

**HARVARD ZONING BOARD OF APPEALS
MEETING MINUTES
DECEMBER 16, 2020
APPROVED: APRIL 14, 2021**

Chair Chris Tracey called the meeting to order at 7:02pm, 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 40A and the Code of the Town of Harvard Chapter 125

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

Others Present: Liz Allard (Land Use Boards Administrator), Christopher Swiniarski (McLane Middleton, Attorney for Verizon Wireless), David Tivnan (SAI Group, LLC), Keith Vellante (Real Estate for Verizon Wireless), Fran & Rick Maiore, Barbara & Gregory Romero, Roseanne Saalfeld, Bill & Robin Calderwood and John Osborn (Harvard Press)

Continuation of a Variance Hearing – Cellco Partnership d/b/a Verizon Wireless, 12 Woodchuck Hill Road. Opened at 7:05pm. (See page 2 for complete details)

Approve Minutes

Steve Moeser made motion to approve the minutes of August 12, 2020 as amended. Theodore Maxant seconded the motion. The vote was unanimously in favor of the motion by a roll call, Steve Moeser, aye; Theodore Maxant, aye; Orville Dodson, aye, Michael Lawton, aye; and Chris Tracey, aye.

Election of Officers

Michael Lawton made a motion to elect Liz Allard as Clerk of the Zoning Board of Appeals for the 2022 Fiscal Year. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion by a roll call, Steve Moeser, aye; Theodore Maxant, aye; Orville Dodson, aye, Michael Lawton, aye; and Chris Tracey, aye.

Theodore Maxant made a motion to elect Michael Lawton as the Vice Chair of the Zoning Board of Appeals for the 2022 Fiscal Year. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion by a roll call, Steve Moeser, aye; Theodore Maxant, aye; Orville Dodson, aye, Michael Lawton, aye; and Chris Tracey, aye.

Theodore Maxant made a motion to elect Christopher Tracey as Chair of the Zoning Board of Appeals for the 2022 Fiscal Year. Michael Lawton seconded the motion. The vote was unanimously in favor of the motion by a roll call, Steve Moeser, aye; Theodore Maxant, aye; Orville Dodson, aye, Michael Lawton, aye; and Chris Tracey, aye.

Approve Invoice – Isotope, \$1,044.50

Steve Moeser made motion to approve the invoice from Isotope in the amount of \$1,044.50 for peer review. Theodore Maxant seconded the motion. The vote was unanimously in favor of the motion by a roll call, Steve Moeser, aye; Theodore Maxant, aye; Orville Dodson, aye, Michael Lawton, aye; and Chris Tracey, aye.

Adjournment

At 8:51pm Steve Moeser 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, Steve Moeser, aye; Theodore Maxant, aye; Orville Dodson, aye, Michael Lawton, aye; and Chris Tracey, aye.

Signed: _____ Liz Allard, Clerk

**Harvard Zoning Board of Appeals
Continuation of a Variance Hearing Minutes
Cellco Partnership, d/b/a Verizon Wireless, 12 Woodchuck Hill Road
December 16, 2020**

The hearing was opened at 7:02pm 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, Steve Moeser, Theodore Maxant, Orville Dodson and Michael Lawton

Others Present: Liz Allard (Land Use Boards Administrator), Mark Lanza (Town Counsel), Christopher Swiniarski (McLane Middleton, Attorney for Verizon Wireless), David Tivnan (SAI Group, LLC, Barbara & Gregory Romero, Rick & Fran Maxson Maiore, Keith Vellante, Roseanne Saalfeld, Bill & Robin Calderwood, David Maxson (Isotrope) and John Osborn (Harvard Press)

This hearing was continued from November 18, 2020 for a Variance filed on behalf of Cellco 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.

Chris Tracey read comments received since the previous meeting from Jim Saalfeld, Greg and Barbara Romero into the record. Mr. Tracey detailed the legal non-conforming structure as confirmed by the Zoning Enforcement Officer and the advice from Town Counsel in regards to a Special Permit from Zoning Board of Appeals (ZBA). Attorney Chris Swiniarski agreed a finding under Section 6 of Massachusetts General Law (MGL) Chapter 40A would be the correct option moving forward; Site Plan Approval would still be required from the Planning Board. Mr. Tracey explained with the right to expand a legally non-conforming structure (MGL c.40A §6) allows the applicant the right to amend the request from a variance to a special permit.

Town Counsel, Mark Lanza, explained in the mid-to-late 1990's Harvard was starting to get a grip on cell towers in Town. Rick Maiore was a member of the Board of Selectmen and he brought to light the tower on his property was non-conforming. Some of the antennas on that tower were not authorized, however the base tower was a prior non-conforming structure and in use in 1997. What is significant is the ZBA found the use and existing tower were grandfathered, with no one appeal or abandonment of the use for greater than two years. Attorney Lanza further explained the applicant could apply for Special Permit under 125-3C for a pre-existing non-conforming commercial use. The criteria for a Special Permit are much lower than that of a variance. A request to amend the application from a variance to a Special Permit could be done verbally or by written notice. Mr. Tracey asked if by allowing the amendment would the ZBA still have the ability to limit the use of the tower by other carriers and require the existing tower be removed within a specific timeframe. Attorney Lanza stated yes.

Originally a variance was necessary at 160', but now the applicant is seeking a tower with a similar height as the existing tower. Attorney Swiniarski is amenable to the ZBA voting on the finding on the abandonment, but not amenable to limiting the permit with a timeframe. Attorney Lanza provided advice on making the decision on the abandonment. Theodore Maxant wants confirmation that there are no other carriers on the tower now under contract to an additional amount of time. Attorney Swiniarski stated he does not know of any other carriers transmitting from the existing tower; has claimed from day one that the existing tower will be removed; willing to timeframe it at 30-days for removal once the new tower is constructed.

The email from Zoning Enforcement Officer, Jeff Hayes, was read into the record. Mr. Tracey asked members their preference moving forward. The general agreement was to allow for the application to be amended from a Variance to a Special Permit.

Mr. Tracey turned to the vote of the Select Board to issue a Request for Proposal for the Bolton Road property to expand the coverage within the Town of Harvard. Mr. Moeser feels even if the ZBA approved a tower on Woodchuck Hill Road another tower will eventually be located on the Bolton Road property. Mr. Moeser thinks the proposed tower at on Woodchuck Hill Road will be less intrusive than what is currently there. Mr. Moeser does not think Bolton Road is an alternative to Woodchuck Hill Road as that is would provide difference coverage. Mr. Tracey agrees, but is glad that the issue was brought back up.

Attorney Swiniarski requested the application be amended from a variance to a special permit and the ZBA make a finding that the use still exists.

Jim Saalfeld, an abutter, asked if it is critical to know if the tower has been abandoned before the ZBA makes a finding and if so should proof be provided. Mr. Tracey stated information has been provided by the Maiores stating the use has not been abandon, along with confirmation from Building Commission.

Steve Moeser made a motion stating the Zoning Board of Appeals has determined through evidence provided by the property owner and the Zoning Enforcement Officer there has been no abandonment of use or the structure at 12 Woodchuck Hill Road. Theodore Maxant seconded the motion. The vote was unanimously in favor of the motion by roll call vote, Steve Moeser, aye; Theodore Maxant, aye; and Chris Tracey, aye.

Theodore Maxant made motion accepting the amendment to the application of Cellco Partnership, d/b/a Verizon Wireless, from a variance to a special permit. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion by roll call vote, Steve Moeser, aye; Theodore Maxant, aye; and Chris Tracey, aye.

Attorney Swiniarski requested the Zoning Board of Appeals accept an application for a special permit finding the application is not more detrimental to the neighborhood. Steve Moeser made a to accept the application for a special permit with the finding that the proposed wireless communications tower for 12 Woodchuck Hill Road as presented by Cellco Partnership, d/b/a Verizon Wireless is not more detrimental to the neighborhood. Theodore Maxant seconded the motion. The vote was unanimously in favor of the motion by roll call vote, Steve Moeser, aye; Theodore Maxant, aye; and Chris Tracey, aye.

Greg Romero, an abutter, stated the proposed tower has a much bigger footprint for the base than the existing tower. Attorney Swiniarski stated the proposed tower has a small area, however the fence around the facility is larger and is not detrimental to the neighborhood. Mr. Tracey asked about conditioning screening. Attorney Swiniarski stated not opposed, but typically that is part of the Site Plan Approval by the Planning Board. Mr. Tracey would recommend the northwesterly side of the fenced-in area be fully screened from the abutting property. This item can be written in the decision in a way that makes it a recommendation to the Planning Board.

Mr. Saalfeld wanted to know what the maximum height of the tower will be. It was stated no higher than what is there now, which could typically be done by-right, but the special permit makes it easy to achieve that requirement.

Attorney Swiniarski agree to extend the filing of the decision with the Town Clerk to January 7, 2021.

Steve Moeser made a motion to continue the hearing to December 30, 2020 at 7:00pm. Theodore Maxant seconded the motion. The vote was unanimously in favor of the motion by roll call vote, Steve Moeser, aye; Theodore Maxant, aye; and Chris Tracey, aye.

Signed: _____ Liz Allard, Clerk

EXHIBITS & OTHER DOCUMENTS

- Zoning Board of Appeals Agenda, December 16, 2021
- Email from Gregory Romero to Liz Allard Subject: Submission for Tonight's ZBA Meeting - Proposed Cell Tower at 12 Woodchuck Hill, December 16, 2020
- Email from Jim Saalfeld to Liz Allard Subject: ZBA, December 16, 2020
- Email from Jeff Hayes to Jim Saalfeld Subject: 12 Woodchuck Hill Road, December 3, 2020
- DRAFT HARVARD ZONING BOARD OF APPEALS MEETING MINUTES AUGUST 12, 2020 prepared by Liz Allard
- Isotrope Invoice 19227, dated 11/30/2020