

SUDBURY ZONING BOARD OF APPEALS  
MINUTES  
NOVEMBER 2, 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). Chairman O'Brien noted that Mr. Riordan would be the 5<sup>th</sup> voting member this evening.

Also present at the meeting on behalf of the town were: Jody Kablack, Director of Planning and Community Development; Mark Herweck, Building Inspector; Scott Nix, Police Chief; William Miles, Fire Chief and John Whalen Assistant Fire Chief.

The meeting was opened at 7:30 p.m.

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

- 1) Public Hearing Case 15-35 – Leo Rotman, applicant and owner, for a Special Permit under the provisions of Section 2420 of the Zoning Bylaws, to construct a 24' x 24' attached garage, on a nonconforming lot resulting in a front yard setback deficiency of approximately 29 feet to Christopher Lane, property shown on Town Map M11-0019, 35 Stock Farm Road, Residential Zone A-1.

Mr. Rotman was present at this Hearing, he was asked to state his case. The applicant gave details about his plans to construct an attached garage, stating that the chosen place will be the best location for the proposed garage because there is a septic tank located in the back of the house.

Mr. O'Brien inquired about the easement on the property.

Mr. Rotman replied that it is an above ground easement for the power lines.

Mr. Gossels stated that the main dwelling is an odd location. 35 Stock Fram Road abuts the high power transmission lines so at ground level there is a lot of abutting open space. The ground slopes down from Stock Fram Road so the house is considerably below the grade of the road. The driveway is actually located on Victoria Road so the location of the proposed garage makes sense. The right of way of Victoria Road in that location is unusually large and so while there would be a technical encroachment from the lot line to the proposed garage location, the distance between the pavement to the construction will be fine.

Another Board member stated that there is vegetation around the house.

Ms. Jackeline Genece from 12 Christopher Lane was present to express her questions and concerns about this application, she shared with the Board her future intention to put her house for sale, and she is afraid that the proposed garage will obstruct her property, because the proposed garage is located very close to her house.

Mr. Rotman showed Ms. Genece the proposed plan and Ms. Genece did not seem satisfied, she expressed her concern that her house will be "box-in". Perhaps impacting her ability to in the future sell her home.

Mr. Palmer and Mr. Gossels would like to see a stamped plan for this application, because only drawings were received. A suggestion from Mr. Gossels to continue this case was made.

Mr. Palmer would like to see a plan with real dimensions, because there are variables that he would like to see more details off.

Motion made and seconded to continue Case 15-35 on December 7, 2015 at 7:30 PM.

- 2) Continuation - 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

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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.

- 3) Continuation - 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, submitted a copy for each Board member of the following documents: "Legal Memo re Applicability of Telecommunications Act of 1996, Additional RF Analysis, Additional Photo Simulations and Revised Site Plans (revised 10/30/2015)".

Mr. Parisi updated the Board about events that had occurred since the last ZBA meeting on October 5, 2015.

Mr. Parisi had met with the BOS to finalize the leasing documents, he also met with the Planning Board and a few minor changes were made to the site plan, not to the tower itself but to the ground and type of fence coverage.

Mr. Parisi continued stating that one of the things that ZBA asked is if a smaller tower could be considered. He noted that this was not an easy question to answer, due to a structural issue of where to put the devices that go inside the tower. This consideration represented a bigger issue than Varsity Wireless had thought at the prior meeting.

Mr. Parisi reminded the Board of Mr. Gossels' request to consider a lower tower with exterior antennas.

Mr. Parisi noted that the BOS's RFP was for a tower with outside antennas or devices due to safety and appearance, and not for a tower with exterior antennas. Mr. Parisi stated that this was a challenge because they are trying to accommodate different needs, the ZBA's requests and the RFP issued by the BOS with internal antennas in addition to the Town's Bylaw which mandates internal antennas.

Mr. Parisi proposed a height 120 feet for the Verizon antenna, and an extension for the Town's microwave dishes making the total height of 137 feet demonstrating that Varsity is trying to work with the location provided.

Mr. Palmer and Mr. Klofft asked about the steps that procedurally will be next if this case is denied tonight, which means in this case that the BOS would have to start over and issue a new RFP.

Mr. Keith Vellante from C2 Systems presented again his slides showing the current gaps in coverage and also showing the various gaps in coverage over the various telecommunication frequencies used by Verizon.

Mr. O'Brien expressed concern regarding why Verizon wanted to cover a gap that was primarily in the woods, without much improvement in the residential areas.

Mr. Parisi reminded the Board that if the tower is 100 feet tall Varsity Wireless is not interested, because it is not commercially viable and is not a collocatable facility.

The Board agreed that putting this tower in this location is a challenge because it is located in a bowl, therefore the geographic placement requires this tower to be taller than 100 feet.

Mr. Parisi noted that the applicant's goal is to make this an economically and technical viable solution.

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Mr. Klofft asked if this location is the least intrusive place to put it and the members of the board noted that the BOS' RFP that basically told them where the tower had to go.

The Board further noted the issue for the applicant is its financial ability to justify constructing the tower at a low height because it will be a less attractive place for colocators. Mr. Parisi stated that Varsity Wireless could perhaps live with a 120 feet tower that might be not colocable but is still interested, but will not be interested in a 100 feet tower.

Mr. O'Brien asked if an analysis had been done for a tower of 125 feet?

Mr. Parisi replies that yes it had been completed, with fiberglass on top and devices above the 125 foot structure to be mounted to metal. Mr. Parisi again noted that the issue for applicant is co-location capability. The applicant would like a 130 feet monopole with 5 additional feet for public safety antenna, 10 foot between carriers, which would allow the applicant to have 4 carriers on the antenna separated by 10 feet.

Mr. Klofft stated that the nature of the friction point will be the neighbors and Varsity intending to maximize the height of the tower.

Mr. Riordan reminded the Board that the BOS did not wanted to see clutter all over the town and they wanted the towers to be concentrated in minimal locations.

Mr. Gossels agrees, but noted that the Town's Bylaw sets the height at 100 feet.

Mr. Klofft voiced that the Special Permit was a no brainer because it matches all the criteria. In regards of the Variance is where they are trying to understand and arrive at a reasonable place where they could agree.

Mr. Klofft feels sensitive about the time when the visibility test was done. Mr. Parisi understands that point.

Mr. Parisi noted that the applicant feels that the height difference between 140 feet and something slightly smaller will not be relevant. The Board disagrees with this.

Mr. Palmer asked what is the minimum height needed for the tower to served the emergency communications.

Chief Nix replied that the minimum height requested by the emergency services departments in town was 120 feet minimum according to a radio consultant.

Mr. Riordan and Mr. Klofft questioned whether tree height would create a problem at the emergency services 120-foot minimum.

Chief Nix stated that the original purpose of the tower was to improve the communication services at the Station. He noted that at the present time the Station pays \$3,000 per month for a cooper hard-wire connection between the police station and the towers on top of Nobscot Hill, while the Fire Station has a microwave link connection. He noted that the departments had looked into copper hard-wire as a permanent solution but that the cost was extremely high to connect all departments to a copper network, and that current technology had moved past copper wire.

The Board asked how much will it cost to build a tower for the town? The approximate cost will be around 100Kto 120K to build or own, was the answer from Chief Nix.

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Mr. Gossels still had questions about external devices on the tower.

The coverage, Mr. Parisi explained to Mr. Gossels, will be the same with external or internal devices with a height of 100 feet, they will still have the same issue and Verizon is not interested in a tower at that height.

The Chairman opened the floor to comments, thanking Mr. Parisi for the information received.

Gregory George from 39 Meadow Drive read a statement and had a question about the map showing coverage, if the blue area was a LTE service instead of 4G. He feels the BOS did the neighbors wrong by proposing this tower in their backyards.

Anne Fisher from 24 Wildwood Lane shared pictures from her house to the proposed tower, taken recently and compared those pictures with pictures taken the day of the balloon test on September 19, 2015.

Linda Huet-Clayton from 8 Pine Ridge Road, shared a concerned about the zoning, stating that soon this zoning might change from Residential A-1 to Industrial.

John Forino from 15 Pine Ridge Road expressed his disappointment about the presentation, and asked if a cell tower could be put in a historic district, thinking about the new Police Station.

Samuel Mushnick from 9 Wash Brook Road had a question about the map, the difference between the shades was not clear to justify the extra height of the tower compared to the gain in coverage.

Mr. Parisi, replied to the question, stating that the height of the tower was critical, because the topography and the trees, additional height helps provide better capacity.

John Gannon from 38 Forest Street asked about the TiSales tower, if that tower could be used for the Emergency Services, he added that this case should be sent back to the BOS.

Chief Nix replied that they did look at that but this tower could not provide them with what they needed, which was line of sight communication to the antennas on Nobscot Hill.

Melinda Davies from 14 Gerry Drive asked a question about coverage and asked the Board to adhere to the Bylaw, stating that the residents of Sudbury do not need coverage in the woodlands.

Chief Nix expressed that he respects the concerns from the neighbors and that they have tried their best to make this proposal the least intrusive that it could be possible.

Jane Rody from 22 Gerry Drive read a statement about the collective amount of taxes paid by this portion of the neighborhood.

The Chairman of the Board Mr. O'Brien noted his dismay that the applicant had only reduced the height of the tower to 137 feet tall. At the last meeting, he had thought it had been made clear to the applicant that they should return with a proposal at a much lower height. He asked that the applicant consider a tower significantly lower than 137 feet.

Mr. Riordan asked what about a tower that was 117 feet tall.

Mr. Klofft talked about balancing the needs, because in that case, this might make the tower not economically viable for the applicant.

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Mr. Parisi once again reminded the Board that a lower tower will not be economically viable because of the requirements from the town to place emergency services at 120 feet.

Chris Davis President of Varsity Wireless, at this point introduced himself, approached the Board and expressed his appreciation to the Board for considering this application. He stated that the applicant could agree to construct the tower at 130 feet tall.

Susan Arayas from 16 Pine Ridge Road asked if the Board could do an independent cell coverage study?

Mr. Klofft replied that the Board has requested such independent cell coverage in the past and that the data is fairly straightforward, and that a counter analysis does not normally improve or change the data. He stated that the Board felt that the material presented was sufficient.

Mr. Riordan noted that if the tower was built at the front of the property abutting the road, the tower could probably be as low as 100 feet, but that because the elevation at the front of the property is much higher than the elevation where the tower is proposed, this requires a significant change in height.

The Board discussed whether they could request a change in the location of the tower within this lot. It was determined that this would not be possible because the RFP was for the chosen location, and even where perhaps the terrain is at a higher elevation, the tower will be in closer proximity to the abutters.

Motion was made and seconded and voted unanimously to approve a Variance under Section 4352 of the Zoning Bylaw, to increase the height of a proposed 4-carrier wireless communications tower above the 100 foot maximum, to 130 feet, at 275 Old Lancaster Road, Sudbury, Massachusetts and identified as Assessor Map H08 Parcel 0049, Zoning District Residential A, (the "Property"). The Board considered the conditions required to issue a Variance, including in particular:

1. There are special conditions related to the topography of the Property that are specific to this particular site. The Facility is proposed to be located in a low lying portion of the Property due to the existence of residential homes abutting the higher elevation areas of the Property. The elevation difference is approximately 30 feet, necessitating a higher tower to obtain adequate signal strength and to provide adequate height to accommodate communications relay equipment requested by the Town's fire and police departments.
2. There would be substantial financial hardship to the Applicant if the requested variance was denied. The Applicant has demonstrated that it is not commercially viable to locate antennas on a 100 foot tower due to the surrounding height of trees and topography, and that the public safety equipment to be located on the tower requires a minimum height of 120 feet.
3. There will be no substantial detriment to the public good with the granting of the requested variance. The height of the tower has been reduced to the minimum height necessary for commercial viability.
4. Granting the requested variance will not nullify or substantially derogate from the intent and purpose of the Zoning Bylaw. The Property is within the Wireless Services Overlay District and the Board has granted a Special Permit for the construction of a tower.

Motion was made and seconded and voted unanimously to approve the Special Permit under Section 4300 of the Zoning Bylaw to install and operate a wireless communications facility consisting of a 130 foot, 4-carrier, stealth monopole tower and associated equipment with the following conditions:

1. The proposed activity shall be conducted substantially in accordance with the Plan and Application submitted and materials contained in the file. This Special Permit grants approval for the use of the tower by 4 commercial carriers, in addition to public safety use.

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2. There will be no night lighting on the Facility unless required by the FAA.
3. The top of the tower will be 130 feet; commercial antenna shall be installed at a location that is no higher than 125 feet from the base of the tower.
4. The diameter of the monopole shall be no larger than 48 inches at the top, and 60 inches at the base.
5. The tower will be galvanized (non-reflective) gray, with gray fiberglass shrouds on top. No flag will be flown at the top of the pole.
6. The Applicant shall allow co-location at the Facility by other carriers upon commercially reasonable terms and conditions and without unreasonable delay.
7. To alleviate excessive noise generated from the proposed activity, all construction activity shall take place on weekdays between the hours of 7:00 am and 6:00 pm, and on Saturdays between 9:00 am and 5:00 pm. There shall be no construction on Sundays. Construction activities include delivery of materials; idling of machinery; removal of trees; grubbing; clearing; grading; filling; excavating; import or export of earth materials; installation of utilities on the Property; removal of stumps and debris; and the erection of structures. Notwithstanding the above, the above restriction on the hours of construction activities shall not apply to any work undertaken off the Property that is normally or customarily conducted during hours other than the hours permitted for such work set forth above.
8. There shall be no signs, except for announcement signs, no trespassing signs and a required sign giving a phone number where the Applicant can be reached on a twenty-four (24) hour basis and any other signage required by FCC rules and regulations or any other applicable laws, rules or regulations.
9. The Applicant shall submit a final construction control affidavit prepared by the engineer of record, to the Building Inspector, stating that the tower construction and associated equipment are installed and secured as required.
10. All unused facilities or parts thereof, or accessory facilities and structures which are the subject of this Decision, which have not been used for two years shall be dismantled and removed at the Applicant's expense. A bond in an amount of twenty five thousand dollars (\$25,000.00) as surety for dismantling and removing the Facility shall be furnished to the Town prior to issuance of the Building Permit and shall be kept in force until the complete dismantling and removal of the Facility. The Applicant shall provide the Town with a renewal or new bond at least ten days prior to the expiration of each bond. If the unused facilities or parts thereof are not removed within thirty days after notice from the Town to the Applicant, the Town may but is not required to take the proceeds of the bond, and dismantle and remove the unused facilities or parts thereof. If the cost exceeds the bond, the Applicant will be responsible for any additional costs and will reimburse the Town within fifteen days of receipt of an invoice. Any unused bond monies will be returned to Applicant or Applicant's designee upon dismantling and removal of all facilities and accessory facilities and structures which are the subject of this decision.
11. The Applicant shall submit an engineering report showing that the tower operates in compliance with all rules of the FCC, to the reasonable satisfaction of the Building Inspector on each occasion that a carrier is added to the tower.
12. A structural engineer shall inspect the Facility at the permit renewal date in 2020 and at each renewal date thereafter, and shall certify its structural integrity to the Building Inspector on each such occasion.
13. The approval granted herein shall expire in five (5) years on November 2, 2020.

4. Certification of Landscaping – The Coolidge at Sudbury.

Ms. Kablack updated the Board about The Coolidge Development in regards of the landscape work that has being in the works since June. She also reminded the Board that there is no bond, because this development was 100% affordable.

The Board asked Ms. Kablack to inform the Management at the Coolidge that the landscape work that they have done appears acceptable and asked them to note that the trees should be properly maintained and replaced promptly as needed.

5. Approval of Meeting Minutes – October 5, 2015

A motion to approve October 5, 2015 Minutes made and seconded.

There being no further business, the meeting was adjourned at 10:15 p.m.

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