

Zoning Board of Appeals Decisions Decisions for: 02-04-2016

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FALMOUTH ZONING BOARD OF APPEALS

FINDINGS AND DECISION

VARIANCE NO: 99-15

APPLICANT/OWNER(S): BELL ATLANTIC MOBILE OF MASS. CORP, LTD.
d/b/a VERIZON WIRELESS

SUBJECT PROPERTY: 132 East Falmouth Highway, East Falmouth, MA
Assessor's Map: Map 33, Section 11, Parcel 009, Lot 000A

DEED/CERTIFICATE: Book 4668 / Page 317

SUMMARY: Special Permit Granted

PROCEDURAL HISTORY

1. Under a date of October 22, 2015, the applicant applied to the Zoning Board of Appeals for a Special Permit pursuant to Section(s) 240-3 C. and 240-23 E. of the Code of Falmouth to construct a new 100' lattice tower within the 10' setback replacing existing tower and associated exterior cabinetry on subject property known as 132 East Falmouth Highway, East Falmouth, MA.
2. 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.
3. A duly advertised public hearing was opened on December 3, 2015.
4. The public hearing was terminated on February 4, 2016, wherein the Board consisting of Chairman Kimberly Bielan, Clerk Terrence Hurrie, Member Ed Van Keuren, Member Paul Murphy and Associate Mark Cool [sitting as voting member] made a decision to Grant the Special Permit with conditions. Minutes from the hearing are on file in the Board of Appeals.
5. The applicant was present at the hearing and reviewed and discussed proposed plans with the Board.
6. The Board received documents and information prior to and during the public hearing that are on file in the office of the Board of Appeals at Town Hall, as set forth below:

Letters/E-mails from Abutters/Interested Parties

12/2/2015 E-mail Letter from Melanie Kulpeksa of 15 Old Barnstable Road [immediate abutter] to Board of Appeals stating opposition to the Special Permit request.

Letters/E-mails/Information from Applicant/Representative(s)

E-mails between Board of Appeals staff and representatives for Verizon Wireless regarding plans and information from October 2015 through January 2016.

10/22/2015 Applicant submitted a copy of Cellular License for Cellco Partnership – Verizon Wireless – expires 10/1/2020

11/10/2015 Applicant submitted a copy of the approval from the Federal Aviation Administration dated 4/6/00, for the existing tower and a copy of the Federal Communications Commission Antenna Structure

Registration

12/3/2015 RF (radio frequency) Report by C2 Systems submitted by applicant's representative

12/3/2015 Calculated Radio Frequency Emissions Report by C2 Systems submitted by applicant's representative

1/29/2016 "Enclosure and Sound Data Sheet – Gas" for proposed Generator on-site, submitted by applicant's representative

1/29/2016 Letter from McLane Middleton of January 28, 2016 re: Supplemental Memorandum in support of applications

Letters/Referrals/E-mails from Town Departments

11/24/2015 Referral submitted by Board of Health Agent Carignan with no comment.

11/5/2015 Referral submitted by Conservation Commission Agent Kasprzyk with no comment.

11/3/2015 Referral submitted by Engineering Department (S. Schluter) with standard comments.

11/2/2015 Referral submitted by Falmouth Fire Rescue Department with no comment.

10/26/2015 Referral submitted by Marine Environmental Services with no comment.

10/28/2016 Referral submitted by the Planning Department staff with statement: Tower is within the Search and Rescue Overlay; see 240-188 height limit.

Plans submitted by Applicant/Applicant's Representative

1/29/2016 Set of Plans drawn by Turning Mill Consultants, Inc. with a final revision date of 1/28/16, stamped and signed by James P. Stroke, P.E. on 1/28/16 – plans consist of Drawings T-1 'Title Sheet', Z-1 'Abutters Map', Z-2 'Site Plan', Z-3 'Compound Plan', Z-4 'Generator Plan', Z-5 'Existing & Proposed Tower Elevations', Z-6 'Features within 300' and Z-7 'Conceptual Plan of Alternate Lattice Tower Locations' – all with a Board date 'received' stamp of January 29, 2016; and

"Platform Canopy 12' x 8' Burial or Base Shoe" plan drawn by Site Pro 1, consisting of Drawing COV812 dated 7/3/2013 and Drawing COV 1012 dated 7/2/2013 – both with a November 10, 2015 Board date 'received' stamp.

Hearing: December 3, 2015

Peter Anderson with McLane Middleton was present.

The Board made a determination to continue the hearing for this special permit until after determination of the Variance was made.

Member Foreman made a motion to continue the hearing to February 4, 2016 at 6:30 PM. Member Murphy seconded the motion. Motion carried 5 – 0.

Hearing: February 4, 2016

The Board briefly discussed the request for a special permit after approving the variance for the proposed tower.

Peter Anderson of McLane Middleton addressed all questions and concerns.

Chairman Bielan asked for any public comment in support or opposition of the proposed project. There was no public comment.

Member Van Keuren made a motion to close the hearing. Member Murphy seconded the motion. Motion

carried 5 - 0.

Chairman Bielan 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 132 East Falmouth Highway in East Falmouth contains 23,800 square feet of Business 2 and Residential C zoned land. The existing and proposed tower location is within the Residential C zoned portion of the property. The applicant applied under Section(s) 240-3 C. and 240-23 E. of the Code of Falmouth to construct a new 100' lattice tower - replacing existing tower - and all associated cabinetry and generator on subject property. The Board granted the variance under #98-15 to allow the proposed tower to have a setback of 6.9' to the side yard property line. The proposed tower will be approximately six inches less in height than the existing tower. The applicant revised the plan to propose the cabinetry inside the existing building adjacent to the tower; and to locate the proposed generator at the south end of said building away from the abutting residential property. The proposed tower will maintain the original carrier on said tower [Sprint] and Verizon, now owner of the tower, will be additional carrier on the tower. The property has benefit of a Special Permit #79-79 allowing the existing underground fuel tanks to be increased. Records do not indicate that a special permit was applied for in order to construct the existing cell tower on site. However, in 2004, special permit #152-04 was granted to decrease the tower height from 140' to 100' and no variance was required as the applicant agreed to locate the cabinetry proposed for cell tower, in the existing building.

Section 240-23 of the Code of Falmouth - "Special permit uses." subsection E. requires a television or radio antennas exceeding 50 feet above ground level to apply to the Zoning Board of Appeals for a special permit.

The Board finds that the exiting 100' tower to be removed has existed on site for many years and that there have been no complaints logged regarding said tower. The Board further finds that the existing tower had at one time been 140 feet in height and in 2004 received a special permit [#152-04] to lower the tower to 100 feet in height. In the special permit it was noted that the existing tower was built in the 1970's. Furthermore, the Board finds that the property has an existing fuel company with underground fuel tanks and fuel trucks.

Section 240-3 of the Code of Falmouth - "Pre-existing structures and uses." subsection C. states: Preexisting nonconforming structures or uses may be extended, altered or changed only by special permit from the Board of Appeals. Any such change, extension or alteration shall not be substantially more detrimental to the neighborhood than the existing nonconforming use or structure.

The Board finds that the proposed tower will be an improvement in telecommunications for the community and a marginal gap in coverage will be resolved. The Board further finds that the proposed is an enhancement to the site as the new tower will have the structural integrity necessary to accommodate carriers and antennas for telecommunications. Furthermore, the Board finds that the nonconforming setback created through the erection of a new tower [6.9' to the northerly side yard property line] will not be visible due to the 6' fence surrounding the tower structure.

The Board finds that the applicant worked with the Board's concerns and revised the plan to move the generator to the south side of the existing building away from the immediate residential abutter; and located the cabinetry in the existing building. The Board further finds that federal regulations/policies encourage co-location of carriers on sites when possible.

The Board finds through testimony, that Verizon Wireless is now the owner of the tower on subject property. The Board further finds that the granting of this special permit does not derogate from the previous special permit for the tower [#152-04].

The Board finds that the cell tower, although not accessory to the existing building on subject property, it is not the principal structure or use on subject property and therefore the setback required to side and rear property lines shall be 10'.

In addition to the above findings, the Board finds that the proposed tower 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 tower and the nonconforming setback of 6.9' to the northerly side yard property line was granted to the applicant in variance #98-15.
- B. The site is suitable for the proposed use as a telecommunications tower has existed on subject property for many years with no complaints according to Town records; and the proposed tower is not an expansion of any use on subject property.
- C. There will be no impact on traffic flow and safety as there is no change in the location of the existing driveway on site and no new traffic will be attributed to the proposed tower.
- D. The visual character of the subject property will be improved; and there is no impact on any view or vista from the roadway or abutting properties.
- E. The sewage disposal system on site is unaffected by this variance approval.
- F. There are adequate utilities to subject property.
- G. The proposed tower discussed and 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 stated that the subject property is within the Search and Rescue Overlay District.
- I. The application is within compliance of all applicable sections of the zoning bylaws as approved herein.
- J. The approval of this special permit does not include any affordable housing.

Member Murphy made a motion to Grant the Special Permit with conditions. Member Van Keuren 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 5 – 0 to Grant a Special Permit to Bell Atlantic Mobile of Mass. Corp., Ltd. d/b/a Verizon Wireless (herein referred to as Applicant) under Section(s) 240-3 C. and 240-23 E. of the Code of Falmouth to construct a new 100' lattice tower replacing existing conforming tower (setbacks) and associated cabinetry on subject property known as 132 East Falmouth Highway, East Falmouth, Massachusetts. This special permit is subject to the following conditions:

1. The tower location, cabinetry and generator location, construction, setbacks, height of tower and use of tower shall be as represented to the Board and as shown on plans submitted and reviewed by the Board entitled as follows:

- Set of Plans drawn by Turning Mill Consultants, Inc. with a final revision date of 1/28/16, stamped and signed by James P. Stroke, P.E. on 1/28/16 – plans consist of Drawings T-1 'Title Sheet', Z-1 'Abutters Map', Z-2 'Site Plan', Z-3 'Compound Plan', Z-4 'Generator Plan', Z-5 'Existing & Proposed Tower Elevations', Z-6 'Features within 300' and Z-7 'Conceptual Plan of Alternate Lattice Tower Locations' – all with a Board date 'received' stamp of January 29, 2016; and

- "Platform Canopy 12' x 8' Burial or Base Shoe" plan drawn by Site Pro 1, consisting of Drawing COV812 dated 7/3/2013 and Drawing COV 1012 dated 7/2/2013 – both with a November 10, 2015 Board date 'received' stamp.

2. There shall be no derogation from previous special permits #79-79 and #152-04 through this Special Permit approval.

3. The proposed tower shall not exceed the height as shown on the plans noted in Condition 1 above; specifically Sheet Z-5 'Existing & Proposed Tower Elevations'.

4. The cabinetry shall be located within the existing building as shown on the plans noted in Condition 1 above; specifically Sheet Z-2 'Site Plan' showing Proposed Verizon Equipment Room Within Building noted on the plan.

5. The applicant shall submit a copy of the lease from the property owner to Verizon Wireless prior to issuance of a building permit for the tower approved 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:

Variance Number: 99-15

Applicant: Bell Atlantic Mobile of Mass. Corp., Ltd. d/b/a Verizon Wireless

Subject Property: 132 East Falmouth Highway, East Falmouth, Massachusetts
Map 33, Section 11, Parcel 009, Lot 000A

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

Vote: 5 – 0 to Grant a Special Permit as represented to the Board, based on the Findings stated herein and with the above stated Conditions.

Terrence J. Hurrie, Clerk, 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 99-15 Verizon Wireless / Filed w/ Town Clerk 2/16/16