

**STAR TOWER CO./T-MOBILE NORTHEAST
PETITION FOR VARIANCE
SEPTEMBER 13, 2010**

The public hearing was held in Stow Town Building and opened at 7:34 p.m. on the petition filed by **Star Tower Co., LLC, 655 Summer Street, Boston and T-Mobile Northeast LL, 15 Commerce Way, Norton** for variances under Zoning Bylaw Sections 3.10, 5.3.7.1, 5.3.7.2 and 5.3.8 to allow construction of a wireless service facility at **215 Harvard Road (Wedgewood Pines Country Club)**. The property is shown on Stow Property Map R-4 as Parcel 39A.

Board members present: Edmund Tarnuzzer, Michele Shoemaker, Charles Barney (associate), Andrew DeMore (associate), Ruth Sudduth (associate).

Mr. Tarnuzzer chaired and read the notice of hearing as it had appeared in the *Beacon Villager* on August 26 and September 2, 2010. The hearing notice had been forwarded to all abutters by certified mail, return receipt. Present were Janet Moffat, 185 Harvard Road; Barbara Drechsler, 179 Harvard Road; Neal Dunn, 31 Sylvan Drive; Robert Lahey, 27 Sylvan Drive, James Murphy, 21 Sylvan Drive. Mr. Tarnuzzer recited the criteria to be met for grant of variance.

Also present were Planning Board members Ernest Dodd, Kathleen Willis and Lori Clark; Town Counsel Jon Witten. Representing the applicants were Attorney Brian Grossman of Prince Lobel Glovsky & Tye; Peter Fales of Centerline Communications; Scott Hefferman, Radio Frequency Engineer; Caleb Miller of Pappas Enterprises.

Mr. Grossman stated he is representing both applicants who are seeking use and dimensional variances for installation and operation of a wireless service facility. The facility will consist of a 150-foot monopole within a 30-foot by 90-foot fenced lease area. T-Mobile proposes to install nine wireless communications antennas at a centerline height of 147 feet, a Global Positioning System antenna, associated radio cabinets mounted on a concrete pad within the lease area, and associated coaxial cables. The cabinets will be of heavy duty steel and weatherproof. The application contains the reasons why the applicants feel the Board has authority to grant the variances.

Mr. Hefferman, employed by T-Mobile as a radio frequency engineer responsible for radio network design in Massachusetts, said that T-Mobile has a system of on-air sites, using existing structures in some cases, particularly in the Route 495/117 corridor. The next phase is to fill in transmission gaps in the Route 117/111 area. There is a significant gap in coverage, therefore, T-Mobile has chosen to pursue filling that gap in this area. Mr. Hefferman presented maps showing existing T-Mobile on-air coverage with an antenna at 97 feet and at 147 feet. That at 147 feet showed much larger coverage.

Town Counsel Witten inquired if possible sites within the Wireless Service Facility Overlay District had been explored. Mr. Hefferman responded that was the first thing that was done but without a good result. They feel the golf course is good for this proposal. There are two areas investigated to the south and the west: Wheeler Road (Spindle Hill); Hillcrest Avenue

(too close to Wheeler Road); Gleasondale Mill; Brown Street in Harvard. Minuteman Air Field would require a 220-foot pole and would be in proximity to runways.

Mr. Tarnuzzer commented that the applicants have to convince the Board that it has the authority to grant the requested variances. Mr. Grossman responded that, as stated in the application, there is a body of case law developed by the federal courts to support the proposal. If there is a significant gap in coverage, the carrier is entitled to provide coverage to fill the gap. In this case there is some coverage coming from other facilities, some not in Stow. The issue is closing the coverage gap. Mr. Grossman said the Board can grant relief to the carrier. Federal law preempts state law.

What is considered a significant gap? Mr. Grossman responded there is no real definition. A user should be able to receive and maintain an uninterrupted communication. There are many wireless-only homes, i.e., those with no land lines. The number of subscribers has increased due to the change in use habits in vehicle, home and office. The site is designed to provide for a co-carrier, although that does not necessarily mean that other carriers have coverage gaps in the proposed area. Mr. Grossman noted there has been a fair amount of development in the area, and this site will provide coverage to those homes. There have been complaints of lack of signal from users of the golf course.

Mr. Witten advised the Board has the right to request of the applicant funds to engage the services of a consulting engineer to verify the information submitted. He recommended that the applicant grant the Board an extension of time for decision filing to enable an engineer to complete an analysis. He noted that Stow has a long history with the delivery of communication. The overlay district was created with the assistance of a very competent engineer. He asked if the overlay district is not effective to serve the needs of this carrier. If there are no sites to serve the carrier, then the Board can relieve the burden.

Ms. Shoemaker asked if the applicant could first apply to the Planning Board for special permit and then return to the ZBA for variance. She expressed discomfort in granting a variance in spite of the law and the Planning Board process. Ms. Sudduth felt the application was an effort to bypass the process. Mr. Witten said the applicants are entitled to a fair hearing. There should be peer review by an engineer. He suggested a date be selected for a continued hearing.

Donald McPherson, owner/manager of Minute Man Air Field, cited possible safety concerns with the proposed wireless tower. He noted there is an "obstruction evaluation" application with both the FAA and MassDOT that to this day the applicant has not filed. He recommended the hearing be continued until both agencies have had an opportunity to review this proposal. Mr. Grossman said he would check into this.

Returning to the process, Mr. Grossman said it is not the intent to avoid the process. It is felt that this application is appropriate.

Ms. Shoemaker questioned if there is a possibility of amendment to the overlay district. Mr. Tarnuzzer noted the Board is not being asked for a special permit, only for variance. Mr. Grossman reiterated they feel they have made the proper application for a use variance outside

the overlay district, with the addition of dimensional variances. The Planning Board could not grant dimensional variances.

Lori Clark of the Planning Board asked if there is coverage with existing facilities within the overlay district. The response was there is some coverage, but the only way to change that is with a another tower.

Janet Moffat of 185 Harvard Road noted the Wheeler Road site is a mile away. She said the Country Club has a lot of area, and the proposed site is close to a residential neighborhood. Could there have been a site further away. Mr. Grossman responded that alternate places on the property were explored. There are factors involved in siting, such as access for construction equipment, availability of utilities, etc. There are very few usable areas on the property. This is the best site from the buildable aspect.

Mr. Witten asked if the golf course location meets T-Mobile's needs. He had not seen that information included in the application. He wished to make sure the Board has all of the information with regard to other site investigation on the course.

Ms. Clark indicated there had been discussion of a balloon test during a Planning Board preliminary discussion with the applicant. Mr. Witten indicated the ZBA could require such a test.

Mr. Witten suggested that the services of David Maxim, a radio frequency engineer, be engaged by the Board for review of the proposal. With the permission of the applicant as regards the procurement process and the choice of engineer, Mr. Witten was to contact Mr. Maxim for a quotation. He felt it important that there be a full record in the event of a legal challenge to the Board's decision. Discussion then again turned to the use variance aspect. It was decided to conduct a balloon test at the site on October 16th with an October 17th rain date from 6:00 a.m. to 6:00 p.m.

Mr. Grossman agreed to an extension of time for decision filing from October 29th to November 30th, 2010 and was to submit a written agreement to that effect.

It was voted to continue the hearing to Monday, October 25th, 2010 at 7:30 p.m.

The hearing was adjourned at 9:20 p.m. to be continued on October 25, 2010 at 7:30 p.m.

Respectfully submitted,
Catherine A. Desmond
Secretary to the Board