ZONING BOARD OF ADJUSTMENT OF THE
BOROUGH OF DUMONT

RESOLUTION

PRELIMINARY AND FINAL SITE PLAN
AND VARIANCES

In the Matter of the Application of

New York SMSA Limited Partnership d/b/a Verizon Wireless
& Omnipoint Communications, Inc.

WHEREAS, New York SMSA Limited Partnership d/b/a Verizon Wireless ("Verizon") and Omnipoint Communications, Inc. ("Omnipoint")(collectively, the "Applicants") are the lessees of a portion of the property located at 2A Sunset Street, designated as Lot 1 in Block 821 on the Tax Map of the Borough of Dumont (the "Property") and 401 Washington Avenue, designated as Lot 1 in Block 509 on the Tax Map of the Borough of Dumont, respectively; and

WHEREAS, the Applicants have made application to the Zoning Board of Adjustment of the Borough of Dumont for Preliminary and Final Site Plan Approval pursuant to N.J.S.A. 40:55D-37, together with application for variance relief pursuant to N.J.S.A. 40:55D-70(d) with respect to permitted use and maximum structure height for each location in separate applications; and

WHEREAS, Verizon's application was heard on March 12, 2007, April 9, 2007, May 14, 2007 and June 11, 2007, upon the

conclusion of which, the Board denied variance relief as set forth in the resolution adopted September 10, 2007; and

WHEREAS, Omnipoint's application was heard on November 13, 2006, December 11, 2006, January 8, 2007, February 13, 2007, and March 12, 2007, upon the conclusion of which, the Board denied variance relief as set forth in the resolution adopted May 14, 2007; and

WHEREAS, both applicants confirmed during the hearings that they could each co-locate at either location and still meet their coverage requirements; and

WHEREAS, the Applicants appealed the decisions of the Board pursuant to N.J.S.A. 40:55D-72 and Section 12A-34 of the Code of the Borough of Dumont in connection with *inter alia*: the reasons for denial as set forth in the resolutions adopted September 10, 2007(Verizon) and May 14, 2007(Omnipoint); and

WHEREAS, the matters were consolidated by consent order; and

WHEREAS, A trial was held on June 13, 2008 regarding the consolidated matters of *Omnipoint Communications, Inc vs. Borough of Dumont Zoning Board of Adjustment, Mayor and Council of Borough of Dumont, and Borough of Dumont (Docket No. BER-L-5367-07)*, and *New York SMSA Limited Partnership, a New York Limited Partnership, d/b/a Verizon Wireless vs. Zoning Board of*

Adjustment of the Borough of Dumont (Docket No. BER-L-8757-07) before the Superior Court of New Jersey; and

WHEREAS, upon referral from the Honorable Joseph S. Conte, J.S.C., as set forth in the Order for Judgment dated August 22, 2008, the decisions of the Board were vacated and both matters were remanded to the Board to solely determine which of the plaintiffs' sites is most suitable for collocation for both of the plaintiffs' facilities; and

WHEREAS, upon a motion and 4:3 roll call vote, the Board voted to approve the construction of a monopole at 2A Sunset Street, as multiple carriers can co-locate on the pole and a fenced in area can be provided for safety. The Board further found that the previously proposed 401 Washington Avenue location is not suitable, as a flagpole limits co-locators and issues surrounding federal regulations regarding flags would prove to be unnecessarily arduous in this case. The Board further found that this location would have a detrimental impact on the surrounding area and would require a higher structure than the cellular installation at the Property. Additionally, the proposed flagpole at 401 Washington Avenue could accommodate a maximum of two (2) carriers, thereby giving rise to the possibility of an additional carrier seeking to build another cell tower; and

WHEREAS, a public hearing was held by the Zoning Board of Adjustment on October 20, 2008, at which time the Applicants, represented by counsel, Richard Schneider, Esq. of the firm of Vogel, Chait, Collins & Schneider, Esqs. (for Verison), and John R. Edwards, Esq. of Price, Meese, Shulman & D'Arminio, P.C. (for Omnipoint), (a) presented proof of notice and publication as required by law; (b) submitted (i) the Site Plan prepared by French & Parello Associates, P.A. dated September 12, 2008, last revised September 25, 2008 and consisting of seven (7) sheets as follows:

Sheet:	Title:
C-01	Cover Sheet
A-01	Site Plan & Notes
A-02	Enlarged Area Plan
A-03	Elevation & Antenna Plan
A-04	Site Details
A-05	Equipment Cabinet & Details
A-06	200 FT. Radius Map

(the "Site Plan"); (ii) the Site Plan prepared by Frank Colasurdo Architect, Inc. dated September 27, 2008 last revised October 3, 2008 and consisting of four (4) sheets as follows:

Sheet:	Title:
Z1	Cover Sheet
Z2	Tax Map, Zoning Map & 200 FT. Property Owners List
Z3	Site Plan & Zoning Chart
Z4	Site Elevation & Equipment Details;

(iii) the Site Map (SK-1) and the Enlarged Site Map (SK-2) prepared by Innovative Engineering, Inc. dated April 30, 2007

and last revised May 11, 2007; and (c) presented the testimony of (i) Peter Longo, a licensed civil engineer employed by the firm of Innovative Engineering, Inc., specializing in wireless communications and accepted by the Board as an expert in the field of civil engineering; and (ii) William F. Masters, Jr. and Timothy Kronk, licensed professional planners and accepted by the Board as an experts in the field of community planning; and

WHEREAS, the Board has reviewed the Application, the plans and documents enumerated above and other evidence submitted, having heard and considered the testimony presented by the Applicant and all members of the public that offered testimony, and having considered the arguments of counsel and the reports submitted by the Board's and the Borough's professionals, including but not limited to the reports of Neglia Engineering Associates, the Board's professional planner, dated October 16, 2008 and October 20, 2008, and for good cause shown:

NOW, THEREFORE, BE IT RESOLVED that the Zoning Board of Adjustment of the Borough of Dumont makes the following findings of fact with respect to the within Application:

1. The Property is located on the northwesterly corner of the intersection of New Milford Avenue and Sunset Street and is presently used as an automotive repair facility and storage yard and contains two (2) single story buildings at the northern end

as well as several trailers. The Property is situate in the LI (Light Industrial) Zone District.

2. The Applicants propose to install an unmanned wireless telecommunications facility on the Property, consisting of a 120 foot high monopole which will accommodate twelve (12) antennae at the top, as well as an 11.5 foot by 22 foot prefabricated equipment shelter. All of the equipment is intended to be located within a 27 foot by 40 foot leased compound area enclosed by an 8 foot high fence. Omnipoint Communications, Inc. may be co-located on the monopole within ten feet of Verizon Wireless with an equipment shelter on a 4x20 foot concrete slab in an enclosed fenced in area (this approval does not grant authority for such shelter or slab, which may require further application to the Zoning Board of Adjustment). The eastern side of the area is intended to have a stockade fence to match the existing fencing, and the remaining three sides are intended to be enclosed by a chain link fence. While the proposed pole has a height of 120 feet, the overall height of the proposed structure is 128 feet, which includes an 8 foot high lightning rod. The Applicants represent that 120 feet is the minimum pole height necessary to accomplish their coverage objectives for the Borough.

3. The facility is proposed to be located on the southern side of the Property, set back 15 feet from Sunset Street and 73

feet from New Milford Avenue. The existing landscape buffer along Sunset Street is intended to remain. The Applicants have agreed to install additional landscaping if the same is recommended by the Board or the Borough.

4. The monopole is proposed to be constructed of galvanized steel in accordance with the applicable Borough Ordinance requirements. The facility requires electric utility service, similar to that of residences, as well as telephone service. No water or sewer utility connections are required. The monopole is not required to be illuminated; however, the equipment shelter includes a 70 watt light bulb directly above the door. The Applicants will use a photo cell to turn the light on at dusk and off at dawn. The Applicants estimate that a hole approximately 20 to 30 feet deep and 7 to 8 feet in diameter will need to be dug into the ground in order to install the footing for the monopole. The hole would then be filled with concrete and reinforced steel.

5. The Applicants propose to install flat panel antennae, approximately 4.5 feet high, 8 to 12 inches wide and 2 to 4 inches thick, at the top of the monopole. The facility is intended only for the Applicants' use at this time; however, it is designed to accommodate multiple carriers. If a need should arise in the future, three (3) carriers could be accommodated simultaneously with minor modifications, and the facility could

conceivably accommodate up to five (5) carriers. Any other carriers wishing to co-locate at the Property would be required to first obtain the Board's approval.

6. The monopole is designed to withstand sustained winds of up to 80 miles per hour and wind gusts of up to 135 miles per hour by bending with the direction of the wind. For maintenance purposes, the Applicant's technicians typically visit its facilities every 4 to 6 weeks. Technicians generally travel to the facilities in sport utility vehicles, and not in large trucks.

7. The Applicants are licensed by the Federal Communications Commission ("FCC") and is required as such to provide reliable service in its marketing area, as well as emergency telecommunications services. The Applicant represents that the area of Dumont intended to be served by the proposed tower presently has poor coverage, as existing signal levels are well below the Applicant's standards in a significant portion of the Borough including nearly 3/4 mile of area along Washington Avenue and other areas. The Applicants have selected the subject location in order to fill the existing gaps in coverage, estimating that if located at the Property, the facility would provide adequate coverage in 90 percent of the Borough of Dumont.

8. The application requests variance relief pursuant to N.J.S.A. 40:55D-70(d) with respect to (a) permitted use, as telecommunications facilities are a permitted conditional use, and (b) maximum structure height, as thirty-six (36) feet is permitted and the Applicant proposes one hundred twenty-eight (128) feet.

CONCLUSIONS AND DETERMINATIONS

9. All findings of fact set forth above are made a part hereof as if set forth herein at length.

10. The proceedings in this matter were voice recorded. The foregoing facts in this Resolution are not intended to be all inclusive but merely a summary and highlight of the complete record made before the Board.

11. The Board of Adjustment has the power, pursuant to 40:55D-70(d), to grant a variance to allow departure from regulations to permit (1) a use of principal structure in a district restricted against such use or principal structure; (2) an expansion of a non-conforming use; (3) a deviation from a specification or standard pertaining solely to a conditional use; (4) an increase in floor area ratio; (5) an increase in permitted density; or (6) a height of a principal structure which exceeds by 10 feet or 10 percent the maximum height permitted in the district for a principal structure.

12. A variance pursuant to 40:55D-70(d) may be granted only upon a showing that such variance or other relief can be granted "without substantial detriment to the public good and will not substantially impair the intent and purpose of the zoning plan and zoning ordinance." 40:55D-70(d).

13. "If the use for which a variance is sought is not one that inherently serves the public good, the applicant must prove and the board must specifically find that the use promotes the general welfare because the proposed site is particularly suitable for the proposed use." *Medici v. BPR Co.*, 107 N.J. 1,3 (1987).

14. The Applicants have demonstrated, and the Board finds as ordered by the Court, that the proposed site is particularly suited for the proposed use. The granting of the variances for permitted use and maximum structure height will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of the zoning plan and zoning ordinance. As ordered by the Court, the Applicants have further demonstrated that special reasons exist for the relief requested, as no structure within the Borough of Dumont is currently suitable in height for the Applicants' wireless communication equipment.

15. Based on the foregoing, and in particular the order of the Court, the Board finds the site to be particularly suited for the proposed use, as the project would better meet the needs of the Applicants' customers within the Borough of Dumont as well as other New Jersey citizens. The Board has concluded that the proposed facility at the Property is the least intrusive means to close existing gaps in service, Vis á Vis the 401 Washington Avenue location.

16. As such, and as found by the Court, the benefits of the project substantially outweigh any possible detriment which might result from the deviations, and the variances for permitted use and maximum structure height pursuant to N.J.S.A. 40-55D-70(d) should be granted, as ordered by the Court.

17. The granting of the application for Site Plan Approval and variance relief pursuant to N.J.S.A. 40:55D-70(d) is within the Zoning Board of Adjustment's statutory authority granted pursuant to N.J.S.A. 40:55D-70, et seq., and its obligation to honor the order of the Court.

NOW, THEREFORE, BE IT RESOLVED that the application for Preliminary and Final Site Plan Approval and variance relief is approved by this Board subject to the conditions set forth below.

CONDITIONS

A. The Applicant shall comply with all of the ordinances of the Borough of Dumont and all applicable county, state, and federal ordinances, rules, statutes and regulations including the payment of real estate taxes. Without limiting the foregoing, the Applicant shall comply with any and all applicable requirements of the Federal Americans with Disabilities Act.

B. The approval of the within Application does not constitute a determination by this Board as to whether the proposed development complies with the Federal Americans with Disabilities Act or the applicable regulations thereunder.

C. The Applicant shall comply with all of the stipulations made during the hearing on this Application, and the hearings which led to the aforementioned Denials.

D. The Applicant shall obtain the approval (or waiver thereof) of all other agencies having jurisdiction with respect to the use of the Property.

E. Unless otherwise specifically addressed herein or at the hearings before the Board, the Applicant shall comply with the recommendations of Neglia Engineering Associates, the Board's professional planner, as set forth in the reports dated October 16, 2008 and October 20, 2008.

F. The monopole shall be expandable in height and designed to accommodate additional height for future carriers.

The plans for same must be submitted and approved by the Board Engineer prior to the issuance of permits.

G. The tower operator shall make space on the tower available to other providers at a current market rate.

H. The Applicants shall landscape the site in order to create a more aesthetically pleasing visual environment. In the event of any dispute as to the required landscaping, the Board shall retain jurisdiction.

I. Antenna arrays shall be cluster mounted in order to minimize visual impact, as depicted on certain photo simulation exhibits dated May 14, 2007 denoted as "view with proposed cluster/flush mount three carriers" prepared by William F. Masters.

J. The Applicant's failure to comply with conditions set forth in this Resolution shall constitute a failure of the conditions and may be the cause for the revocation of either a building permit and/or Certificate of Occupancy of the premises, subject to reasonable notice and the opportunity to cure.

NOW, THEREFORE, BE IT RESOLVED that the application for Site Plan Approval and variance relief is approved by this Board for the reasons set forth above.

IT IS HEREBY CERTIFIED that this is a true and correct copy of a Resolution adopted by the Zoning Board of Adjustment of the

Borough of Dumont upon a roll call vote at its regular meeting held on December 15, 2008.

A copy of this Resolution shall be given by the Board Secretary, to the Tax Assessor, Applicant, Borough Clerk, Building Department, Zoning Officer and Borough Engineer.

ATTEST:

Rosalia Bob 12/15/08

ROSALIA BOB, Secretary

SO APPROVED:

12/15/08

TIMOTHY HICKEY, Chairman

Date of Adoption: December 15, 2008

ZONING BOARD OF ADJUSTMENT OF THE
BOROUGH OF DUMONT

RESOLUTION

DENIAL OF PRELIMINARY AND FINAL SITE PLAN
AND VARIANCES

In the Matter of the Application of
New York SMSA Limited Partnership d/b/a Verizon Wireless

WHEREAS, New York SMSA Limited Partnership d/b/a Verizon Wireless (the "Applicant") is a lessee of a portion of the property located at 2A Sunset Street, designated as Lot 1 in Block 821 on the Tax Map of the Borough of Dumont (the "Property"); and

WHEREAS, the Applicant has made application to the Zoning Board of Adjustment of the Borough of Dumont for Preliminary and Final Site Plan Approval pursuant to N.J.S.A. 40:55D-37, together with application for variance relief pursuant to N.J.S.A. 40:55D-70(d) with respect to permitted use and maximum structure height; and

WHEREAS, Mary Ellen Muller, as Trustee of the Testamentary Trust of Anthony G. Muller, the owner of the Property, has consented to the within application; and

WHEREAS, public hearings were held by the Zoning Board of Adjustment on March 12, 2007, April 9, 2007, May 14, 2007 and June 11, 2007, at which time the Applicant, represented by

counsel, Richard Schneider, Esq. of the firm of Vogel, Chait, Collins & Schneider, Esqs., (a) presented proof of notice and publication as required by law; (b) submitted (i) the Site Plan prepared by French & Parello Associates, P.A. dated February 13, 2006, last revised September 25, 2006 and consisting of six (6) sheets as follows:

Sheet:	Title:
CV-1	Cover Sheet
SP-1	Site Map & Notes
SP-2	Enlarged Area Plan & Tower Elevation
SP-3	Shelter Plan & Elevations
SP-4	Site Details
SP-5	200 Foot Radius Map & Property Owners List

(the "Site Plan"); (ii) the Analysis and Report by V-Comm, L.L.C. and dated March 28, 2006; (iii) the RF Emission Study prepared by V-Comm, L.L.C. and dated March 28, 2006; (iv) a letter to the Dumont Fire Department from Integrated Wireless Alliance dated March 21, 2005, inquiring as to the possibility of leasing space for a wireless telecommunications facility on the Fire Department's property; (v) a letter to the Borough's former Mayor from Integrated Wireless Alliance dated March 21, 2005, inquiring as to the possibility of leasing space for a wireless telecommunications facility on Pershing Street; (vi) a letter to the Borough Administrator from the Gregory Czura, Esq., the Applicant's former Attorney, dated June 1, 2006 regarding possible wireless telecommunications facility sites; (vii) conceptual information as to a possible wireless

telecommunications facility site at the Borough Board of Education's property; (viii) a photograph board showing a balloon flown at a height of 120 feet at the Property and computer-generated simulations of the proposed monopole at the Property, as viewed from the nearest residences located directly across the street, from 80 Sunset Street, which is located to the north of the Property and from the intersection of New Milford Avenue and Bedford Road; (ix) a photograph board showing a balloon flown at a height of 120 feet at the Property and computer-generated simulations of the proposed monopole at the Property, as viewed from West Linden Avenue and American Legion Terrace, from New Milford Avenue and Sunset Street and from the opposite side of the railroad tracks at 37 Bedford Road; (x) the Conceptual Layout Sketch prepared by Innovative Engineering, Inc. dated April 30, 2007, last revised May 11, 2007 and labeled Sheet SK-1; (xi) a letter to the Borough of Dumont from the Testamentary Trust of Anthony G. Muller, the owner of the Property, dated May 8, 2007, advising that any existing tenancy of the portions of the Property to be potentially made available for the equipment of co-locators will be terminated as of the date the Applicant is ready to occupy the Property, together with the Site Map prepared by Innovative Engineering, Inc. dated April 30, 2007 and last revised May 1, 2007; (xii) computer-generated photographs showing a simulated flagless pole and

antennae at the Property; and (xiii) a letter to the Applicant from Innovative Engineering, Inc. dated June 11, 2007 with stormwater runoff analysis calculations attached; and (c) presented the testimony of (i) David Stern, a radio frequency communications expert employed by the firm of V-Comm, L.L.C. and accepted by the Board as an expert in the field of radio frequency communications; (ii) Peter Longo and Ron Igneri, licensed civil engineers employed by the firm of Innovative Engineering, Inc., specializing in wireless communications and accepted by the Board as experts in the field of civil engineering; and (iii) William F. Masters, Jr., a licensed professional planner and accepted by the Board as an expert in the field of community planning; and

WHEREAS, the Board has reviewed the Application, the plans and documents enumerated above and other evidence submitted, having heard and considered the testimony presented by the Applicant and all members of the public that offered testimony, and having considered the arguments of counsel and the reports submitted by the Board's and the Borough's professionals, including but not limited to (a) the report of Neglia Engineering Associates, the Board's professional planner, dated December 7, 2006; and (b) the reports of T&M Associates, the Borough's civil engineer, dated June 1, 2006, November 13, 2006 and April 26, 2007, and for good cause shown:

NOW, THEREFORE, BE IT RESOLVED that the Zoning Board of Adjustment of the Borough of Dumont makes the following findings of fact with respect to the within Application:

1. The Property is located on the northwesterly corner of the intersection of New Milford Avenue and Sunset Street and is presently used as an automotive repair facility and storage yard and contains two (2) single story buildings at the northern end as well as several trailers. The Property is situate in the LI (Light Industrial) Zone District and the Applicant's proposed use as a telecommunications facility is a permitted conditional use, provided that it is located on property owned or leased by the Borough of Dumont.

2. The Applicant proposes to install an unmanned wireless telecommunications facility on the Property, consisting of a 120 foot high monopole which will accommodate twelve (12) antennae at the top, as well as an 11.5 foot by 22 foot prefabricated equipment shelter. All of the equipment is intended to be located within a 27 foot by 40 foot leased compound area enclosed by an 8 foot high fence. The eastern side of the area is intended have a stockade fence to match the existing fencing, and the remaining three sides are intended to be enclosed by a chain link fence. While the proposed pole has a height of 120 feet, the overall height of the proposed structure is 128 feet, which includes an 8 foot high lightning rod. The Applicant

represents that 120 feet is the minimum pole height necessary to accomplish its coverage objectives for the Borough.

3. The facility is proposed to be located on the southern side of the Property, set back 15 feet from Sunset Street and 73 feet from New Milford Avenue. The existing landscape buffer along Sunset Street is intended to remain. The Applicant has agreed to install additional landscaping if the same is recommended by the Board or the Borough.

4. The monopole is proposed to be constructed of galvanized steel in accordance with the applicable Borough Ordinance requirements. The facility requires electric utility service, similar to that of residences, as well as telephone service. No water or sewer utility connections are required. The monopole is not required to be illuminated; however, the equipment shelter includes a 70 watt light bulb directly above the door. The Applicant typically uses a photo cell to turn the light on at dusk and off at dawn. The Applicant estimates that a hole approximately 20 to 30 feet deep and 7 to 8 feet in diameter will need to be dug into the ground in order to install the footing for the monopole. The hole would then be filled with concrete and reinforced steel.

5. The Applicant proposes to install flat panel antennae, approximately 4.5 feet high, 8 to 12 inches wide and 2 to 4 inches thick, at the top of the monopole. The facility is

intended only for the Applicant's use at this time; however, it is designed to accommodate multiple carriers. If a need should arise in the future, three (3) carriers could be accommodated simultaneously with minor modifications, and the facility could conceivably accommodate up to five (5) carriers if some carriers utilized smaller equipment. Any other carriers wishing to co-locate at the Property would be required to first obtain the Board's approval.

6. The monopole is designed to withstand sustained winds of up to 80 miles per hour and wind gusts of up to 135 miles per hour by bending with the direction of the wind. For maintenance purposes, the Applicant's technicians typically visit its facilities every 4 to 6 weeks. Technicians generally travel to the facilities in sport utility vehicles, and not in large trucks.

7. The Applicant is licensed by the Federal Communications Commission ("FCC") and is required as such to provide reliable service in its marketing area, as well as emergency telecommunications services. The Applicant represents that the area of Dumont intended to be served by the proposed tower presently has poor coverage, as existing signal levels are well below the Applicant's standards in a significant portion of the Borough including nearly 3/4 mile of area along Washington Avenue and other areas. The Applicant has selected the subject

location in order to fill the existing gaps in coverage, estimating that if located at the Property, the facility would provide adequate coverage in 90 percent of the Borough of Dumont.

8. As set forth in the RF Emissions Study prepared by V-Comm, L.L.C. and dated March 28, 2006, the radio frequency emissions produced by the proposed facility would be in strict compliance with the standards of the FCC. The Applicant's radio frequency communications expert has testified that he used the methodology developed by the FCC and the standards detailed in the FCC publication entitled "Office of Technology & Communication, No. 65" in performing his analysis and preparing the report. Based on the analysis, the highest level of radio frequency emissions that a person would experience near the facility is 0.14 percent of the maximum permissible level established by the FCC. Calculations were performed for various locations extending out 600 feet from the proposed facility, and the level of emissions was found to decrease with distance, becoming infinitesimally small beyond 600 feet.

9. During the hearings before the Board, the Applicant presented testimony that the following alternative facility locations in and around the Borough of Dumont had been contemplated:

(a) the monopole located behind Borough Hall: The Applicant represents that this site is located too far south, and would leave a gap in service at the northern end of the Borough. In addition, a new structure would be required, as the existing monopole is not designed to accommodate the Applicant's equipment.

(b) the Bergenfield lattice tower: The Applicant represents that this site is located too far south, and would leave a gap in service at the northern end of the Borough, and that it is located too close to the Applicant's existing Bergenfield site, which would result in duplicative coverage. In addition, the Applicant represents that its equipment would have to be located at an elevation of 60 feet, which would not be high enough to satisfy its coverage needs.

(c) the PSE&G substation: The Applicant represents that this site is located too far west, and would leave a gap in service at the eastern end of the Borough.

(d) St. Mary's Church, located at 258 Washington Avenue: The Applicant represents that it contacted the Church, but that the Church was not interested in leasing space to the Applicant.

(e) Old North Reformed Church: The Applicant represents that this site is designated as a national historic site, and may not be used as a telecommunications facility.

(f) D'Angelo Floral Acres, located at 546 Washington Avenue: The Applicant represents that this site is located too far to the north, and would leave a gap in service at the southern end of the Borough.

(g) Dumont Fire Company No. 3: The Applicant represents that it contacted the Fire Department regarding the possibility of locating its facility at this site, but did not receive any response.

(h) the Borough Little League Park located on Bergen Street: The Applicant represents that it contacted the Borough regarding the possibility of locating its facility at this site, but did not receive any response.

(i) the Elks Lodge located at 15 American Legion Terrace: The Applicant represents that this site would not be as efficient as the Property in fulfilling its coverage needs.

(j) St. Luke's Church, located on Massachusetts Avenue in Haworth: The Applicant represents that this site is located too far north, and would not be adequate to fill the existing gaps in coverage.

(k) The Hungry Peddler, located at 462 Knickerbocker Avenue in Cresskill: The Applicant represents that this site would be appropriate for one of its other service areas, but would not be adequate to fill the existing gaps in coverage within the Borough of Dumont.

10. During the hearings held before the Board, in response to the questions of the Board, the Applicant presented testimony as to its exploration of the possibility of locating its facility on the Dumont High School property. The Applicant presented testimony to the effect that discussions had occurred between its representatives and the Borough Board of Education, and that the Borough High School property would be an appropriate location to serve its coverage needs from a radio frequency perspective, as the High School property is close in proximity to the Property which is the subject of this application. However, the Applicant would need a structure approximately 30 feet taller than the pole herein proposed in order to accomplish its coverage objectives from the High School property, and would still need a variance with respect to the conditional use, that property is owned by the Board of Education and not by the Borough. Finally, any effort to locate the facility on the High School property would be subject to a public bid, and the Applicant advised the Board that, at the time of the hearings, no public bid had been made available for that property.

11. The application requests variance relief pursuant to N.J.S.A. 40:55D-70(d) with respect to (a) permitted use, as telecommunications facilities are a permitted conditional use, provided that they are located on property owned or leased by

the Borough and the Applicant proposes to locate its facility on property not owned or leased by the Borough; and (b) maximum structure height, as thirty-six (36) feet is permitted and the Applicant proposes one hundred twenty-eight (128) feet.

CONCLUSIONS AND DETERMINATIONS

12. All findings of fact set forth above are made a part hereof as if set forth herein at length.

13. The proceedings in this matter were voice recorded. The foregoing facts in this Resolution are not intended to be all inclusive but merely a summary and highlight of the complete record made before the Board.

14. The Board of Adjustment has the power, pursuant to 40:55D-70(d), to grant a variance to allow departure from regulations to permit (1) a use of principal structure in a district restricted against such use or principal structure; (2) an expansion of a non-conforming use; (3) a deviation from a specification or standard pertaining solely to a conditional use; (4) an increase in floor area ratio; (5) an increase in permitted density; or (6) a height of a principal structure which exceeds by 10 feet or 10 percent the maximum height permitted in the district for a principal structure.

15. A variance pursuant to 40:55D-70(d) may be granted only upon a showing that such variance or other relief can be granted "without substantial detriment to the public good and

will not substantially impair the intent and purpose of the zoning plan and zoning ordinance." 40:55D-70(d).

16. "If the use for which a variance is sought is not one that inherently serves the public good, the applicant must prove and the board must specifically find that the use promotes the general welfare because the proposed site is particularly suitable for the proposed use." *Medici v. BPR Co.*, 107 N.J. 1,3 (1987).

17. The Applicant has failed to demonstrate that the granting of the variances for permitted use and maximum structure height will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of the zoning plan and zoning ordinance. The Applicant has further failed to demonstrate that special reasons exist for the relief requested. The Board finds that the Property is not particularly suitable for the proposed use and that the facility would have a negative visual impact on the surrounding area.

18. In addition, as noted in the Board Engineer's report dated April 26, 2007, the Property does not have any parking provisions for the Applicant's service vehicles. The Board Engineer requested that the Applicant present testimony regarding all of the uses on the Property, the number of employees of each tenant and the number of parking spaces

required and provided for each tenant. The Applicant's planner has testified that service vehicles would not be able to enter the Applicant's leased compound area through the proposed four (4) foot wide gate. Because no street parking is available near the Property, the Applicant's service technicians would be required to park on portions of the Property leased by other tenants. The Applicant submitted a letter from the property owner regarding the potential termination of the tenancy of three (3) existing tenants; however, the Board was not provided with information or testimony as to how many parking spaces are provided for or used by such tenants. Therefore, the Applicant did not adequately address the issues that might arise as a result of the lack of parking for its service vehicles.

19. Based on the foregoing, the Board does not find the site to be particularly suited for the proposed use, as the project would not promote the general welfare.

20. As such, the benefits of the project do not substantially outweigh any possible detriment which might result from the deviations, and the variances for permitted use and maximum structure height pursuant to N.J.S.A. 40-55D-70(d) should not be granted.

21. The Telecommunications Act of 1996, 47 U.S.C.S. §332(c)(7) (the "TCA") preserves the traditional authority of

state and local governments to regulate land use and zoning, but proscribes regulations enacted by these authorities which prohibit or have the effect of prohibiting the provision of personal wireless service facilities. A local government may reject an application to construct a wireless communications facility in an under-served area if the service gap can be closed by less intrusive means.

22. In Sprint Spectrum L.P., New York SMSA Limited Partnership d/b/a Bell Atlantic Mobile and Omnipoint Communications, Inc. v. Borough of Upper Saddle River Zoning Board of Adjustment, the Mayor and Council of Upper Saddle River and the Borough of Upper Saddle River, 352 N.J. Super. 575 (App. Div. 2002), the Superior Court of New Jersey, Appellate Division, established a four-part test for determining whether the local government's rejection of an application to construct a wireless communications facility violates §332(c)(7)(B)(i)(II) of the TCA. The factors to be considered are (a) whether the applicants proved that the area is not presently served by another wireless communications carrier; (b) whether the proposed facility is the least intrusive means to close the gap in service; (c) whether the applicants have made a good faith effort to identify and evaluate less intrusive alternatives; and (d) whether requiring the applicants to show further reasonable

attempts to build a wireless communications facility to fill the gaps in service would likely be fruitless and a waste of time.

23. As to the first factor, the Board finds that the Applicant has failed to prove that the area is not presently served by another wireless carrier. The Applicant presented testimony as to its obligation to provide "reliable service". However, the Applicant was unable to provide the Board with a clear definition of "reliable service". In addition, the Board does not find the testimony presented by the Applicant as to the existing gaps in service to be credible. Therefore, the Applicant has not demonstrated to the Board that "reliable service" does not presently exist.

24. Notwithstanding the Applicant's failure to show that "reliable service" does not exist, the Applicant has not demonstrated that the proposed facility is the least intrusive means to close existing gaps in service. The Board finds that the location of the facility at the Borough High School property would satisfy the Applicant's stated coverage objectives and would be far less intrusive and less detrimental to the aesthetic quality of the area than the Property.

25. Based on the testimony presented to the Board, the Applicant has shown a good faith effort to identify and evaluate less intrusive alternatives. However, the Board finds that requiring the Applicant to show further reasonable attempts to

build a facility would not likely be fruitless and a waste of time. Rather, the Board finds that the High School property would serve as a better location for the facility, having a less detrimental visual impact while fulfilling the Applicant's coverage objectives. Therefore, further efforts by the Applicant to locate its facility at the High School property would be fruitful.

26. Despite the testimony presented by the Applicant that the High School property would "be just fine for us", the Applicant has not thoroughly evaluated the possibility of locating its facility at that site. The Applicant presented testimony that it had corresponded and/or met with representatives of the Borough Board of Education, but that any potential facility would require public bidding and bids had not yet been made available at the time of the hearings before the Board. However, as of the date of adoption of this Resolution, public bids have since been made available.

27. Therefore, the denial of this application does not violate the TCA, as the Applicant has failed to demonstrate three (3) of the four (4) factors set forth in Sprint Spectrum L.P. v. Borough of Upper Saddle River Zoning Board of Adjustment.

28. The grant or denial of the application for Site Plan Approval and variance relief pursuant to N.J.S.A. 40:55D-70(d)

is within the Zoning Board of Adjustment's statutory authority granted pursuant to N.J.S.A. 40:55D-70, et seq.

NOW, THEREFORE, BE IT RESOLVED that the application for Site Plan Approval and variance relief is denied by this Board for the reasons set forth above.

IT IS HEREBY CERTIFIED that this is a true and correct copy of a Resolution adopted by the Zoning Board of Adjustment of the Borough of Dumont upon a roll call vote at its regular meeting held on September 10, 2007.

A copy of this Resolution shall be given to the Tax Assessor, Applicant, Borough Clerk, Building Department, Zoning Officer and Borough Engineer.

ATTEST: SO APPROVED:

_____ _____

[ ], Clerk [ ], Chairman

Date of Adoption: September 10, 2007