

OMNIPOINT HOLDINGS, INC.
BOSTON EDISON CO/NSTAR
163 Boston Post Road
04-1, 2, 3 (formerly 03-53, 54, 55)

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, JANUARY 6, 2004

The Board consisted of:

Melinda M. Berman, Acting Chair
Jeffrey P. Klofft, Acting Clerk
Patrick J. Delaney III
Thomas W.H. Phelps

Notice of the hearing was advertised in the Sudbury Town Crier on December 18 and 26, 2003, posted, mailed and read at this hearing.

Present: Paul Gascoigne and Attorney Peter Morin

Following the public hearing held on November 24, 2003, the Board was inclined to approve the petitions which provided for a power mount pole not to exceed 30 feet above the existing 100 foot 5 inch BECO transmission tower. The original application submitted by the petitioner was for a power mount pole not to exceed 20 feet. The Board requested the petitioner consider a pole not to exceed 30 feet in order to allow for the possibility of an additional collocator. Since, the pole exceeded that which was originally advertised, the Board was required to re-advertise the petitions. This was done and the petitions were renumbered as petitions 04-1, 2, &3.

The Board was in receipt of a draft decision document for review. At the request of Attorney Morin, the Board agreed to attach as part of its approval pages 9 through 13 of the AT&T Minutes of March 16, 1999 which contain the Findings of Fact (REASONS) for approval which are applicable to these cases, said Minutes to be marked as Exhibit 1.

Following further review, there were no further changes to the draft.

Vincent Mercury, 189 Boston Post Road, abutter was present. He felt this facility would be detrimental and had concerns with regard to what he felt was construction of a building on the site. Mr. Klofft explained that no building was being constructed – only a concrete pad to support the equipment. As to access, it was explained that the existing access would be used – no additional access area would be created. Mr. Mercury had assumed the tower would go beyond the BECO tower. The Board explained that it would be going on top of the existing tower and extend 30 feet above that.

Mr. Klofft explained that the Board had come to the drafting of an approval document following public hearings held on October 14, 2003 and November 24, 2003. Mr. Phelps added

that in 1999 approval was granted to AT&T for almost identical applications and several hearings were conducted in those cases.

The public hearing was then closed and the following motions were placed and seconded:

MOTION: Case 04-1 (formerly 03-53)

“To grant Omnipoint Holdings, Inc., applicant, Boston Edison Co./NSTAR Electric Co., owner of property, a Use Variance from the provisions of Section 1210, 4320, 4330, 4352 of the Zoning Bylaws, to provide wireless telecommunications services by attaching a 24-inch diameter power mount pole, not to exceed 30 feet, above the existing 100-foot 5-inch electric transmission tower, and to install antennas, equipment shelter and associated equipment within a fenced-in area at the base of the tower.”

VOTED: In favor: 4 (unanimous) Opposed: 0

MOTION: Case 04-2 (formerly 03-54)

“To grant Omnipoint Holdings, Inc. applicant, Boston Edison Co./NSTAR Electric Co., owner of property, a Variance from the provisions of the Zoning Bylaws, specifically from Section 4363, to locate a wireless communications service facility within 500 feet of a residential lot line, and from Section 4352, to exceed the height limitation for a monopole.”

VOTED: In favor: 4 (unanimous) Opposed: 0

MOTION: Case 04-3 (formerly 03-55)

“To grant Omnipoint Holdings, Inc. applicant, Boston Edison Co./NSTAR Electric Co., owner of property, a Special Permit under the provisions of Section 4300 of the Zoning Bylaws, to install and operate wireless communications antennas on a power mount pole attached to an existing electric transmission tower, including associated equipment and equipment pad, property located at 163 Boston Post Road, Residential Zone A-1, subject to the following:

1. Installation shall consist of a 3-carrier capability, 24-inch diameter power mount pole in accordance with plans prepared by Coler & Colantonio, Inc., Norwell, MA, titled 4DE-B009-G BECO Sudbury, consisting of Sheets 1-3, revised November 19, 2003.
2. No flag will be flown at the top of the pole.
3. No lighting on the pole will be allowed unless required by the FAA.

4. If required, Omnipoint shall allow a future co-locator to construct a shelter structure capable of enclosing that locator's equipment in addition to Omnipoint's ground electronic equipment subject also to approval by Boston Edison Company.
5. The approval granted herein shall expire in five (5) years on January 6, 2009. Continued operation of the facility shall be subject to application for and renewal by the Board of Appeals."

VOTED: In favor: 4 (unanimous) Opposed: 0

REASONS: The petitioner proposes to install and operate wireless communications antennas on a power mount pole attached to an existing electric transmission tower on the back portion of property owned by Boston Edison Company. The Board notes that in 1999, it granted approval to AT&T (Case Nos. 99-10,12,13) for a wireless facility on this site; however, those permits were not exercised by AT&T.

The REASONS for approval for the above-referenced AT&T case numbers are contained in Pages 9 through 13 of the March 16, 1999 Minutes and are applicable to these Omnipoint cases. They have been marked as Exhibit 1 and are attached to and made a part of the Reasons for Approval for these petitions as they pertain to the overall installation for use variance, variance and special permit requirements.

In addition, the Board notes that for this installation, the petitioner has modified his proposal to allow for an additional co-locator which is encouraged in the Town's Wireless Services Bylaw. Further, the petitioner has agreed to allow a future co-locator the capability of enclosing its equipment shelter to allow for a single enclosure should that be required.

The Board finds that the petitioner has met the requirements for installation of this facility and therefore approves these petitions.

Melinda M. Berman, Acting Chair

Jeffrey P. Klofft, Acting Clerk

Patrick J. Delaney III

Thomas W.H. Phelps-

SUDBURY AMERICAN LEGION POST 101
676 Boston Post Road
04-4

SUDBURY BOARD OF APPEALS
TUESDAY, JANUARY 6, 2004

The Board consisted of:

Melinda M. Berman, Acting Chair
Jeffrey P. Klofft, Acting Clerk
Patrick J. Delaney III
Thomas W.H. Phelps

Notice was published in the Sudbury Town Crier on December 18 and 26, 2003, posted, mailed and read at this hearing.

Ms. Berman, Acting Chair, explained the requirements necessary to substantiate the granting of a Use Variance. She also explained that if anyone is not satisfied with the Board's decision, they have the right to appeal to Superior Court or District Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

Floyd Stiles, General Manager, was present to represent a petition for renewal of Use Variance 02-8 to use the building and property at 676 Boston Post Road as a clubhouse and meeting hall. He introduced Douglas Zanzot, President of the Corporation.

Mr. Stiles would request the renewal period be for more than one year. While he understood the reasons behind the imposition of a one-year renewal period, he felt that over the past years the Legion has become a good neighbor and doesn't deserve to be forced to apply for renewal every year. He said the Legion has complied with the conditions of the permit. In addition, it has upgraded the property by paving and white lining the parking lot and has installed catch basins for storm water. Letters have been mailed to abutters soliciting input and/or complaints. None were received.

In response to questions from the Board, Mr. Zanzot explained that the Legion is a corporation set up by members of the Post but not owned by the Post. The President and General Manager are elected each year; however, Mr. Zanzot said he has been re-elected President for the past few years.

Bruce Kankanpaa, 11 Stone Road, abutter, said Condition 5 requires a barrier along Stone Road. He submitted photos which shown that barrier, a fence, to be in disrepair. He said this has been in disrepair since June. In addition, he said Condition 2 requires a 5-foot landscaped area at the rear. He submitted a photo which shows that area which contains a discarded utility pole, stones and weeds. He said this has been an ongoing problem for many years.

Mr. Kankanpaa's concern was that the Legion has a history of not maintaining the improvements it makes to the property.

Mr. Delaney said the reason for the fence was to prevent parking along the roadway. He asked if there has been parking in that area. Mr. Kankanpaa said parking does occur occasionally; however, his concern was that the fence has not been maintained.

Mr. Kankanpaa said the fence and the landscaping were his only two issues.

Mr. Delaney said it seems the Legion is close to compliance, but not exactly.

Messrs. Stiles and Zanzot viewed the photos. With regard to the landscaping, Mr. Stiles said azaleas were planted but died after two years. He said it is difficult to plant in that area because that area is where the snow is pushed. Mr. Stiles said the stones were to be used to construct a wall along the front of the property as part of an Eagle Scout project. However, that scout became ill and the project is on hold. He apologized for the condition of the rail fence and said the Legion was debating whether a fence is the right barrier for the area.

Mr. Zanzot was unaware of parking along Stone Road but said that might have occurred during one of the larger functions. He said normally there are not many cars being parked on the property.

With regard to the request for a longer term, Mr. Delaney said there have been a lot of complaints in the past over many years. He said over time those complaints have dribbled down to just a few which Mr. Delaney felt was attributable to the one-year renewals.

Mr. Delaney said the Board does not have a hard and fast rule with regard to renewal periods. He said it needs to reach a comfort level. As a member who for many years has sat on the Legion's renewals, he was progressively more comfortable with the Legion's progress.

In response to a further question from Mr. Delaney, Mr. Zanzot said the primary reason for a longer term was for financing. A longer term would provide more flexibility in securing loans. Mr. Stiles would like to see at least a two-year renewal period.

Mr. Delaney said if the Board decided to go with a longer renewal period, the Legion would still be required to comply with the conditions of the permit as any violations during that period would be dealt with by the Building Inspector as Zoning Enforcement Agent.

Mr. Stiles said he would also like to be able to send out the letters to abutters earlier in the year rather than the winter months.

There were no further comments. The public hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: "To grant Sudbury American Legion Post 191, applicant, renewal of Use Variance 03-8, from the provisions of Section 2230, Appendix A,C,Use 24 of the Zoning Bylaws, to use the building and property as a private clubhouse and meeting hall, property located at 676 Boston Post Road, Residential Zone A-1, provided that:

1. There shall be no parking on Boston Post Road or Stone Road by those using the building, and there shall be no traffic hazard as defined by the Police Chief.
2. All off-street parking is to be on the westerly side of the property. The five-foot wide buffer between the parking area and rear lot line shall be maintained and shall consist of a low retaining wall at the rear of the parking area with suitable plantings within the buffer area.
3. The barrier constructed to prevent parking on Stone Road shall be properly maintained.
4. There shall be no illuminated signs on the property.
5. A sign no larger than one square foot to identify the building shall be allowed.
6. There shall be no exterior storage of any kind, nor shall exterior rubbish (dumpster) be allowed.
7. There shall be no organized outdoor activities on the property, except for the following three events: Earth Day, Memorial Day, and July 4th activities.
8. There shall be no exterior floodlights on the property except that a single light, consisting of a motion sensor light, to light the parking area and so located as not to shine into the public way or towards residences, is permitted. The light currently used to shine on the flag will be properly maintained.
9. No nuisance shall be created and abutters must be contacted by written letter, with a copy to the Board of Appeals, three months prior to renewal, to solicit complaints or areas of concern.
10. This Use Variance is non-transferable and shall not run with the land and shall be limited to expire on October 6, 2005. The Board will consider renewal upon receipt of proper application on or before that date."

VOTED: In favor: 4 (unanimous) Opposed: 0

REASONS: The petitioner seeks renewal of a use variance to continue using the building and property as a clubhouse and private meeting house. Recognizing that this use is in a residential

SUDBURY AMERICAN LEGION POST 191

676 Boston Post Road

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zone and has in the past been the subject of complaints from the neighbors, the Board feels strongly that lines of communication between this facility and the neighbors should be kept open as an attempt to head off any problems which may arise. For this reason, Condition 9, requiring the petitioner to solicit input from the neighbors, was imposed.

Because of a decrease in the amount of issues with regard to this facility from the neighbors, the Board agreed to a longer renewal term. However, it stressed the importance of compliance with all conditions noting that any violations brought to the attention of the Building Inspector will be strictly enforced.

Melinda M. Berman, Acting Chair

Jeffrey P. Klofft, Acting Clerk

Patrick J. Delaney III

Thomas W.H. Phelps

STANLEY & JEANNE GUTOWSKI
13 Birchwood Avenue
04-5

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, JANUARY 6, 2004

The Board consisted of:

Melinda M. Berman, Acting Chair
Jeffrey P. Klofft, Acting Clerk
Patrick J. Delaney III
Thomas W.H. Phelps

Notice was published in the Sudbury Town Crier on December 18 and 26, 2003, posted, mailed and read at this hearing.

Ms. Berman, Acting Chair, explained the requirements necessary to substantiate the granting of a special permit. He also explained that if anyone is not satisfied with the Board's decision, they have the right to appeal to Superior Court or District Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

Stanley and Jeanne Gutowski were present to represent a petition for special permit to construct a family room which would result in a side yard setback deficiency at 13 Birchwood Avenue. The family room would be located on the east side of the house. The house of the immediate abutter is 10 feet from the property line. He said his abutters on both sides were present and he had three letters of some support from other neighbors.

Paul Woyda had some questions with regard to process. He said most of the houses are small and on small lots.

Mr. Klofft explained the requirement for special permits for nonconforming lots. He said it is not a buildings permit which must be applied for through the Building Department.

Mr. Woyda said the plans appear to be conceptual. Without knowing the design of the construction, he asked how a determination is made that the construction would not be detrimental to the neighborhood.

Mr. Klofft said this is determined by the facts presented during the public hearing. He asked Mr. Gutowski whether he would be comfortable with a condition limiting the construction to one story.

Mr. Gutowski said his present plan was for a large, square room and his application stated the construction was a single-floor room addition with a structural height not exceeding that of existing or neighboring structures. He has since been considering the possibility of

STANLEY & JEANNE GUTOWSKI
13 Birchwood Avenue
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adding a den or office area on the second floor. He said things keep changing and the resulting design would depend upon his financial resources.

Ms. Berman said normally the Board would more of a plan for this type of application as it allows the Board to see the proportions and how it would fit into the neighborhood.

Mr. Phelps said the second story is an important consideration. He said there have been cases where the Board has had to deny applications because the structure would be intrusive to a neighbor or not fit in with the character of the neighborhood.

Mr. Delaney would suggest the applicant provide an architectural rendering of the proposed design. This could be done by either continuing this hearing or withdrawing the application without prejudice and resubmitting as a new application.

The next ZBA hearings are scheduled for February 10, 2004. Mr. Gutowski believed he could provide an architectural rendering by that date.

Mr. Klofft suggested Mr. Gutowski check the setback numbers since a mortgage inspection plan is not a surveyed plan.

The hearing was continued to February 10, 2004.

Mr. Gutowski submitted three letters of support dated December 30, 2003 from abutters at 6, 10 and 24 Birchwood Avenue.

Melinda M. Berman, Acting Chair

Jeffrey P. Klofft

Patrick J. Delaney III

Thomas W.H. Phelps