

**ZONING BOARD OF APPEALS  
REGULAR MEETING MINUTES  
WEDNESDAY  
AUGUST 18, 2021**

RECEIVED  
OCT 29 2021  
WESTPORT ZONING  
BOARD OF APPEALS

**Members Present:** Roger Menard, Chairman  
Gerald Coutinho  
Peter Borden  
Constance Gee  
Raymond Elias

Also present was Attorney Brian Corey, Peter Correy via conference call, and Attorney Robin Stein, Town Counsel.

Chairman Menard called the Zoning Board of Appeals meeting to order at 6:30 p.m. with the reciting of the Pledge of Allegiance.

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

Chairman Menard advised that the Board would be conducting in-person meetings in accordance with the Board of Health's mandate that all persons entering Town of Westport buildings must wear masks or face coverings.

Birthday greetings were extended to Vice Chairman Gerald Coutinho on his 80th birthday.

1. Chairman Menard opened the continued hearing 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.

Chairman Menard introduced the Board members who will be deciding this matter: Roger Menard, Gerald Coutinho, Constance Gee, Peter Borden and Raymond Elias.

Chairman Menard noted that the Board would accept any evidence that the Applicants would like to submit; the Board would discuss and ask questions; and, then, the hearing would be opened up to the public for comment. He also advised that the Board would hear only new evidence and that any evidence presented in prior hearings should not be repeated. Once all evidence has been presented, the Board will close the hearing and deliberate and render a final decision.

Chairman Menard read comments that were made by the Board's consultant, Ivan Pagacik from IDK Communications. From his review of the coverage maps, Mr. Pagacik noted that:

1. The Chardon site at 125 feet has similar coverage to the proposed site at 145 feet.

2. The Gifford site was run at 100 feet and provides maybe around 75% of the coverage that the proposed site has. Note it was run at 100 feet, so a higher height might provide more.

3. The Tripp site at 50 feet provides maybe half the coverage that the proposed site offers.

4. The Tripp site at 120 feet provides a little more coverage than at 50 feet, but it is not a large amount more.

5. The Church site at 40 feet provides maybe a little more than 50% of the coverage at the proposed site.

6. Utilizing the Tripp and Gifford sites looks to provide at least 90% of what the proposed site offers.

Mr. Pagacik also stated that these were not official percentages, as those would have to be outputted from the modeling software.

Chairman Menard then read into the record correspondence that the Board had received subsequent to the August 4th, 2021 hearing as follows:

E-mail from Betty Slade dated August 14, 2021, responding to several comments made at the prior hearing by Attorney Corey.

E-mail from Carl Tripp dated August 17, 2021, advising that F.L. Tripp and Sons would consider installation of a second cell tower on the Marina property.

Letter dated August 17, 2021 from Sohail Usmani, contractor to AT&T, that reduction in height of the tower to 136 feet would mean that not all areas having a significant coverage gap would be covered, and the efficacy of coverage and capacity for Drift Road and the surrounding geographic area would be reduced.

Attorney Brian Corey, Jr., 519 American Legion Highway, Westport, MA, who represents the Applicants, stated that EBI Consulting submitted requests to the Westport Historical Society for comment on the project, but received no response.

E-mail from Betty Slade dated August 10, 2021, attaching coverage maps for the Norman Buck property located at 1 Least Tern Circle, Westport, abutting the Bayside Restaurant.

Discussion ensued regarding the possibility of utilizing the site at the Norman Buck property, located at 1 Least Tern Circle, Westport. Attorney Corey said that, although the Buck property would be closer to occupied dwellings, he believed placing the tower at that location would require additional variances.

Attending by teleconference call was Peter Corry of Municipal Communications, as well as David Maxson, the consultant for the group opposing the location of the cell tower, who authored the Isotrope Report.

There was discussion regarding the liability to the Town if the tower were to collapse, cause damage and would need to be dismantled. Attorney Corey said there would be no objection to the posting of a bond. Mr. Corry stated that, typically, a \$10,000 bond is posted, however, he would agree to post a bond of \$20,000-\$25,000.

Mr. Corry said that his company carries insurance on the property, in the event there is a liability issue, which would not directly or indirectly affect the Town.

Mr. Elias noted that the bond posted when the Board granted the cell tower requested by Omnipoint Holdings was \$13,000, however that was many years ago, in 2006.

Attorney Corey said that an insurance binder would be provided to the Board.

Regarding the hours for construction of the tower, Mr. Corry said the hours could be flexible and depend on the request made by the Board. He also stated that his company has, in the past, conformed to construction limitations depending on the surrounding neighborhood. The timeframe for the foundation to be poured and cured would be three (3) weeks; the tower could be assembled during the late evening/early morning hours. Chairman Menard stated that, perhaps, because of the noise issue, the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, would work best, with no construction on weekends or holidays.

Mr. Corry stated that the construction time would be about 8 to 9 weeks for the tree tower, with the bolting of individual tree limbs. He also noted that the traditional monopole with flush-mount antenna would work best. One other option would be the canister pole with interior-mounted antenna. A camouflaged/stealth monopole resembling a fir tree is the third option. He also noted that the number of carriers will depend on the type of pole installed.

Chairman Menard noted that he would be concerned with the pole's failing and falling. Although it is known to occur rarely, he would be concerned with the catastrophic damage it would cause.

Mr. Corry said that regulations have been revised to thwart those instances.

Attorney Corey stated that the Applicant had provided information from the design engineer that, taking into consideration the type of tower and its location, it would be a segmented fall.

Mr. Coutinho asked for clarification of the terms of the lease between Municipal Communications/AT&T and John Snyder, previous owner of 67 Masquesatch Road. Attorney Corey said the lease was recorded with the Registry of Deeds and it became an encumbrance at the time the Giblins purchased the property. Town Counsel Stein said that, so long as one of the current owners signed the application, the lease is not pertinent.

Town Counsel Stein also clarified the relief that is being requested by the Applicants, namely:

1. A use variance because the site is outside of the Telecommunications Facilities Overlay District.

2. A special permit with site plan approval pursuant to Recodified Zoning Bylaw 6.3.5.

3. A number of dimensional variances pursuant to Bylaws 6.3.5, 6.3.5(c) and 6.3.5(d) as follows: the tower will be 25 feet from the property line at Route 88 (approximately 50 feet from the actual road layout, improved part of the road); 179 feet from the southerly property line abutting 69 Masquesatch Road; 39 feet from the property line with Drift Road (approximately 50 feet from the road itself); 302 feet from the easterly property line abutting Masquesatch Road; and a generator pad and equipment shelter within 25 feet of the property line abutting Route 88.

4. Dimensional variances from the side and front yard setback requirements pursuant to Bylaw 7.7.

Attorney Corey confirmed that these were the requested relief in the application.

Chairman Menard asked if anyone in the audience would like to make a comment or ask a question related to new information.

Mr. Coutinho stated that, at some point, the number of carriers on the tower should be addressed to avoid a proliferation of

towers. The number of carriers would be dependent upon the type of tower selected by the Board.

Mr. Corry said there are four (4) carriers who are currently interested in placement on the tower, which include DISH Network, utilizing both T-Mobile and AT&T with its own equipment, and Verizon.

Ms. Gee stated that with the actual height of a tree in the area of the site being 55 feet -- rather than the originally-quoted 80 feet -- would it be possible to lower the tower by 25 feet.

Attorney Corey said the answer is no. The measurements that were taken originally and quoted by the Isotrope Report were inaccurate. The height at 136 feet would not cover as well as 146 feet; also, the height varies due to the topography of the land. The height of the tower will be 146 feet.

Town Counsel Stein advised that the Board may want to not close the hearing until such time as it is ready to make a final decision because the Board may have questions during its deliberations that will require answers from the Applicants. The Board could decide on the type of tower design, confirm the conditions it intends to place on the project and agree to plantings and fencing.

Mr. Coutinho asked whether the Board's consultant would still need to comment and Chairman Menard said that the consultant has concluded his work for the Board and has submitted his invoice for payment.

Attorney Corey stated that his clients are in agreement to install additional screenings around the site as directed by the Board.

Chairman Menard read into the record the draft conditions of approval, if the project were to be approved. The Board discussed those conditions and recommended changes and received input from the Applicant and the public including, as follows:

1. The Applicant shall construct the Facility in substantial conformance with this decision and the plan entitled "Site Name: Westport 2 67 Masquesatch Road, Westport, MA 02790 Bristol County," prepared by Daniel P. Hamm, dated January 23, 2020, revised through February 21, 2020.

Attorney Corey confirmed that the most current site plan is dated February 21, 2020, which was submitted with the application of March 19, 2021 to the Board. Exhibit A to the application contained background and information as to the variances being requested. Also made part of the application was a letter from Vector Engineers dated March 11, 2021 regarding the fall zone and construction of the tower.

Discussion ensued regarding the type of tower to be installed.

Ms. Gee said she would rather the tower not be tree-like as it would not look like a tree at all.

Mr. Elias said he has no problem with the tree-like tower. He said he would rather the tower be painted, not camouflaged. He also said that he viewed the videos that are on the Municipal Communications' web site as to two (2) of the towers installed at a golf course and paper mill site.

Mr. Borden said he agreed that the tower should not try to look like a tree and be painted a green color that is the least conspicuous and would blend into the area.

Mr. Coutinho also agreed as to the tower not being tree-like, as the tower would not look like a tree in the landscape. Noting that the tower at Horseneck Road does not look like a tower, he inquired as to how large the antenna would be, if they were flush-mounted.

Mr. Corry said that the 5G antenna are shorter and more stocky, as short as 3-1/2 feet, with an arm extended that is no longer than 3 feet in distance from the tower. The monopole tower with flush-mount antenna is similar to the tower at Horseneck Road, which could be duplicated here.

Attorney Corey explained to Mr. Corry that the tower on Horseneck Road was originally permitted as a wind turbine, to look like a wind turbine and served as a cell phone tower. It no longer has the wind turbine look, but, instead, flush-mounted antenna have been installed with arms at 3 to 4 feet from the canister itself.

Mr. Corry said that if that is the look that the Board is requesting, he can accomplish that.

Mr. Coutinho said the tower should look as unobtrusive as possible.

Chairman Menard said that he would prefer a monopole with flush-mount antenna similar to the tower at Horseneck Road, with a condition that the tower not be higher than 150 feet.

Accordingly, as to Condition No. 2:

2. The tower shall be of a monopole design with flush-mount antenna, with a design -- to the extent feasible -- as unobtrusive as possible in similar nature to the existing tower on Horseneck Road.

3. The Tower shall not exceed 150 feet in height.

Attorney Corey agreed.

4. The Applicant shall permit installation by the Town of a single antenna on the tower, together with the ground space necessary for related equipment within the secure, fenced-in area of the facility, at no charge to the Town for the use thereof.

Attorney Corey said there was no objection.

5. In the event that the facility is abandoned or not used for a period of six (6) months, the Applicant shall, within ten (10) days, notify the Board of such and shall within ninety (90) days thereafter, dismantle and remove all aspects of the facility and return the subject property to its natural state.



If the facility is not timely removed, the Town may, to the extent permitted by law, cause the facility to be removed at the property owner's expense. The Town's costs for the removal will be charged to the owner of the subject property in accordance with the provisions of G.L. c. 139, §3A as a tax lien on the subject property.

There was discussion about the last sentence where this involves a lease and the Board agreed to strike it.

Mr. Coutinho inquired of Mr. Corry as to whether the Town would have access to the tower.

Mr. Corry said that, since the Town will be at the top of the tower, anyone maintaining or attending to the carriers below would not affect the Town's antenna.

Attorney Corey also noted that the Town's contractor would be permitted access to the Town's antenna.

Mr. Corry agreed the Town's 24-hour-a-day access to the location for security purposes and access to the Town's antenna at the top of the tower.

6. Prior to obtaining a building permit, the Applicant shall provide a bond from a surety authorized to do business in Massachusetts, issued to the Town in the amount of \$25,000 for the cost of dismantling and removing the facility in the event that the Applicant fails to do so upon abandonment or discontinuation of use. The Applicant shall maintain that bond in perpetuity or until the dismantling and removal of the facility as provided herein.

Attorney Corey said there was no issue with this condition.

7. The Applicant shall plant and maintain in perpetuity shrubbery on all sides of the outside of the Facility's security fence on the subject property to provide additional screening. Existing on-site vegetation and natural screening shall be preserved to the maximum extent possible.

Mr. Coutinho suggested that the word "non-invasive" be added to this condition.

Attorney Corey said the Applicant would provide to the Board a planting plan prior to the issuance of a building permit for the Board's approval. The plantings may include shrubbery that is natural, with coastal plantings that consist of non-invasive species.

8. The Applicant shall maintain and operate the facility in a safe and well-maintained manner and in conformance with all applicable laws, bylaws, orders, rules and regulations.

Attorney Corey stated there was no issue with this condition.

9. Night lighting of the facility, including the tower, is prohibited, except as mandated by any authorized governmental agency or law, rule or regulation.

Attorney Corey stated there was no issue with this condition.

10. No exterior signs, logos or advertising shall be installed on the facility or the subject property, except as necessary for security or safety or to identify the ownership of the subject property or persons with contact with respect to the facility; such signs shall comply with applicable laws or regulations.

Attorney Corey stated there was no issue with this condition.

11. Noise levels, as measured at the property line, shall comply with the provisions of 310 CMR 7.1, with the exception of noise from construction, maintenance and emergency alarms.

Attorney Corey stated there was no issue with this condition.

12. The facility and use thereof shall not generate any noxious fumes.

Attorney Corey stated there was no issue with this condition.

13. Prior to obtaining a building permit, the Applicant shall record the decision at the Bristol County (S.D.) Registry of Deeds and shall provide the recording information to the Board.

Attorney Corey stated there was no issue with this condition.

14. The Applicant shall timely obtain any and all other necessary permits, relief and approvals.

Attorney Corey stated there was no issue with this condition.

15. During construction, the Applicant shall conform to all local, state and federal laws regarding noise, odor, vibration, dust and blocking of ways. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. Construction shall be limited to the hours of 8:00 a.m. to 5:00 p.m. on Monday through Friday. There shall be no construction on Sundays or any state or federal legal holiday. Construction shall include, but not be limited to, site work, the installation of utilities and the erection of structures and improvements on the subject property.

Attorney Corey stated there was no issue with this condition.

16. Prior to the commencement of construction, the Applicant shall provide, and update as necessary, to the Town's Building Department or its designee, the name, address and 24-hour contact information for an on-site construction manager who shall have primary responsibility for the oversight of day-to-day construction activities on the subject property.

Attorney Corey stated there was no issue with this condition. Attorney Corey also said that the Applicant would provide proof of insurance and an insurance binder for the site.

Mr. Coutinho noted that there should be an understanding of "commencement of construction."

Town Counsel Stein stated that, in Condition No. 15, it notes that "construction shall include, but not be limited to, site

work, the installation of utilities and the erection of structures and improvements on the subject property."

Chairman Menard stated that these are the conditions were the relief be granted.

Betty Slade, 2037 Main Road, Westport, MA asked that, since the tower would be in a historic area, that the shed and fencing be comparable aesthetically to the surrounding structures.

Mr. Coutinho said that he has in the past seen projects be constructed to have more of the "New England" look.

Attorney Corey said there would be no objection to that request, and that he would also submit a fence and planting plan for approval by the Board.

Mr. Corry said there are several options for fencing that he will submit for approval.

Having nothing further for the Board to consider, Mr. Elias made a motion to close the hearing. Mr. Borden seconded the motion and the Board voted unanimously to close the hearing at 7:54 p.m. Voting to close the hearing were Gerald Coutinho, Roger Menard, Peter Borden, Constance Gee, and Raymond Elias.

Chairman Menard explained that, in order to build the project, the site plan and all the relief requested must be voted as one. Also, he advised the public that, in order for this application to be granted, there must be a supermajority vote by the Board, namely that at least four (4) members must vote in the affirmative for the application to be approved. He said he would poll the members on their decision to grant or deny the application. Town Counsel Stein had drafted proposed findings for granting or rejecting the application.

Chairman Menard stated that he and Town Counsel Stein had drafted a proposed decision, containing a summary of the findings, either for granting or rejecting the application.

Town Counsel Stein said the Board could take a yes or no vote to approve or deny the application; and, then, a separate vote to adopt the findings.

Ms. Gee stated that the Board has listened to all the comments through many hearings on this matter.

Accordingly, Chairman Menard made a motion to grant the petition for site plan approval, for the special permit and variances with conditions of approval that have been identified and discussed at this hearing. Mr. Elias seconded the motion.

Discussion ensued including the following:

Mr. Coutinho said that:

1. He still has the same concerns that he has had throughout the process, that the Applicant is considering only one (1) site. The Applicant has not properly considered alternative sites, in that, no engineering data have been provided to the Board that would support the Applicant's contention that the proposed site was the only appropriate site for this project.

2. During the first hearing, the Board requested that the Applicant provide funds for the Board to hire an independent consultant. This request was later denied by the Applicant.

3. The neighborhood opposing the project hired its own consultant, David Maxson, who later presented his report to the Board, known as the Isotrope Report.

4. A few hearings later, when the Applicant agreed to pay for a consultant, the Board was given only a couple of weeks to hire a consultant, who was then given only one (1) week to review documents and render an opinion to be presented at the August 4, 2021 hearing.

5. The Applicant has presented no evidence that lowering the tower height would not provide considerable coverage that's being sought with this project.

6. There are too many variances being requested without further consideration of other sites.

Mr. Elias stated that the Board's consultant had made similar observations as to the information provided by the Applicant, that it would take two (2) sites -- perhaps with less coverage - - to accomplish what one (1) site can. He also said that he was looking for more information, which has been provided by both the Applicant and AT&T. Mr. Elias said he was ready to make a decision.

Ms. Gee said that two (2) sites might be less conspicuous.

Mr. Borden said that the Board should vote on what is being requested in the application -- the proposed site and no other sites. He agreed that the Board should render one vote on all the requested relief.

Chairman Menard asked for a show of hands as to the members voting in favor of the project. Raymond Elias voted yes.

Chairman Menard asked for a show of hands as to the members voting to reject the project. Chairman Roger Menard, Gerald Coutinho, Peter Borden and Constance Gee voted no.

Chairman Menard stated for the record that the vote was 4 to reject the project and 1 in favor of the project. Therefore, the application was denied.

Chairman Menard advised of the 20-day appeal period.

Town Counsel Stein recommended that the Board review and adopt the findings supporting the denial; taking a separate vote to accept the findings for denial and, then, a vote to allow Town Counsel, Chairman Menard and the Board Clerk to finalize the decision of the Board.

Mr. Coutinho suggested that the words "Board Clerk" be revised to say "Recording Clerk" as there is a Clerk on the Board.

Attorney Corey stated that the hearing was off-record and not being recorded. Mr. Horky, the cable operator, stated that the issue was at the main office at the Town Hall Annex, but that the hearing was being recorded nonetheless.

The Board reviewed, discussed and recommended changes and additions to the proposed findings prepared by Town Counsel and Chairman Menard. Chairman Menard read into the record some of those proposed findings and the Board's discussion included the following:

1. The Applicant's proposal fails to meet the variance criteria pursuant to G.L. c. 40A, §10, because the Applicant failed to demonstrate that the subject property suffers from sufficiently unique characteristics of soil, shape or topography and the 150-foot tower located 25 feet from a state highway and 39 feet from Drift Road, and well in the view of the public and abutters, will cause substantial detriment to the public good and will nullify and substantially derogate from the intent and purpose of the Bylaws including to prevent blight and pollution of the environment. The dimensional variances sought by the Applicant are an extreme deviation from that required by the By-laws. In addition, the Tower will be visible from the Town's historic district.

2. Similarly, the Applicant's proposal fails to meet the special permit criteria pursuant to G.L. c. 40A, §9 and Section 6.3.5 of the Bylaws because the proposed use is not in harmony with the intent and purpose of the By-laws to prevent blight and pollution of the environment as it will result in the construction of a 150-foot tower located 25 feet from a state highway and 39 feet from Drift Road and well in the view of the public and abutters. The Applicant did not demonstrate why the Tower needs to be 150 feet in height and, as such, failed to establish that the design of the tower will minimize adverse visual effects on the environment to the extent possible.

3. The Applicant submitted to the Board that the variances request must be evaluated and granted pursuant to 47 U.S.C. 332(7), the Telecommunications Act ("TCA"). There is established case law in which courts have held that the provisions of the

TCA can supplant the necessary finding of unique hardship required under c. 40, §10 in the case of wireless communications facilities.

4. Pursuant to 47 U.S.C. 332(c)(7)(B)(i)(II), "The regulation of the placement, construction, and modification of personal wireless service facilities by any state or local government or instrumentality thereof . . . shall not prohibit or have the effect of prohibiting the provision of personal wireless services" if the Board finds both that a significant coverage gap exists and the application presents the only feasible plan to address that significant coverage gap.

Proposed Findings for Denial:

1. While the Applicant indicated that the tower is designed to fall within a radius of 25 feet, it acknowledged that, in event of a fall, antennas or other equipment on the tower might land outside that area. Given the proposed location of the tower relative to Route 88 and Drift Road, the proposed facility is not consistent with the intent and purpose of the Bylaws to reduce hazards from fire and other dangers and could cause substantial detriment to the public good. The Applicant indicated that monopole failure is very rare; however, there is evidence of monopole catastrophic failure at its base which would cause the entire monopole to fall potentially blocking a major highway.

2. Early in the public hearing process, the Board, seeking technical assistance with its review of the application asked the Applicant to pay for peer review costs. The Applicant initially refused to do so, but later agreed to fund a peer review. Given that, and the applicable deadline for the Board to act on the application, the Board was only able to use limited peer review assistance with its review.

3. The Applicant did not identify any alternative locations that it considered for the facility and it initially failed and refused to provide the Board with any documentation about the effectiveness of a lower tower on the subject property. Ultimately, on August 17, 2021, the Applicant submitted a conclusory letter indicating that "the lowest



optimum height for a tower [on the Subject Property is] 146' which requires a 150' structure" and "that a reduction to 136' would accomplish the majority of AT&T's goals but it would have a measurable impact on coverage area, particularly neighborhoods on the perimeter of the target area." Given the Applicant's late filing of this information and the lack of any supporting data or documentation, the Board was not able to have that contention peer-reviewed. The Applicant reiterated several times that its requirements, as set by AT&T, limits it from any site further than 300 yards from the subject property.

4. Based on information provided by the Applicant, and reviewed by the Board's peer reviewer, it appears that a 100-foot tower on O Drift Road would provide approximately 75% of the coverage to be gained by the tower. The Applicant did not provide information about a higher tower on that property. In addition, the combination of a 50-foot tower on the property at 211 Cherry and Webb Lane and a 100-foot tower on O Drift Road would provide at least 90% of the coverage to be gained by the tower. Both of those property owners indicated a willingness to host a tower.

5. The Westport Point United Methodist Church located at 1912 Main Road is willing to consider raising the height of its existing steeple to accommodate wireless communications equipment,

6. The Board found that the Applicant failed to establish that the proposed facility on the subject property is the only feasible plan to address the existing coverage gap because it did not identify any other properties that it considered and there appear to be at least two feasible alternative locations to address the coverage gap. Further, the Applicant did not adequately demonstrate why it needs a 150-foot tall tower on the subject property. The Applicant continued to mandate the subject property as the only site that would meet all of the requirements, without identifying the requirements. The Applicant specifically noted that the only site appropriate for this tower would be at 67 Masquesatch Rd and this was the only site they were concentrating on. The Board repeatedly urged the Applicant to investigate alternative locations, to provide documentation regarding its need for a 150-foot tower on the subject property and to speak with the owners of specific

properties suggested as potential alternative locations. The Applicant refused to do so and the conclusory statements and limited documentation opportunity for peer review that the Applicant provided to the Board were not sufficient for the Board to find that the subject property is the only feasible location.

7. A review of AT&T's website clearly showed that AT&T already has 100% coverage in the area which would be covered by the Tower. During the hearings, AT&T identified large areas which had no coverage. While there is no doubt that there are some areas with marginal or minimal service, it is not clear that the gap is as substantial as indicated by AT&T.

8. Given the approximately 55-foot-high tree cover in the area, and based on information provided by the Applicant, it appears feasible to construct a tower of less than 150 feet in height on the subject property and still provide space for at least three (3) carriers.

Mr. Coutinho made note that he did not believe that there was sufficient comment on the record as to the close proximity of the tower to the Historic District.

Town Counsel Stein suggested adding wording that the subject property nearly abuts and is across the state highway from the Town's Historic District.

Mr. Coutinho also suggested that the decision stress in more detail that, at the early stages of this matter, the Board requested that the Applicant fund an independent consultant, which is allowed by state law, to conduct a peer review for the Board. The Applicant initially refused to provide funding for the Board to hire an independent consultant, and it was not until months later, that the Applicant agreed to fund the peer review. The delay resulted in allowing limited peer review. The Board on several occasions requested the applicant review identified alternative sites which were met with denial and adamantly refused. Other alternatives would not have required significant variances, this is not just that we do not like it there or a visual thing.

Ms. Gee said that the decision should be clear that the Applicant was not willing to provide adequate information that the Board repeatedly requested (e.g., engineering data as to alternative locations and that the Subject Property was the one and only feasible location). There was no willingness from the Applicant to consider the Boards' suggested alternatives.

Chairman Menard also suggested that the decision should contain stronger language as to the possibility of the tower collapsing and the impact that that incident would have to residents on Drift Road and to the state highway -- Route 88 -- which is an emergency evacuation route to anyone attempting to drive away from the vicinity (i.e. Drift Road, Horseneck Beach, and other areas in the southerly direction of Westport Point).

Mr. Borden reiterated that recent correspondence from the Applicant insisted that the proposed location was the sole option for the tower with no other alternative. This is proof that the Applicant would not consider other locations.

Chairman Menard noted that the Applicant, on several occasions, noted that any alternative site must be within 300 yards of the proposed site. Therefore, the coverage that AT&T wants to service limits the Applicant from placing the Tower in any other alternative location that would be within a quarter mile from the proposed site. This artificially limited searching for alternative sites.

Ms. Gee made a motion to adopt the proposed findings for denial, subject to revisions as discussed and to authorize Town Counsel, Chairman Menard and the Recording Clerk to finalize the decision, making all necessary revisions. Mr. Borden seconded the motion, which was passed by a vote of 4 to 1 with Mr. Elias voting no, Gerald Coutinho voting yes, Roger Menard voting yes, Constance Gee voting yes, and Peter Borden voting yes.

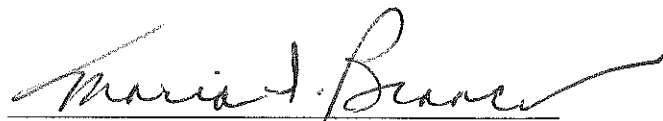
The hearing concluded at 8:40 p.m.

Chairman Menard stated that the second matter on the agenda was regarding 581B&C Drift Road (Joan and Casey Amaral). The Board discussed the matter of whether the kitchen had been removed from the detached structure, which was a condition mandated by the Board in its prior decision. Chairman Menard said that he would send an e-mail to the Building Commissioner for a response as to whether or not the kitchen has been removed and report back to him. The members agree that it is difficult to enforce some conditions and that it is difficult for the Building Commissioner to go to the properties to ensure that the owners have complied with conditions because he has considerable other work to do, as he is the sole Building Inspector and Zoning Enforcement Officer in Westport.

At 8:51 p.m., Ms. Gee made a motion to adjourn the meeting. Mr. Borden seconded the motion, with all members voting in favor by unanimous vote.

Adjournment.

Respectfully submitted,



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

APPROVED:

  
Roger Menard, Chairman