

**STILLWATER TOWNSHIP
ZONING BOARD OF ADJUSTMENT
March 28, 2011**

MEMBERS PRESENT: Mr. Powell, Mr. Saal, Mr. Sarni, Mr. Hammond, Mr. Stachura, Mr. Daingerfield, Mr. Lippencott, Mr. Lockwood

MEMBERS ABSENT: None

ALSO PRESENT: Board Attorney Morgenstern; Board Engineer Rodman

A REGULAR MEETING OF THE Stillwater Township Zoning Board of Adjustment was held on Monday, March 28, 2011, at 7:30 p.m. at the Municipal Building in Middleville, New Jersey. The meeting was called to order by Mr. Lockwood in accordance with the Open Public Meetings Act.

The flag was saluted and roll call taken.

Mr. Daingerfield submitted a certification indicating he has listened to the recording and read the minutes for the Zoning Board of Adjustment meeting held on February 28, 2011.

MINUTES

Mr. Powell made a **motion** to approve the minutes of February 28, 2011, as corrected, seconded by Mr. Lippencott.

Roll Call Vote: Mr. Powell, yes, Mr. Hammond, abstain, Mr. Daingerfield, yes, Mr. Saal, yes, Mr. Sarni, abstain, Mr. Stachura, abstain, Mr. Lockwood, yes

At this point in the meeting, Mr. Lockwood announced that Cellco Partnership d/b/a Verizon would not be appearing before the Board this evening.

HEARING

Michael Chaves, Block 3804, Lot 12.04, Cal. No. 560, application amendment

All notices appeared to be in order; Sussex County Planning Board was noticed.

Michael Chaves was sworn in. Mr. Chaves submitted a letter from Case Construction Company dated February 18, 2011 indicating the reasoning for the selective demolition and reconstruction of the single family dwelling. Mr. Chaves testified the contractor felt the home was not salvageable as it existed and would have to be reconstructed, and the footprint remained the same as it would have been with the original addition plan. The original foundation was kept and there will be the same number of bedrooms. He stated his testimony before the Board at the original hearing was based on the plans at that time. Mr. Chaves referred to condition #5 of the resolution dated January 25, 2010, which required drywells to be installed for the roof drainage. He asked for this condition to be removed as he did not recall it being discussed at the hearing. After a brief discussion, the Board determined condition #5 would be revised to require the applicant to contain all roof drainage on the property and to prevent it from running onto the County road. The Board reviewed the landscape plan and questioned why trees were being placed on the other side of the property line. Mr. Chaves indicated that his neighbor, Mr. Syberg, met with his landscape contractor, Mr. Grablutz, and Mr. Syberg asked for additional trees to be planted in those locations. Mr. Grablutz has provided a one year guarantee on all plantings. The one year guarantee will be noted in the Resolution. A ten foot side yard variance is required. Proposed – 20 feet; Required – 30 feet. Mr. Chaves testified the house is completed and the trees will be ordered based upon approval.

Mr. Daingerfield made a **motion** to grant the variance relief for the amended application and approve the landscape plan submitted; and revising condition #5 of the original resolution,

seconded by Mr. Powell, carrying the application to April 25, 2011 for a memorializing resolution.

Roll Call Vote: Mr. Powell, yes, Mr. Hammond, yes, Mr. Daingerfield, yes, Mr. Saal, yes, Mr. Sarni, yes, Mr. Stachura, yes, Mr. Lockwood, yes

Following a brief discussion, Mr. Lockwood made a **motion** to allow the applicant at his request and at his own risk, to waive his right to wait to receive the resolution and proceed with the project, seconded by Mr. Stachura.

Roll Call Vote: Mr. Powell, yes, Mr. Hammond, yes, Mr. Daingerfield, yes, Mr. Saal, yes, Mr. Sarni, yes, Mr. Stachura, yes, Mr. Lockwood, yes

RESOLUTION

Cellco Partnership d/b/a Verizon Wireless, Block 3101, Lot 13, Cal. No. 566

Mr. Powell made a **motion** to adopt the Resolution declaring the application incomplete, seconded by Mr. Daingerfield.

Roll Call Vote: Mr. Powell, yes, Mr. Daingerfield, yes, Mr. Saal, yes, Mr. Lippencott, yes, Mr. Lockwood, yes

At this point, due to questioning from the public, the meeting was opened to the public at 7:54 p.m.

Cheire Lozaw, 917 Swartswood Road, asked if the cell tower application was done or would there be discussion on it, and she expressed concern that she was not provided notice of the application. Mr. Lockwood explained the application was deemed incomplete and must submit further information. Mr. Lockwood explained that only those located within 200 feet of the property in question are noticed. It was then clarified that Ms. Lozaw was present for the Nextel of NY application, which would be heard before the Board pending completeness.

There being no further members of the public wishing to speak, this portion of the meeting was closed at 7:55 p.m.

RESOLUTION

Courtney Pipher, Block 2401, Lots 57, 59.01, 59.02, Cal. No. 544

Mr. Stachura made a **motion** to adopt the Resolution, seconded by Mr. Lippencott.

The Board finds that it can grant the applicant an extension of the variance approvals originally granted by this Board by Resolution dated December 20, 2007, and the variance approvals are hereby extended until November 28, 2011, subject to the condition set forth below:

CONDITION OF APPROVAL

All of the conditions of the original Resolution of this Board dated December 20, 2007, remain in full force and effect and are conditions of this extension approval.

Roll Call Vote: Mr. Powell, yes, Mr. Hammond, yes, Mr. Saal, yes, Mr. Sarni, yes, Mr. Stachura, yes, Mr. Lippencott, yes, Mr. Lockwood, yes

RESOLUTION

Nextel of New York, Inc. & JCP&L, Block 1703, Lot 21, Cal. No. 569

Mr. Powell made a **motion** to adopt the Resolution declaring the application incomplete, seconded by Mr. Stachura.

Roll Call Vote: Mr. Powell, yes, Mr. Hammond, yes, Mr. Saal, yes, Mr. Stachura, yes, Mr. Lippencott, yes, Mr. Lockwood, yes

COMPLETENESS HEARING

Nextel of New York, Inc. & JCP&L, Block 1703, Lot 21, Cal. No. 569, completeness hearing; application to be heard pending completeness.

Mr. Sarni cited a conflict and stepped down from the completeness and regular hearing. Gregory Meese, Esq of Price, Meese, Shulman & D'Arminio, was the attorney present on behalf of the applicant. Mr. Meese stated that all items of completeness required by the Resolution have been satisfied. A memorandum dated March 18, 2011 was received from the Zoning Officer recommending the application be deemed complete by the Board. Following review, Mr. Powell made a **motion** to deem the application complete, seconded by Mr. Hammond.

Roll Call Vote: Mr. Powell, yes, Mr. Hammond, yes, Mr. Daingerfield, yes, Mr. Saal, yes, Mr. Stachura, yes, Mr. Lippencott, yes, Mr. Lockwood, yes

HEARING

Nextel of New York, Inc. & JCP&L, Block 1703, Lot 21, Cal. No. 569

The following witnesses were called by Mr. Meese: Frank Colasurdo, Architect; Robert Bertona, Radio Frequency Engineer; Steve Sofman, Tradition Wireless Consultant for Sprint/Nextel; Dan Collins, Radio Frequency Compliance Standards; and William Masters, Professional Planner **Frank Colasurdo, Architect** was sworn in, providing his qualifications accepted by the Board. Mr. Colasurdo provided testimony based on the plans submitted and entitled "Proposed Wireless Telecommunications Facility," JCP&L (owned by FirstEnergy Corporation) and Sprint together with Nextel, dated 11/1/11, Preliminary and Final Site Plan.

Mr. Colasurdo reviewed the following evidence:

Page Z-3 Site Plan and Zoning Information, marked as **A-1**. The proposed tower is located 172' from Newton Swartwood Road, 103' from the rear property line, 40'.7" from the east property line and there is 75' between the firehouse and the monopole. The property itself contains a firehouse and associated parking. Landscaping will be installed on the northeast and southeast of the tower facility.

Page Z-4 Equipment Plan and Site Elevation, marked as **A-2**. The site will contain a 34' x 30' equipment compound, a 12' x 20' pre-fab equipment shelter, just over 11' in height, used to store radio cabinets; and a 150' galvanized steel monopole with 12 antennas.

Page Z-5 Equipment and Antenna Details, marked as **A-3**. The plan depicted shelter elevations and an isometric of the antenna support at 150 feet.

Page Z-6 Coax and Miscellaneous Details, marked as **A-4**

Page Z-7 Landscape Plan, marked as **A-5**, and including the number and types of trees to be planted.

Mr. Colasurdo testified the site is designed to support a Nextel unmanned facility that will be monitored seven days per week, 24 hours per day. With respect to the Environmental Impact Statement (EIS), based on the NEPA, he testified the following: The State Office on Historic Preservation indicated there would be no adverse effect on any historic properties in the area; an archeological dig was conducted and no artifacts were found; and no building will be permitted from August 1st through December 15th due to the nesting of the Bald Eagles at Swartwood Lake. He stated there are no wetlands within 150'; no people, no traffic, no sewer, and no potable water associated with the project. Mr. Colasurdo noted an EIS is not required by ordinance and Mr. Lockwood commented that the Board is well within its right to request one, noting the EIS submitted is hard to follow due to the lack of a Table of Contents. Mr. Colasurdo reviewed portions of the EIS including the geo-technical report dated 3/4/11 and soil logs. He stated the monopole is designed to bend if overstressed and a depth of 20' is required to support the pole in 90 mile per hour winds. The water table will not affect that and any material removed will be trucked away from the site.

Mr. Colasurdo reviewed the following evidence marked as **A-6** from Engineering Endeavors, subject: Design and Reliability of a Multi-Carrier Monopole Structure; Fall Zone Radius; and Quality of Steel and Fabrication of Monopole. In response to Board questioning, he stated a licensed structural engineer will sign and seal the foundation plan, indicating it is adequate. A structural engineer will review the guidelines of the geo-technical report and determine how the

foundation should be built. A tanker will remove any excess water, and a groundwater discharge permit will be obtained if required. If a bird nest should be built on the tower, no climbing on the tower would be permitted until the nesting is completed. A technician will be visiting the site every 4-6 weeks to ensure that all is working properly. Nesting will not impact the signaling of the tower. Mr. Colasurdo referred to Page Z5 (evidence A3) noting there is no location on the tower where a nest could be constructed. Referring to page Z1 (evidence A1) he testified that the fire department chose the location of the tower and the parking spaces lost will not be replaced. He testified that 31 parking spaces would remain, including 1 handicapped. He noted that lot 1.03 has additional parking available, with no striping. The number of parking spaces may be an issue and will be reviewed by Mr. Rodman referring to section 240-116 of the ordinance. Mr. Colasurdo and Mr. Rodman will meet at the site to determine the square footage of the building. In response to Board questioning on any adverse visual effects, Mr. Colasurdo testified it is common to find towers next to a firehouse, and any adverse effect would be minimal because people are used to seeing them in association with one another. Mr. Stachura felt there would be a visual impact as the tower is not incorporated with the fire house and is sitting out in the open by itself. Mr. Rodman suggested the applicant may want to consider the option of a flag pole as Blairstown did, with co-locators. Mr. Colasurdo stated he could provide photo simulations of the tower as a flagpole and also of the tower painted brown to better blend with its surroundings. He could also reduce the platform by half. He noted flag pole towers are taller and cannot accommodate as many co-locators. Landscaping was reviewed by Mr. Colasurdo, and he testified 16 evergreens would be installed, based upon the Board's preference in locations chosen by the Board if necessary.

Referring to Z-5 (A3) Mr. Colasurdo stated the only lighting for the facility would be located above the door of the equipment shelter.

Robert Bertona, Radio Frequency Engineer, was sworn in providing his qualifications accepted by the Board. Mr. Bertona reviewed the Radio Frequency Report dated 10/22/10, revised 3/10/11. The following maps were reviewed and marked into evidence as follows: **A-7** Base Map; **A-8** Existing Coverage Map; **A-9** Proposed Coverage Map with existing coverage. Mr. Bertona testified co-locating on existing structures is done whenever possible; however there were no structures where they could do so in the area. He explained the methodology for determining coverage using industry software and drive testing. He reviewed the Radio Frequency Report/Overall Comprehensive Plan marked into evidence as **A-10**, noting the Planner will review how the location was determined. Mr. Meese stated that Steve Sofman, Consultant, met with the former Mayor and reviewed over 190 township owned properties, narrowing it to two properties that would be adequate. Those two properties were later determined unusable and the firehouse location was chosen. Mr. Lockwood expressed concern with the RF Report including the Comprehensive Plan revisions, indicating it only included the addition of a few sentences. In response to Board questioning, Mr. Meese stated other carriers would not be contacted until approval is granted. Mr. Bertona stated the option of co-locating on an existing tower in the township was investigated and it was not possible. Mr. Bertona discussed height and horizontal reach, noting there will be no gaps in coverage. The location picked was based on equal distance between north and south tower locations.

Steve Sofman, Tradition Wireless Consultant for Sprint/Nextel was sworn in. Mr. Sofman stated he is responsible for contacting property owners for tower leasing. In response to questioning by Mr. Meese, Mr. Sofman testified the following: He worked with the Township Committee for nine months and visited several sites as well as reviewed 190 township properties, a majority of which were ruled out because they were not located in the area needed. The search was narrowed to two sites, the first was a 163 acre parcel located by the YMCA property, which could not be used as it was purchased with Green Acres funding. The second property was Stillwater Park, which could not be used as it did not work for the Township Committee due to tree removal and wetland issues. At that point, the Swartswood Fire Department property was

chosen as a quasi-municipal property and the revenue would help the municipality. He noted that they could not seek Green Acres relief for the first property as you must prove there is no other feasible location. The Recycling Center location was researched and it was too close to an existing tower site and ruled out by radio frequency engineers. He explained co-location is primarily done to defray costs; this tower is needed to provide coverage. Mr. Sofman testified the Paulinskill Lake water tower was not in the initial search ring and his focus was working closely with the Township Committee to pursue a township property location. Mr. Sofman indicated there were no other existing structures of significant height that could be used based on visual inspection, elevation and structure height within the search ring. If at some point in the future the cell tower is no longer needed, it would be dismantled and removed.

Dan Collins, Radio Frequency Compliance Expert, was sworn in providing his qualification accepted by the Board. Mr. Collins is the Chief Technical Officer for Pinnacle Telecom Group. Mr. Collins reviewed the Antenna Site FCC RF Compliance Assessment and Report dated August 23, 2010 and marked into evidence as **A-11**. He provided a background on the FCC. Mr. Collins testified the following: The proposed Nextel antenna operation along with the existing fire department antenna operation at the site is 1.4178% of the FCC limit for acceptable continuous exposure of the general population which is 70 times below the FCC limit. This is well below the 100% reference point for compliance. He noted the RF effects of antennas are calculated using a standard FCC formula, which is designed to conservatively overstate the RF levels that actually occur from the antennas. New Jersey has a Radiation Protection Act; however it is five times less protective than the FCC limit. In this case, both the FCC and State standards have been satisfied, and the levels are less than half of those in the average home. The RF levels are so low there is no evidence of affecting human or non-human beings. In 65 years of studies, not a single case has demonstrated a health effect due to radiofrequency exposure. Mr. Morgenstern referred to case law and noted federal standards have been established so that boards cannot deny based on radiation emissions. Referencing future cube technology, Mr. Collins felt a macro base station that covers a mile in any direction and has antennas 150 feet in the air could not be replaced by technology that fits inside a cube. **William Masters, Professional Planner**, was sworn in stating his qualifications accepted by the Board. In response to questioning by Mr. Meese, Mr. Masters provided the following testimony on the variances required:

Tower Setback	120% tower height (180 ft)	51'11" prop monopole to property line; 75'-5" prop monopole to ex. Building; 142'0" to closest adj. offsite structure	240-114J.(2)e.[1]
Tower setback to residential property	Greater of 300 ft or 300% tower height	274'-0" to residential property (block 1703, lot 20)	240-114J.(2)f.[1][b]
Tower setback to non-residential property	120% tower height	51'-11" to non-residential property (block 1703 lot 22)	240-114J.(2)f.[1][b]

There are seven bulk variances required, five involve setbacks for the tower, and two involve the equipment building - one variance for height and one for area.

With respect to proof for the variance relief required pursuant to N.J.S.A. 40:55D-70d(3), Mr. Masters testified the fire property is well suited due to the type of use existing on the property and although it is not technically a municipal property it is a quasi-municipal standard as it provides a municipal service. The equipment shelter will be 40 square feet and will be 11'2" in height, with 10' permitted. This is not a significant departure from the requirement and will not have a substantial impact. The tower complies with the 199' requirement and no variance is needed.

A balloon test was conducted using a 4' balloon on 4/22/10 and the following photo simulations were submitted and marked into evidence:

A-12 Photo simulations previously submitted to the Board with the application including six colored photographs taken on 4/22/10 by Mr. Masters from various vantage points.

A-13 Four colored photographs, two depicting the balloon; two depicting a simulation of the monopole

A-14 Two colored photographs, one depicting the view from Swartswood using the balloon; one depicting a tower simulation with six antennas as opposed to 12 antennas

Mr. Masters testified that all photos were taken from areas of most visibility, noting visibility is limited outside of the primary area. He stated a cluster mount antenna is a better option due to the decreased size, although service may be decreased it would be minimal, and it would have no impact on co-locators. Mr. Masters provided the following testimony with reference to satisfying the burden of proof for the D3 and bulk variances: A license has been secured from the FCC which indicates the use satisfied the general welfare; the site is particularly suited for the use; the zone is a Neighborhood Commercial Zone, non-residential; only one percent of Stillwater is zoned Neighborhood Commercial or Industrial; the proposed use is consistent with the primary use – a fire house; the proposed use more often than not exists with other principle uses; it is a utility use, unoccupied, unmanned facility; a technician will visit every 4-6 weeks to make any necessary adjustments; the site will be monitored 7 days per week/ 24 hours per day from a monitoring facility; there will be no employees, no traffic; the lot is conforming; the use can co-exist with the other primary use on the property without detriment to the zone plan; there is no zone in Hampton Township in proximity to this location where the use is permitted or conditionally permitted; the site is particularly suited for the use; the variance relief can be granted without detriment to the public good, and there is no substantial impairment to the zone plan, ordinance, or Master Plan. Mr. Masters indicated no photos were taken or simulations prepared from the left side of the property. With respect to the proximity to Swartswood Lake, Mr. Masters felt the visual impact was not significant and although the tower would be visible from areas of the lake, it would not be to a significant level as areas around Little Swartswood Lake would provide a buffer and big Swartswood Lake is located a mile from the site. The State Office of Historic Preservation has determined there would be no adverse impact; it was his understanding that the local historical agency had to be notified as part of the SHIPO application. He felt the Comprehensive Plan submitted was sufficient. The Neighborhood Commercial Zone is consistent with the land use element of the Master Plan for that area and the use is permitted as a conditional use in that area. Mr. Masters stated the landscape may be more effective being placed closer to the properties affected. An alternate buffering landscaping scheme can be done for the residents to the rear and left of the firehouse. The compound was not placed closer to the fire house as the department chose the location; however this can be addressed with the fire house to see if they would agree to do so. Mr. Meese agreed to review an alternate location with the fire department, closer to the building, as well as review the flag pole option, noting this option limits the number of co-locators.

At this point in the meeting, this portion was opened to the public for comments or questions limited to radiofrequency for Mr. Bertona, Mr. Collins or Mr. Sofman.

Linda Helaudais, a Hampton resident, stated she resides behind the fire department and the tower will be visible from her front door. She referred to the FCC standards and expressed concern with the non-ionizing, non-thermal adverse effects of the tower. She stated there have been many studies done since the 1980s indicating non-thermal effects from low intensity, microwave radiation. Mr. Collins disagreed stating there have been studies that suggest the FCC standards should be more restrictive; however there was no evidence presented to support this or change the standard. Ms. Helaudais felt just because there was no evidence, does not mean there are no adverse effects. Ms. Helaudais reviewed the effects discovered during the studies and although they may not be life threatening they do affect a person's well being and should be

considered. Mr. Meese noted the FCC pre-empts this issue and the level is 70 times lower than what is permitted by the FCC. Ms. Helaudais felt the tower would destroy the rural character of the area.

Raffy Chilingirian, a Hampton resident, stated he will have a visual of the tower and questioned the studies referred to by Ms. Helaudais and why they were rejected by the court. Mr. Collins did not know specifically what was wrong with each study, however the FCC was not forced to change their standard based on the studies. Mr. Chilingirian expressed concern with the adverse effect on Swartswood State Park and with the property selection process going on for over two years without the public knowing. He was also concerned with the tower not meeting the required setbacks, it is not a municipal property and he would rather not have to look at it, although he did like the idea of a flag.

Liza Abruzzo, 915 Swartswood Road, stated her property would have one of the worst views from the area to the left of the tower, and she asked if there had been any contact from other carriers regarding co-location. Mr. Lockwood clarified that the questions are to be limited to the radiofrequency engineers.

At this point, this portion of the meeting was closed at 11:16 p.m.

Mr. Hammond made a **motion** to carry the application to April 25, 2011, no further notice required, seconded by Mr. Daingerfield.

Roll Call Vote: Mr. Powell, yes, Mr. Hammond, yes, Mr. Daingerfield, yes, Mr. Saal, yes, Mr. Stachura, yes, Mr. Lippencott, yes, Mr. Lockwood, yes

HEARING

Cellco Partnership d/b/a Verizon Wireless, Block 3101, Lot 13, Cal. No. 566, completeness hearing; application to be heard pending completeness

The following members have cited a conflict and stepped down: Mr. Stachura, Mr. Sarni, and Mr. Hammond. A letter was received from David H. Soloway, Esq. of Vogel, Chait, Collins and Schneider on behalf of the applicant asking the Board to carry the application to the April 25, 2011 meeting without further notice.

Mr. Powell made a **motion** to carry the application to April 25, 2011 for a completeness hearing and pending the outcome of the completeness hearing, the public hearing will follow, no further notice being required, seconded by Mr. Daingerfield.

Roll Call Vote: Mr. Powell, yes, Mr. Daingerfield, yes, Mr. Saal, yes, Mr. Lippencott, yes, Mr. Lockwood, yes

All members rejoined the Board at this time.

BILLS

Mr. Daingerfield made a **motion** to pay the following bills, seconded by Mr. Sarni:

Dolan & Dolan General (February 2011)	\$106.65
Monthly Meeting (February 2011)	\$280.00
Escrow – Cellco Partnership	\$786.00
Escrow – Chaves	\$124.50
Escrow – Gordon	\$225.00
Escrow – Nextel of NY/JCP&L	\$288.00
Escrow – Pipher	\$ 37.50

Roll Call Vote: Mr. Powell, yes, Mr. Hammond, yes, Mr. Daingerfield, yes, Mr. Saal, yes, Mr. Sarni, yes, Mr. Stachura, yes, Mr. Lockwood, yes

Correspondence: NJPO Planner – February/March 2011

At this point, this portion of the meeting was opened to the public at 11:27 p.m.
There being no members of the public wishing to speak this portion of the meeting was closed at 11:27 p.m.

Liaison Report: Committeeman Scott and Committeewoman Straway attended the meeting for Committeeman Gross. Committeewoman Straway commended the Board for their work tonight.

There being no further business, Mr. Hammond made a **motion** to adjourn the meeting at 11:27 p.m., seconded by Mr. Daingerfield. In a voice vote, all were in favor.

Respectfully submitted,

Kathy Wunder, Board Secretary

Laurence Lockwood, Chairman