

**HANOVER TOWNSHIP ZONING HEARING BOARD**

**OF NORTHAMPTON COUNTY, PENNSYLVANIA**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Re : T-Mobile Northeast, L.L.C.  
Dated : April 22, 2009  
Property : 3439 Bath Pike

The Hanover Township Zoning Hearing Board, after conducting a hearing on Thursday, June 4, 2009, and rendering its oral decision granting variances to permit the location of the T-Mobile commercial communication equipment on the existing PPL utility pole, pursuant to the plan submitted to the Board, hereby makes the following findings of fact and conclusions of law:

1. The subject property is a 6.78 acre parcel of land located in a C-2 – Commercial Center District, and owned by Gregory A. Gulick.

2. The current uses on the property are automobile sales, Lafayette Ambassador Bank, Adams Advertising Billboard Sign, and an existing PPL utility pole with Nextel Communications' equipment and Allentown SMSA d/b/a Verizon Wireless equipment located thereon.

3. The present property was the subject of a Zoning Hearing and Decision of the Board dated August 23, 2001, which granted the necessary variances in order for Nextel Communications of the Mid-Atlantic, Inc. to locate its commercial communications equipment on a PPL utility pole, and a zoning hearing decision of the Board dated February 5, 2009 which granted the necessary variances in order to permit Allentown SMSA d/b/a Verizon Wireless to co-locate its commercial communications equipment on the same PPL utility pole.

4. The present application is brought by T-Mobile Northeast, L.L.C. to locate its equipment on the same pole, as well as to have an equipment shelter building 12'x20'. The applicant proposes to extend the pole by another 10 feet.

5. The applicant was represented at the hearing by Attorney Catherine Durso who offered into evidence a total of 12 exhibits as follows:

- A-1 FCC License;
- A-2 PPL Site Reservation Form;
- A-3 Lease Agreement;

- A-4 ZHB 2001 Decision;
- A-5 ZHB 2009 Decision;
- A-6 Site Plan;
- A-7 Photo Simulations;
- A-8 Structural Analysis;
- A-9 Propagation analysis showing existing coverage;
- A-10 Propagation analysis showing proposed coverage;
- A-11 Non-Interference Report;
- A-12 EMF Compliance Report;
- A-13 Letter to Airport Authority and Response from Airport Authority;
- A-14 Equipment Shelter Drawings with Material Safety Data Sheet.

6. Present at that hearing was Louis Mattioli of the Township Solicitor's Office and Paul Drissel of the Township Engineer's Office.

7. The applicant presented testimony from Christopher Milotich of T-Mobile, Kenneth L. Hill of PPL, and Glenn Villanueva, an RF Engineer.

8. The sum total of all of the testimony and exhibits was to the effect that the tower in question has the structural capability to support the additional 10 feet and the additional equipment that would be placed on the tower.

9. In addition, according to the testimony of the applicant, the tower is necessary in order to have reliable service within the area.

10. The Board believes that the applicant has demonstrated a hardship in that the applicant has shown through its testimony and exhibits that it is unable to meet its reasonable needs with respect to coverage in the area without utilization of this tower. Further the Board recognizes the legislative intent as expressed in 185-54 E 10 (m) (2) of the Ordinance, to consider locating communication equipment on existing towers rather than having to build new towers.

11. The Board also recognizes that it is the intent of the Supervisors to see that communications towers are not built in residential areas and although the proposed site is not in a PIBD district where it is permitted, it is clearly in an area that is non-residential.

12. The Board, therefore, concludes that the applicant has demonstrated a hardship and that its proposed extension of the tower by 10 feet, together with the associated equipment at the base of the tower as per the drawings set forth in the exhibits presented to the Board will not be detrimental to the public welfare or alter the character of the neighborhood.

13. The Board believes that a reasonable condition attached to their grant of approval is that there be a light at the top of the pole as requested by the Township and agreed to by the applicant.

WHEREFORE, the Hanover Township Zoning Hearing Board hereby adopts the above Findings of Fact and Conclusions of Law in support of its decision to grant the variances subject to the condition as set forth herein.

HANOVER TOWNSHIP ZONING HEARING BOARD

By:   
Paul A. Balla, Chairman

Dated: June 15, 2009

**HANOVER TOWNSHIP ZONING HEARING BOARD**

**OF NORTHAMPTON COUNTY, PENNSYLVANIA**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Re : Michael J. Baran  
Dated : March 24, 2009  
Property : 5216 Harriet Lane

The Hanover Township Zoning Hearing Board, after conducting a hearing on Thursday, June 4, 2009, and rendering its oral decision denying by a 2-1 vote the requested variance from the dimensional provisions applicable to storage sheds, hereby makes the following findings of fact and conclusions of law in support thereof:

1. The property is known as 5216 Harriet Lane and is located in an R1-S District.
2. Michael J. Baran, the applicant is the owner of the premises and desires that the Board approve a storage shed 10' x 18' on the premises.
3. He introduced into the record Exhibit A-1, being a picture of the storage shed as it is now situated on his property next to his home.
4. He stated that he currently owns and desires to store in the shed a trailer being 11' 3" long and a mower which is approximately 5-1/2' long.
5. He testified that he uses the equipment not only to mow his own lawn but to mow many other people's lawns. He stated he does not charge very much money and in some cases no money for mowing the yards.
6. He stated that he regularly mows lawns for seven properties and occasionally mows the lawn of five other properties.
7. Felix Clarin of 5220 Harriet Lane testified that he is the neighbor on the side of the property where the shed is located. He stated he believes the shed is attractive and he is not opposed to the application.
8. Jared McLaughlin of 5208 Harriet Lane also testified that he walks by the property and he feels that the shed is not a problem.
9. Natalie Kzacky indicated that she lives at the property with Mr. Baran and believes that the storage shed is at its minimum size in order to store the equipment owned by Mr. Baran.

10. The Zoning Officer, Yvonne Kutz, testified that the storage shed encroaches into the drainage easement on the property by approximately 2-1/2 feet and approval for that encroachment would have to come from the Supervisors.

11. The size of storage sheds are regulated by Sect. 185-25.C.(3)(b). That section provides that storage sheds, whether prefabricated or custom built shall not exceed 120 sq. ft. of floor space, and the wall height shall not exceed 8 ft. nor the gable height exceed 9 ft.

12. In the present case the proposed shed is 180 sq. ft. and the gable height is approximately 9'3", and therefore a variance from the aforesaid section is required.

13. Louis Mattioli from the Solicitor's office appeared on behalf of the Township to state that the Township is opposed to the grant of a variance in this matter.

14. Mr. Baran acknowledged that he had the shed installed on the property without consulting with the Zoning Officer.

15. With respect to the structure having already been placed on the property without a permit, it is the position of the Zoning Board that in the absence of some showing of bad faith on behalf of the applicant which is not indicated in the present case, the applicant should neither be rewarded for having located the structure on the premises without the permit nor penalized for doing the same. Instead the Board will treat the application in the same manner it would have if the structure had not yet been built as to whether or not it believes a variance is appropriate for the structure in question.

16. Therefore, any inconvenience or additional costs incurred by the applicant as a result of the Board not granting a variance would not be a basis for the applicant to claim a hardship. Nor would the Board deny the applicant a variance that it might otherwise have granted for the construction and location of this structure on the basis that the applicant failed to get the permit and ask the Board's permission first.

17. The majority of the Board believes that the applicant has failed in the present case to demonstrate any hardship. While the applicant may have some laudable reasons for doing the lawns of others, that is a matter that deals with the personal desires of the applicant. It is not related to the property in question. In fact, the smallness of the lot in the present situation would indicate that the size lawn mower and a trailer to transport the lawn mower are not really necessities as it relates to the subject property.

18. The applicant has failed to demonstrate where these provisions impact him in a manner that is different than was generally intended by the imposition of these regulations in the zoning ordinance.

19. Therefore, the majority of the Board believes that the applicant has not demonstrated a hardship as required under the Municipalities Planning Code and under Sect. 185-52.A. and 185-52.D(3,4,5).

WHEREFORE, the Hanover Township Zoning Hearing Board hereby adopts the above Findings of Fact and Conclusions of Law and denies the requested dimensional variance for the storage shed.

HANOVER TOWNSHIP ZONING HEARING BOARD

By: *Paul A. Baila*  
Paul A. Baila, Chairman

Dated: June 15, 2009