

BOLTON BOARD OF APPEALS
MINTUES
May 19, 2009
Bolton Town Hall

Present: Chairman, Gerard Ahearn, Brad Reed, Jacqueline Smith, Alexander Kischitz, Kay Stoner, Town Planner, Jennifer Atwood Burney and Town Counsel, Ellen Doucette.

HEARING

7:30 p.m. Variances to allow construction of a 149-foot monopole within a 3,600 square foot fenced compound area. The property is town-owned and is located at Forbush Mill Road, and identified on Assessor's Map 5A and Parcel 19.

Applicant: Bell Atlantic Mobile, LTD, d/b/a Verizon Wireless, 400 Friberg Parkway, Westborough, MA 01581

The Applicant is seeking the following variances:

1. Under 2.5.7.6 (8) (i) a tower must be set back from a property line a distance of 400' or 2 times the height of the tower. Both Davis Farm - Map 6A, Lot 4 and the Town of Bolton Gravel Pit - Map 5A, Lot 11 fall within this 400' radius.
2. Under 2.5.7.6 (8) (iii) the tower must be located 1000' from a residence. The tower is 632' from Bernhard and Carol Jensen's residence located at 131 Forbush Mill Road and identified as Map 5A, Lot 12.
3. Under 2.5.7.6 (11) (i) the accessory building can't be more than 300 square feet. Verizon is proposing a 360 sq. foot building.
4. Under 2.3.5.2 the "structure" cannot be more than 20' from the side yard. The compound is 15' from the side yard of town property identified as Map 5A, Lot 11.

Present: Verizon's representative, Attorney Dan Klasnick, Board of Selectmen Ken Troup and Abutter, Bernhard Jensen of 131 Forbush Mill Road.

At 7:30pm the Chairman read the Hearing notice and opened the hearing. The Board heard testimony from Verizon's representative, Attorney Dan Klasnick. Attorney Klasnick stated that Verizon Wireless responded to a Request for Proposal issued by the Town on June 5, 2007 for the Lease of Property to be used for the construction of a Wireless Communication Tower and related equipment on a portion of Towns' land at Forbush Mill Road. Verizon proposes to construct a 149' monopole and install a prefabricated 12 foot by 30 foot (360 square foot) equipment shelter to house its telecommunications equipment within a 3,600 square foot fenced compound area.

The applicant is proposing to access the proposed facilities through the town transfer station access road and then extend the access with a twelve foot wide five hundred and twenty foot long crushed stone road extension and vehicular access to the tower would be infrequent.

The applicant is proposing to construct a 149-foot monopole and install 12 antennas at a height of 147 feet. The antennas will be connected to a co-axial cabling that will run from the antennas inside the monopole to the proposed ground based equipment shelter.

The tower can accommodate a total of four wireless service providers (including Verizon).

The applicant is proposing to install a prefabricated 12 foot by 30 foot (360 square foot) equipment shelter to house its telecommunications equipment within a 3,600 square foot fenced compound area. The compound area will be surrounded by a 6 foot high chain link fence with three strands of barbed wire that will have a 12 foot wide locked entrance gate. One covered safety light will be mounted on the Verizon's equipment shelter to illuminate the doorway. A propane powered emergency generator will be located in the equipment shelter and will be used for back-up power in the event of an emergency. Electric and telephone lines will run above ground from the WCF and will be connected to an existing overhead electric and telephone pole on the town owned property currently being utilized as a transfer station. The proposed ground space will accommodate future wireless service provider's equipment shelters.

The applicant submitted results of a study of radio frequency coverage for the Town of Bolton and for the area surrounding the subject property. These studies indicate a gap in coverage that would be filled by construction of a telecommunications tower on the subject property.

The applicant submitted an affidavit provided by the radio frequency engineer stating that the area needs significant coverage improvement and determined the coverage footprint provided by a facility in this area would connect well with those of existing and proposed facilities in the surrounding area. To date, Verizon has been unable to successfully locate a wireless communications facility in the area of the proposed site. The proposed site will provide coverage along Routes 117 and 110 in the northwestern portions of the town, along major roads Main Street, Still River Road, Wilder Road and Green Road. Verizon does not currently provide acceptable coverage in this area.

Verizon searched the defined area for existing buildings, towers, and other structures of sufficient height that would fill the coverage gaps in the network. Verizon was unable to locate any other existing structures in the vicinity of the search area with sufficient height to meet the coverage objectives. Due to signal strength concerns a height of at least 147 feet is required to attain quality signal strength.

Abutter, Bernhard Jensen of 131 Forbush Mill Road expressed concern over the tower being located less than 1000' from his residence. Attorney Klasnick stated that the tower was located as far away as possible from the nearest residence and if the tower was moved any further it would be located too close to the nearest property line. At the request of the Board

of Selectmen, Verizon moved the proposed tower 153' from the nearest property line because the height of the tower is 149'. The tower would still be located 45' from the town owned property line.

Chairman Gerard Ahearn asked how the applicant was prepared to address abutter concerns. Attorney Klasnick stated that because of the tree coverage between Mr. Jensen's house that the tower would not be seen. Verizon would minimize the removal of trees and only remove trees necessary to construct the storage compound. The applicant was also using existing access to minimize tree cutting.

Board member, Brad Reed asked if the storage shelter could be minimized so that a variance would not be required. Attorney Klasnick responded that all proposed Verizon towers in all communities were 360 sq. feet to accommodate the emergency generator and other equipment. Mr. Reed questioned the hardship and suggested that the applicant select another piece of land to site the tower. Attorney Klasnick responded that the lot is unique in that it is town owned and is an allowed use by the zoning bylaws. No other towers exist that Verizon could co-locate and there are no other properties in the area that the tower could be sited on. Attorney Klasnick also referenced the coverage maps submitted in the application that demonstrate the lack of coverage on 117, 110 and Still River Road.

Mr. Reed responded that he is concerned about the 1000' feet requirement that no tower be sited within 1000' feet of a residence due to industrial encroachment. He suggested that the applicant look at other places to site the tower and possibly adjust their equipment for more optimal coverage. It's a big town and the board cannot grant use variances. Attorney Klasnick responded that the site is a hardship because it is already being used as a landfill. Board member Kay Stoner asked if it could be relocated anywhere else. Attorney Klasnick responded that it could not.

Board of Selectmen, Ken Troup stated that the town was seeking someone to put a tower on this site and stated that there is no other place in town to do this and it would provide a public benefit and would use existing town property and increase coverage in the area.

The Board had a general discussion in regards to the Federal Telecommunications Act of 1996 (TCA) which circumscribes the authority of state and local government over decisions regarding health impacts. Attorney Klasnick pointed out that a statement was submitted in the application regarding exposure guidelines. Mr. Jensen responded that he is totally against the site plan due to health concerns and indicated that studies show that there are health impacts if towers are sited too close to residences. He referred to a Cambridge study. He suggested that the tower be moved to another location and questioned the hardship. Brad Reed responded that the TCA states that the Board can't deny the application due to health concerns and understands that the site is a landfill which is pre existing non conforming use, but the bylaw states that a tower cannot be sited within 1000' of a residence and suggested that the bylaw be changed.

Mr. Troup stated that he wished the abutter had come to the Board of Selectmen Special Permit and Site Plan Review Hearing. The only concern expressed at the Board of Selectmen

Hearing on April 16, 2009 was made by Bolton Orchards being concerned that the tower was being sited only 145' from the property line with a tower height of 149'. The Board of Selectmen requested that the applicant move the tower more than 149' away from the property line. In response, Verizon moved the proposed tower 153' away from the property line. Mr. Troup stated that the bylaw is not being ignored and Mr. Jensen's line of site is blocked by trees. Mr. Troup indicated that the proposed site is an appropriate site because it was in an open area on town owned land and Verizon would use the existing access road through the transfer station.

Chairman Gerard Ahearn asked if shifting the tower would make it any closer to the apartment building the only other residence within close proximity. The Board reviewed the plans and determined that the tower could not be sited anywhere else on the town owned property that would meet the bylaw requirements.

The Board asked the applicant to review the criteria of granting a variance. Attorney Klasnick stated that the property has unique topography and the only location the tower could be located on. Other lots would require a use variance which the board cannot grant. The bylaw limits sites where a tower could be located. Additionally due to the allowed use on this site it makes the site unique. In regards to hardship, Attorney Klasnick stated that Verizon would not be able to satisfy the network coverage requirement of filling gaps and coverage objectives if the tower is not sited at the Forbush site. It would provide public and emergency service coverage during natural disasters. Additionally, the town can attach equipment to the tower per the lease agreement. Board member Alexander Kischitz asked if there were any federal or state requirements that stated that cell companies had to provide coverage. Attorney Klasnick stated that Verizon needs to show it is building its network and reminded the Board that a town cannot prohibit a cell phone company from expanding its services. Brad Reed stated that there are other places in town to site the tower and suggested Davis Farm as a potential location. Ken Troup responded that Davis Farm has withdrawn a previous application due to abutter opposition. Attorney Klasnick stated that the tower would benefit the public, would facilitate co-location and increase coverage in town. He stated that it would not nullify the bylaws because the town approved the overlay district bylaw by 2/3 vote which specifically included the proposed site in the overlay district. Mr. Reed indicated that he would like to see an alternative map showing the 2 closest residences and where the tower could be located. Mr. Reed stated that he would like to see the tower moved. Attorney Klasnick stated that Verizon responded to an RFP issued by the town to site the tower on the town land. Alexander Kischitz stated that if the tower was moved to the transfer station he would be concerned about the tower falling on the public. Ken Troup stated that if the Board was concerned about health concerns then they should be more concerned if the tower was relocated to the town transfer station because of full time workers and the number of people coming to the transfer station.

Mr. Reed stated that he is not satisfied with Verizon showing alternative sites such as the Davis property. He is not convinced of hardship and is concerned about being located within 1000' feet of a residence. He would like to see Verizon demonstrate that an alternate location can be made to be further away from any residences. After a long discussion and review of the plans it was decided by the board that the transfer station would not be ideal due to the

amount of people visiting, not zoned for a tower and there is no lease agreement. Mr. Reed stated that he withdrew his request for additional information.

Mr. Troup asked how the Girl Scout camp was allowed because it is located in a residential district. He stated that many homes must be located closer than the 1000' requirement. The Town Planner stated that the Board had issued a Use Variance and a variance for the 400' requirement but was not sure about the variance or distance from residences and would need additional time to look up the file.

The abutter requested that the board not approve the variances.

After discussion the Board found:

1. With respect to the application for a variance for Sections 2.5.7.6 (11) (i) and 2.3.5.2, the Board finds that there are circumstances that exist relating to the topography of the land and the unique configuration of the property that do not affect generally the zoning district in which such land is located. The site is located in the Wireless Overlay District and is town owned land. The site is a preexisting town transfer and landfill site;
2. Literal enforcement of the provision of Section 2.5.7.6 (11) (i) and 2.3.5.2 would involve substantial hardship to the applicant if the proposed accessory building and storage compound were minimized to meet the bylaws. The proposed accessory building size is a standard size for Verizon to house ground equipment and backup generator, anything smaller would not accommodate the equipment;
3. The desired relief from the documented provision of Sections 2.5.7.6 (11) (i) and 2.3.5.2 would not be more detrimental to the neighborhood to accommodate the accessory building and storage compound;
4. The request does not nullify or substantially derogate from the intent and purpose of the Bolton Zoning Bylaws Sections 2.5.7.6 (11) (i) and 2.3.5.2.
5. With respect to the application for a variance for Sections 2.5.7.6 (8) (i) and 2.5.7.6 (8) (iii), the Board fails to find that a literal enforcement of the by-laws would result in substantial hardship to the applicant. The Board finds that use of the site would derogate from the intent of the By-laws and would be more detrimental to the neighborhood. The Applicant has failed to convince the Board that this is the only land available to build a communications tower in this area of town. Therefore, the Board does not support granting a variance for Sections 2.5.7.6 (8) (i) and 2.5.7.6 (8) (iii).

1. A motion was made by Alexander Kischitz, seconded by Jackie Smith to close the public hearing.

Vote: 5/0/0 unanimously approved

2. *A motion was made by Alexander Kischitz, seconded by Jackie Smith to approve a variance to the Applicant that provides relief from the provision of the Zoning Bylaw Section 2.5.7.6 (8) (i) that would allow a tower to be sited less than 400' or 2 times the height of the tower*

Vote: 3/2/0 (Kay Stoner and Brad Reed voting not in favor) Not Approved

3. *A motion was made by Alexander Kischitz, seconded by Jackie Smith to approve a variance to the Applicant that provides relief from the provision of the Zoning Bylaw Section and Section 2.5.7.6 (8) (iii), that would allow a tower to be located less than 1000' from a residence.*

Vote: 3/2/0 (Kay Stoner and Brad Reed voting not in favor) Not Approved

4. *A motion was made by Alexander Kischitz, seconded by Jackie Smith to grant a variance to the Applicant that provides relief from the provision of Zoning Bylaw Section 2.5.7.6 (11) (i) that will allow the accessory building to be 60 sq. feet more than the allowable sq. foot requirement of 300 sq. feet*

Vote: 4/1/0 (Kay Stoner not in support) Approved

5. *A motion was made by Alexander Kischitz, seconded by Jackie Smith to grant a variance to the Applicant that provides relief from the provision of Zoning Bylaw Section and Section 2.3.5.2 that would allow the structure to be located 5' less from the side yard that allows a 20' side yard setback*

Vote: 5/0/0 Approved

GENERAL BUSINESS

None

Next Meeting

TBD

Meeting adjourned at 10:30 pm

Minutes submitted by Jennifer Atwood Burney, Town Planner