

Zoning Board of Appeals Decisions Decisions for: 10-02-2014

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DECISION OF FALMOUTH ZONING BOARD OF APPEALS

SPECIAL PERMIT NO: 71-14

APPLICANT: SPRINT SPECTURM REALTY COMPANY of Bayonne, NJ

OWNER: Seacoast Tower Development, LLC of Hyannis, MA

DEED/CERTIFICATE: Book 18636 / Page 85

SUBJECT PROPERTY: 210 Nathan S. Ellis Highway, Hatchville, MA
Map 06, Section 03, Parcel 008, Lot 010

Under a date of August 14, 2014 the applicant applied to the Zoning Board of Appeals for a Modification of Special Permit #54-03, previously approved under Section(s) 240-38 I. of the Code of Falmouth to add three additional panel antennas, three remote radio heads and one hybrid cable line onto existing monopole located at 210 Nathan S. Ellis Highway, Teaticket, Massachusetts.

A public hearing was opened on October 2, 2014. Notice was duly given as required by Section 11 of Chapter 40A, M.G.L., as well as notices sent to all persons deemed to be affected thereby as they appear on the tax list, and at which hearing, at the Board's discretion, relevant and appropriate testimony was heard.

Board Members sitting: Chairman David Haddad, Vice Chairman Kenneth Foreman, Member Matthew McNamara and Associate Mark Cool

Acting Clerk Mark Cool read the Notice of Public Hearing into the record.

Michael Walsh with J-Lee Consulting was present on behalf of the applicant Sprint Spectrum, LP. Sprint Spectrum has existing antennas on the monopole located at 210 Nathan S. Ellis Highway; the monopole is owned by Seacoast Tower Development, LLC and the property is owned by Nathan S Ellis Highway LLC [Cavossa]. He explained that Sprint has 6 antennas and 6 remote radio heads on the existing monopole and is proposing to add three additional antennas, three remote radio heads, 1 cable and 1 cabinet at the base of the pole. He noted that the cabinet was approved through a building permit in 2011 but not added to site. Mr. Walsh informed the Board that the Cape Cod Commission approved the application and approval was submitted to the file. He said there is a structural analysis of the monopole tower that was submitted to the file for the additional proposed antennas and radio heads.

Clerk Cool read the Town Department referrals into the record.

A referral from the Falmouth Fire Rescue Department has no concerns with the project proposed moving forward.

A referral submitted by the Engineering Department and the Planning Department had no comment.
Board Questions:

Member Cool noted that the monopole is allowed to have six carriers and currently there are four carries on the tower. He asked Mr. Walsh where on the tower Sprint is located.

Mr. Walsh referred to Drawing A2 of the plans that show Sprint as third up from the bottom at 148'.

Member Cool asked what the protocol for complaints regarding the tower is.

Mr. Walsh stated that a complaint would go to the Town and Town would notify owner of issue.

Member Cool asked if there is an access number provided to the Town.

Mr. Walsh stated that there should be a placard on the tower gate with a phone number.

Member McNamara clarified the relationship of all the parties and noted Mr. Walsh is here on behalf of Sprint and not the tower owner [Seacoast].

Mr. Walsh stated that is correct.

Member McNamara noted that the plan submitted is not dated. He further stated that in 2003 the Planning Board requested that the plan reflect activity on the site.

Mr. Walsh noted that other activity is not on the plan, just structures.

Member McNamara related issue with wildlife birds on other towers and asked Mr. Walsh if Sprint has a policy on birds.

Mr. Walsh stated that the common practice is that when Sprint needs to work on a tower they find out status of any nest and contacts the owner of the tower.

Member McNamara asked if that is the tower's policy or Sprint's.

Mr. Walsh stated it is Sprint's policy.

Chairman Haddad asked if work on the tower is documented.

Mr. Walsh stated there is a construction time-line, but there is no log at the site.

Chairman Haddad commented on the cabinet that has been added to this application.

Mr. Walsh explained that it has been approved by the building department in 2011 and not yet put on site.

Member Cool asked what the capacity of antennas for Sprint is at this site.

Mr. Walsh stated that 12 allowed if the structure can hold – 9 for sure at this time.

Member Cool asked if this proposal brings the total to 9 at this site.

Mr. Walsh confirmed 9 antennas and 9 radio heads total through this request.

Chairman Haddad asked if the proposed equipment addition will have any increase in noise.

Mr. Walsh stated no.

Chairman Haddad asked if anyone present would like to speak in favor or opposition.

Carol Belmore of 112 Saddleback Lane asked if there would be increase in height to the tower.

Chairman Haddad stated there will be no increase in the height of the tower.

Board Discussion:

Member McNamara said he believes the scope of the project is benign but there is a deficiency in the plans as it doesn't show all activity on the site and is not dated. He said this Board has the responsibility to the Town to show accurate activity on the site [Planning Board Special Permit for Contractor Yard]. The original special permit is to Seacoast, Sprint is the applicant – it is hard to make bird policies to carriers and not with the owner of the tower(s) – potential problem. He said he believes that an accurate plan needs to be submitted showing site activity and possibly a policy on 'logging-in' for activity to tower. We should not diminish what was done in 2003 "all permitted uses on property to be shown on plan".

Chairman Haddad stated he does not like the lack of information on access to the tower.

Member Cool said he agreed with Matt on deficiency on plan and asked if the Board could condition

administrative approval for revised plan.

Member McNamara stated that the plan may not alter the decision for Sprint – but the plan doesn't even show access from 151 [Nathan S. Ellis Highway].

Member Cool said that Sprint told the Board that they have a bird policy and recommends they submit it to the Board in the future. Also we are talking about accountability for access.

Member McNamara agreed and stated that in the future the Board can develop a policy for security regarding towers as well as bird policy.

Member Foreman stated that the Board cannot rely on each entity's policy; maybe the Board should make a policy that extends to all towers.

Chairman Haddad said that the Board can hold Sprint responsible as Mr. Walsh stated that if the owner of the tower does not respond to bird issues, then they contact a biologist.

Member Cool made a motion to close the hearing. Member McNamara seconded the motion. Motion carried 4 – 0.

Chairman Haddad closed the Hearing.

Findings:

The Board of Appeals, after carefully considering all of the facts and evidence submitted at the hearing, makes the following findings:

The subject property located at 210 Nathan S. Ellis Highway in Hatchville [Falmouth] contains 8.5 acres of Agricultural AA zoned land that is located within the Wild Harbor River Coastal Pond Overlay District, is partially located within the Wildlife Corridor and is located partially within the Natural Heritage for Endangered Species Plan. The applicant [Sprint] applied to modify Special Permit #54-03 approved under Section(s) 240-38 I. of the Code of Falmouth to allow the addition of three panel antennas, three remote radio heads and one hybrid cable to the existing 180' monopole, as well as installing an additional cabinet at the base of the monopole within the fenced area. Special Permit #54-03 granted the construction of a 180 foot monopole style wireless telecommunications tower providing space for six carriers, together with associated equipment shelters and infrastructure. Seacoast LP leases approximately 10,000 square feet of land for the tower from Nathan S Ellis Highway LLC.

The Board finds that the subject property, 210 Nathan S. Ellis Highway, has other uses and activities as permitted through the Planning Board. The subject property in 1998 was issued a special permit from the Planning Board that allowed fabrication of sub-assemblies [pipe fittings / hydrant assembly] and accessory activities with no retail sales allowed. In 1999 the permit was amended to include snowplowing activities and some light accessory activities were added and parking for rental vehicles was deleted from the proposed plan. In 2000 the decision was again modified by the Planning Board to allow more updated equipment list and materials to be stored by tenant [Cape Cod Fabricators]. In 2002 the decision was again modified imposing conditions that allowed other activities on the site such as limited stump grinding, storage of up to twelve empty dumpsters, asphalt brick and concrete processing, etc. Most operations on site are done by Cavossa Excavation. Just recently in August of this year, the Planning Board further modified the permit eliminating some operations and limiting the permit to two entities Cavossa Excavation, Inc. and Cavossa Disposal, Inc.

The Board finds that Special Permit #54-03 allows for six carriers to be on the subject monopole. The Board further finds that as of the date of this decision there are four carriers on subject monopole: AT&T, Verizon, T-Mobile and Sprint.

The Board finds that the modification of this Special Permit, #54-03, requesting three additional antennas, three additional remote radio heads to the tower, a hybrid cable along the tower and a new cabinet at the base of the tower, is benign and does not alter the use of the tower. The Board further finds that the addition of the proposed antennas and other equipment requested herein by the applicant [Sprint Spectrum] is within the allowed capacity for Sprint on this tower. Furthermore, the Board finds that through this approval, Sprint Spectrum will have a total of 9 antennas and 9 remote radio heads

located on the tower; where according to Sprint Spectrum their capacity on this tower is 12 antennas and remote radio heads.

The Board finds that the applicant submitted to the file a "Structural Analysis Report" for the 180' monopole tower on subject property prepared by EG Advanced Engineering Group, PC. The Board further finds that the report dated June 3, 2014 does take into consideration the antennas, remote radio heads and cable that the Sprint Spectrum is requesting to install on the tower.

The Board finds that the applicant gave testimony that the application has been before the Cape Cod Commission and has been approved.

The Board finds that the plan for subject property by the applicant is deficient as to access to site from Nathan S. Ellis Highway, the plan is not dated and same plan did not reference site activity as was requested on plan in 2003 for initial tower construction by the Planning Board. The Board further finds that the applicant is amenable to submitting revised plan. Furthermore, the Board finds through testimony of the applicant that they [Sprint Spectrum] have a bird policy that was not submitted to the file, but the representative will submit said policy to the Zoning Administrator.

The Board finds there is no height increase to the existing tower. The Board further finds that the cabinet proposed at the base of the tower will not increase the fenced area as it exists.

The Board finds that there is the need for a bird/access policy for the existing monopole tower whereby the Administrator will need to approve maintenance/installation/repair activities on or impacting the tower and/or the leased area by Seacoast Tower.

In addition to the above findings, the Board finds that the proposed antenna, remote radio heads and cabinet addition within the fenced area of the existing monopole will be in harmony with the general purpose and intent of this chapter and does include consideration set forth in Section 240-216 of the Code of Falmouth as follows:

- A. The site is adequate in terms of size for the proposed additions to the monopole fenced site as represented herein.
- B. The site is suitable for the proposed use as the entire 8.5 acre site is zoned Agricultural AA and is used for commercial operations.
- C. There will be no impact on traffic flow and safety as there is no increase in the number of activities or carriers on the existing monopole on subject property.
- D. The visual character of the subject property will be unchanged; and there is no impact on any view or vista from the roadway or abutting properties.
- E. The sewage disposal system is in place does not affect the monopole and its uses on subject property.
- F. There are adequate utilities to the monopole on subject property as it has existed as such since approval is 2003.
- G. The proposed additions to the monopole on subject property as represented herein will have no effect on the supply of affordable housing in Falmouth.
- H. There was no Site Plan Review required by the Planning Board and the referral submitted to the file from the Planning Department had no comment.
- I. The application is within compliance of all applicable sections of the zoning bylaws as represented, except for the nonconformities stated herein.
- J. The approval of this special permit does not include any affordable housing.

Member McNamara made a motion to grant the application to modify #54-03 and incorporate the request to include the cabinet at the base contingent upon revised detailed site plan with all existing uses on site; and institute that any construction/repair or activity that has an impact on the tower would require administrative approval by the Zoning Administrator that shall include time line and bird policy specific to requested construction/repair. Member Foreman seconded the motion.

NOW THEREFORE

BE IT RESOLVED, that the Board of Appeals (herein referred to as Board) being of the opinion aforesaid and acting under the provisions of the Code of Falmouth voted 4 – 0 to Grant Modification of the Special Permit to Sprint Spectrum Realty Co. (herein referred to as Applicant) to allow the addition of three (3) antennas, three (3) remote radio heads, one hybrid cable to the existing monopole tower and one cabinet to be installed at the base of the tower on subject property located at 210 Nathan S. Ellis Highway,

Teaticket, Massachusetts. This special permit is subject to the following conditions:

1. The addition of the antennas, remote radio heads, a hybrid cable and a cabinet shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- "Plot Plan" for Seacoast Tower Falmouth 210 Nathan S. Ellis Highway, East Falmouth prepared by EG Advanced Engineering Group, PC for J-Lee Associates, LLC [representing Sprint Spectrum], - drawing C-1 signed by Marc R. Chretien, PE, with a revision date of 8/21/14 and a Board date 'received' stamp of August 25, 2014;
- "Outline Specifications for Seacoast Tower Falmouth 210 Nathan S. Ellis Highway, East Falmouth prepared by EG Advanced Engineering Group, PC for J-Lee Associates, LLC [representing Sprint Spectrum] - Drawings SP-1 through SP-3 with a final revision date of 4/17/2014 and with a Board date 'received' stamp of August 14, 2014;
- Drawing A-1 "Compound Plan", Drawing A-2 "Elevation", Drawing A-3 "Antenna Plans & Details", Drawing A-4 "Equipment Plans & Details", Drawing A-5 "RF Data Sheet & Bill of Materials", Drawing A-6 "Wiring Diagrams", Drawing S-1 "Structural Details" and E-1 "One-Line Diagram & PPC Details" and Drawing E-2 "Grounding Details & Notes" - all drawings for Seacoast Tower Falmouth 210 Nathan S. Ellis Highway, East Falmouth prepared by EG Advanced Engineering Group, PC for J-Lee Associates, LLC [representing Sprint Spectrum] - all with a revised date of 4/17/2014 and with a Board date 'received' stamp of August 14, 2014.

2. The applicant shall submit a revised "Plot Plan" showing the access to the subject property from Nathan S. Ellis Highway and other activity and structures on the subject 8.5 acre parcel where the monopole tower discussed herein exists. The plan shall be dated and stamped and submitted to the Board of Appeals prior to the issuance of a building permit.

3. The applicant shall submit to the Board of Appeals a copy of the policy they have on bird protection for monopole cellular telecommunication towers. The policy shall be submitted to the Board of Appeals prior to the issuance of a building permit.

4. Any party intending to conduct any work that will impact the monopole tower discussed herein shall first request approval from the Zoning Administrator. Any approval shall be limited to specific activities and a specific timeline. No work shall be allowed that impacts this tower if an active nest is found on said tower.

5. The Board further finds that there shall be no derogation whatsoever of the conditions set forth in Special Permit #54-03 except for administrative approvals on file with the Town Clerk and what is conditioned herein.

6. Any deviation, no matter how minor, from plans submitted and approved, orally or in writing, by this Board, shall be submitted to the Board for approval prior to implementation of said change. Minor changes may be administratively approved by the Zoning Administrator.

7. This permit shall not take effect until a copy of the decision bearing the certification of the Town Clerk that 20 days has elapsed after the decision had been filed in the office of the Town Clerk with no appeal being filed, or an appeal has been filed within such time, is recorded in Barnstable Registry of Deeds. (Any person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.)

8. This permit shall lapse two years from the date on which this decision is filed in the Town Clerk's office if a substantial use of the Special Permit has not sooner commenced except for good cause as determined by the Board of Appeals.

Decision of the Falmouth Zoning Board of Appeals Continued:

Special Permit Number: 71-14

Applicant: SPRINT SPECTRUM REALTY COMPANY of Bayonne, NJ

Subject Property: 210 Nathan S. Ellis Highway, Teaticket, Massachusetts

Map 06, Section 03, Parcel 008, Lot 010

Action: The Board of Appeals, by the signature below, being present, certifies the vote of the Board as follows for the above referenced:

Vote: 4 – 0 to Grant Modification of Special Permit #54-03 as represented to the Board, based on the Findings stated herein and with the above stated Conditions.

Kenneth Foreman, Vice-Chair, Board of Appeals

_____ Date Filed With Town Clerk

Notice is hereby given that any appeal from this Decision shall be made pursuant to Section 17 of Massachusetts General Laws, Chapter 40A, and shall be filed within twenty (20) days after the date of filing of this Decision in the office of the Falmouth Town Clerk.

Notes:

SP #71-14 Sprint Spectrum Realty Co - 210 Nathan S Ellis Hwy / posted 10/14/14 mm