

Telephone
(914) 277-5582

FAX
(914) 277-3790

ZONING DEPARTMENT

Town of Somers

WESTCHESTER COUNTY, N.Y.

TOWN HOUSE
ANNEX
337 ROUTE 202
SOMERS, NY 10589

Thomas J. Burke, Esq.,
Chairperson
Steven E. Waldinger, Esq.
Ronald A. Carpaneto
Thomas A. Garrity
Umberto Santaroni
Victor J. Cannistra, CPA
Linda R. Burpee, Esq.



December 21st, 2004

7:30 PM

ROLL CALL:

PRESENT: Chairman Burke, Messrs. Waldinger, Carpaneto, Santaroni and Ms. Burpee.

ABSENT: Messrs. Cannistra and Garrity

ALSO

PRESENT: Town of Somers Legal Counsel, Kenneth Powell, Building Inspector, Efrem Citarella, ZBA Secretary, Toni Siriani, and interested citizens.

Chairman Burke opened the meeting with the attendance.

The assemblage recited the Pledge of Allegiance.

APPLICATIONS:

PRUDENTIAL HOLMES & KENNEDY

BZ12B/04-17.11-1-18

New. This is an application for a Special Use Permit for a sign in the Business Historical District located at 339 Route 202. Said appeal is taken from a denial by the Architectural Review Board. The property which is subject to this appeal is designated on the Town Tax Map as Section: 17.11, Block: 1, Lot: 18. Re: Sec. Sched. 170-7.

Mr. William Holmes approached the Board and explained the need the Real Estate firm had for this freestanding sign close to the road in order to be more visible to customer traffic. The sign would be 4 feet X 2 1/2 foot and would have two boards underneath. The pole sign would be located on the right side of the property facing the building close to the driveway on the side of Scott and Route 202. The Architectural

Review board denied the application for a freestanding sign and would prefer a sign attached to the front of the building. Chairman Burke asked if the boards could be removed and all information included on one sign. Mr. Holmes expressed his desire to work with the Board. He noted that the proposed sign was not any larger than others in the area or the one at the Town Hall. Chairman Burke clarified that the Real Estate Agency was the sole occupant of the building and has a long-term lease. Mr. Carpaneto also clarified that it was a two-sided sign that could be seen from the road.

Mr. Morrissey of the Town of Somers Architectural Review Board approached the Board to explain the denial by that Board. He explained that there were other free standing signs in this district as a result of prior variances given out by the Zoning Board but it was essential to preserve the area and not continue this practice. Those granted were primarily to occupants of buildings, which were back from the road. The building in question is near the road and already has a pre-existing area over the porch or portico for a sign. There is no evidence of hardship for this application.

Mr. Carpaneto noted that the boards, which hang down from the sign, are non-conforming. He also noted that the public does not use the front entrance. They would enter by the driveway on the side and use a back entrance. Various members of the Board questioned the actual site, the lighting of the sign and wanted to take note of all the other signs in the immediate area.

Chairman Burke asked the applicant if he would stake out the position of the sign and the Board would come to the site and review the area after the holidays and before the next Zoning Board Meeting. The Chairman asked if there was anyone in the audience who wished to comment on the application. As there was no response, the Chairman adjourned the application until the January 18th, 2005 Zoning Board meeting.

MICHAEL LUCIAN**BZ12C/04-5.13-1-24**

New. This is an application for an area variance for less than the required rear yard set back for an attached sunroom to an existing one family dwelling located at 9 Cornelius Lane. The property which is subject to this appeal is designated on the Town Tax Map as Section: 5.13, Block: 1, Lot: 24 in an R-40 Zone. Re: Sec. Sched. 170-7.

Mr. Lucian approached the Board and explained that there was a previous variance granted for this home but it was not applicable. This project would require a variance, which is one foot less than the variance given to the original owner. In response to questions from the Board, Mr. Lucian noted that there is no other place for this sunroom because of the placement of the septic. The variance requested is 10 feet.

Chairman Burke asked if anyone on the Board or in the audience had any other questions. There being none, the Chairman asked for a motion on the application. Mr. Waldinger made a motion for a Type II Hearing. Mr. Carpaneto seconded the motion.

POLL OF THE BOARD

Mr. Santaroni	aye
Ms. Burpee	aye
Mr. Carpaneto	aye
Mr. Waldinger	aye
Chairman Burke	aye

Chairman Burke entertained a motion with respect to the application. Mr. Carpaneto made a motion to approve the application based on the plans dated 10/22/04. Mr. Santaroni seconded the motion.

POLL OF THE BOARD

Mr. Waldinger	aye
Mr. Carpaneto	aye
Ms. Burpee	aye
Mr. Santaroni	aye
Chairman Burke	aye

The application for an area variance was granted. Building Inspector Citarella asked for a memo.

ANDREW MULLHAUPT

BZ12D/04-59.5-1-3

New. This is an application for a Special Use application for the construction and alteration of a one story accessory structure to be used as a recording studio. The property which is subject to this appeal is located at 19 Old Route 100 and is designated on the Town Tax Map as Section:59.5, Block: 1, Lot: 3 in an R-120 Zone. Re: Sec. Sched. 170-7.

Mr. Tom O'Brien, Architect for the project, approached the Board and noted that the applicants were in the audience and were available for any questions. He reviewed the plans for the project with the Board. The property consists of 12.8 acres and this studio will be built to adhere to environmental concerns and will be sound proof. It will maintain the features of the land and will be tucked into the side of the hill. This application is being presented to the Board under Section 170.82J of the Town of Somers Code.

Chairman Burke questioned the validity of this application as it does not seem to meet the requirements of the Special Use provision in the Town Code. The applicant seems to be applying for an accessory use to the Special Exception Permit. Prior requests for this type of action were for schools or a house of worship.

Mr. Andrew Mullhaupt approached the Board to explain the purpose of the construction was to facilitate his interest in music upon his planned retirement. It would be for personal use only. He preserves his privacy on this large secluded lot and would continue to do so and avoid any additional traffic due to this studio. He is also proposing a new septic and bathroom in the structure because the current facility only has a sink.

After further discussion and no additional input from the audience, Chairman Burke requested that a site walk be scheduled prior to the next Zoning Board Meeting and that the application be adjourned until the January 18th, 2005 meeting. The Chairman also asked Town Counsel, Kenneth Powell to review the application and make a determination of its validity.

BRIAN GOC

BZ12E/04-27.5 -1-13

New. This is an application for an Area Variance for a front yard set back for the construction of a second floor addition to a non-conforming structure. The property which is subject to this appeal is located at 3 Old Tomahawk Road and Anita Road and is designated on the Town Tax Map as Section: 27.5, Block: 1, Lot: 13 in a NS Zone. Re: Sec. Sched. 170-7.

Mr. Joel Greenberg, Architect for the applicant approached the Board and described the property on the corner of Old Tomahawk Road and Anita Road near the Firehouse. The proposal is to build a residential area above the commercial use on the first floor. In order to put this second floor apartment on this property a front yard variance of 4 foot is required all along the Anita Road side. Mr. Greenberg continued to explain that the second floor will not totally cover the first floor and the footprint will be changed by squaring off the corner. On site parking is available but additional parking will be required and will be sought through the Planning Board along with total site plan approval.

Chairman Burke asked if anyone on the Board or in the audience had any other questions. There being none, the Chairman asked for a motion on the application. Mr. Carpaneto made a motion for a Type II Hearing. Mr. Waldinger seconded the motion.

POLL OF THE BOARD

Mr. Santaroni	aye
Ms. Burpee	aye
Mr. Carpaneto	aye
Mr. Waldinger	aye
Chairman Burke	aye

Chairman Burke entertained a motion with respect to the application. Mr. Waldinger made a motion to approve the application with the provision that the Planning Board would approve the site plan. Mr. Santaroni seconded the motion.

POLL OF THE BOARD

Mr. Waldinger	aye
Mr. Carpaneto	aye
Ms. Burpee	aye
Mr. Santaroni	aye
Chairman Burke	aye

The application for an area variance was granted. Building Inspector Citarella asked for a memo.

AT&T WIRELESS PCS, LLC

BZ12A/04-28.10-1-6.1

New. This is an application for a Special Use Permit and an Area Variance to locate a public utility wireless telecommunications facility consisting of a 105 foot stealth “flagpole” with antennas therein, together with related equipment at the base thereof. The property which is subject to this appeal is located at 243 Route 100 (Somerstown Road) and is known and designated under Samaj Investors Corp. on the Town Tax Map as Section: 28.10, Block: 1, Lot: 6.1 in an OLI Zone (Office – Light Industry). Re: Sec. Sched. 170-7.

Before the applicant came to the podium Chairman Burke advised the assemblage and the audience that Ms. Burpee would be recussing herself from this application because the owner of the property is a client.

Neil J. Alexander, attorney from Cuddy & Feder LLP appeared before the Board to explain the application, which he noted was a preferred location for this type of communication facility. Mr. Alexander noted that due to a recent merger, the name of the applicant was changed to Cingular. He provided the assemblage with the particulars of the application which included a 105 foot “flag pole” within a 50 x 50 fenced compound, which lies on an 8 foot by 18-foot concrete pad and will have sufficient vegetation for screening and buffer. The tree line is at 82 feet, which requires that the tower be above this level to be effective for communication. AT&T will use the 87-foot and 97 foot height for their antennas and will have a position at the 77-foot mark for another carrier. The variance is required because the monopole does not meet the distance requirements of the code. The pole will be approximately 730 feet from the nearest neighbor.

Mr. Alexander reviewed the material submitted with the application, which included Exhibit B, an engineering report related to the proposed antenna sites to adequately fill those gaps in signal coverage in the area. Exhibit C provides engineering data to determine the predicted levels of radio frequency (RF) in the vicinity of the proposed facility. Exhibit D provides an analysis of alternative sites. Exhibit E provides an evaluation of the visibility of the proposed tower within a two-mile radius of the proposed site. Exhibit F is a full environmental assessment form while Exhibit G provides an analysis of the Telecommunication act of 1996 as it applies to this application.

The Board and the applicant reviewed a number of other locations within the area that have cell towers and or antennas co-located. Chairman Burke opened the meeting to discussion from the audience.

Mr. Jim Rieger of 2 Catherine Place approached the Board and questioned the need for this tower in the area. He proposed that this was just a way for the carriers to compete with each other for better pricing and there was no need for this coverage.

Mr. William Reilly of 15 Highview Terrace explained that he was a pilot and he was concerned about the height of the pole and the FAA regulations regarding lighting the pole for planes. He also asked if there could possibly be an arrangement made with IBM to have more coverage from their location.

Mr. Bai of 3 Highview Terrace noted that he lives close to this location and he was concerned about the environmental impact on migrating birds and also the health hazard of the radio waves. He also noted that he is an AT&T wireless user and has no issue with a signal in this area.

Chairman Burke noted that the Applicant had provided reports related to the Radio frequency, the environmental impact and the FAA issues.

Mr. Alexander responded to some of the issues by clarifying that the radio frequency emissions are below required standards. He also explained that there were no issues with birds. The level of the tower would have to be over 1,000 feet to effect migrating birds.

Chairman Burke asked for a vote from the Board to obtain a proposal from Mr. Mike Musso of LMS to review this AT&T cell tower application as he is currently reviewing the Sprint application and to provide an estimate of the escrow account required for this Application.

Mr. Carpaneto made a motion that the Board make use of the LMS consultant to review the AT&T application and provide a proposal of the scope of review required and the escrow amount needed. Mr. Waldinger seconded the motion.

POLL OF THE BOARD

Mr. Santaroni	aye
Ms. Burpee	abstained
Mr. Carpaneto	aye
Mr. Waldinger	aye
Chairman Burke	aye

The motion was passed. The ZBA secretary was directed to prepare a letter requesting this review and information from Mr. Musso.

Chairman Burke also requested a review from Town Counsel, Kenneth Powell of some of the relevant case histories related to the cell tower process. Chairman Burke also requested a list of the AT&T stealth towers in Westchester County with the height levels. The application was adjourned until the next ZBA meeting on January 18th, 2005.

SPRINT SPECTRUM LP**BZ09B/04-37.14-1-4**

Carryover. Chairman Burke explained that the consultant, Mr. Mike Musso was to present his review and report regarding this application but was ill and would make this presentation at the next meeting.

Robert Gaudioso of Snyder & Snyder representing Sprint Spectrum LP approached the Board and noted that he had presented the ZBA Secretary with a December 21st package which addresses:

- Response to the Letter from the Somers Open Space Committee and critique of photos taken by Allan Golden
- No Adverse Aesthetic Impact
- Alternative Sites
- Response to Letter from Allan Golden
- Appraisal Analysis
- Inventory of prior application materials to be incorporated into this application
- Consultant Scope of Work

Mr. Gaudioso questioned the accuracy of the Consultant's scope of work and need for additional escrow. He would like to see the scope of work tailored to this application.

Chairman Burke asked the lawyer for the resident of Orchard Hill, Mr. Vartabedian if he had any questions or comments at this time and Mr. Vartabedian declined.

Chairman Burke asked for comments or questions from the audience.

Mr. Himmelstein of Orchard Hill Road approached the podium to take exception to Mr. Gaudioso comments that this flagpole was like any other flagpole. Other flagpoles are not of this dimension. He also noted that if someone put up a flagpole they would do this on his or her own and would take their neighbors into consideration. They would not be doing it under contract to an outside agency and would not receive compensation for the flagpole. The ordinary flagpole would not have a chain link fence and equipment the size of a refrigerator at the base.

Ms. Levine of 12 Orchard Hill Road addressed the Board and noted that her AT&T service is fine and does not understand the need for these cell towers. She proceeded to give the Board her interpretation of the restrictions on cell towers. The towers were not allowed near schools or hospitals because she believed these buildings had captive audiences. She feels she is also part of this captive audience because she works in her

home. She presented the Board with two renderings of her house and the cell tower noting the direct line of the frequency into her home.

Mr. Dennis Pastena of 23 Orchard Hill Road spoke to the Board and expressed his concern that this cell tower would be in a residential area while all of the other cell towers are in commercial areas. He also questioned the validity of the real estate analysis provided by the applicant and would like to see an independent study.

Mr. Allan Golden of 4 Catherine Place expressed concern of the critique of his photos and that the renderings of the tower was not exact but an interpretation of the pole. He used one of the colors referred to in prior meetings and did not use a zoom lens. The size of this tower has a high visual impact on this scenic corridor.

Mr. John Lissauer of 2621 Route 35 explained to the Board that his property is adjacent and about 200 feet from the cell tower site. He is a 28-year resident who has restored a 1760 farmhouse. He also works at home in his music room and has been advised that this tower will impede his ability to continue with his composing career because of the radio frequency interference. He feels this is "big business" bullying the residence. He will try to obtain a report from his experts by the next meeting on the 18th.

Mr. James Rieger of 2 Catherine place approached the podium and expressed his concern that the idea that cell phone companies would keep rates down is a fairy tale and is not of primary concern to the residents. The preservation of the area is more of a concern.

Mr. Gaudioso returned to the podium to answer some of the issues presented by the residents. He reiterated the point that the Telecommunications act was set into motion to create competition and reduce prices and provide more services. The radio frequency issues were addressed in the materials provided and is within guidelines. The use of the flagpole is the most common utilization of this communication system

Mr. Himmelstein returned to the podium to question why there is a need for a cell tower on Route 35 when the reception for AT&T users is not an issue. He questioned why Sprint could not use the same location that AT&T is currently using to cover Route 35 and avoid this tower on Orchard Hill.

Chairman Burke responded to the Town Attorney's request for a decision on Lead Agency by noting that the information was mailed to all involved agencies over 30 days ago and there were no questions or concerns received. The Zoning Board could vote to become Lead Agency.

Chairman Burke asked for a vote from the Board to designate the Zoning Board as Lead Agency for this project. Mr. Waldinger made a motion to approve this decision. Mr. Carpaneto seconded the motion.

POLL OF THE BOARD

Mr. Santaroni	aye
Ms. Burpee	aye
Mr. Carpaneto	aye
Mr. Waldinger	aye
Chairman Burke	aye

Mr. Gaudioso also questioned the need for a \$6,000 escrow payment for the consultant review. There was already a \$5,000 payment made to the Town and he felt this was sufficient and that the scope of work noted in Mr. Musso's proposal was too broad. He was willing to add money to the account if it was deemed necessary.

Chairman Burke suggested that these questions would be best reviewed at the next meeting with Mr. Musso. The application was adjourned until the January 18th, 2005 meeting.

OTHER BUSINESS

Chairman Burke asked the Board members if they had received and reviewed the ZBA Meeting Minutes for November 16th, 2004. All the Board members affirmed that they had and all members voted aye to approve the minutes. The Minutes were accepted.

The Chairman also asked the Board if they had received and reviewed the listing of the Zoning Board meeting for 2005. All members were in agreement on the dates for meetings in 2005.

There being no further business Chairman Burke adjourned the meeting.

Respectfully submitted by

Toni Siriani
ZBA Secretary

APPROVED: Zoning Board of Appeals Meeting of January 18th, 2005