

**HARVARD ZONING BOARD OF APPEALS
MEETING MINUTES
AUGUST 12, 2020
APPROVED: FEBRUARY 10, 2021**

Chair Chris Tracey called the meeting to order at 7:13pm, virtually in accordance with the Governor's Executive Order Suspending Certain Provisions of the Open Meeting Law, MGL Chapter 30A §20 under M.G.L. Chapter 40B and the Code of the Town of Harvard Chapter 125

Members Present: Chris Tracey, Theodore Maxant and Michael Lawton

Others Present: Liz Allard (Land Use Boards Administrator), Christopher Swiniarski (McLane Middleton, Attorney for Verizon Wireless), David Tivnan (SAI Group, LLC), Jim & Roseanne Saalfeld, Barbara & Gregory Romero, Bruce Ringwall (GPR, Inc.) and Bruce Gallagher

Continuation of a Variance Hearing – Cellco Partnership d/b/a Verizon Wireless, 12 Woodchuck Hill Road. Opened at 7:18pm. (See page 2 for complete details)

Special Permit Hearing – Bruce Gallagher & Joyce Vassallo, 104 Still River Road. Opened at 7:19pm (see page 4 for complete details)

Election of Officers

This item was postponed to until the next meeting.

Request to Extend Comprehensive Permit for Trail Ridge, Trail Ridge Way

After a brief discussion the Board agreed to continue this discussion at the next meeting in order to gather additional input.

Request to Endorse Craftsman Village Harvard Regulatory Agreement

The Regulatory Agreement, as submitted, is lacking information and has not been reviewed by Town Counsel as of yet, therefore the Board agreed to delay its endorsement of the Agreement.

Approve Minutes

Theodore Maxant made a motion to approve the minutes of June 24, 2020, as drafted. Michael Lawton seconded the motion. The vote was unanimously in favor of the motion by roll call vote, Theodore Maxant, aye; Michael Lawton, aye; and Chris Tracey, aye.

Adjournment

At 8:45pm Theodore Maxant made a motion to adjourn the meeting. Michael Lawton seconded the motion. The vote was unanimously in favor of the motion by a roll call, Theodore Maxant, aye; Michael Lawton, aye; and Chris Tracey, aye.

Signed: _____ Liz Allard, Clerk

DOCUMENTS & OTHER EXHIBITS

- Town of Harvard, Zoning Board of Appeals Agenda, dated August 12, 2020
- Verizon Photo Simulations, Harvard 3 MA, 12 Woodchuck Hill Road, Harvard, MA 01451, March 6, 2020
- Attachment A: Harvard 3 – Existing/Approved 700MHz LTE Coverage, undated
- Attachment B: Harvard 3 – 700MHz LTE Coverage with Proposed Site, undated
- Attachment C: Harvard 3 – Existing/Approved 700MHz Sector Footprints, undated
- Attachment D: Harvard 3 – 700MHz Sector Footprints with Proposed Sites, undated
- Attachment E: Harvard 3 – Area Terrain Map, undated
- Draft Zoning Board of Appeals Minutes, Prepared by Liz Allard, June 24, 2020
- Building Permit Plan #104 Still River Road, Harvard, Mass., Prepared for Bruce Gallagher, 171059A, prepared by GPR, Inc., dated July 17, 2020

Harvard Zoning Board of Appeals

Continuation of a Variance Hearing Minutes

Cellco Partnership, d/b/a Verizon Wireless, 12 Woodchuck Hill Road

August 12, 2020

The hearing was opened at 7:18pm virtually in accordance with the Governor's Executive Order Suspending Certain Provisions of the Open Meeting Law, MGL Chapter 30A §20, by Chairman Chris Tracey under the Zoning Act, MGL Chapter 40A and the Code of the Town of Harvard, Protective Bylaw, Chapter 125.

Members Present: Chris Tracey, Theodore Maxant and Michael Lawton

Others Present: Liz Allard (Land Use Boards Administrator), Christopher Swiniarski (McLane Middleton, Attorney for Verizon Wireless), David Tivnan (SAI Group, LLC), Barbara & Gregory Romero and Jim & Roseanne Saalfeld

This hearing was continued from June 24, 2020 for a Variance filed on behalf of Cello Partnership, d/b/a Verizon Wireless, to allow for a replacement wireless communications tower taller than 105 feet and up to 160 feet when a 120-foot wireless communication tower exists at 12 Woodchuck Hill Road, Harvard.

Christopher Swiniarski accepted the request to open the hearing and immediately continue it to 7:30pm to allow for the 7:15pm public hearing to open prior to this hearing. Theodore Maxant made a motion to continue the public hearing on the above referenced application to 7:30pm this evening. Michael Lawton seconded the motion. The vote was unanimously in favor of the motion by a roll call, Theodore Maxant, aye; Michael Lawton, aye; and Chris Tracey, aye.

At 7:30pm Chair Chris Tracey re-opened the public hearing for the above referenced application.

Christopher Swiniarski, the Attorney for Verizon Wireless, along with David Tivnan, of SAI Group, were present to represent the applicant. Attorney Swiniarski provided an update to the Board of where things are at with the Zoning Board of Appeals and the Planning Board (PB). Attorney Swiniarski has provided an updated study based on multiple carriers at this location (which is well below Federal Communication Commission standards); and provide clarification on the variances being sought. Chris Tracey stated the Board would be seeking Town Counsel advice on how Federal laws pre-empt State and local laws.

Theodore Maxant asked if there are better location for this tower that would provide better coverage, as he sees this not as a modification, but as new construction. Attorney Swiniarski stated hardship is by way of limited locations for such a facility in Town. A discussion in regards to the coverage shown on the provide maps was had and noted that not all areas detailed in white on the maps are considered "dead zones", just limited coverage. Attorney Swiniarski stated the Department of Public Works (DPW) is blocked by Pin Hill and Dean's Hill. The road on which the DPW is located is not dense enough to justify a tower in that area. Attorney Swiniarski stated the coverage objective is the Mass Ave area.

Mr. Tracey asked for additional clarification on how the PB will deal with the allowed height of towers within Chapter 125-27. Attorney Swiniarski stated at 75' or 105' you are unable to get the desired coverage. Michael Lawton stated peer review of this application should include whether or not the proposed height of the tower is appropriate to achieve the objective. Attorney Swiniarski pointed out Tab 10 of the application details the gains and losses at various heights. Mr. Tracey asked if the current 130' tower is unused. Attorney Swiniarski stated yes. When

asked, Attorney Swiniarski further explained the height request of 160'; the tower is 155', with the centerline of the pole at 160'. Attorney Swiniarski further detailed the criteria that allows the PB to approve a tower at 105'; without detrimental impact upon the viewshed (125-27D(2)(b)[1][a][ii]).

At this time Mr. Tracey allowed for comments from the public.

Roseanne Saalfield stated she is opposed to the construction of this tower; property values will be decreased if the tower is built; how will the Town work to ensure property values do not drop; can the use for this tower be distributed over several towers.

Jim Saalfield, speaking on behalf of Harvard Conservation Trust (HCT), stated the abutting land was purchased by HCT to preserve the viewshed; it would be a significant detriment to have a 160' tower in this location; it has been an abandoned tower for a long time, this is a new use moving closer to existing open space; the ZBA and Planning Board should protect residents from being steamrolled; would like to see the real dollar value on this being a benefit to the Town; should be located on Town-owned land to gain the value.

Greg Romero stated the unused tower is 100' from his property line; 160' tower with five arrays is going to stick out and have an expanded footprint; property value will be impacted; he suggested a shorter tower with additional towers in other locations; the goal is 5G.

Attorney Swiniarski will provide sample reports from appraisers to show that property values will not be affected, but in fact will enhance values.

The Board reviewed the proposals for peer review. Theodore Maxant made a motion to accept the proposal from Isotrope. Michael Lawton seconded the motion. The vote was unanimously in favor of the motion by a roll call, Theodore Maxant, aye; Michael Lawton, aye; and Chris Tracey, aye.

Theodore Maxant made a motion to continue the hearing to September 16, 2020 at 7:15pm. Michael Lawton seconded the motion. The vote was unanimously in favor of the motion by a roll call, Theodore Maxant, aye; Michael Lawton, aye; and Chris Tracey, aye.

Signed: _____ Liz Allard, Clerk

Harvard Zoning Board of Appeals

Special Permit Hearing Minutes

Bruce Gallagher & Joyce Vassallo, 104 Still River Road

August 12, 2020

The hearing was opened at 7:19pm virtually in accordance with the Governor's Executive Order Suspending Certain Provisions of the Open Meeting Law, MGL Chapter 30A §20, by Chairman Chris Tracey under the Zoning Act, MGL Chapter 40A and the Code of the Town of Harvard, Protective Bylaw, Chapter 125.

Members Present: Chris Tracey, Theodore Maxant, Orville Dodson and Michael Lawton

Others Present: Liz Allard (Land Use Boards Administrator), Bruce Ringwall (GPR, Inc.) and Bruce Gallagher

This hearing is for a Special Permit filed on behalf of Bruce Gallagher and Joyce Vassallo to enlarge or otherwise alter a pre-existing non-conforming structure by adding a new deck and stairs at 104 Still River Road, Harvard

Bruce Ringwall, of GPR, Inc., was present to represent the applicant, Bruce Gallagher, who was also present. Mr. Ringwall stated Mr. Gallagher is seeking to construct a deck and stairs to replace the previous access to the dwelling that was constructed in 1940. The dwelling is pre-existing non-conforming in the fact that it does not meet the front setback from the right-of-way (ROW) established in 1951 of 40'. The structure is at 38' from the ROW, with the existing stairs at 38.1 feet from the ROW. The proposed stairs will be 39.7 feet from the ROW. The 16' by 16' deck will be beyond the 40' setback established in 1951 and will not be more detrimental to the neighborhood.

Chris Tracey read a letter of support from an abutter into the record. No person spoke in opposition of the application.

Theodore Maxant made a motion to close the evidentiary portion of the hearing. Michael Lawton seconded the motion. The vote was unanimously in favor of the motion by a roll call, Theodore Maxant, aye; Michael Lawton, aye; and Chris Tracey, aye.

Theodore Maxant made a motion to issue a Special Permit to Bruce Gallagher to enlarge or otherwise alter a pre-existing non-conforming structure by adding a new deck and stairs at 104 Still River Road. Michael Lawton seconded the motion. The vote was unanimously in favor of the motion by a roll call, Theodore Maxant, aye; Michael Lawton, aye; and Chris Tracey, aye.

Signed: _____ Liz Allard, Clerk