

**TOWN OF GOSHEN, ORANGE COUNTY, NEW YORK
ZONING BOARD OF APPEALS
MINUTES OF THE MEETING**

January 22, 2002

Present Members:

Donna Roe, Chair
Malcolm Booth
Robert Farfalla
Priscilla Gersbeck
Michael Wilson

Also Present:

Brian Morgan, Esq.

I. Call to Order

Chair Roe called to order the Town of Goshen Zoning Board of Appeals at 7:34 p.m.

Chair Roe announced that the next Zoning Board of Appeals work session will be at 7:30 p.m. on February 20, 2002, its regular meeting on February 26, 2002 at 7:30 p.m., and the filing deadline for applications would be Friday, February 15, 2002. Chair Roe announced that at next month's meeting a schedule for the balance of the year would be adopted.

Mr. Booth made the motion to accept the aforementioned dates.

Mrs. Gersbeck seconded the motion.

All in favor. Aye. Motion carried.

II. Public Hearing Continued

**A. The application of Nextel of New York, Inc., d/b/a Nextel Communications for a use variance to Sections 97-93(A) and 97-94(B) for the erecting and use of antennas and support structures located on Industrial Drive in an I Zoning District:
Tax Lot No. 20-2-6**

Chair Roe stated that the first item on the agenda was Nextel and that Seth Mandelbaum, Esq., was representing the applicant. The mailing for the Notices were reviewed.

Mr. Mandelbaum stated that normally regulations require that Notices be sent to property owners within 300 ft., however, in this situation after public response and as a courtesy, the area was extended to a 1,000 ft. radius. This is required under the Wireless Communications Section, which Nextel is not currently governed by because of the fact that the I Zone is omitted by that Section. Basically, they extended this area three times more than required.

Chair Roe announced that anyone speaking tonight, please give their full name so that it may be properly recorded into the minutes of the meeting. Chair Roe then asked Mr. Mandelbaum to begin. Mr. Mandelbaum introduced himself stating that he was an attorney from the law firm of Snyder and Snyder and that they are the attorneys for Nextel of New York, Inc., d/b/a Nextel Communications and he was here this evening for the proposed wireless communications facility at 10 Industrial Drive in Goshen, New York. Mr. Mandelbaum wanted to take a moment and go through the history of the application and how they got to where they are tonight. The application was originally filed on July 31, 2000 with this

Board for a 199 ft. monopole with antennas mounted on top of the monopole. The antennas are approximately 4 ft. tall, 6-1/2" wide, and 8" deep. There is also a 200 sq. ft. pre-fabricated equipment shelter that goes at the base of the monopole, which contains computer and telephone switching equipment. The entire compound is proposed to be fenced with landscaping surrounding the fence. At that time the application was filed with this Board for a couple of reasons. The main reason being a use variance is technically required because the Code of the Town of Goshen, when the Section was adopted for wireless facilities, permits this type of facilities in every single zone by Special Permit or Conditional Permit except for the I Zone; it is permitted in the IP Zone, as well as all the residential zones in the Town. Whether it was intentional or a typographical error is irrelevant because we are required to comply with the Code as it exists. Therefore, application was made to this Board for a Use Variance, as well as several setback variances even though we weren't permitted to do so under the Wireless Law. The applicant wanted to comply with the spirit of the law, and therefore took the most conservative possible setback for the proposed tower, equal to the height of the tower. Initially, two side yard variances for the tower, and a rear yard variance based on the originally height of 199 ft. were needed. Two side yard setback variances for the 200 sq. ft. equipment shelter were also needed. Again, looking at this as conservatively as possible in the I Zone, if the lot abuts a residential zone, that the rear and side yard shall be 200 ft. This is questionable whether that applies to the lot lines that do not directly abut the residential district, however, we played it safe and those variances have not changed. Two side setback variances for the structure at the base are still needed.

A Public Hearing was held by this Board on August 22, 2000 and that time the Board adopted a Resolution deferring to the Planning Board as Lead Agency under the State Environmental Quality Review Act (SEQRA). At that point, we began attending Planning Board meetings and the Planning Board accepted the role as Lead Agency and began its review which commenced in September 2000 through last week. In the course of that review, the Planning Board reviewed numerous alternative locations for the proposed facility including existing structures and raw land both in the Town of Goshen and the Village of Florida. A crane test was held in November 3, 2001, whereby the facility was evaluated at the heights of 180 ft. and 150 ft., and a visual analysis was prepared, which this Board was provided a copy of. On January 17, 2002 the Planning Board voted and adopted a Negative Declaration under SEQRA finding that the proposed facility, as a 150 ft. tall structure would not have a significant environmental impact. This was based on visual mitigation of lowering the facility from 199 ft. to 150 ft., which did reduce the coverage area, but was a trade off that Nextel was willing to work with and work with the Town to balance the visual impacts. The site is proposed to remedy a significant gap in Nextel's coverage. Mr. Richard Comi, who was present, performed an extensive review of Nextel's technical materials and concluded, independently, that there was a significant gap in coverage and reviewed materials on the alternative locations all of which was reviewed by the Planning Board.

Based upon the Negative Declaration being adopted by the Planning Board, we are back now for the continued Public hearing from the August 22, 2000 meeting. We have provided you with additional information on the shelter facades and what the facility would look like if it did have five sets of antennas on it, which would reduce the number of towers needed in Town and those materials are in front of you this evening. It was also confirmed with Nextel that we can move the door to the other side of the shelter to make emergency access even easier.

The facility is monitored 24 hours a day, seven days a week remotely and if there was ever service outage, a Nextel technician would automatically go to the site. However, the door was moved to the other side and Nextel agreed to install a lock-box which local emergency services would have access to further provide faster emergency access in the unlikely event of a fire or other emergency at the site.

Mr. Mandelbaum also wanted to note that because Nextel was deemed a Public Utility in the State of New York, the standard for the Use Variance is a different one than would apply to a typical applicant that would come before this Board. Rather than the usual standard of unnecessary hardship, where the applicant has to show actual dollars and cents proof of why they would not be able to receive a reasonable return from their property, the highest courts in New York in both the State and Federal levels, note that

once a wireless carrier, Federally licensed, such as Nextel shows the need for the its facility, confirmed by Mr. Comi and the intrusion to the community has been minimized to the maximum extent possible and the broader public good is served, then the Use Variance should be granted. Nextel has demonstrated through the Negative Declaration, through alternative reviews, through the mitigation that the applicant believes this is the least intrusive means of remedying Nextel's significant gap in coverage. Material has also been submitted showing the public benefit of wireless phones, that thousands of 911 calls are made every day from wireless phone, that Congress in 1999 also passed an Act further encouraging a national wireless system, a national 911 system, and this all contributes the public's benefit.

Mr. Mandelbaum stated that this is the overview of where we have been and how we got here tonight and he would be happy to answer all questions that the Board or the public may have. Mr. Mandelbaum also requested that the Board simply take the information before them, the information from the Planning Board and consider granting the variances to Nextel, so that they can go back to the Planning Board for Final Site Plan review, and hopefully get this facility up and running and providing a public service to the Town of Goshen. Mr. Mandelbaum thanked the Board.

Chair Roe asked if everyone had a copy of the January 22, 2002 correspondence with enclosures. Chair Roe asked if Mr. Mandelbaum if he could give the Board a condensed version of what is new in this correspondence.

Mr. Mandelbaum stated that he submitted an updated site plan, as the only site plan that this Board has ever seen was the original site plan with the monopole being 199 ft. Mr. Mandelbaum stated that the updated site plan was the same one as shown on the presentation easel. The site plan shows the height as of 150 ft., which lowers the setbacks from the tower along the property lines to 150 ft. and actually eliminated the need for several variances; eliminated two completely and reduced one side yard to only 4.1 ft. Also submitted was a comprehensive visual analysis based on all the comments and the Neg Dec at 150 ft. including the clock tower design as being considered by the Planning Board, which incorporates several viewing points. Mr. Mandelbaum's understanding with respect to the final design is that the Planning Board has reserved decision until final site plan regarding monopole vs. clock tower or another stealth design. These renderings were presented to this Board in the event that this Board wants to include a preference in its Resolution, but certainly the Planning Board has taken a lead on this issue. Tonight's submission is based upon our discussions at the work session and the first exhibit are the different options from Nextel's manufacturer. It was discussed at the work session to try to match the existing industrial buildings on the property, the Quality TV building, as well as the Industrial Park itself. Based on his visits to the site and discussion with the Site Acquisition Consultant most of those buildings are light beige with a dark brown trim, dark brown roofs and there are certainly several options here which would blend in nicely.

The shelter will be behind a fence with landscaping around the fence but the goal is to blend it into the site as much as possible. Again, the Zoning Board can certainly state its preference with the finish and it may be something that the Planning Board would take in consideration.

Chair Roe asked if the Planning Board had received a copy of this latest submission. Mr. Mandelbaum stated that they would be during final site plan review. To be honest, they had not gotten up to this issue with the Planning Board because they were looking at alternative sites and other concerns. The Area Variance talks more about character of the neighborhood and blending with the site. They want to discuss any of these designs tonight. There are twenty different colors and four different sizes of aggregate. It is a standard utility structure like the kind you would see at a school, when a school runs out of room and place outdoor classrooms, which are basically freestanding structure with this type of aggregate. That is the first Exhibit. The second Exhibit is also a result of our discussion at the work session. This Board requested renderings of what the facility would look like if it were built out with five carriers. The drawings show a few viewpoints of both the monopole and couple of the clock tower. Viewpoint 5 is particularly relevant because here you can really see the Orange and Rockland lines, which are a major feature of the portion of the Town. If you look at the antennas they look like cross arms, just like the

existing utility lines with transformers. The clock tower depiction shows extra panels that the antennas can pass through. As discussed at the work session, the application before you tonight is for a variance for Nextel proposal so these are just for discussion purposes to show what a full build out would like. Under the Code, any additional carrier that wants to go on this site would have to go before the Planning Board for site plan review. In addition, the Code strongly encourages pole locations so certainly if someone proposes a tower a tenth of a mile away, either this Board or the Planning Board would certainly take them to task.

Chair Roe asked the Board members if they had any comments or questions at this point. There was no response. Chair Roe asked if they could have a few comments from Mr. Comi regarding the technical necessity of this tower. Mr. Comi, consultant for the Town of Goshen concurred with Mr. Mandelbaum that a considerable amount of time has been spent with the Planning Board going through and making sure that Nextel has a significant gap in their service, which they do and secondly looking at quite a number (at least 8, 10, 12) alternative sites in terms of using existing structures, facilities, etc., to see if any of those would cover the gap, and finally coming through the process of getting Nextel to reduce the size of the structure from 199 ft. to 150 ft. As Mr. Mandelbaum also discussed the issue of stealth technology vs. the monopole tower has been discussed in depth and it is in the hands of the Planning Board to make that determination. Mr. Comi stated he would be happy to answer any other questions.

Chair Roe asked if there was anyone in the audience that had any questions. No response.

For the benefit of Mr. Farfalla who was not present at the work session, Chair Roe asked Mr. Mandelbaum to move the plan on the easel closer and give a blow-by-blow. Mr. Mandelbaum pointed to the plan and showed the parcel and its relation to the adjoining lands, including Orange and Rockland lines.

Mr. Booth asked when the door was moved to the left side did it now line up with the opening of the fence. Mr. Mandelbaum stated that the opening in the fence remained on the other side, due to the topography.

Chair Roe asked what would be housed for the record. The Radio Frequency Engineer stated that it is pretty simple, air conditioning, radios and batteries for back-up power.

Chair Roe asked if the Board had any questions. Mr. Farfalla asked what kind of electric power is coming in. The Radio Frequency Engineer stated that it is a regular household current, 220 volt.

Chair Roe stated that in the surrounding area there is Quality TV and is there a residence back there. Mr. Mandelbaum stated that the best map to look at is in the visual analysis because that has a NYS DOT map. The lot itself is over 900 ft. from the edge Route 17A

Chair Roe asked how often is someone going to check on the site. Mr. Mandelbaum stated that it is once a month because there is remote monitoring all the time. For whatever reasons the facility is knocked off line there is an eight-hour battery to keep it up. After construction, a technician will drive to the site to check on the condition of the equipment and log in their report and leave. This happens once a month. There will no traffic on-site.

Chair Roe asked what was the height of the fence. Mr. Mandelbaum stated it would be eight feet and it would be locked. Chair Roe asked if any of the other locations experienced any vandalism. Mr. Mandelbaum said sometimes in locations closer the City, kids try to break in. It is very difficult to get in. Mr. Zonowski, Site Acquisition Specialist for Nextel stated that it is very difficult to get into one of these buildings and if you do get in an alarm goes off. There is a technician that watches the data on a screen, so if the temperature goes up or if there is someone who goes into one of these buildings and there is not a telephone call within a minute the police are called. Mr. Mandelbaum stated that this equipment is very expensive and it is in the best interest of Nextel to keep people out.

Mrs. Gersbeck asked if there is noise that comes from the building. Mr. Mandelbaum stated that it is comparable to a large residential air-conditioner unit. That would be the only noise. It should be noted that these facilities are on the roof top of residential buildings.

Chair Roe asked what was the likelihood of a fire in the shed. Have there been any problems? Mr. Mandelbaum was not personally aware of any. The back-up batteries eliminate the need for a generator, thus eliminating the need for further noise or fuel at the site.

Mr. Farfalla asked what the lease was on this site, 5 years, 10 years, 50 years. In other words how long are you going to be our neighbors. Mr. Mandelbaum stated that there was a 5 year initial term with a five year renewal so it would be a total of 25 years. This is an industry standard. Mr. Farfalla asked what the life expectancy of these poles are. It was not know specifically but they have been seen to last for more than twenty years. Mr. Mandelbaum pointed out that the Planning Board has discussed the condition of a Removal Bond if the facility becomes inoperable or is abandoned. The towers are galvanized steel, similar to Orange and Rockland substations.

Mr. Comi pointed out that Federal standard for towers stating that stand-alone towers must be inspected every five years, and with that in mind if it is rusted or out of plumb it has to be corrected and that is part of the process. Mr. Mandelbaum agreed and added that Nextel has so much invested into these sites, and wants to keep their customers on air and connected that they are always inspecting the sites once a month and correcting any problems. Nextel is very pro-active in correcting any problems that they may see.

Chair Roe asked if the Board had any other questions. Mr. Booth stated nothing that he had not asked in the last year and a half. Chair Roe stated that she would like to have an opportunity to review this material that was submitted this evening. Mr. Mandelbaum implored the Board to consider taking a Board vote simply for the fact, as Mr. Booth had mentioned, that Nextel has been in the process for the well over a year, we have a Federal mandate and a Public Utility mandate to get these sites up and operating and we are here tonight and are happy to answer any additional questions. They are also anxious to provide this service to the Town of Goshen and they hope to get back to the Planning Board in February and certainly can not do that without this Board at the very least closing the Public Hearing. Since there were no public comments, Mr. Mandelbaum asked the Board to reconsider and take a straw poll to get a sense of the Board on the variances, so he can go back to the Planning Board next month.

Chair Roe stated that she personally wanted to review this information. Mr. Booth also wanted it noted that the Board has a new member and to take that into consideration. Chair Roe stated that she understands but she wants to be thorough when making the decision. Mr. Mandelbaum understood, and if there are any specific questions that the Board may have he would be happy to answer them. Chair Roe stated he handed the material this evening and she would like everyone to have the opportunity to read it. Mr. Mandelbaum understood that he could not force the Board to do anything, he would just throw himself at the mercy of the Board and if that is the decision of the board there is nothing he could do about it. Frankly, this application was filed a year and a half ago and this Board had the materials and had the opportunity to look at them.

Mrs. Gersbeck asked if they could close the Public Hearing. Chair Roe stated they could.

Mr. Farfalla made a motion to close the Public Hearing.

Mrs. Gersbeck seconded it.

All in favor. Aye. Motion carried.

Mr. Farfalla made a motion.

Mrs. Gersbeck seconded.

Mr. Farfalla: Aye

Mrs. Gersbeck: Aye

Mr. Booth: Aye

Mr. Wilson: Aye

Chair Roe: Aye

All in favor. Aye. Motion carried.

II. Topic

A. Weslowski - An interpretation of existing truck repair facility located on Arcadia Road and NYS Route 94 in an AR-1 Zoning District: Tax Lot No. 18-1-127.2

Present for the discussion was John Nosek of Ferris Engineering and Tom Pahucki of R.J. Smith Realty.

Chair Roe asked if they had anything in writing as to why they were here. Plans were distributed to the Board prior to the meeting.

Mr. Nosek stated that they were referred by the Planning Board to appear before the Zoning Board regarding the concern as to whether or not a variance would be required for the separation of the existing commercial facility. The facility which did obtain a variance from the Zoning Board quite some time ago. Basically, the Planning Board asked that we get an interpretation.

Chair Roe stated that the Planning Board Chairman, Mr. Ralph Huddleston, was present and maybe he could shed some light on this issue. Mr. Huddleston stated that there is a situation where it appears that some point in time that a variance was issued for a truck repair shop in a residential zone. At that time that was the whole pie and now that pie has been cut up. Basically, with the subdivision and the elimination of certain parts of that original decision and with the reduction of the property, there maybe a requirement for an additional variance. That old 1952 variance that looked at the whole facility and gave its approval, and now there is subdividing going on and is that facility the same facility that the approval was given to, in other words has the operation changed. There seem to be a number of changes going on and the Planning Board was uncomfortable moving forward with this.

Mr. Pahucki stated that the original piece back then was probably a 75 acre farm.

Mr. Booth asked what were they doing repairs in. Mr. Pahucki stated that they had just recently got a Building Permit and completed a newer building in the back of the building. This has gone through quite an exhausting chain of command because what you do in 1960 is quite different from what you do in 2002, the whole flavor of the area has changed. The shop not only repaired but sold International Trucks,

so there was a lot of traffic in there. Back in 1952 when the variance was granted it was granted for the whole section, block and lot for 70-80 acres. But now that section, block and lot has been divided off into various lot numbers with still one remaining. Mr. Pahucki's understanding of what the Planning Board wants to know is how much of that remaining land is that variance going to be on, if that variance is going to continue. A plan was done at the Planning Board's request.

Chair Roe asked what is the distance from the existing truck repair shop to the dwelling on the adjacent lot. Mr. Nosek stated it was 54± feet from the back of the building to the lot line. Chair Roe asked what the distance to the proposed dwelling is. Mr. Nosek stated 150± feet. There is no proposal to change the use of the existing repair shop. The proposal is for five single-family residential lots to be subdivided off. There could be a possibility for one or two more lots, but no more due to the presence of wetlands.

Mrs. Gersbeck asked for a clarification of why they are appearing before the Board.

Mr. Pahucki's understanding is that the interpretation is to see if the variance survives the subdivision.

Mr. Wilson asked if the original variance was for the commercial operation of the truck sales and repair and the question is if the variance can continue because you are putting in these lots.

Mr. Huddleston stated that their concern is that in 1952 the ZBA made a determination that the truck repair facility and its proximity to other residential areas, other zoning areas, and other intended uses for the property around it was okay. But, now that has all changed and the existing facility has gotten larger. Is it appropriate to have that truck repair facility so close to a property line for a residential use? The variance does not take into consideration today's conditions.

Mr. Nosek presented a copy of a letter dated March 2, 1992 from Carlton Lloyd, Building Inspector stating that he is acknowledging that this variance was granted and that this operation was within its limits. Mr. Pahucki stated that the trucks from 1952 are not the truck of today's standards. Up on Clark Road, those residents oversee the existing use and there have not been any complaints. Mr. Pahucki asked the Board what would the Public Hearing be based on, setbacks.

Mr. Nosek stated if the Board is leaning towards a variance, it would be good to know now so that we can file an application now instead of waiting.

Mr. Morgan stated the neighbors might or might not know that the situation exists and they might be a little tired of it, especially if the owner sells or it changes somehow. Mr. Farfalla stated that he is concerned that it will change and have 25 tractor trailers coming in and out. Mr. Pahucki stated that the owner has no intention to change the operation. Mr. Farfalla stated that these proposed half-million dollar homes will have these huge truck blowing diesel out at all hours of the night, and I do not want people to say who allowed this? Are we in Monroe or Chester?

Mr. Nosek pointed out there is no expansion on the truck repair shop planned and certainly whoever buys Lot No. 1 will be fully aware that there is a business there.

Mr. Farfalla stated that you are going from 900 ft. to 50 ft. and that is a hell of a difference.

Mr. Booth asked what Mr. Weslowski does now. Mr. Pahucki stated that he changes tires, does oil changes, and maintenance repairs. Mr. Weslowski has 3 to 6 trucks a day coming into the shop. Chair Roe asked what are the dimensions of the building. Mr. Nosek stated that is approximately 60 ft. x 100ft. Chair Roe asked if there was fuel on the site. Mr. Pahucki stated no that the trucks fuel on the road.

Mr. Farfalla asked what is going to happen down the road. Mr. Pahucki stated that he is not going to expand, not even his hours of operation.

Mr. Wilson stated that it is his understanding that the existing operation is not the same operation that the variance was granted for back in 1952. He understands that trucks change and the needs for the trucks change, but the variance was granted for a agricultural operation which has now changed into a completely separate business. Understanding that Mr. Weslowski is 80 years old, but maybe his sons ideas are different and this is something that needs to be reviewed again.

Mr. Pahucki understood that there could be something placed into the variance that if the use should change then he has to come back to the Planning Board for approval. This would stop it from developing into something different. Mr. Farfalla stated that there is no way to patrol, we are not a police state.

Mr. Pahucki asked if the Zoning Board of Appeals wants a Public Hearing on this to get a feel from the public. Please keep in mind it is not a truck stop, it is not gas station it is not a transfer station, it is a truck repair shop and it is within its permitted use, according to the existing variance. We could have full disclosure on the deed for Lot No.1 and 2 that these parcels are within proximity to the truck repair shop.

Mr. Huddleston's final statement to the Board was it the intent of that variance to allow further subdivision placing residential units within that 50± radius. The variance exists there when there was farm around it, and now the Planning Board is being asked to allow residential development in there with a variance that we do not know what the intent was.

Chair Roe suggested that the Board's counsel research this further and asked for a copy of the 1992 letter from the Building Inspector. Chair Roe stated that our attorney will have communication forthcoming but it might not be next month.

IV. Approval of Minutes

Chair Roe stated that the Board would look at the minutes and approve them at the next meeting.

V. Adjournment

Mr. Farfalla made a motion to adjourn.

Mrs. Gersbeck seconded the motion.

All in favor. Aye. Motion carried.

Respectfully submitted,

Gloria J. Lloyd
Secretary