

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
May 5, 2011**

Mr. Braswell called the meeting to order at 7:38 p.m.

Mr. Braswell asked all to stand for the Pledge of Allegiance.

Mrs. Cummins made the following statement: As per requirement of P.L.1975, Chapter 231. Notice is hereby given that this is a Regular Meeting of the Borough of Highlands Zoning Board and all requirements have been met. Notice has been transmitted to the Asbury Park Press and the Two River Times. Notice has been posted on the public bulletin board.

Roll Call:

Present: Ms. Ryan, Mr. Gallagher, Mr. Knox, Mr. Braswell

Absent: Mr. Fox, Mr. Anthony, Mr. Britton, Mr. Knox, Mr. Kutosh, Mr. Cervantes

**Also Present: Carolyn Cummins, Board Secretary
Greg Baxter, Esq., Board Attorney
Robert Keady, P.E., Board Engineer
Martin Truscott, P.P. Board Planner**

**ZB#2010 Quick Check Corp.
Block 108 Lots 1 & 2.01, Hwy 36
Application Review & Set P.H. Date**

Present: Dan Madrid, Esq., Applicants Attorney

Mr. Madrid explained that this was a bifurcated application. They previously received use variance approval and the appeal time for that approval has expired. They are here for site plan application completeness review.

Mr. Baxter – the Board Engineer Letter indicated that the application is complete.

Dan Madrid stated that the environmental issues will be discussed at the hearing. There is an environmental due diligence period as long as Exxon is responsible they will close on the property.

Mr. Gallagher offered a motion to schedule this matter for a public hearing on June 2, 2011, seconded by Ms. Ryan and approved on the following roll call vote:

ROLL CALL:

AYES: Ms. Ryan, Mr. Gallagher, Mr. Knox, Mr. Braswell

NAYES: None

ABSTAIN: None

Mr. Baxter advised Mr. Madrid to obtain an up to date 200 foot list of property owners.

**ZB#2010-2 Metro PCS, New York, LLC
Block 108 Lot 2.01
Unfinished Public Hearing**

**Present: Michael Beck, Esq., Applicants Attorney
Noel Moeller, Metro Employee
Louise Davis, President of Eastpointe Condo Assoc.
Robert Toms, VP of MTM Design Group
William F. Masters, Jr. Professional Planner for Application
Martin Truscott, P.P. for the Board**

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Exhibits marked into evidence this evening:

- A-23: Revised Plans dated 3/28/11 which replace A-11;**
- A-24: Board with Six Photographs;**
- A-25: Board with Four Photographs.**

Mr. Baxter stated that this is the third public hearing on this application. He informed Mr. Beck of the absences of board members this evening. He then requested that Mr. Beck submit a memo for deliberations and he will also submit one to the board.

Mr. Beck – our last public hearing was on March 3, 2011 and in the interim he received Mr. Baxter's memo or subpoena for Ms. Louise Davis of the Eastpointe Condo Association Board.

Mr. Baxter swears in Louise B. Davis of 1 Scenic Drive.

Louise Davis stated the following during her testimony and response to questions from the board:

1. She is the President of the Condo Association for past five years.
2. She is familiar with Metro and there has been contact about putting antenna on Eastpointe Condo Roof.
3. The first contact was made to the board on April 3, 2008 and by May 1, 2008 the Treasurer informed Metro that we were not interested. September 3, 2010 they were contacted by D. DeStefano who wanted to revisit cell tower on roof and the new board members said absolutely that we were interested and that they do have space on the roof.
4. On November 20, 2010 new site plan was done by Metro and they included Fire Official and Roof Warranty Company.
5. February 8, 2011 new site plan and new lease but management requested a structural report.
6. Negotiations have been ongoing.
7. Exhibit A-15 yes, she saw this email.
8. The hold up with the contract is the last email dated 4/8/11. There were issues with the starting date and security deposit.
9. No officials said that we could not do this.
10. They are still waiting for structural report.
11. As if 4/8/11 no one has said they are not interested in a lease.
12. Condo Board Elections are coming up next week and no one is contesting incumbents.
13. Her desire is to come to an agreement to have Metro lease the roof.
14. Fire Official and Management have studied and determined that there is sufficient space on the roof.
15. Management Company does negotiations but she is informed of status every two weeks.
16. She showed site plan last revised 11/9/10 which is the most recent site plan she has.
17. The proposed equipment of Metro is acceptable by all.
18. Metro will be required to provide them with a structural report as part of the lease. The other factures of the lease that are on the table now have to do with specifics of the lease like security deposit, when rental fees were commencing and there were some other issues that were already worked out.

Mr. Beck then cross examined Ms. Davis.

Ms. Davis stated that following during cross examination by Mr. Beck:

1. She has been President of the Association for past five years.
2. September 2007 is when Metro contacted them.
3. She was not aware of this zoning board application to extend an existing monopole.
4. She heard about this zoning application before receiving subpoena but she can't speak for the other board members and their knowledge of this application.
5. She doesn't know about Metro board adjournments due to them presenting proposed leases to Eastpointe.
6. Metro does not have an executed lease.

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7. Yes, seven months is a reasonable amount of time to get a lease.
8. Yes, she would go somewhere else if she didn't get a lease in seven months such as Metro.

There were no further questions from the public for Ms. Davis.

The board questioned Ms. Davis and she stated the following:

1. The finalization of lease is not settled because of dollars and cents and a start date.
2. Negotiations have not concluded.
3. She does not know of any deadlines.
4. Board Members don't get involved with ongoing negotiations it's handled by their management company.

Ms. Davis was then excused.

Noel Moeller of 130 Clinton Road, Fairfield, NJ was sworn in.

Ms. Moeller stated the following during her testimony and response to questions from the board:

1. She is employed with Metro PCS. She oversees the leasing and zoning and permitting of sites before construction.
2. They first approached Eastpointe Condo Assoc in August 2007.
3. They did a design visit at Eastpointe site in October 2007 because interest was expressed by Eastpointe.
4. In April of 2008 they had Mr. DeStefano contact the condo association about the status of the lease and basically they said that they would get back to you was their response. He sent another copy of the lease and sent emails.
5. In September 2008 they received an email that Eastpointe was not interested because of Fire Officials statements.
6. Because Eastpointe wasn't available they explored another location and found this site.
7. In 2008 they undertook lease negotiations for this site and secured lease with this site owner and pole owner.
8. Once Metro secured lease we moved forward with this zoning application.
9. They came forward with this zoning board application in September 2010.
10. They requested Mr. DeStefano to reach out to Eastpointe again in September 2010 to see if they were interested.
11. They received a call from Jackie Booker of Wentworth Management that Eastpointe Condo was indeed interested and on October 14, 2010 they did a design visit. A proposed lease was provided to condo association prior to design visit.
12. After September 2, 2010 the board public hearing for this application, they requested postponements and negotiations with Eastpointe continued.
13. She explained negotiation dates with Jackie Booker.
14. They did make Jackie Booker and the Eastpointe Attorney aware of the upcoming Board application.
15. They did not obtain a signed lease with Eastpointe.
16. January 6, 2011 public hearing adjourned and tried to reach out to Eastpointe again to secure a lease but they did not secure a lease.
17. February 3, 2011 there in house Attorney reached out to Eastpointe's Attorney to see if we could come to some sort agreement, agreement not done. They requested adjournments from the Zoning Board to try to finalize a lease with Eastpointe.
18. She explained that on 3/2/11 she received an email from Jackie Booker asking for a copy of the most recent lease so she could move it forward. She then provided the lease to Jackie Booker and she also informed her that Metro would be proceeding with the March 3, 2011 Zoning Board hearing.
19. She did not get a response from her email to Jackie Booker.
20. Between the March 3rd, 2011 Zoning Board hearing and the April hearing Metro again reached out to Eastpointe to obtain a lease.
21. She requested that Mr. Beck seek another adjournment from this board at its April 2011 board meeting so that they could finally secure an agreement with Eastpointe and they did not secure an agreement.

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22. The last communication that Metro had with Eastpointe was on March 22, 2011 from Charlene Roberts, Esq., it was a phone call. The following week Metro sent an email for a response but no response. On April 5, 2011 they sent another email to see if there was a lease but again no response. On April 8, 2011 she emailed a deadline date of April 28, 2011 to Eastpointe and we have not heard from them.

23. So as of today Metro does not have a lease with Eastpointe and the deadline to enter into a lease has come and gone.

24. As a result of this application being dragged out Metro has had to start paying rent on this subject site to two different landlords without being able to use it.

25. After the April deadline they felt enough was enough.

26. For the past six weeks it's been total silence from Eastpointe but prior to that especially with two different attorneys, not sure if negotiations were satisfactory. Not sure what the problems were with the latest lease.

27. It is not a fair statement to say that all major lease items were worked out.

28. Metro feels that Eastpointe doesn't want lease due to their lack of actions.

29. She described their efforts to negotiation with Eastpointe.

Mr. Baxter – it seems to be a shame, sounds like the lease never went to the board with Metro's proposal.

Board had discussion with witness about lack of communications regarding the Eastpointe lease.

Mr. Beck – Metro has significant legal issues if this application is not approved.

Noel Moeller stated that she wants to proceed with this application.

Mr. Braswell asked if there were any questions from the public for Ms. Moeller but there were none.

Ms. Moeller was then excused.

Mr. Beck then calls up Robert Toms, VP of MTM Design Group.

Robert Toms of 670 N. Beers Street, Holmdel, NJ was then sworn in.

Mr. Toms stated the following during his testimony and response to questions from the board:

1. He described his education and professional background to the board and stated that he was a licensed Architect, Structural Engineer, Licensed Professional Engineer.

2. He prepared the plans that are before the board which are marked as Exhibit A-11.

3. He then described drawing sheet 2 of the plan which shows subject property with fenced in compound with an 80 foot tall monopole. They want to lease a 20 by 25 foot area and take an 18 foot extension in the north and south direction and basically join the existing fence with new fence which would be 8 foot high board on board fence with a 4 foot high gate along south east corner along the north east side. Inside the compound they would propose to put 14 by 7 foot concrete pad to support four equipment cabinets which he further described.

4. Sheet 3 shows enlarged plan of compound area and need electric and telephone service. He spoke about the cabinet mounting and stated that the light would be on a timer. The existing tower is 80 foot high and they are proposing to build it up 50 feet so it would become a 130 foot tower.

5. Sheet 4 they will install six antennas at the top of monopole to make it a height of 132 feet 4 inches in height and would be 6 inches wide. It would be no higher than 132 feet 4 inches. The antennas would be facing in east, south and westerly direction, three sets of two. This would basically provide the service that Metro is required.

6. A structural analysis was done on this tower and it was found to be structurally acceptable. The analysis also included a possible third carrier at a height of 119 feet and it was found to meet code requirements.

7. Antennas are connected to ground equipment using a cable and they will go from the cabinets along the cable bridge into the tower and then be connected to the antennas. The cables will be interior and invisible.

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8. A conditional use standard requires six feet chain link fence and we are asking for a variance for 8 foot board on board fence. The existing fence is 8 foot board on board and they want to make sure you can't see top of equipment cabinets.
9. Existing cabinets are beige in color and similar to other carriers beige metal cabinets. Two will be used for battery backup and the other two cabinets will be the guts.
10. Cabinets are monitored remotely 24 hours, 7 days per week. A technician will come in about every 45 days for about 30 minutes.
11. Light drawing Sheet 3, south of equipment to provide lighting for technicians and it will be on a timer.
12. Cabinets will comply with all requirements. There is no emergency generator proposed, they have battery backup. No additional drainage required for this application, they are not adding to any impervious coverage of this site.
13. Signage, they will put a sign on the gate providing emergency contact information.
14. Responded to questions about the Board Engineers Review Letter dated August 26, 2010. Item 2-5.1, they will not require any further license from FAA.
15. The applicant previously proposed a hydrogen fuel cell as backup power but it was replaced with battery cabinets.
16. Bollards will be provided around the fencing.
17. The existing fencing is two fences chain link inside and board on board is on the outside, yes they would provide same fencing if board requires it.
18. The section of the monopole will be designed to collapse upon itself if it were to fall.

Martin Truscott – there are some conditional use standards that will have to be addressed.

Mr. Toms was then excused.

Mr. Beck then called up William Masters, Jr. up to testify.

William Masters, Jr. of 19 Ironwood Drive, Morris Plains, NJ was then sworn in.

Mr. Masters, Jr. stated the following during his testimony and response to question from the board:

1. He described his education and professional background to the board. He stated that he is a Licensed Professional Planner in New Jersey.
2. He reviewed the Zone Plan and Master Plan of the Borough.
3. The zone of subject site is located on the Highway in the H-O Zone District. That is a zone district which permits principal uses of restaurants, commercial and recreation and various highway oriented uses. Included in the H-O district as a conditional use are wireless communication facilities. They are here seeking a "D" Use Variance because they don't meet the conditional use requirements.
4. Burden of proof for use variance - the use has been recognized in the borough ordinance as a use that is permitted conditionally subject to compliance with the various conditions. The burden here is to show that the use of this site continues to be a particularly suited site for a wireless telecommunications facility notwithstanding the deviation or departure from the conditional use standards. Specifically they seek a variance from the minimum tower distance from the property line requirement. The ordinance requires a setback of one and a half times the height of the tower to any property line but it also has a provision that if the tower design is designed to collapse on itself then the board may permit a distance of one times the height of the structure to the property line. So in this case it would be 130 feet, the existing setback distance to the existing 80 foot monopole is 16.25 feet to the side property line. So the first aspect of the D-3 Variance relief would be to request relief from the requirement of the 100% of the tower height to the nearest property line. Again, the existing tower at 80 feet in height encroaches in that setback distance requirement and the proposed would increase that nonconformity. The second conditional use requirement is for the tower to be painted an earth tone or sky blue color and the intent here is to maintain the existing steel color of the existing 80 foot monopole. The proposed is to match the existing color. The third conditional use requirement is minimum lot size. The existing is .63 acres and the preexisting nonconformity would be increased. The fourth deviation would be

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the height of the fence. The ordinance requires a six foot chain link fence and the proposal is to maintain the 8 foot board on board around the exterior and as discussed earlier the applicant would be willing to provide a 6 foot chain link inside the board on board.

5. Bulk Variance – there is also a “C” Variance requested here for the side yard setback for the equipment. The minimum side yard setback is 10 feet and the proposed is 5.14 feet from side line.

6. Applicant satisfies criteria for granting D-4 relief. The subject site is particularly suited for numerous reasons. Testimony was previously given that from a radio frequency perspective the site meets technical requirements for Metro PCS. As such meets the technical requirements in terms of satisfying the coverage objective for Metro for this particular area. Secondly, the site is situated approximate to major traffic corridors. The primary roadway here in which Metro is seeking to provide adequate coverage here is to Highway 36, major highway. The fact that the site is situated in the H-O Zone, the fact that there is an existing 80 foot monopole at the site, the fact that Metro is willing to collocate by adding to the existing structure, the fact that the use is permitted as a conditional use in this zone district are all characteristics that contribute to the particular suitability of this site, lastly we have a willing landlord. So for all of those reasons he would suggest that the subject site is suited.

7. Metro PCS has secured the license from FCC which should verify the use serves the general welfare.

8. Satisfy Negative Criteria – through decisions by the NJ Supreme Court has established the basis for the negative criteria analysis. While the court has stopped short of declaring these uses as inherently beneficial uses, they have however utilized the SECA balancing test for the negative criteria analysis. The public interest at stake here is significant, this provides a benefit to the general public. Detrimental Effect – he showed visual impact exhibits A-24 and A-25. He then described the photos.

11. The pole would be about to the eighth or ninth floor of the Eastpointe Condo building.

12. Conclusion, they can reduce the effect by encompassing conditions that Metro match existing exterior of the monopole to minimize visual effect.

13. There will be a visual impact but not a substantial impact.

14. Fence is a reasonable condition.

15. The positive benefits outweigh the negatives.

16. This site is particularly suited and there is no detriment to the zone plan or master plan.

17. The Master Plan is silent to cell towers.

18. He then read the borough vision of the master plan and stated that this application promotes a goal and objective of it, which he then read.

19. Bulk Variance for the location of the equipment, the necessity for the bulk variance is created by the location of the existing monopole as well as the location and configuration of the existing equipment compound. The proposed extension to the existing equipment compound is a logical location, which he further explained.

20. The proposed does not negatively impact adjoining property.

21. The use is not permitted at the Eastpointe site and would require a D-1 Use Variance or a D-2 variance.

22. The burden of proof for D-1 Variance is stricter than those of a D-3 Variance.

23. The very top of the antennas would be 132 feet 4 inches. A 130 foot monopole is not an unusually tall monopole. It falls within the average range of height for monopoles.

24. 8/26/10 Eastpointe Eng Board Letter mentioned a c variance for height of over 100 feet and he disagrees with that interpretation which he further explained.

25. The Zone plan determined that wireless communication facilities should be permitted in the H-O Zone.

26. There are no lots in the H-O Zone that meet the 3 acre minimum lot size requirement.

27. This is the next logical location having not been able to obtain a lease with Eastpointe Condo this is the next logical site.

28. The encroachments are not critical.

Robert Keady stated that there are a lot of variances being increased due to height. The visual impact is greater and that the tower exceeds the height of building in Exhibits A-24 & A-25.

Mr. Truscott spoke about the insufficient lot size of the subject site.

Mr. Braswell asked if there were any questions from the public for Mr. Masters.

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Jim Parla of 16 Portland Road questioned the height of the monopole with additional carriers and questioned the visual impact.

Mr. Masters explained the 10 feet separation requirement for carriers. He then spoke about antenna heights.

There were no further questions from the public for Mr. Masters.

Mr. Beck stated that he did not have any further witnesses.

Jim Parla of 16 Portland Road asked the Board if Ms. Davis was here because she was subpoenaed.

Mr. Baxter – yes, the board issued the subpoena.

Mr. Braswell then spoke favorably about locating the proposed antenna at the Eastpointe Condo building verses locating it at the subject site.

Mr. Beck responded to Mr. Braswells comments.

Tom Kavookjian of 113 Church Street, Rumson, NJ questioned coverage gap. Would Eastpointe location provide more coverage.

Mr. Baxter – we did not hear any testimony that any location will give you 100% coverage.

There were no further questions from the public.

Mr. Baxter then recommended that the Board close the public hearing and then have Mr. Beck submit a memo to the board within two weeks and he will also prepare a memo for the board. He stated that various board members have to listen to tapes to be eligible to vote on this application.

Mr. Gallagher offered a motion to close the public hearing and continue the matter until the June 2, 2011 meeting for the purposes of deliberation and vote, seconded by Ms. Ryan and approved on the following roll call vote:

Roll Call:

Ayes: Ms. Ryan, Mr. Gallagher, Mr. Britton, Mr. Braswell
Nays: None
Abstain: None

Approval of Minutes:

Mr. Gallagher offered a motion to approve the April 7, 2011 Zoning Board Meeting Minutes with a change of the meeting start time, seconded by Mr. Knox and approved on the following roll call vote:

ROLL CALL:

AYES: Ms. Ryan, Mr. Gallagher, Mr. Knox
NAYES: None
ABSTAIN: Mr. Braswell

Ms. Ryan offered a motion to adjourn the meeting, seconded by Mr. Gallagher and all were in favor.

The meeting adjourned t 10:08 P.M.

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CAROLYN CUMMINS, BOARD SECRETARY

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