

SUDBURY ZONING BOARD OF APPEALS
MINUTES
OCTOBER 5, 2015

The Board consisted of:

Jonathan F.X. O'Brien, Chair; Jonathan G. Gossels; Nicholas B. Palmer, Clerk; Jeffrey Klofft; John Riordan (Alternate) and William Ray (Alternate).

Also present at the meeting on behalf of the town were: Jody Kablack, Director of Planning and Community Development. Selectman Susan Iuliano; Selectman Leonard Simon and Mark Herweck, Building Inspector.

The meeting was opened at 7:33 p.m.

Mr. Palmer read the Hearing Notice published in the Sudbury Town Crier.

- 1) Public Hearing, Case 15-33 – Varsity Wireless Investor, LLC, applicant, Town of Sudbury, owner of property, for a Special Permit under the provisions of Section 4320 of the Zoning Bylaws, to install and operate a wireless communications facility consisting of a 140' stealth monopole tower and associated equipment, property shown on Town Map H08-0049, 275 Old Lancaster Road, Residential Zone A-1.
- 2) Public Hearing, Case 15-34 – Varsity Wireless Investor, LLC, applicant, Town of Sudbury, owner of property, for a Variance under the provisions of Section 4352 of the Zoning Bylaws, to increase height of wireless communications tower above the 100' maximum to 140', property shown on Town Map H08-0049, 275 Old Lancaster Road, Residential Zone A-1.

Mr. Francis D. Parisi, Esq., representing Varsity Wireless, presented the company's application and shared a digital presentation with the Board and residents.

Mr. Gossels thanked the neighbors for coming to voice their opinions.

Mr. Parisi stated that about 10 years ago this site was named as one of the preferred zones for cell towers at Town Meeting. Varsity Wireless, he continued to explain, builds structures that comply with local Bylaws; data shows that over 70% of emergency calls to 911 are made from cell phones. Wireless connectivity is used more and more these days and they are more than just voice transmissions, because of this consumers demand better transmission. In order for the signal to penetrate more sites the need for cell towers is more and more necessary; the challenge now is to find the right site for these towers. This large parcel at the DPW yard is in relatively local proximity to the neighborhoods that Varsity Wireless is trying to help.

Mr. Parisi stated that this application package is being submitted to the ZBA for a Special Permit and a Variance, and to the Planning Board for a Site Plan Approval. The applicant desires to construct a 140' tall Wireless Service Facility within the Wireless Service Facility Overlay District, and requires a Variance from the 100' height limitation for Wireless Service Facilities under Section 4352.

Mr. Parisi noted that a visual demonstration by flying a balloon to illustrate the height of the proposed facility was performed on Saturday, September 19, 2015 from 8:00 am to 12:00 Noon. The balloon was raised to 140 feet and photographs were taken from different locations around town. The photographs of the balloon test were shown in the digital presentation.

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Mr. Parisi described the facility and location of the tower to be behind the DPW building, with the use of an aerial photo; the nearest abutter will be about 300 feet from the tower. Mr. Parisi noted that the Town's Bylaw requires a distance of only 125 feet.

The proposed tower will be 140' tall "stealth" free-standing monopole tower with all antennas, tower based electronics and cabling to be located within the tower structure, with necessary ground based equipment to be located within a fenced in compound at the base of the tower.

Varsity Wireless is working with the Fire Chief and Police Chief to improve their intercommunication network which will be installed inside the tower.

Mr. Parisi stressed that there are lots of trees around this neighborhood and this tower is difficult to see, as most of the trees are pine trees. The tower does not project from the tree tops. The visibility will not change that dramatically from season to season because most of the trees are pine trees.

Mr. Parisi continued that Verizon conducted a study to determine if there is a gap in coverage for the area. Keith Vellante from C2 Systems presented the current gaps in coverage and the various gaps in coverage over the various telecommunications frequencies used by Verizon. A map was shown demonstrating Verizon's conclusions on areas of coverage, in three different colors.

Mr. Gossels and Mr. Klofft questioned the data being presented and challenged the concept of coverage gaps. They concurred that this application is about increasing bandwidth or capacity for data services, not voice communication gaps.

The Board then discussed the Telecommunication Act of 1996, and questioned the data presented in the map. The Board also noted that the act prohibits the Board from considering health arguments in connection with the new tower and cited the act: *"No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions."*

Mr. Parisi stated that Verizon is not looking for 100% coverage in Sudbury, but rather that it is the residents of Sudbury that want 100% coverage; Mr. Klofft stated that this might not be the case.

Mr. Gossels stated that the Town of Sudbury decided that this is the preferred site for a cell tower. However he does not buy the coverage argument, and in his view the Board cannot judge the coverage gap based on the map presented; furthermore Mr. Gossels stated that he resented the manner in which the application was presented. In his view the approach in the material was condescending and oversimplified the concept of there being a coverage gap without thorough analysis. In his view, simply stating that there is a coverage gap is not sufficient to warrant granting a special permit or a variance and significant data needed to be included to demonstrate that a real gap existed. Mr. Gossels asked the applicant to provide additional coverage data.

Mr. Klofft stated that the coverage argument was weak, and he would like to see what the extra 40 feet will provide as a benefit. Mr. Parisi replied that he is happy to provide that data and reminded the Board that they are building this tower to also assist the Town of Sudbury.

Mr. Gossels asked Jody Kablack, Director of Planning and Community Development to clarify some details about the application.

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Ms. Kablack replied that she cannot comment on the Telecommunication Act, but that this tower will provide an upgrade to the public safety system for the new Police Station on Hudson Road. The proposal is to link Nobscot Mountain to a microwave dish on the proposed tower.

Ms. Kablack added that the public safety departments requested that a tower have a minimum height of 120 feet to be able to provide the Police and Fire Department with adequate public safety telecommunication coverage in town. She went on to state that the BOS authorized an RFP for the site, knowing that topographically this site will be challenging as it is located in a bowl.

Mr. Klofft is not clear about the need of a 140 feet cell tower if around town other cell towers are 100 feet tall. He asked why this particular pole is unique and needs to be 140 feet tall.

Mr. Palmer asked for a topographic description of the site.

Mr. Parisi explained that the topography is definitely a challenge. The lease location is at the low point on the site.

Mr. Riordan asked the other members about whether the definition of least intrusive had been fulfilled in this application.

Mr. Gossels stated that the town voted on this as a great site for the cell tower, but the Board needs to be mindful of the fact that residents are concerned.

Mr. Klofft stated that the project is bound by the topography, which is what makes this site unique. Therefore, the applicant needs to show a hardship if the application is denied.

Mr. Parisi will provide the data at 100 feet tall, but he stated that at this height, the tower will not be commercially viable, based on a previous analysis they will not be able to attract tenants if the tower is only 100 feet tall.

Mr. Gossels would prefer a small antenna with structures on the outside, as opposed to a taller antenna with the electronics and cabling on the inside.

Mr. Klofft disagreed with the analysis that the monopole would not be intrusive based on the balloon test and stated that not all the trees are pine trees in the area and if this test balloon were to be done today it will be a different situation, as the leaves are beginning to come down with fall advancing.

Mr. O'Brien at this point opened the floor for general discussion.

Mr. John Forino of 15 Pine Bridge Road, presented a signed petition from the neighbors in the area and he proceeded to read the petition with the following points:

- Limited assessment of visual impact, due to foliage and wind
- Excessive tower height for meeting public safety wireless communication needs
- Adverse effect on property values
- Absence of consideration by the Board of Health
- Resident's health concerns
- Insufficient evidence of meeting the town's "west pressure point" demand for wireless coverage

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- Insufficient setback requirement
- Environmental impacts
- Absence of evaluation by an independent radiofrequency (RF) engineer
- Variance required
- Selectmen authority to lease the DPW site

Mr. O'Brien asked how many people present did not signed this petitions, a couple of people raised their hands.

Mr. Riordan stated that the Town of Wayland's Bylaw and 900 foot of setback requirement for cell towers, as was mentioned by a resident at the hearing, should not be used because enforcement of the bylaw by the town resulted in the town's decision being overturned by a Court decision against the town.

Ms. Patricia Forino of 15 Pine Bridge Road is a Registered Nurse and presented health arguments against the cell tower.

Ms. Anne Fisher of 24 Wildwood Lane, presented to the Board a couple of pictures that she took with her cell phone the day of the balloon test, pointing out that she could see the balloon perfectly from her house.

Another neighbor present asked about whether the cell tower will have a light on top, he would not like to see one. The answer was no.

Mr. Samuel Mushnick from 9 Wash Brook Road stated that abutters should receive the levels of exposure that they will be subject to if this cell tower is installed.

Dr. Don Haes, Radiation Safety Specialist representing the applicant answered the question stating that the amount of exposure is very limited and could not exceed one half of one percent at the most.

Selectman Len Simon approached the table and explain that he was present at the BOS meeting on June 10, 2014. Where this site was discussed on August 19, 2014 the BOS authorized the Town Manager to sign a lease for that site. On the August 19, 2014 meeting, some questions were raised about the visibility of the tower. It was explained that a light grey or blue color will be used to better blend with the sky and no lights will be installed on the tower.

Mr. Klofft asked if the town could construct their own cell tower instead of leasing it to a carrier.

Mr. Gossels asked Mr. Simon what is his general personal opinion about the type of tower that is being proposed. Mr. Simon replied that he has conflicting thoughts about it, in his opinion Fire and Police communication is paramount. Personally he has empathy for both sides. Mr. Simon shared that together with Ms. Susan Iuliano they conducted BOS office hours last week and met with abutters who shared their concerns about the health risks associated with the cell towers.

Mr. Klofft expressed that even if he is going to vote in favor of this application, he will need to see more data.

Mr. Gregory George from 39 Meadow Drive asked how much would it cost for the town to construct a tower dedicated to public safety telecommunications alone.

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Mr. John Gannon from 38 Forest Street stated that from his backyard he could see the tower; cell phone coverage is not an issue meaningful to him and he would like to see a height and visibility test done with a crane in winter time.

The Board discussed the need for this type of cell tower in a few years and concluded that in time it will go obsolete, due to development of new technologies but that for the moment, the public safety argument by the town was of significant importance to the application.

The Board discussed whether a new balloon test would be necessary and agreed that the prior results were sufficient and that a new test would not be needed.

The Board requested that the applicant provide a more accurate and detailed coverage map with RF levels for a lower tower with antennas installed on the exterior, as well as presenting the data based on a 100 foot monopole with equipment inside.

Mr. Parisi stated that based on the RF report, a 120 to 140 foot tower would be viable for the public safety needs.

The Board noted that it wished to discuss the application further, including in particular the following items at a continued meeting:

RF, Ideal height of cell tower, alternatives to a 140 foot monopole, and a coverage map showing basic, traditional cell use (voice transmission only) and no data transmission.

A Motion was made, seconded and voted to continue Case 15-33 and 15-34 to November 2, 2015 at 7:30 pm at Town Hall.

3. Approval of Meeting – Minutes September 14, 2015.

A motion to approve September 14, 2015 Minutes made and seconded.

There being no further business, the meeting was adjourned at 9:45 p.m.

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