

**HARVARD ZONING BOARD OF APPEALS
MEETING MINUTES
JANUARY 8, 2014
APPROVED: April 23, 2014**

Chairman Chris Tracey opened the meeting at 7:31pm in the Hildreth House under Chapter 40A and the Code of the Town of Harvard Chapter 125

Members Present: Chris Tracey, Steve Moeser, Robert Capobianco, Orville Dodson and Michael Lawton

Others Present: Liz Allard (LUB Admin), Mark Lanza (Town Counsel), Bill Scanlan (Town Planner), Michael Giaimo (Robinson & Cole, LLC), Greg Sampson (Robinson & Cole, LLP), Anne McGuinness (Real Estate for Verizon Wireless) and Dan Goulet (Engineer for Verizon Wireless)

Variance Hearing – Bell Atlantic Mobile of Massachusetts Corporation, LTD, d/b/a Verizon Wireless, 47 Poor Farm Road. Opened at 7:35pm (See page 2 for detailed minutes)

Approve Minutes

Robert Capobianco made a motion to approve the minutes of December 11, 2013 as amended. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

Protective Bylaw Amendments 125-3 Existing Lots, Structures & Uses

Liz Allard has distributed the proposed amended Chapter 125-3 of the Protective Bylaw in regards to existing structures and uses. Members agreed to meet on January 15th to review the draft in order to make additional recommendations to the Planning Board prior to the opening of the public hearing on February 3rd at 8:00pm.

2013 Annual Report

Liz Allard had previously distributed a draft of the 2013 annual report for the members to review. No comments were received from the members. Chris Tracey made a motion to approve the annual report as drafted. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

Adjournment

Robert Capobianco made a motion to adjourn the meeting at 9:35pm. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
Liz Allard, Clerk

Zoning Board of Appeals

Variance Hearing Meeting Minutes

Bell Atlantic Mobile of Massachusetts Corporation, LTD, d/b/a Verizon Wireless, 47 Poor Farm Road

January 8, 2014

The hearing was opened at 7:35pm by Chairman Chris Tracey in the Hildreth House under Chapter 40A and the Code of the Town of Harvard Chapter 125

Members Present: Chris Tracey, Steve Moeser, Robert Capobianco, Orville Dodson and Michael Lawton

Others Present: Liz Allard (LUB Admin), Mark Lanza (Town Counsel), Bill Scanlan (Town Planner), Michael Giaimo (Robinson & Cole, LLC), Greg Sampson (Robinson & Cole, LLP), Anne McGuinness (Real Estate for Verizon Wireless) and Dan Goulet (Engineer for Verizon Wireless)

This hearing is for a Variance Bell Atlantic Mobile of Massachusetts Corporation, LTD. d/b/a Verizon Wireless to install, maintain and operate a 12 foot extension of an existing 104 foot tall wireless telecommunications tower and additional "stealth" branches at the top of the tower extending up to 121 feet above ground level (agl) and 3 antenna array at center-line height of 112 feet agl at 47 Poor farm Road, Harvard.

Michael Lawton explained a possible conflict of interest he may have with the application before the ZBA this evening. Town Counsel Mark Lanza asked Mr. Lawton if he does or has done any work for the applicant. Mr. Lawton stated that his company does do work for Verizon, but not on this project. Attorney Lanza asked Mr. Lawton if he is an owner of any part of the company he works for. Mr. Lawton stated he is not. Attorney Lanza stated Mr. Lawton's disclosure that he is currently employed by a company that designs wireless communications towers meets the requirements under the Open Meeting Law.

Robert Capobianco made a motion to waive the reading of the legal notice. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

Michael Giaimo, the attorney for Verizon Wireless, explained Verizon Wireless is in need of coverage on the north side of Harvard and are proposing a 12 foot extension to the existing wireless tower at 47 Poor Farm Road. The extension will be covered with the traditional tree branches. The top of the tower itself will be at a height of 116 feet, with additional braches covering the top of the tower, bringing the total height to 121 feet. Mr. Giaimo explained the requested variance is a function of height. The current Protective Bylaw does not allow for a tower to exceed 125 feet, §125-27D(2)(b)[1][b]. In addition in accordance with the Protective Bylaw, the tower shall be set back from any residence by a distance of no less than 500 feet or a distance equal to six times the height of the tower, which ever is greater, §125-27D(2)(f)[3]. For a 121 foot tower, the Bylaw would require the tower be setback a distance of 726 feet.

Dan Goulet, an engineer for Verizon Wireless, explained the coverage area map, which indicates a significant gap between Routes 2 and 111 for the 4g network, which includes data and internet service. Chris Tracey asked about the other co-locators on the tower. The availability of coverage was discussed. Robert Capobianco asked how much of the 12 foot extension is taken up by the antennas themselves. Mr. Goulet explained each co-located use requires there to be 10 feet vertically between the center lines of each antenna array to avoid interference with other carriers. Mr. Lawton asked about the available space lower on the tower. Mr. Goulet stated the

monopole is not designed for an array lower than 62 feet, nor could you get the proper coverage at that height.

Mr. Tracey asked about other carriers needing to go to 4g coverage; would they too need to be higher on the tower to receive proper coverage; what is the cut off point for a tower if not that allowed within the existing Bylaw. Mr. Giaimo stated this is a small increase on the monopole; he would agree that going up 40 feet would be a huge increase. Mr. Capobianco asked about the additional weight load on the pole with the addition of the antennas. Mr. Giaimo stated the numbers were run for the proposed weight and the monopole is structural sound to carry the increased load. Mr. Lawton asked if the existing monopole was designed to be extended. Mr. Giaimo stated it was.

Attorney Lanza explained to the members there are two Federal laws that allow the by right use of wireless communications towers under the Federal Communication Act. Town Planner Bill Scanlan asked if there was any opportunity for the Town to add radios to the tower for added safety protection by police and fire. Mr. Giaimo stated as a tenant on the tower and not the actual owners, that requested would need to be made to the company that owns the tower.

Mr. Giaimo reviewed the variance provisions of the Protective Bylaw as it pertains to a Variance, under §125-45B. Literal enforcement of the Bylaw would involve substantial hardship due to the gap in coverage; by not allowing Verizon Wireless to extend the existing tower they would be forced to site and build a separate tower on the same or nearby property to cover the gap, thereby creating a substantial financial and practical hardship. Circumstances relating to soil conditions, shape or topography of such land or structures were detailed in the 2003 variance, which indicated the location of the tower is comprised of stable soils suitable for the construction of the foundation of the tower. The Board found in 2003 that alternate sites for a tower would have more unstable soil and would require more invasive construction and have a negative impact on wetlands. In addition, the existing tower was designed and constructed to blend in with the surrounding land and tree cover that makes it barely visible. The proposed use on any other site in the surrounding area would require the construction of a new tower, which may be difficult to camouflage as well as the existing tower. There is no alternative site in the vicinity that have an existing tower suitable for modifications that could be used by Verizon Wireless to effectively address its coverage gaps, therefore the hardship is owing to said circumstances. Granting the requested variance relief for the Wireless Facility will not result in any detriment to the public good, as it will provide adequate and reliable service to the customers in the Harvard area. This promotes the health, safety, convenience and welfare with minimal visual and other impacts. The granting of relief from §125-27 will not nullify or substantially derogate from the intent or purpose of the Bylaw, which includes the minimization of visual impact of wireless communications towers within the Town of Harvard.

Members discussed the potential of having a condition within the decision that would limit the height of the tower to 121 feet. Attorney Lanza expressed concerns the ZBA does not have the ability to require such a condition. Members discussed requiring a report from a structural engineer confirming the existing tower can handle the proposed increase in load, prior to the issuance of a building permit. Mr. Lawton would like to see documentation supporting Mr. Goulet's statement that you can not co-locate below 62 feet. Mr. Goulet stated there is no additional port available for the coaxial cables to exit the existing monopole at 62 feet; he can run a report for the 62 foot location, but by adding antennas there you would compromise the integrity of the monopole by adding a cable exit port at that level. Mr. Tracey noted that based on Verizon's structural analysis, the new coaxial cables for Verizon's use would be attached to the outside of the monopole and would not require any additional port or change to the existing monopole other than the height.

With no further questions or comments Robert Capobianco made a motion to close the evidentiary portion of the hearing. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

After a brief discussion, Steve Moeser made a motion to grant the variance to include a condition that requires a report from a structural engineering indicating the existing monopole can handle the load at 121 feet. Robert Capobianco seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
Liz Allard, Clerk