall be placed upon existing towers or other structures on property owned, leased or otherwise controlled by the Township of Green, provided a license or lease authorizing such antenna or tower has been approved by the Township.*
- Priority 2: *New antennas or towers shall be located on property owned, leased or otherwise controlled by the Township of Green, provided a license or a lease authorizing such antenna or tower has been approved by the Township.*
- Priority 3: *Antennas shall be placed upon existing towers or other structures located within the Township.*
- Priority 4: *Antennas shall be placed upon electrical transmission towers.*
- Priority 5: *Antennas or towers shall be located on a new tower within the Township.*

14. In accordance with the applicant's obligation in that regard, the applicant has exercised its *due diligence* with respect to addressing these locational priorities, particularly, Priorities 1, 2 and 4, which relate, respectively, to existing towers on Township property, new towers on Township property and antennas upon existing electrical transmission towers or structures.
15. Among the properties under the applicant's consideration is a property fronting upon Wintermute Road known and designated as Block 1, Lot 8 and also a property on Yellow Frame Road known and designated as Block 8, Lot 4.01.
16. Testimony revealed the Yellow Frame Road (Block 8, Lot 4.01) site is a "landlocked" property with no access existing or achievable despite the applicant's efforts to acquire access.
17. Within the applicant's *search area*, i.e., the area within which signal coverage is proposed to be enhanced, was included not only the Yellow Frame Road property, but an additional Township owned property fronting upon Wintermute Road and known and designated as Block 1, Lot 8.

18. The applicant's site acquisition specialist, Eric Fastnacht, testified that he examined the suitability of the Green Township owned property on Wintermute Road as the site of the proposed new tower. However, the site was found to be unsuitable and far inferior to the Shotwell Road property for access and environmental reasons.
19. The Wintermute Road property is an eleven (11) acre *flag lot* upon which is located a (250 foot wide) JCP&L electrical (high energy) transmission line with 50 foot high H-Frame wooden poles.
20. Although the site manager for JCP&L, when originally contacted by the applicant, indicated that JCP&L was unwilling to entertain co-location, that decision was reversed in favor of approval to co-locate.
21. However, the applicant's RF (radio frequency) engineer determined that this co-location site would also be far inferior to the proposed Shotwell Road site.
22. With regard to the site owned by the Township of Green (Block 1, Lot 8), the applicant presented the testimony of Michael Muller, Senior Environment Scientist, employed by E2 Project Management of Rockaway, NJ, whose testimony (summarized herewith) was substantially as follows:
  - i. Mr. Muller has been doing wetland delineations, permitting work and threatened and endangered species analysis work for nearly 25 years, 20 of which has been devoted, exclusively, to evaluation of proposed wireless communications facilities sites.
  - ii. Mr. Muller was the author of the December 15, 2014, report entitled: *Environmental Impact Statement (EIS), Proposed Verizon Wireless Facility, Fredon 2, Block 5, Lot 2.02, 140 Shotwell Road, Green Township, Sussex County, New Jersey.*
  - iii. Mr. Muller evaluated the suitability of the Township property (Block 1, Lot 8 – located on Wintermute Road).
  - iv. The property is a *flag lot*, the *flagstaff* access to which is entirely forested and is attended by steep terrain.

- v. However, the *flagstaff* and adjoining properties are attended by wetlands which, the witness projects, would be classified as having *exceptional resource value*, thereby requiring a 150 foot buffer.
  - vi. Although an NJDEP permit, probably a General Permit No. 10, might be issuable for a driveway (*road crossing*) to access any tower to be located upon the site, there would be significant environmental impacts resulting from construction of such a driveway, given the steepness of the grade, the amount of mature trees to be removed, the amount of land to be disturbed and the wetlands to be impacted.
  - vii. Accordingly, Mr. Muller's conclusion was that: *Strictly speaking environmentally, I would prefer to see it* (the proposed tower) *go on the Shotwell property.*
23. The Board of Adjustment, acting through Chairman Bambara, invited the attendance of Mr. Ralph Shotwell, a principal and the property owner of Shotwell Partnership, LLC, (the subject property) to appear before the Board and address the issue of an existing commercial use existing upon the subject property and its potential interaction with the proposed tower.
24. That existing commercial use is the storage of dynamite and other blasting materials for commercial use by excavators and other persons licensed by the State of New Jersey to purchase, possess and utilize explosives.
25. It appears, through the examination by the Township Clerk of the records maintained by the Township of Green (conducted by the Township Clerk at the request of Board of Adjustment Chairman Bambara) that this subsisting use has been licensed and permitted decades ago by Green Township. Accordingly, that use, although not a permitted use in the zone in which the subject property is located, appears to be a prior existing nonconforming use.
26. Finally, it appears to the Board of Adjustment, and the applicant is satisfied in that regard, that the subsisting use and the proposed new use have no projected interactions or conflicts.

**WHEREAS**, as a result of the foregoing basic **FINDINGS OF FACT**, the Green Township Zoning Board of Adjustment hereby makes the following ultimate **CONCLUSIONS BASED THEREON**:

- a. The applicant is licensed and regulated by the Federal Communications Commission (FCC). As an FCC licensee, it is the applicant's mandate to provide comprehensive and reliable telecommunications services throughout its franchised service area.
- b. In fulfilling its FCC mandate to provide comprehensive and reliable telecommunications services throughout its franchised service area, the applicant is obliged to install additional telecommunications towers and facilities in areas needed to support poor signal strength, poor signal reliability and to establish reliable signals in areas of no coverage.
- c. This mandate governs over the applicant's business goals, i.e., the applicant is obliged to construct new facilities in areas needful of same, without regard to the financial return anticipated from installation of such facilities.
- d. The applicant is the holder of the license permitting it to provide telecommunication services within a four-county Metropolitan Statistical Area (MSA) which includes Green Township and Sussex County.
- e. The applicant has argued and the Board herewith concludes that the proposed use will serve and benefit the public welfare by: eliminating an existing gap in telecommunications coverage; enhancing the ability of emergency services personnel to provide communications throughout the Township; assisting motorists in need of emergency or roadside assistance in Green Township; and facilitating the transmission of business data and information.
- f. Furthermore, the site is passive with respect to considerations such as: traffic generation, noise, stormwater runoff, water usage, sewerage demands, land disturbance and coverage by impervious surfaces, the site to remain essentially unchanged from its present use and configuration.
- g. Wireless communications towers, structures and related facilities are conditional uses in the AR 5/2 Agricultural Residential Zone District in which the subject property is located as established by Section 30-82.11 of the Green Township Land Use Regulations.

- h. Pursuant to Subsection 30-82.11(d.) of the Land Development Ordinance *locational priorities* are established.
- i. Consequently, although the proposed structure and use are a conditional use, which is a type of permitted use, the use does not meet all the *standards and specifications* relating thereto.
- j. Consequently, relief pursuant to the provisions of the Municipal Land Use Law, particularly N.J.S.A. 40:55D-70(d.) (3) has been sought and is required for such conditional use standard deviations.
- k. The New Jersey Supreme Court in the case of Coventry Square v. Westwood Zoning Bd. of Adjustment (138 N.J. 285 (1994)) altered the previously existing *special reasons* standard with respect to the *positive criteria* and the traditional *negative criteria* relating to such conditional use standard deviations.
- l. The Supreme Court in the Coventry Square case held that:
  - A conditional-use applicant's inability to comply with some of the ordinance's conditions need not materially affect the appropriateness of the site for the conditional use.
  - A standard of proof of *special reasons* to support a variance for more than one condition imposed on a conditional use should be relevant to the nature of the deviation of the ordinance.
  - A conditional-use variance applicant must show that the site will accommodate the problems associated with the use even though the proposed use does not comply with the conditions of the ordinance established to address those projects.
  - With respect to the *negative criteria*, the focus is on the effect on surrounding properties of the grant of the variance from the specific deviations from the conditions imposed by the ordinance.
  - The Board must evaluate the impact of the proposed conditional use variance upon the adjacent properties and determine whether or not it will cause such damage to the character of the neighborhood as to constitute a *substantial detriment to the public good*.

- m. Accordingly, the Zoning Board of Adjustment herewith concludes that the applicant has demonstrated the existence of sufficient and compelling *special reasons* in support of the conditional use variance relief sought; that the site, structures and proposed use remain viable and suited for their intended purpose, despite the deviation from the *standards and specifications* pertaining solely to the conditional use; that there will be no substantial adverse impact to the public good or to the Zone Plan or Zoning Ordinance from the granting of the variance relief sought and that the grant of the variances sought will not alter the character of the neighborhood or constitute a *substantial detriment to the public good*.

**NOW, THEREFORE, BE IT RESOLVED**, by the Green Township Zoning Board of Adjustment that, as a result of the foregoing basic **FINDINGS OF FACT** and ultimate **CONCLUSIONS BASED THEREON** the following **OFFICIAL ACTION** is taken with respect thereto:

1. **CONDITIONAL USE VARIANCES, BE** and same are herewith **GRANTED** from the requirements of Section 30-82.11 of the Green Township Land Development Ordinance with respect to: tower height; tower setback from a property line; and evergreen landscape plantings around the proposed enclosure fence.
2. A **DRIVEWAY WAIVER BE** and same is herewith **GRANTED** from the requirement that a driveway have a minimum 10 foot setback from a side property line.
3. **PRELIMINARY and FINAL SITE PLAN APPROVALS, BE** and same are herewith **GRANTED** with respect to the site plan plats submitted and as identified hereinabove proposing and detailing the establishment of a (60' x 60') (3,600 sq. ft.) leasehold area within which will be located a 12' x 26' equipment shelter and within which will also be located a 140 foot (exclusive of a 8' lightning rod on the top thereof) galvanized steel monopole wireless communication (cellular) tower.
4. The foregoing Official Action is taken, subject to full compliance by the applicant with the following terms and conditions:
  - a. The applicant shall pay all preliminary and final site plan application review and inspection fees and all fees payable on account of the companion *conditional use* variance application.

- b. The applicant shall conduct the improvements to the site in precise compliance with the site plan plats submitted to, reviewed and approved by the Board and in accordance with the testimony made by and on behalf of the applicant and the applicant's professionals at the April 2, 2015 and May 7, 2015 hearings, **any deviations therefrom** requiring resubmission to, re-review and reapproval by the Board.
- c. There shall be no microwave dish antennae permitted on the tower without subsequent application to, review and approval by the Board.
- d. There shall be no subsequent co-location of additional carriers/antennae on the tower without subsequent application to, review and approval by the Board which herewith retains jurisdiction for such purposes.
- e. The applicant shall comply with and satisfy all the comments and/or recommendations contained in the January 29, 2015 and March 4, 2015 reports of John P. Miller, P.E., C.M.E., the Green Township engineer and Green Township Zoning Board of Adjustment engineer with the exception of the securing of a Letter of Interpretation (LOI), which is not required.
- f. In accordance with the applicant's proposal in that regard, the applicant shall allow co-location on the facility of Green Township Emergency (Fire and Rescue Squad) communications antennas, **provided** same do not interfere with the applicant's signal propagation.

GREEN TOWNSHIP ZONING BOARD OF  
ADJUSTMENT

  
EUGENE BAMBARA, CHAIRMAN

  
DESIREE L. DUNN, SECRETARY

I hereby certify the foregoing Resolution to be a true and complete memorialization of the Official Action taken by the Green Township Zoning Board of Adjustment at its regular meeting convened on May 7, 2015, by a motion and vote as follows:

**MOTION TO GRANT THE CONDITIONAL USE VARIANCES, THE DRIVEWAY WAIVER (WITH RESPECT TO SIDE YARD SETBACK) AND PRELIMINARY AND FINAL SITE PLAN APPROVALS, SUBJECT TO CERTAIN CONDITIONS, TO APPLICATION NO. BA 1501 – CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS (BLOCK 5, LOT 2.02):**

**IN FAVOR:** Chairman Bambara, Mr. Fox, Mrs. Mullen, Mr. Tommaso,  
Mr. Roller, Mr. Walker.

**OPPOSED:** None.

**ABSTAIN:** None.

**ATTEST:**

  
DESIREE L. DUNN, SECRETARY

Revised: July 2, 2015 as to pages 5-8

Dated: June 4, 2015

GTZBA:Cellco(Verizon Wireless)VarReliefandSitePlanAppr.Reso.