

BOARD OF ADJUSTMENT
OF
THE TOWNSHIP OF WEST ORANGE
R E S O L U T I O N
ZB-91-24

WHEREAS, NYNEX MOBILE COMMUNICATIONS, having its principle place of business at 200 Corporate Drive, Orangeburg, New York, has applied to the Zoning Board of Adjustment of the Township of West Orange, for a variance from the provisions of the Township Zoning Ordinance for property located at 25 Prospect Avenue, particularly described as Lot 1 Block 151 in an R-2 Zone for the purposes of a use variance for a commercial antenna and final site plan approval; and

WHEREAS, all the facts and data contained in the documents in the Township Variance Applications are incorporated herein as findings of fact of this Board as if set forth herein at length; and

WHEREAS, The Board of Adjustment, after due notice and compliance with all jurisdictional requirements of the Laws of the State of New Jersey and the ordinances of the Township of West Orange and having carefully reviewed the evidence of the applicant and general public, at a public hearings held on February 20, 1992, and March 19, 1992, have made the following factual findings:

1. The entire site is utilized as a private golf course with related facilities. The proposed antenna will be placed upon a water tower which has been in existence for the past 70 years.
2. The antennas per se to be placed upon the water tower are three whip antennas connected to the roof of the existing tower having de minimis impact from the prospective of aesthetics and further are found to be non hazardous to the environment.
3. The granting of this variance will be beneficial to the community insofar as it shall enhance telecommunications.
4. Granting the proposed application would promote the purposes of the Municipal Land Use Act. Specifically, development as proposed will promote public health, safety, and generally benefit the welfare of the community. Moreover, having analyzed the master plan and zoning ordinance of the Township of West Orange, the granting of this application would not substantially impair the intent and purpose of the same.

and

WHEREAS, the Zoning Board of Adjustment of the Township of West Orange has determined that based upon the factual findings that special reasons exist in order to grant the variance sought by the applicant;

and

WHEREAS, the Zoning Board of Adjustment of the Township of West Orange has determined that the purposes of Municipal Land Use Law would be enhanced by a deviation from the Zoning Ordinance requirements and the benefits of the deviation would substantially outweigh any detriment;

and

WHEREAS, the Board of Adjustment on March 19, 1992 voted to approve the application of NYNEX MOBILE COMMUNICATIONS by a vote of 7 for approval and 0 against approval.

NOW THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Township of West Orange on this 16th day of April, 1992, that the Application of NYNEX MOBILE COMMUNICATIONS for a use variance and final site plan approval be granted.

SUBJECT TO THE FOLLOWING CONDITIONS:

1. This variance is limited to the specific equipment including but not limited to antennas which were the subject of this application.
2. This variance is granted on the condition that no more than one entity, commercial or otherwise be permitted to utilize the tower for placement of antenna(s) or any other communication equipment.

THOSE IN FAVOR

Theodore Abeles

Robert Hoehn

Alice Weiss

Alton Williamson

Nicholas Del Spina

THOSE OPPOSED

The foregoing is a true copy of the Resolution adopted by the Board of Adjustment of the Township of West Orange at its April 16, 1992, meeting.



Catherine Adsitt
Secretary

DATED: April 21, 1992

**BOARD OF ADJUSTMENT
OF
THE TOWNSHIP OF WEST ORANGE
RESOLUTION
ZB-01-30**

WHEREAS, Omnipoint Communications, Inc., having its main office at 11 Highpoint Drive, Wayne, New Jersey, 07470, ("The Applicant") has applied to the West Orange Zoning Board of Adjustment ("The Board") as tenant of Montclair Golf Club, the owner of the facility who has consented to the application for a "D" variance to install 12 antennas on an existing 100 feet tall water tower and for a height variance because the antennas will be at a height not to exceed 93 feet which will exceed the maximum height permitted of 35 feet, to be erected on the 100 foot tall water tower located on the Montclair Golf Club property at 25 Prospect Avenue, West Orange, New Jersey, being Block 151, Lot 7 on the Tax Maps of the Township of West Orange and located in an R-2 Zone which does not permit the antennas and which would now have two primary uses on the site since there is an existing antenna on the water tower; and for preliminary and final site plan approval; and

WHEREAS, the Applicant presented proof that adequate notice of the hearing on said application was published in The West Orange Chronicle, one of the official newspapers of the Board; and

WHEREAS, the Applicant submitted proof of service of notice of the hearing upon all property owners within 200 feet of the property; and

WHEREAS, the application was heard at a public meeting of the Board on February 21, 2002; and

WHEREAS, the Applicant was represented by Albert E. Cruz, Esquire, who presented the application at the hearing appearing for the law firm of Bateman, Coley, Yospin; Kunzman, Davis, and Lehrer, P.C; and

WHEREAS, submissions included plans prepared and signed by Peter M. Longo, Professional Engineer of the state of New Jersey dated September 13, 2001 which included Cover Sheet, Radius Map, Site Map, and enlarged Site Plan, Elevation and Details; and

WHEREAS, various witnesses were presented by the Applicant's attorney in support of their case who included Peter M. Longo, Licensed New Jersey Professional Engineer and Janice Talley, Licensed Professional Planner of the State of New Jersey, and Jonathan Link, Radio Frequency Engineer.

Mr. Longo described the proposed installation of 12 antennas on the existing 100 foot tall water tower that would require the "D" variance in that the antennas were not permitted and in that it was a second use for the site which had an existing antenna on the water tower . He further pointed out that a height variance was needed indicating the proposed antennas will be 93 feet high and therefore exceed the requirement of 35 feet.

Janice Talley pointed out that this was an application that involved a site that was particularly suited for their purposes because they would use an existing building rather than build a new one and that there would be no impact on the surrounding buildings or area and that no services of the Town would be utilized and no traffic would be generated as it would involve a monthly inspection by a technician to make sure that everything was in order. She further pointed out that the Applicant had an FCC license and that the granting of the license covers the aspect of special reasons. Further since it is an inherently beneficial use, it meets the requirement of the

positive criteria. Further she pointed out that they would service the entire area and surrounding area and that there was 911 capability with access to the wireless internet. She further pointed out that there was no detriment to the application for the site which was well suited for the use and that the variance sought could be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of Zone Plan and Zoning Ordinances. The installation would blend in with the water tower as the antennas would be painted the color of the tower and there would be no intrusion on the site as the water tower was already there; Jonathan Link confirmed that Applicant has an FCC license which includes West Orange for telephone service and E mail.

He described how the 12 antennas would be attached to the water tank and there would be 3 cabinets about the size of a wide refrigerator that will be inside the enclosed building.

He pointed out that no noise will emanate from the site and that what they proposed would provide needed telephone service for the area; and

WHEREAS, various members of the Board questioned the various witnesses and their attorneys; and

WHEREAS, the comments and report of Susan Borg, Township Planner, were considered; and

WHEREAS, no members of the public appeared in opposition to or in favor of the application; and

WHEREAS, no one else testified in favor of or against the application; and

WHEREAS, all the facts and data contained in the submitted application and all the facts and testimony adduced at the public hearing on said application are incorporated herein

as Findings of Fact of this Board as if set forth at length herein; and

THE BOARD HAVING MADE THE FOLLOWING SPECIFIC

FINDINGS OF FACT AND CONCLUSIONS:

- A. Omnipoint Communications, Inc., the Applicant is the tenant of Montclair Golf Club, at premises 25 Prospect Avenue, West Orange, New Jersey, being Block 151, Lot 7 on the Tax Maps of the Township of West Orange and involving the installation of 12 antennas on an existing 100 foot tall water tower.
- B. The owner of the property, Montclair Golf Club, has consented in writing to the application.
- C. The property is located in the R-2 Zone which does not permit antennas so as to require a "D" variance.
- D. In addition this will create a second use on the same lot as there is an existing antenna on the water tower; and two uses are not permitted without the "D" variance.
- E. The antennas will be 93 feet high and thus exceeding the maximum height of 35 feet so as to require a variance for same.
- F. The proposed use will not involve the use of any Township services and will not generate any traffic because only one technician comes there monthly to check on the facility.
- G. The proposed use is inherently beneficial and the site is particularly suited because they are using an existing water tower on which there already is a commercial antenna and not building another installation or using another site. This is

consistent with providing special reasons for what is an inherently beneficial use and will provide needed communication services to the area including 911 capability.

- H. Granting the proposed installation will not impair the intent and purpose of the Zoning Ordinances and Master Plan of the Township of West Orange and will not cause any substantial detriment to the public good and will not present an adverse visual blight as the antennas will be mounted to an existing tank.
- I. The Applicant has satisfied their burden of proof insofar as meeting the positive and negative criteria and has shown the need for a height variance as well as the antennas will be 93 feet high and the ordinance requires 35 feet.
- J. The application advances the purposes of the Municipal Land Use Laws enunciated in N.J.S.A. 40:55-d-2 and is consistent with the kind of development in the area.

A Motion to approve the application to include various conditions as hereinafter stated was made by Bruce Buechler and seconded by John McElroy and voted upon as follows:

<u>AYES</u>	<u>NAYS</u>	<u>ABSTENTIONS</u>
Abeles Buechler DeSacia McElroy Spango	0	0

NOW, THEREFORE, BE IT RESOLVED, that the Zoning Board of Adjustment of the Township of West Orange, based upon the Findings of Fact and Conclusions aforesaid, and upon the laws established in the State of New Jersey, hereby grants the application

of Omnipoint Communications, Inc., to install 12 antennas on a water tank located at 25 Prospect Avenue, West Orange, New Jersey in Block 151, Lot 7 of the Tax Maps of the Township of West Orange being an R-2 Zone together with a height variance to permit them to be 93 feet above the ground instead of 35 feet as required; and for approval of the preliminary and final site plan; and it was further resolved that the foregoing grant of relief is based upon the Applicant performing the following conditions:

1. The antennas and cables to be installed shall be painted a color to match the color of the water tower.
2. The fence around the building where the equipment is to be placed shall be repaired as required and have slats added.
3. The windows on the building shall be repaired as required.
4. The discoloration on the building shall be painted as required.
5. The landscaping around the building shall be installed as shall be designated by the Township Planner.
6. All Findings of Fact and Conclusions of Law set forth herein are deemed conditions that are binding upon the Applicant.
7. Approvals granted herein are conditioned upon the West Orange Fire Department approval.
8. The Applicant shall execute prior to the issuance of a Certificate of Approval or Certificate of Occupancy, an Affidavit of Compliance certifying that they have fulfilled all conditions set forth which shall be to the satisfaction of the Township Planner, Engineering Department, and Building Department of the Township of

West Orange, who shall be furnished with a copy of the resolution. No Certificate of Occupancy or Certificate of Approval for the addition shall be issued until receipt of an executed Affidavit of Compliance approved and signed by the Zoning Official.

MOVED BY: Vice Chairman Buechler

SECONDED BY: Mr. McElroy

THOSE OPPOSED: 0

THOSE IN FAVOR: 5

ABSTENTIONS: 0

I hereby certify that the foregoing Resolution was adopted by the Zoning Board of Adjustment of the Township of West Orange at its meeting of March 21, 2002 and said resolution memorializes the action of the Board taken at its meeting held February 21, 2002, granting the application by a vote of 5 in favor and 0 against.

 3/22/02

NORA MYERS, Board Secretary

**BOARD OF ADJUSTMENT OF
THE TOWNSHIP OF WEST ORANGE
RESOLUTION / ZB-02-24**

WHEREAS, Nextel of New York, Inc. d/b/a Nextel Communications, having its principal office at One North Broadway, White Plains, New York 10601, ("the Applicant") has applied to the West Orange Zoning Board of Adjustment of the Township of West Orange, ("the Board") for a "D" variance at add 3 groups of 4 antennas each for a total of 12 antennas to the existing water tower at the Montclair Golf Club located at 25 Prospect Avenue, West Orange, New Jersey and being Block 151, Lots 1, 5, 7, 11, 14, 15.01, 23, 34, 37, 41, 45.01 and 49 and being in zone R-2 and to install an equipment cabinet at the base of the tower and for a "D" variance for height which will be 100 feet existing instead of what is required by the ordinance, and for preliminary and final site plan approval; the Applicant being a tenant of the Montclair Golf Club, the owner, who has consented to the application in writing; and

WHEREAS, the Applicant presented proof that adequate notice of the hearing on said application was published in The West Orange Chronicle, one of the official newspapers of the Board; and

WHEREAS, the Applicant submitted proof of service of the hearing upon all the property owners within 200 feet of the property; and

WHEREAS, the application was heard at a public meeting of the Board on August 22, 2002; and

WHEREAS, the Applicant made their presentation through Warren O. Stilwell, Esq., of law firm of Czura Stilwell, LLC; and

WHEREAS, the admissions included Architectural Plans Z1 - Z4 prepared and signed by Frank Colasurdo, Licensed Architect of New Jersey, dated December 20, 2002 and a property survey prepared and signed by Michael Pronesti, Licensed Land Surveyor, dated April 17, 2002; and Resolution ZB-91-24 adopted by the Zoning Board of Adjustment of the Township of West Orange on April 21, 1992 for the placement of 3 whip antennas connected to the roof of the water tower, West Orange Planning Board Resolution PB-88-1 adopted February 3, 1988 approving the site plan presented by the then applicant for the subject location; and West Orange Planning Board Resolution PB-88-33 adopted December 7, 1988 approving the site plan presented which included the installation of a maintenance facility at subject location; and

WHEREAS, the Applicant presented various witnesses who included Frances Boschulte, Radio Frequency Engineer, Alice Fahy-Elwood, Consultant to Nextel as a Health Physicist in safety analysis in this field; Gary Musciano, Licensed Architect of the State of New Jersey and James Dowling, Licensed Professional Planner of the State of New Jersey.

Ms. Boschulte indicated the Applicant provides two way radio communication, walkie-talkie communication and the usual e-mail. She indicated that the FCC has licensed them to transmit and receive radio frequency which included public service to the police and fire department and the citizens of the area and were within the standards and requirements of the FCC.

Alice Fahy-Elwood indicated that the radio frequency signals complied with FCC regulations and offered no risk to anyone in the area by their use.

Gary Musciano explained the plans and described that the water tower was 100 feet high and that it was not in jeopardy of being adversely affected by any additional weight that they would put on it. He indicated that all equipment for the 12 antennas that they sought to install would be installed in an equipment cabinet to be at the base of the water tank and would not show. He pointed out that they proposed to install 3 groups of 4 antennas each for a total of 12 antennas. They would be the third wireless communications carrier on the water tower already occupied by Omnipoint and Nynex. They indicated that they would follow the pattern of the present occupiers of the tower to camouflage the existing antennas and equipment and would continue to join with them in maintaining the area well as it is now. He indicated further that antennas could not be flush mounted because it was physically impossible to do so because of the other antennas being there.

James Dowling, the Licensed Professional Planner of New Jersey, explained the reason for the "D" variance because the use is not permitted and that the height variance exceeded that which was permitted and was necessary as it was in place, being the water tower which could not be reduced in height. He indicated that the positive and negative criteria were met, that no town facilities would be used and that there was no detriment to the health and public welfare and no trash pick up and no burdens to the town systems. There would be a minimal change in the site by adding the antennas which would be hardly discernable. Mr. Dowling indicated there was no detriment to the public good or to the area

by what they proposed to do and that since they have an FCC license, it indicates they are serving the general welfare and this met the positive criteria. He pointed out that the area was particularly suited for the use intended and there would be no detrimental effects to anyone and it would not impair the master plan or the zoning ordinances of the Township of West Orange or the Municipal Land Use Law as it affected the site; and

WHEREAS, the report filed by Susan Borg, Township Planner and her testimony were considered by the Board; and

WHEREAS, the Board members questioned the various witnesses and their attorney; and

WHEREAS, Barry Moskowitz, the Public Advocate did not conduct any questioning of the witnesses; and

WHEREAS, no one else appeared at the meeting and no one else testified in favor of or in opposition to the project; and

WHEREAS, all the facts and data contained in the submitted application and all the facts and testimony adduced at the public hearing on said application are incorporated herein as Findings of Fact of this Board as if set forth at length herein and made a part hereof; and

THE BOARD HAVING MADE THE FOLLOWING SPECIFIC FINDINGS OF FACT AND CONCLUSIONS:

- A. Applicant is a tenant of the Montclair Golf Club for the use of the water tower located at 25 Prospect Avenue, West Orange, New Jersey, being Block 151, Lots 1, 5, 7, 11, 14, 15.01, 23, 34, 37, 41, 45.01 and 49 on the Tax Maps of

the Township of West Orange and located in the R-2 zone.

- B. The West Orange Planning Board adopted Resolution PB-88-1 on February 3, 1988 approving the site plan presented for the site at that time. By Resolution PB-88-33, adopted December 7, 1988 the West Orange Planning Board approved an amended site plan presented at that time. By Resolution ZB-91-24 the West Orange Board of Adjustment adopted on April 21, 1992 Nynex Mobile Communications was granted the right to install antennas on the water tower in question.
- C. The Applicant requires two "D" variances, one to be permitted to install 12 antennas on the water tower at 25 Prospect Avenue, West Orange, New Jersey, being 3 groups of 4 antennas each which is a non-permitted use and therefore requires the variance, together with a height variance which requires the use of the existing facility which is 100 feet and in excess of that which is permitted and therefore requiring a "D" variance. They also seek preliminary and final site plan approval.
- D. The Board was advised that they will also install an equipment shed at the base of the water tower that will house all of the radio frequency equipment and the Board was advised further that the added weight to the tower would not be a danger or cause the tower to fall or crumble.
- E. The Board was advised that if the application was granted the Applicant would be the third wireless communications carrier on the water tower as it is

presently occupied by Omnipoint and Nynex.

- F. The proposed use is not intrusive and does not require any use of the Township's services as it does not generate trash or noise or any emissions that involve odors or anything dangerous to the community and that the radio frequency emissions are in accordance with the standards of FCC who had licensed the Applicant.
- G. From the testimony presented it appears that there are many special reasons for the granting of the proposed relief as enunciated by the licensed planner and that the proposed use is tantamount to an inherently beneficial use and provides a benefit to the general public and would have no adverse effect upon the public good and would not substantially impair the intent of the zoning plan and master plan and zoning ordinances and will have no adverse effect upon the Municipal Land Use Law.
- H. The proposed installation and use is designed to blend in with the character of that which is there and with the character of the neighborhood and will not impact negatively on the surrounding area and represents an improvement of the existing facilities. There will not be any adverse impact to the health, safety or welfare of any other properties or persons in the area or to passers by or by users of the facilities.
- I. The purposes of the Municipal Land Use Law will be advanced by the grant of the two "D" variances.

- J. The granting of the "D" variances will not substantially impair the general purposes of the West Orange Master Plan or Zoning Ordinances of West Orange.
- K. The benefits of the variances will substantially outweigh any detriment and will not substantially negatively impact on the surrounding properties and neighborhood.
- L. The proposed installation and use are not out of character with the neighborhood and will enhance the property, and will enhance the area and benefit the general welfare of the general public and surrounding area.
- M. The proposed installation and use do not pose any threat to the safety and well being of anyone in the surrounding area.

A motion to grant the Applicant's request for a "D" variance to add 12 antennas to the existing water tower at 25 Prospect Avenue, West Orange, New Jersey and to install an equipment cabinet to house the equipment at the base of the tower, and for a "D" variance for the height of 100 feet instead of what the ordinance requires and for approval of the preliminary and final site plan was made by John Blind and seconded by John McElroy and voted upon as follows:

AYES

NAYS

ABSTENTIONS

Blind
Buechler
Flannery
McElroy
Ricci
Spango
Sullivan

0

0

NOW, THEREFORE, BE IT RESOLVED, that the Zoning Board of Adjustment of West Orange, based upon the Findings of Fact and Conclusions aforesaid, and upon the laws established in the State of New Jersey, hereby grants the Applicant, Nextel of New York, Inc. d/b/a Nextel Communications, a "D" variance to install 12 transmitting and receiving antennas on the existing water tower at 25 Prospect Avenue, West Orange, New Jersey, and a "D" variance for the height of 100 feet as it exists for the water tower instead of that which the ordinance permits, and for the approval of the preliminary and final site plan, subject to the following conditions; and

BE IT FURTHER RESOLVED, that the grant of said variances shall be conditioned upon the Applicant's full and complete satisfaction of the following conditions:

1. All radio equipment shall be inside the equipment shed that shall be installed at the base of the water tower.
2. The equipment shed and antennas shall match the color of the water tower.
3. The Applicant shall furnish the Township of West Orange a billing address for this location.
4. Prior to the adoption of this Resolution and not later than September 12, 2002, the Applicant shall provide the Engineering Department of the Township of West Orange with a letter signed by their appropriate authorized person indicating that the added weight that will be involved in installing the antennas on the water tower will not have an adverse effect so as to create no danger to the structure of the water tower.

5. All Findings of Fact and Conclusions of Law set forth herein are deemed conditions that are binding upon the Applicant.
6. The approvals granted are subject to West Orange Fire Department approval.
7. Applicant shall execute prior to the issuance of a Certificate of Occupancy, an Affidavit of Compliance certifying that they have fulfilled all conditions set forth which shall be to the satisfaction of the Township Planner, Engineering Department and Building Department of the Township of West Orange, who shall be furnished with a copy of this resolution. No Certificate of Occupancy or Certificate of Approval shall be issued until receipt of an executed Affidavit of Compliance approved and signed by the Zoning Official.

Moved By: Chairman Buechler

Seconded By: Mr. Flannery

Those in Favor: 5

Those Opposed: 0

Abstentions: 0

I hereby certify that the foregoing Resolution was adopted by the West Orange Zoning Board of Adjustment of the Township of West Orange at its meeting of September 19, 2002 memorializing the resolution adopted August 22, 2002 granting the application by a vote of 7 in favor and 0 against.



NORA M. YERS, Board Secretary

Dated: October 17, 2002