

**REGULAR MEETING
ZONING BOARD OF APPEALS**

Nyack Village Hall
Nyack, New York

February 29, 2016

Present: Catherine Friesen, Chair
Mary Ann Armano
John Dunnigan
Ellyse Berg
Roger Cohen (alternate)

In Memoriam:
Raymond O'Connell

Absent: Robert Knoebel, Sr.

The following resolution was offered by Member Berg, seconded by Member Cohen, and carried based upon a review of the evidence presented at the public hearing held on February 29, 2016.

**BOARD OF APPEALS
VILLAGE OF NYACK, COUNTY OF ROCKLAND**

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In the Matter of the Application of New Cingular
Wireless PCS, LLC ("AT&T") for renewal of a Special
Permit for existing co-located rooftop
telecommunications antennas and equipment at 32-38
High Avenue.

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The Applicant, New Cingular Wireless PCS, LLC ("AT&T"), comes before this Board seeking a renewal of its Special Permit pursuant to VON Code 360-3.2D(1)(c)(21)(a)(ii) for the installation of a wireless communication facility.

The Zoning Board of Appeals held a public meeting on February 29, 2016, and due deliberations having been made that day;

Now, upon said hearing and upon the evidence adduced thereat, it is hereby found and determined that:

PROCEDURAL HISTORY

The Applicant received its initial permit authorizing the installation of a telecommunications facility pursuant to then-existing Zoning Code provision 59-18.2 *et seq.* by resolution of the Zoning Board of Appeals dated July 28, 2008. A copy of that decision is annexed hereto and incorporated herewith. As a condition of the special permit, the Applicant was required to seek

renewal every 2 years. Because of an oversight on the part of the Applicant and the Building Department, the applicant did not file any applications for renewal until December 29, 2015.

This application was received and placed on the ZBA docket for public hearing in February. At the public hearing the applicant made a full factual presentation and answered questions from the ZBA. As is the policy of this Board, prior to the hearing, the application was sent to the ZBA's retained telecommunications expert, Mike Musso of HDR. Mr. Musso submitted a report which was received by the Zoning Board of Appeals on February 29, 2016.

The procedural history was passed 5-0.

FINDINGS OF FACT & CONCLUSIONS OF LAW

FIRST: That the Applicant has appeared before the Zoning Board of Appeals seeking a renewed Special Permit pursuant to VON Code Section 360-3.2D(1)(c)(21)(a)(ii).

SECOND: The Board, in reaching its decision, has taken the following factual testimony and evidence under consideration:

- A. The presentation, complete application and materials submitted by the applicant and all subsequent amendments thereto;
- B. The correspondence and report of Mike Musso, consultant to the Zoning Board of Appeals;
- C. There was no testimony from any member of the public;
- D. ZBA members knowledge of the site;

THIRD: That based on the detailed and comprehensive analysis performed by the Zoning Board's consultant, each of the factual assertions made by the applicant in its renewal application in relation to site selection, system need, system operation, system function and safety have been proven, and the application comports with the Village's Telecommunications Law (Section 360-3.2(D)).

Moved and passed (5-0)

CONCLUSIONS OF LAW

The Zoning Board of Appeals makes the following Conclusions of Law:

FIRST: That the conditions of the initial Special Permit have been adhered to; and

SECOND: That pursuant to VON Code Section 617.5(c)(26), this is a Type II action under SEQRA as a renewal application with no material changes.

Accordingly, the application for renewal of the Special Permit is GRANTED on the condition that the applicant complies with the conditions set forth herein.

1. FCC signage shall be posted and maintained around the roof-based equipment and at rooftop accessways by the Applicant and the other wireless carriers;
2. Re-inspection of the bulkhead including its brick and mortar is required to make sure that there is no further deterioration. The structural integrity should be recertified to the Building Department after such inspection occurs as part of the Applicant's annual reporting responsibilities pursuant to VON Code Section 360-3.2(D)(13).
3. Any rooftop maintenance or inspection activities by persons not trained in RF exposures should be coordinated appropriately between the owner/operator of the building and the existing wireless carriers (including the Applicant) to eliminate the potential for RF exposure levels above the general public MPE. RF signage shall be maintained in accordance with FCC protocols (i.e. at rooftop accessways and in proximity to antennas);
4. Applicant's operations should be maintained in accordance with the Village's Wireless Ordinance and all relevant Village Codes. Any proposed increase in the Applicant's number of antennas, antenna sizes or number/sizes of equipment cables shall be approved by the Village prior to any modifications;
5. Applicant shall provide proof within two weeks of the hearing date that the site management agreement imposed as a condition of the initial grant of the Special Permit was appropriately filed with the Building Department.

On roll call, the vote was as follows:

Ayes: 5 (Friesen, Dunnigan, Armano, Berg, Cohen)

Nays: 0

Abstain: 0

Catherine H. Friesen
CATHERINE H. FRIESEN, Chairperson
Zoning Board of Appeals, Nyack