

**TOWN OF RED HOOK
ZONING BOARD OF APPEALS
June 12, 2024**

AGENDA

Meeting to take place at Town Hall – 7340 South Broadway

Preliminary Business

- 7:00 -Call to Order - Roll Call
-Approval of May 8, 2024 ZBA Draft Meeting Minutes
-Review of Planning Board Minutes
-Comments from the Chair

Board Vote

ZBA 23-04 George Santoire of Airosmith Development, representing New Cingular Wireless, PCS, LLC, and AT&T, and who is represented by Lauren M. Adornetto, of Phillips Lytle, LLP, application for an amendment to the existing Use Variance, 5-98, as amended on January 10, 2024, by Use Variance 23-10 (Revised), to authorize development of permitted uses, including the proposed wireless facility, at the Site, formerly consisting of two parcels, numbered 515038 and 512069, now merged to a single parcel, numbered 515038, by Dutchess County, on October 20, 2023, at property owner Michael Levy's of MK Levy Properties, LLC, request to combine the lots. The subject parcel is located at 3499 Route 9G, in the Town of Red Hook, in the RD-3 Zoning District.

Board Vote

ZBA 24-03 George Santoire of Airosmith Development, representing New Cingular Wireless, PCS, LLC, and AT&T, and who is represented by Lauren M. Adornetto, of Phillips Lytle, LLP, application to amend existing Use Variance, 5-98, as amended on January 10, 2024, by Use Variance 23-10(Revised), to construct a new, Wireless Telecommunications Facility, consisting of an approximately 100' monopole, and associated ground-based equipment. Town of Red Hook Zoning Law, Section 143-10 Applicability and Compliance with Zoning District Regulations, and Use Variance 5-98, as amended by Use Variance 23-10(Revised), allow only one principal use per lot, in a residential district. The applicant has applied for this use on "vacant land", however, Dutchess County merged former parcel 512069 with parcel 515038, on October 20, 2023, per property owner Michael Levy, of MK Levy Properties, LLC application to combine the two lots. The resulting parcel has three structures with a principal, commercial use of offices and office buildings. The subject parcel is located at 3944 Route 9G, in the Town of Red Hook, in the RD3 Zoning District.

The next ZBA meeting is scheduled for Wednesday, July 10, 2024. Prospective ZBA Applicants must present their application to Building Inspector, Brandon Mullins. **The submission deadline for this meeting is *noon* Tuesday, July 2, 2024.**

TOWN OF RED HOOK
Zoning Board of Appeals

AMENDMENT TO USE VARIANCE RESOLUTION

Application #: ZBA 23-04 & ZBA 24-03

Amendment to Use Variance Grid #: 134889-6172-00-515038

Introduced by: _____

Date: June 12, 2024

Seconded by: _____

The Town of Red Hook Zoning Board of Appeals, at meetings duly convened on June 14, 2023, December 13, 2023, February 14, 2024, March 13, 2024, May 8, 2024 and June 10, 2024, reviewed the facts relevant to Application # 23-04 and Application #24-03 as submitted by George Santoire of AiroSmith Development representing New Cingular Wireless, PCS, LLC & AT&T (“the Applicant”) for variances to allow the erection of a wireless communication facility (“the Project”) on property located at 3940-3944 Route 9G and owned by MK Levy Properties LLC (parcel No. 134889-6172-00-515038-0000) (“the Property”).

WHEREAS, the applications for this Project have undergone numerous iterations and originally included Application #23-03 and Application #23-05, and

WHEREAS, Application #23-03 was withdrawn by the Applicant on February 20, 2024, by letter from Lauren Adornetto, Esq., attorney for the Applicant, and

WHEREAS, Application #23-05 was rendered moot by the merging of Parcel No. 134889-6172-00-515038-0000 and Parcel No. 134889-6172-00-512069-0000 into a single Parcel No. 134889-6172-00-515038-0000 and was withdrawn by the Applicant on February 20, 2024, by letter from Lauren Adornetto, Esq., attorney for the Applicant, and

WHEREAS, the address of the combined parcels is 3940-3944 Route 9G, and

WHEREAS, in a coordinated review, the Town of Red Hook Planning Board issued a Negative Declaration under the State Environmental Quality Review Act, Section 6NYCRR Part 617 on April 1, 2024, and

WHEREAS, the application was referred to the Dutchess County Planning Department pursuant to GML §239-m, and the County determined it was a matter of local concern, and

WHEREAS, the Board held a Public Hearing on March 14, 2024, notice of which was duly published in the Poughkeepsie Journal on March 1, 2024, and posted as required by law, and

WHEREAS, said hearing was held open until April 10, 2024, and was closed on that date, and

WHEREAS, at said Public Hearing all who desired to be heard were heard and their testimony recorded, and

WHEREAS, this Board and the Applicant have both consented to an extension of time under Town Law 267-a(8) until June 12, 2024, for the Board to vote on Application #23-04 and Application #24-03, and

WHEREAS, all testimony has been carefully considered and the ZBA makes the following findings:

1. A use variance was granted for the property on September 9, 1998 (#5-98).
2. Use Variance #5-98 was amended on January 10, 2024, by Use Variance #23-10,
3. Condition #6 of Use Variance #23-10 reads “Only three structures as currently erected are permitted on the Property without obtaining an amendment to these conditions.”
4. The three structures erected on the property as of the granting of Use Variance #23-10 and permitted under Use Variance #23-10 are used as commercial offices and office buildings.
5. The Applicant now seeks two variances to allow the Project on the Property:
 - a. An amendment to condition #6 of Use Variance #23-10 to authorize development of the proposed wireless facility, at the Property (Application #23-04, as amended by letter dated February 20, 2024, from Lauren Adornetto, Esq., attorney for the Applicant), and
 - b. Relief from Town of Red Hook Code §143-10(F) to permit the Project as a second principal use on the Property, in addition to the principal use approved in Use Variance #23-10 (#24-03).
6. Pursuant to the Court of Appeals decision in *Matter of Cellular Tel. Co. v Rosenberg*, 82 NY2d 364, 371 (1993), a wireless communication facility is considered a public utility.
7. As a public utility, a wireless communication facility is not subject to the use variance criteria outlined in Town Law §267-b(2) or Town of Red Hook Code §143-35(B)(2).
8. “To obtain a use variance, the [Applicant] must demonstrate that the site is necessary to provide safe and adequate service and that there are compelling reasons, economic or otherwise, to obtain the variance. Moreover, where the burden on the community is minimal, the showing required by the utility should be correspondingly reduced.” (*Sprint Spectrum, L.P. v Zoning Bd. of Appeals of the Town of Guilderland*, 173 Misc 2d 874, 877 [Sup Ct 1997] [internal quotations omitted] [citations omitted].)

9. There are areas in the Town of Red Hook where there are gaps in cellular coverage, and there is a demonstrated need for cellular phone service in these unserved areas.
10. The Applicant has shown that the Project would provide service in some of those currently unserved areas as demonstrated in the coverage maps submitted with its application.
11. At the current time no other provider is serving the unserved areas in which the Applicant proposes to provide coverage.
12. Although a wireless facility has been approved in an adjacent municipality (the Town of Rhinebeck) and collocation may be available on that facility when it is fully built, there is no guarantee that that tower will, in fact, be built and that collocation will be available.
13. The Project is subject to special use permit approval, and pursuant to that process and §143-103(B) of the Code of the Town of Red Hook, the Town of Red Hook Planning Board will make a determination whether the Project will be granted a special use permit or whether collocation is feasible and required.
14. In addition to the traditional consumer coverage that AT&T provides on its network, AT&T is also responsible for the First Responder Network Authority ("FirstNet"). FirstNet was created by Congress in 2012 as an independent authority within the United States Department of Commerce to ensure the establishment of a nationwide public safety broadband network. FirstNet gives first responders a single, interoperable platform for emergency and daily public safety communications.
15. The Project, if built, will contribute to FirstNet's mission to deploy, operate, maintain, and improve the first high-speed, nationwide wireless broadband network dedicated to public safety.
16. The Property is not abutted by lots currently used for residences and no available alternative location in the Town would have less impact on the neighborhood.
17. Subject to a determination by the Town of Red Hook Planning Board with respect to whether collocation on the wireless communication facility approved in the Town of Rhinebeck would provide adequate service to the unserved areas of the Town of Red Hook proposed to be served by this Project, the Applicant has demonstrated that the site is necessary to provide safe and adequate service and that there are compelling reasons, economic or otherwise, to grant the variance.

NOW THEREFORE BE IT RESOLVED by the Zoning Board of Appeals, that Application #24-03 and Application #23-04 as described in number 5a. and 5b. above are granted with the following conditions:

1. Payment of any and all outstanding fees and ZBA consultant invoices.
2. Parcel No. 134889-6172-00-515038-0000 shall not be subdivided.
3. Site plan approval must be obtained from the Town of Red Hook Planning Board.
4. Special use permit approval must be obtained from the Town of Red Hook Planning Board.
5. Application for and receipt of any other required permits and approvals from Town of Red Hook, Dutchess County or New York State departments or agencies.
6. The Property must always be in full compliance with all applicable statutes of the State of New York and the laws of the Town of Red Hook.
7. All of the conditions in Use Variance #23-10 (a copy of which is attached hereto) remain in full force and effect with the exception of condition #6 which is replaced with and superseded by the language in Condition #8 herein.
8. Only four structures, specifically the three structures erected on the Property as of January 10, 2024, and the wireless communication facility approved for variances in Application #23-04 and Application #24-03, herein, are permitted on the Property without obtaining an amendment to these conditions.
9. Two principal uses shall be allowed on the Property: (1) business or professional office establishment as described in and approved by this Board in Application #23-10 and (2) a commercial communications receiving and/or transmitting wireless communication facility as described in and approved by this Board in Application #23-04 and Application #24-03, herein.
10. The use variance granted in #23-10 shall be read in conjunction with the variances granted herein.
11. A copy of this resolution shall be sent to MK Levy Properties, LLC, and its attorney Karen Hagstrom, Esq., both by certified mail return receipt requested.

Adopted: June 12, 2024

Member	Aye	Nay	Abstain	Absent
Kate Karakassis, Chair				
John Bonavita-Goldman				
Chris Carney				
George Jahn				
Chris Klose				

Adopted: _____

Zoning Board Chairperson: _____

Secretary: _____