

**BOARD OF APPEALS
REGULAR MEETING MINUTES
DECEMBER 17, 2010**

Members Present: Clayton M. Harrison, Chairman
Gerald Coutinho, Vice Chairman
Christopher Graham
Kimberley A. Fernandes, Clerk
Donna Lambert, Alternate
William Wyatt, Alternate
Absent: Kendal Tripp
Also Present: Attorney Ilana Quirk, Kopelman & Paige

Chairman Harrison called the Zoning Board of Appeals meeting to order at 6:30 PM in the Westport Town Hall, 816 Main Road, Westport, MA.

Chairman Harrison stated that Town Counsel has asked for a brief Executive Session before opening the continued hearing for T-Mobile. Attorney Parisi stated he had no problem with this request.

Motion made by Mr. Coutinho to table the opening of the continued hearing for T-Mobile for 15 minutes. Second by Ms. Lambert. The Board voted unanimously in favor.

Executive Session – 6:30 PM

Motion made by Mr. Coutinho to enter into Executive Session pursuant to Massachusetts General Laws Chapter 30A, Section 21 to discuss pending litigation and approval of Executive Session Minutes. Second by Ms. Lambert. The Board voted unanimously in favor.

Roll Call Vote: Mr. Coutinho-aye. Ms. Lambert-aye. Ms. Fernandes-aye. Mr. Graham-aye. Mr. Wyatt-aye. Mr. Harrison-aye.

Open Session – 7:00 PM

T-Mobile Northeast, LLC & Robert J. Desmarais - RE: Continued hearing on an application request for variances and/or Special Permit. The applicant seeks relief from Article 9.0 in the form of a Use Variance; a Dimensional Variance under Article 7.2.1 and/or if applicable, a Special Permit under Article 9.2.1.1. Application is for a wireless telecommunications facility outside of the Telecommunications Overlay District, to be located at 560 Highland Avenue. The property is identified on Assessor's Map 5, Lots 10C & 11G. Property owner is Robert J. Desmarais.

Present were Attorney Parisi and David Maxson, Isotrope and Attorney Deshaies representing Gabriel Medeiros.

Attorney Quirk stated that the Board may want to seek an extension of the variance relief due to Special Permits having to be acted upon within 90 days from the closing date of the hearing. Attorney Parisi stated he would see how it goes tonight before agreeing to an extension.

Attorney Parisi stated he is representing T-Mobile who is seeking a use variance and special permit for the expansion of a non-conforming use. A laundry list of items have been reviewed including that no lighting of the tower was required, coverage maps showing alternatives, the proposed zone will provide the coverage being sought, a prior existing tower will not provide enough coverage, a CW test was provided, a balloon test

at 170 ft. was conducted and the results were provided and a structural integrity design for the proposed tower was provided. All requested information has been supplied to the Board and a supplemental application has been filed.

Mr. Maxson stated he received the materials from the applicant. All the material was confirmed and agreed with or satisfied the Board's concerns; all materials was compared to Isotrope's using a different model. Mr. Maxson stated the site most beneficial to T-Mobile is the proposed site; and in adhering to the bylaw it is compliant. Attorney Quirk questioned the height of the tower at 170 ft., what about varying height tests. Mr. Maxson stated the lower the height of the tower, the more reduction in coverage. As for visual impact and co-location, by lowering the tower 40 to 70 ft., the coverage will lessen. In looking at 97 ft., which was submitted by the applicant, the coverage is being distorted by terrain and building coverage. Both models would show lowering coverage at incremental heights of 97, 117, 147 and 167 ft. Mr. Maxson noted that Dartmouth should not be a concern of Westport; every ounce of good coverage makes sense for T-Mobile. At 167 ft. there is a change in coverage, it is better and more, whereas at 97 ft. it retracts the coverage. Mr. Maxson noted that 25% of US residents do not have a landline but rely on cellphone use. Attorney Quirk stated that in Mr. Maxson's opinion, it has been confirmed there is a substantial gap in coverage. Attorney Quirk then asked if there was any new information to add. Mr. Maxson stated his analysis in this area is that coverage is below the threshold for reliable coverage. Mr. Maxson stated that at 170 ft. there is substantial covering for in building service along Highland Avenue and the surrounding streets such as Old Fall River Road; at 147 ft. it is essentially serving the same area at 170 ft. particularly in Westport; at 117 ft. there is a withdrawal of coverage in Dartmouth but not a significant change in Westport from 147 ft.; and at 97 ft. this is the most substantial change, you are getting closer to the tree line but in Dartmouth, coverage pulls back and provides less in building coverage and this information is basically the same along Route 195.

Attorney Quirk asked about an analysis of Davis Road at 170 ft. what type of coverage would be provided? Mr. Maxson stated that question is mute; Davis Road target area is different, if changing Davis Road to 170 ft. and 97 ft. nothing significant is gained. Mr. Graham stated that Davis Road is a congested area allowing no fall zone. Mr. Maxson stated that co-location would require 150 ft. based on comparable coverage.

Mr. Harrison asked about the technology and design on an antenna. Mr. Maxson stated the proposal for a customary array of antennas presents every time a change is made to beautifying a structure, you are limiting the coverage and flexibility; tree camouflage can help in this area.

Mr. Coutinho asked if this property had a non-conforming use; the property consists of two lots, one fronting on Highland Avenue and one fronting on Old Bedford Road.

Mr. Desmarais stated he purchased the first lot on the Highland Avenue property on December 7, 1964 and the second lot in 1972, which is the adjacent lot; he purchased the third lot in 1985, which consists of nine acres and he purchased the fourth lot in 1987.

All the lots were under Mr. Desmarais's name and it was zoned as unrestricted.

Mr. Coutinho asked if the tower could be moved further into Mr. Desmarais's property; Mr. Coutinho stated he was looking for alternatives on the lot itself. Attorney Parisi stated the topography changes drastically on the lot and surrounding area. Attorney Quirk asked if the Board would like to have spot elevations done. Mr. Desmarais stated there was not only the change of elevations but there is also wetlands to consider.

Attorney Quirk stated this is not in the Overlay District, if it was the Board could allow up to four co-locations. The Town Bylaw, under FCC ruling, has not caught up with in the building coverage. The dilemma being faced is does the Town want a lower height

and then drive for more towers. The FCA allows for higher towers, more coverage and less towers.

Mr. Coutinho explained that the Town can't flat out disapprove of the application request, this needs to be worked out. Attorney Quirk stated this is not a typical Special Permit, the Board has to decide if allowed, what height will be allowed. Mr. Graham stated that with a lower height, more towers maybe necessary. Mr. Coutinho stated that at 97 ft., Westport coverage is the same, let the applicant go to Dartmouth; if the tower is put in the wetlands, maybe a higher tower can be the solution. Ms. Lambert stated that in moving the tower to another section of the property, it would possibly effect another abutter. Attorney Parisi stated that coverage knows no jurisdiction, as far as the alternative of moving the tower, T-Mobile has the right to build it where it is sited. T-Mobile picks the land that is not valuable; T-Mobile picked the most appropriate location factoring in a lot of items for impact in the proposed location. Attorney Parisi stated the Board should consider shorter means more towers and sometimes there is a need to go to residential lots. The proposed location is appropriate to what we have researched. Mr. Coutinho stated he did not see any area of white in Dartmouth. Attorney Parisi stated that Mr. Maxson, the Town's consultant, did concur a gap in coverage. Mr. Maxson stated that if the Board thinks about a lower tower, he suggests that 130 ft. would be appropriate. The attorney could agree to 150 ft. but anything less would have to return and do more research and testing. At 130 ft. there would be a change in visual impact and potentially the lost of four co-locations. Mr. Coutinho stated that he understood that over the past 10 years, there have been improvements in giving service. Mr. Maxson stated the improvement has been in the cellphone itself; in the last 10 years, the demand has required more coverage. One factor, too high a tower can cause problems in frequency and too low the same affect; the technology is moving toward more complex equipment.

Attorney Marc Deshaies representing Gabriel Medeiros, 640 Highland Avenue presented pictures to the Board of the visual impact of the balloon test in his client's backyard. The Town Meeting developed an Overlay District for this type of request. The Zoning Board of Appeals has the right to grant a use variance but this is a residential area and under Chapter 40A, section 10, a use variance is a great source of danger to zoning, it is the hardest to attain. There is nothing before this Board to justify the granting of a variance – soil conditions, shape and topography of the land; financial hardship to the petitioner, substantial detriment to the public good and it does not derogate from the bylaw. The Town Meeting approved an Overlay District and the Attorney General approved it, this Board must abide by this. This petition should be denied. Attorney Deshaies stated that in putting aside the FTCA, look at what is before this Board. Under a Special Permit, this would be a detriment to the neighborhood and as a threshold matter, the petitioner does not meet the requirements. Attorney Quirk stated the alterations to the non-conforming use is more detrimental, as for the variance, the Board has the express authority to grant and the FTCA is in the room, and there is a draft decision for you to review.

Mr. Coutinho stated that his thinking is to move the proposed tower to the non-conforming use area. Mr. Graham asked what minimum height is required. Attorney Parisi stated his client applied for 170 ft. but in looking at the bigger picture, we are amenable to a lower height of about 150-ft., this would reduce the visual impact and still deliver coverage. Mr. Maxson stated the balloon is roughly 5 ft. in diameter, the tree line is about 110 ft., actually on the property, the tree line goes up; so using my calculations, the pictures shows the test at approximately 140 ft. Mr. Harrison stated that Mr. Medeiros will have the most visual impact, so perhaps if the tower is lower and moved a little from the requested location that could be looked at.

During discussion, it was established that the change from unrestricted to residential occurred at Annual Town Meeting, April 4, 1987; the property was purchased in January 1987.

Attorney Parisi stated that in moving the tower onto the property, it would be closer to Bentley Lane and may have more of an impact on those abutters. The poles for the power will run along the edge of the property and across the back of the abutting property then toward the tower with all overhead pole lines. There is no ability to go underground and the trees on the property would help the poles disappear after the first two poles.

A recess was called from 9:19 PM to 9:40 PM.

Mr. Maxson stated that in looking at an aerial photo, the farther back the trees go, the better the buffer. The property has a boar's eye view, shifting laterally would affect someone else, in moving it; the difficulty in the alternate location is that it would not meet the fall zone setback but it would reduce visual impact. Attorney Parisi stated that in moving it, it may not meet the tower height setback but as Town Counsel pointed out, we may not need to meet all the requirements but it will meet all other setbacks and the elevation change will not be that drastic.

Mr. Coutinho stated to Attorney Parisi that the monopole is designed to be held together because of wiring inside; it is designed in stages, could it be over designed on the bottom 2/3's of the pole.

The Board conducted a review of the draft decision. See attached.

Following the decision review, Attorney Parisi agreed to sign the extension.

Motion made by Mr. Coutinho to accept the extension agreement with T-Mobile. Second by Ms. Lambert. The Board voted unanimously in favor.

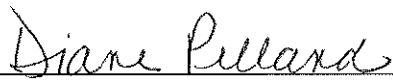
Motion made by Mr. Coutinho to close the hearing. Second by Ms. Fernandes. The Board voted unanimously in favor.

Motion made by Mr. Graham to direct Town Counsel to prepare the T-Mobile Decision as discussed; and allow Chairman Harrison to sign it. Second by Ms. Lambert. The Board voted unanimously in favor.

Motion made by Mr. Coutinho to adjourn the Zoning Board of Appeals meeting at 11:00 PM. Second by Ms. Fernandes. The Board voted unanimously in favor.

Adjournment

Respectfully submitted,


Diane Pelland, Principal Clerk
to the Zoning Board of Appeals

APPROVED:


Kimberley A. Fernandes, Clerk