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Staff Review

Date: September 12, 2008
To: Nathan Poore, Town Manager
Town Council
From: Amanda L. Stearns, Community Development Director
Cc: Ethan Croce, Senior Planner, Al Farris, CEO
Re: 356 US Route 1 – Conditional Rezoning for Cell Tower Extension

Authority

The applicant requests a Conditional Rezoning under Section 3.12 of the Zoning and Site Plan Review Ordinance (ZSPRO) for the conversion of a Tier II Personal Wireless Service Facility (PWSF) to a Tier III PWSF. The conversion is a ten (10) foot addition to the tower to accommodate a new array of antennas. Article X of the Code of Ordinances, Section 8-350 specifies that all Tier III facilities require Conditional rezoning by the Town Council. Section 8-353. Permit required, ¶ (6), outlines the standards. Staff comments are *italicized*.

ZSPRO, § 3.12 Conditional Rezoning Standards

1. be consistent with the Comprehensive Plan and Open Space Plan – *The Comprehensive Plan addresses the subject of land use in the BP area east of I-295 very generally, pointing to it as one of the two areas where commercial development has been encouraged. Attached are the excerpts from the 1989 Open Space Plan regarding zoning recommendations as well as the Greening of Falmouth plan, as it was adopted subsequent to the Open Space Plan.*
2. establish rezoned areas which are consistent with the existing and permitted uses within the original zones – *Tier II facilities are permitted by right in this district.*
3. only include restrictions which relate to the physical development or operation of the property. – *yet to be determined*

ZSPRO, §3.12.2- Conditions imposed by the Town Council may be more restrictive, but not less restrictive, than the applicable requirements of this Ordinance. Conditions and restrictions shall relate to the physical development or operation of the property and may include, without limitation, the following:

- a. Limitations on the number and types of permitted and conditional uses, and re-designation of permitted to conditional uses and vice versa. – *Not applicable as the use already exists on the site.*

- b. Restrictions on the scale and density of development, and on the days and hours of operation. – The tower is currently 90 feet tall, the addition being about an 11% increase in height with a third set of arrays.
- c. Specifications for the design and layout of buildings or other improvements, including landscaping. – The proposal includes the construction of an 11.5' x 20' equipment shelter and 4' x 11' foot concrete pad to house a generator within the existing 60 x 59 foot fenced enclosure. No additional landscaping proposed.
- d. Schedules for commencement and completion of construction. – To be negotiated.
- e. Performance guarantees securing completion and maintenance of improvements, including landscaping, and guarantees against defects. – To be negotiated.
- f. Preservation of open space and buffers, and protection of natural areas and historic sites. The entire remainder of the site is wooded. Currently there are no local restrictions on the remaining land outside of the lease. The State of Maine holds a beautification easement (see Item 21 of the applicant's submittal). The extent of the easement has not been located on the site plan.
- g. Provisions for reservation or dedication of land for public purposes.
- h. Contributions toward the provision of municipal services required by the development, including, for example, infrastructure improvements such as roads and sewers, and specialized maintenance needs arising from the rezoning.
- i. Provisions for enforcement and remedies for breach of any conditions or restrictions.

Article X. Sec. 8-351. Zoning. The following standards are in the Code of Ordinances. The Council is charged with the conditional rezoning process. The ordinance does not address the submittal items or detailed standards for the review. At the pre-application presentation the Council determined that it would follow the Planning Board approval process. I have included ¶ (6) which articulate the standards the Planning Board will apply. Paragraph (c) below lists the criteria (in bold) the Council must address to grant a rezoning.

- (c) Tier III facilities where the tower base is at or above four hundred (400) feet based on the United States Geological Survey datum referred to mean sea level. Additionally, Tier III facilities may be allowed by conditional rezoning as approved by the town council pursuant to section 3.12 of the zoning and site plan review ordinance upon a showing by the applicant that:
 - (a) except for the height limitations on Tier I and Tier II facilities, the provisions of this article X have been met;

- (b) it is impractical to meet coverage and/or capacity needs of the applicant through one (1) or more Tier I or Tier II facilities; and
- (c) the visual impact of a single facility would be less than the visual impact of the number of Tier I and/or Tier II facilities required to meet such need.

In case of conflict between this section 8-351 and the zoning and site plan review ordinance, the latter ordinance shall control.

These remaining standards are those that would be applied by the Planning Board during site plan review. The Council has the authority to place specific conditions or restrictions through the rezoning process that may effect these standards.

- (6) *Standards for Tier III facilities.* Each Tier III facility may be established upon planning board approval of a Tier III facility permit application satisfying the requirements of subsection (1), and demonstrating that the facility will be constructed, installed and operated in compliance with all applicable provisions of this article X, and satisfying the following criteria. In cases where a conditional rezoning approval from the town council is required, the applicant shall obtain the town council approval before submitting an application to the planning board. The town council shall follow the conditional rezoning procedures contained in the zoning and site plan review ordinance and section 8-351 of this article. The planning board shall consider the following criteria in addition to the requirements of subsection (1):
 - a. The facility shall comply with subsection (3), subsection (4), and subsection (5)(b), (c), (d), (g) and (k).
 - b. In no event shall a Tier III facility exceed two hundred (200) feet above grade level.
 - c. Tier III facilities that are not subject to special painting or lighting standards of any federal agency shall meet as far as is practical the visual standards for Tier II facilities and at a minimum shall have a galvanized finish or be painted in a sky tone above the top of surrounding trees and shall be painted in an earth tone below treetop level or should be camouflaged by a "stealth" treatment. *–Please refer to the Planning Board Conditions of Approval for the original tower. They required a dual color paint scheme to camouflage the tower. Perhaps a continuation of the above treeline color would be appropriate.*
 - d. Unless existing vegetation provides a buffer strip the width of the required fall zone, calculated as the equivalent of the facility's height, the planning board shall require that all property lines along roadways or visible to existing abutting or nearby buildings (within one-fourth (1/4) mile radius) be landscaped as follows:

- i) With six (6) to eight (8) foot evergreen shrubs planted in an alternate pattern, five (5) feet on center and within fifteen (15) feet of the site boundary.
- ii) With at least one (1) row of deciduous trees, not less than two and one-half (2 1/2) inch to three (3) inch caliper measured three (3) feet above grade, and spaced not more than twenty (20) feet apart and within twenty-five (25) feet of the site boundary.
- iii) With at least one (1) row of evergreen trees at least four (4) to five (5) feet in height when planted, and spaced not more than fifteen (15) feet apart within forty (40) feet of the site boundary.
- iv) In lieu of the foregoing, the planning board may determine that the existing vegetation must be supplemented to meet an equivalent means of achieving the desired goal of minimizing the visual impact. To assist in making that determination, the planning board may require the applicant to provide a visual impact analysis by a qualified professional.