

**ZONING BOARD OF APPEALS
REGULAR MEETING MINUTES
WEDNESDAY
FEBRUARY 24, 2021
(Conducted via Google Meet)**

RECEIVED
APR 1 2021
WESTPORT ZONING
BOARD OF APPEALS

Members Present: Roger Menard, Chairman
Gerald Coutinho, Vice-Chairman
Constance Gee
Peter Borden
Barbara Pontolilo
Raymond Elias

Chairman Menard called the Zoning Board of Appeals meeting to order at 6:35 p.m. with the reciting of the Pledge of Allegiance.

Chairman's Announcement - Under MGL Chapter 30A, Section 20(f) - Meeting being recorded.

Governor Charlie Baker's Mandate

Chairman Menard opened the hearing by reading the provisions mandated by Governor Charlie Baker's guidelines regarding the congregation of people at the Town Hall and the manner in which municipal boards should meet and hear matters on their agenda.

Chairman Menard advised that the meeting was being conducted remotely by accessing Google Meet. A roll call of the members' votes will be conducted for each motion. The Board would receive information and documents from the petitioners and, then, accept comments from anyone in attendance before closing the hearing and making a decision.

1. Chairman Menard read the public hearing notice on the petition for special permit and variance of Municipal Communications LLC, Applicant, and Brian J. Giblin, Owner, with site plan approval for a wireless communications facility to be located within a residential/agricultural district, to construct a 150-foot monopole-style tower, with minimum of 12 panel antennas and related equipment, in compliance with Article 6.3 as Recodified. The subject property is located at 67 Masquesatch Road, Westport, MA and is shown on Assessor's Map 58, Lot 173G.

(Due to audio issues, notice was re-read into the record.)

Attorney Brian Corey, Jr., 519 American Legion Highway, Westport, MA addressed the Board. He stated that:

- He represents the petitioners, who are requesting a special permit/variance of the site plan for a cell tower to be located at 67 Masquesatch Road, Westport, Massachusetts.
- The site is located adjacent to Route 88, Masquesatch Road and Drift Road.
- The monopole will be 50 feet from Drift Road.
- The Conservation Commission has approved the location of the pad site, as well as associated attachments to the pad and has issued an Order of Conditions.
- There is a large gap in cell coverage in Westport, particularly in the area of the proposed tower.
- AT&T will be the cell service provider for this tower.
- There has been a lease secured with the former owner, John Snyder, who then sold the property to the current owner, Brian J. Giblin, whereby the lease remained in effect.
- This is an opportunity for the tower to provide 5G coverage to Westport, create a seamless network throughout the Town, replacing the current 4G coverage. The 5G coverage will provide extremely fast, data-driven service, particularly for Internet service, which is currently being provided by one other provider.
- This system will drastically increase the level of the signal for this area. Also, it will increase the level and abilities of first responders to communicate during emergency situations.
- The significance of a 5G network has been made more apparent during COVID, to transmit service for virtual meetings, without using a server, as well as the ability of everyone in the area to not only e-mail large documents, create faster speed to download, but also for video-to-video interaction.
- The primary focus is due to a growing number of devices demanding Internet access. Many devices require substantial bandwidth and 5G service. With the use of different antennas, radio frequency deliver data without delay.

- The new network to be created is basically same as the existing one, except 5G uses higher frequencies, where 4G uses lower ones -- 5G is 90% more energy efficient and 20 times faster than 4G.
- A 5G network brings this area of Westport into the future, not just for these types of communication, but as a dedicated first responder network, which will allow clear communication during natural disasters or during times of natural emergency that this area has never had; will allow service to continue, even with downed lines during ice storms or high wind events. All of Westport will eventually be covered with this 5G coverage, which is necessary for the benefit of citizens of Westport and to complete the mandate that AT&T has to provide seamless and complete network.
- The monopole will be self-contained within the compound area; positioned as far away from residential structures as possible; conforming as much as possible to bylaws. The maximum height for a tower under the bylaw is 150 feet. The monopole is constructed as a "breakaway" structure, in that it has the ability to fold into itself; and if collapse occurs, the pole will remain within the compound. A backup generator is designed to minimize noise.
- Traffic to and from the site will be minimal as it is a self-supporting site. Maintenance will be performed on a regular basis.
- The applicant has attempted for years to get coverage in this area.
- A reliable system depends on a grid of cellular antennas.
- No other cell phone towers exist in the site's geographical area that could handle this communication deficit.
- This proposed site will become part of national safety broadband network.

Chairman Menard asked Attorney Corey to explain how the petitioner intends to comply with the bylaws and the ways in which the requests for variances compare to current requirements of the bylaws.

Attorney Corey noted that:

- The site is located within a residential/agricultural district; will contain a minimum of 12 antennas, equipment shelter, and emergency power backup generator.
- The facility indicates it is in compliance with the bylaw, and not permissible outside of very limited Telecommunications Facilities Overlay District.
- There are no other parcels within the TFOD from which necessary coverage may be provided and, therefore, the petitioner is requesting a blanket variance. The Board is vested with authority to grant all necessary relief to provide compliance with the Telecommunications Act.
- The height of the monopole is designated to be 179.6 feet and set back 50 feet from Drift Road. The height of the monopole complies with the bylaw that mandates a maximum height of 190 feet.
- The petitioner has shown control of site as having a valid lease from the former owner, John Snyder, to the current owner, Brian Giblin, to AT&T. This is only area currently available to provide reliable services to the Town and fulfill the mandate within the Commonwealth of Massachusetts. This coverage is not currently available anywhere in the Town.
- There will be no negative impact on existing agricultural area. Balloon tests that were conducted to identify any visual impacts from Drift Road, up the road and within the Town. The balloon test sites are locations where observations were made, with an emphasis on the Historic District, Drift Road, running east. Balloon tests identify what would be visible so that there will be a minimized impact on the area.
- The facility, to the extent practicable, will maintain the aesthetic qualities of the Town. The site abuts a state highway (Route 88), which will have minimal negative visual impacts to adjacent properties and neighborhoods.
- The existence of the monopole will not present a threat to the health, safety and welfare of residents.
- The site will provide coverage during national or local emergencies for first responders. The spectrum will hold a call sign -- WQQ234 -- and will allow seamless communication

for first responders, even in the worst of disasters. The facility has been selected as a suitable site to comply with FirstNet, which is responsible for the deployment of the Nationwide Public Safety Broadband Network, conducted by AT&T.

Chairman Menard asked that Attorney Corey address the dimensions delineated in the plans and how those will affect the neighborhood.

Attorney Corey stated that:

- The site is located on the corner of Masquesatch Road, abutting Route 88 and Drift Road.
- The monopole could be disguised as a fir tree, taller than surrounding foliage to blend in with the treed area.
- The wooded site surrounds the compound and areas to the south are wetlands, which have been delineated by the Conservation Commission.
- The strip of land that the State owns runs down to the Fontaine Bridge. That area would provide an adequate tree buffer from public view with 50 feet setback from the roadway. The monopole would not be visible from roadway.
- The closest tower is 2.72 miles away, located north of this project up on Main Road and is an older facility. This site will provide a monopole that is stealth, with no guard wires, and connected directly to the ground with the latest technology.
- There will be no intrusion to the wetlands. The pole will be situated on a concrete pad, with no intrusion to the ground.

Chairman Menard stated that the 50-foot setback from Drift Road is far shorter than the required distance, which is to be equal to the vertical height of the tower.

Attorney Corey stated that the wetlands prohibit the pole's placement anywhere other than the proposed site. This site is the most reliable and best suited. Construction accommodates safety concerns, wherein the pole would fold into itself at a time of emergency. Therefore, the setback would not be a concern. He also noted that the petitioner will attempt to conform to the bylaws as possible.

In response, Chairman Menard said that the location of the pole is deficient and should be as far away as the height of the pole.

Again, Attorney Corey stated that the petitioner would attempt to conform as much as possible to the bylaws, requesting a variance to accommodate the plans.

Site Engineer, Sohail Usmani, of C2Systems, 65 Dartmouth Drive, Auburn, New Hampshire, addressed the Board. He stated that:

- He is a consultant for AT&T and designed the site.
- The next closest site is more than 2 miles north of this proposed site; with coverage gaps as a result along Drift Road, Route 88 going south, Main Road and other roadways.
- The antenna will fulfill federal mandate, extending coverage along River Road, to improve coverage to areas such as the Westport Yacht Club and the State Beach Reservation.
- This site also caters to provide FirstNet, an entity that was established 9/11 in 2001 for first responders to access anytime and anywhere. The FirstNet needs will not be met if this pole is not installed due to lack of coverage and coverage gaps in south of Westport.

Chairman Menard asked for a description of the location of the site, specifically the proposed additional ingress and egress) to the site. The petitioner may want to consult with the Zoning Enforcement Officer as to whether a variance would be required to have access to and from the site in addition to the current driveway. He also noted that, from the site plan, it seemed that there were only 25 feet from the property line.

Attorney Corey responded that the property line for the facility is off of Drift Road; however, the pole would be situated within the Town layout of roadway. Attorney Corey also stated that the site is not 25 feet from the property line and, in fact, is 30 to 35 feet in distance, with a total of 50 feet from the Drift Road layout.

Chairman Menard requested that Attorney Corey address the distance to the west, being 25 feet from the property line to the west.

Attorney Corey stated that he believed that that area is not covered by the bylaws.

Chairman Menard quoted the bylaw: "A tower shall not be erected nearer to any property line than a distance equal to the vertical height of the tower (inclusive of any appurtenant devices), measured at the mean finished grade of the tower base. A tower shall be set back from any public way, except interstate highways, a distance at least equal to one and one-half times the vertical height of the tower, measured at the mean finished grade of the tower base." Therefore, he believed that the petitioner would require an additional variance from the setback requirement to the west. Further, Chairman Menard noted that Route 88 is not an interstate highway and, therefore, a variance would be required for this setback as well.

Attorney Corey stated that he did not believe a variance was necessary in that area of the State highway. He also indicated that the Special Permit conditions would be dictated by the Zoning Board and enforced by the Zoning Enforcement Officer as to a driveway for access to the site.

Chairman Menard reiterated that there are 2 separate issues in this petition: a Special Permit for installation of the tower; and variances required for approval for that particular facility.

Attorney Corey said that he believed that the requirements for a Special Permit have been met by the site plans. He noted that the standards for the tower are met with the existing terrain. The tower will be self-supporting, and to be hidden within a pine-tree-like structure, minimizing visual effects. He also stated that the health, safety and welfare of that area will be increased by the inclusion of the tower to accommodate the FirstNet systems. Attorney Corey restated that the site will be as compliant as possible.

Chairman Menard noted that, in order for the Zoning Board to make a rational decision, it would need a complete description of what is being asked for, namely: variances. Also, the Board must be clear as to how the petitioner intends to meet the requirements of the Special Permit.

Attorney Corey stated that the 9-page attachment to application outlines the relief being requested; however, he would further itemize those and present them at the next hearing. He said that the petitioner is asking for variances from all bylaws. For example, requesting a variance, in that this site is in a residential/agricultural district. He also noted that it is not anticipated that the pole will have any lighting required by the FAA; that the pole will be adjacent to Route 88 with ample buffers

of vegetation; the site will not produce significant traffic; any visits to the site be 1 or 2, the most, to check on site and perform necessary maintenance; and this is the only site available in this area that would eliminate the coverage void to provide the necessary inter-connection for a 5G network for Westport and the FirstNet system; no signage requirements; no odor of fumes and no glare issues. The facility will not require additional services or fire protection as the monitoring equipment will immediately detect any malfunction or tampering.

Chairman Menard advised that the bylaws in effect here are those that have been recodified in 2020 and the numbering of the bylaws differ from the prior bylaws.

Chairman Menard stated that, for the next hearing, Attorney Corey should provide: an itemization of all the characteristics of a Special Permit that the petitioner does not intend to meet, as well as any and all variances from the bylaws being requested. This hearing should be continued to afford the Board members a full understanding of the requests being made prior to making a determination. Chairman Menard suggested that the members, as well as abutters and anyone else attendance, express their comments so that the petitioner may have a better understanding of what information he should be ready to provide at the next hearing.

Mr. Coutinho inquired as to the discrepancies with some of the documents, in that some of the paperwork refers to the Masquesatch address and others to 1850 Drift Road. He noted that the Assessors do not show a listing for that Drift Road address. Also, Westport is in Bristol County, not Worcester County as noted by the site plans. All paperwork should be with one address and if not, the Board should have an explanation for the discrepancy.

Attorney Corey stated that the Drift Road address is based on a radio testing site.

Mr. Coutinho asked Mr. Usmani if it were possible to co-locate, technically speaking, the 5G system with a 4G system?

Mr. Usmani responded that, yes, it can be.

Mr. Coutinho said that, a number of years ago, the Board approved a tower and, for aesthetic reasons, was to be installed in the spire of the Westport Point church; in the alternative, the tower would be installed in the flagpole area of Tripp's Boatyard. Ultimately, the tower was installed in the flagpole at Tripp's Boatyard. This site is not mentioned in the petitioner's

application at all and would like to know why it was eliminated from the application. That tower was installed specifically to cover what is being requested here. Mr. Coutinho stated that other locations should not be dismissed out of hand.

Attorney Corey did not have an answer, but believed that that area may be inadequate for the purposes requested here, and may not have the adequate height to cover the areas in question here. He also said that the height at the Main Road site would still be lower than the height of this tower. He agreed to review this issue at the next meeting.

Discussing the balloon test, Mr. Coutinho stated that, in the past, balloon tests were conducted with Board members present, as well as giving an opportunity to any abutters or parties of interest in Town to attend or watch for visual impact purposes. This event would have been posted as a meeting to the web site.

Chairman Menard asked if there were any other members wishing to inquire and there were none. He then opened up the hearing to the public, requesting that any person commenting should state his or her name and address and all comments should be concise in light of the fact that there would be a further hearing on this matter.

Max Kohlenberg, 1789B Main Road, said that he agrees that most people would support having better service. The question, however, is more if there are other sites that have been considered for this project and, if so, why were those rejected? He also noted that, looking to the northeast of the Drift Road intersection, if the tower were set in the woods, it might serve better.

Attorney Corey stated that the site across the street is 61A land and no tower can be placed there by agricultural covenant; cell phone towers are not acceptable under agricultural restrictions; and he will inquire of his client as to efforts to find a different location.

Martha Sears, 48 East Shore Road, noted that Masquesatch Road is a private road and is maintained by an association. Therefore, access to the site would be an issue. Also, she mentioned that, further up Drift Road, there was conversation of a tower, but she was unsure as to the status of that.

David Cole, 2037 Main Road, commented that he believed the proposed location was the most inappropriate area for this tower. He also stated that the petitioner's claims that the pole will not be visible are inaccurate, in that, anyone will be able to see it

clearly while traveling up and down Route 88. He also noted that the area will most likely be flooded when sea level rises. He suggested that placing the tower on a higher hill will increase service.

Attorney Corey responded that there has been a full study completed, showing the elevation. He said that the placement of the pole has been approved by the Conservation Commission. Further, the proposed location is up-gradient and flooding is almost impossible; would have to have extreme change in elevation. The site is at least a half mile from any body of water.

Chairman Menard stated that, according to the map, the ground elevation is 38 feet above sea level.

Annie Perlick, 1814 Drift Road, stated that she is concerned about the visual impact. Echoing Mr. Cole's comments, she said that the trees are deciduous trees, and, therefore, disguising the tower as an evergreen tree will not work. People walk and bike in that area. She would like to see artist renderings (to see chain link fence, location of the building on the property) to see how it would aesthetically look like the neighborhood.

Buzz Brownlee, 77 Masquesatch Road, an abutter, noted that the setback from Drift Road is minimal. He said that the tower at Tripp's Boatyard uses T-Mobile, which is not an issue. He is concerned about the collapsibility of the tower into the site and the effect on the aesthetics to the neighborhood. Also, he stated that 5G service is not a given, as it interferes with GPS and weather forecasting; many federal agencies object to 5G. He also commented that the tower would be visible from the waterways and mar the nature of Westport Point area.

Chairman Menard stated that he drove through that area and he has a cell phone that utilizes AT&T. He said his phone showed 5 bars up Horseneck Road and Gooseberry Island with no issue with service.

Betty Slade, 2037 Main Road, asked whether the project is subject to the PNF (Project Notification Form that Massachusetts Historical Commission sends to local Historical Commissions) as to the impact on historical areas.

Parker Mauck, 69 Masquesatch Road stated that he abuts the site. There was discussion regarding enactment of bylaws that are voted in by Town Meeting.

Chairman Menard stated that any zoning changes require 2/3 approval by Town Meeting. He said that the bylaws need to be constantly reviewed to accommodate modern-day issues. The Zoning Board is granted authority to grant or deny this type of petition.

Mr. Coutinho noted that the reason why notifications of hearings are published in the newspaper twice is for everyone to be notified and attend the hearings.

Mr. Elias asked whether the site plan still needs to be reviewed with Planning Board?

Chairman Menard said yes, that it is just one step in a long process and the petitioner will be required to work with the Building Commissioner as well as to any conditions placed in the Board's decision.

8:32 p.m. -- Chairman Menard made a motion to continue this hearing to Wednesday, March 31, 2021 at 7:00 p.m. Ms. Pontolilo seconded the motion, which passed by unanimous vote with each individual member of the Board voting aye in a roll call.

Correspondence:

Jeffrey and Niveria Rodrigues, 45 Pine Street sent a letter to the Board regarding the Board's denial of their administrative appeal. Mr. and Mrs. Rodrigues advised the Board about the issues they had with what they contend were inadequate legal services and misrepresentations made to them by their former attorney, Brian Corey. (Attorney Corey was not present for this discussion). Mr. and Mrs. Rodrigues noted how distraught they are at the denial of their administrative appeal because they have expended thousands of dollars for legal fees and to prepare the site plans. They contend that Attorney Corey advised them that the meetings were being continued; or they were given the incorrect date of the meeting in January. Mr. and Mrs. Rodrigues request that, because they are not at fault, would the Board be inclined to provide them with guidance as to pursuing a different petition.

Chairman Menard read into the record the most recent e-mail that was forwarded to Attorney Brian Corey. Because Attorney Corey had not submitted the requested documents, the Board decided to deny the administrative appeal. Several e-mails to Attorney Corey by the Board were not responded. Chairman Menard stated that he discussed this matter with Attorney Jeff Blake, Town Counsel, who indicated the decision cannot be reversed; however, the

petitioners can re-file with substantive changes, such that it would not be a continuation of the same petition.

Mr. and Mrs. Rodrigues would like to file a new petition with new site plan, including proposed house, septic system, and move forward. They said they would obtain legal advice, if necessary.

Chairman Menard said that, although he cannot guarantee a favorable result by the Board, he would be willing to review all documents filed with a new petition. He said that he believes that the Board members feel bad about this. Having to proceed with Zoning Board business through virtual meetings is not optimal, and, under normal circumstances, the petitioners would most likely have attended the hearings, with a different outcome.

Mr. and Mrs. Rodrigues discussed a similar property in the neighborhood that was approved by the Board and did not understand why that property had been approved and theirs was not.

Chairman Menard said that the issue is that the 2 lots are in common ownership, and, therefore, become one lot. There is legal precedent with the case of Dalbec, which is derived from an appeal of a Westport Zoning Board decision, that may be good law and may assist the Rodrigueses with their new petition. He suggested that they may also want to discuss this further with Ralph Souza and get some guidance from him.

Mr. Coutinho stated that, although the Board cannot give legal advice, he suggested that Mr. and Mrs. Rodrigues start with a review of the Dalbec case, which may help them.

Mrs. Rodrigues said that they would be submitting plans and other documents that were not part of the first petition. They would also file site plans that would show the lot numbers that have changed over the years and they have site plan with updated lot numbers. They would also be willing to finish paving the road accessing the property.

Mr. Coutinho said that he agrees with the comments made by Chairman Menard, that they were not given the opportunity to fully present documents or information to support their administrative appeal. He further noted that conducting Zoning Board hearings virtually is not ideal and that the fact that these hearings are not in person may be a factor taken into account as well. Mr. Coutinho noted that the addition of the Dalbec comparison to their property may be a factor to go forward with a new petition.

Administrative Items

1. Wetherlow Farms, 845 Sodom Road -- Mr. Coutinho stated that he sent an e-mail to Town Counsel, asking for guidance as to whether this matter should be addressed in Executive Session. Town Counsel has not responded back. This matter will be continued to a later date.

2. Minutes of January 13, 2021 - Ms. Gee made a motion to approve the minutes. Ms. Pontolilo seconded the motion and the Board voted unanimously to approve the minutes of the January 13, 2021 meeting, with each member voting aye on a roll call.

The Clerk will provide copies of the Recodified Zoning Bylaws to all the Members.

The Clerk will provide a copy of the Annual Report to all the Members.

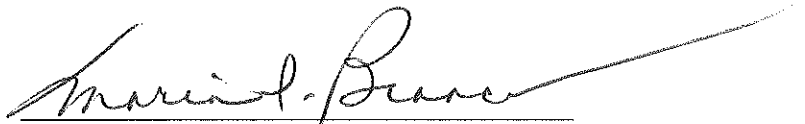
Next meeting is scheduled for March 31, 2021 at 6:30 p.m.

9:03 p.m.

Motion made by Ms. Pontolilo to adjourn the meeting. Seconded by Mr. Elias, with each member voting aye on a roll call. The Board voted unanimously in favor.

Adjournment.

Respectfully submitted,



Maria I. Branco, Principal Clerk
to the Zoning Board of Appeals

APPROVED:



Roger Menard, Chairman