

**TOWN OF PLYMPTON ZONING BOARD OF APPEALS
CERTIFICATE OF DECISION ON
APPLICATION FOR SPECIAL PERMIT**

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To: Plympton Town Clerk
Plympton Town Hall
Five Palmer Road
Plympton, MA 02367

Re: APPLICANT: Industrial Tower and Wireless, LLC
APPLICATION: Variances for a Telecommunications Facility Lattice Tower
PROPERTY: 0 Palmer Road
ZONING: Business Zoning District

BACKGROUND AND PROCEDURAL HISTORY

This matter concerns the real property located at 0 Palmer Road, Plympton, Massachusetts (Assessors Map 11, Lot 3-5) in the Business Zoning District and the Applicant's proposal to construct thereon a 120' unmanned Telecommunications Facility Lattice Tower and associated equipment surrounded by an 80' x 80' compound on the ground.

The Applicant filed its application with the Zoning Board of Appeals (the "Board") on April 9, 2018 (the "Application") seeking one use variance and four dimensional variances. The Board advertised, posted and noticed a public hearing regarding the Application. The Board opened the public hearing on May 24, 2018, and continued the public hearing to June 19, 2018 without hearing testimony. The Board held duly noticed public hearings and heard testimony and comment and received evidence on the Application on June 19, 2018, July 10, 2018 and July 24, 2018.

On June 26, 2018 the Applicant conducted a balloon test to demonstrate the proposed Tower's height and location.

In advance of the hearing on July 24, 2018, the Board provided additional notice to the owners of dwellings within 800 feet of the proposed Tower. The Board conducted a pre-meeting site visit on July 24, 2018.

The Board closed the public hearing on July 24, 2018 and began deliberations. The Board continued its consideration of the Application to July 31, 2018 and concluded its deliberations and voted on the Application and related findings at a posted open meeting on July 31, 2018. The Applicant agreed to extend the time pursuant to G.L. c. 40A and the Town of Plympton Zoning Bylaws ("Zoning Bylaws") for the Board to complete the public hearing and file its decision on the Application to August 31, 2018, and a copy of that extension was filed with the Plympton Town Clerk.

The following Board members were present at the public hearings during which substantive testimony and other evidence was presented, and then deliberated toward a decision in this matter: Kenneth A. Thompson, David F. Alberti and Harry Weikel.

INFORMATION PRESENTED TO THE BOARD

1. The Property is located in the Business Zoning District. Wireless Communications towers and related equipment are not permitted as of right or by special permit in the Business Zoning District. Wireless communications towers may be allowed by special permit in the Industrial Zoning District.

2. The Zoning Bylaws provide, in Section 2.4.3, in relevant part, as follows:

...the Zoning Board of Appeals may issue a use variance to allow a wireless communications tower, in a non-industrial district, provided however, that no such variance shall be issued under this provision unless, in addition to the normal criteria set forth under G.L. c. 40A, §10:

- (1) The tower shall not exceed 120 (one hundred twenty) feet in height, as measured from the original ground level, including antennae;
- (2) The tower lot shall have a minimum area of 200,000 (two hundred thousand) square feet;
- (3) The tower shall be set back: (a) a minimum of 300 (three hundred) feet from any existing way, excluding the driveway that is to be used to serve the tower; (b) a minimum of 170 (one hundred seventy) feet from all property lines; and (c) a minimum of 800 (eight hundred) feet from any existing dwelling or dwelling for which a building permit has been issued at the time of the application for the use variance.
- (4) The parking at the site shall not exceed one space per antenna or other wireless device that could be developed on the tower.
- (5) The new tower shall not be located closer than one linear mile to any other tower located in a non-industrial district.

3. Pursuant to G.L. c. 40A §10, the ZBA may grant:

a variance from the terms of the applicable zoning ordinance or by-law where such permit granting authority specifically finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve

substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.

4. Pursuant to Section 1.3 of the Zoning Bylaws:

The purposes of this By-law include but are not limited to the following:
...to conserve health...to conserve the value of land and buildings,
including the conservation of natural resources and the prevention of blight
and pollution of the environment; to encourage the most appropriate use of
land throughout the city or town...

5. Pursuant to 47 U.S.C. 332(c)(7)(B)(i)(II), "The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof... shall not prohibit or have the effect of prohibiting the provision of personal wireless services" if the Board finds both that a significant coverage gap exists and the application presents the only feasible plan to address that significant coverage gap.

6. The Applicant presented the Application to the Board including a narrative supporting the Application, a propagation study dated January 15, 2018, information regarding alternative sites investigated by the Applicant and a plan entitled "Industrial Communications Plympton, MA" prepared by Industrial Communications Engineering Division dated January 1, 2018. The plan was amended on July 2, 2018 to incorporate changes requested by the Chief Lance Benjamino, Fire Management Consultant and Plympton Acting Fire Chef regarding site access.

7. The applicant sought one use variance and the following four dimensional variances:

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

8. During the public hearing process the Applicant realized that the closest dwelling was actually 245 feet from the proposed tower and clarified to the Board that the relevant variance was for 555 feet not 500 feet.

9. During the July 10, 2018 public hearing, the Applicant presented photographs from the balloon test showing that the balloon was visible from some but not all locations. The Applicant claimed that visual impacts will be minimal and that it should be expected that the Tower will be visible above the tree line from some locations.

10. The Applicant provided a letter from the Massachusetts Historical Commission that indicate the proposed Tower was unlikely to have any significant historical or archeological impact.

11. The Applicant provided a report from Donald L. Haes, Jr. PH.D regarding potential radio-frequency exposure from the Tower.

12. The Applicant conceded to the Board that it did not meet the requirements for variances pursuant to G.L. c. 40A §10 and the Zoning Bylaws and asserted that the Board must grant the variances pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. 332(c)(7)(B)(i)(II).

13. Numerous residents and abutters provided the Board with documentation and spoke in opposition to the Application raising concerns about noise, negative impacts on health and property values, visual impacts and the close proximity of the Tower to many dwellings.

14. Residents and abutters presented testimony and photographs contradicting the photographs provided by the Applicant regarding the balloon test and asserted that the Tower would be visible from the Townhouse (Town Hall), a historic structure, and that visual impacts of the Tower would be much greater than suggested by the Applicant particularly during the times of the year when the trees are barren.

15. Although the Applicant claimed that the area surrounding the Property had a gap in coverage for cellular communications services, the Applicant did not identify carriers prepared to locate equipment on the Tower to close that gap. Residents and abutters presented testimony contradicting the Applicant's claim that a coverage gap exists in the area.

16. The Applicant claimed the Tower would not create additional noise. At least one abutter provided contradictory evidence and testimony based on noise emanating from equipment associated with a similar type of tower in a nearby community.

17. Residents, abutters and Board members suggested alternative locations for the Tower, including identifying six Town-owned parcels in excess of 200,000 square feet. The First Congregational Church of Plympton submitted a letter and was represented at one of the public hearings by members of the Church leadership indicating that the Church had not been contacted by the Applicant but is interested in the potential to locate a tower at the Church. The Church is located in the same coverage area of the proposed site and, based on testimony from residents and abutters, siting a tower on the Church property will be less detrimental to the community.

DECISION

On July 31, 2018, on a motion made and seconded following deliberation and consideration of the testimony and evidence presented during the public hearing, the Board voted 1 in favor and 2 opposed to approve the Application of Industrial Tower and Wireless, LLC for one use variance and four dimensional variances pursuant to Section 2.4.3 of the Town of Plympton Zoning Bylaws to construct a cell tower on the property located at 0 Palmer Road, Plympton, Massachusetts subject to the following conditions:

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 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 requested 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 motion did not carry and no other motion to approve the variances was made. The application is, therefore, DENIED.

FINDINGS SUPPORTING DECISION

On July 31, 2018, on a motion made and seconded following deliberation and consideration of the testimony and evidence presented during the public hearing, the Board voted unanimously to make the following findings:

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 to locate a wireless communications tower on the Property:
 - 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

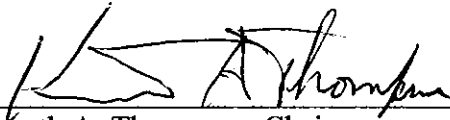
Palmer Road and that do not affect the land generally in the zoning district, and that the applicant has not identified any hardship, financial or otherwise, which is owing to such circumstances.

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 a residential dwelling than is required by the Zoning Bylaw. (See paragraph 13 below)
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 Bylaws are 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.
12. Based on the balloon test, the proposed Tower will be visible to many abutters and as far away as the north side of the Townhouse (Town Hall), an historic structure.
13. There are approximately eleven dwellings within 800 feet of the proposed tower with an average distance of 300 feet between the dwellings and tower. Thus the proposal requires eleven variances as to the requirement that there be a minimum of 800 feet between the Tower and any existing dwelling. The Applicant only sought a variance from the closest dwelling, being 245 feet from the Tower.

14. There are at least six town-owned parcels in excess of 200,000 square feet of land area in the area of the proposed Tower.

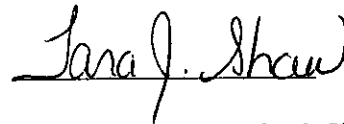
The following Board member certifies the above decision is a true record of the actions and votes of the Board.

TOWN OF PLYMPTON ZONING BOARD OF APPEALS


Kenneth A. Thompson, Chair

DATED: August 9, 2018

FILED:



Any person aggrieved by this decision may appeal to a court of competent jurisdiction pursuant to M.G.L. Chapter 40A, Section 17 and shall be filed within twenty days after the date of filing of such notice in the office of the Town Clerk.

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