

**RESOLUTION
GRANTING PRELIMINARY AND FINAL SITE PLAN APPROVAL
WITH USE AND BULK VARIANCE RELIEF**

**UNIFIED PLANNING BOARD
BOROUGH OF KEYPORT**

BLOCK 21.01 LOTS 38 and 39

Application # 15-02

**NEW YORK SMSA LIMITED PARTNERSHIP
d/b/a VERIZON WIRELESS 35-37 WEST FRONT STREET**

WHEREAS, New York SMSA Limited Partnership d/b/a Verizon Wireless has applied to the Unified Planning Board of the Borough of Keyport for preliminary and final minor site plan approval with use and bulk variance relief so as to allow the installation of two wireless telecommunications antennas, with associated equipment, to be installed at property commonly known as 35-37 West Front Street which is officially designated as Block 21.01, Lots 38 and 39 on the official Tax Map of the Borough of Keyport; and

WHEREAS, the applicant has provided notice to all property owners within two hundred feet and has caused notice to be published regarding said application in accordance with **N.J.S.A. 40:55D-1** et. seq., this Board gaining jurisdiction thereunder; and

WHEREAS, public hearings on the application were conducted in the within matter during regularly scheduled meetings of the Unified Planning Board held on September 24, 2015, December 10, 2015, February 25, 2016 and March 24, 2016 ; and

WHEREAS, the Board having carefully considered the evidence and exhibits presented by the applicant and the review of the Borough experts;

NOW THEREFORE, be it Resolved by the Unified Planning Board of the Borough of Keyport that the following findings of facts are made:

1. This application constitutes a request by the applicant, New York SMSA Limited Partnership d/b/a Verizon Wireless, to obtain Preliminary and Final Minor Site Plan Approval with bulk and use variances so as to allow for the installation of two faux chimneys, which would house wireless telecommunications antennas, on the roof of the existing building located at 35 West Front Street, which is officially known as Block 21.01 Lot 39 on the Tax Map of the Borough of Keyport and provide associated wireless equipment on the side of that same building, although overhanging the adjacent existing building located at 37 West Front Street which is officially known as Block 21.01, Lot 38 on the Tax Map of the Borough of Keyport.

2. The properties are located in the Borough's General Commercial (GC) Zone which does not permit telecommunication facilities. A use variance, pursuant to the provisions of N.J.S.A. 40:55D-70(d)(1), allowing such telecommunications uses is therefore necessitated by this application.

3. 35 West Front Street (Lot 39) is currently owned by an entity known as 35 West LLC, while 37 West Front Street (Lot 38) is currently owned by an entity known as 37 West LLC. The primary member of both LLC's is an individual named Jatin Patel. The applicant intends to enter into lease with the two LLC's to house its proposed telecommunications site.

4. In addition to the aforementioned use variance relief, the applicant also required bulk variance relief for maximum building height, pursuant to the provisions of N.J.S.A. 40:55D70(c)(2), as the maximum building height permitted in the zone is 35 feet whereas the antenna proposed by the applicant would be 40.1 feet & 40.11 feet respectively. The top of the proposed faux chimney which would support the antenna would be 41.25 feet high.

5. Throughout all aspects of this site plan application, the applicant was represented by Richard F. DeLucry, Esquire of the law firm Cooper Levenson which has offices located at 1125 Atlantic Avenue, Atlantic City, New Jersey 08401.

6. In support of the application, the applicant submitted the following exhibits into evidence:

- A-1: "Proposed Small Network Node Communications Facility" plans dated September 2, 2015, consisting of 8 sheets, as prepared by Frank Colasurdo, R.A. of FCA Architects having offices at 33 Woodport Road, Sparta, New Jersey 07871.
- A-2: "Property Survey" dated March 31, 2015, consisting of 1 sheet, as prepared by Richard M. Gardell, PLS of Gardell Land Surveying, LLC, having offices at 57 Keller Avenue, Rockaway, New Jersey 07866.
- A-3: "RF Emission Study" dated July 16, 2015, consisting of 11 pages, as prepared by Dominic C. Villecco and David K. Stern of VCOMM Telecommunications Engineering having offices at 2450 US Highway 130, Suite 101, Cranbury, New Jersey 08512.
- A-4: "RF Analysis and Report" dated July 16, 2015, consisting of 18 pages, as prepared by Dominic C. Villecco and David K. Stern of VCOMM Telecommunications Engineering having offices at 2450 US Highway 130, Suite 101, Cranbury, New Jersey 08512.
- A-5: "Final Approval" letter dated July 13, 2015 from Victor Furmanec, P.P. of the Monmouth County Planning Board indicating Final Approval of the application had been granted by that body.
- A-6: "Photo Simulations" of the proposed site, undated, as prepared by Dewberry Engineers, Inc. having offices at 600 Parsippany Road, Suite 301, Parsippany, New Jersey 07054.
- A-7: Revised "Proposed Small Network Node Communications Facility" plans dated September 2, 2015, last revised November 17, 2015, consisting of 8 sheets, as prepared by Frank Colasurdo, R.A. of FCA Architects.
- A-8: Revised "Photo Simulations" of the proposed site, undated, but filed with the Board on February 11, 2015, as prepared by Dewberry Engineers, Inc.
- A-9: Revised "Proposed Small Network Node Communications Facility" plans dated September 2, 2015, last revised February 8, 2016, consisting of 8 sheets, as prepared by Frank Colasurdo, R.A. of FCA Architects.

A-10: Letter dated June 30, 2015 from Trileaf Environmental and Property Consultants addressed to the Keyport Historical Society advising them of the proposed project.

7. The Board notes that initially the applicant proposed to install a telecommunications equipment platform at the rear of Lot 39. This proposal is reflected in **Exhibits A-1, A-6 and A-7**. This platform was removed from the proposal prior to the final meeting on the application. All equipment will now located on the buildings as reflected in **Exhibits A-8 and A-9**.

8. In addition to the Exhibits introduced by the applicant, the Board also marked two of its own Exhibits:

B-1: "Second Engineering and Planning Review Letter" dated September 15, 2015, consisting of 11 pages, as prepared by the Board's Engineer, Francis W. Mullan, P.E., C.M.E. and the Board's Planner, Stan Slachetka, P.P., AICP. Both professionals are from T&M Associates having offices at 11 Tindall Road, Middletown, New Jersey 07748.

B-2: "Third Engineering and Planning Review Letter" dated February 23, 2015, consisting of 8 pages, as prepared by the Board's Engineer, Francis W. Mullan, P.E., C.M.E. and the Board's Planner, Stan Slachetka, P.P., AICP.

9. In support of the application, the applicant presented sworn testimony from its professional architect Frank Colasurdo, R.A. of FCA Architects.

10. Relying upon **Exhibits A-8 and A-9**, Mr. Colasurdo testified that the applicant was proposing to create two faux chimneys on the top of 35 West Front Street (Lot 39) which would house two telecommunications antenna. An equipment cabinet would be mounted on the brick wall separating 35 West Front Street (Lot 39) and 37 West Front Street (Lot 38).

11. Mr. Colasurdo explained that the equipment box, known as a "Charles Cube", would be 43.9 inches high, 24 inches wide and 20 inches deep. It would weigh approximately 300 pounds, and would be easily supported by the wall it was going to be attached to.

12. Mr. Colasurdo further explained that all of the data processing for the antennas would be located inside of the "Charles Cube". The box would also consist of little direct current (DC) breakers, necessitating 30 amps of regular power. The power would be provided from lines running from the cube to a circuit breaker panel in the basement of 35 West Front Street (Lot 39). Fiber would be supplied to the Charles Cube from an existing utility pole in the rear of the property. The lines would be strung with other wires and then hit the corner of the building and then wind up into the box. The actual telecommunications antennas would be connected to the Charles Cube by way of coaxial cables.

13. There would not be any underground wiring, trenching or any land disturbance whatsoever proposed as part of this application.

14. Mr. Colasurdo assured the Board that the site would not require any potable water, produce any sewerage or solid waste. It would not create any smoke, glare, or any odors. The only by-product of the equipment would be some noise which would be the equivalent of a residential bathroom exhaust fan.

15. Mr. Colasurdo testified that this would be an unmanned facility and would therefore not generate any traffic to the site. The only exception to that would be a routine visit once every

four to six weeks by a technician. The technician would drive to the site in a Ford Explorer type van. There would be more than sufficient room in the rear of the building to circulate on the site. The technician would spend approximately an hour confirming that all of the equipment was in proper working order. Since there was no light fixture associated with the equipment, if the technician had to work at night, he would plug his work light directly into the Charles Cube.

16. Referring to the photo simulations introduced into evidence as **Exhibit A-8**, Mr. Colasurdo noted that other than the faux chimneys which had been designed to blend into the existing building, the project was more or less undetectable to the human eye. It was agreed, as a condition of approval, that the proposed faux chimneys, must blend into the building as proposed. It was acknowledged that the Charles Cube could not be painted as it would void the warranty on the structure if it was. Nevertheless, as reflected in **Exhibit A-8**, the Charles Cube was not really noticeable from the ground unless one was actively looking for it.

17. The applicant also presented testimony from its professional engineer, Margaret Lyons, P.E. of VComm, LLC.

18. Ms. Lyons testified with regard to the RF Reports which had been submitted into evidence and marked as **Exhibits A-3** and **A-4** respectively.

19. Ms. Lyons testified that Verizon Wireless had reached its capacity for service in the Keyport downtown area back in 2013. (**Page 7 of Exhibit A-4**) The newly proposed site was intended to allow the Verizon service to function properly for the foreseeable future. The improvements once the proposed site was on-line was demonstrated by the graphics in her company's RF Analysis and Report (**Exhibit A-4**) at pages 10 and 11. These graphics

clearly demonstrated that the service would be dramatically increased in the downtown area.

20. Ms. Lyons noted the applicant is required to provide substantial service for its markets for four different bands of cellular frequencies; 700 megahertz, 800 megahertz, PCS and AWS. Ms. Lyons believed that the applicant had adequate RF coverage, however the full capacity for the network has been reached. She indicated that unless the capacity was increased, service would be slow and customers would experience bad reception and dropped calls.

21. Ms. Lyons further testified that the proposed buildings were the best site for the proposed equipment. She indicated that the applicant had examined 11 alternative sites, as demonstrated at page 12 of the RF Analysis and Report (**Exhibit A-4**) and based upon a site inspection of what is known as the old bank building at 23 West Front Street, and none of those would properly cover the downtown area so as to resolve the coverage issues. The site being proposed allowed for proper coverage along West Front Street as well as areas along the Keyport waterfront and beyond. She noted that while the old bank building was located nearby, it was tucked away on the street whereas 35 West Front Street was better situated on its lot and provided the height necessary to give the best coverage.

22. With regard to the RF Emission Study (**Exhibit A-3**), Ms. Lyons testified that the proposed antenna and supporting equipment would operate at a maximum level of 4 to 5 percent of the emission standards permitted by the FCC. As the FCC permits 100 percent of the standard, the proposed site will operate well under what is permitted. There would not be any danger to residents in the area nor to those who might reside within the buildings where the antennas would be located.

23. As to questions of whether the same capacity relief could be obtained if the antennas were located to the same position on the roof top, rather than necessitating the creating of two different faux chimneys, Ms. Lyons testified that the distance between both was required to create the proper pitch to resolve the twin needs of addressing service both behind and in front of the building.

24. The final witness presented on behalf of the applicant was Tsvia Adar, P.P. of Dewberry Engineers, Inc.

25. Ms. Adar testified with regard to the photo simulations marked into evidence as **Exhibit A-8**. It was her opinion that based upon these photographs, it was clear that the proposed antenna which were to be housed within the faux chimneys would have little, if any, visual impact on the downtown area. The applicant had essentially put together an application which would be more or less invisible to the naked eye. As reflected in the photo renderings, unless you were actively looking for the proposed antennas and supporting equipment along the edifice of the subject building, they blend into the existing structure.

26. With regard to locating the telecommunications site at another location, Ms. Adar referred back to the testimony of the applicant's engineer, Margaret Lyons, P.E. and the analysis report marked into evidence as **Exhibit A-4**. She noted the areas in which the applicant was experiencing capacity issues were directly centered around the subject site. As a result, installing a telecommunications facility at another location would not rectify the problem. The proposed site was therefore particularly suited to resolve the capacity needs in question.

27. Ms. Adar further noted that the sought after height variance, which allowed for the creation of the faux chimney's, allowed for a positive result for the site since the structures would effectively hide the antennas from public view.

28. Ms. Adar believed that this was a low impact application and would not create any detriment for the community. Instead it would benefit the community by allowing better capacity for telecommunications in the area.

29. The applicant agreed, as a condition of approval, to comply with the requirements contained within the T&M Associates engineering and planning review letter dated February 23, 2016 (**Exhibit B-2**). This includes, but is certainly not limited to, the requirement that a copy of the Lease between the applicant and the property owners be submitted to the Board's Attorney for his review and approval. It also includes, but again is not limited to, the requirement that the applicant will remove all of the installed equipment at the time of termination or abandonment of the approved facility.

30. The applicant agreed, as a condition of approval, to provide a copy of an agreement between the applicant and the owners of 35 West Front Street and 37 West Front Street which would allow the overhang of the Charles Cube over the latter building. The encroachment agreement would need to be recorded with the Monmouth County Clerk's Office following approval being granted by the Board attorney.

31. The Board's Engineer, Fran Mullan, P.E., C.M.E. indicated that while he had some concerns pertaining to the condition of the rear of the property, those concerns really did not implicate the application since no disturbances to the ground were being proposed. As a result, he had no objections to the granting of the application from an engineering perspective.

32. The following members of the public also were sworn and spoke with respect to the application:

A) **Bob Ludwig - 50 Beers Street, Keyport** - Mr. Ludwig agreed there were benefits associated with the application. However, he also felt those general benefits were not universal in nature since he believed users of older technologies might be penalized.

B) **Michael Lane - 51 First Street, Keyport** - Mr. Lane's concerns were based primarily upon the original version of the plan which included an equipment cabinet at the rear of the property. As noted in this Resolution, that cabinet was eliminated prior to the February 25, 2016 public hearing. Nevertheless, for the sake of the record, Mr. Lane introduced the following Exhibits during the December 10, 2015 hearing:

L-1: Photograph of the project site taken by Mr. Lane

L-2: Photograph of a sample lighthouse structure which could cover the originally proposed equipment cabinet.

L-3: Price sheet/specifications for a proposed lighthouse structure

C) **Matthew McGrath - 40 Broad Street, Keyport** - Mr. McGrath stated his opinion that there was definitely a lack of coverage in the downtown area as he cannot use his mobile phone as a hot spot in any of the local restaurants or the coffee shop.

33. No one else from the public spoke with respect to this application.

34. In considering the testimony and evidence submitted in support of this application, the Board finds the subject location is particularly suited to serve as the site for the telecommunications antennas and associated equipment being proposed. The Board has reviewed the revised plans (**Exhibit A-9**), the photo renderings (**Exhibit A-8**) and the two reports which were produced (**Exhibit A-3 and A-4**). All of these exhibits, as well as the accompanying testimony, establish that the downtown area where the property is located is suffering a telecommunications capacity issue that needs to be dealt with. The proposal put forth by the applicant, in remedying the situation with such a low impact solution that does not disturb any of the uses already located in the downtown area makes clear that the proper site has been chosen. The Board is very pleased that once implemented, the proposed telecommunications site will be almost invisible to the naked eye.

35. The Board also notes that in considering this application, the use variance being sought is for an extremely limited purpose. The application only seeks to permit the installation of the antennas and accompanying equipment being proposed by the applicant. This use variance cannot be utilized nor read as having declared the 35 West Front Street and 37 West Front Street buildings as being open to accommodate multiple telecommunication providers.

36. The Board also finds that the applicant has established an enhanced quality of proof for this use by demonstrating that the proposed use will not be out of harmony with other existing uses already in the area. As noted, the proposed use is extremely low impact and will essentially be invisible to those who are not actively looking for signs of the fixtures. In fact, Board Members noted during the course of the application that at first glance they had trouble locating the fixtures in the photo renderings (**Exhibit A-8**) which were provided.

37. As long as the applicant adheres to the proposal that has been presented, the Board cannot envision any detriments that will be created by allowing the applicant to proceed with his application. In fact, the Board finds that it is a benefit to the surrounding community to have improved telecommunications capacity in the area. If this application were denied, the general

public would begin to see a failure in their telecommunications ability in the area. Additionally, it is very likely the applicant would be compelled to seek alternative locations and means to provide its service. Those alternate locations might not be as low impact as the one currently proposed. The Board is hard pressed to understand how either eventuality would be a benefit to anyone.

38. Based upon all of the above, the Board finds that the applicant has met the appropriate burden of proofs and therefore should receive the requested use variance relief pursuant to the provisions of N.J.S.A. 40:55D-70(d)(1).

39. With regard to proposed height variance, the Board feels such relief may be granted pursuant to the provisions of N.J.S.A. 40:55D-70(c)(2) as allowing for the increase in height enables the applicant to enclose the proposed antennas inside of faux chimneys which will be blended into the existing building. Absent the grant of the height variance, the antennas would be more visible to the naked eye which would not serve the benefit of anyone. As a result, the Board specifically finds that benefits for the entire community of Keyport in granting the requested relief far exceed the benefits of forcing the applicant to adhere to the strict parameters of the zoning ordinance.

40. The Board finds that as long as the applicant adheres to the testimony presented and exhibits submitted into evidence, that the site will function as envisioned. There is no reason that the Board can discern as to why the applicant should not be granted the requested preliminary and final minor site plan approval with associated use and bulk variance relief.

41. The Board concludes that the benefits of granting this application outweigh the detriments and the variance can be granted without impairing the public good, Zone Plan and Ordinance.

NOW THEREFORE, be it further resolved by the Unified Planning Board of the Borough of Keyport that the application of New York SMSA Limited Partnership d/b/a Verizon Wireless seeking Preliminary and Final Minor Site Plan Approval with use and bulk variance relief be granted subject to the following conditions:

1. Subject to the applicant adhering to the plans and photo renderings submitted into evidence as **Exhibits A-9 and A-8**.

2. Subject to the condition that the approved faux chimneys must be constructed so as to blend into the existing building as depicted on **Exhibit A-8**.

3. The applicant will be required to provide the Board attorney with a copy of the lease between it and the property owners so as to ensure there is nothing inconsistent in that lease with the approvals being granted.

4. The applicant will be required to provide the Board attorney with a copy of an encroachment agreement that will permit the Charles Cube to overhang over the building located at 37 West Front Street. Said agreement must be recorded with the County Clerk's Office following its approval being granted by the Board's attorney.

5. Subject to all requirements contained within the Board Engineer and Planner's review letter dated February 23, 2016 unless otherwise modified by this Resolution. (**Exhibit B-2**) This includes, but is not limited to, the requirement that the applicant will remove all of the installed equipment at the time of termination or abandonment of the approved facility.

6. All representations made under oath on behalf of the applicant, or by its agents, shall be deemed conditions of this approval, and any misrepresentations or actions by the applicant contrary to the representations made before the Board shall be deemed a violation of this approval.

7. This application is granted only in conjunction with the conditions noted herein and but for the existence of the same, the within application would not be approved.

8. This approval shall be deemed void by abandonment if the applicant does not receive a building permit within one year of the date hereof.

9. Subject to any and all other approvals as may be required by the Borough, County, State or Federal regulations.

10. Subject to the payment of any fees, escrows and taxes as may be due the Borough, prior to the issuance of a building permit.

11. Subject to all laws and ordinances enacted by either the State or the Borough relative to Affordable Housing, including, but certainly not limited to, payment of any required fees.

12. The action of the Unified Planning Board in approving this application shall not relieve the applicant of responsibility for any damage caused by this project, nor does the Unified Planning Board or its reviewing professionals and agencies accept any responsibility for the structural design of the proposed improvements or for any damage that may be caused by the development.

13. The applicant must publish adequate notice of this Resolution in the official newspaper of the Borough of Keyport at their sole cost, within ten days, and provide proof of publication to the Board Secretary within thirty days.

The foregoing was moved by J. Kovacs, Seconded by M. Sessa and on Roll Call, the following vote was recorded:

Affirmative: M. Sessa, R. Benedict, T. Musson, J. Kovacs, J. Kovacs-Olsen

Negative: D. Fotopoulos

Abstentions: None

The foregoing is a true copy of a Resolution adopted by the Unified Planning Board of the Borough of Keyport as copied from the Minutes of its meeting on April 28, 2016.

A handwritten signature in dark ink, appearing to read "Denise Nellis", with a horizontal line extending to the left.

Denise Nellis, Secretary of the Board