

**STILLWATER TOWNSHIP
ZONING BOARD OF ADJUSTMENT
October 22, 2012**

MEMBERS PRESENT: Mr. Daingerfield, Mr. Lippencott, Mrs. Feenstra, Mrs. Galante, Mr. Powell

MEMBERS ABSENT: Mr. Hammond, Mr. Stachura, Mr. Sarni

ALSO PRESENT: Board Attorney Morgenstern; Board Engineer Rodman

A REGULAR MEETING OF THE Stillwater Township Zoning Board of Adjustment was held on Monday, October 22, 2012, at 7:30 p.m. at the Municipal Building in Middleville, New Jersey. The meeting was called to order by Chairman Powell in accordance with the Open Public Meetings Act. The flag was saluted and roll call taken.

Krista Galante was sworn in as a Regular Member of the Board, filling the term of Ed Saal, expiring 12/31/12.

MINUTES

Mr. Daingerfield made a **motion** to approve the minutes of 9/24/12, seconded by Mrs. Feenstra.

Roll Call Vote: Mr. Daingerfield, yes, Mr. Lippencott, abstain, Mrs. Galante, yes, Mrs. Feenstra, yes, Mr. Powell, yes

HEARING

Cellco Partnership/d/b/a Verizon, Block 3101, Lot 13, Cal. No. 578 – Telecommunications Facility

Conflicts were previously cited by Mr. Sarni, Mr. Stachura, and Mr. Hammond, all were not present at the meeting.

Richard Schneider of Vogel, Chait, Collins and Schneider was present on behalf of Cellco Partnership d/b/a Verizon Wireless and he provided a brief history of the application and hearing held on August 27, 2012.

William Master, Professional Planner, was sworn in with the Board accepting his qualifications. Mr. Masters reviewed the application, supporting documentation, site plan, radiofrequency report, visited the site and conducted a balloon test on April 19, 2012. He conducted a visual site analysis in accordance with Section 240-114J(2) of the Stillwater Land Development Ordinance, reviewed the comprehensive zone plan and zoning ordinance pertaining to the tower and equipment, Master Plan, and Mr. Rodman's report dated June 21, 2012. Mr. Masters described the property as a 69 acre parcel in the R-5 zone, including critical characteristics such as terrain, topographic conditions, steep slopes, rises to high ground elevation, heavily wooded in the rear with an open field to the front. There is an existing access road to the proposed location, traversed by a 150' PSE&G right of way. Mr. Masters reviewed the important characteristics with regard to suitability: property is ideally situated from a radiofrequency perspective to meet the coverage needs, it is a large lot, 14 times the minimum lot requirement, it is 950' to the nearest house, 681.6' to the nearest residentially developed property, 843' elevation for efficient operation of the facility, 150' PSE&G right-of-way is existing and proposed use is of a similar nature to the public utility. Existing site access will minimize vegetation removal, ideal buffering is present, the site can facilitate co-location in accordance with the ordinance, with ground space and extendable height, and overall the site is particularly suited for a telecommunications facility. The lattice type tower is most appropriate for the location as it is within close proximity to an existing lattice type utility tower. The facilities are unmanned and will be monitored remotely with a technician visiting the site once every 4-6 weeks. There will be low traffic generated, it is an extremely benign use and the site can be accessed without difficulty. The following exhibits were marked:

A-10: 929 Fairview Lake Road – colored aerial Google Earth dated 5/28/08, superimposed a 1 mile radius circle – requirement for site analysis. Six vantage points are indicated and the tower is delineated by the red circle in the middle of the exhibit. Mr. Masters briefly described the balloon test conducted on 4/19/12.

A-11: Photos (3 pairs/1-3) balloon test

#1: View from Fairview Lake Road/Route 617 where the utility right-of-way crosses the Fairview Lake Road

#2: View from Fairview Lake Road/Route 617 from Harmony Hill Methodist Church

#3: View from 925 Fairview Lake Road, closest house to the location

A-12: Photos (3 pairs/4-6) balloon test

#4: View from 928 Mt. Holly Road (Partridge Ridge Farm)

#5: View from 936 Route 521

#6: View from 905 Saddleback Road

Mr. Masters concluded the tower would be visible from various vantage points from 1300'-5000' away, and with respect to the use variance, the proposed installation will not have an aesthetic impact on the surrounding area. With regard to municipally-owned property, the terrain characteristics of the township property would result in a coverage gap to the south creating the need for an additional facility. With respect to existing structures, the Nextel tower does not meet technical needs resulting in lack of coverage and meeting the overall coverage objective. The PSE&G towers are not available and a letter has been previously submitted indicating such. None of the conditionally permitted zones were approximate to the subject search area with required terrain characteristic to meet coverage. Mr. Masters reviewed the D-1 variance positive criteria, including the issuance of an FCC license and suitability of the location; special reasons, and negative criteria, and inherently beneficial uses including the SICA four- step balancing test. The use is benign and passive, reasonable conditions can be imposed and the applicant will comply with all comments in Mr. Rodman's report dated June 21, 2012.

Mr. Masters reviewed the following:

| | <u>Proposed</u> | <u>Required</u> |
|---|-----------------|---------------------------------|
| Shelter Height | 11'8" | 10' |
| Equipment Shelter | 345 sq. ft. | 200 sq. ft. |
| Tower setback to residential property/ Tower setback to residentially zoned land | 336.3' | 399' (330% of the tower height) |

Mr. Masters noted the property encroached on is property owned by the applicant. In his opinion, the applicant meets the statutory criteria for the D-1 use variance and dimensional variations can be granted without substantial detriment to the public good or zone plan. Mr. Morgenstern stated a height variance would also be required as the tower is not permitted in the R-5 zone and the height requirement is 35' for structures in that zone. Mr. Masters addressed the

height variance (D-6), testifying the height is necessary to provide the coverage needed, suitability, visual analysis and proximity to the PSE&G towers. He felt the height variance could be granted without substantial detriment or impairment. Mr. Morgenstern and Mr. Rodman questioned the multiple principal uses on the lot referencing 240-140(g)(1). Mr. Masters testified the wireless telecommunications use will not cause detriment to the public good or zone plan, is an unmanned facility, routinely visited 1x every 4-6 weeks, remotely monitored and is similar to the existing PSE&G right-of way. Mr. Rodman questioned the driveway requirements with 21% slope proposed and 15% required.

John Ferrante, Professional Engineer, still under oath, indicated waivers were requested from the township driveway requirements. The applicant will pave the first 25', the additional 2,200' is above 8%. Mr. Ferrante indicated the fire department did not have any comment or objection to the first application and this application is the same. A brief discussion was held on the comment in Mr. Rodman's report requiring a recorded access easement. Mr. Schneider indicated he would submit an as built indicating the center line, submit satisfactory proof of lease to access the facility and provide documentation from PSE&G consenting to access over the PSE&G easement. Mr. Morgenstern agreed all would be conditions. Maintenance of the access road was discussed. Mr. Schneider indicated the property owner would continue to maintain the logging road and Verizon would maintain access as needed for their portion. A discrepancy in the disturbance number was pointed out by Mr. Rodman and Mr. Ferrante agreed the actual number is 69,000 square feet and the correction would be made and Stormwater Management Plan prepared. The Environmental Commission expressed concern with the vernal pool on the property and Mr. Ferrante agreed to respect that concern in accordance with DEP regulations; noting a DEP permit was obtained and would be provided to the Board. Mr. Ferrante stated the tower pole would be galvanized steel, gray in color.

A Board discussion followed on the maintenance of the access road should a safety issue occur. At this point, **Rodney Castner, owner of the property**, was sworn in. Mr. Castner stated he already maintains the road and would continue to do so, although he does not do so in the winter and this would be addressed with Verizon. Mr. Schneider agreed to formalize a written maintenance agreement between Mr. Castner and Verizon and provide a copy to the Board with a map. Co-location was discussed and Mr. Ferrante stated the ability to extend the tower to 150' could be built into the design if the Board approves to do so.

At this point, this portion of the meeting was opened to the public at 8:38 p.m.

Lisa Chamings, 928 Mt. Holly Road spoke as a resident asking about coverage in her area. Using A-2 and A-3, Mr. Schneider indicated the improved coverage. Ms. Chamings indicated she had no objection to the application and felt it would be significant to residents to have the coverage.

There being no further members of the public wishing to speak, this portion of the meeting was closed at 8:41 p.m.

Mr. Morgenstern and the Board reviewed and discussed suggested conditions:

- Comments 2, 3 (a,b,c), 4-10, 13-15, 18, 19 of Mr. Rodman's report dated 6/21/12
- The applicant and property owners shall maintain the access driveway, including snowplowing to provide adequate access for fire trucks and emergency vehicles; copy of memorandum agreement to be provided to the Board. The agreement shall provide for obligation of the applicant to remove the tower if it is no longer used. Mr. Schneider agreed to submit a copy of the redacted lease.
- The Board Secretary would forward a letter to the fire departments and emergency rescue squad inquiring if access to the proposed location is adequate or if there were any comments or recommendations regarding such.
- Limit tower height to 150'
- Design support to 150' to accommodate 4 co-locators, total of 5.
- Co-locators to appear before the Board for ground equipment approval.
- The first 25' of the driveway must be paved.
- Sussex County Sediment and Soil Control approval
- Sussex County Planning Board approval.
- As built to be submitted indicating the center line of the access road.
- Written consent from PSE&G to cross their right-of way.
- DEP permit
- The facility shall not cause any interference with radio or television reception
- No lighting shall be installed on the tower; no additional lighting except for security purposes.
- FCC license to be filed with the Board.
- File construction plans with Construction Official and obtain construction permit.
- File construction plans with the Board and Board Engineer.
- Lattice tower should be galvanized steel, gray in color.
- Sign to be posted on the fence or shelter indicating name, address, and phone number of the applicant.
- The first 20' of climbing rungs shall be removed when not actually in use.
- The applicant's professional engineer shall submit a written certification to the Board that they have complied with the conditions of this approval in the construction of the improvement.
- No septic system is to be installed.
- Record Resolution in County Clerk's Office.
- Pay required fees.
- Obtain required approvals from other governmental agencies.
- Comply with all federal, state and local laws, rules and regulations.
- No certificate of approval from the building department until the improvements are installed.
- Applicant shall comply with all representations regarding the project made at Zoning Board meetings and install/and operate the system in conformance therewith.
- Developer's agreement agreeing to remove the cell tower and equipment when no longer in use; provide that in the event they do not remove the cell tower then the owner can enforce it, and the town could enforce it with lien powers on the property.
- All other standard conditions applying.

Mr. Daingerfield made a **motion** to grant the variance relief necessary, seconded by Mr. Lippencott, conditions applying.

Roll Call Vote: Mr. Daingerfield, yes, Mr. Lippencott, yes, Mrs. Galante, yes, Mrs. Feenstra, yes, Mr. Powell, yes Motion passed 5-0.

Mr. Daingerfield made a **motion** to grant preliminary/final site plan approval, seconded by Mr. Lippencott.

Roll Call Vote: Mr. Daingerfield, yes, Mr. Lippencott, yes, Mrs. Galante, yes, Mrs. Feenstra, yes, Mr. Powell, yes Motion passed 5-0.

Mr. Lippencott made a **motion** to carry the application to November 26, 2012 for the memorializing Resolution, seconded by Mr. Powell.

Roll Call Vote: Mr. Daingerfield, yes, Mr. Lippencott, yes, Mrs. Galante, yes, Mrs. Feenstra, yes, Mr. Powell, yes

At this point, a five-minute recess was taken. The meeting resumed at 9 p.m.

OTHER BUSINESS

Budget Worksheet Review 2013:

Mr. Lippencott made a **motion** to recommend the following 2013 Budget to the Township Committee, seconded by Mrs. Feenstra:

| | |
|-----------------|---|
| Salaries &Wages | \$ 5,828.00 |
| Advertising | \$ 500.00 |
| Forms & Books | \$ 125.00 |
| Office Supplies | \$ 75.00 |
| Equipment | \$ 75.00 |
| Membership Dues | \$ 220.00 |
| School Training | \$ 500.00 |
| Legal Fees | \$ 4,000.00 |
| *Litigation | To be determined by the Township Committee if necessary |
| Engineering | \$ 750.00 |
| Total: | \$ 6,245.00 |

Roll Call Vote: Mr. Daingerfield, yes, Mr. Lippencott, yes, Mrs. Galante, yes, Mrs. Feenstra, yes, Mr. Powell, yes

BILLS

Mr. Daingerfield made a **motion** to approve the following bills, seconded by Mrs. Galante:

| | | |
|-------------------|-----------------------------|----------|
| New Jersey Herald | Resolutions Goldberg/Gordon | \$ 23.70 |
| | Resolution Hollinger | \$ 19.50 |
| Dolan & Dolan | General – September 2012 | \$ 83.33 |
| | Meeting – September 2012 | \$ 75.00 |
| | Escrow – Cellco Partnership | \$150.00 |
| | Escrow – Hollinger | \$424.50 |
| | Nextel Litigation | \$215.00 |

Roll Call Vote: Mr. Daingerfield, yes, Mr. Lippencott, yes, Mrs. Galante, yes, Mrs. Feenstra, yes, Mr. Powell, yes

At this point, this portion of the meeting was opened to the public at 9:06 p.m. There being no members of the public wishing to speak, this portion of the meeting was closed at 9:06 p.m.

Liaison Report: Committeeman Gross

Following a brief discussion, the Board indicated they had no issue with Mr. Gross continuing to sit at the front table during Zoning Board meetings.

There being no further business, Mr. Daingerfield made a **motion** to adjourn the meeting at 9:12 p.m., seconded by Mrs. Feenstra. In a voice vote, all were in favor.

Respectfully submitted,

Kathy Wunder, Board Secretary

Eric Powell, Chairman