

ZONING BOARD OF APPEALS

September 19, 2005

MINUTES

The Zoning Board of Appeals for the Town of Philipstown held a work session on Monday, June 6, 2005, at the Philipstown Town Hall, 238 Main Street, Cold Spring, New York. The work session was opened by Vincent Cestone, Chairman, at 7:30 p.m.

PRESENT:	Vincent Cestone	-	Chairman
	Lenny Lim	-	Member
	Joan Turner	-	Member
	Victor Carlson	-	Member
	Bill Flaherty	-	Member
	Tim Pagones	-	Counsel

ABSENT:

Vincent Cestone – Okay. Review of Minutes September 12th

Kim Shewmaker - You didn't get them

Vincent Cestone – We didn't get them yet

Kim Shewmaker - I was hopeful

Vincent Cestone – Okay. Let's go on and do the completeness ones

Tim Pagones – All right Dunn is incomplete. We are still waiting for a survey. So we will write a letter to them just saying that you know it is off the agenda until we get a survey. Cottrell, same thing. We are waiting for a survey. So that's incomplete. And Mastrantone is on, it is complete. I believe you set it for the 17th of October for a Public Hearing.

Vincent Cestone – Okay. Draft Resolution Tim

Tim Pagones – Before you do the resolution, you declared yourself lead agency and you need to adopt their Part 2. I reviewed it, it is in your packet. It is all no's. This is a co-location on a stealth tree so the Board has to make a motion to adopt the Part 2 as your own

Vincent Cestone – Okay. I'll make a motion to adopt the Part 2 as our own. Do

I have a second?

Bill Flaherty - I'll second.

Vincent Cestone – All in favor?

All Board Members – Aye

Tim Pagonis – Okay. Now your resolution

RE: DECISION AND FINDINGS OF THE PHILIPSTOWN ZONING BOARD OF APPEALS
Appeal #743; Applicant: General Dynamics Network Services, Inc. as agent for Nextel New York, Inc. d/b/a Nextel Communications

Special Use Permit for co-location of 6 panel antennas and communication equipment on an existing structure

Dated: September 19, 2005

The Philipstown Zoning Board of Appeals conducted a Public Hearing on May 16, June 6th, June 20th and July 18th, 2005, to hear the appeal of General Dynamics Network Services Inc., for a special use permit to allow for co-location of 6 panel antennas and communication equipment on an existing "stealth" tree monopole. The property is located on 1924 Route 9, Garrison, in the Town of Philipstown, Putnam County, New York.

At the public meeting of the Board on September 19, 2005, upon all the discussion that preceded it, including the public hearing, all prior public meetings, site visits undertaken by individual Board Members, and a review of all exhibits and submissions, _____ made the following motion, seconded by _____:

BE IT RESOLVED by the Zoning Board of Appeals of the Town of Philipstown, Putnam County, New York, as follows:

THE APPEAL OF GENERAL DYNAMICS NETWORK SERVICES INC. AS AGENT FOR NEXTEL OF NEW YORK, INC. D/B/A/ NEXTEL COMMUNICATIONS, (#743) FOR A SPECIAL USE PERMIT TO CO-LOCATE SIX PANEL ANTENNAS ON AN EXISTING STRUCTURE (TREE MONOPOLE) AND RELATED BASE EQUIPMENT IS HEREBY GRANTED WITH THE FOLLOWING CONDITIONS, BASED ON AN EVALUATION OF

THE APPLICATION IN LIGHT OF THE STANDARDS AND CONDITIONS ENUMERATED IN THE PHILIPSTOWN CODE FOR THE ISSUANCE OF SPECIAL USE PERMITS AND FOR THE REASONS HEREIN STATED, WHICH REASONS ALSO CONSTITUTE THE FINDINGS OF THIS ZONING BOARD OF APPEALS.

THE CONDITIONS¹ OF THE SPECIAL USE PERMIT:

The Board hereby finds that the following conditions are reasonable and imposed for the purpose of minimizing any adverse impacts on the neighborhood or community:

- A. The structures on the subject premises granted conditional special use permit by this decision shall not be further enlarged except in accordance with all applicable provisions of the Philipstown Code and shall remain in the configuration as shown on the Applicants' maps and plans. No further enlargement or reconfiguration of the structures is authorized without the required approvals.
- B. The equipment buildings shall be used only for the purposes enumerated in the application materials and shall not be converted to any other use without compliance with applicable provisions of local, regional and/or state laws.
- C. The applicant must immediately remove the antennas and/or equipment building upon obsolescence and/or discontinuance of use and applicant must thereafter reclaim the site or portion thereof and return it to its original natural state.
- D. The applicant shall perform an emission test as well as a complete safety inspection of the communications tower yearly. The safety inspection shall consist of, but not be limited to the items enumerated in section 175-49.10(F)(5) of the Town of Philipstown Code. Said results shall be given to the building Inspector within thirty (30) days of the test being completed.

¹ Town Law 274-b (4) authorizes the Zoning Board to impose "reasonable conditions and restrictions as are directly related to and incidental to the proposed special use permit."

- E. The applicant shall post a bond sufficient to provide for the removal or repair of the antennas and building with the Building Department pursuant to section 175.49(t) of the Town of Philipstown Code. Said amount should not be less than \$25,000.
- F. The applicant shall maintain landscaping and screening as detailed in the set of plans provided to the Philipstown Planning Board attached as **Exhibit "A"**.

Bill Flaherty - Tim, can I ask you a question about paragraph D the applicant shall perform emission tests as well as complete safety inspection of the communications tower yearly. How do we determine whether or not those tests are conducted?

Tim Pagones - They have to provide a copy of the results

Bill Flaherty - They provide us with a copy we don't necessarily have to include that in the resolution?

Tim Pagones - No it says they have to give a copy of the results within 30 days

Bill Flaherty - Inspections? Yeah. Oh I see, I'm sorry.

Tim Pagones - Okay

Bill Flaherty - Yeah thanks

Tim Pagones - Okay

- G. The applicant shall pay any and all fees incurred by the Town to the Town's consultant in regards to reviewing this application. Said payment shall be upon receipt of any and all invoices.
- H. The Applicant shall install the antennas within the existing branches and shall supply sufficient camouflage to maintain the integrity of the tree.
- I. The Applicant shall install a noise abatement (baffle) system for the proposed equipment units. Additionally, no generator or fuel shall be installed for the system.
- J. The Applicant shall install the system Monday - Friday and between the hours of 9 A.M.- 5 P.M.

Any other conditions?

FINDINGS OF FACT:

1. The Applicant, "General Dynamics", made an appeal (#743) to the Philipstown Zoning Board for a special use permit. The appeal was filed with various exhibits and the Board accepted additional materials and revised submissions at public meetings and during the public hearing process, all of which were reviewed by the Zoning Board and made available to the public. A composite list of the Exhibits considered by the Board in reaching a determination is attached as **Exhibit "B"**.

Kim will attach the list of exhibits as Exhibit B

2. The subject property is located in a R-80 District in the Town of Philipstown, New York. According to the Zoning Law of the Town of Philipstown at Section 175-49.10, Paragraph B(4); Permit Regulations, co-location of communication equipment on an approved communication tower is permitted in an R-80 District subject to the securing of a special use permit from the Zoning Board of Appeals.
3. The Board first reviewed the application materials for completeness on May 16, 2005. The Application was deemed complete and the Zoning Board referred the Application to the Planning Board in accordance with Philipstown Code §175-52 for their input and report prior to scheduling the public hearing.
4. Copies of the application materials were referred to Putnam County Planning Department in accordance with General Municipal Law §239-m. A copy of the Putnam County Planning Department response is attached as **Exhibit "C"**.
5. The action is subject to review pursuant to SEQR. The Zoning Board determined the project as unlisted based on a review of the Long Form EAF as prepared by the Applicant. The Zoning Board conducted an uncoordinated review. The Zoning Board declared itself lead agency and reviewed a draft Part 2 of the EAF which was prepared by the applicant. Part 2 was adopted and no potential large impacts were identified. Therefore, no Part 3 was required.

6. The Planning Board report was received and reviewed. A copy of the Planning Board report is attached as **Exhibit "D"**.
7. A Public Hearing was held and completed on May 16th, June 6th, June 20th and July 18, 2005. A copy of the Public Hearing Notices are attached as **Exhibit "E"**. The Zoning Board conducted a straw poll vote concerning a Negative Declaration and a straw poll vote concerning the Special Use Permit. The straw poll vote was unanimous in giving a Negative Declaration and granting the Special Use Permit.

FINDINGS AND CONCLUSIONS (IN ACCORDANCE WITH THE STANDARDS AND CONDITIONS ENUMERATED IN SECTION 175-53 OF THE CODE OF THE TOWN OF PHILIPSTOWN:

The Zoning Board hereby finds that the Applicant has demonstrated compliance with the following standards and conditions:

- I. The location, type, character and size of the use and any buildings, structures or facilities in connection therewith will be harmonious with the character of the neighborhood, will not detract from the appearance and beauty of the neighborhood, will not hinder or discourage the appropriate and orderly development of the town and the neighborhood

The site already consists of an existing "stealth" tree monopole with panel antennas and supporting utility building. The proposed use is to add an additional six panel antennas to the pole at a height of 67 feet as well as a 240 square foot prefabricated equipment shelter within the new enclosure area. The six panel antennas will be placed within the existing "branches" of the existing monopole so as to make them less visible. There was no evidence in the record from which the Zoning Board could determine that the proposed use would either hinder or discourage the appropriate and orderly development of the town or neighborhood.

- II. The nature and location of the use and of any building or structure in connection therewith will be such that there will be adequate access to it for fire and police protection purposes.

The proposed use involves merely adding six panel antennas and small utility shelter to the existing facility. Access for the proposed use will be derived via the existing driveways and pathways on the

property which are used by the existing carriers. The nature of the use and the location of the buildings will not interfere with access for fire and emergency apparatus. A chain link fence will surround the leasehold area, secured by a locked gate. This fence will not be an obstacle to emergency service personnel in the event of an emergency requiring access.

- III. The streets serving the proposed use are adequate to carry prospective traffic, that provision is made for entering and leaving the property in such a manner that no undue hazard to traffic or undue traffic congestion is created and that adequate off-street parking and loading facilities are provided.

The Applicant has proposed to use the existing two parking spaces that are currently at the site. These spaces are in accordance with the requirements of the Philipstown Code for the proposed use. Visits to the site will be infrequent consisting of approximately one visit per month. Therefore, the existing driveways and pathways are adequate to carry prospective traffic for the proposed use.

- IV. The lot on which the use is to be established is of sufficient size and adequate dimension to permit conduct of the special use and provision of buildings, structures and facilities in a manner that will not be detrimental to the neighborhood or adjacent property.

feet of the 120,225 sq. ft. parcel. There is an existing camouflaged monopole tower which already contains panel antennas and therefore, there should be no further impact to the neighborhood.

- V. The buildings, structures, facilities and site layout will be suitably landscaped and maintained and will have adequate land area, yards and setback area so as to maintain the character of the neighborhood.

The applicant proposes to co-locate on the existing "stealth" tree monopole at a height of 67 feet and build a 240 square foot equipment shelter. The applicant will comply with all the required setback requirements and height requirements. There is already natural screening consisting of both deciduous and evergreen trees and additional plantings and screening have been installed.

- VI. The proposed use and the buildings, structures, facilities and site layout will not be detrimental to the public health, safety and property values in the neighborhood.

The proposed use and the buildings, structures, facilities and site layout will not be detrimental to the public health, safety and property values in the neighborhood. The applicant provided a report by Pinnacle Telecom Group, dated April 1, 2004. The report concluded that there would be no health danger to the public by adding the additional 6 antennae and structure.

COMPLIANCE WITH STATE ENVIRONMENTAL QUALITY REVIEW ACT².

The Zoning Board hereby adopts the Negative Declaration dated September 19, 2005 as its notice of determination of non-significance pursuant to Article 8 of the Environmental Conservation Law. A copy of the Negative Declaration is attached as **Exhibit "F"**.

THE ROLL CALL VOTE:

The question of the foregoing resolution calling for GRANTING the requested Special Use Permit with conditions was put to a vote on roll call on the 19th day of September, 2005, the results were as follows:

Vincent Cestone, Chairman	Voting _____	of the special use permit
Victor Carlson, Member	Voting _____	of the special use permit
Leonard Lim, Member	Voting _____	of the special use permit
Joan Turner, Member	Voting _____	of the special use permit
Bill Flaherty, Member	Voting _____	of the special use permit

ATTENTION APPLICANTS

FURTHER COMPLIANCE WITH THE PHILIPSTOWN ZONING CODE REMAINS YOUR RESPONSIBILITY. THE GRANTING OF A SPECIAL USE PERMIT BY THE ZONING BOARD OF APPEALS IS NOT THE EQUIVALENT OF A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY, BOTH OF WHICH CAN ONLY BE SECURED THROUGH THE PHILIPSTOWN BUILDING DEPARTMENT. PLEASE SEEK THE ADVICE OF THE PHILIPSTOWN

² Town Law § 274-b (8) requires compliance with the State Environmental Quality Review Act and its implementing regulations.

BUILDING DEPARTMENT FOR YOUR PARTICULAR CIRCUMSTANCES.

Lenny Lim - Okay, before we vote, what are the conditions? Is there somewhere we can put down some, wasn't there something about the tree branches falling down and blowing into his house. Is there some way we can have them maintain those branches?

Tim Pagonos - Legally they have to maintain theirs. And what they did on your behalf is he wrote a letter and he gave you a copy of the letter he wrote to Jud Seibert who represented Sprint. And Sprint was going to look into it and try and repair. What I think needs to happen here is whoever, Mr. Kelly or whoever, has to contact Mr. Monroe and say you know what the branches are falling off here and whether they cite the land owner who really owns, it is on his property, somebody needs to be cited.

Lenny Lim - But is there any way we can put a condition in that they have to maintain these things

Tim Pagonos - They have to maintain their branches

Vincent Cestone - Sprint has been there. They have replaced a bunch of branches. Motion to accept the resolution as read

Bill Flaherty - I'll so move

Vincent Cestone - Do I have a second?

Lenny Lim - Second

Vincent Cestone - All in favor?

All Board Members - Aye

Vincent Cestone - Len?

Lenny Lim - I'll vote in favor.

Vincent Cestone - Joan?

Joan Turner - I'll vote in favor

Victor Carlson - I vote in favor

Bill Flaherty - I vote in favor

Vincent Cestone - And so do I

Tim Pagones – done

Vincent Cestone - Any old business? Motion to adjourn?

Joan Turner - Just let me, I'm sorry, on this interpretation that we have with Alan Friedman-Kien

Tim Pagones – Right

Joan Turner - They gave us a copy of the minutes. Generally at the planning board there is also a resolution

Tim Pagones – No. Well back then, that was the resolution

Joan Turner - That was the resolution

Tim Pagones – Yes

Joan Turner - So there were no conditions on it

Tim Pagones – Whatever was in the minutes was their resolution

Joan Turner - Okay so that's it and there was nothing

Tim Pagones – Well one of his arguments is you know what I got my whatever from the planning board, I had my permit and I renewed my permits and I kept it going

Joan Turner - And

Tim Pagones – Well he has to prove this. Mr. Monroe has pulled his permit and he has applied before the planning board for an access approval and what has happened now is the neighbors said you know what, you clear cut your whole property

Joan Turner - Yeah I know

Tim Pagones – So what he is trying to do here is if you find that his permit is still valid, well then he doesn't have to go back to the planning board. But he has to prove it. His, I think his board of health approval was pulled for some reason and he went and did what he had to do and got it back. Now part of his application is saying my permit even though I lost my board of health approval for a little while, my permit was still good.

Joan Turner - But shouldn't there be a record in the building department of the

renewal of that permit over the years

Tim Pagones – Well he has to prove that

Joan Turner - Well can we go downstairs to Tom Monroe and say show it to us

Tim Pagones – I think Mr. Monroe is, you see, way back when you got your permit, it was good, it was good forever. At least that is what he is alleging. Now it is good for so many years

Joan Turner - When did that law go into affect

Tim Pagones – I don't remember

Joan Turner - So he saying that this is grandfathered in

Tim Pagones – Exactly. He is saying my permit was grandfathered even though I lost my board of health approval for whatever reason, I rectified that, I took care that as quick as possible

Vincent Cestone - So we shouldn't even be looking at this

Tim Pagones – Well no, he is asking for an interpretation

Joan Turner - We have to look at it

Vincent Cestone - An interpretation of

Tim Pagones – Whether Mr. Monroe pulling his permit was valid

Joan Turner - But it is a very

Tim Pagones – You are interpreting his decision. Just like whether giving the permit for that structure was valid.

Vincent Cestone - Okay

Tim Pagones – Here he has pulled the permit. He is saying your permit is no longer valid and now because you don't have a valid permit, you need to go to the planning board for access approval.

Joan Turner - In 1978 he bought the property so he has renewed the permit, there would be a record of renewed permits up until now. If there are gaps in that

David Brower - The original permit was issued in 1984 I believe. The minutes

are from 1983

Lenny Lim - Either way it is over 20 years

Joan Turner - But he basically said he bought the lot with a building permit, that was his understanding of it. But the thing that is very slippery, a slippery slope, no pun intended on this hillside, is the fact that his lawyer has very narrowly constructing the interpretation. He is not allowing, I want to know if this board can then widen the scope of this interpretation to look at the overall picture on that road. As you know Cloud Bank is over built. It is a private road and it has more than eight houses. So does this board have the authority based on the constrictions that this lawyer has put on defining one section, one very narrow section of the code?

Tim Pagones - Well the only reason he is here is because his permit is pulled.

Joan Turner - Right

Tim Pagones - Now whether Mr. Monroe wants to say you can't just clear cut your property, whether he violated the steep slopes law or stuff like that, that is another thing for Mr. Monroe to possibly cite him on. But for right now he is in front of the planning board because his permit is pulled. So now he needs an access

Joan Turner - Which they will deal with the private road.

Tim Pagones - Right

Joan Turner - So then to answer my own question then, we are strictly stuck on that one slice of the code which is so narrow

Tim Pagones - Does he have a permit or does he not have a permit. If there are other violations, Mr. Monroe needs to cite him on those violations.

Joan Turner - But we need to go by the precedent of whether when did the law change about renewing, how

Tim Pagones - What was it back then, what did you have to do to renew it?

Joan Turner - And where do we find that

Tim Pagones - And when he lost his board of health approval, did he lose his building permit? He is alleging he gets to keep it

Joan Turner - But my question is where do we find, what do we base the interpretation on? Where does it say in our code or in Tom Monroe's if he has a

separate code, that the building permit

Vincent Cestone - The key is whether he let it lapse.

Tim Pagones - He has to prove he has a valid permit. Right now, I guess we give _____ to Mr. Monroe and that the permit was properly

Vincent Cestone - He has to prove that he has paid all those years

Joan Turner - He has to prove. That's what I am saying.

Tim Pagones - It is up to him. He has the burden

Joan Turner - So we don't have to go down and rustle through the file and get all

Tim Pagones - Well I guess if he starts saying one thing and you want to go through the files and you find something else, certainly you can do that. But he has to come before the board and prove that you know what Mr. Monroe was wrong, my permit has been valid for the last 20 years and this is why it is valid.

Joan Turner - Because I see the argument unfolding as I had a valid permit in 1984 and it was up until 1990, this is hypothetical, and between 1990 and 1995 it lapsed, and then I came back in 1995 and I renewed it again. Now when does that law change that says that if you have a building permit it is only good for 2 years? When does that come in that period? You see that's what our case would hinge on. It lapsed and therefore, even though you had it valid up to that point, you lapsed after the law changed.

Tim Pagones - Well a lapse is a lapse

Vincent Cestone - Once you lapse, that's it

Tim Pagones - He is going to say it didn't lapse at all

Joan Turner - But we have to have that concrete information in our hands to say, we need the law that says

Tim Pagones - The proof is in the pudding and I will get you the pudding

Joan Turner - Okay. Can I count on that?

Bill Flaherty - I couldn't find anything in the code that would validate or invalidate that particular certificate going back to 1984. I know there was a change in the code that required that any variances or other things were good for two years.

Tim Pagones - Right

Bill Flaherty - But at that time

Vincent Cestone - If he didn't renew it once, it lapsed.

Bill Flaherty - Well I guess we would have to determine that.

Tim Pagones - His permit might have been conditional on board of health approval. And if he loses the board of health approval, you lose the permit

Bill Flaherty - He still has the board of health permit

Tim Pagones - But I think he lost it for a while

David Brower - He went to Tom for a new permit.

Lenny Lim - Oh

David Brower - It was a new permit that was issued. It wasn't a renewal of the old permit.

Lenny Lim - He went for a new permit?

David Brower - Well wasn't that a new permit that was issued?

Joan Turner - Because he is arguing that the planning minutes that the planning gave him building permit permission then that did not lapse

David Brower - It wasn't a renewal, it was a brand new permit wasn't it

Vincent Cestone - I think so

David Brower - So if it was a brand new permit, then obviously all the other ones have lapsed

Joan Turner - I'll go down and check the file

Vincent Cestone - Motion to adjourn

Lenny Lim - Second

Vincent Cestone - All in favor

All Board Members - Aye.

NOTE: These Minutes were prepared for the Zoning Board of Appeals and are subject to review, comment, emendation and approval thereupon.

DATE APPROVED: October 3, 2005

Respectfully submitted,

Kim Shewmaker
Secretary