

INTERPRETATION OF ZONING CODE
LITTLE EGG HARBOR M.U.A.
Block 326.16, Lot 2
823 Radio Road

Application No. 2023-02

RESOLUTION OF APPROVAL #2023-05
ZONING BOARD OF ADJUSTMENT, TOWNSHIP OF LITTLE EGG HARBOR

WHEREAS, an application has been made by the Little Egg Harbor Township Municipal Utilities Authority for an interpretation of the Township Zoning Code as it applies to the applicant; and

WHEREAS, the request for interpretation is being submitted in accordance with the provisions of the Municipal Land Use Law, NJSA 40:55D-70(b), and Little Egg Harbor Township Code § 215-3.12, which state that the zoning board of adjustment shall have the power to hear and decide requests for interpretation of the zoning ordinance; and

WHEREAS, a public hearing on the application was held on February 8, 2023, at which time the applicant was represented by Robert Shinn Esq.; and

WHEREAS, the Zoning Board, after carefully considering the evidence presented by the applicant, and the report(s) from its professional staff, hereby makes the following findings of fact:

1. The applicant has a proprietary interest in the subject property.
2. The applicant has requested approval in accordance with the Ordinances of the Township of Little Egg Harbor.
3. All record property owners located within 200 feet of the subject property were duly notified of the public hearing, and the notice summarizing the application was duly published in an official periodical of the Board in accordance with the provisions of the Municipal Land Use Law.
4. The site in question is located at 823 Radio Road.
5. The applicant is seeking an interpretation of Township Code § 215-3.13 as it applies to the applicant's request to establish the previously approved temporary celltower monopole on the site as a permanent structure on the property.

6. The Township Zoning Officer has refused to grant any such authority without the express interpretation and decision of the Zoning Board of Adjustment, in accordance with the provisions of Township Code § 215-8.14, which states as follows:

§ 215-8.14 (C). Cases of Doubt. Should the Official be in doubt as to the meaning or intent of any provision of this chapter as to the location of a district boundary line on the Zoning Map or as to the propriety of issuing any permit in the particular case, he/she shall appeal the matter to the Board of Adjustment for interpretation and decision.

7. The subject section of the Township Code § 215-3.13 provides as follows:

Except as otherwise provided for in NJSA 40:55D-31 [planning board review of capital projects], the provisions of Chapter 15 [now, Chapter 215 – Land Use & Development] shall not be applicable to the Township of Little Egg Harbor Township Municipal Utilities Authority. All other public agencies shall be bound by the provisions of Chapter 15 [now, Chapter 215] except when specifically exempted by applicable state law which supersedes this Ordinance. In such cases, the subject public agency shall comply with NJSA 40:55D-31 and shall submit an application for courtesy review by the appropriate Board.

8. The applicant has requested an interpretation of the same so as to exempt the applicant from site plan or other zoning review with regard to the previously approved temporary celltower monopole on the site now being transitioned as a permanent structure on the property.

9. The applicant presented to the Board a copy of the Board's 2004-06 Resolution of Interpretation, which determined that, with respect to the addition of cell carrier antennas on the MUA's watertower, Township Code § 215-3.13 specifically exempts the MUA from the necessity of any variance approval or site plan review requirements. The applicant further presented to the Board a copy of the August 5, 2019 Zoning Approval and Building Permit with regard to the construction of a temporary 130ft celltower monopole on the site. The applicant presented the testimony of Matt Watkins, its wireless consultant, who testified that the subject existing temporary monopole is structurally sound and may be converted to consideration as a permanent structure without any modifications to the same. There is no detriment to the Township caused by the proposed permanent monopole, and it provides many benefits to the community, including the provision of reliable cellphone service and ground treatment sensors for icing conditions. The applicant's executive director, Earl Sutton, testified to the MUA's ownership of the subject monopole and its agreements for cell antenna carriers for the use of the monopole. Mr. Sutton testified to the history of the cell antenna situation at the site, and the numerous benefits of the celltower, including the ability to have remote meter readings. Originally, the monopole was considered a temporary structure at the time of the beginning of the water tank painting project; after the painting project was completed, the cell carriers did not

move to replace their antennas on the water tower, but instead, the use of the monopole has been preferred by the MUA and the cell carriers. There are no structural changes required to the monopole, and it would simply continue to exist as-is. There are no residents within the 200ft radius of the pole that could possibly be affected by the same.

WHEREAS, the Zoning Board has determined that the applicant should be granted a favorable interpretation of the aforementioned Zoning Code § 215-3.13 in order to establish the previously approved temporary celltower monopole on the site as a permanent structure on the property, without the necessity of a variance or site plan approval, for the following reasons:

1. Township Code § 215-8.14 specifically places jurisdiction over this questionable application or interpretation of the Township Code with the Zoning Board of Adjustment.

2. Township Code § 215-3.13 specifically exempts the MUA from the necessity of any variance approval or site plan review requirements, particularly with regard to the specific application of the Little Egg Harbor Municipal Utilities Authority concerning the subject celltower monopole.

3. The applicant acknowledged that any future plans for the development or improvement upon its property would similarly require a request for an interpretation by the Zoning Board of Adjustment, pursuant to Township Code Sections § 215-3.12, § 215-3.13 & § 215-8.14.

4. There was no public comment at the hearing.

5. The granting of this favorable interpretation will not have any substantial detriment to the public good and will not substantially impair the intent and purpose of the Zone Plan, Master Plan, and/or Zoning Ordinances of the Township of Little Egg Harbor.

6. The safety and well-being of the immediate area will not be adversely affected

NOW THEREFORE BE IT RESOLVED by the Little Egg Harbor Township Zoning Board of Adjustment that the Zoning Board hereby grants and approves the favorable interpretation of the aforementioned Zoning Code § 215-3.13 in order to establish the previously approved temporary celltower monopole on the site as a permanent structure on the property, without the necessity of a variance or site plan approval, however, subject to the following specific conditions of approval:

1. This favorable interpretation and decision of the Zoning Board is limited to the specific application presented by the applicant, and no expansion or extension of the same beyond the specifics of this application are granted or are implied.

2. Any future plans for the development or improvement upon its property would similarly require a request for an interpretation by the Zoning Board of Adjustment, pursuant to Township Code Sections § 215-3.12, § 215-3.13 & § 215-8.14.


3. All representations and statements made by the applicant shall be considered and deemed to be relied upon by the Board in rendering this decision and to be an expressed

condition of this Board's actions in approving the subject application. Any misstatement or misrepresentation, whether by mistake or change in circumstance, shall be deemed a breach of this condition of approval and shall subject this application to further review of this Board's own motion. In the event the Board determines that it reasonably relied upon any misstatement or misrepresentation, then and in that event any approvals previously given may be rescinded and any improvements permitted by this resolution shall be deemed to be unauthorized by this resolution and in violation of the Township's ordinances.

5. These specific conditions noted herein are an integral part of the basis for which the approval is being granted and are intended to be inseparable from the right of enjoyment of this approval.

BE IT FURTHER RESOLVED that a copy of this Resolution be forwarded to the applicant, the Zoning Officer, the Building Department, and the Township Clerk by the Zoning Board secretary.


BE IT FURTHER RESOLVED that a notification of this favorable Resolution shall be published in an official newspaper of Little Egg Harbor Township within ten (10) days of the adoption of this resolution.



GREG LESZEGA, Vice-Chairman

CERTIFICATION

I, **Robin Schilling**, Secretary of the Little Egg Harbor Township Zoning Board of Adjustment, certify that the foregoing Resolution was duly adopted at a meeting held on March 8, 2023, memorializing the vote of the Little Egg Harbor Township Zoning Board of Adjustment at a meeting previously held on February 8, 2023, a quorum being present and voting in the majority.



Robin Schilling, Board Secretary