



Zoning Board
of Appeals

ZONING BOARD OF APPEALS

221 Main Street
Boylston, Massachusetts 01505
Telephone 508-869-0143

MEETING MINUTES Monday, February 13, 2023

CHAIRMAN: William Filsinger
MEMBERS PRESENT: Janet Lombardi, Brad Wyatt, Robert Cotter, Arlene Murphy
MEMBERS ABSENT: None
OTHER ATTENDEES: Stephen Madaus, Town Counsel, Tony Zahariadis,
Building Commissioner, Detective Sgt. Cody Thomasian
RECORDER: Nina Gardner

Mr. Filsinger called the meeting to order at 6:32 p.m. The Board reviewed the minutes of August 15, 2022. Ms. Lombardi motioned to approve and Mr. Wyatt seconded; all voted in favor.

88 Stiles Road/formerly 95 Stiles Rear/Public Hearing – Mr. Filsinger opened the public hearing on the appeal by residents on Stiles Road of the issuance of the building permit by the Building Commissioner for a Telecommunications Tower. The Appeal was filed by Attorney Christopher Senie on behalf of his clients; Andrew and Mary Cutter, Paul Baril and Eric Langevin. Attorney Paul Tellier of D’Ambrosio LLC represented them at the meeting. The applicants feel the Building Inspector issued the permit without Site Plan Review by the Planning Board. The Zoning Board is tasked with determining if the Building Inspector was correct in his issuance of the permit without Planning Board Site Plan approval.

Mr. Filsinger asked everyone in attendance to introduce themselves and give their address. Sargeant Thomasian gave an overview of the Telecommunications Tower. He explained that the current system the Town uses is outdated and parts are no longer made for it so it is inoperable. Officers have to be in a cruiser to communicate or use their cell phones. There is no service at Tahanto High School and minimal at Boylston Elementary. In order for communication to be improved, the locations of the towers have to be placed in areas that can communicate with one another. The Town wanted to use municipal land to keep the cost lower

and the location owned by the Water District on Stiles Road was the best fit due to height. There will be other towers at the High School, the Police Station and the Fire Station.

John Vittum of Green Mountain Communications gave an overview of the Tower; its construction and capabilities. He stated it was only for Municipal use and there is no room for other carriers on the tower. Coverage from the new tower will go to 95%.

Mr. Filsinger took comments and questions from the residents in attendance. Each person that spoke was very concerned about the location of the tower and proximity to homes. They are extremely concerned about ice falling from the tower and injuring someone. Many residents asked why other site locations were not considered. The contractors and Sgt. Thomasian explained they did testing of locations and the Stiles Road was the best suited. Ralph Viscomi, 10 Ridgefield expressed concern for the ice accretion. This prompted a discussion with Mr. Filsinger regarding facts about ice and towers falling. It is very unlikely that ice buildup would cause any harm to someone on the ground. The Tower would be located behind the Water Tower. Teresa Prunier of the Water Department stated the Water Tower was in good condition and high functioning. It was inspected by DEP.

Residents in attendance all felt they approve of a new system, but were not aware of the location when they voted to approve the funds for the new tower. Ms. Murphy stated only 3 residents from Stiles were at Town Meeting. Rudy Lambracht, 100 Stiles Road, asked if the Town could consider other locations. A few were mentioned but according to the representatives present from Green Mountain and Cyber Communications they were not a good fit.

Paul Baril, 86 Stiles stated the residents were never notified of the location of the tower and it was not in the warrant. One of the biggest concerns the residents have is that the approval did not go to the Planning Board for Site Plan Approval. According to the bylaws, municipalities are exempt from having to obtain a Special Permit. There was mention of perhaps going back to Town Meeting to seek approval for a different location. There was concern amongst the residents that their property values would be decreased due to the tower being located so close to their properties. The tower will be hidden behind trees.

There was a lot of discussion about lack of information from the town and how the site was chosen. Many asked if the Town could choose a different location. Stephen Madaus, Town Counsel stated once the Town has entered into a contract, which they have, it cannot be broken. He also informed the residents they can bring a warrant article to Town Meeting with 10 signatures.

Mr. Filsinger confirmed with the Attorney Tellier his clients didn't want to withdraw their appeal. They do not.

At 7:45, the Board took a five-minute break.

At 7:50 p.m., the meeting continued.

The Board discussed the reasoning behind the Building Commissioner's approval of the permit without Site Plan Review. It is an allowed use in the Boylston Zoning Bylaws and it is exempt under the Zoning Bylaw from requiring a Special Permit as an emergency communications tower.

The Board needs to determine if the Building Inspector was incorrect in his decision to issue the permit without Planning Board Site Plan review. The Board must issue a decision within 14 days and file with the Town Clerk. There is a 20-day appeal period.

Attorney Paul Tellier of D'Ambrosio, LLP representing his clients presented to the Board. He showed where their homes were in relation to the proposed telecommunications tower. He stated his clients do not dispute the need for the tower. Their grievance is the location and that the proximity to property lines is unfair. His clients feel other locations could have been used in town. They strongly feel that the Planning Board should have done a Site Plan review of the tower based on his interpretation of the bylaw. He stated they feel the project was rushed because of FCC deadlines in May. There was discussion regarding the bylaw and exemptions as previously discussed by the Board. Attorney Tellier feels the town did not do their due diligence.

Mr. Filsinger read his research on zoning interpretation and his conclusions. The Building Commissioner issued the permit without Site Plan review because the bylaw as written was not intended to have such a review.

Zoning By-Law Interpretation pertaining to Radio Tower Proposed for 88 Stiles Road.

Excerpt from "A Guide to Gathering and Using Legislative History in Massachusetts"

Lawyers must have the ability to interpret statutory language. Whether during criminal or civil litigation, advising a client on recent statutory changes or appearing before an administrative agency, the importance of statutes to the modern legal world is unquestioned. Although some jurists, notably Justice Antonin Scalia, question whether there can be such a thing as "legislative intent" and disregard materials that may be instructive to the court, most jurisdictions not only accept evidence of legislative intent, but seek it out. As Massachusetts Supreme Judicial Court Justice Robert Cordy wrote: While researching legislative history in Massachusetts can be a tremendous challenge, where a question involving the Legislature's intent is a close one, the legislative history can often be a decisive factor in determining which side is to prevail. The legislative history and knowing how it supports your position can make the difference between a good argument and a really compelling one.

- A. In 1999 at the annual town meeting the following occurred:
(The following text is from Appendix A of the zoning by-laws)

1999 May 10, Annual Town Meeting

Article #36 – Wellhead Protection District expansion. Denied by Attorney General as Town Clerk did not post Public Hearing Notice 14 days prior to Public Hearing.

Article #37 – Wireless Communication By-Law, Adding it to the several areas of the By-laws that it applies to: Section I-Purpose, Section III - Use Regulations. (Bold added)

Conclusion: This wording (**several areas of the By-laws that it applies to**) would establish that all sections of the by-laws pertaining to wireless communications are interrelated and not separate stand-alone items

B. (From Section 8 of the By-laws)

8.07 Exemptions The following are exempted from this Wireless Communication By-law:

A. Amateur radio Communication Structure, or Communications Device(s). An amateur radio tower or communications device(s) defined as a Communication Structure(s), or Communication Device(s) used solely in accordance with the terms of an amateur radio license(s) issued by the Federal Communications Commission, and any Communication Device(s): 1. Must not be used or licensed for any commercial purposes; and 2. Must be immediately dismantled if the amateur radio use is discontinued or the amateur radio license is revoked or not renewed by the FCC.

B. Wireless Communication Facility(s), Communication Structure(s), or Communication Device(s) erected and maintained by the Town of Boylston and/or the Town of Boylston's public schools solely for the Town of Boylston's municipal emergency and safety communication purposes. (bold added)

Conclusion: Given the wording in part A (above), this exemption applies to every section of the by-laws that mention wireless communications.

C. In 2009 at the special town meeting the following occurred:
(The following text is from Appendix A of the zoning by-laws)

2009 Nov. 09, Special Town Meeting

Article #2 Amend the Zoning By laws as follows:

A. In Section 4 of the Zoning Bylaws, entitled “Use Regulations”, amend the table in Part 4.02 therein, entitled “Schedule of Use Regulations”, by inserting the following new designations at line 4.02.05, “Transportation, Communication, Utility,” Note 3, “Wireless Communication Facility”, and under the columns “H” and “RR”: SP# and

2) In Section 8 of the Zoning Bylaws, entitled “Wireless Communication”:

(a) Amend subparagraph A in Part 8.01, “Applicability,” to read as follows: (new text shown in bold): A. Any **Wireless Communication Facility** to be constructed, installed, replaced, maintained and/or used in the Industrial Park (IP), and Industrial (I), **Heritage (H) and Rural Residential (RR)**, zoning districts as specifically provided for hereafter, in compliance with the provisions of this Wireless Communication By-law and upon the grant of Special Permit.”

(b) Amend subparagraph B in Part 8.01 by deleting the following text (shown in bold/strikethrough): . Any **Wireless Communication Facility** to be constructed, installed, replaced, maintained and/or used on property owned by the Town of Boylston in the above ~~(I)~~ zoning districts as specifically provided for hereafter in compliance with the provisions of this By-law.

(c) Amend the second sentence in the first paragraph of Part 8.03, entitled “Jurisdiction”, by deleting the following words (shown in bold/strikethrough): The Planning Board is further authorized to grant or modify Special Permit(s) for the construction, installation, replacement, maintenance and or use of a Wireless Communication Device(s) on already existing buildings or structures ~~in the Industrial Park (IP) and Industrial (I) zoning districts~~. Zoning By-Laws for the Town of Boylston, Massachusetts 07-June-2021 Annual Town Meeting 117

(d) Amend subparagraph J in Part 8.04, entitled “Required Findings For a Special Permit,” by deleting the following words in the first sentence therein (shown in bold/strikethrough): That any **Wireless Communication Facility** ~~in the Industrial Park (IP) or Industrial (I)~~ zoning districts is set back from:

Conclusion: Tweaks to the by-laws that do not change anything substantially, but the fact that this change was made at all, is important and will be made clear in the next section D.

D. In 2014 at the town meeting the following occurred:
(The following text is from Appendix A of the zoning by-laws)

2014 May 05, Annual Town Meeting
Article #23 – add Registered Marijuana Dispensaries to zoning by-laws

In Section 15 (Registered Marijuana Dispensaries) of the By-Laws

Section 15.05 Exemption from RMD Special Permit Requirements RMD applicants that that qualify for the agricultural exemption under G.L. c.40A §3 are not required to obtain a special permit under this subsection, **but shall apply for Site Plan Approval from the Planning Board pursuant to Section 10.03. (Bold Added)**

Conclusion: Because the specific language requiring the application for Site Plan Approval from the Planning Board is absent from the exemption in Section 8, it is clear the planning Board did not intend to require a separate Site Plan Approval for wireless communication facilities exempted per Section 8 for municipal uses. Had they had such intentions, then similar wording for Site Plan Approval would have appeared in Section 8 as it does in Section 15. This is further supported because the Planning Board has not added that specific requirement to Section 8 in over 22 years and despite modifying the wireless communication By-Law in 2009.

After a lengthy discussion with the Board and residents, the Board needed to decide if the Building Commissioner was correct in his issuance of the permit without Site Plan review from the Planning Board.

Ms. Lombardi motioned to deny the appeal of the Building Permit for the construction of a radio tower to be located at 88 Stiles Road based on the rationale provided in “Zoning By Law Interpretation pertaining to Radio Tower proposed for 88 Stiles Road”. The Zoning Board of Appeals finds that the Building Permit was issued in compliance with the Zoning By Laws and Site Plan Approval by the Planning Board was not required. Mr. Cotter seconded.

A roll call vote was taken:

Mr. Cotter - yes
Mr. Filsinger - yes
Ms. Lombardi - yes
Ms. Murphy - yes
Mr. Wyatt – no

The motion passes with a 4-1 vote.

Mr. Filsinger motioned to adjourn at 8:45 p.m. and Mr. Wyatt seconded; all voted in favor.

Meeting Materials:

Appeal application (on file in PB office)
Drawings of Tower (on file in PB office)