

**Minutes of the BOXFORD ZONING BOARD OF APPEALS
TOWN HALL, MEETING ROOM #1
November 15, 2012 6:30PM**

Present:

William R. Cargill, Jr., Chair
Paula Lia Fitzsimmons, Vice-Chair
Robert W. Conroy, Clerk
Barbara Jessel, Alternate Member
Robyn Kotarski, Alternate Member
Paula Meagher, Secretary
Pat Canonica, Planning Board Liaison

Absent: None

6:35PM Meeting Opened

William Cargill called the meeting to order.

**6:36PM Case #913: Second Congregational Church, 173B Washington Street
Special Permit: §196-6 (B); §196-18; §196-30**

Members Sitting:

William R. Cargill, Jr., Chair
Paula Lia Fitzsimmons, Vice-Chair
Barbara Jessel, Clerk Pro Temp

Plans Submitted:

- **Alterations & Additions to the Second Congregational Church, 173B Washington St. West Boxford, Mass.**
Royal Barry Wills Associates, Inc.
Date: May 9, 2012

Applicant Present: Bart Beahm, member of the Board of Trustees of the 2nd Congregational Church

Robert Conroy, Clerk, and Alternate Robyn Kotarski recused themselves from this hearing, as they are members of the church.

Clerk Pro Temp, Barbara Jessel, read aloud the legal notice.

Special Permit to construct 731 sq. ft. addition consisting of two levels, west of parish hall, connecting building to facilitate wheel chair lift to access four levels of structure including sanctuary from Article V, §196-6 (B); §196-18; and §196-30 of the Zoning Bylaw.

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50 Mr. Beahm gave a brief history on the additions to the church over the years. He explained that
52 there is no obvious place within the building to put in an elevator or wheel chair lift. There are
54 four levels that need to be accessed within the church. They have identified an area outside
the church where they could locate a wheel chair lift. He referred to the plans provided to point
out the location. Beahm noted that the lift they use now is outdated and they are unable to get
parts to fix it. There were questions/comments as follows:

- 56 • **Cargill: You talked about variances – are you seeking variances from the state
or?** Beahm advised that the variances they sought and received were from the Board
58 of Elevator Regulations in Boston.
- 60 • **Cargill: Are you planning on taking the existing chair lift offline?** Beahm advised
that once this one is operating, they'll take the other offline.
- 62 • **Cargill: Is it both a non-conforming lot and a non-conforming structure?** Beahm
advised that the initial church lot was 51,000 sq. ft. and non-conforming from a size
standpoint. The setback is fairly far off the road and should be okay.
- 64 • **Cargill: Parking, loading spaces not changing?** Not changing at all
- 66 • **Cargill: Will there be any change to landscaping at all?** Beahm advised they'll be
losing some landscaping, but putting in replacement landscaping that will be more
attractive.
- 68 • **Cargill: Any exterior lighting?** Beahm advised that the lighting that is there will be
moved out 10 feet, but it is the same lighting.
- 70 • **Fitzsimmons: You should note where the exterior lighting is on the plan.** Beahm,
we will do that, and it is motion lighting.

72 Cargill advised the applicant that it will have to go to the Planning Board and Board of
Selectmen, where it's in an O District. With no further questions or comments, the Zoning
74 Board of Appeals took the following action:

76 On a **MOTION** made by **Fitzsimmons**, second by **Jessel**, the Zoning Board of Appeals
VOTED unanimously to continue Case #913 to December 20, 2012.

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**6:55PM Case #914: Joseph Hill for property owner Alison Chase, 41 High Ridge Road
80 Special Permit: §196-13(B)(11)(I)**

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Members Sitting:

William R. Cargill, Jr., Chair

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Paula Lia Fitzsimmons, Vice-Chair

Robert W. Conroy, Clerk

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Plans Submitted:

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- **Site Plan**, 41 High Ridge Road, Boxford, MA, Donohoe Survey, Inc., April 23, 2013

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- **Site Plan**, 41 High Ridge Road, Boxford, MA, Donohoe and Parkhurst, Inc., Nov. 5,
2012

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- **Site Plan**, 41 High Ridge Road, Boxford, MA, Donohoe and Parkhurst, Inc., Feb. 4,
2013

- **Garage Plan and Foundation**, 41 High Ridge Road, Thistle Designs, 10/12/12
- **Garage Elevations**, 41 High Ridge Road, Thistle Designs, 10/13/12
- **Section A Garage**, 41 High Ridge Road, Thistle Designs, 3/13/13

Applicant Present: Joseph Hill for property owner Alison Chase

Clerk Robert Conroy read aloud the legal notice.

Special Permit to construct a 32'x32' attached 2-bay garage which will yield garage space for more than three vehicles on the property from Article V, §196-13(B)(11)(I) of the Zoning Bylaw.

Joe Hill advised that the size of the garage is actually 26'x32', rather than 32'x32', as in the application. He reviewed with the Board the reasons he is proposing the placement of the garage where it is, and reviewed other locations they considered. The ZBA had questions or comments on the following:

Cargill: How many bays are there currently? Hill advised he has two bays now.

Cargill: We have no jurisdiction over covenants.

Cargill: Is there commercial intent? Hill advised he has classic cars and no commercial intent.

Cargill: Will there be a second story? Hill advised there is 5 feet available on the second story for storage.

Cargill: What is the height of the structure? Hill advised it is 19' 9" to the roof peak. Width is 26 feet wide, 32 feet deep.

Abutter Input:

Carl Noblitt: 51 High Ridge Road, Director of High Ridge Property Association:

Noblitt relayed that there may be a problem with the covenants and that Mr. Hill would be approaching the Association with the issues, so they can discuss them. Noblitt added that the Association thinks Hill may be in violation of the covenants and they expect to have an answer by December 1. In the meantime, they've asked Hill to withdraw his request, but he has not. Noblitt is an abutter as well and feels too many trees will have to come down to accommodate the garage, which will be overlooking his bedroom. He would prefer the garage be built on the site of his present garage. Hill advised that he would like to postpone the case until the end of January, which would allow discussion with the Association and with the Planning Board to find out what is possible, such as additional buffers, etc.

Cargill: So you do not want to come back until January? Hill confirmed that was correct.

Cargill asked Hill to sign the extension and the Board took the following action:

On a **MOTION** made by **Conroy**, second by **Fitzsimmons**, to continue Case #914 to January 24, pending the outcome of discussions with the Association and input from the Planning Board.

140 **7:13PM Case #910: InSite Towers, LLC and Metro PCS MA LLC**

Special Permit: §196-22

142 c/o Parisi Law Associates, P.C. for property owner Ronald & Catherine
144 Tetreault, 58 Endicott Road, and

144 **Case #911: InSite Towers, LLC and Metro PCS MA LLC**

Variance: §196-22 (1) (6)

146 Chairman Bill Cargill recused himself from hearing these cases, as the property owners are
148 clients of his.

150 **Members Sitting:**

150 Paula Lia Fitzsimmons, Chair Pro Temp
152 Robin Kotarski, Vice-Chair Pro Temp
154 Robert W. Conroy, Clerk

Plans Submitted:

- 156 • **Plot Plan and Notes**, 58 Endicott Road, AEG Advanced Engineering Group, PC,
158 9/20/12

Applicant Present: Francis Parisi, attorney for the applicant

160 Clerk Robert Conroy read aloud the legal notices for Case #910 and Case #911.

162 Case #910: Special Permit to construct a wireless communications facility consisting of a 120'
164 tall mono-pole tower and ground-based telecommunications equipment within 50'x50' fenced
166 in compound from Article V, §196-22 of the Zoning Bylaw.

168 Case #911: Variance to construct a wireless communication facility consisting of a 120' foot tall
170 mono-pole tower and ground-based telecommunications equipment within 50'x50' fenced in
172 compound from Article V, §196-22 of the Zoning Bylaw.

174 Francis Parisi, an attorney representing the applicant, InSite Towers, LLC and Metro PCS MA,
176 LLC, provided the Board with statistics on cell phone usage as background information on why
178 a tower is needed at this location. He added that Metro PCS is the anchor tenant on the tower;
180 it will be designed with the future in mind so other telecommunications companies can use the
182 tower as well, as required by the bylaw. He added they are seeking a dimensional variance
184 and a design variance, as the setback does not meet the regulations, nor does the design.
They are proposing something where the tower is as equally svelte as the towers in Boxford,
but the antennas will be on the inside of the structure, rather than the outside. He advised that
many residents are using cell phones as their primary telephone in their homes and that better
coverage is needed to accommodate that need. He noted that there are no alternatives in that
area. Parisi provided maps, showing areas the new tower would cover. At Fitzsimmons
request, he pointed out the sites of existing towers on the map. Parisi continued with the
alternative locations they had considered, mentioning that they approached Masconomet, but
they were not interested. Fitzsimmons, disclosing that she is also a member of the

186 Masconomet School Committee, said that the location submitted to Masconomet was
ultimately withdrawn. Parisi advised it was taking too long and they needed to move on, but
188 suggested that they may try contacting Masconomet again at a later date. He said the facility
would be located right off Endicott Road, just northeast of the intersection of Middleton Road
190 and Endicott Road. The area is a residential area and densely wooded and they prefer wooded
areas, because the towers are more hidden from view. The facility will be within a 50'x50'
192 fenced-in compound, potentially 8' high, behind a stockade fence. All the equipment inside the
fence – electronics and back-up batteries -- would be invisible, because of the fence. None of
194 the equipment would generate much noise. They are not going to have a generator there.
There will be about a month's worth of activity while the facility is constructed, then once a
196 month thereafter. Parisi reviewed the setbacks and height of the tower, noting that other
towers in Boxford do not meet the setback requirements and that it doesn't appear to be a big
198 problem. He assured the Board that there is no risk of the tower toppling over, as it is very well
anchored. Fitzsimmons advised that she was not okay with the tower not meeting the setback
200 requirements in the proposed area of Endicott Road, as it is very close to a large Tri-Town
school and if it toppled over, it would be right on Endicott Road, where multiple people travel
202 on a daily basis, including hundreds of school children. Parisi provided a report from a
structural engineer, stating the tower would bend over on itself, rather than topple over, if it
204 were to fail in high winds, stressing again that they have no other option to locate the tower.
There were questions/comments as follows:

- 206 • **Fitzsimmons: Your access would be through the existing driveway?** Parisi confirmed they would use the existing driveway to access the woods where the facility will be located.
- 208 • **Fitzsimmons: Can you provide a visual on what the pole will look like on the site?** Parisi advised they can put up a red balloon 120' high to show residents and other interested parties where the pole will be located and they can have the opportunity to know if they'll be able to see it or not. All Board members agreed that they'd like to see what it will look like.
- 210 • **Kotarski: Are the other towers in Boxford on residential or town property?** One is on Mass. property, other is on residential property. Fitzsimmons advised there is another one on the right-of-way for the power lines, off 133.
- 212 • **Canonica: Is there going to be an emergency generator there?** No
- 214 • **Attorney Bill Hunt, Topsfield, representing Maureen Babcock, 22 Gina Way:** Hunt advised that there are restrictive covenants that apply to this site. They will get a copy of the covenants to Mr. Parisi. He continued to review the reasons why the variance and special permit should not be approved.
- 216 • **Olivia Fiore, 2 Gina Way:** Fiore noted that the property is on private land and not public land, as presented. Fitzsimmons asked that the correction be made before the next meeting. Fiore continued by noting that Mass. Highway was not notified, nor were the local representatives. Fitzsimmons advised that everyone on the list was notified, as required. Fiore asked that an alternative analysis be completed on what other sites might work, noting that no one in her area was approached. She also questions whether any searches were done on the deed, as they would have been aware of the restrictive covenants. Fitzsimmons asked the applicant to address these issues at the next hearing. Fiore also advised that there have been other towers in Massachusetts that have toppled over in the past five years.

- 232 • **Christine Dwyer, 9 Gina Way:** Dwyer asked for clarification on the setbacks, noting
that the base of the structure is 50'x50', making the setback less than half of the
requirement.
- 234 • **Maureen Babcock, 22 Gina Way:** Babcock noted that there isn't a legitimate survey,
236 all setbacks and measurements are approximate. She asked what the actual setback
is from her property line. She provided photos of the damage from the recent hurricane
238 for the Board to view. She added there is a history of power outages in her area. She
also noted that she felt it wasn't fair that one property owner has an economic benefit
at the expense of others in the neighborhood.
- 240 • **Fitzsimmons: What is the life of the battery back-up?** Parisi advised that cell
242 service is generally more reliable than wired service. The battery back-up is good for 8
hours. If the outage is longer than 8 hours, they would bring in a temporary generator
during a lengthy power outage.

244 There was a lengthy discussion on the frequency and length of power outages and using
batteries vs. generators during a power outage.

- 246 • **Linda Magnifico, 6 Gina Way:** She noted that she has never experienced any dead
spots in her area.
- 248 • **Scot Hamburger, 2 Gina Way:** He noted that a cell phone tower toppled over in
250 January of 2009 on Route 9 in Wellesley, as a result of a fire. He also asked that Parisi
elucidate more on his extensive talks with Masconomet at the next hearing, as he
252 checked with Dr. Lockwood and he was not aware of any discussions with Metro PCS.
He strongly suggested that talks resume with Masconomet, as the additional income
254 would benefit the sports programs. He would also like to see a full instrument survey
done on the property. Hamburger later asked about public safety issues and whether a
256 fire truck would be able to access the tower, if there was a fire or other emergency at
the facility. Fitzsimmons made note of the question and will make sure they talk to the
Fire Chief and Police Chief about any public safety issues.
- 258 • **Attorney Parisi:** Parisi conceded there were errors on the application. He advised
260 they use the same forms all the time, as they are required to be in the record. They
have been pored over line by line and realized there were mistakes that will be
262 corrected. He added that they are certainly willing to talk to Masconomet and noted
that they have another appointment with them to discuss it again after the next school
264 committee meeting. He suggested that the setback to the abutter can be increased
and they will relocate the tower closer to the road and further from the closest abutter.

266 Fitzsimmons suggested they set a date to continue the hearing. Parisi proposed that the
hearing be continued to January, as he will know then whether Masconomet is interested or
not and he will also have other data available by that time as well.

268 On a **MOTION** made by **Kotarski**, second by **Conroy**, the Zoning Board of Appeals
270 **VOTED** unanimously to continue the hearing for Case #910 and Case #911 to January
24, 2013.

272 **8:50PM Case #915: Christopher Melillo**
274 **Special Permit: §196-6(B)**
276 **For property owner David Murphy, 38 Glendale Road**

Members Sitting:

278 William R. Cargill, Jr., Chair
Paula Lia Fitzsimmons, Vice-Chair
280 Robert W. Conroy, Clerk

Plans Submitted:

- 282 • **Front Entry Addition**, Murphy Home, 38 Glendale Road, Boxford, MA
284 Drawn By: B.L. Michienzi, Sept. 20, 2012
- 286 • **Plot Plan of Land**, 38 Glendale Street (sic), Boxford, MA 01921
Prepared by Sullivan Engineering Group, LLC, 10/18/12

Applicant Present: Christopher Melillo

290 Clerk Robert Conroy read aloud the legal notice for Case #915.

292 Special Permit to remove existing platform and construct 4x8 bump-out for front entry and 3x8
294 roofed platform entry on the property from Article III §196-6(B) of the zoning bylaw for the
premises located at 38 Glendale Road.

296 Christopher Melillo, the builder representing the applicant, described the work to be done,
298 making the existing platform an entry way and constructing a 3'x8' set of stairs.

The Board discussed the extension of the non-conforming use by decreasing the setback from
300 the dwelling to the street. Cargill noted that you can have a non-conforming lot and a
302 conforming house, but you can't get closer to the setback, which would increase the non-
304 conformity, requiring a variance and not a special permit. The applicant advised that only the
roof would be closer, not the base of the foundation. The Board members continued to clarify
306 the plans with the applicant, trying to determine if the applicant should apply for a variance.
They determined that the project would increase the non-conformity and would require a
308 variance. Cargill advised the applicant to file for a variance. Cargill suggested that the Board
make a site walk in the meantime. The applicant discussed changing the plans so a variance
310 wouldn't be required. Cargill suggested he discuss the options with his client and the Board
decided to make a site walk on Tuesday, November 27 at 2PM.

9:30PM Review Draft Minutes: May 24, 2012

312 After the Board reviewed the Minutes, they took the following action:

314 On a **MOTION** made by **Conroy**, second by **Fitzsimmons**, the Zoning Board of
Appeals **VOTED** unanimously to accept the Minutes of May 24, 2012, as written.

9:31PM Other Business

318 Paula Meagher, the secretary, requested that the Board sign an extension for Community
Center case, to the December 20 meeting:

320 On a **MOTION** made by **Fitzsimmons**, second by **Conroy**, the Zoning Board of
322 Appeals **VOTED** unanimously to extend the hearing for Case #912 to December 20,
2012.

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Meeting Adjourned

326 **9:32PM** On a **MOTION** made by **Cargill**, seconded by **Conroy**, the Zoning Board of Appeals
328 **VOTED** unanimously to adjourn at 9:32PM.

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330 Respectfully Submitted,

332 *Judith A. Stickney*

Minutes Secretary

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Approved as Amended 7/25/13