

**MINUTES OF THE HARDYSTON TOWNSHIP ZONING BOARD OF ADJUSTMENT
MEETING HELD SEPTEMBER 4, 2003**

CALL TO ORDER: The meeting was called to order by Chairman Miller at 7:30 p.m.

STATEMENT OF COMPLIANCE: Pursuant to the Open Public Meetings Act, Chapter 231, P.L. 1975, adequate notice as defined in Section 3D of Chapter 231 P.L. 1975 has been made to the New Jersey Herald and is also posted on the Bulletin Board at the Hardyston Township Municipal Building.

ROLL CALL:

William Walsh	Present
Santo Verrilli	Present
Gerald Laughlin	Excused
David Toyne	Excused
Gary Bargiel	Present
Candace Leatham	Present
Carl Miller	Present
Mary Ann Murphy (Alt.1)	Present
Roger Kabbash (Alt. 2)	Present

OTHERS PRESENT: Michael G. Vreeland, P.E., Michael S. Garofalo, Esq., James C. Kilduff, Planning/Community Development Director, Anne-Marie Wilhelm, Secretary

APPROVAL OF MINUTES:

A motion to approve the Minutes of the Hardyston Township Zoning Board of Adjustment Meeting Held August 7, 2003, was made by Gary Bargiel and seconded by Candace Leatham. Roll Call: Santo Verrilli – yes, Gary Bargiel – yes, Candace Leatham – yes, Carl Miller – yes, Mary Ann Murphy – yes. The motion carried.

RESOLUTION: ZB-8-03-1, Lake Gerard Company, Minor Subdivision, “D” Variance, Block 60, Lot 22CR. A motion to adopt the memorializing resolution was made by Candace Leatham and seconded by Gary Bargiel. Roll Call: Carl Miller – yes, William Walsh – yes, Santo Verrilli – yes, Gary Bargiel – yes, Candace Leatham – yes, Mary Ann Murphy – yes, Roger Kabbash – yes. The motion carried.

APPLICATION: ZB-4-03-1, Omnipoint Communicatins, Inc., “D” Variance, Preliminary and Final Site Plan, Block 62, Lot 35: It was noted that as Richard Briigliodoro, Esq., had a conflict, Michael S. Garofalo, Esq., would represent the Board on the matter. Mr. Garofalo informed the Board that the Applicant’s notice was sufficient. Michael B. Murray, Jr., Esq., appeared on behalf of the Applicant. He stated that approximately two years ago, Omnipoint Communications was granted a use variance to construct the existing 125' stealth monopole with nine antennae and equipment compound at the Hardyston Cemetery. He presented that since that time, Omnipoint has put up six antennae and placed one equipment cabinet on the concrete slab within the compound area. He stated that the Applicant seeks permission to expand the total number of permitted antennae by three and place a total of twelve antennae on the monopole with two additional equipment cabinets on the concrete slab. Mr. Murray stated that on the previously approved plan, three equipment cabinets were illustrated.

Mr. Murray distributed exhibit packets to the Board consisting of Exhibit A-1 through A-6. The Exhibits were noted as follows: A-1, Affidavit of service of Notice of Hearing in compliance with Municipal Land Use Law, N.J.S.A. 40:55D-12; A-2, Use Variance/Site Plan Application of Omnipoint to the Hardyston Township Zoning Board of Adjustment, Sussex County, New Jersey; A-3, Copy of Radio Station Authorization issued by the FCC to Applicant; A-4, Resolution of the Township of Hardyston Zoning Board of Adjustment Memorialized on February 1, 2001, granting Omnipoint

permission to locate a telecommunication facility on the subject property; A-5, Report of EMF emissions dated August 6, 2003; and A-6, Site Plan of subject site. David Karl LeBach, P.P., was sworn, qualified, and accepted by the Board as an expert. He stated that the "D2" variance application would expand a nonconforming use and this expansion would have little impact from a planning perspective. He stated the expansion would not create any additional site disturbance and there would be no change in use or triggering of modifications to the zoning plan. He presented that this use is passive as there would be no generation of additional employees or need for additional municipal services. Further,

Mr. LeBach stated that the areas surrounding the site encompass several converging zones – the Midd Zone, Industrial Zone, Business Zone, as well as agricultural uses in the area. He described the area as rural and noted that the property is located in both the RC and Midd II Zones. He noted that the tower is located exclusively in the RC Zone. He stated the site is suitable for the proposed use because the 125' pole is approved and the impacts of the site have been tested. He stated the construction of another tower would have a far greater community impact.

With reference to the legal proofs required for a use variance, Mr. LeBach stated that the New Jersey Supreme Court ruled that the mere issuance of an FCC license should suffice for a carrier to establish that the general welfare purpose is served. He stated that Omnipoint holds this license and consequently, the positive criteria is met. He stated that the addition of the antennae would serve the public interest in terms of enhancing public safety, increasing work productivity and efficiency, providing access to the information superhighway, and providing on-demand communications. He stated he could not identify any public detriments.

With reference to the Master Plan, Mr. LeBach stated that in the 1996 Re-exam prepared by Heyer, Gruel & Associates, there was no specific reference to this property or mention of wireless telecommunications facilities. Mr. LeBach stated that he did not believe that the application conflicts with any provisions or recommendations of the Master Plan. Further, he stated that the public benefit to be derived by the proposed development outweighs any conceivable community impacts.

With reference to the negative criteria, Mr. LeBach stated that he did not believe there were any community impacts as the tower blends in well with the surrounding areas and is in an appropriate area. With reference to the visual impact, Mr. LeBach stated that you could not really see the antennae as they were hidden within the foliage of the tree and would not visually impact the adjoining properties. He presented Exhibit A-7, a series of five photographs of the existing site, for the Boards' review.

Chairman Miller opened the meeting to the public for questions and commentary on this portion of testimony. There were no participants. The meeting was closed to the public.

Bert Lesley, P.E., was sworn and qualified by the Board as an expert witness. He stated that the site was originally selected to fill in an area coverage void. He stated the Applicant now seeks to expand its capacity in accordance with growth to satisfy regulatory FCC standards which require carriers to maintain reliable coverage for their customers. Mr. Lesley defined reliable coverage as a maximum load of 75% at a site. He stated that as you obtain that percentage load more frequently, the site efficiency decreases. He stated the objective is to build more than what is needed to provide a cushion. Mr. Lesley stated that Omnipoint is approaching capacity and needs to expand to meet consumer demand. He stated that expanding the antennae count to twelve should be sufficient for the next four to six years depending on growth. He confirmed that the old antennae would remain and the new additions would be of the same type. Mr. Lesley submitted Exhibit A-5, *Evaluation of Human Exposure to RF Radiation at Wireless Communication Sites* dated August 6, 2003, for the Board's review. He explained that the FCC mandates analysis utilizing maximum permissible exposure to the public and personnel. He stated that a worst case scenario study is conducted as if the maximum amount of carriers, channels, and power are being used. Mr. Lesley noted that Omnipoint, at its maximum, is at .14% of the standard maximum permissible exposure. He stated the system is designed to be low power and the signal strength is measured in negative decimal milliwatts. He noted that FCC 911 requirements prohibit the use of all the channels to allow for emergency uses. Further, he noted that the antennae do not transmit power but the radios do at 20 watts per channel. Michael G. Vreeland, P.E., requested an amendment to Table I on page three to include the other carriers. Mr. Lesley agreed to provide same.

Chairman Miller opened the meeting to the public for questions and commentary on this portion of testimony. There were no participants. The meeting was closed to the public.

Frank E. Pazden, P.E., was sworn, qualified, and accepted by the Board as an expert witness. Mr. Pazden presented an overview of the existing site conditions stating the equipment compound consists of a 10' x 12' concrete pad with one equipment cabinet on it. He noted that the approved plan allowed for the placement of three equipment cabinets with underground conduits for future build-out. He stated that the subject application proposes to add the two cabinets at this time. He stated these cabinets would be identical to the existing cabinet and would measure 6' x 2' x 4'.

With reference to the existing 125' monopole, Mr. Pazden stated it is designed in four sections for four co-locaters. He explained that the mounts are the same and can incorporate three antennae sectors with two, three, or four antennae per sector. Mr. Pazden noted that the previously approved 9 antennae sectors (three antennae per sector) were built-out with a T-arm holding two antennae at the end of the arm with the mounting pipe built in the center for the future antennae. He stated that the subject application proposes four antennae per sector and this would require a change to the horizontal separation on the T-arm crossbar and the installation of four additional antennae. He stated the additional antennae will be identical to what is there now. Further, he noted that the size of each antennae is 72' x 8' x 3'. He stated the analysis and subsequent structural mounts on the monopole were designed to allow 38 antennae – 12 for Omnipoint; 6 for AT & T, 8 for Horizon, and 12 for a future co-locater.

Board members reviewed the attached 8/25/03 report submitted by Michael G. Vreeland, P.E. The Applicant agreed to comply with the recommendations and requests for information noted by Mr. Vreeland. It was noted that AT & T constructed their antennae at 105' and the plans show their antennae to be located at 95'. Mr. Murray stated that a default letter has been issued to AT & T and they are required to move the antennae. With reference to their placement of equipment cabinets outside the compound area, Mr. Murray stated that he believed the group will apply an amended site plan application with the Board.

The Board discussed issues concerning responsibility for maintenance of the pole and adherence to conditions of approval imposed on Omnipoint's tenants. Mr. Murray stated that Omnipoint would replace/add branches, subject to the approval of Michael G. Vreeland, P.E., on the pole as necessary. It was noted that the Board would require Omnipoint to provide a full as-built and will hold Omnipoint responsible for the site.

Jim Simmons, authorized agent of Omnipoint and site acquisition specialist, was sworn. He stated Omnipoint has no lease with Verizon [a pending matter] for this site.

Chairman Miller opened the meeting to the public for questions and commentary on this matter. There were no participants. The meeting was closed to the public.

A motion to approve the application providing - Omnipoint installs the stealth branches to the 75' level and the installation of these branches is approved by the Board engineer prior to the issuance of any building permits; Omnipoint complies with Mr. Vreeland's requests for information and corrections to the plans to include the installation of slats on the fence; and the RMF report table is amended as noted above was made by Gary Bargiel and seconded by William Walsh. Roll Call: Carl Miller – yes, William Walsh – yes, Santo Verrilli – yes, Gary Bargiel – yes, Candace Leatham – yes, Mary Ann Murphy – yes, Roger Kabbash – yes. The motion carried.

Chairman Miller informed Mr. Murray that the Board would strongly suggest that AT & T appear before the Board at the October meeting. Further, the Board directed Mr. Kilduff to forward a letter to Omnipoint requesting as-builts.

BILLS: A motion to recommend payment of the bills cited below to the Township Council was made by Santo Verrilli and seconded by Gary Gargiel. Roll Call: Carl Miller – yes, William Walsh – yes, Santo Verrilli – yes, Gary Bargiel – yes, Candace Leatham – yes, Mary Ann Murphy – yes, Roger Kabbash – yes. The motion carried.

Weiner Lesniak LLP	ZB-7-03-1, AT & T	\$ 182.00
Weiner Lesniak LLP	ZB-4-03-1, Omnipoint	56.00
Guerin & Vreeland Engineering, Inc.	ZB-7-03-1, AT & T	427.50

PUBLIC PARTICIPATION: Chairman Miller opened the meeting to the public for questions and commentary on general issues. There were no participants. The meeting was closed to the public.

CORRESPONDENCE/DISCUSSION: James C. Kilduff, Planning/Community Development Director, gave an update on the Town center designation application and stated the State's plan endorsement program may be an alternative option for the Town to pursue. He stated the matter is being reviewed by the Town's professionals.

ADJOURNMENT: Having no further business, a motion to adjourn was made by Santo Verrilli and seconded by William Walsh. All were in favor. The motion carried. The meeting was adjourned at 8:45 p.m.

Minutes respectfully submitted by:

Anne-Marie Wilhelm