

**Minutes for July 31, 2018 ZBA deliberations on the application of Industrial Tower and Wireless regarding 0 Palmer Road.**

Board Members Present: Kenneth Thompson, Chair; David Alberti, Clerk and Harry Weikel, Jr.

Also present, Robin Stein, Town Counsel

Opened at 6:30 p.m.

The Chairman began by reading the Notice of Hearing into the record and then asked Robin Stein, Town Counsel, to provide a brief summary of the procedural history on the Application. Town Counsel provided a summary of the prior hearings on the Application. Town Counsel also clarified that while the Board began deliberations after the close of the public hearing during the July 24, 2018 open meeting session and expressed initial opinions on the Application, that the Board had not yet voted any findings and would do so after voting a motion on the Application.

The Board continued its deliberations on the Application. Harry Weikel expressed his objections to the Application and shared with the Board a Summary of Facts, Map showing dwellings within 800 feet of the proposed Tower and a list of six Town-owned properties in excess of 200,000 square feet with the Board. Dave Alberti expressed agreement with Harry's comments and concerns.

The Board then concluded its deliberations.

A motion to approve the Application for a use variance and four dimensional variances listed below subject to the following conditions was made by Kenneth Thompson and seconded David Alberti:

1. Space on the Tower and ground shall be provided free of charge for the location of Town public safety equipment including that of police and fire departments;
2. All construction shall be in conformance with the application and plans submitted including the July 2, 2018 amendment incorporating comments from the Plympton Fire Department made by letter on June 25, 2018;
3. The Applicant must obtain any and all other necessary permits and approvals and this decision does not relieve the applicant from any other applicable laws, rules or regulations and
4. The tower and related equipment, must at all times, comply with applicable noise regulations, including without limitation, the DEP Noise Pollution Policy.

The four dimensional variances are:

1. lot area: proposed- 174,240 square feet and required- 200,000 square feet;
2. setback from way: proposed- 148.7 feet and required- 300 feet;
3. setback from property line: proposed- 148.7 feet and required- 170 feet and
4. setback from dwelling: proposed- 245 feet and required- 800 feet.

The Board voted 2 opposed (Alberti and Weikel) and 1 in favor (Thompson) of the motion and as such the motion failed.

Following a motion made by David Alberti and seconded Harry Weikel, the Board voted unanimously to adopt the following findings, along with the additional reasons for denial shared by Harry Weikel during deliberations, in support of its vote to deny the Application:

1. 0 Palmer Road is located in the Business Zoning District;
2. The Applicant has applied for a use variance and the following four dimensional variances:
  - a. lot area: proposed- 174,240 square feet and required- 200,000 square feet
  - b. setback from way: proposed - 148.7 feet and required - 300 feet
  - c. setback from property line: proposed - 148.7 feet and required - 170 feet and
  - d. setback from dwelling: proposed- 245 feet and required 800 feet.
3. The Board finds that the Applicant has failed to satisfy the criteria for issuance of a variance pursuant to M.G.L. c. 40A, §10, insofar as there are no circumstances relating to the soil conditions, shape or topography of the land that especially affect the land at 0 Palmer Road and that do not affect the land generally in the zoning district, and that the applicant has not identified any hardship, financial or otherwise, which is owing to such circumstances.
4. The Board further finds that the relief requested will result in substantial detriment to the public good and that the relief requested will nullify the intent and purposes of the Bylaw, specifically, the Bylaw's purpose and intent to protect against blight and pollution of the environment, to encourage the most appropriate use of land throughout the Town, to conserve the value of land and buildings and to conserve health.
5. The Board heard public comment from abutters who expressed numerous concerns about the proposed tower including as to the visual impacts of the project, noise, negative impacts on health and property values and the close proximity of the proposed tower to abutting properties and dwellings.
6. Of particular concern is the fact that the proposed tower will be located 555 feet closer to residential dwellings than is required by the Zoning Bylaw.
7. The applicant acknowledged to the Board that, pursuant to the Bylaw and G.L. c. 40 §10, it does not meet the standard for granting a variance.
8. The applicant, however, claims that the Town's Zoning Bylaw is preempted by the Federal Telecommunications Act, 47 U.S.C. 332 (c)(7), due to the claimed presence of a significant coverage gap and the lack of feasible alternative sites.
9. The Board heard public comment from abutters that there is not a significant coverage gap and that potential alternative sites do exist.
10. The applicant has not identified any particular carrier planning to attach equipment to the tower, so it is not clear that the tower will actually impact service in the area.
11. The Board finds that the Applicant has not met its burden of proving to the Board that it is entitled to a variance under federal law.

Following a motion made and seconded, the Board voted to close the hearing.

Hearing closed at 7:00 p.m.