

RESOLUTION  
 LAND USE BOARD  
 BOROUGH OF ALLENDALE  
 BERGEN COUNTY, NJ

DATE: December 21, 2022

RESOLUTION: 22-28

Land Use Board	Motion	Second	Yes	No	Abstain	Absent
Bergen						✓
Daloisio	✓		✓			
Kistner			✓			
Lovisollo					✓	
Yaccarino						✓
Sirico		✓	✓			
Bernstein					✓	
Quinn			✓			
Forbes - Alt. #1					✓	
Putrino - Alt. #2			✓			

Carried  Defeated  Tabled

LAND USE BOARD OF THE BOROUGH OF ALLENDALE  
 RESOLUTION DENYING APPLICATION OF WORLD  
 CLASS WIRELESS, LLC FOR CONDITIONAL USE,  
 SITE PLAN APPROVAL & VARIANCE RELIEF  
 BLOCK 1005, LOT 1 & 2  
 (a/k/a 240/260 WEST CRESCENT AVENUE)

WHEREAS, the applicant, **WORLD CLASS WIRELESS, LLC**, the contract-tenant of the property located at 240/260 West Crescent Avenue, known as Block 1005, Lots 1 & 2 on the Tax Map, in the Borough of Allendale, County of Bergen and State of New Jersey, applied to the Land Use Board of the Borough of Allendale in an application dated September 8, 2022, seeking preliminary and final site plan as well as multiple variance approval to construct a wireless communication facility, including a 180 foot tower and associated equipment, where two single-story masonry buildings currently exist; and

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WHEREAS, the site is located in the D-1 Industrial Zone District, wherein communication towers are a conditionally permitted use. The application is seeking eight (8) variances, as well as site plan approval.

WHEREAS, the Land Use Board considered the matter at the October 19, 2022 and November 14, 2022 regular public meetings of the Land Use Board at which the applicant was represented by counsel, and at which the applicant's various professionals personally appeared and testified;

NOW THEREFORE BE IT RESOLVED by the Borough of Allendale Land Use Board that it hereby makes the following findings of fact and conclusions:

1. Notice of the public hearing was given by the applicant in accordance with applicable law.

2. The subject property is located on West Crescent Avenue at the Myrtle Avenue signalized T-intersection. A shared driveway provides access to the lots. The New Jersey Transit rail line is located to the west (the Recycling Center and Crestwood Park are further west beyond the rail line). Residential uses are located to the south and east. The West Crescent Avenue Redevelopment area is located to the north. The subject property is located within the Borough's D-1 Industrial Zone District, where wireless communications facilities are permitted as a conditional use.

3. The subject property is developed with two multi-use commercial buildings and associated amenities. A large portion of the site is utilized by Borst Landscape and Design. Storage bins, racks, containers, equipment, landscape materials as well as a salt storage accessory structure are located on the property. The Board previously approved a rear building addition on Lot 2 (a/k/a No. 240) as well as modifications to site parking and the contractor yard.

4. The application and plans propose a 180-ft wireless communications tower, associated equipment cabinet with canopy shelter and chain link fence enclosure in the north corner of the subject property. The tower and amenities are meant to provide low-frequency communications for the securities industry.

5. The proposed application sought variance relief, since communication towers are a

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conditionally permitted use in the zone, under certain conditions and with certain restrictions. In sum, a total of eight (8) variances were requested as a component of the application. Specifically, the application sought variance relief for the following:

- “D(3)” conditional use variance-proposed monopole height. A wireless communications facility in the D-1 Industrial Zone is permitted subject to conditions as identified in §270-48.6A(1). The proposed monopole height is 180 feet whereas the maximum height of the telecommunications tower shall not exceed 150 feet.
- “C” variance for separation distance from another wireless tower. The applicant requires relief for proposing the construction of a new wireless communications facility within 172 feet from the existing Crown Castle Tower, whereas the separation distance between these two towers should be at least 1,500 feet as specified in §270-48.6.A.(5)(b).
- “C” variance for separation distance to a residential use/zone. The location of the wireless communication facility is noted to be 334 feet away from the nearest existing residential property when §270-48.6 states a required setback of 200 feet or 300% of the height of the monopole (whichever is greater) in accordance with §270-48.6.A.(5)(a)[2]. This would equate to a minimum setback requirement of 540 feet in the case of this 180 foot proposed monopole.
- “C” variance for separation distance to a park. The wireless regulations require the same setback requirement of 540 feet between monopoles and park property whereas the application is proposing a monopole at 77.5 feet from Crestwood Park (§270-48.6.A.(5)(a)[2]).
- “C” variance for side and rear yard setback to tower. The “C” variance for side yard setback of 23 feet and a rear yard setback of 14.1 feet are proposed when monopoles are required to be set back at distance equal to at least 100% of the height of the monopole from any adjoining lot line, in this case 180 feet, in accordance with §270-48.6.A.(4)(a).
- “C” variance for the equipment shelter’s proposed height. The equipment shelter structure is proposed to be 11 feet tall when only 10 feet is permitted in accordance with §270-48.7.C.

6. In connection with the application, the applicant submitted the following:

- Application with Attachments;

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- Survey consisting of one (1) sheet entitled, “Topographic Survey, Map of Property for Hoss Consulting, Inc., Lots 1 & 2 in Block 1005 Tax Map, Borough of Allendale, Bergen County, New Jersey,” prepared by Thomas G. Stearns III, PLS of GB Engineering LLC, dated July 22, 2022, without revision;
- Site Plan Set consisting of eight (8) sheets entitled, “240 West Crescent Avenue, Borough of Allendale, Bergen County, New Jersey, 07401, Block: 1005, Lot: 1 & 2,” prepared by James C. Murawski, PE of E2 Project Management LLC, dated August 5, 2022, last revised September 6, 2022;
- Alternatives Site Analysis Report, prepared by Gotham Communications, not dated;
- Twist and Sway / Tilt Analysis Report, prepared by Michael Strickland, RF Engineer, World Class Wireless LLC , not dated; and
- Existing Condition & Proposed Photo Simulation, prepared by TK Design Associates, not dated.

7. In connection with the application, the applicant presented testimony from Michael Strickland, RF Engineer, World Class Wireless LLC, who was accepted by the Board as an expert in the field of Radio Frequency Engineering. Mr. Strickland testified as to the business of he applicant, and existing conditions of the property. The applicant controls a number of wireless networks in New Jersey, and is building a wireless network to connect a large data center facility in Mahwah with a data center facility in Secaucus. The applicant is in possession of a FCC license for the proposed network (Exhibit A-1), which is proposed as “line of sight” communication with parabolic antennas. The network is proposed to run from Mahwah to Secaucus (Exhibit A-2), and terrain issues along this route lead to the requirement for the tower height to be 180 feet. The basic path of the network was presented as Exhibit A-3, and since there are obstructions, the requested height is required along this path.

8. Mr. Strickland also testified that efforts were made to use the existing tower on Borough property near the proposed site, but that a “sway and tilt” analysis and structural report (Exhibit A-4) determined that the existing tower could not accommodate the applicant’s needs, and that the tower on Borough property would have to be extended to be made higher. It was further stated that it was not economically feasible to “drop and swap” the existing Borough tower for a larger tower to accommodate the applicant. Mr. Strickland also testified as to other locations and other options that were examined by the applicant in place of the proposed 180 foot tower, none of which were deemed acceptable or feasible by the applicant. Nevertheless, there was a need for this facility and network, as set forth in Exhibit A-5.

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9. The applicant further presented testimony from Eric Sudman, Civil Engineer, who was accepted by the Board as an expert in the field of Civil Engineering. Mr. Sudman testified as to the existing conditions of the property, and the proposed improvements to the site as part of the application. Mr. Sudman also presented and explained Exhibits A-6 through Exhibit A-9, which show the site plan and proposed structure to be built on and around the tower. Mr. Sudman explained the setbacks from other properties and the Borough tower, and safety, fencing and security around the tower and facilities. The tower and associated amenities are proposed for the northwest corner of the property, and may require removal of two small trees. The tower as proposed is 180 feet, wherein the height limit in the Borough Ordinance for the zone is 150 feet. Other bulk variances are required for the ground structure/facility.

10. The applicant presented testimony from Tim Ball, a contractor for World Class Wireless, who handles site acquisition for the applicant. Mr. Ball was sworn in and his credentials were accepted by the Board. Mr. Ball testified that he had reached out to Borough officials about possible alternative site locations, and presented communications citing his efforts (Exhibits A-9 through A-13). He also testified about efforts to procure other suitable sites in the vicinity of Allendale, and eventually the applicant came to the conclusion that the present site as proposed was most suitable and available for the company's needs, since it was leasable and zonable and not within a residential district. This determination was made after other sites within the search area were examined and ruled out for various reasons. Testimony was presented as to these other potential sites and their shortcomings.

11. The applicant also presented Mr. Tim Kronk, Planner, and he was sworn in and his credentials accepted by Board as an expert in the field of Planning. Mr. Kronk stated he visited the property on June 15, 2022 and other dates, reviewed the MLUL ordinance, Borough Master Plan and re-examination plans and professionals' reports. He conducted a conditional use analysis: The property is in the D-1 zone, which is appropriate for the tower since it is a conditionally permitted use. The maximum height in the Borough Ordinance is 150 feet. The applicant's proposal is for a 180 foot tower. There are as proposed 8 bulk variances. The D-1 zone is a small zone which does not allow for the proposal to meet the required setbacks, but the proposed location is the best alternative on the site and in the zone. It is also a better alternative than building the tower in a residential zone. Mr. Kronk presented graphics from a "balloon test" that was conducted on site to show the proposed height of the tower from various perspectives. (Exhibit A-14). Mr. Kronk concluded that he did not think there was any detriment to the public good if the application was approved, since there would be benefits to the economy and the possibility of municipal co-location in the future, and there would be no substantial detriment to the zone plan or ordinance.

12. In connection with the interpretation of the existing use and the variance application, Borough Planner, Edward Snieckus, P.P., L.L.A., A.S.L.A. reviewed the submissions by the applicant, listened to the testimony of the applicant's professional and prepared a

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Memorandum dated October 11, 2022. The Memorandum was in evidence and reviewed and examined by the members of the Land Use Board. Mr. Snieckus also asked questions of the applicant's professionals.

Mr. Snieckus also reviewed the Borough Master Plan, and stated that one of the goals of the Master Plan was to preserve and enhance the suburban character of the existing one and two family residential neighborhoods through establishing and maintaining zone districts and use, lot, bulk and intensity of use regulations based on existing neighborhood development patterns and good design practices.

13. The Borough's Engineer, Michael Vreeland, P.E., reviewed the submissions by the applicant, asked questions of the applicant's professionals, and prepared a Memorandum dated October 13, 2022. The Memorandum was in evidence and reviewed and examined by the members of the Land Use Board.

14. Land Use Board members asked questions of the applicants' Radio Frequency Engineer, Civil Engineer, Site Acquisition representative, Planner, the applicant's counsel, and the Borough professionals relative to the merits of the application. Particular concerns were raised as to the size and scope of the proposed tower and development, the visual impact of a 180 foot tower, especially so close to an existing tower, the large number of variances required and requested by the applicant, insufficient setbacks, the benefit to the public good of the proposed development, buffering with nearby residential development, and the proximity to the nearby Borough tower.

15. Members of the public appeared in connection with the application and asked questions of the applicant's professionals, the applicant's counsel, and the Borough professionals relative to the merits of the application, and provided testimony related to the merits of the application.

**NOW THEREFORE, BE IT RESOLVED**, based upon the factual and legal evidence, testimony and contentions set forth herein, that the Allendale Land Use Board hereby denies the applicant's request for a "D(3)" use variance and "C" bulk variances to permit the development of the site for a 180 foot communications tower and associated ground amenities. In connection thereto, the preliminary and final site plan approval is also denied.

**BE IT FURTHER RESOLVED** that the Municipal Land Use Law (MLUL) and relevant caselaw sets forth the statutory criteria for variance relief. It permits a Land Use Board to grant a

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'd' variance, as with a 'c' variance, "in particular cases and for special reasons." In the context of a wireless communications facility application, the positive criteria may be met by an applicant through the showing of the possession of a FCC license, and that the use is "particularly suited" to the proposed site. Where the site proposed allows for conditional use of the facility, as in this instance, the applicant must show that the site remains suitable for the use *notwithstanding* any nonconformity. This is the "positive criteria" of the statute.

To address the "negative criteria" of variance relief, the applicant must demonstrate that the proposed variance can be granted "without substantial detriment to the public good" nor will the granting of the variance "substantially impair the intent and the purpose of the zone plan and zoning ordinance" of the municipality.

**BE IT FURTHER RESOLVED** that one of the a goals of the Borough's Wireless Communications Facility Ordinance is "to minimize the number of towers throughout the community" and to "require the joint use of towers as a primary option rather than construction of additional single-use towers", and that the application as proposed is contrary to this goal;

**BE IT FURTHER RESOLVED** that the Allendale Land Use Board hereby specifically determines that the applicant has not met its burden of proof and it has not shown that the proposed development and requested variances can be granted without substantial detriment to the public good, especially since the result would be two towers in very close proximity to one another, and the Board has determined, after a rigorous site plan review, that an approval would substantially

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impair the intent and the purpose of the zone plan and zoning ordinance, despite the fact that the use is conditionally permitted in the D-1 Industrial Zone; and

**BE IT FURTHER RESOLVED** that the Allendale Land Use Board specially rejects the testimony of the applicant's Professional Planner that the proposed development would be particularly well-suited for the zone and site, in light of the close proximity of the existing tower, insufficient setbacks from a residential zone which are contrary to the language and intent of the Ordinance, and the need for multiple bulk variances to allow the conditional use at this location. In fact, the Borough Ordinance requires that a wireless tower must be separated by at least 1500 feet from another wireless tower. The application as presented proposes a separation of only 172 feet from the existing wireless tower on Borough property.

Likewise, the Ordinance provides that a wireless tower be at least 554 feet, based upon the tower's height, from a residential development, and the application proposed a separation of only 334 from the nearest *existing* residential property, and would be within 315 feet from the approved but not yet constructed multi-family development on the adjacent lot at 220/230 West Crescent Avenue. It is also only 77.5 feet from the AAA residential zone.

The proposed tower would also only be 127 feet from Crestwood Lake and Park, a Borough facility and park, wherein the Ordinance requires a separation of 554 feet from a monopole to a park.

**BE IT FURTHER RESOLVED** that the Allendale Land Use Board specially rejects the testimony of the applicant's Professional Planner, and concludes that the site is not suitable for the tower and amenities as proposed, as it does not promote the health, safety and welfare of the



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community, does not promote a desirable visual environment, and does not promote the provision of sufficient light, air and space in appropriate locations, all due to the fact that it is so close to an existing tower. In addition, the tower is sought for the benefit of the applicant and its commercial endeavors, since the testimony presented was that the applicant has outgrown capacity on existing towers and networks. However, the applicant's service does not provide a significantly beneficial use for the general public, only a benefit to those clients of the applicant involved in high-speed and high-capacity securities trading, thus not providing functionally equivalent services as other providers currently existing in the Borough; and

**BE IT FURTHER RESOLVED** that the Allendale Land Use Board finds and concludes that although the criteria for a D(3) variance is less stringent than a D(1) variance, since the Ordinance permits the use under certain circumstances, it is determined that the site is not an appropriate location for the use since the application does not meet the established conditions of the Borough Zoning Ordinance, namely due to the excessive height (a total of thirty feet, or 20%, larger than that permitted by Ordinance in the zone), proximity to existing tower, and insufficient buffers and screening with adjacent properties, including residential. Wireless communications facilities regulations are established and acceptable to protect adjacent residential property with specific heights and setbacks, and this application fails to do so.

**BE IT FURTHER RESOLVED** that the Board further finds that approval of the variance would result in a substantial detriment to the public good, and that the benefits of the proposed deviation do not substantially outweigh the various detriments, including the excess height of the tower, the number of variances required for the proposed ground facility, the location of residences

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surrounding the site, and the impact on light, air and space in the zone, in light of the placement of the tower in the zone as proposed in the application. The Board also concludes that the grant of the variance will substantially impair the intent and purpose of the Allendale zone plan and zoning Ordinances since the proposed lack of buffer and adequate setbacks, appropriate to protect residential development and zoning, for the height proposed were not sufficient to adequately support the goals of the Master Plan. It is determined that there is not sufficient zoning benefit to the proposed variances and use as proposed by the applicant. Further, the applicant has not shown through sufficient proofs that there are no other technological alternatives to solve the problem of coverage detailed in their application.

**BE IT FURTHER RESOLVED**, for the foregoing reasons, that the Allendale Land Use Board hereby denies the application and determines that the evidence presented in support of the requested variance relief does not meet the factual or legal criteria for a use variance under N.J.S.A. 40:55D-70(d)(3) or "C" bulk variances; and

**BE IT FURTHER RESOLVED** that the Land Use Board Secretary shall mail a copy of this Resolution within ten days from the date of adoption thereof to the applicant or to their attorney, if any, without charge; and to all other persons who request the same and pay the required fee therefore. The Secretary shall also file a copy of this Resolution in the offices of the Borough Clerk, Building Inspector, Construction Code Official, Tax Assessor and the Borough Attorney and shall publish a brief notice of the decision in the official newspaper, the cost of which shall be paid for by the applicant.

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Approved:

ALLENDALE LAND USE BOARD



KEVIN QUINN, Chairman

Attest:

  
JOSEPH DALOISIO, SECRETARY

Adopted: December 21, 2022