



Township of Abington

Wayne C. Luker, *President*
Steven N. Kline, *Vice President*
Richard J. Manfredi, *Manager*
Jay W. Blumenthal, *Treasurer*

Zoning Hearing Notice

Notice is hereby given that the Zoning Hearing Board of the Township of Abington will hold a meeting as required by the Township's Zoning Ordinance at the Abington Township Administration Building, 1176 Old York Road, Abington, Pennsylvania, on:

Monday, November 6, 2017 at 7:00 p.m., at which time a public hearing will commence on the following application:

17-17: This is the application **Crown Castle NG East, LLC**. The applicant, has submitted an application for an Appeal to the Actions of the Zoning Officer of the Township of Abington. The applicant contends that the Zoning Officer misinterpreted the use regulations and the dimensional requirements for the placement of communication equipment within the public right-of-ways in front of the properties located at 353 Church Road, Rockledge, Pa. and 872 Jenkintown Road, Elkins Park, Pa. This application is for the replacement of existing non-conforming service sites. This application has been filed to allow for the replacement of existing utility poles within the public right-of-ways with the new poles being 48 feet, 10 inches in height and to installed replacement communication equipment on the newly installed poles.

The properties are zoned within the R-4 Residential District and the Main Street District Low of Ward #4 of the Township of Abington. A copy of the application and site plan are on file with the Planning & Zoning Office and is available for review during normal business hours.

By Order of the Zoning Hearing Board.

Mark A. Penecale
Planning & Zoning Officer

Note: There is a 30 day period after the date the decision is rendered for any and all aggrieved persons to file an appeal in the appropriate court to contest the actions of the Zoning Hearing Board. Applicants that take action on a Zoning Hearing Board Approval during the 30 day appeal period, do so at their own risk. If there are questions that you may have, please feel free to contact the Zoning Officer at 267-536-1014. If you are unable to attend the hearing, written comment may be entered into the record by submitting them in advance of the hearing to the Planning & Zoning Officer.

Zoning Hearing Board Application



Abington Township, PA

1176 Old York Road, Abington PA 19001, Fax: 215-884-8271, Telephone: 267-536-1000

This application must be accompanied by a minimum of ten (10) copies of the plot plan of the property, prepared and signed by a registered land surveyor or professional engineer. The plan must include lot area, lot dimensions, coverage percentages, existing structures, other improvements, proposed improvements, off-street parking, buffers and all characteristics on the site.

The Undersigned herein makes application for:

- Request for Variance from the Zoning Ordinance.
- Request for a Special Exception as provided by the Zoning Ordinance.
- Appeal from the actions of the Zoning Officer.

1. Name and address of the owner of the land: Phone number:
N/A - PennDOT and Township Right-of-Ways N/A

2. Name and address of the applicant: Phone number:
Crown Castle NG East LLC 412-562-8362
3200 Horizon Drive, Suite 150
King of Prussia, PA 19406

3. Name and address of the attorney: Phone number:
Shawn N. Gallagher, Esq. 412-562-8362
301 Grant St., 20th Floor
Pittsburgh, PA 15219

4. If the applicant is not the owner of the property, list the applicant's interest in filing this application.
Example: equitable owner, agent, lessee, etc.

Applicant has agreement with PECO, the owner of the utility poles, to install wireless telecommunications facilities on the poles

5. Description of the property:

Address/location 353 Church Rd, Rockledge, PA 19046, 872 Jenkintown Rd, Elkins Park, PA 19027

Present use Utility Pole/Wireless Communications Facility

Proposed improvement Replace existing pole and upgrade existing wireless telecommunications facilities

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6. State briefly the reasons for which the proposed improvements or use does not meet the requirements of the Zoning Ordinance, and the nature of relief you are seeking:
See Attached Exhibit "A" for Notice of Appeal.

7. List the specific section of the Zoning Ordinance upon which the application for a variance or special exception is based:
N/A

8. Describe in detail the grounds for the appeal, or the reasons both in law and in fact for the granting of the variance or special exception, describing in detail the nature of the unique circumstances, and the specific hardship justifying your request for approval of the application.

See Attached Exhibit "A" for Notice of Appeal.

9. List any and all prior Zoning Hearing Board action regarding the property. List the date, case number and the nature of the zoning relief granted.
None

10. List any and all additional information, records, transcripts which may be helpful to the Zoning Hearing Board in rendering a decision: A minimum of eight (8) copies are required to be submitted.
Evidence to be provided at hearing in accordance with the procedures set forth in the Municipalities Planning Code

[Handwritten Signature]

Signature of Applicant

N/A

Signature of Owner

Internal Validation:

Date Received: 9/20/17

Fee Paid: \$1,000.00

Case: 17-17

check # 160277

Rec # 183167



BY:.....

[Handwritten Signature]

Signature of the Zoning Officer

**BEFORE THE ABINGTON TOWNSHIP
ZONING HEARING BOARD**

In Re: Notice of Appeal of)
 Crown Castle NG East LLC)
)

NOTICE OF APPEAL

Crown Castle NG East LLC (“Crown Castle”) files the within Notice of Appeal to the Abington Township Zoning Officer’s August 18, 2017 zoning determination (“Zoning Determination”) pursuant to Section 909.1(a)(3) of the Pennsylvania Municipalities Planning Code (“MPC”), 53 P.S. § 10909.1(a)(3) and Section 2002.1 of the Abington Township Zoning Ordinance (“Zoning Ordinance”). A copy of the Zoning Determination is attached hereto as Exhibit “A.”

BACKGROUND

1. Abington Township has adopted a Zoning Ordinance that contains a “Wireless Communications” Chapter at Article XXVIII, (“WC Ordinance”), which addresses wireless communications towers and antennas within the Township.

2. In 2008, Next G Networks (“NextG”), Crown Castle’s predecessor in interest, received Township approval for and installed an integrated system of telecommunications facilities on public rights-of-way in the Township. The system included the installation of 15 unobtrusive remote communications “Nodes” to address a coverage/capacity gap. The Township did not require NextG to obtain zoning approval for the installations.

3. Crown Castle now desires to commence upgrades on two of the Nodes in order to collocate an additional wireless provider on each tower. Each upgrade involves the replacement of the antenna and shroud box, as well as the replacement of the existing PECO



owned utility pole. Replacement of the poles is necessary so that they can safely support the electric, cable, fiber and telecommunications facilities.

4. After receiving notification from Crown Castle that it was planning to proceed with the upgrades, on October 5, 2016, the Township filed a Complaint and Petition for Preliminary Injunction with the Court of Common Pleas of Montgomery County, which sought to prevent Crown Castle from making the upgrades.

5. On October 6, 2016, the Court issued an *ex parte* Temporary Restraining Order, which temporarily enjoined Crown Castle from installing the upgrades pending consideration by the Court.

6. On May 30, 2017, after consideration of the matter, the Court issued an order denying the Township's Petition for Preliminary Injunction and dissolving the October 6, 2016 Temporary Restraining Order.

7. On Friday, June 23, 2017, after informing Township officials of the Court's May 30, 2017 Order dissolving the injunction, representatives from Crown Castle went in person to the Abington Township municipal building and submitted building and electrical permit applications for the two collocation sites.

8. By letter dated August 18, 2017, the Township Zoning Officer issued an official Zoning Determination, which stated that the building and electrical permit applications had been denied. *See Exhibit A.* The Zoning Determination states that the upgrades require new zoning approvals because the plans call for replacement of the existing utility poles with new poles. The Zoning Determination provides that both the proposed Nodes are not compliant with the Zoning Ordinance for the following reasons:

- Node MBC025 requires conditional use approval because it is located in the Main Street Low (MS-L) Zoning District. *See Comprehensive Use Matrix.*

- Node MBC025 requires a dimensional variance because the new pole exceeds 35 feet in height, which is the maximum building height permitted in the MS-L Zoning District. Zoning Ordinance § 1006 (Fig. 10.19)
- Node MBC029 requires a use variance because it is located in the R-4 Zoning District, where telecommunications towers are not a permitted use. *See* Comprehensive Use Matrix.
- Node MBC029 requires a dimensional variance because the new pole exceeds 35 feet in height, which is the maximum height permitted in the R-4 Zoning District. Zoning Ordinance § 602 (Fig. 6.1).

See Exhibit A.

The Zoning Determination also states that:

Please be aware that the installation of replacement poles will require conformance with the dimensional and setback requirements within the Zoning Ordinance of the Township of Abington for this use. Each of the zoning districts have requirements based on district and the surrounding uses. Once the plans have been returned to my office by Code Inspections Inc., I can provide you greater detail and to any additional relief that may be required.

Id.

9. At the time Crown Castle filed the within Notice of Appeal, it also filed a substantive validity challenge (“Validity Challenge”) to the WC Ordinance.

REASONS FOR APPEAL

10. Crown Castle appeals the August 18, 2017 Zoning Determination because the determination constitutes an abuse of discretion and an error of law for the following reasons:

- a) for the reasons set forth in Crown Castle’s Validity Challenge, which are incorporated by reference herein;
- b) the determination violates the Montgomery County Court of Common Pleas May 30, 2017 Order denying the Township’s Petition for Preliminary Injunction and dissolving the Temporary Restraining Order;
- c) Crown Castle’s proposed upgrades are not subject to the “Tower” related portions of the WC Ordinance or use regulations because they do not fit within the meaning of the definition of “Tower,” which is defined, in pertinent part, as “Any structure that is designed and constructed

primarily for the purpose of supporting one or more antennas for telephone, radio and similar communication purposes.” See Zoning Ordinance § 2801 (emphasis added). Crown Castle’s upgrades are located on existing utility poles, which were not constructed primarily for supporting antennas. Rather, the upgrades fall under the definition of “Antennas,” which are subject to separate regulations and use restrictions under the Zoning Ordinance. Specifically, the 872 Jenkintown Rd. upgrade should be permitted as an “Antenna” use, which is permitted by right in the MS-L District and should be approved administratively pursuant to Zoning Ordinance § 2804.

d) the complete prohibition of telecommunications towers and antennas in residential and other districts is *de facto* exclusionary as it pertains to DAS facilities;

e) the Zoning Determination violates the Pennsylvania Wireless Broadband Collocation Act, 53 P.S. § 11702.1, *et seq.*;

f) the WC Ordinance and Zoning Determination impermissibly regulate state owned road and public utility facilities;

g) to the extent the utility poles are considered “Towers,” both Node upgrades are proposed for “preexisting towers” pursuant to Zoning Ordinance § 2808(B) and “[r]outine maintenance (including replacement with a new tower of like construction and height)” is permitted on “preexisting towers” without compliance with the WC Ordinance;

h) dimensional variances to exceed height limitations should not be required because the Zoning Ordinance only refers to “building height” and the proposed Node upgrades are located on utility poles;

i) setback requirements should not be applied to antennas located on utility poles within the public rights-of-way because they could never be satisfied given the poles’ customary location adjacent to property lines;

j) the existing facilities are legal nonconforming uses;

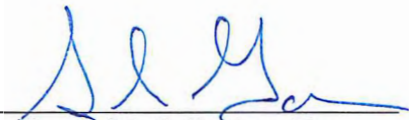
k) the Zoning Determination violates Crown Castle’s due process rights;

l) the Zoning Determination is arbitrary, capricious, irrational and unreasonable;

m) other reasons as may become apparent once the record is created.

11. Thus, the Zoning Officer erred as a matter of law and abused his discretion in issuing the Zoning Determination.

Respectfully submitted,

By: 

Shawn N. Gallagher, Esq.

Pa. I.D. No. 88524

Brendan P. Lucas Esq.

Pa. I.D. No. 314300

Buchanan Ingersoll & Rooney PC

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301 Grant Street

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(412) 562-8362

September 20, 2017

Counsel for Crown Castle NG East LLC