

26-75.5 Standard Development Application

BOROUGH OF SAYREVILLE
STANDARD DEVELOPMENT APPLICATION

(Page 1 of 3)

GENERAL INSTRUCTIONS: To the extent possible, applicant shall complete every question. When completed, this application shall be submitted to the Planning Board Secretary (if an application to the Planning Board) or the Zoning Officer (if an application to the Board of Adjustment). The proper application and escrow fees must accompany the application. Do not advertise for a public hearing until you are advised to do so by the Board.

Indicate to which Board application is being made:

☐ Planning Board

☒ Board of Adjustment

Indicate all approvals and variances being sought:

Use Variance; Waiver of Site Plan requirements; Waivers for documents required under Wireless Communications Facilities Ordinance Section 26-87

<input type="checkbox"/> Informal Review	<input type="checkbox"/> Preliminary Major Site Plan	<input type="checkbox"/> Interpretation
<input type="checkbox"/> Bulk Variance(s)	<input type="checkbox"/> Final Major Site Plan	<input type="checkbox"/> Fill or Soil Removal Permit
<input checked="" type="checkbox"/> Use Variance	<input type="checkbox"/> Preliminary Major Subdivision	<input checked="" type="checkbox"/> Waiver of Site Plan Requirements
<input type="checkbox"/> Conditional Use Variance	<input type="checkbox"/> Final Major Subdivision	
<input type="checkbox"/> Minor Site Plan	<input type="checkbox"/> Appeals from Decision of Administration Officer (Attach the denial/decision)	
<input type="checkbox"/> Minor Subdivision		

1. Applicant

Name: DISH Wireless L.L.C.		Address: c/o PinilisHalpern, LLP 160 Morris Street		
City: Morristown	State: NJ	Zip: 07960	Phone: 973-401-1111	Fax: 973-401-1114

2. Property Owner (if other than applicant)

Name: Highpoint Enterprises - NJ, LLC/ Crown Castle		Address: 2000 Corporate Drive		
City: Canonsburg	State: PA	Zip: 15317	Phone:	Fax:

3. Applicant's Attorney (if applicable)

Name: Christopher J. Quinn, Esq.		Address: PinilisHalpern, LLP 160 Morris Street		
City: Morristown	State: NJ	Zip: 07960	Phone: 973-401-1111	Fax: 973-401-1114

BOROUGH OF SAYREVILLE			
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4. Subject Property (attach additional sheets if necessary)			
Street Address: 2 Gowin Street		Block(s) Lot(s) Number(s): Block 333.01; Lot 7	
Site Acreage (and Sq. Ft.) 1.522 acres	Zone District(s) B-3	Tax Sheet Numbers	
Present Use Telecommunications			
Proposed Development Name and Nature of Use: Same - placing antennas at 158' centerline height on existing 160' lattice tower and other related tower improvements. Equipment to be placed in existing compound.			
Number of New Buildings: N/A	Sq. Ft. of New Building(s): N/A	Height N/A	% of Lot to be covered by Building(s) : N/A %
% of Lot to be Covered by Pavement: No change %	Number of Parking Spaces and Dimensions: N/A	Dimensions of Loading Area(s): N/A	
Exterior Construction Material/Design: Metal			
Total Cost of Bldg. And Site Improvements:	Number of Lots Before Subdivision: N/A	Number of Lots After Subdivision: N/A	Are any new streets or utility extensions Proposed? No
Number of existing trees 2" caliper or greater to be removed: none	Are any structures to be removed? none	Number of Proposed Signs and Dimensions: only small sign required by the FCC	
Is soil removal or fill proposed? Specify total in cubic yards: N/A		Is the property within 200 ft. of an adjacent municipality? If so, which? South Amboy	
5. Are there any existing or proposed deed restrictions or covenants? Please detail. None affecting project.			
6. HISTORY OF PAST APPROVALS See attached Resolutions <input type="checkbox"/> Check here if none			
	APPROVED	DENIED	DATE
SUBDIVISION			
SITE PLAN	See attached Resolutions		
VARIANCE(S)	See attached Resolutions		
BUILDING PERMIT			

BOROUGH OF SAYREVILLE

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7. NAMES OF PLAN PREPARERS

Engineer's Name: John W. Kelly, B+T Group		Address: 1717 S. Boulder, Suite 300		
City: Tulsa	State: OK	Zip: 74119	Phone: 918-587-4630	License #: 24GA28301200
Surveyor's Name: N/A		Address:		
City:	State:	Zip:	Phone:	License #:
Landscape Architect or Architect's Name: N/A		Address:		
City:	State:	Zip:	Phone:	License #:

8. FEES SUBMITTED

Application Fees	\$3,000.00
Variance Fees	
Escrow Fees	\$2,550.00
Total Fees	\$5,550.00

CERTIFICATION:

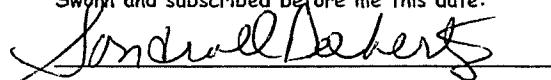
I certify that the foregoing statements and the materials submitted are true. I further testify that I am the individual applicant or that I am an Officer of the Corporate applicant and that I am authorized to sign the application for the corporation or that I am a general partner of the partnership applicant. I hereby permit authorized Borough officials to inspect my property in conjunction with this application.

Sworn and subscribed before me this date:



4/7/22

Signature of Applicant Christopher J. Quinn, Attorney for Applicant



See attached Property Owner Authorization

SONDRA O. DOHERTY
A Notary Public of New Jersey
My Commission Expires 02/27/2027

Property Owner Authorizing Application if Other
than Applicant

Notary Public

Secretary, Board of Adjustment
Borough of Sayreville
167 Main Street
Sayreville, NJ 08872

Please be advised that I have authorized Applicant: DISH Wireless L.L.C.
to make full application for a Variance as indicated in the application filed with you.
I give full authority to take all steps necessary with reference to the application for
a Variance and the construction involved.

See attached Property Owner Authorization

Signature

Sworn to and Subscribed before me

This ____ day of _____ 20 ____.

Signature

Date

In the Matter of the Application of
Dish Wireless L.L.C.
Site ID: NJJER01580A

Block 333.1, Lot 7
2 Gowin St.
Township of Sayreville
Middlesex County,
State of New Jersey

**AFFIDAVIT OF OWNERSHIP
OWNER'S CONSENT AND
SITE INSPECTION CONSENT**

FLORIDA
State of ~~New Jersey~~ }
SARASOTA } ss.
County of ~~Middlesex~~ }

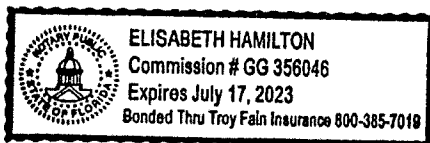
I/We, Robert C Gunther, (am) are the owner(s) of the premises known as 2 GOWIN ST, identified as Lot 7 in Block 33.1 in the Sayreville Township NJ, Middlesex County, State of New Jersey which is the subject of an application for development which has or will be submitted by Dish Wireless L.L.C. (Dish), located at 9601 S. Meridian Boulevard, Englewood, CO 80112, which involves an application for a wireless communications facility and may require the granting of use and bulk variances and site plan approval.

I/We authorize the applicant to prepare and file an application and all necessary documentation and to proceed before the proper Board. I/We further authorize the members of the Board and their authorized representatives, consultants, and other municipal officials to enter onto the premises for the purpose of evaluating the application for development.

Sworn and subscribed this

18 day of MARCH, 2022

Elisabeth Hamilton
NOTARY PUBLIC



BY:

Robert C. Gunther
NAME: ROBERT C. GUNTHER

DATE:

March 18 / 2022

2022 FLORIDA LIMITED LIABILITY COMPANY ANNUAL REPORT

DOCUMENT# L13000037561

Entity Name: HIGHPOINT ENTERPRISES - NJ, LLC

Current Principal Place of Business:

800 S OSPREY AVE
SARASOTA, FL 34236

Current Mailing Address:

800 S OSPREY AVE
SARASOTA, FL 34236 US

FEI Number: 46-3270000

Certificate of Status Desired: No

Name and Address of Current Registered Agent:

GUNTHER, ROBERT C
800 S OSPREY AVE
SARASOTA, FL 34236 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: ROBERT C GUNTHER

02/08/2022

Electronic Signature of Registered Agent

Date

Authorized Person(s) Detail :

Title	MEMBER	Title	MANAGER
Name	HPTT HOLDING COMPANY LLC	Name	GUNTHER, ROBERT C
Address	800 S OSPREY AVE	Address	800 S OSPREY AVE
City-State-Zip:	SARASOTA FL 34236	City-State-Zip:	SARASOTA FL 34236
Title	AUTHORIZED REPRESENTATIVE		
Name	SUPLEE, T RAYMOND		
Address	800 S OSPREY AVE		
City-State-Zip:	SARASOTA FL 34236		

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 605, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

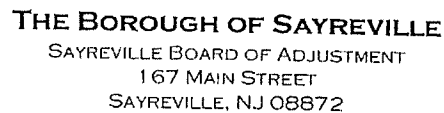
SIGNATURE: ROBERT C GUNTHER

MANAGER

02/08/2022

Electronic Signature of Signing Authorized Person(s) Detail

Date



Christopher J. Quinn, Attorney for Applicant, DISH Wireless L.L.C.

- (i) *Any Borough Candidate or holder of public office*
- (ii) *To any Borough or Middlesex County Party Committee or,*
- (iii) *To any Political Action Committee (PAC) referenced in this Ordinance within 2 calendar years of the date of this application.*

Signature of Applicant Chr

April 7, 2022

Witnessed By:

Notary's Signature:

Date:

SONDRA O. DOHERTY
A Notary Public of New Jersey
My Commission Expires 02/27/2027

Notary Seal

STOCKHOLDER DISCLOSURE STATEMENT

DISH WIRELESS L.L.C.

9601 S. Meridian Boulevard

Englewood, CO 80112

DISH Wireless Holding, L.L.C. is the 100 % owner of DISH Wireless L.L.C., 9601 S. Meridian Blvd., Englewood, CO 80112

DISH Wireless Holding, L.L.C is 100% owned by DISH Network Corporation, 9601 S. Meridian Blvd., Englewood, CO 80112

DISH Network Corporation Stockholders with More Than 10% Ownership

Charles W. Ergen, 9601 S. Meridian Blvd., Englewood, CO 80112

Cantey M. Ergen, 9601 S. Meridian Blvd., Englewood, CO 80112

Dodge & Cox, 555 California Street, 40th Flr, San Francisco, CA 94104

PROPOSAL

Applicant: DISH Wireless L.L.C.
5701 South Santa Fe Drive
Littleton, CO 80120

Site No.: NJJER01580A/ Sayreville

Property: Block 333.01, Lot 7
2 Gowin Street
Sayreville, New Jersey

The Applicant, DISH Wireless L.L.C. ("DISH"), is a federally licensed communications carrier which intends to collocate a telecommunications facility on the lattice tower at the above-referenced Property (the "Project"). The Project includes the installation of antennas at a centerline height of approx. 158 feet on the existing 160 ft. tower (which is approximately 165 ft. to the top of the lightning rod), removing an existing empty antenna mount, installing related equipment near the base of the tower inside the existing fenced compound, and other related improvements. The Applicant is requesting use variance approval and a waiver of site plan approval pursuant to Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, codified at 47 U.S.C. 1455(a) (the "Tax Act"), and N.J.S.A. 40:55D-46.2. To the extent required, DISH shall also request variance relief for the existing non-conforming conditions relating to height and tower setback.

BACKGROUND

DISH is in the process of building a nationwide network for wireless communication services ("WCS"). Presently, DISH is in the process of building its network throughout New Jersey. DISH has a federal license issued by the Federal Communications Commission ("FCC"). This license mandates that DISH provide WCS coverage to its customers.

By way of background, WCS telephones, still commonly referred to as cell phones, operate by transmitting an extremely low power radio signal between the handheld unit and antennas operated by DISH. In order to function, these antennas must be placed in strategic locations and at appropriate heights throughout the area. The antennas are connected to equipment shelters. To provide continuous service to its customers, there must be a continuous interconnected series of antenna sites, which create a grid pattern similar to a honeycomb. Each site must be placed within a limited area, which is not too close or too far from other sites.

In Sayreville, there is insufficient WCS coverage and inadequate service in the area surrounding the proposed site. Therefore, anyone attempting to use DISH's WCS service would not be able to do so. Without the proposed site at the proposed height, DISH is unable to provide coverage in the area, which it is mandated to do pursuant to its FCC license.

In order to promote competition in the wireless telecommunications industry, Congress enacted the Telecommunications Act of 1996. The Telecommunications Act of 1996 ("TCA") is

the federal law which governs the regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government. Specifically, the TCA, 47 U.S.C. § 332(c)(7)(B) provides in part:

(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof;

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

(ii) Any State or local government or instrumentality thereof shall act on any request for authorization to place, construct or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

(v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

The TCA further provides at § 253(a):

No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

While there have been many cases relating to the TCA, the seminal case in New Jersey relating to the siting of telecommunications facilities pursuant to the TCA is Smart SMR of New York, Inc. d/b/a Nextel Communications v. Borough of Fair Lawn Board of Adjustment, 152 N.J. 309 (1998). As this Board is well aware, §70 of the New Jersey Municipal Land Use Law governs the granting of variances by land use boards in New Jersey. N.J.S.A. 40:55D-70, et seq. An applicant must satisfy the positive and negative criteria of the statute. To satisfy the positive criteria, an applicant must prove that the use promotes the general welfare because the proposed site is particularly suitable for the proposed use. See Medici v. BRP Co., 107 N.J. 1, 4 (1987). To satisfy the negative criteria, an applicant must demonstrate that the variance can be granted without substantial detriment to the public good and that the variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance. Id. at 21-22.

In Smart, the New Jersey Supreme Court held that in the case of telecommunications facilities, an FCC license established that the use promotes the general welfare. Smart at 336. In order to satisfy the remainder of the positive criteria, an applicant holding an FCC license must demonstrate that the use is particularly suited for the proposed site. Id. at 332. To demonstrate that a site is particularly suited for a telecommunications facility, an applicant must show need for the facility at that location. See, New Brunswick Cellular Telephone Co. v. Borough of South Plainfield, 160 N.J. 1 (1999).

The Supreme Court in Smart then turned to the negative criteria. As stated, to satisfy the negative criteria, an applicant must demonstrate that the variance can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance. With telecommunications facilities, the Supreme Court held that it would weigh “the positive and negative criteria and determine whether, on balance, the granting of the variance would cause a substantial detriment to the public good”. Smart at 332. This balancing requires the use of the Sica four part balancing test. Sica v. Board of Adjustment, 127 N.J. 152, 165-166 (1992). The prongs of the balancing test are as follows:

1. The Board must identify the public interest at stake. Some uses are more compelling than others.
2. The Board must identify the detrimental effect that will ensue from the granting of the variance.
3. In some situations, the Board may reduce the detrimental effect by imposing reasonable conditions on the use. Mitigating conditions can be imposed, the weight accorded the adverse effect should be reduced by the anticipated effect of the conditions.

4. The Board should then weigh the positive criteria and negative criteria and determine, whether, on balance, the grant of the variance would cause a substantial detriment to the public good.

The beginning impetus for the drive to the next generation of wireless communications began with a Memorandum authored by President William Jefferson Clinton to the heads of all Federal executive departments and agencies which was released October 13, 2000. In his Memorandum, the President established a national priority for a modern wireless telecommunications network in the United States, stating:

[T]he value of wireless communications increased as the number of users and types of use increased. Today's second generation wireless technology increased services and information offered to users and increased competition among providers. Digital "personal communications services" (PCS) provided added messaging and data features, including such services as voice mail, call waiting, text messaging, and, increasingly, access to the World Wide Web. These first and second generation services increased productivity and reduced costs for thousands of businesses as well as Government agencies.

The next generation of wireless technology holds even greater promise. Neither the first nor the second generation of wireless technologies were designed for multi-media services, such as the Internet. Third generation wireless technologies [3G] will bring broadband to hand-held devices. Higher speeds and increased capability will lead to new audio, video and other applications, which may create what many are calling "mobile commerce" (m-commerce) that people will use in ways that are unimaginable today. Moreover, an international effort is underway to make it possible for the next generation of wireless phones to work anywhere in the world.

Memorandum of Advanced Mobile Communications/Third Generation Wireless Systems, 3 Pub. Papers 2171 (Oct. 13, 2000).

In his Memorandum, President Clinton ordered all Federal agencies and departments to take steps to facilitate the development and implementation of modern wireless communications. *Id.* In a corresponding Press Release, President Clinton declared as the public policy of the government to "allow consumers to enjoy a wide range of new wireless tools and technologies, such as hand-held devices that combine services like a phone, computer, a pager, a radio, a customized newspaper, a GPS locator, and a credit card." Statement on Action to Support the Third Generation of Wireless Technology, 3 Pub. Papers 2170, 2171 (Oct. 13, 2000). President Clinton's prescient vision was that "time is of the essence. If the United States does not move quickly to allocate this spectrum, there is a danger that the U.S. could lose market share in the industries of the 21st century." *Id.*

President Clinton's initiative was expanded upon in 2009 when the Federal Government allocated billions of dollars for broadband services. President Barack Obama unveiled his Wireless Expansion Plan declaring that "we can't expect tomorrow's economy to take root using yesterday's infrastructure." President Obama stated in his State of the Union Address, in January 2010, that within the next five years carriers "will be able to deploy high-speed wireless to 98 percent of the population". He addressed the need for "a firefighter who can download the design of a burning building onto a handheld device; a student who can take classes with a digital textbook; or a patient who can have a face-to-face video chat with her doctor".

BASIS FOR RELIEF

I. MLUL. In this case, DISH has proposed to place its telecommunications antennas on an existing lattice tower. The property is located in the B-3 zone. As set forth in Smart, DISH is a federally licensed carrier; therefore, the proposed site promotes the general welfare. However, to satisfy the remainder of the positive criteria, it must demonstrate the particular suitability of this site. This site is particularly suitable because (i) its location will resolve a service deficiency; and (ii) DISH is proposing to collocate on an existing structure that already supports existing telecom antennas. DISH will provide radio frequency engineering testimony at the hearing before the Board, which will demonstrate that there is no coverage in the area surrounding the proposed site. Therefore, there is a gap in the area and a need for the proposed site. (See, AT&T v. Borough of Ho-Ho-Kus, 197 F.3d 64, 70 (3rd Cir. 1999), holding that zoning decisions have the effect of prohibiting wireless services if they result in significant gaps in the availability of wireless services). DISH clearly requires this site to provide coverage pursuant to its FCC license.

As for the negative criteria, the proposed site will not be a substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance. The proposed site will not produce any noise, vibration, smoke, dust, odors, heat, or glare. It will not require any municipal services such as water, sewer, police or fire and will require only infrequent maintenance. The site will not have any adverse impacts on adjoining properties. In fact, the proposed site will provide improved wireless communications in the area. Wireless telephones enhance safety by allowing people to report accidents and crimes. They also provide an enhanced ability for people to communicate on both personal and business matters. On balance, as required by Sica, the public benefit far outweighs any potential detrimental effect of the site.

II. Tax Act. On February 22, 2012, the Tax Act became law. Section 6409(a) of the Tax Act provides that a state or local government "may not deny, and shall approve" any request for collocation, removal, or replacement of transmission equipment on an existing wireless tower or base station, provided this action does not substantially change the physical dimensions of the tower or base station.

The FCC interpreted Section 6409 of the Tax Act in 2014. See *FCC Report and Order, FCC 14-153*, adopted October 17, 2014 (the "FCC Order"). The FCC Order interpreted that a substantial change to the overall tower structure as follows: A modification substantially

changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

- (i) for towers other than towers in the public rights-of-way, *it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater*; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;
 - (A) Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.
- (ii) for towers other than towers in the public rights-of-way, it involves *adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater*; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;
- (iii) for any eligible support structure, it involves *installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets*; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;
- (iv) *it entails any excavation or deployment outside the current site*;
- (v) *it would defeat the concealment elements of the eligible support structure*; or
- (vi) *it does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment*, provided however that this limitation does not apply to any modification that is noncompliant only in a manner that would not exceed the thresholds identified in §1.40001(b)(7)(i)-(iv).

The Project qualifies for approval under Section 6409. DISH is proposing to install antennas and equipment on an existing tower outside the right of way. There is no question that the antennas satisfy the FCC Order's height and width requirements since there is no height or width increase proposed. The proposed equipment meets the FCC Order's requirements as well as it will be less than 4 cabinets, all confined to the existing compound, and will be smaller than

the existing equipment. The Site involves no excavation outside the compound and is consistent in appearance with other antennas on the pole and does not defeat any concealment purposes. Finally, the Project complies with the conditions associated with the prior approvals. Accordingly, the Applicant respectfully submits that the Tax Act applies, and federal law dictates that approval be issued for the proposed Project.

For the above reasons, we respectfully request that approval be granted for the proposed Project.