

***BEFORE THE CASINO REINVESTMENT DEVELOPMENT AUTHORITY***

**IN RE: APPLICATION OF T-MOBILE NORTHEAST, LLC  
3501 VENTNOR AVENUE, ATLANTIC CITY  
SITE NAME: T-MOBILE NORTHEAST, LLC  
1AT9525G**

**ADDENDUM "A" TO CRDA APPLICATION**

**I. BACKGROUND**

The subject property is located at 3501 Ventnor Avenue, Atlantic County, New Jersey ("Property"). The Property is further identified as Block 259, Lot 13 on the Tax Map and is currently owned by Hampton Condominium Association. The Property is currently zoned RM – 2 Multi-Family Residential and is situated within the Casino Reinvestment Development Authority Tourism District. As the accompanying site plans establish, Applicant, T-Mobile Northeast, LLC ("T-Mobile") is proposing a telecommunication facility consisting of the collocation of nine (9) antennas on the rooftop of the existing building. The antennas and equipment will be concealed and will be painted to match. The associated equipment cabinets will be placed on the roof and there will be no external ground improvements.

**II. REQUEST FOR RELIEF**

T-Mobile is seeking the following relief to the extent required:

1. Grant of a d(1) use variance to permit co-location of wireless telecommunication antennas on the rooftop of an existing structure within the RM – 2 Multi-Family Residential which is not permitted per § 163-56.B.
2. If necessary, grant of a "d" variance to permit expansion of the non-conforming height of the building (note the proposed antennas and concealment wall will not exceed the current height of the building)
3. Waiver of minor site plan approval to the extent required given all the improvements are either on or inside the building and there are no external ground/site improvements. If the Board disagrees that site plan approval is not required and/or does not grant the waiver, then Applicant seeks alternatively, site plan approval. See also Request for Waiver enclosed as part of this Application.
4. To the extent minor site plan is required, Applicant seeks certain completeness and design waivers as included with this Application.
5. Any other variances, waivers, or other relief that the Board deems necessary.

### **III. REASONS WHY THE APPLICATION SHOULD BE GRANTED**

#### **A. Compliance with Positive/Negative Criteria**

1. The Board has the power to grant d(1) variances in particular cases and for special reasons, in accordance with the New Jersey MLUL 40:55D-70d.

2. As to special reasons, referred to as the positive criteria, New Jersey courts have Generally held that grant of an FCC license for a wireless telecommunications facility is sufficient to demonstrate promotion of general welfare, which is purpose "a" of the Municipal Land Use Law.

3. In accordance with the court decision in *Kohl v. Mayor and Council of Fair Lawn* and reaffirmed by the Court in *Medici v. BPR*, the positive criteria for a d variance requires demonstration that the site is particularly suited to the proposed use. New Jersey case law related to wireless telecommunication facilities has generally held that demonstration of a need for the facility at the proposed site to fill a coverage gap fulfills the site suitability requirement. Here, T-Mobile will demonstrate through a propagation analysis that the facility at this location is necessary to fill a gap in coverage.

4. In addition to demonstration of the positive criteria, it must be shown that the so-called negative criteria can be satisfied. The applicant must demonstrate and the Board must find that the requested relief can be granted without a substantial detriment to the public good and without substantial impairment to the intent and purpose of the zone plan and zoning ordinance.

5. As to the negative criteria, it's been widely held by New Jersey courts that application of the *Sica* balancing test is appropriate in consideration of the negative criteria consisting of the following four-part test:

- (a) "identify the public interest at stake," recognizing that "some uses are more compelling than others,"
- (b) "identify the detrimental effect that will ensue from the grant of the variance,"
- (c) if necessary, "reduce the detrimental effect by imposing reasonable conditions on the use," and
- (d) "weigh the positive and negative criteria and determine whether, on balance, the grant of the variance could cause a substantial detriment to the public good."

6. The public interest at stake is provision of wireless telecommunications services. As

more people abandon land lines in favor of wireless services, filling gaps in coverage becomes more and more important, particularly gaps related to reliable in-building and in-car coverage. Additionally, wireless telecommunications fill a critical need in emergency situations for both the public and those that serve the public. Given the increased need for and use of wireless telecommunications devices, the need for the proposed installation is compelling.

7. As to the identification of detrimental effects, this is an unmanned facility that requires routine visits by technicians every 4-6 weeks. The facility is remotely monitored 24 hours a day 7 days a week, and will not generate noise, traffic, smoke, odor and will not impact municipal services such as sewer and water. It is a very benign land use from those perspectives. Detrimental effects related to wireless telecommunications applications generally focus on the visual impact of the installation. In this case the applicant is installing antennas on an existing structure. The antennas will be painted to match the color of the existing structure. Any visual impact associated with the proposed installation is effectively mitigated, making it a non-issue. All of the associated equipment will be located within the building so there will be no outside ground equipment which would be visible to the public.

8. The imposition of reasonable conditions to reduce detrimental effects is essentially satisfied by the applicant's visual mitigation measures, including painting of the antennas to match the color of the existing structure and placement of equipment cabinets and related equipment in the basement of the church.

9. The final aspect, weighing of the positive and negative to determine any potential detriment to the public good, the positives far outweigh any negatives and there is no detriment to the public good.

#### **B. Other Justifications in Support of Application**

The proposed use is suitable for the Property and is in the best interests of the community and the requested relief should be granted for the following reasons:

1. The proposed facility is necessary in order for T-Mobile to provide telecommunications service in accordance with its Federal Communications Commission license and the Telecommunications Act of 1996.

2. A significant gap in wireless coverage exists and/or there are capacity issues impacting reliable coverage in the proposed area and the proposed facility is the least intrusive means in which to fill that gap in wireless coverage.

3. The addition of a telecommunication facility, a passive communications use, is a suitable and appropriate use of the Property. The proposed use is consistent with the spirit, purpose and intent of the City Code and in no way detrimentally affects the community or its residents.

4. The proposed use will not substantially injure or detract from the use of neighboring properties or from the character of the neighborhood and the use of the properties adjacent to the Property will be adequately safeguarded.

5. The proposed use will serve the best interest of the City, the convenience of the community, and the public welfare by making enhanced wireless telecommunications service available and will foster competition among the other approved wireless providers.

6. The proposed use will be entirely consistent with the logical, efficient and economical extension of public services and facilities within the City including police and fire protection.

7. The proposed facility will be designed in accordance with all applicable safety and industry standards, and will not endanger the safety of persons or property.

8. The proposed use will not overcrowd the land or create an undue concentration of population.

9. The proposed use will not impair an adequate supply of light and air to adjacent property.

10. The proposed facility will be fully automated and unattended on a daily basis and will be visited for periodic maintenance or emergency repair.

11. The proposed use will not adversely affect transportation or unduly burden public facilities.

12. The telecommunications facility complies with all applicable standards established by the Federal Communications Commission.

13. The telecommunications facility shall not cause radio frequency interference with other communications facilities located in the City.

14. The applicant is licensed by the Federal Communications Commission to operate the telecommunications facility.

15. The telecommunications facility shall comply with all applicable Federal Aviation Administration Regulations.

16. The surrounding neighborhood will not be subjected to objectionable noise, lighting, glare, heat, ventilation, smoke, fumes, vapors, dust, dirt, gases or radioactive or electrical disturbances by the proposed use. There will be no signs or lights mounted on the facility.

17. The telecommunications facility will be maintained in a safe manner in accordance with the requirements of the City's Building Code.

For all of the reasons stated above, T-Mobile requests the above referenced relief and any other relief the Board deems necessary. Detailed Plans of the proposed use have been submitted to the City, and are incorporated by reference herein for consideration before the Board.

Respectfully submitted,

RILEY RIPER HOLLIN & COLAGRECO

Date: 12-22-16

By: Debra A. Shulski  
Debra A. Shulski, Esquire  
Attorney for Applicant