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PLANNING & ZONING OFFICE  
TOWNSHIP OF CRANFORD

**PROPOSED WIRELESS COMMUNICATIONS FACILITY**

**BLOCK 121, LOT 2.01  
1033 SPRINGFIELD AVENUE  
TOWNSHIP OF CRANFORD  
UNION COUNTY, NEW JERSEY**

**JUNE 12, 2019**

**Prepared by:**

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LICENSE NUMBER 33LI00236300**

## **INTRODUCTION**

This planning report pertains to the application of New York SMSA Limited Partnership d/b/a Verizon Wireless (Verizon Wireless), New Cingular Wireless PCS, LLC d/b/a AT&T Mobility (AT&T) and T-Mobile Northeast, LLC (T-Mobile) (collectively hereinafter referred to as the "Wireless Carriers") for a wireless communications facility to be located on the campus of Union County College, on property known as Block 121, Lot 2.01 on the official tax maps of the Township of Cranford. All three of the Wireless Carriers are licensed by the Federal Communications Commission (FCC) to provide wireless communications services.

The Wireless Carriers propose a wireless communications facility consisting of a 140-foot-tall tree monopole with concealment tree branches that extend to a height of 148 feet above ground level (AGL). The proposed tree monopole is to be centrally located within a 48ft. x 48ft., 2304 sq. ft., fenced equipment compound. The security fence will be an 8 ft. high chain link fence.

The subject property is situated within the E-1, Education Zone District. The Township of Cranford regulates telecommunications antennas and towers pursuant to Section 255-37I of its Land Development Ordinance. Antennas are permitted uses in the O-1, Office Building District, the O-2, Medium-Density Office Building District, the C-1, Commercial District, the C-2, Commercial District, and the C-3 Commercial District. Towers are regulated as conditional uses in the O-1, O-2, C-1, C-2, and C-3 Zone Districts.

If the property that is the subject of a telecommunications antennas and tower application is owned, controlled or leased by the Township, the application is exempt from Planning Board or Board of Adjustment review but is subject to review and approval by the Township Governing Body.

Owing to the fact that the proposed wireless communications facility is not a permitted use in the E-1 Education Zone District, a use variance is required pursuant to N.J.S.A.40:55D70d(1).

Section 255-37I(10)(a) of the Cranford Township Land Development Ordinance establishes a maximum tower height of 70 feet. The proposed tower height of 140 feet with a top of branching height of 148 feet will require a height variance pursuant to the N.J.S.A.40:55D70c(2).

In addition to the use variance and height variance relief, the application seeks variance relief from the minimum setback requirement of 125% of the height of the tower, as set forth in Section 255-37I(10)(b)[1] of the Cranford Township Land Development Ordinance. The minimum setback requirement for the 148-foot top of branching height is 185 feet. The proposed setback to the monopole foundation is 112'-9". Setback variance relief is sought pursuant to N.J.S.A.40:55D70c(2).

Section 255-37l(10)(c) of the Cranford Township Land Development Ordinance requires a separation distance from the monopole to any zone district in which residential use is permitted of 300 feet or 300% of the tower height, whichever greater. The minimum separation requirement for the 148-foot top of branching height is 444 feet. The separation distance from the proposed monopole foundation to the closest residential zone district is 187'-10". Separation distance variance relief is sought pursuant to N.J.S.A.40:55D70c(2).

### **PROPERTY DESCRIPTION**

The subject property is an irregular shaped lot that is part of a 22.023 acre college campus that extends from Springfield Avenue (County Route 615A) to Gallows Hill Road. The site is occupied by the Cranford Campus of Union County College. The subject property is bounded on the west by the municipal boundary line with the Town of Westfield.

### **PROJECT DESCRIPTION**

Verizon Wireless, AT&T and T-Mobile propose to collocate on a proposed 140-foot-tall monopole, designed as a tree monopole with branching that extends to an overall height of 148 feet above ground level (AGL). Verizon Wireless proposes an array of sixteen (16) panel antennas at a centerline antenna height of 140' AGL. AT&T proposes an array of sixteen (16) panel antennas at a centerline antenna height of 130' AGL. T-Mobile proposes an array of nine (9) panel antennas at a centerline antenna height of 120' AGL.

Verizon Wireless, AT&T, and T-Mobile plan to locate their equipment within a 48'x48', 2304 square foot fenced equipment compound. The wireless communications equipment will be encompassed within an 8-foot-high chain link fence with (2) 4 foot wide lockable access gates.

The unmanned wireless communications facility will be monitored continuously from remote locations.

### **SURROUNDING LAND USE**

The subject property is bounded on the east by Springfield Avenue. Across Springfield Avenue lies Nomahegan Park. To the south and southeast of the proposed wireless communications installation a campus road extends between Gallows Hill Road and Springfield Avenue. Beyond the campus road lies a large parking lot which services the Union County College campus. The parking lot is bounded by vacant wooded land which borders Colby Lane and residences to the southeast.

The municipal boundary line with the Town of Westfield forms the western boundary with the subject property. The adjoining tract of land to the west is occupied by Fairview Cemetery. The subject property is bounded on the north by residences situated on Princeton Road and Rutgers Road.

### **STATUTORY CRITERIA FOR THE GRANT OF USE VARIANCE RELIEF**

The applicants seek use variance relief consistent with Section 40:55D-70d(1) of the New Jersey Municipal Land Use Law (MLUL) from Section 255-36E of the Land Development Ordinance of the Township of Cranford to locate a wireless communications facility within the E-1 Education Zone District.

Height Variance Relief is also sought pursuant to Section 40:55D-70c(2) of the New Jersey MLUL from Section 255-37I(10)(a) of the Cranford Township Land Development Ordinance as the maximum permitted tower height is 70 feet whereas 148 feet to the top of branching is proposed.

The New Jersey Supreme Court decided the case of New Brunswick Cellular Telephone Company d/b/a Comcast Cellular One v. Borough of South Plainfield Board of Adjustment et al (decided June 30, 1999)-(hereinafter South Plainfield). The Supreme Court stated in the South Plainfield decision that "[g]enerally, the issuance of an FCC license should suffice for a carrier to establish that the use serves the general welfare." This finding reinforced the N.J. Supreme Court's conclusion in the case of Smart SMR of New York, Inc. d/b/a Nextel Communications v. Borough of Fair Lawn Board of Adjustment, 152 N.J. 309, 323 (1998) (hereinafter Fair Lawn). The wireless carriers' licenses satisfy that requirement.

In the Fair Lawn decision, the Supreme Court established guidelines for local land use agencies in deciding cases involving the location of wireless communication facilities. The Court stated that when a new tower is proposed the applicant must prove that the site is particularly suited for that use.

### **PARTICULAR SUITABILITY OF THE SITE**

The Supreme Court in the South Plainfield decision stated that "to demonstrate that a site is particularly suited for a telecommunications facility, the applicant initially must show the need for the facility at that location." In this application, both the Wireless Carriers as well as the property owner have a need for improved telecommunications. Union County College performed a safety and security needs assessment and determined that there was a critical communication need on the Cranford campus. The safety and security needs assessment was performed by Union County College pursuant to the mandate of federal law contained in the Clery Act, 20 U.S.C. 1902. The Clery Act, "requires every Title IV institution, without exception, to have and disclose emergency response and evacuation procedures that would be used in

response to a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees occurring on the campus.” The Clery Act requires every institution to immediately notify the campus community upon confirmation of a “significant emergency or dangerous situation occurring on the campus.” Examples of a significant emergency or dangerous situation include fire; outbreak of meningitis, norovirus or other serious illness; approaching tornado, hurricane or other extreme weather conditions; earthquake; gas leak; terrorist incident; armed intruder; bomb threat; civil unrest or rioting; explosion; and nearby chemical or hazardous waste spill.

U.S. Department of Education, Office of Postsecondary Education, The Handbook for Campus Safety and Security Reporting, Chapter 6, 2016 edition, Washington, D.C. 2016.

Union County College identified a deficiency in the wireless communications services of the Wireless Carriers on the Cranford campus. It issued a request for proposals (RFP) from the Wireless Carriers to address the significant need for improvement to their networks in order to provide reliable uninterrupted wireless communications to the campus community in accordance with the requirements of the Clery Act. The within application emanated from the RFP.

Independent of the College, the Wireless carriers also identified significant gaps in their networks in and around the subject property that they have been attempting to address for several years. In the Fair Lawn case, the Supreme Court declared that:

“Relevant to the determination of the suitability of a telecommunications site is the Telecommunications Act’s mandate that “The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof . . . shall not prohibit or have the effect of prohibiting the provision of personal wireless services.”

The subject site, Block 121, Lot 2.01, is particularly suited for the proposed wireless communication facility for numerous reasons as indicated herein.

- The subject site is ideally situated from a radio frequency engineering standpoint to satisfy the coverage objective for Verizon Wireless, AT&T, and T-Mobile for this particular area of Cranford Township and the Town of Westfield. Therefore, the subject site achieves the technical requirements of the three (3) Wireless Carriers.
- The subject site is situated within a non-residential zone district, the E-1 Education District.
- The subject site is occupied by a non-residential land use, the Cranford Campus of Union County College.
- The Union County College Administration and Department of Campus Public Safety has identified a critical deficiency in wireless communications service of the providers which

affects the reliability of communications, including emergency text alerts. This situation significantly impacts the college's ability to adhere to the requirements of the Clery Act with respect to its ability to notify the campus community in the event of a significant emergency or dangerous situation involving an immediate threat to the health and safety of students or employees.

- The proposed wireless communication facility is within a developed site such that the use would not produce a significant impact on the environment. The proposed installation can be situated on the site with minimal disruption, utilizing an existing access driveway and existing on-site parking. The location of the proposed facility is within the College's maintenance yard which is surrounded by a heavily wooded buffer and would allow for the construction of the facility without the loss of the wooded buffer.
- The subject site affords adequate space to accommodate collocation, a desired objective of the wireless communications industry as well as the Land Use Planning community.
- The subject lot is part of a particularly large nonresidential tract (22.023 acres) situated within a predominately residential area. Thus the site affords the opportunity to provide reliable, uninterrupted wireless communications service, from three (3) wireless providers, to surrounding residential neighborhoods from a large, non-residential, quasi-public property.
- The subject site has a willing landlord to facilitate the proposed installation, Union County College; a landlord who has determined that there is a significant need to alleviate a critical deficiency in the on-campus wireless communications networks resulting in unreliable wireless communications within the college campus that compromises the college's ability to provide immediate notification to its students, faculty and employees in the event of a significant emergency or dangerous situation occurring on campus, in contravention of the federal Clery Act.

Based upon the aforementioned reasons, the conclusion is reached that the site located at the Cranford Campus of Union County College and identified as Block 121, Lot 2.01 on the official tax maps of the Township of Cranford, is a site that is particularly suited for the proposed wireless communication facility. As such, it is concluded that the application satisfies the positive criteria required for the grant of use variance relief.

## **NEGATIVE CRITERIA**

While the New Jersey Supreme Court has stopped short of declaring wireless communications facilities that require the construction of towers or monopoles inherently beneficial, the court in the Fair Lawn case found that the Sica balancing test which it heretofore utilized solely for the negative criteria analysis of an inherently beneficial use was the proper test to evaluate a telecommunications use.

In considering the negative criteria, the court states:

“In making this determination, we will weigh, as we would with an inherently beneficial use, the positive and negative criteria and determine whether, on balance, the grant of the variance would cause substantial detriment to the public good,” citing Sica v. Board of Adjustment of the Township of Wall, 127 N.J. Super 584. Fair Lawn at 27.

The relevant points set forth in the Sica decision are as follows:

There must be a balancing of the positive and negative criteria. The Court further established a general guide to municipal boards when balancing the positive and negative criteria (p. 165-166)

- (a) “The board should identify the public interest at stake,”
- (b) “The board should identify the detrimental effect that will ensue from the grant of the variance”,
- (c) “In some situations, the local board may reduce the detrimental effect by imposing reasonable conditions on the use”, and
- (d) The board should then weigh the positive and negative criteria and determine whether, on balance, the grant of the variance would cause a substantial detriment to the public good.

In reviewing these guidelines this report makes the following findings:

First, the public interest at stake is significant. The N.J. Supreme Court in Fair Lawn states:

“In today’s world, prompt and reliable information is essential to the public welfare. Evidencing the need for such information is the proliferation of wireless telecommunications instruments such as mobile phones, which rely on antennas for the transmission of signals.” Fair Lawn at 2.

There is a need for this facility. Our region, and particularly the College campus, is dependent upon efficient telephone communication especially in situations where immediate communication is critical to safety. The enhanced ability of police, fire, or other emergency personnel to provide expedient response by virtue of an enhanced communication network is essential to society and clearly promotes the public good and general welfare. The public benefit is not confined to one municipality but rather the public benefit is regional. As stated by the Supreme Court in Fair Lawn :

“A telecommunications facility is a paradigm for a use that serves a greater community than the particular municipality.” Fair Lawn at 27.

In evaluating any detrimental effect, it is noted that the proposed antenna arrays will be an extremely benign use. There are no employees and thus no traffic, other than routine maintenance. There is no noise, light, glare, odors, dust nor any nuisance factor associated with this facility.

The visual impact is mitigated by the fact that the location of the proposed facility on the 22.023 acre college campus is within an existing wooded area, surrounded by 85+ tall trees. Further, the proposed antenna support structure will be designed as a tree monopole. Given the lack of noise, lights, glare, odors, dust, traffic and the limited visual impact, any detrimental effects resulting from the grant of the variance will not be significant. Thus, there is no substantial detriment to the public good.

The balancing test required in the Sica case places the positive criteria for the use and provision of its services on one side and the negatives on the other. Analysis of these two sides of the scale, clearly places greater weight on the positive side than the negative.

First, considering the negative there is no substantial negative impact. This use is extremely benign. It has no traffic, no employees, no lights, no noise, no glare, nothing that could have a significant detrimental impact. Second, considering the positive, the facility will cover gaps in the networks of all three Wireless Carriers, improve mobile communications and provide emergency benefits through up to date communications. Expanding upon the “prohibition of service” proscription contained in the Telecommunications Act, the “FCC” recently clarified “that a state or local legal requirement constitutes an effective prohibition if it “materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.” Declaratory Ruling & Third Report & Order, FCC 18-133, 35 citing California Payphone, 12 FCC Rcd at 14206, para. 31. The FCC explained that “[t]his test is met not only when filling a coverage gap but also when densifying a wireless network, introducing new services or otherwise improving service capabilities.” Id. at 37 (internal citations omitted).

A land use board will effectively prohibit service under this “materially inhibit” standard if the applicants demonstrate that they have service goals that are not being met in the area and the proposed facility addresses the identified issues. As set forth in the expert radio frequency



report submitted with the within application and which will be further supplemented and explained during the public hearing, each of the Wireless Carriers have a significant gap in coverage within their respective networks within the identified area. Under federal law, the Wireless Carriers must be allowed to enhance their existing service. Moreover, the benefits derived by eliminating these gaps coupled with the increasing dependence upon reliable voice and data transmission in our society all add up to very substantial and weighty positive reasons and criteria under both State and federal law.

In balancing the positive and negative criteria, the finding is that first, the negative impact is minimal and thus that side of the "balance" or "scale" is negligible. On the positive side of the "balance", the general welfare, safety and need for this facility are very substantial and far outweigh any negatives.

Thus, it is concluded that the application satisfies the Sica test which balances the positive and negative criteria.

In further support of satisfying the negative criteria burden, the professional radio frequency report establishes that there are no other existing tall structures within the subject area that would achieve the coverage objectives of the three (3) wireless carriers by eliminating their significant coverage gap. Further the radio frequency report confirms that there are no alternative technologies available to satisfy the technical objectives. As such the proposed facility is the least intrusive method of addressing the gap in coverages.

### **STATUTORY CRITERIA FOR THE GRANT OF HEIGHT VARIANCE RELIEF**

The applicants seek height variance relief consistent with N.J.S.A. 40:55D-70c(2). The maximum permitted tower height in the Township of Cranford is 70' and the top of the branching of the proposed tree monopole is 148 ft. AGL. The antenna centerline height of Verizon Wireless is 140 ft. AGL. The antenna centerline height of AT&T is 130 ft. AGL. The antenna centerline height of T-Mobile is 120 ft. AGL. The needs of the Wireless Carriers is documented in the professional radio frequency report. Wireless communication is a line-of-sight technology. The antennas need to "see" above the prevailing tree height, terrain, and "ground clutter," such as buildings, in order to function efficiently.

The courts have found that monopole heights such as the proposed do not substantially impact the community. In the Fair Lawn case, a 90 ft. monopole was replaced by a 140 ft. tall monopole, adjacent to a residential zone. In that decision the court opined that the increase was, "merely a 50 foot increase in height." 152 N.J. at 333.

In Kingwood Tp. Volunteer Fire Co. v. Board of Adjustment, 272 N.J. Super. 498, 509 (1993), the court held that the replacement of a 75-foot tower with a 197-foot tower would impose, at most, minimal intrusion on the surrounding community.

The primary focus from a planning perspective with regard to the negative criteria analysis for a height variance is the potential visual impact. This application proposes to locate a 148 ft. tree monopole on a 22-acre college campus within an existing wooded area with trees in excess of 85 feet tall, 229 feet from the closest residential dwelling. Consequently, the conclusion is reached that the height variance relief can be granted without substantial detriment to the public good and without substantial impairment to the intent and purpose of the Zone Plan and Zoning Ordinance of the Township of Cranford.

## **CONCLUSION**

Based upon the facts and information presented herein and their analysis, it is concluded that the application satisfies the New Jersey Municipal Land Use Law criteria for the grant of use variance, height variance, setback, and separation variance relief.

Further, it is the conclusion of this analysis that the application satisfies the guidelines established by the N.J. Supreme Court for the installation of a wireless telecommunications facility, as set forth in its decision, Smart SMR of New York, Inc. d/b/a Nextel Communications v. Borough of Fair Lawn Board of Adjustment.

Specifically, the application adheres to the following guidelines of the Fair Lawn decision:

1. Verizon Wireless, AT&T and T-Mobile have secured the requisite licenses from the FCC.
2. The site which is the subject site of this application is particularly suited for the proposed use.
3. The application does not pose a substantial detriment to adjacent properties.
4. The application does not cause substantial impairment to the intent and purpose of the Zone Plan and Zoning Ordinance of the Township of Cranford.

The application is herein recommended for approval.