



## **CITY PLANNING COMMISSION**

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December 7, 2005 / Calendar No. 16

C 050494 ZSR

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IN THE MATTER OF an application submitted by Omnipoint Communications, Inc. pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 107-73 of the Zoning Resolution to modify the height and setback regulations of Section 107-43 of the Zoning Resolution to allow an 82 foot high telecommunications tower in connection with a proposed wireless communications facility on property located at 122 Arthur Kill Road (Block 4475, Lots 1 and 175), in an R3-2 District, within the Special South Richmond Development District, Borough of Staten Island, Community District 3.

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The application for the special permit was filed by Omnipoint Communications, Inc. on May 31, 2005, to modify the Special South Richmond Development District height limitation of 50 feet to construct an 82-foot high telecommunications tower designed as a flagpole with internal antennas for wireless communications services in the South Richmond area of Staten Island.

### **RELATED ACTION**

In addition to the special permit which is the subject of this report, implementation of the proposed development also requires action by the City Planning Commission on the following application which is being considered concurrently with this application:

N 0500495 RAR      Authorization for modification of existing topography pursuant to  
Section 107-65.

### **BACKGROUND**

A telecommunications facility consisting of an 82-foot high telecommunications stealth flagpole and a fully-screened 10-foot by 20-foot concrete slab for related equipment is proposed to be constructed within an approximately 2,597 square foot project site located on the 30.8 acre United Hebrew Cemetery on Arthur Kill Road between Clarke and Newvale avenues. The proposed

telecommunications flagpole is within an R3-2 zoning district in the Richmondtown area in the Special South Richmond Development District in Staten Island, Community District 3.

On June 15, 2004, the proposal for a telecommunications flagpole at this location on this zoning lot received a special permit (339-03-BZ) from the Board of Standards and Appeals (BSA) pursuant to Section 73-30 to allow location of a non-accessory radio tower in a residential district.

The proposed structures are located near the Arthur Kill Road frontage of the lot, directly behind an existing one-story metal maintenance building. The leased project area includes a portion of an existing service driveway from Arthur Kill Road that can provide access to the facility. The remainder of the zoning lot is in use as a cemetery. The project site is not used for cemetery purposes and has no existing trees.

Other cemetery uses surround the zoning lot to the northeast and the southwest. Mixed residential development is located to the west of the zoning lot's Arthur Kill Road frontage and adjacent to the wooded areas at the rear of the zoning lot. The residential development on the adjacent zoning lot at the Arthur Kill Road frontage is more than 345 feet westerly of the proposed telecommunications flagpole. The nearest residential building across Arthur Kill Road is approximately 250 feet to the west of the proposed flagpole.

The applicant proposes construction of a public utility wireless telecommunications facility containing an 82-foot high stealth telecommunications flagpole, a 200 square foot concrete pad for

related operations equipment and a retaining wall which is approximately 36 feet long and up to 1.5 feet in height just south of this equipment area to minimize potential erosion. This concrete pad area would be enclosed with seven-foot high opaque fencing and further screened by 14 newly planted Scotch pine trees. The flagpole would be located approximately 45 feet to the east of this screened area. This flagpole would be centered within an approximately 617 square feet existing sodded triangular median at the end of a 105-foot service driveway from Arthur Kill Road. Three lighting fixtures are also located within this median to illuminate the flag at night. The flagpole has capacity for internal antennas for two potential carriers. The antennas for the applicant, Omnipoint Communications, Inc., would occupy one of these carrier spaces. The carrier for the other space is unidentified at this time.

This proposed telecommunications facility will enable provision of wireless communications services in the vicinity of the site where a gap in service presently exists. The flagpole would also include an American flag.

The proposal includes planting of screening trees around the enclosed 200 square foot equipment area. Street trees would be planted along Arthur Kill Road in accordance with regulations of the Special South Richmond Development District.

The applicant requests a special permit (C 050494 ZSR) pursuant to Section 107-73 of the Zoning Resolution to modify the 50 foot Special South Richmond Development District height limit to

allow construction of the telecommunications flagpole. The Commission must make findings related to effects of this proposal on the surrounding area's character and the ability of the proposal's design to take full advantage of the site's special characteristics.

The project also requires an authorization (N 050495 RAR) for modification of existing topography in the project site area to locate the 200 square foot concrete slab equipment area on level ground and to excavate for the telecommunications flagpole foundation. In the proposed equipment area, the existing grade rises approximately two feet in elevation. The 1.5 foot high retaining wall just beyond this equipment area is proposed to minimize potential erosion. In the flagpole area, excavation is required for a 30-foot deep foundation. The modification of existing topography is requested to provide a level surface for the equipment area, and to minimize the potential for erosion and for excavation for the location of the telecommunications flagpole.

## **ENVIRONMENTAL REVIEW**

This application (C 050494 ZSR) was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq. and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 04BSA071R. The lead agency is the Board of Standards and Appeals.

After a study of the potential environmental impact of the proposed action, a Negative Declaration was issued on June 15, 2004.

## **UNIFORM LAND USE REVIEW**

This application (C 050494 ZSR) was certified as complete by the Department of City Planning on September 12, 2005, and was duly referred to Community Board 3 and the Borough President, in accordance with Article 3 of the Uniform Land Use Review Procedure (ULURP) rules.

### **Community Board Public Hearing**

Community Board 3 held a public hearing on this application on September 21, 2005, and on September 27, 2005, by a vote of 28 to 0 with 0 abstentions, adopted a resolution recommending approval of the application subject to the following conditions:

Community Board #3 approves the application for the telecommunication tower at 122 Arthur Kill Road with the same conditions put forth to the Board of Standards and Appeals: lighted flagpole, added landscaping, and a guarantee to replace the flag every year.

### **Borough President Recommendation**

This application was considered by the Borough President, who issued an unfavorable recommendation for the application on October 31, 2005. The Borough President's recommendation stated:

I am opposed to the installation of these towers near residences for the following reasons:

- Possible adverse health effects of 24 hour operation proximate to residential neighborhoods
- The devaluing of existing homes near the subject property

- The capacity of City Agencies to review specialized information regarding the legitimacy of “dead zone” claims by the various service providers
- Structural design concerns regarding sound engineering practices for adequate flagpole design
- Proposed maintenance programs to ensure adequate structural upkeep of the superstructure
- Adherence to performance standards regarding noise and exterior lighting.

This office has scheduled a joint meeting of service providers to further discuss the aforementioned issues and the possibility of sharing future tower facilities.

### **City Planning Commission Public Hearing**

On October 19, 2005 (Calendar No. 22), the City Planning Commission scheduled November 2, 2005, for a public hearing on this application (C 050494 ZSR). The hearing was duly held on November 2, 2005 (Calendar No. 22). There was one speaker in favor and none in opposition. The applicant’s representative spoke in favor of the application and described the proposal and stated that it would increase the capacity to provide wireless services in the area. He further stated that the Telecommunications Act of 1996 pre-empts local regulation of radio frequency emissions provided that the service operator is in compliance with federal regulations. He further noted that proposed emissions for this project will be less than 1.2% of the allowable limits enacted pursuant to the 1996 act.

There were no other speakers and the hearing was closed.

### **Waterfront Revitalization Program Consistency Review**

This application was reviewed by the Department of City Planning for consistency with the policies of the New York City Waterfront Revitalization Program (WRP), as amended, approved by the New

York City Council on October 13, 1999 and by the New York State Department of State on May 28, 2002, pursuant to the New York State Waterfront Revitalization and Coastal Resources Act of 1981 (New York State Executive Law, Section 910 et seq.). The designated WRP number is 05-033.

This action was determined to be consistent with the policies of the New York City Waterfront Revitalization Program.

## **CONSIDERATION**

The Commission believes that the grant of this special permit is appropriate.

This special permit allows for a modification of the Special South Richmond Development District's height limitation of 50 feet pursuant to Section 107-73 of the Zoning Resolution. The Board of Standards and Appeals has granted a use special permit pursuant to Section 73-30 of the Zoning Resolution to allow location of a non-accessory radio tower at this location. The proposed telecommunications flagpole would be 82 feet high and would be located more than 100 feet from the Arthur Kill Road frontage of the subject zoning lot in an R3-2 zoning district. Further, the stealth flagpole design presents this wireless telecommunications facility as a flagpole which is 3 feet wide at its base. Where the tower facility is visible it would be seen as a flagpole.

The Commission notes that the nearby area is developed primarily with cemetery and other community facility uses, as well as residences. The closest residential building is within the R3-2

zoning district, approximately 250 feet from the site of the proposed stealth telecommunications flagpole.

The Commission notes that enclosing the antennas inside the flagpole improves the aesthetic appearance of the telecommunications facility and takes advantage of the special characteristics of the site. The design of the facility as a stealth flagpole helps it to blend into the surrounding environment.

This parcel is located behind an existing maintenance building near the frontage of the lot. The portion of the proposed development containing operations equipment will be enclosed by seven-foot high opaque fencing and further screened by newly planted trees. The design of the telecommunications tower as a free-standing flagpole is seen as appropriate for this setting. The use of this parcel for a non-accessory radio tower in an R3-2 zoning district has been permitted by a BSA Section 73-30 use special permit.

In response to the Borough President's concerns, the applicant stated at the public hearing that the proposal is well within the federal regulations for this facility. The proposed emissions for this project will be less than 1.2% of the allowable federal limits. Further, the Commission notes that the 82-foot high flagpole would be 250 feet away from the nearest residence and set back 105 feet from Arthur Kill Road. The related operations equipment would be located behind an existing maintenance building and screened with trees and fencing. The flagpole has room for a second



potential carrier in addition to the applicant, Omnipoint. This would reduce the need for additional telecommunications structures in this area in the future.

Community Board Three's requests for flagpole lighting and added landscaping are incorporated in the site plan approved by the BSA and the City Planning Commission.

## **FINDINGS**

The City Planning Commission hereby makes the following findings pursuant to Section 107-73 which allows the Special South Richmond Development District 50 foot height limit to be modified:

- (a) that such development is so located as not to impair the essential character of the surrounding area;
- (b) not applicable; and
- (c) that the development's design proposal takes full advantage of all special characteristics of the site.

## **RESOLUTION**

**RESOLVED**, that the City Planning Commission finds that the action described herein will have no significant impact on the environment; and be it further

**RESOLVED** that the City Planning Commission, in its capacity as the City Coastal Commission, has reviewed the waterfront aspects of this application and finds that the proposed action is consistent with WRP policies; and be it further

**RESOLVED**, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New

York City Charter, that based on the environmental determination, and the consideration and findings described in this report, the application submitted by Omnipoint Communications, Inc. pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 107-73 of the Zoning Resolution to modify the height and setback regulations of Section 107-43 of the Zoning Resolution to allow an 82 foot high telecommunications tower in connection with a proposed wireless communications facility on property located at 122 Arthur Kill Road (Block 4475, Lots 1 and 175), in an R3-2 District, within the Special South Richmond Development District, Borough of Staten Island, Community District 3, is approved subject to the following terms and conditions to such application as are reflected therein:

1. The property that is the subject of this special permit (C 050494 ZSR), shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by Dewberry-Goodkind, Inc., for Omnipoint Communications, Inc., and incorporated in this resolution:

<b><u>Drawing Number</u></b>	<b><u>Title</u></b>	<b><u>Last Date Revised</u></b>
Z-1	Key Plan, Zoning Map and Bulk Table	August 30, 2005
Z-2	Site Plan	August 30, 2005
Z-3	Partial Site Plan	August 30, 2005
Z-4	Proposed Conditions Plan	August 30, 2005
Z-5	Equipment Layout Plan and Elevations	August 30, 2005
Z-6	Site Section Views and Key Map	August 30, 2005
Z-7	Encroachment Plan	August 30, 2005

2. Such development shall conform to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in this resolution and shown on the plans listed above. All zoning computations are subject to verification and approval of the New York City Department of Buildings.
3. Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.
4. All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of this special permit to the lessee, sublessee or occupant.
5. Upon the failure of any party having any right, title or interest in the property that is the subject of this special permit, or the failure of any heir, successor, assign or legal representative of such party, to observe any of the covenants, restrictions, agreements, terms of conditions of this resolution whose provisions shall constitute conditions of the special permit and authorizations hereby granted, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of said special permit and authorization. Such power of revocation shall be in addition to and not limited to any other powers of the City Planning Commission, or of any other agency of government, or any private person or entity. Any such failure as stated above, or any alteration in the development that is the subject of this special permit that departs from any of the conditions listed above, is grounds for the City Planning Commission or the City Council, as applicable, to disapprove any application for modification, cancellation or amendment of the special permit hereby granted.

6. Neither the City of New York nor its employees or agents shall have any liability for money damages by reason of the city's or such employee's or agent's failure to act in accordance with the provisions of this special permit.

The above resolution (C 050494 ZSR), duly adopted by the City Planning Commission on December 7, 2005 (Calendar No. 16), is filed with the Office of the Speaker, City Council, and the Borough President in accordance with the requirements of Section 197-d of the New York City Charter.

**AMANDA M. BURDEN, AICP, Chair,  
KENNETH J. KNUCKLES, Esq., Vice Chairman  
ANGELA M. BATTAGLIA, IRWIN G. CANTOR, P.E., ANGELA R. CAVALUZZI, R.A.,  
ALFRED C. CERULLO III, RICHARD W. EADDY, JANE D. GOL, LISA GOMEZ,  
CHRISTOPHER KUI, KAREN PHILLIPS, DOLLY WILLIAMS, Commissioners.**

**JOHN MEROLO, Commissioner, Voted No**