



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

ADMINISTRATIVE MINUTES

DATE OF HEARING: SEPTEMBER 2, 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 Members: Michael Medeiros, David Dore and Rahim Aghai, and Principal Clerk Assistant, Tina Cabral

ADMINISTRATIVE

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

- Administrative Minutes of August 5, 2014 Meeting
- Minutes for Special Permit Case 2014-24 (11 Tolland Path)
- Minutes for Special Permit Case 2014-21 (1048 Allen Street)

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

6:35 P.M. Adjournment

Tina Cabral

Tina Cabral, Principal Clerk
For the Zoning Board of Appeals
Date of Approval: 9/30/14

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

MINUTES

DATE OF HEARING: September 2, 2014
CASE: SPECIAL PERMIT AND VARIANCE
CASE NO: 2014-28
Petitioner/Applicant: John & Kerri Kelly
Property Owner(s): SAME
Representative: Kevin Caldwell
Subject Property: 103 Wilson Street
MAP: LOT(S): Districts Map 127 Lot 35
Registry of Deeds Book: Book 10985 Lot 15

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ATTENDANCE

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

ALSO PRESENT: Kevin Caldwell and John Kelly

11:20 PM P.M. Chairman Figueiredo opened the hearing

LEGAL AD: Notice is hereby given of a public hearing to be held on **Tuesday, September 2, 2014 at 6:30 PM** in Meeting Room 304, Town Hall, 304 Slocum Road, Dartmouth, MA on the Petition of John Kelly and Kerri Kelly who are seeking a **SPECIAL PERMIT AND VARIANCE** to construct a 12' x 12' pool house (with an additional 12' overhang for shade on the South, East and West sides) with a 10' setback from a paper street (Joyce St.) where 20' is required by zoning, and to allow to bring water to the pool house. The property is located at 103 Wilson Street in the General Residence District and identified on Assessor's Map 127 as Lot 35. Information is on file in the office of the Board of Appeals and may be seen upon request. (Section 5.302 – Accessory buildings or Structures with Kitchen and Bathroom Facilities and Section 5.404 – Setbacks)

ADVERTISED: The Notice for public hearing was published in The Dartmouth Chronicle on Wednesday August 20, 2014 and Wednesday, August 27, 2014.

ABUTTER'S LIST: Robert Gardner motioned to waive the reading of the abutter's list into the record, which was seconded by Halim Choubah. Motion passed unanimously. A certified abutter's list is available for review in the office of the Zoning Board of Appeals.

DOCUMENTS ON FILE

- Variance and Special Permit applications time-stamped with the Town Clerk on August 11, 2014
- Schedule of Departmental Payment of Fees to Town Collector
- Legal Ad
- Certified Abutter's List
- Vision Appraisal Cards
- Photos of site
- Plan of Survey of the property by AVT Associates dated November 28, 2012
- "As Built Plan" by AVT Associates dated May 20, 2014
- Elevations by Caldwell Architectural Associations of the proposed pool house dated July 24, 2014.

Chairman Figueiredo read into the record a letter from Planning Director, Donald Perry, dated September 2, 2014.

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

Kevin Caldwell, architect, spoke on behalf of the property owners. He noted they are requesting a setback variance for the pool building. He stated that adherence to the 20' setback would create a hardship for the applicant: – the lot is quite deep and there is an open section at the rear of the lot. Requirement of the 20' would place the pool house in the middle of the lot which would make the rear section of the property unavailable to be viewed from the house. A 10' setback is being requested. The family has two small children and the family would like to be able to view their children in the backyard. Also longstanding vegetable gardens would need to be destroyed with the 20' setback, but would be preserved with the 10' setback.

Mr. Kelly stated that he was available for questions.

A question was raised about the issue of Joyce Street. Mr. Kelly stated that they researched it and found that it is owned by Dr. Glennon but is still referenced as a paper street.

Chairman Figueiredo invited any Board Members to ask questions. There were no additional questions.

Chairman Figueiredo invited public comments regarding this project. There were no comments by the public...

With respect to the Special Permit:

The Board proposed the following findings:

1. Locus property at 103 Wilson Street is identified as Map 127 Lot 35, General Residence District and Flood Zone A, E and X.
2. The top of the existing dwelling foundation is at an elevation of 16.3, which is above the flood zone requirement.
3. John and Kerri Kelly have owned the property since 2008.

4. The petitioners are seeking to build a 12'x 12' pool house that will include the construction of bathroom and wet bar and they have filed applications for both a special permit and variance.
5. A special permit is required pursuant to Section 5.302 to install plumbing for the proposed bathroom and wet bar.
6. The submitted building plans show that the proposed 12'x12" structure, plumbing and covered outdoor seating would not allow the structure to be used or converted to additional residential unit.
7. The property meets the requirements for a Special Permit pursuant to Section 5.302.

The Board made proposed conditions to the Special Permit:

1. Petitioner to secure all of the necessary permits and approvals from all applicable Boards and Agencies
2. The plan of record will be plan entitled "As Built Plan" by aVT Associates dated May 20, 2014; Plan of Survey of the property by AVT Associates dated November 28, 2012 ; and Elevations by Caldwell Architectural Associations of the proposed pool house dated July 24, 2014.
3. Submittal by petitioner and approval by DPW of the final water/sewer plan.
4. The structure cannot be used or converted to an additional residential unit.
5. There may be a yearly inspection to determine that the pool house has not been converted to an additional residential unit. Conversion would result in the revocation of the Special Permit after a public hearing in according with Massachusetts General Laws Chapter 40A.

With respect to the requested Variance, the Board made the following findings

The Board made the following findings

1. Locus property at 103 Wilson Street is identified as Map 127 Lot 35, General Residence District and Flood Zone A, E and X.
2. The top of the existing dwelling foundation is at an elevation of 16.3, which is above the flood zone requirement.
3. John and Kerri Kelly have owned the property since 2008.
4. The petitioners are seeking to build a 12'x 12' pool house that will include the construction of bathroom and wet bar and they have filed applications for both a special permit and variance.
5. A variance is required for the proposed setback from the paper street, Joyce Street. Pursuant to Section 5.404 a setback of 20' and the proposed setback to the paper street Joyce Street are 10'.

The Board made statutory Variance requirements:

1. *There are circumstances related to soils, shape and topography that especially affect the subject property that do not generally affect the zoning district in which the structure or land is located.*

The uniqueness of the lot relates to the existence of the paper street abutting the lot on the west side and the drainage easement that is located in the southeast corner of the lot. The shape of the remaining accessible building space limited the location of the existing in-ground pool and proposed pool house. If the paper street did not exist, the pool house would meet the required side setback requirement at 10'.

2. *A literal enforcement of the provisions of the by-law would involve substantial hardship, financial or otherwise to the petitioner.*

The petitioner explored alternative locations to the pool house, but the proposed location is most viable in order to have a reasonable amount of usable space left on the subject property.

3. *Desirable relief may be granted without detriment to the public good.*

The paper street can serve the property located at 658 Elm Street only. The lot at 658 Elm Street runs along the rear of that property from Wilson Street to Elm Street. The owner of the property at 658 Elm Street has voiced no objection to this proposal so the proposal presents no detriment to the public good.

4. *The Variance will not nullify or substantially derogate from the intent or purpose of the by-law.*

The proposed pool house is in alignment with the purpose of the General Residence District. Due to the pool house location, it is not in proximity to any neighborhood dwelling. The addition of the pool house is not more detrimental than the existing non-conforming structure which does not conform to the required setbacks.

The Board made proposed conditions to the Variance

1. Petitioner to secure all of the necessary permits and approvals from all applicable Boards and Agencies
2. The plan of record will be plan entitled "As Built Plan" by aVT Associates dated May 20, 2014; Plan of Survey of the property by AVT Associates dated November 28, 2012 ; and Elevations by Caldwell Architectural Associations of the proposed pool house dated July 24, 2014.

Chairman Figueiredo asked Board Members for further comments and/or questions.

No further comments or questions by Board Members.

Chairman Figueiredo invited further public comments regarding this project.

No further public comments.

Robert Gardner motioned to close the public hearing which motion was seconded by Halim Choubah and made unanimous by Chairman Figueiredo. Motion passed unanimously.

Robert Gardner made the motion to GRANT the SPECIAL PERMIT based upon the findings as stated and conditions as proposed. Motion was seconded by Halim Choubah and made unanimous by Chairman Figueiredo. Motion passed unanimously.

Robert Gardner made the motion to GRANT the VARIANCE based upon the findings as stated and conditions as proposed. Motion was seconded by Halim Choubah and made unanimous by Chairman Figueiredo. Motion passed unanimously.

11:55 P.M. Hearing adjourned

Tina Cabral

Tina Cabral, Principal Clerk
For the Zoning Board of Appeals
Date of Approval: _____



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DATE OF HEARING: September 2, 2014
CASE: VARIANCE
CASE NO: 2014-26
Petitioner/Applicant: Bradie C. and Betty Diane Metheny
Property Owner(s): SAME
Representative: Richard Rheume
Subject Property: 572 Elm Street
MAP: LOT(S): Districts Map 121 Lot 104
Registry of Deeds Book: Book 81 Page 421

ATTENDANCE

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

ALSO PRESENT: Richard Rheume; Bradie C. and Betty Diane Metheny

10:55 P.M. Chairman Figueiredo opened the hearing

LEGAL AD: Notice is hereby given of a public hearing to be held on **Tuesday, September 2, 2014 at 6:30 PM** in Meeting Room 304, Town Hall, 304 Slocum Road, Dartmouth, MA on the Petition of RICHARD RHEAUME/PRIME ENGINEERING who is seeking VARIANCES to allow the use of the detached dwelling unit behind the existing garage as an accessory apartment with kitchen and bathroom facilities. The accessory apartment does not meet current setbacks as the front yard setback is 17.5' where 20' is required. The subject property is located at 572 Elm St. in the General Residence District and identified on Assessor's Map 121 as Lot 104. Information is on file in the office of the Board of Appeals and may be seen upon request (Section 5.204D & 5.204 - Accessory Apartments, Section 5.219 - Accessory Uses and Section 5.302 - Accessory Buildings or Structures with Kitchen and Bathroom Facilities.

ADVERTISED: The Notice for public hearing was published in The Dartmouth Chronicle on Wednesday August 20, 2014 and Wednesday, August 27, 2014.

ABUTTER'S LIST: Robert Gardner motioned to waive the reading of the abutter's list into the record, which was seconded by Halim Choubah. Motion passed unanimously. A certified abutter's list is available for review in the office of the Zoning Board of Appeals.

DOCUMENTS ON FILE

- Variance application time-stamped with the Town Clerk on 7/22/14.
- Schedule of Departmental Payment of Fees to Town Collector
- Legal Ad
- Certified Abutter's List
- Vision Appraisal Cards
- Existing Building Locations Plan dated July 2, 2014

Chairman Figueiredo read into the record a letter from Planning Director, Donald Perry, dated 8/7/14.

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

Mr. Rheume made a brief presentation to the Board. He noted that the structure had been in existence since the 1940's and used as an accessory apartment until the owners used it as a home office between 1993 and 2000. He noted that the required setback is 20' and that the existing setback is 17.5'. Additionally the size of the apartment is 826 s.f. where the by law allows a unit no greater than 800 s.f. Mr. Rheume stated that it would be a hardship to move the building or to try to make it smaller.

Chairman Figueirdo noted that the legal add stated that relief was needed from Section 5.219 and Section 5.302 of the Zoning By-law. Mr. Rheume stated that relief is not needed or being requested from those sections of the by-law. The petitioner is only seeking relief from Sections 5.204 D and E.

Chairman Figueiredo confirmed that as listed in the legal ad, relief from Sections 5.219 and 5.302 is not required.

Chairman Figueiredo invited any Board Members to ask questions. There were no questions.

Chairman Figueiredo invited public comments regarding this project. There were no comments by the public.

The Board proposed the following findings:

1. Locus property at 572 Elm Street and is identified on Town Assessor's Map 121, Lot 104 and is located in a General Residence District.
2. Bradie C. and Betty Diane Metheny have owned the property since September 1986.
3. The petitioners seek variances to re-establish the use of the detached structure behind the existing garage as an accessory apartment with kitchen and bathroom facilities.
4. The structure was first used as an accessory apartment in the 1940 and no setback or size criteria was required at that time.
5. The structure was used as a home office from approximately 1993 – 2000.
6. To re-establish the structure as an accessory apartment, the petitioner seeks a variance from the amount of usable square footage that presently exists in the structure and for the existing setback from the street

7. Relief is not needed from Sections 5.219 and 5.302 as listed in the legal ad for this petition. The Petitioner meets the requirements of 5.219. Relief from bylaw 5.302 is unnecessary because the accessory apartment located in an existing detached accessory structure is exempt from the need for plumbing relief
8. A variance is needed from 5.204D for the front setback of 17.5'-17.8' of the existing accessory structure, since 20' street setback is required. The existing accessory structure meets the other setback requirements as well as the requirements for height and lot cover for an accessory apartment in the General Residence
9. A variance is needed from 5.304E since the existing accessory structure includes 826 s.f. of habitable gross floor area where only 800 s.f. is allowed.
10. The requested Variances do meet the statutory requirements for granting a Variance pursuant to Massachusetts General laws Chapter 40A§10.

The Board made statutory Variance requirements:

1. *There are circumstances related to soils, shape and topography that especially affect the subject property that do not generally affect the zoning district in which the structure or land is located.*

The increase in square footage of habitable space represents an increase of 26 square feet, only 3% above the requirement and the decrease from the required setback is 2.5 feet is minimal and allows the shape of the lot to remain unchanged. As a stand alone structure it would be considered to be a nonconforming protected structure. The structure has existed since the 1940's before the zoning bylaws existed.

2. *A literal enforcement of the provisions of the by-law would involve substantial hardship, financial or otherwise to the petitioner.*

The elimination of 26 s.f. of living space and moving the structure back 2.5' from the street presents a financial hardship to the petitioner. This is not a self-imposed hardship because the structure has existed since the 1940's.

3. *Desirable relief may be granted without detriment to the public good.*

Since the footprint of the structure has not been changed since the 1940's, reuse of the structure as an accessory apartment rather than as an office is not detrimental to the public good. The parking needs would not be increased by the proposed use and the traffic congestion made be lessened.

4. *The Variance will not nullify or substantially derogate from the intent or purpose of the by-law.*

Re-establishment of the structure's use aligns with the purpose and allowed uses in the General Residence district. The structure has been predominately used as an accessory apartment since the 1940's.

The Board made proposed conditions:

1. Petitioner to secure all of the necessary permits and approvals from all applicable Boards and Agencies

2. The plan of record will be plan entitled "Existing Building Locations Plan 572 Elm Street, prepared by Prime Engineering for Bradie C. & Diane Metheny dated July 2, 2014.

Chairman Figueiredo asked Board Members for further comments and/or questions.

No further comments or questions by Board Members.

Chairman Figueiredo invited further public comments regarding this project.

No further public comments.

Robert Gardner motioned to close the public hearing which motion was seconded by Halim Choubah and made unanimous by Chairman Figueiredo. Motion passed unanimously.

Robert Gardner makes the motion to GRANT the VARIANCE based upon the findings as stated and conditions as proposed. Motion was seconded by Halim Choubah and made unanimous by Chairman Figueiredo. Motion passed unanimously.

11:15 P.M. Hearing adjourned

Tina Cabral

Tina Cabral, Principal Clerk
For the Zoning Board of Appeals
Date of Approval: _____



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MINUTES

DATE OF HEARING: SEPTEMBER 2, 2014
CASE: SPECIAL PERMIT
CASE NO: 2014-25
Petitioner/Applicant: Paul Botelho and Debra Pavao Botelho
Property Owner: Paul Botelho and Debra Pavao Botelho
Subject Property: 4 Isaac Circle in the Single Residence B District, Map 109, Lot 52

ATTENDANCE

PRESENT: The Board: Chairman Jacqueline Figueiredo, Clerk Halim Choubah, Robert Gardner, Associate Members, David Dore, Michael Medeiros, Rahim Aghai and Principal Clerk Assistant, Tina Cabral
ALSO PRESENT: Paul Botelho and Debra Pavao Botelho and Other Interested Parties

10:30 P.M. Chairman Figueiredo opened the hearing

LEGAL AD: Notice is hereby given of a public hearing to be held on **Tuesday, September 2, 2014 at 6:30 P.M.** in Meeting Room 304, Town Hall, 400 Slocum Road, Dartmouth, MA on the petition of PAUL BOTELHO and DEBRA PAVAO who is seeking a SPECIAL PERMIT to allow to construct a proposed 8' x 40' wooden deck farmer's porch attached to the front of existing home. The subject property is located at 4 Isaac Circle in the Single Residence B District and identified on Assessor's Map 109 as Lot 52. Information is on file in the office of the Board of Appeals and may be seen upon request. (Section 4B.300-Special Permit Uses; Section 4B.403-Frontages and Section 4B.404-Setbacks)

ADVERTISED: The Notice for public hearing was published in The Dartmouth Chronicle on Wednesday, August 20, 2014 and Wednesday, August 27, 2014.

ABUTTER'S LIST: Robert Gardner motioned to waive the reading of the abutter's list into the record, which was seconded by Halim Choubah. Motion passed unanimously. A certified abutter's list is available for review in the office of the Zoning Board of Appeals.

DOCUMENTS ON FILE

- Special Permit application time-stamped with the Town Clerk on 7/17/14
- Schedule of Departmental Payment of Fees To Collector's Office
- Legal Ad
- Certified Abutter's List
- Vision Appraisal Card
- Letter from Donald Perry, Planning Director, dated 8/7/14
- Site Plan prepared by AVT Associates, dated 7/9/14

Chairman Figueiredo read into the record a letter from Planning Director, Donald Perry, dated 8/7/14.

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

PAUL BOTELHO: Expressed his desire to construct a wooden deck farmer's porch to be attached to the front of his home.

CHAIRMAN FIGUEIREDO: Commented that after her review of the Special Permit application the bylaws which were cited did not apply to this Special Permit application. She suggested to the Petitioner that he request a withdrawal without prejudice of this petition and reapply for a new Special Permit petition citing the correct zoning bylaws.

PAUL BOTELHO: Requested that the Board allow him to withdraw without prejudice his Special Permit application.

Chairman Figueiredo invited any board members to ask questions.

No questions by board members.

Chairman Figueiredo invited public comments regarding this project.

No public comments.

Robert Gardner makes the motion to close the public hearing. Motion was seconded by Halim Choubah, and made unanimous. Motion passed unanimously.

Robert Gardner makes the motion to Withdraw Without Prejudice the Special Permit. Motion was seconded by Halim Choubah, and made unanimous. Motion passed unanimously.

10:50 P.M. Hearing adjourned

Tina Cabral

Tina Cabral, Principal Clerk
Zoning Board of Appeals
Date of approval: 9/30/14



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Office of the Zoning Board of Appeals
400 Slocum Road, Dartmouth, MA 02747
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MINUTES

DATE OF HEARING: SEPTEMBER 2, 2014 (Continued from August 5, 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 Residential District
Registry of Deeds: Book 920, Page 564

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ATTENDANCE

PRESENT: The Board: Chairman Jacqueline Figueiredo, Clerk Halim Choubah, Robert Gardner, Associate Members, David Dore, Michael Medeiros, Rahim Aghai and ZBA Assistant, Tina Cabral

ALSO PRESENT: Town Counsel-Anthony Savastano, Edward D. Pare, Jr., Esq., David Maxson of ISOTROPE, INC (Consultant to the Board), Steven Sullivan-Superintendent for the Water and Sewer Division of the Public Works, Melinda Piccirilli-Court Report for AT&T, Elisabeth Rutkowski of TRM, and Other Interested Parties

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

NEW DOCUMENTS ON FILE

- Lease Agreement by and between Town of Dartmouth and New Cingular Wireless PCS, LLC
- Coverage Analysis of AT&T prepared by ISOTROPE Wireless
- Memorandum on Height of Water Tank and Antennas prepared by ISOTROPE Wireless
- New TOWAIR Determination Results
- Key Map of Photos (revised), dated 8/24/14
- New Coverage Map Aerial of Dartmouth Police Station existing Cell Tower
- Chart & Map of Cell Towers and Antennas in Dartmouth
- Correspondence from Attorney Christopher Senie, dated 9/2/14
- Correspondence from Attorney Christopher Senie (Re: Cross-Spectrum Labs), dated 5/31/11
- Package of documents from Abutter in Opposition, Nicole Jackman
- Letter from "Residents and Neighbors who opposed the 1048 Allen Street cell panel antenna installation", dated 8/27/14
- Letter from Abutter in Opposition, Amy E. Goulart

Chairman Figueiredo clarified to the public that this case was continued from August 5, 2014 to determine certain identified areas that needed the Board's consensus to move forward with this

petition: 1) consultant to review significant gap coverage; 2) consultant to confirm that there are no other existing structures that would satisfy the needs of the significant gap coverage; 3) Petitioner & DPW to review the possibility of installing a shroud around the antenna; 4) Petitioner to investigate ways to mitigate noise from the generator; and 5) other conditions to be considered: vegetative screening, appropriate signage, and bond for future removal of facility.

Chairman Figueiredo invited David Maxson, Town's Hired Consultant to present his findings in his Coverage Analysis Report.

DAVID MAXSON: Mr. Maxson stated that his report addresses the claims of need for the Facility and provides a review of alternative sites. The "height necessary" was evaluated and the Petitioner has offset the proposed Facility to the north of its ideal location in order to use the existing water tower structure. The coverage to the south does not penetrate as far as it would if the Facility were centered. Since the location is already off center from the ideal for serving the targeted area, any reduction in height would further diminish the coverage to the south. The less the proposed Facility penetrates in a southerly direction, the more likely it will be that an additional Facility will be necessary to supplement coverage. There are no existing structures that offer any material overlap with the proposed Facility's coverage in the area bounded by Tucker Rd, Allen St, Slocum Rd and Russells Mills Rd. Using existing structures makes it more practical. It is necessary to use the greatest height possible on the existing water tower to maximize coverage to the south and minimize the need for a new tower in the vicinity. The any lesser height, the proposed Facility antennas would have to be mounted on the sides of both water towers, because the second tower would obstruct the signal of some antennas mounted on the first water tower that would be pointed generally toward the second water tower. Adding a cylindrical shroud covering the antennas on top of the tank would create a clean architectural appearance. If antennas were to be side mounted, the antennas might be more unappealing as side mounts. The height proposed does seem necessary to accommodate the transmitter/receiver for the proposed service as required in the bylaw. Any reduction in the height of the antennas on the water tank will not improve the site's ability to support co-location. Alternate locations were researched where antennas could be installed at a lower height than the proposed antennas. All local residential and nonresidential buildings were ruled out because their heights are typically below the height of the local tree cover, which severely obstructs signal propagation from a cell site. A search for existing tall structures was performed for potential alternatives. ISTROPE turned up only one tall structure in the general area. This structure was the existing cell tower at the police station on Russells Mills Rd. There were no other tall existing structures tall enough to clear the vegetation and provide a substantial coverage footprint. ISOTROPE also evaluated the Petitioner's coverage claims and performed coverage mapping. The Petitioner provided evidence intended to show a gap in service using its 1900 MHz frequency band. This is one of two frequency bands that the Petitioner uses to provide the new 4G (4th generation) wireless services using a technology called LTE. The other frequency band is nominally at 700 MHz. It is well established that 700 MHz signals penetrate foliage more readily than 1900 MHz signals. Hence, the 1900 MHz coverage map will show less coverage than a 700 MHz coverage map. As long as there is 4G LTE service available to a user on the Petitioner's 700 MHz spectrum, the Petitioner is providing service to that location. Alternate frequency bands are employed to increase the capacity of the network generally within the coverage footprint of the primary network frequency band. The Petitioner is using 1900 MHz band as capacity spectrum. There is substantial coverage at 700 MHz where the 1900 MHz coverage is lacking. There is an area bounded by Slocum Rd, Allen St, Tucker Rd and Russells Mills Rd that is not entirely served by the Petitioner's 700 MHz coverage. The proposed Allen St Facility substantially covers this area with 700 MHz service. The alternate site at the police station tower does not substantially cover

this area with 700 MHz or 1900 MHz service. In conclusion the Petitioner has a number of residential streets in the area south of Allen St that do not receive the 700 MHz signal levels at the Petitioner's targeted level of 700 MHz service. The proposed Facility provides new 700 MHz service to this area and more. The Petitioner has also submitted a corrected TOWAIR determination result with indicates no FAA notification is required.

Chairman Figueiredo invited Steven Sullivan, Superintendent of the Department of Public Works to comment.

STEVE SULLIVAN, WATER SUPERVISOR FOR TOWN OF DARTMOUTH: He commented that the placement of a shroud on top of the proposed cell antennas could prevent any employee from visually inspecting the tank as inspections are done monthly as well as accessing the vent on the top of the water tank. He stated that there could be a possible problem. If a shroud is placed, AT&T would have to be notified to shut off the power to allow the water department employees access every time they need to inspect the tank. He also mentioned that DPW would need to have its consultant/engineer perform an inspection as to the access, structural integrity of the tank, painting the shroud to match the color of the tank, possibility of any welding damage and snow, ice and wind load prior to any installation of a shroud. Mr. Sullivan expressed his opinion that the water tank would be better without the shroud.

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

EDWARD D. PARE, JR., ESQ.: Addressed Mr. Sullivan's concern by stating that the shroud would obviously be a more expensive option for AT&T. He provided the Board with a list of alternative sites but none came up.

Chairman Figueiredo invited any board members to ask questions.

ROBERT GARDNER: Asked Mr. Sullivan if there is an access door to get into the tank if a shroud was installed.

STEVE SULLIVAN: Answered that he is not sure as the access to the tank is on the top of the tank in the center.

Chairman Figueiredo invited public comments regarding this project.

CHRISTOPHER SENIE, ESQ.: Spoke on behalf of two abutters who are the closest to the water tank. He questioned whether there were alternative sites for the cell antennas; this location is not perfect and maybe to consider the Allendale Country Club; the cell antennas were in too close of proximity to homes and his clients live 150' away from the water tank; it will generate quite a bit of sound power; the level of sound pressure is loud; the machinery needs to be cooled down; is there a substantial gap in coverage; expressed his opinion that the petition should be denied as the Town has involvement in the application process.

STEVEN BROWN, ALLENDALE COUNTRY CLUB: Expressed his interest to have AT&T erect a cell tower on the golf course property and had contacted Attorney Pare with respect to his

interest. He feels if a cell tower is higher than the water tank there would be more coverage and the cell tower would be away from residential homes.

A number of abutters and interested parties were present at the hearing and spoke in opposition to the proposal and raised similar concerns from the previous hearings such as gap coverage, low real estate values, possible radiation, noise, well-being of the neighborhood, and alternative sites.

A lengthy discussion continued relative to concerns in opposition to this proposal.

Chairman Figueiredo invited any board members to ask further questions.

No further questions by board members.

Halim Choubah makes the motion to close the public comment. Motion was seconded by Robert Gardner, and made unanimous by Chairman Figueiredo. Motion passed unanimously.

A lengthy discussion ensued between Town Counsel and the Board relative to making proposed findings and conditions.

The Board proposed findings:

- 1. The locus property at 1048 Allen Street and is identified on Town Assessor's Map 148, Lot 39 and is located in the Single Residence B District.*
- 2. The subject property has been owned by the Town of Dartmouth, Department of Public Works since 1946.*
- 3. A garage belonging to the Town's water department and a 2 million gallon stand pipe as well as a 95' tall water tank with a capacity of 500,000 gallons exists on the subject property.*
- 4. The Petitioner, New Cingular Wireless PCS, LLC ("AT&T") is seeking a Special Permit to allow the installation of a Telecommunications Facility on the subject property.*
- 5. The Petitioner has entered into a lease with the Town of Dartmouth, the owner of the subject property for a portion of the subject property.*
- 6. The Petitioner is enhancing its data network to provide high speed data services commonly referred to as "long term evolution" ("LTE"). LTE is designed to improve AT&T's data services network and will be incorporated into this Facility.*
- 7. The installation of the Telecommunications Facility will include and propose:*
 - a tri-sector antenna frame mounted/stud-welded to top of water tank with 12 panel antennas;*
 - 60 jumper cables, RET 27 remote radio heads and 4 surge protectors atop an existing elevated water tank;*
 - construction of a 276 s.f. concrete pad within a leased area fenced compound;*
 - transformer on utility company approved concrete pad;*
concrete pad will be at ground level within existing fenced compound area;
 - construction of a 11'6"x 24' equipment shelter with a mounted diesel generator inside shelter;*
 - two (2) fiber optic cables, 8 DC cables and 3 RET cables mounted to a cable bridge running to the equipment shelter across a cable bridge and up water tank support leg then up and over side of tank to antenna frame;*

- construction of a 10' wide utility easement will extend from the existing curb cuts and driveways;
 - antenna installation will increase the height of the existing water tank by 10 feet.
 - existing fenced compound is flat and well drained. No changes to existing grades are proposed;
 - Infiltration of ground water will be promoted by using crushed stone under the new concrete pad;
 - the existing lot coverage is estimated to be at 44.2%. The proposed project will increase the coverage by .3%; and
 - electrical conduits from existing utility pole will be used.
8. A Telecommunications Facility is allowed by Special Permit through the Board of Appeals if met by the requirements pursuant to zoning bylaw Section 4A.310.
 9. The subject property has been approved by Special Permit to other Telecommunications Facilities namely Omnipoint Communications, Inc., Case#2008-31 and Nextel Communications, Case#2007-64.
 10. The proposal is in compliance for all uses in Single Residence A Districts and meets development standards pursuant to zoning bylaws Section 4A.400-Development Standards, Section 4A.401-Lot Area, Section 4A.402-Lot Shape, Section 4A.403-Frontage, Section 4A.404-Setbacks, Section 4A.405-Height, Section 4A.406-Percentage of Lot Coverage, and Section 4A.408-Signs
 11. Zoning bylaw Section 4A.407-Parking and Driveways does not directly apply to this proposal as the access to the Facility will be un-manned and have no loading or storage areas. Trips to the Facility will average once or twice per month by Town maintenance personnel who will park on the easement on the fenced compound. No additional fencing is required.
 12. Zoning bylaw Section 3B.203 is not applicable to this Special Permit application.
 13. The Telecommunications Facility is to be an un-manned private and secure equipment shelter that will be accessed only by trained technicians who are employed by the Town of Dartmouth for periodic routine and sanitary inspections and maintenance.
 14. The Facility does not require police or fire protection because the installation has its own monitoring equipment that can detect malfunction and/or tampering.
 15. The Facility will not be a threat to the public, health, safety and welfare.
 16. The Facility will aid in public safety by providing and improving wireless communications services to the residents, businesses, commuters, and emergency personnel utilizing wireless communications in the immediate vicinity.
 17. The Facility will not generate any odor, fumes, glare, smoke, or dust or require signage.
 18. No significant increase in traffic or hindrance to pedestrian movements will result from the Facility.
 19. Based on the evidence submitted and demonstrated by the Petitioner and the Town's hired consultant through reports there is a significant gap in coverage in and around the surrounding area.
 20. Petitioner will comply with FCC and FAA standards, if applicable.
 21. The "height necessary" was evaluated and is ideal to maximize the coverage of the Facility in the surrounding area. There are no other existing structures that offer any material overlap with the proposed Facility's coverage in the area bounded by Tucker Rd, Allen St, Slocum Rd and Russells Mills Rd.
 22. The height of the proposed cell antenna installation has been revised from 13' to 10'.
 23. The Petitioner and the Town's hired consultant, through research and evidence submitted, searched alternative locations for existing tall structures and sites where

antennas could be installed at a lower height than the proposed antennas. All local residential and nonresidential buildings were ruled out because their heights are typically below the height of the local tree cover, which severely obstructs signal propagation from a cell site. A search for existing tall structures was performed in the area and there were no potential alternatives.

24. There is no evidence regarding any potential reduction of real estate property values.
25. The final amended plan included a proposal for the installation of a 16'6" x 9' 6" shroud. Department of Public Works will make the final determination as to whether this shroud will be constructed and installed in its sole discretion. The factors considered in making such a determination will include the effect on the structural integrity of the tank, safety to workers and others, possible interference to access and inspections, effects on the paint of the tank, and other factors which the Board of Public works determines are necessary or important in considering the effects of such an installation on the water tank. If the Board approves the shroud, it will be constructed and installed at the Petitioner's cost. Any costs incurred by the Board of Public Works, including the cost of consultants, in making this determination shall be paid by the Petitioner.
26. The Petitioner has performed the TOWAIR application and the result indicates that no FAA notification is required.
27. The Board finds that the project meets the conditions for granting this Special Permit pursuant to Section 4A.310-Telecommunications Facility and Section 38 of the Zoning By-laws.

The Board proposed conditions:

1. 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.
2. The Petitioner must be in compliance with all the terms of the Lease Agreement by and between the Town of Dartmouth/Department of Public Works and New Cingular Wireless, PCS, LLC ("AT&T") relative to the subject property situated at 1048 Allen Street, Dartmouth, MA 02747.
3. The Petitioner shall install a shroud at the top of the water tank as set forth in the final amended plans submitted to this Board, subject to the approval of the Board of Public Works as set forth above in 25 of the Decision. If the Board of Public Works determines that the shroud will not be allowed, the grant of the Special Permit will not be affected. Any costs incurred by the Board of Public Works, including the cost of consultants, in making this determination shall be paid by the Petitioner.
4. The Telecommunications Facility will be installed, erected and maintained and used in compliance with all applicable Federal and State requirements, including but not limited to, the Radio Frequency Emissions set forth by the FCC.
5. After the installation of a diesel powered generator and compressor including any and all equipment producing noise in the base equipment shelter, a test is to be conducted on the acoustical noise frequency and the results of the test are to be provided to the Zoning Enforcement Officer prior to any issuance of any applicable permit. Any acoustical noise from the proposed AT&T equipment will be in accordance with the regulations of the DEP Noise Control Regulation 310CMR710.

6. *The Telecommunications Facility is to be a private and secure equipment shelter which will include the diesel powered generator that will be accessed only by trained technicians.*
7. *The Town of Dartmouth will continue to maintain the Facility in good condition as determined by the Department of Public Works Water Department and Director of Inspectional Services. The Water Department will continue to have access and perform its usual periodic routine and sanitary inspections and maintenance to the water tank.*
8. *Any proposed addition of any co-locators on the water tank of the subject property requires the filing of a new Special Permit application and brought before the Zoning Board of Appeals.*
9. *In the event that the removal, restoration and repair of the Facility or any cessation of use requires, a surety bond or escrow account is required by the Petitioner pursuant and in accordance with the terms in Section 13(b) of the Lease Agreement by and between the Town of Dartmouth and New Cingular Wireless PCS LLC ("AT&T").*
10. *The Board approved Plan of Record as AT&T Telecommunications Facility on DPW Water Tank-Allen Street, For: Tower Resource Management ("TRM"), Drawings: Pages T-1, Z-1, Z-2, Z-3, Z-4 and Z-5,
Drawn By: EG Advanced Engineering Group, P.C., Dated: August 27, 2014*

Halim Choubah makes the motion to grant the SPECIAL PERMIT based upon the proposed findings and conditions. Motion was seconded by Robert Gardner, and made unanimous by Chairman Figueiredo. Motion passed unanimously.

10:30 P.M. Hearing adjourned

Brittany Doherty, Temporary Principal Clerk
Zoning Board of Appeals
Date of approval: _____