



TOWN OF DARTMOUTH
Office of the Zoning Board of Appeals
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DARTMOUTH TOWN CLERK

MINUTES

DATE OF HEARING: AUGUST 5, 2014 (continued from July 8, 2014)
CASE: SPECIAL PERMIT
CASE NO: 2014-21
Petitioner/Applicant: New Cingular Wireless PCS, LLC ("AT&T")
Property Owner: Town of Dartmouth, Department of Public Works
Representative: Edward D. Pare, Jr., Esq./Brown Rudnick LLP
Representative: Elisabeth Rutkowski, Tower Resource Management
Subject Property: 1048 Allen Street, Map 148, Lot 83 in Single Residence A District
Registry of Deeds Book 920, Page 564

ATTENDANCE

PRESENT: The Board: Chairman Jacqueline Figueiredo, Clerk Halim Choubah, PE., Member Robert Gardner, Associate Member Michael Medeiros, and Principal Clerk Assistant Tina Cabral

ABSENT: Associate Member David Dore

ALSO PRESENT: Town Counsel-Anthony Savastano, Edward D. Pare, Jr., Esq., David Maxson of Isotrope Wireless (Consultant to the Board), Steven Sullivan, Superintendent for the Water and Sewer Division of the Public Works, Don Haes, PhD., George Valentine of Valentine Appraisal Associates, Court Reporter for AT&T, Melinda Piccirilli, and Other Interested Parties

7:00 P.M. Chairman Figueiredo opened the hearing

NEW DOCUMENTS ON FILE

Application Review of AT&T Proposed Telecommunications Facility 1048 Allen Street, Dartmouth by David Maxson, WCP of Isotrope, LLC dated 7/31/14
New Wireless Regulation from the 2012 Middle Class Tax Relief and Job Creation Act dated March, 2012 and submitted by David Maxson, WCP of Isotrope, LLC dated 7/31/14
TOWAIR Determination Results dated 7/30/14 and submitted by Edward D. Pare, Esq.
Consulting Report Impact of Wireless Telecommunications Facilities on Neighboring Property Values prepared by George F. Valentine of Valentine Appraisal Associates and dated 7/23/2014
Number of letters/emails written by residents in opposition to the proposal
Site location map and GIS photos by Advanced Engineering Group, P.C., dated 8/5/14
Revised Site Plan and Drawings prepared by Advanced Engineering Group, P.C., dated 8/5/14

Since this was a continued case, Chairman Figueiredo read the petition. She then explained that the reason for the continuance regarding this case was to allow time for the Board to secure advice from Town Counsel, and a Consultant.

Chairman Figueiredo invited Town Counsel, Anthony Savastano to speak about his position regarding one of the Special Permits for this petition.

ANTHONY SAVASTANO, TOWN COUNSEL:

Responded that he had not spoken with counsel for the petitioner about the matter. He suggested that the Special Permit that is requested under 3B.203 (the extension of a pre-existing nonconforming structure) is not required since the existing structure is a municipal structure, which makes it conforming. The Special Permit request under 4A.310 regarding height is required.

EDWARD D. PARE, JR., ESQ.:

Responded that his client requested the Special Permit under 3B.203 in case the Board's interpretation of the proposal required relief under that section. However, he would agree to withdrawal of this request if the Board makes a finding that it is unnecessary as advised by Town Counsel.

Chairman Figueiredo invited abutters/residents who wrote letters/emails and were present at the meeting to either speak or have their written correspondence read. All correspondence received were written in opposition to the proposal.

NICOLE JACKMAN, ABUTTER:

She had submitted a letter, but chose to speak before the Board in lieu of having her letter read by the Chairman. She asked a number of questions regarding Board procedures and the petition. Additionally, she asked if residents had the right to appeal the Board's decision.

Chairman Figueiredo responded to questions regarding Board procedures and that residents have a right to appeal a decision.

ANTHONY SAVASTANO, TOWN COUNSEL:

Explained that it is not the Board's job to garner evidence to oppose a project, but to be independent arbiters to hear evidence from both sides and make a determination. He also explained the time constraints, the "Shot Clock", and the reason why the Board cannot consider health related issues when making their decision.

BRENDA GOMBER, ABUTTER:

She had submitted a letter, but chose to speak before the Board in lieu of having her letter read by the Chairman. She questioned AT&T's coverage gap, the possible compromise of the water tank's integrity due to weight of antenna array and especially during ice storms and hurricanes. She identified concerns regarding health related issues, effects on property values, and the potential addition of cell facilities to the water tower by other telecommunication carriers.

ROBERT GARNER, BOARD MEMBER:

Made note that someone was present in the audience who could speak to the integrity of the water tower.

Chairman Figueiredo read letters/emails that were received from three other residents. She then invited the Petitioner's Representative, Attorney Edward D. Pare to speak on behalf of the proposal.

EDWARD D. PARE, JR., ESQ.:

Explained that the proposal has been changed in that the antennas will extend the height of the water tank by 10' rather than 13'. Since an FAA question was raised at the last hearing, he presented a determination report by TOWAIR which states that the structure does not need to be registered with the FAA. He also wanted to respond to a question from the last hearing regarding what had occurred years ago with respect to an application which had been heard by Omnipoint (T-Mobile).

Chairman Figueiredo reported that the Board did research on that prior application and found that there had actually been two applications filed for telecommunication facilities at 1048 Allen Street. One Special Permit

request was made in 2007 and a second Special Permit request was made in 2008. The 2007 Special Permit petition, Case #2007-64 was by Nextel Communications of the Mid-Atlantic, Inc. The 2008 Special Permit petition, Case #2008-31 was by Omnipoint Communications, Inc. Both Special Permits were granted.

EDWARD D. PARE, JR., ESQ.:

Requested that George Valentine be allowed to present his report. He had given testimony at the last hearing that he anticipated that there would be no negative impact on property values. On page two of his written report, he has concluded that this is indeed the case.

GEORGE VALENTINE OF VALENTINE APPRAISAL ASSOCIATES:

He referred to his report in which he included some of his recent studies on water tower and tank sites in Eastern Massachusetts as paired sales analysis. There are comparisons of homes in close proximity to wireless structures to other homes of similar value that have no wireless presence to see if there are any impacts to home values where there is a wireless presence. The report includes eight paired analyses, and the data shows that there is no impact on value due to the presence of wireless facilities. He has in the past visited Assessors' offices to see if there have been any abatement requests due to abutting wireless facilities and was told that no one had asked for abatements.

Chairman Figueiredo responded to the presentation by pointing out that there are a number of telecommunication facilities located in Dartmouth. She identified the heights and types of facilities and where they are located. She noted that some were in residential areas.

ANTHONY SAVASTANO, TOWN COUNSEL:

Suggested that the Board formally accept the received documents into the record.

Chairman Figueiredo identified each of the documents. A motion was then made by Robert Gardner to accept the identified documents into the record. The motion was seconded by Halim Choubah. Motion carried unanimously.

EDWARD D. PARE, JR., ESQ.:

As a point of order, he stated the proceedings are being recorded by a court reporter and requested that Board members speak up, slowly, and into the microphones. Although the Board cannot consider health concerns in making its decision, he wanted to address health related concerns and to have Dr. Don Haes provide some education relating to potential health impacts.

DON HAES, PhD:

Spoke about his background and radiation safety. He explained that the International Committee on Electromagnetic Safety (ISES), of which he is a member, reviews literature then prepares and publishes standards for radio frequency exposure which are adopted by the FCC. AT&T requested that he look at this proposed facility, and he did so from two different standpoints. First he identified what is presently at the area from a radio frequency energy perspective using a calibrated instrument. On July 26th he was in the neighborhood and did a series of measurements. He found that there was no area greater than 1.5% of the limit of emissions allowed by both FCC and Massachusetts DPH. Secondly, he performed a theoretical analysis whereby the AT&T facility had been approved and had begun transmitting. He determined what the RF fields would be given the facility would be functioning at 100%. He concluded that the emissions would be well within the allowable limits (actually less than 2% of the limits). He stated that there could be over 200 telecommunication installations on the water tank and still be compliant with the radio frequency exposure standards. Cell stations involve two-way communication, therefore the stations and the cell phones are both low power.

ROBERT GRADNER, BOARD MEMBER:

Asked Dr. Haes' computations included the other antennas on the towers such as UHF and VHF.

DON HAES, PhD:

Responded that they *were not* included in the theoretical analysis, but they *were* included in the calibrated measurements.

JOHN GOMBER, RESIDENT:

Asked Dr. Haes what the units are for 100% according to the FCC and what the power would be for the set of proposed antennas.

DON HAES, PhD:

Explained the reason that regulatory agencies use *percent* limits (rather than units) is that the (unit) limits are different for different frequency bands. He then gave examples. Regarding power level, he identified the different wattage for the different megahertz that he used in his theoretical analyses. He stated that these measurements are for non-ionizing radiation.

STEVEN SULLIVAN, SUPERINTENDENT OF DARTMOUTH WATER & SEWER DIVISION OF DEPARTMENT OF PUBLIC WORKS:

Stated information regarding the integrity of the water tank in its present state and in the anticipation of the addition of the cell antennas. He explained that prior to the accepting the proposal, a consultant was hired by his division to determine the worthiness of the tank. After the installation there would be a secondary inspection to insure that everything is to code.

ROBERT GRADNER, BOARD MEMBER:

Stated that there was a question raised at the last hearing regarding the effects of welding of antenna products on top of the existing water tank.

STEVEN SULLIVAN, SUPERINTENDENT OF DARTMOUTH WATER & SEWER DIVISION OF DEPARTMENT OF PUBLIC WORKS:

Responded that there would be pre-installation and post-installation inspections of the inside of the water tank by divers. Any needed cell tower repairs resulting from the installation of the cell equipment would be the responsibility of AT&T. Internal inspections by divers are done every five years, and DEP requires a security check to be conducted yearly. The division's consultant will be responsible to determine that antenna installation and water tank will withstand the effects of ice or wind storms, and that any wiring is concealed.

HALIM CHOUBAH, PE., BOARD MEMBER:

Asked if an inspection has already been conducted on the water tank's existing conditions and its ability to accommodate the proposed antennas.

STEVEN SULLIVAN, SUPERINTENDENT OF DARTMOUTH WATER & SEWER DIVISION OF DEPARTMENT OF PUBLIC WORKS:

Responded that the inspection has not yet occurred, but will be done prior to any installation of cell equipment. He stated that telecommunication facilities had been previously approved, but that there had been no actual installations to date.

HALIM CHOUBAH, PE., BOARD MEMBER:

Remarked that plans for the antenna installation will need to be approved by the ~~planning~~ *building* department, and that codes will need to be met regarding wind, loads, etc.

EDWARD D. PARE, JR., ESQ.:

Commented on the requirements that need to be satisfied, such as, the plans that need to be submitted to the building inspector to demonstrate that the proposal will meet code requirements and a structural analysis to show that the proposal will meet needs for ice and wind, etc. Additionally, there are specific regulations from DEP.

DAVID MAXSON, CONSULTANT FROM ISOTROPE WIRELESS:

Explained that his role is advisory to the Board by providing them with factual information in correlation with the requirements of the Telecommunication Act of 1996, which is to develop substantial evidence in the written record. He does not take a position in favor of or against a proposal. He makes statements and gives information that the Board could use to either grant or deny a proposal. He helps the Board gather facts that may not have been identified by the Applicant. Another key point that is often missed by the general public in hearings such as this one is that it's not the Board's job to put evidence in the record, rather it is their job to hear evidence. If residents have photographs or specific reports that may provide evidence that is a counter-balance to the evidence presented by the Applicant, then such evidence may be added to the record. When the Board makes a decision that results in the Federal Courts reviewing that decision, the Court would look at the substantial evidence in the written record and not necessarily testimony that occurred at a hearing.

He then identified facts that are in the written report he submitted to the Board. He explained that he began his investigations by reviewing the application and the Dartmouth's zoning bylaw that is applicable to this petition. He stated that the bylaw gives the Board a fair amount of discretion regarding the visual character of a wireless facility. In terms of the wireless facility as proposed, should the Board be inclined to approve the proposal, but feels that the antennas look too cluttered, they may want to consider requiring the installation of a "top hat" or "shroud" such as Medfield has that encloses their facility's antennas that are atop a standpipe (picture is included in his report). The shroud would need to have a 16'-20' diameter (report erroneously states radius). Since the proposed antenna installation shows them to be compact, it precludes another carrier from adding to the water tank. He could not identify whether or not the water tank at Allen Street would be able to support a shroud. The Board could require a shroud as a condition, or continue the hearing until an answer could be obtained regarding the water tank's ability to support a shroud.

Looking at height requirements, preference is usually that the height be needs-based. Antennas could be placed on the sides of the water tank, but a shroud could then not be used, and the antennas, mounts, and cables would be visible. It is unknown how the installation of antennas on the sides of the water tank would affect the coverage that the Applicant is seeking. Consideration of this alternate position of antennas would require additional research.

He reviewed the Applicant's online determination report from TOWAIR that was submitted this evening. The report states that the structure does not require registration with the FCC or notification to the FAA because the structure meets the 20' rule criterion. However, the program that generated this report seemed to be looking at an erroneous description of the structure, that is, that the structure itself is 103' and that the antennas do not increase the height of the structure. So he reentered the data in his phone this evening, and he found that the 103' height is at the threshold for the FAA notification so increasing the height by 13' with the antennas would indeed require FAA notification. However, since this evening the Applicant announced a change in their proposal wherein the antenna height will be decreased by 3' (from 13' to 10'), they will have decreased the structure height by just enough to eliminate the need for the FAA notification. A redo of the TOWAIR determination with correct figures should confirm that they will not need to notify the FAA or register with the FCC, and they won't need to put lights on the structure.

He stated that in his report, he reviewed the bylaw development standards and made suggestions about how the applicant's proposal may or may not have met those standards. There is generally a preference by Planning and Development Communities to use an existing structure rather than carve out a new space for the installation of a tower. This preference is indirectly included in the Dartmouth bylaw. Wireless companies also generally prefer to use an existing structure since it is a less costly alternative to building and permitting a new tower. Additionally, wireless facilities like to use a municipal property (as in this petition) because it is a way to garner support from some of the community since some revenue is raised for the town.

The Board needs to look at a two-pronged test to assist in making their decision. First: Is indeed a significant gap in coverage? Second: Are there alternative sites? More time is needed for him and his company, Isotrope, to do their own computer models and to do more fact finding regarding the gap and frequencies to insure that requirements of the Telecommunication Act are met. The question of alternatives requires looking at other properties.

Comments about questions that have been raised at this hearing:

- Structural integrity: There is a standard for steel antenna towers and antenna supporting structures that is part of the state building code. Specific hurricane zone conditions and icing zone conditions are included in the standard.
- Some people said that they have good AT&T coverage so what is the problem?: If further study by him is approved, he will report on what is the nature of the existing coverage and what constitutes a gap. Is the Applicant seeking an increase in capacity rather than gap coverage?
- Regarding Dr. Don Haes' comments: He confirmed that Dr. Haes presented enough information to insure that the proposal complies with Federal and State regulations in terms of emissions.

ANTHONY SAVASTANO, TOWN COUNSEL:

Remarked that Attorney Pare will need to withdraw his request for a Special Permit under 3B.203 since it is not needed. In response to the comment regarding the preference of town land being used, he advised that the Board not consider that the town will gain revenue from this project when rendering a decision.

Chairman Figueiredo confirmed that the withdrawal will be done later in the proceedings and that the Board needs to eliminate discussions related to the nonconforming component. The Board is to limit discussions and a decision pursuant to bylaw 4A.310. She also confirmed that revenue for the town has nothing to do with the Board's decision. She then asked Attorney Savastano if he had further comments.

ANTHONY SAVASTANO, TOWN COUNSEL:

He reminded the Board that they may accept or reject any recommendations that he makes. He does at times draft a decision document with proposed findings and conditions for the Board's consideration.

Chairman Figueiredo invited Board members to ask questions of Mr. Maxson. She also explained that Mr. Maxson's report contains information regarding each subsection of the bylaws that need to be considered by the Board in making a decision. She stated that Attorney Pare had also commented on each subsection of the bylaw in a brief that he attached to the application. She asked if the subsection that states that a tower be setback from residential structures and schools at a distance at least equal to the height of the tower applies solely to new towers.

ANTHONY SAVASTANO, TOWN COUNSEL:

Responded that he would argue that facilities placed on existing structures need to meet the tower requirements. He stated that in the information provided by AT&T, the nearest house is 113' from the structure, and that the

structure was originally proposed at 103' but newly proposed at 100'. So based on the submitted information, that requirement (bylaw subsection C) would be met.

NICOLE JACKMAN:

There is a buildable lot that has no home yet. That lot may be closer than 100'.

ROBERT GARDNER, BOARD MEMBER:

Asked Mr. Maxson how much time it would take for him to do the gap coverage analysis.

DAVID MAXSON, CONSULTANT FROM ISOTROPE WIRELESS:

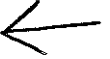
Responded it would typically take about a month to collect information from the applicant, do some processing, and produce a report with his findings.

Chairman Figueiredo commented that gap coverage analysis and investigation of alternative sites, such as the Allendale Country Club, are the two things that now need to be addressed.

HALIM CHOUBAH, PE., BOARD MEMBER:

Commented that the application is based on the significant gap in coverage, and for the Board to do due diligence, more time is needed to research the gap and alternative site issues. Those two issues need to be looked at then the Board needs to look at the bylaw and its subsections to determine ~~if~~ a Special Permit can be granted.

if



ROBERT GARDNER, BOARD MEMBER:

Commented that since there has been a lot of public opinion, the Board needs the additional information.

ANTHONY SAVASTANO, TOWN COUNSEL:

Suggested that perhaps Counsel for the Petitioner would be willing to continue this hearing to September 2nd to allow the Board to look at the gap issue.

EDWARD D. PARE, JR., ESQ.:

Stated that he has no issue with the Board's desire to verify the gap. He wanted to clarify that the water tank is actually not a perfect location. Locating a facility further South would be better. Using an existing structure is the reason for using the proposed location. The Dartmouth bylaw states that the Applicant for a telecommunication facility shall submit to the Board satisfactory evidence that an existing structure is not currently available in order to build a *new* telecommunication facility. Therefore, since the water tank is a satisfactory existing structure, the construction of a new tower would not be allowed. If the Board decided to deny the petition, the Federal Law AT&T would expectedly be successful in a law suit in Federal Court.

He also stated that he would be willing to continue this hearing to September 2nd to allow time for the Board's consultant to verify the gap that AT&T says exists.

Chairman Figueiredo asked Town Counsel for comments.

ANTHONY SAVASTANO, TOWN COUNSEL:

Federal law supersedes state law and local bylaws in regards to telecommunication facilities. He concurred with the Petitioner's Counsel that under the Dartmouth bylaws, existing structures are preferred. He explained the ramifications for losing a case in Federal Court should the Board decide to deny the petition. Some things that the Board can consider in Special Permit or Variance applications involving telecommunication facilities include aesthetics and different locations under the Federal law regulations.

EDWARD D. PARE, JR., ESQ.:

Re-explained the process they used for determining the site for this facility and how the Dartmouth bylaw applies to their decision to seek approval for using the existing water tower. He said that AT&T will consider the screening suggestion (shroud) made by the Board's consultant if it will be structurally possible and not outrageously expensive. He has given the structural information that he received from the Superintendent of the Town's Water Division to AT&T's engineer, Scott Adams for his review. He stated that he was willing to extend the "shot clock" to September 2nd, but that he needed the Board's direction relative to what items, such as, the exchange of information between AT&T and Mr. Maxson and aesthetics that the Board needs to consider in order to make their decision at the next hearing.

MICHAEL MEDEIROS, ESQ., ASSOCIATE BOARD MEMBER:

Requested to the Board's chair to ask Mr. Maxson a question concerning co-location. Permission was granted, and he asked Mr. Maxson about his indication in his report that if the Board were to grant this Special Permit to this Petitioner, based on 2012 Middle Class Tax Relief Act..., a co-locator could attach to the tower almost as a matter or right if the Board is not specific enough in its decision/determination.

DAVID MAXSON, CONSULTANT FROM ISOTROPE WIRELESS:

Responded that he was concerned about that. The term in Section 6409 of that Act is *eligible facilities*. There has been a fair amount of lobbying on behalf of the telecommunication industry with the FCC to define a "base station" as one belonging to one carrier that another carrier can use. The general meaning of "base station" in FCC regulations is facility belonging to a licensee. Therefore from a Community Development and Planning perspective, if "carrier A" is on a structure or tower, and "carrier B" wants to co-locate, "carrier B" does not have an eligible facility at that location so it cannot expand the structure (co-locate). The telecommunication industry's interpretation of the Act is that there would be a *collective eligible facility*, and other carriers could modify the facility in order to co-locate so long as the modification is not substantial. The non-substantial modification would only require a building permit. The definition of "substantial modification" is presently being considered by the FCC. This definition won't be finalized until after the Board makes its decision on this petition. So he (Mr. Maxson) recommends that if the Board decides to approve the permit, that it put as much information as possible to let people in the future know would constitute to be "substantial modification" based on the evidence that was presented for this case.

MICHAEL MEDEIROS, ESQ., ASSOCIATE BOARD MEMBER:

Asked Mr. Maxson for his opinion based on the present case. How much expansion/co-location could occur with the limitations of the present proposal for an antenna mount of 8' in diameter.

DAVID MAXSON, CONSULTANT FROM ISOTROPE WIRELESS:

Responded that he would not see room for another set of antennas on top of the water tank. However, if the height of the second tank at the location would allow for another wireless facility, there could be a co-location at the site. The two carriers would each have a facility on each of the tanks. This might allow for a reduction in the size of the shroud in the present case to be 8' rather than 20' in diameter.

ANTHONY SAVASTANO, TOWN COUNSEL:

Stated that his understanding of appropriate section of the 2012 Middle Class Tax Relief Act... is that the ZBA must approve any requests to modify an existing tower or base station that does not make a substantial change in the *physical* dimensions.

EDWARD D. PARE, JR., ESQ.:

Stated that the co-location and modification language became a consideration by Congress because the telecommunication industry wanted to avoid getting blocked when they want to modify a tower. Some communities require a carrier to apply for a Special Permit each time it want to make a change in its previously

approved antennas. The Telecommunication Act of 1996 was for jobs creation and competition. It created an industry that had not previously existed along with the creation of fierce competition within that industry. Land lines are phasing out, so the Federal Act was a means to deploy technology as fast as possible. Change is coming to prevent blockages for telecommunication facilities. Presently, AT&T's position is that if a base station exists, they would be allowed to modify it. However, not all building officials throughout the Commonwealth agree with that position so those modifications have not happened with frequency. When AT&T wants to modify its own site, building officials almost uniformly throughout the Commonwealth allow it pursuant to the Federal Act. The Act has specific preemption provisions in the Federal legislative history so Congress has wanted to allow the telecommunication industry to employ technology through some form of administrative process, such as a building permit or some other administrative review process.

ANTHONY SAVASTANO, TOWN COUNSEL:

Commented that in this particular case, there is a lease involved. The town owns the facility, so the town's permission would be needed before changes could be made.

EDWARD D. PARE, JR., ESQ.:

In regards to co-location: Should another carrier want to co-locate then the Board may require that it makes specific changes to the existing facility.

He reminded the Board of the previous two approvals for wireless facilities at this location. He concluded that the only issues that are in play at this time are aesthetics and verification of the gap.

He requested to submit new plans and photo simulations to the Board since the height proposal was changed. The antennas would now be 2' off the tank rather than 5'. With the water tank being 90' and the 10' addition from the antennas, the structure would then be a total of 100' in height.

A motion was made by Robert Gardner to accept the identified documents into the record. The motion was seconded by Halim Choubah. Motion carried unanimously.

Chairman Figueiredo then re-invited public comment for those citizens who had been previously asked to wait.

ED GOULART, RESIDENT:

Stated that he has lived at 64 Tucker Lane for 33 years, and he was a member of the Planning Board for 10 years. He is concerned about noise levels from the generator since the power in the neighborhood goes out regularly. He is also concerned about the visuals. The area has the second highest elevation in Dartmouth at 150'. He feels that the facility will be one more intrusion into the neighborhood. There is a viable alternative in the Country Club, and due diligence is needed in exploring that alternative. He voiced concerns about the RFP and lease hoping the Town made all the due considerations necessary before executing anything. He asked if the vintage of the tank was 1952, and that was confirmed by Steven Sullivan, Superintendent for the Water and Sewer Division of the Public Works. He asked that the Board take the age of the tank into consideration when making their decision.

ANTHONY SAVASTANO, TOWN COUNSEL:

Confirmed that the RFP was submitted followed by extensive negotiations on the lease through his office. The final lease proposal was approved by the Board of Public Works.

DAVID MAXSON, CONSULTANT FROM ISOTROPE WIRELESS:

Responded to the concern that was raised about noise. He thought he had read about a noise analysis related to the two air conditioning units in the Petitioner's reports. Some communities do request a noise assessment related to generators. Something that has been done by some Wireless Companies is to include a 10' longer

shelter that allows for a separate room for the generator and muffler with an exhaust pipe that extends to the outdoors.

EDWARD D. PARE, JR., ESQ.:

He stated that indeed the noise analysis was related to the H-VAC units. The noise for the generator was not assessed since it does not run all the time. If there is something the Petitioner can do to mitigate the noise under appropriate conditions, it can be considered.

EDMUND AVILA, RESIDENT:

Asked if information from a Survey from the National Institute of Science for Law and Public Policy that he had submitted at the last hearing would become part of the record for this case. He asked if Attorney Savastano felt that this was a reputable agency. The survey had been done in June and released in Washington on July 3rd. Ninety-four percent of respondents reported that cell towers and antennas would negatively impact their interest in real estate or the price they would be willing to pay for property that had wireless presence.

ANTHONY SAVASTANO, TOWN COUNSEL:

Responded that he would not opine on an expert's opinion on factual issues and that his role was to provide advice to the Board. He stated that having the document entered into the record would be up to the Board's Chairman.

A motion was made by Robert Gardner to accept Mr. Avila's letter and attached information into the record. The motion was seconded by Halim Choubah. Motion carried unanimously.

RAY OSWALD, RESIDENT:

Stated that he was not an abutter, but wanted to make three points: 1) He suggested to the Board to look into the reasons for the withdrawal by previous carriers; 2) The issue is one of aesthetics. He would not want a "hat" on top of that tower. He stated that he was a certified appraiser in the state and suggested that an if appraiser looked at the future and not past history, he would find would find a decrease in property values; 3) He suggested that State Senators and Representatives be contacted because newly proposed state law could supersede everything, and towers could be put up everywhere. State and Federal law would completely outweigh whatever the town does.

Chairman Figueiredo responded that the issues could be investigated by anyone. She reiterated what Attorney Savastano had stated earlier, that it is not the Board's role to find evidence, but to respond to evidence that is presented to the Board.

BRENDA GOMBER, RESIDENT:

Stated that since additions to the record that have been made, and since the petition was for a Special Permit, she wanted to remind the Board that the number of houses that are now in the neighborhood did not exist seven or eight years ago.

No further public comments were made.

ANTHONY SAVASTANO, TOWN COUNSEL:

Commented that it is important to note that under the Federal Regulations the zoning restrictions do not apply to the extent that they have the effect of prohibiting the provision of personal wireless service which disapproval by the Board would create a gap in coverage. Therefore, the key issue for the Board's Consultant is his review of the gap. It seems clear that a denial of the Special Permit will result in a Federal Court case, and the Court would lean greatly in favor of the carrier. If the Board is inclined to impose conditions, the ability to do that will

be lost if the Petitioner files a case in Court and the Board's decision of denial for the requested Special Permit is overturned by Federal Court.

EDWARD D. PARE, JR., ESQ.:

Stated that the Federal Law requires that a denial from the Board would require substantial evidence, and that the Board cannot unreasonably discriminate, which is applicable because of the Board's prior approvals. Additionally, there is expected to be more legislation regarding the telecommunication industry.

HALIM CHOUBAH, PE., MEMBER:

Stated that since aesthetics seems to be an important issue in this case, that a dialogue about the visual representation of the antennas occur before the Board either votes on the petition or decides to request a continuance. He also wondered how the residents who were present at the hearing felt about the suggested addition of a shroud.

EDWARD D. PARE, JR., ESQ.:

Responded that if the Board is interested and feels that it would make a difference to the residents, he would in good faith consider the shroud. If this would be the compromise to get the Special Permit to move forward, it may be worth the extra expense for AT&T, as well as, noise mitigation, shrubbery, etc. However, he stated that he would not be interested in pursuing these ideas if the Board is inclined to deny the petition. He stated that the shroud that was suggested by the Board's Consultant, David Maxson, is in Medfield.

ANTHONY SAVASTANO, TOWN COUNSEL:

Suggested to get Steven Sullivan's opinion, since the Town owns the property and any approvals will need to go through the DPW.

STEVEN SULLIVAN, SUPERINTENDENT OF DARTMOUTH WATER & SEWER DIVISION OF DEPARTMENT OF PUBLIC WORKS:

Stated that his Department would be willing to look at a shroud. It would be considered if it does not put undue stress on the tank. Blockage for monthly inspections and weight bearing would need to be considered for the small surface that exists on the top of the water tank.

ANTHONY SAVASTANO, TOWN COUNSEL:

Advised the Board to have the potential condition dialogue with the Petitioner at this hearing so that both the Board and Counsel for the Petitioner will have necessary information at the next hearing.

Chairman Figueiredo noted her understanding of the suggestions that had been made by both Counsels. She stated that she knows that the bylaw shows a preference for the addition of telecommunication facilities on existing structures, therefore is it advisable to look for alternate sites that would require a new tower.

ANTHONY SAVASTANO, TOWN COUNSEL:

Confirmed that existing structures must be considered first (before considering a new tower).

Chairman Figueiredo stated that given the restrictions of the bylaw, consideration of alternate sites is not viable. She gave her opinion that a task for the Board's Consultant would be to verify the significant gap. She asked Town Counsel to advise if it is appropriate to have him investigate if there are any alternate existing structures, not sites, to which wireless antennas could be added? This may not be a worthwhile endeavor since at first glance, there does not appear to be any other appropriate existing structure in the area. Additionally, conditions that the Board wanted to consider did need to be identified to allow the Petitioner the opportunity to respond to them before a decision is made on the petition. She identified possible conditions included aesthetics, vegetative screenings, and noise control.

ANTHONY SAVASTANO, TOWN COUNSEL:

Stated that he did not think that there are any other existing structures in the area that would satisfy the Petitioner's coverage gap.

ANTHONY D. PARE, JR., ESQ.:

Responded that there are no other existing structures that would meet AT&T's coverage needs.

DAVID MAXSON, CONSULTANT FROM ISOTROPE WIRELESS:

Summarized some of the issues: Explained the coverage gap as shown on the AT&T map. That there is now consideration to eliminate the investigation of alternate sites, due to the bylaw requirements. That perhaps a confirmation that there are no other existing structures in the area to meet the coverage gap as identified by AT&T is needed. Would a next step be that the Board in good faith request that the Applicant to look into the migrating issues that have been identified in order to present them at the next meeting.

Additional comments/questions were made by residents regarding alternate sites. Attorney Pare responded that: AT&T was already located on some of the towers at the identified sites. Some of the towers or sites were not at an appropriate distance to cover the identified gap. Some of the sites would require new towers.

Chairman Figuieredo identified areas that needed Board consensus to move forward with this petition: 1) That the Consultant verify the significant gap in coverage. 2) That the Consultant confirm that there are no other existing structures that would satisfy the needs of the significant gap. 3) Request that the Petitioner and DPW review the possibility of installing a shroud around the antennas that may become a condition for approval of the Special Permit. 4) Request that the Petitioner investigate ways to mitigate noise from the generator that will become a condition for approval of the Special Permit. 5) Other conditions to be considered: vegetative screening, appropriate signage, and bond for the future removal of facility.

She then asked Attorney Pare about his willingness to extend the statutory deadline for the finalization of the decision for this case.

EDWARD D. PARE, JR. ESQ.:

Responded that he was willing to do so. Rather than use the State form, he had a letter that he would date and he and the Board would execute at the end of the present hearing. The concern was the "shot clock", so he determined that he would extend to September 2nd for a verbal decision along with an additional extension to September 16th for complete the written decision. He suggested that the State form was not needed (Town Counsel agreed.).

Robert Gardner made the motion to continue this case to September 2, 2014. Motion was seconded by Halim Choubah. Motion passed unanimously.

Robert Gardner made the motion to continue the "shot clock" to September 16, 2014. Motion was seconded by Halim Choubah. Motion passed unanimously.

10:30 P.M. Hearing adjourned

Tina Cabral, Principal Clerk

Zoning Board of Appeals

Date of approval: **September 2, 2014**



TOWN OF DARTMOUTH
Office of the Zoning Board of Appeals
400 Slocum Road, Dartmouth, MA 02747
(508) 910-1868

MINUTES

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DATE OF HEARING: AUGUST 5, 2014 (Continued Case)
CASE: SPECIAL PERMIT
CASE NO: 2014-24
Petitioner/Applicant: Tekeyla Atkinson
Property Owner: Tekeyla Atkinson
Representative: Gary Farland/Thompson Farland
Subject Property: 11 Tolland Path in the Single Residence A District
MAP: 177 LOT: 16

ATTENDANCE

PRESENT: The Board: Chairman Jacqueline Figueiredo, Clerk Halim Choubah, Robert Gardner, Associate Member, Michael Medeiros, and Principal Clerk Assistant, Tina Cabral
ABSENT: Associate Member, David Dore

6:35 P.M. Chairman Figueiredo opened the hearing

Chairman Figueiredo read into record a letter from the Planning Director, Donald Perry, dated 7/16/14.

Chairman Figueiredo invited the Petitioner or Representative to present the case.

GARY FARLAND: Explained to the Board that a Variance Decision was approved on January 7, 2014 to construct a 31'x17' accessory building on the subject property that will become an esthetic/massage studio home occupation. Per Condition #2 of the Variance Decision, the Petitioner is required to file a Special Permit application in order to bring water to the accessory building.

Chairman Figueiredo invited any Board Members to ask questions.

HALIM CHOUBAH: Asked the Petitioner if he has a plumbing plan.

GARY FARLAND: Answered that the plan had been submitted to the Building Department. The building will consist of a total of four (4) sinks and one toilet.

No further questions by Board Members.

Chairman Figueiredo invited public comments regarding this project.

No public comment.

The Board made proposed findings:

- Locus property
- On January 7, 2014, the Petitioner was granted a Variance (Case # 2013-36) to construct an accessory building on the subject property for an esthetic/massage studio home occupation.
- Per condition #2 of the approved Variance Decision Case 2013-36, the Petitioner was required to file a Special Permit application in order to bring water to the accessory building, hence the present petition, Special Permit Case 2014-24 pursuant to Section. 4A.302 of the zoning bylaws.

- Use of town water and private septic system are existing utilities on the subject property.
- With the construction of the accessory building for the home occupation, the installation of a three (3) chamber storm water recharge system will help with drainage.
- The accessory building is planned to be 527 +/- square feet as it has not yet been constructed.
- Pursuant to Section 4A.302, the installation of plumbing is allowed by Special Permit by the Zoning Board of Appeals with the stipulation that the submitted plans for the accessory building is not proposed in such a manner such that the accessory building could not be used or converted to an additional residential unit.
- The Board of Appeals previously approved Plan of Record as Site Plan prepared by Thompson Farland Professional Engineers/Land Surveyors, dated September 9, 2013.
- Based on the proposed findings, the requested proposal meets the requirements for the issuance of a Special Permit pursuant to Section 4A.302 of the zoning bylaws.

The Board made proposed conditions:

- The Petitioner and/or any subsequent owner will secure all of the necessary permits and approvals from all applicable Boards and Agencies prior to the issuance of a building permit.
- The proposal must meet the requirements of Floodplain District, Section 19 of the zoning bylaws.
- The Board of Health must confirm that the home occupation can be accommodated with respect to on-site water, septic disposal and any other necessary requirements/standards of their board before the issuance of a permit to install the requested plumbing.
- Prior to the issuance of a building permit, the proposed plumbing plan must be verified by the Zoning Enforcement Officer/Building Inspector that the plan includes the installation of four (4) sinks and one (1) toilet for the esthetic/massage studio home occupation.
- The esthetic/massage studio home occupation shall not be used or converted into an additional residential unit.
- There can be an inspection once a year (after notice to the owner) to determine that the esthetic/massage studio home occupation has not been converted to an additional residential unit. Conversion would result in the revocation of the Special Permit after a public hearing in accordance with Massachusetts General Laws, Chapter 40A.
- The Board approved plans referenced as:
 - Project Name: Farland-Permit Set
 - Project #: 3271418
 - Owner: Tekeyla Atkinson
 - Pages: Cover, A.1, A.2, and A.3
 - Dated: 4/23/14

Robert Gardner motioned to close the public hearing which motion was seconded by Halim Choubah. Motion passed unanimously.

Robert Gardner motioned to GRANT the SPECIAL PERMIT based upon the findings and conditions as stated. Motion was seconded by Halim Choubah. Motion passed unanimously.

6:50 P.M. Hearing adjourned

Tina Cabral, Principal Clerk

Zoning Board of Appeals

Date of approval: 9-2-14



TOWN OF DARTMOUTH
Office of the Zoning Board of Appeals
400 Slocum Road, Dartmouth, MA 02747
(508) 910-1868

ADMINISTRATIVE MINUTES

DATE OF HEARING: AUGUST 5, 2014

6:30 P.M. Chairman Figueiredo opened the meeting, Pledged the Flag, Moment of Silence

ATTENDANCE

PRESENT: The Board: Chairman Jacqueline Figueiredo, Clerk Halim Choubah, Robert Gardner, Associate Member: Michael Medeiros, and Principal Clerk Assistant, Tina Cabral

Absent: Associate Member David D. Dore

ADMINISTRATIVE

The Board unanimously voted and approved the following Minutes as amended:

- Administrative Minutes of July 22, 2014 Meeting
- Minutes of 7-22-14-Six Month Extension For Variance & Special Permit Case 2013-19 (25 Russells Mills Rd)
- Minutes of 7-22-14 continued Variance Case 2014-15 (122 Potter St)
- Minutes of 7-22-14 Special Permit Case 2014-24 (11 Tolland Path)

A motion was made by Robert Gardner to accept the Minutes, seconded by Halim Choubah, and unanimously voted.

ANNOUNCEMENTS

Chairman Figueiredo announced that the ZBA was scheduled to next meet on September 9, 2014, but had to be changed due to the State Primary Elections. The next ZBA meeting will now be scheduled on September 2, 2014 at 6:30 p.m.

6:35 P.M. Adjournment

Tina Cabral

Tina Cabral, Principal Clerk
For the Zoning Board of Appeals
Date of Approval: 9-2-14

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