

**MINUTES  
ZONING BOARD OF APPEALS  
OCTOBER 25, 2010**

The meeting was held in Stow Town Building and began at 7:30 p.m. Board members present were Edmund Tarnuzzer, Michele Shoemaker, Charles Barney (Associate), Andrew DeMore (Associate) and Ruth Sudduth (Associate).

**Star Tower Co./T-Mobile Northeast** - The public hearing continued from September 13, 2010 was reopened in Stow Town Building at 7:33 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).

Representing the applicants were Attorney Brian Grossman of Prince Lobel Glovsky & Tye; Peter Fales of Centerline Communications; Scott Hefferman, Radio Frequency Engineer. Also present were Town Counsel Jonathan Witten, Planning Board member Ernest Dodd and Donald McPherson of Minute Man Air Field.

The applicant had submitted to the Board a package of material entitled "Supplemental Information", dated October 20, 2010. Its purpose was to respond to questions raised at the initial hearing. Mr. Grossman reviewed the submittal as he referred to the exhibits contained therein. The proposal had been evaluated by Site Safe, RF compliance experts, who determined the maximum height that can be built on the site without notice to the FAA is 185 feet AGL. The structure does not require notification to the FAA or FCC and would not affect navigation.

Exhibit 2 addressed alternative locations on the Wedgewood Pines property. Several possible sites were explored and rejected for a number of reasons, such as access for construction and/or utilities, wetlands, etc. The proposed site is felt to meet the criteria.

Exhibit 3 concerned nearby parcels within the Wireless Overlay District that were reviewed. It was determined that none of those are reasonably feasible alternatives to the proposed facility. A number of maps were included to demonstrate what coverage might or might not be from those sites. Also shown were existing and proposed coverage from the Wedgewood Pines site. Mr. Hefferman explained that the full potential of the site is shown in green. Another map showed the areas to be covered that are not now covered. There are variations due to topography and terrain.

Member Ruth Sudduth questioned why the proposal was before this board. She said there is a process in place with the Planning Board. Is the Town not making a good faith effort to allow cell towers? Mr. Witten responded that the overlay district is not enough. If the ZBA denies, the applicant would have to show there is discrimination. The burden is on the applicant

to prove that the overlay district is not good enough. He pointed out that the Planning Board had worked very hard to create the overlay district. There could be amendment of the district through town meeting action.

Ms. Sudduth asked if there is a reason they had not applied to the Planning Board. Mr. Grossman responded that, given the state of affairs, the ZBA is the only board to hear this. The Town is under obligation to comply with the Telecommunications Act. The ZBA is the appropriate board to grant a variance. Mr. Grossman added that Stow is not the first town to be asked for a variance in this regard. In terms of the regulatory process, this is appropriate. Mr. Witten repeated that the burden is on the applicant to demonstrate that the overlay district is not good enough. A variance requires a hardship finding. The Board is to be convinced there is a significant gap. It is expected the report of the Board's RF consultant, to be received by the end of the week, will address the question of gap.

Mr. Tarnuzzer referred to a site on Boxboro Road within the overlay district and asked if it would be adequate for the purpose. The response was there are considerations from an RF aspect. That site does not provide the amount of coverage being sought. Other considerations are access and wetlands.

Mr. Witten said that the federal courts have no authority to strip local control. If a variance is granted with conditions, it would probably not be overturned by the court.

The suggestion was that the hearing be continued to November 1st at 8:00 p.m. when it is expected the consultant's report will be in hand and to then further continue to November 22nd at 7:30 p.m. Mr. Grossman presented a letter granting an extension for variance decision filing to December 30, 2010.

The hearing was adjourned at 8:25 p.m. to be continued on November 1, 2010 at 8:00 p.m.

**Villages at Stow** - A request was received from developer Habitech for reduction of the construction bond covering Phase I of the Villages at Stow Chapter 40B project. The Board's consulting engineer, Susan Carter of Places Associates, had performed a review of the construction progress and recommended the bond amount be reduced from \$250,000 to \$22,950. Mr. Barney moved to approve the bond reduction, second by Ms. Shoemaker. The vote on the motion was unanimous.

**Plantation I & II Chapter 40B** - The Board met with Town Counsel Jonathan Witten to review and discuss drafts of the decisions for the Plantation II Comprehensive Permit for a 37-unit apartment building at 252 Great Road and for modification of the Plantation I Comprehensive Permit to accommodate the Plantation II development. Representing the applicants were Peter Munkenbeck, Eric Herrmann and Bruce Fletcher. Planning Board member Ernest Dodd was also in attendance.

Mr. Witten explained that the draft has been prepared by Attorney Rita Schwantes for the applicant. The draft before the Board includes Mr. Witten's amendments. A waiver had been requested from the Board of Health regulations concerning wastewater disposal at 1.5 times that

required by Title 5. It was noted there was no mention in the Places Associates report that the waiver would be necessary. It was felt this is a significant issue. Mr. Munkenbeck said it would not be possible to fully comply with the Board of Health requirement. This location has very good percolation soils, and there is no practical reason why this site would not function well with the State's Title 5 requirements. Mr. Witten noted that Title 5 is a "one size fits all" regulation. The Board of Health adopted its regulations based on the soils within the town. Mr. Tarnuzzer noted that the area of site is rather restricted and expressed concern that a waiver might be setting precedent for future applications. Mr. Munkenbeck pointed out that the peer review did not see a problem with the waiver, nor did the Board of Health address it in their response.

Mr. Tarnuzzer clarified that the septic system would serve only the single building. The system for the existing house will have to be upgraded. Mr. Munkenbeck said the applicant would accept a condition that the house will comply with Board of Health requirements.

Mr. Witten noted that the wording of the draft decision refers to "sub-division" of the property to accommodate the existing house and the proposed building. He felt the reference should be "division", assuming the Planning Board has authority to comply with the Board's decision. The house is not part of the 40B, and it is proposed to sell it at market rate. An ANR plan is not within this board's authority to grant. Mr. Munkenbeck said there was no objection to changing "sub-division" to "division" in the draft. In order to apply for a building permit concerning the house, there should be a plan for a valid lot. Mr. Witten said that the ZBA through the Planning Board could endorse the plan for division of the property.

It was noted that the November 2nd State Election ballot includes a referendum question to repeal Chapter 40B. The understanding is that any approved 40B project that has not been issued a building permit would not go forward.

Mr. Tarnuzzer advised that the consensus of the Board with regard to the wastewater disposal question tends to allow State regulations to take precedent over the Town. Mr. Witten expressed concern about existing soils at the site. That will have to be proven to the Board of Health. The consensus is to grant that waiver.

Mr. Witten reviewed for the Board the "red lined" changes included in the current draft. The applicant had granted the Board an extension to November 4th for filing the decisions with the Town Clerk. Mr. Witten and Mr. Herrmann were to confer about several sections where there is disagreement. The Board could vote to grant the Comprehensive Permits subject to the changes to be made.

Ms. Shoemaker moved to grant the Chapter 40B Comprehensive Permit for Plantation II subject to the changes to be made by Town Counsel and the applicant; second by Mr. DeMore. The vote was unanimous in favor.

Ms. Shoemaker moved to grant the first amendment to the Chapter 40B Comprehensive Permit approved for Plantation I in 1982; second by Mr. Barney. The vote was unanimous in favor.

In view of certain circumstances, it was mutually agreed that an additional extension for decision filing to November 10th is in order. The applicant was to forward that extension to the Board.

The meeting was adjourned at 9:45 p.m.

Respectfully submitted,  
Catherine A. Desmond  
Secretary to the Board