

APPLICATION

EAST GREENWICH TOWNSHIP ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF EAST GREENWICH
159 DEMOCRAT ROAD
MICKLETON, NEW JERSEY 08056
TEL: (856) 423-0654 ext. 100

This application, with supporting documentation, must be filed with the Secretary of the East Greenwich Township Zoning Board of Adjustment (the "Board") at the above referenced address, for a review and determination as to completeness prior to a hearing date being set or an applicant advertising for, or mailing notices regarding, a hearing date.

ONLY THE BOARD SECRETARY CAN SET A HEARING DATE.

This Section To be Completed by Board Staff Only

Date Filed (Received): _____ Application No. _____
Application Fee: \$ _____ Date of Check: _____ Check No.: _____
Escrow Deposit: \$ _____ Date of Check: _____ Check No.: _____
Review for Completeness Completed: _____ Hearing Date Set For: _____

TO BE COMPLETED BY APPLICANT

1. SUBJECT PROPERTY (All requested information must be completed):

Location (Street Address): 114 Mantua Road

ZONE DISTRICT - Must Complete (Obtain from Zoning Office): R-10

Tax Map: Block 1402.1 Lot(s) 120 (Check with Tax Office or look at tax bill)

Dimensions: Frontage 200' Depth 1,440' Total Area 6.12 acres

Attached Survey/Plot Plan: Yes No. Waiver Requested because See Rider

The location of the property is approximately 68.75' feet from the intersection of Berkley Road
and _____

The property is located within 200 feet of another municipality: NO. YES - Specify Name of Municipality: East Greenwich

The property fronts on a county road or state highway: NO YES - Specify County or State Highway Number: COUNTY RT. NO.: _____ STATE HIGHWAY NO.: NJ Turnpike

Has an application regarding this property ever been filed before the Board before? NO. YES.
If "Yes", please give details, and attach a copy of the written decision (Resolution) adopted by the Board:
The Resolutions were ordered on 5/17/07 but never received.

2. APPLICANT INFORMATION (All requested information must be completed):

Full Legal Name Clearwire US, LLC

Address 4400 Carillon Point, Kirkland WA 98033
(Street) (City) (State) (Zip Code)

Telephone Number(s): DAY (609) 572-7606 EVENING ()

Applicant is a (must check one): Corporation Partnership Sole Proprietor Resident LLC

Relationship of Applicant to property in question: Owner. Tenant or Lessee. Purchaser
under contract. Other: _____

3. DISCLOSURE STATEMENT (If Applicant is a Corporation or Partnership)

Pursuant to N.J.S.A. 40:55D-48.1, the names and addresses of all persons owning 10% or more of the stock in a corporation that is an applicant, or 10% or greater interest in a partnership that is an applicant, must be disclosed. In accordance with N.J.S.A. 40:55D-48.2, that disclosure requirement applies to any stockholder in a corporation that is an applicant, or partner in a partnership that is an applicant, who owns or holds 10% or more of its stock, or 10% or greater interest in the partnership, until the names and addresses of the non-corporate stockholders and individual partners at or exceeding the 10% ownership criterion, have been listed. [Attach pages as necessary to fully comply with the following information that is required for each individual.]

Name See attached Disclosure Statement Percent of Interest held: _____%

Address _____
(Street) (City) (State) (Zip Code)

4. OWNER IF DIFFERENT FROM APPLICANT

If the owner of the property is someone different from the Applicant, then please complete the following:

Owner's Name: American Tower, Inc.

Address 10 Presidential Way, Woburn, MA 01801
(Street) (City) (State) (Zip Code)

Telephone Number: DAY: () EVENING: ()

5. ADDITIONAL PROPERTY INFORMATION (All requested information must be completed):

Restrictions, covenants, easements, homeowners/condo association by-laws, existing or proposed on the property:

YES (Attach Copies and/or Copy of Deed) PROPOSED (Attach Description) None

NOTE: All deed restrictions, covenants, easements, association by-laws, either existing or proposed, must be submitted for review, and must be written in easily understandable English in order to be approved.

Present use of the premises and proposed use (describe in detail):

See Rider attached

6. APPLICANT'S EXPERTS / REPRESENTATIVES:

Applicant's Attorney Nicholas T. Menas, c/o Cooper Levenson Law Offices
(Name, and Firm if Applicable)

Address 1125 Atlantic Ave., Atlantic City, NJ 08401
(Street) (City) (State) (Zip Code)

Telephone Number (609) 572-7606 Fax Number (609) 572-7607

Applicant's Engineer Robert Duclos, P.E., c/o C&S Engineers, Inc.
(Name, and Firm if Applicable)

Address 499 Col. Eileen Collins Blvd., Syracuse, NY 13212
(Street) (City) (State) (Zip Code)

Telephone Number (315) 455-2000 Fax Number (315) 455-9667

Applicant's Planning Consultant _____
(Name, and Firm if Applicable)

Address _____
(Street) (City) (State) (Zip Code)

Telephone Number (_____) Fax Number (_____)

Applicant's Traffic Engineer _____
(Name, and Firm if Applicable)

Address _____
(Street) (City) (State) (Zip Code)

Telephone Number (_____) _____ Fax Number (_____) _____

7. OTHER EXPERTS

List any other expert(s) who will submit a report and/or testify on behalf of the Applicant; (Attach additional sheets as may be necessary, with the following information):

Name _____ Field of Expertise _____

Address _____
(Street) (City) (State) (Zip Code)

Telephone Number: (_____) _____ Fax Number (_____) _____

8. RELIEF BEING REQUESTED:

The applicant is requesting the following relief from the Board. (List as many forms of relief that are applicable). Mark and Attach Separate Sheet if More Space Needed:

SITE PLAN APPROVAL (IF ASSOCIATED WITH A USE VARIANCE).

Major Site Plan Approval Minor Site Plan Approval

Preliminary Site Plan Approval (phases - if applicable) _____

Final Site Plan Approval (phases - if applicable) _____

Amendment or Revision to an Approved Site Plan (Area to be disturbed - square feet) _____

Request for Waiver From Site Plan Review and Approval. Reason for request: See Rider attached

OTHER:

Informal Review of _____

Appeal of decision of the Zoning Officer (N.J.S.A. 40:55D-70.a.). Describe nature of appeal:

Interpretation of Map or Ordinance, or Decisions Upon Special Questions (N.J.S.A. 40:55D-70.b.). Explain:

* Variance Relief - "Hardship" (N.J.S.A. 40:55D-70c(1)). Provide Reasons: _____
(Bulk Variances - Deck, Addition, Etc.)

* Variance Relief - "Substantial Benefit" (N.J.S.A. 40:55D-70c(2)). Provide Reasons: _____
(Bulk Variance - Deck, Addition, Etc.)

* Variance Relief - "Use" (N.J.S.A. 40:55D-70d). Provide Reasons: See Rider attached

* List sections of the East Greenwich Township Zone Code from which relief is requested when providing "reasons".

Conditional Use Variance Approval. See Rider

Direct issuance of a permit for a structure in the bed of a mapped street, public drainage way, or flood control basin - other than as part of subdivision, site plan or conditional use (N.J.S.A. 40:55D-34).

Describe: _____

[] Direct issuance of a permit for a lot lacking street frontage (N.J.S.A. 40:55D-35, -36):

Block ____ Lot ____ Reason for request: _____

9. SUBMISSION REQUIREMENTS

The Applicant is required to submit each of the following, unless otherwise noted:

- A-1 Application (with attached site plan, plot plan, survey and/or any other pertinent documents):
An original and fourteen (14) copies to the Board Secretary (Total 15) must be submitted.
*Also mail 1 copy to each professional from attached "Mailing List"
- A-2 Certified List of Property Owners Within 200 Feet. Obtain from Tax Collector's Office and submit with original copy of application.
Application and Escrow Fees as determined by Secretary from fee schedule
- A-3 Escrow Agreement : Sign and submit with original copy of application.
- A-4 Notice of Public Hearing (DO NOT MAIL TO PROPERTY OWNERS UNTIL AUTHORIZED TO DO SO BY THE BOARD'S SECRETARY). Submit a draft copy (leaving date of hearing blank) and submit with original application.
- A-5 Affidavit of Publication - Gloucester County Times: Evidencing that the Notice of Public Hearing was Published at Least Ten (10) days prior to the Hearing Date. (DO NOT PUBLISH NOTICE IN NEWSPAPER UNTIL AUTHORIZED TO DO SO BY THE BOARD SECRETARY). Submit to the Board's Secretary as soon as received by the newspaper.
- A-6 Affidavit of Service - With Attachments. Submit to the Board's Secretary along with original copies of Certified Mail Receipts stamped by the U.S. Post Office as to the date of mailing, and a copy of Notice of Public Hearing with hearing date.
- A-7 Tax Payment Certification. Submit with original copy of application.

10. OTHER APPROVALS, WHICH MAY BE REQUIRED, AND THE DATES THAT PLANS/APPLICATIONS WERE SUBMITTED:

<u>AGENCY OR PERMIT</u>	<u>YES</u>	<u>NO</u>	<u>DATE PLANS SUBMITTED</u>
Gloucester County Health Department	_____	_____	_____
Gloucester County Planning Board	<u>X</u>	_____	<u>2/22/08</u>

Gloucester County Soil Conservation District

N/A _____

NJ Department of Environmental Protection
(Check nature of approval(s) needed:

N/A _____

- Sewer Extension Permit;
- Sanitary Sewer Connection Permit;
- Stream Encroachment Permit;
- Wetlands Permit; Tidal Wetlands Permit;
- Potable Water Construction Permit;
- Other: _____

NJ Department of Transportation

N/A _____

Connectiv Electric

N/A _____

Other: _____

List of Maps, Reports and other materials accompanying this application (attach additional pages as required for complete listing): Site plans prepared by C&S Engineers, Inc. dated

2/20/07 and revised through 5/15/07

11. OTHER INFORMATION ATTACHED IN SUPPORT OF YOUR APPLICATION. (List the specific information attached and its importance/significance to your application): _____

See Rider attached

12. CERTIFICATIONS:

APPLICANT

I certify that the foregoing statements and the materials submitted are true. I further certify that I am the individual applicant or that I am an Officer of the Corporate applicant and that I am authorized to sign the application for the Corporation, or that I am a general partner of the partnership applicant. (If the Applicant is a corporation, this Application must be signed by an authorized corporate officer as indicated in a resolution of the corporation which must be attached hereto. If the applicant is a partnership, this must be signed by a general partner.)

Sworn to and subscribed before me this

22nd day of February, 2008

Mary L. Spissinger
NOTARY PUBLIC

MARY L. SPISSINGER
A Notary Public of New Jersey
My Commission Expires 6/9/08
6-10-08

X

NICHOLAS T. MENAS, Esq.
SIGNATURE OF APPLICANT
Attorney for Applicant

CLEARWIRE US, LLC
Applicant's Name (Print)

OWNER (IF DIFFERENT FROM APPLICANT)

I certify that I am the Owner of the property which is the subject of this application, that I have authorized the applicant to make this application and that I agree to be bound by the application, the representations made by the applicant, and the decision of the Board in this matter. (If the owner is a corporation, this must be signed by an authorized corporate officer as indicated in a corporate resolution which must be attached hereto. If the owner is a partnership, this must be signed by a general partner.)

Sworn and subscribed to before me this

___ day of ___, 200__

NOTARY PUBLIC

X
See Lease In Lieu of Owner's Consent

SIGNATURE OF OWNER

Owner's Name (Print)

APPLICATION RIDER

This is an application submitted by Clearwire US, LLC (the "Applicant") for variance relief pursuant to N.J.S.A. 40:55D-70(d)(1) & (6), and waiver of the site plan submission and approval requirements, and in the alternative, site plan approval pursuant to the requirements of the East Greenwich Township Land Development Code (the "Code"). The Applicant proposes the installation of up to three (3) wireless telecommunications antennae at a centerline height of one hundred twenty-nine feet six inches (129'6"), and up to three (3) microwave dishes installed at a height of one hundred thirty feet (130') on an existing one hundred ninety-seven foot (197') lattice tower, with related telecommunications equipment located at the base of the existing tower. The location of the proposed use is at 114 Mantua Road, Mt. Royal, New Jersey, also known as Block 1402.01, Lot 120, on the Official Tax Map of the East Greenwich Township, Gloucester County, New Jersey (the "Property").

The property is located in the R-10 Zoning District (the "District"), and the project as proposed conforms to the ordinance requirements except that variance relief may be required as follows:

<u>BULK</u>	<u>REQUIRED</u>	<u>PROPOSED</u>	<u>EXISTING</u>
Maximum Building Height	35'	<35' (no change to the height of the existing lattice tower is proposed)	<35'

<u>USE</u>	Prohibited	Permit use of wireless Telecommunications facility	No change
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Applicant seeks relief from Section 16.68.020 of the Code. Section 16.68.020 requires use variance and site plan approvals. In addition to the foregoing, Section 16.68.050 limits the maximum height to thirty-five feet (35') where the existing lattice tower is one hundred ninety-seven (197') feet. Testimony will be provided, through Applicant's professionals, that the use promotes the general welfare because the proposed site is particularly suitable for the proposed telecommunications facility. More specifically, the proposed site is necessary, in part, to cover a gap in existing service coverage.

Applicant also requests that the Application be deemed to request any additional variances and design waivers or exceptions determined to be necessary during the review and processing of the Application by the Township of East Greenwich.

USE VARIANCE APPROVAL

Pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-70(d), a (d) or use variance will be granted if (1) "special reasons" exist for the variance and (2) the variance can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the Master Plan and Zoning Ordinance. In order to satisfy the first statutory prong,

referred to as the “positive criteria”, an applicant must determine that the “use promotes the general welfare because the proposed site is particularly suitable for the proposed use. Smart SMR of New York, Inc. v. Fairlawn Board of Adjustment, 152 N.J. 309, 323 (1989), citing Medici v. BPR Co., 107 N.J. 1, 4 (1987).

As to second prong, or the “negative criteria”, the Applicant must demonstrate not only that a variance can be granted “without substantial detriment to the public good”, but must also demonstrate, via an “enhanced quality of proof”, that the variance request is not inconsistent with the intent and purpose of the Master Plan and Zoning Ordinance. Smart, supra, 152 N.J. at 323, citing Medici, supra, 107 N.J. at 21-22.

However, because telecommunication systems are licensed and serve the general welfare, our Supreme Court has determined that a less-stringent balancing test, applicable to traditionally inherent beneficial uses, should be used. See, New Brunswick Cellular Telephone Co. v. South Plainfield Board of Adjustment, 160 N.J. 1, 14 (1999); Smart, supra, 152 N.J. at 336. Although the Supreme Court declined to characterize all telecommunications facilities as inherently beneficial uses, it did opine that: “[We] might reach a different result with a facility that does not require a tower monopole, such as one that simply involves appending antennas to an existing structure”. Id. at 331. See also, Cellsouth of New Jersey v. Zoning Board of Adjustment of West Windsor Township, 172 N.J. 75, 82 (2002) (reaffirming the Decision in Smart).

In Sica v. Board of Adjustment of the Township of Wall, 127 N.J. 152 (1992), the New Jersey Supreme Court set forth the less-stringent four-part analysis to be used by municipal boards when assessing whether the granting of a variance would cause a substantial detriment to the public good. When striking a balance between the positive and negative criteria, the court advised local land use boards that they should: (1) identify the public interest at stake; (2) ascertain the detrimental effect that will ensue from the grant of the variance; (3) reduce the detrimental effect, if possible, by imposing reasonable conditions on the use and then, in turn, reducing the weight according to the adverse effect by the anticipated effect of these restrictions; and (4) 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. Id. at 165-66.

With regard to the positive statutory criteria, the New Jersey Supreme Court has opined that:

“[a] telecommunications facility is a paradigm for a use that serves a greater community than a particular municipality,” *and that (added)* “The issuance of an FCC license should suffice for a carrier to establish that the use serves the general welfare”. Smart, supra, 152 N.J. at 332, 336.

The Applicant is a wireless communications service provider licensed by the FCC to construct, operate, and maintain a personal communications service (“PCS”) in the State of New Jersey, including the Township of East Greenwich. The proposed facility consists of the construction of up to three (3) wireless antennas at a centerline height of one hundred twenty-nine feet six inches (129’6”) on an existing one hundred ninety-seven (197’) foot lattice tower, and the installation of up to three (3) microwave dishes at a height of one hundred thirty feet (130’) with the installation of associated cabinetry within the existing fenced compound. Generally, if variance relief was required under N.J.S.A. 40:55D-70(d) the Applicant must prove

that “the use promotes the general welfare because the proposed site is particularly suitable for the proposed use”. Supra, Smart, 152 N.J. at 323. In terms of telecommunications facilities, the “particular suitability” of a site refers to inadequacy of existing capacity and signal strength and whether the site proposed could relieve that inadequacy. See, Ocean County Cellular Telephone Co. v. Township of Lakewood Board of Adjustment, 352 N.J. supra, 514, 525-529 (App. Div. 2002), cert. denied, 175 N.J. 75 (2002). Further, the Telecommunications Act of 1996 (the “TCA”) places federal requirements upon the siting of personal wireless service facilities. The TCA provides in pertinent part:

“(i) the regulation of the placement and construction, and modification of personal wireless services facilities, by any state or local government, or instrumentality thereof...”

“(I) shall not unreasonably discriminate among providers of functionally equivalent services, and shall not prohibit or have the effect of prohibiting the provision of personal wireless services, (II) any decision by a state or local government or instrumentality thereof to deny a requested place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence in a written record, and (III) no state or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent such facilities comply with the Commissioner’s regulation concentration and such emissions. U.S.C. § 332(C)(7)(B).”

In Cellular Telephone Co. v. the Zoning Board of Adjustment of Ho-Ho-Kus, 1997 F.3d and the Cellular Telephone to the Kus, 64, 70 (3rd Cir. 1959), the Third Circuit held that local zoning decisions had the effect of prohibiting wireless communication services if they result in “significant gaps” in the availability of wireless service. The wireless provider must demonstrate that the manner in which it proposed to fill the gap is the least intrusive means available (Ibid.). The TCA’s mandate is relevant to the issue of “particular suitability” because:

“It places the local board on notice that, although it may consider the equality of existing services in deciding that the variance application, there is an absolute bar prohibiting the denial of the application if the provider meets the ‘significant gap’ and ‘least intrusive means’ standards articulated by the federal courts”. Ocean County Cellular Telephone, supra, 352 N.J. super. at 532.

Clearwire’s planning and engineering experts will testify that the proposed facility will fill a significant gap in Clearwire’s wireless network, and it is the least intrusive location for doing so. Clearwire’s planning expert will testify that the proposed facility will benefit the community by providing an enhanced ability to communicate for emergency, personal and business purposes.

With regard to the negative criteria, Clearwire’s experts will testify at the hearing that the proposed facility will not be a detriment to the public good and is not inconsistent with the intended purpose of the Master Plan and Zoning Ordinance. Clearwire’s experts will testify that

locating Clearwire's facility on the subject property will have no detrimental effect upon the surrounding properties, or substantially impair the intent and purpose of the ordinance and master plan as the proposed facility will not generate any noise, dust, odor, or traffic, and does not require municipal services of water and sewer.

Traditionally, because telecommunications facilities "usually generate little pollution or demand on municipal services, the primary objection is to their construction concerning the aesthetic impact on the character of the locality...", Omnipoint Communications, Inc. v. Board of Adjustment of Township of Bedminster, 337 N.J. super., 398, 416-17 (App. Div. 2001) in Smart, supra, the court found that the removal of a ninety (90') foot telecommunications monopole and its replacement with a one hundred forty (140') foot monopole suitable for "co-location" would result in merely a fifty (50') foot increase in height. That increase would not substantially alter the Fairlawn skyline. Id., 152 N.J. at 333. The Appellate Court determined that an addition of eight (8') feet to ten (10') feet for placement of telecommunications antenna on the top of an existing water tower was "aesthetically inconsequential and a minimal intensification of the non-conformity". NYEXT Mobile Communications v. Hazlet Twp. Zoning Bd. of Adjustment, 267 N.J. super. 598, 162 (App. Div. 1994). Here, because of the location and the type of structure posed, any at-stake impact from the proposed wireless facility would be negligible.

The Appellate Division reversed a Board of Adjustment's denial of a use variance to place a wireless facility on top of a rooftop of a building, used as a student residence and school. County Cellular Telephone Co., supra, 352 N.J. super. at 519-537. The proposed rooftop telecommunications facility, included installation of twelve (12) antenna on the top of the forty-five (45') foot high building's elevator penthouse that would extend approximately seven (7') feet above the penthouse roof. Id. at 533. The antenna were to be color coordinated with the building in order to minimize their "visual impact" from street level. Ibid. The court found that the aesthetic impact of the facility would be minimal. Id. at 533-34.

Most recently, the Appellate Division affirmed the Court's reversal of a Board of Adjustment's denial of a use variance to place a wireless facility in a residential zone in Leonia. Sprint Spectrum, L.P. v. Zoning Board of Adjustment of Borough of Leonia, 360 N.J., super. at 337 (App. Div. 2003). The court held that:

"Because the proposed telecommunications facilities will serve the general welfare, its benefits to the public will outweigh the potential detriments, and locating the equipment in a residential zone would not substantially impair the intended purpose of the zone plan or ordinance".

The court rejected the board's conclusion that the site's location in a residential zone, and Sprint's failure to seek alternative proposed locations, rendered the use not particularly suited.

WAIVER OF SITE PLAN

As it relates to the waiver of site plan submission and approval, the New Jersey Municipal Land Use Law contemplates the Applicant's request for waiver for site plan approval and waiver of site plan submission requirements. More specifically, N.J.S. 40:55D-10.3 gives recognition to the fact that, particularly in connection with site plan applications, requests to waive submission and approval requirements are appropriate. The situation in which such

waivers should be granted typically involves applications for site plan approval, whereas in this case, buildings, parking lots, etc. already exist on the site. Given the fact that this a limited application, which does not include expansion to the building footprint and does not propose any impact of storm water management, the requested waiver of site plan approval and the site plan submission requirements is appropriate.

CLAC; 132015.1