

Town of Lincoln

100 Old River Road, Lincoln RI

Zoning Board of Review

July 7, 2009 Minutes

Present: Jina Karampetsos Chair, David Gobeille, Lee Blais, John Bart, David DeAngelis, Raymond Trabulsi, Attorney Joelle C. Sylvia (Town Solicitor Office)

Minutes

Motion made by Member Bart to accept the June 2009 minutes as presented. Motion seconded by Member Gobeille. Motion carried with a 5-0 vote.

Correspondence

No correspondence.

Applications:

Dennis and Rita Caraccia, 393 Great Road, Lincoln, RI – Application for Dimensional Variance for two front entrances for property located at 1431 Smithfield Avenue, Lincoln, RI.

AP9, Lot 130 Zoned: RL 9

Russell Hervieux, Zoning Official stated because of a notice issue the application needs to be continued to the August agenda so proper

notice can be served.

Omnipoint Communications, Inc. 15 Commerce Way, Suite B, Norton, MA 02766 – 28 Breakneck Hill Road, Lincoln, R.I. – Application for Use Variance for the operation of a wireless facility consisting of a 150 foot monopole tower on property located at 28 Breakneck Hill Road, Lincoln, RI.

AP 25, Lot 58 Zoned: RA-40

Represented by: Edward Pare, Esquire

Chair read into the record standards that need to be met for a Use Variance.

Premises consist of 86+ acres. Applicant met with the Area Planning Concern Committee (APCC) about lowering the tower from 150 to 120 feet and switching to a monopole with interior mounted antennas. Application was amended to reflect this change. Revised application has not been reviewed by the APCC or the Planning Board. Tower will have limited visibility and T-Mobile is licensed by the FCC. Applicant will submit an affidavit from the radio frequency engineer later during this meeting. Proposed pole is a 4-slot pole and T-Mobile will use the first two slots with remaining two slots available to future carriers. They are leasing a 50'x50' fenced in area. Cabinets will be attached to concrete pads and located 135 feet from front property line.

Witness

Mohammed Abraham, Radio Frequency Engineer

Appeared before this Board on the St. Jude application. Motion by Member Blais to accept Mr. Abraham as an expert witness. Motion seconded by Member Bart. Motion carried with a 5-0 vote.

Witness showed Board members map illustrating the existing and lack of coverage areas for Routes 146 and 123. Submitted into the record:

Exhibit #1 Map 4FR2047A showing existing T-Mobile coverage area

Exhibit #2 Map 4FR2047A proposed coverage map

Exhibit #3 Map 4FR2047A proposed coverage with 120 foot tower

Exhibit #4 Map 4FR2047A proposed coverage with 120 foot and 75 foot tower

Witness

Mark Cook, Site Acquisition Specialist

He has over ten years experience and has appeared before other boards. Motion by Member Blais to accept Mr. Cook as an expert witness. Motion seconded by Member DeAngelis. Motion carried with a 5-0 vote.

Submitted into the record as Exhibit #5 Affidavit signed by Mr. Cook. He looked for existing structures in the area. None were of sufficient height and proposed location is the best alternative. Junction of Routes 146 & 123 allows use but area too small with offices.

Submitted into the record as Exhibit #6 Google Earth photo of area. Pins in the photo reflect area of zoning designation. Closest permissible area not satisfactory for telecommunication facility. Looked at existing towers at Cox Cable but too far southwest for coverage. Drawn to the YMCA facility because of multiple acreage. After a site is located the radio frequency engineer is given the area to look at for gap coverage and existing structures. Radio frequency engineer gives final approval.

Attorney submitted into the record:

Exhibit #7 Map showing coverage area in Lincoln with Cox tower at 150 feet.

Exhibit #8 Map showing coverage area with Metro tower at 150 feet.

Exhibit #9 Map showing coverage area using existing tower at 70 feet.

Witness

Edward Pimentel, AICP

Motion made by Member Bart to accept Mr. Pimentel as an expert witness. Motion seconded by Member Blais. Motion carried with a 5-0 vote. Submitted his report into the record as Exhibit #10.

Mr. Pimentel was retained by T-Mobile and reviewed the application and Comprehensive Plan. Proposed site is a suitable area for use and Lime Rock comprises 47% of the land use in Lincoln. Proposed site of tower is several hundred feet from residential properties. Unipole structures are encouraged and there are not enough tall

structures in the area. Mr. Pimentel read into the record first paragraph of page 7 of 9. Distance of proposed location is several hundred feet from residential properties. The unipole styles are encouraged. The town has no control over placement of towers; application doesn't need dimensional relief; and, the applicant meets all burdens of a use variance.

Witness

George Valentine, Newport Appraisal Group

Motion made by Member Bart to accept Mr. Valentine as an expert witness. Motion seconded by Member Gobeille. Motion carried with a 5-0 vote. Submitted into the record as Exhibit #11 Consulting Report.

Witness does not see any difference in property values based on the installation of a wireless facility. Mr. Valentine also performed four studies in surrounding states with only one in Rhode Island. He also inspected the subject location and reviewed the plans filed with this application. Board members discussed with witness discrepancy of photos/views in his report.

Chair read into the record Planning Board recommendation:

Members of the Technical Review Committee visited the site and reviewed the submitted project plans and application. The Planning Board recommends Denial of this application for a use variance for the installation of a 150 foot monopole telecommunications tower and associated equipment as accessory use for property located at 28

Breakneck Hill Road, Lincoln, RI. The Board feels that the application does not meet any of the standards for relief of a use variance as presented in the Zoning Ordinance. More specifically, the Planning Board feels that the site plan and application does not represent the least relief necessary and is not due to the unique characteristics of the subject land. The Planning Board feels that the use variance will alter the general character of the surrounding area. This tower will be visible from many locations along Breakneck Hill Road and Great Road. As the board is aware, Great Road is designated as a Historic District. Breakneck Hill Road and Great Road are designed as a Scenic Highway by the State of Rhode Island. The installation of a 150 foot monopole tower at the proposed location will greatly damage the integrity and distinctiveness of this very special area in Town. The Planning Board feels that the installation of a 150 foot monopole tower at the proposed location will impair the intent and purpose of the zoning ordinance and the Comprehensive Plan.

Opposed:

James Spooner

Opposed to non-profit organizations profiting. Town properties should be considered. Visibility of the tower would be intrusive.

Opposed:

Joseph Goudreau, 30 Dexter Rock Road, Lincoln, RI

Proposed use will disturb the historical factors of Great Road. Lincoln Woods has a geological station that could be utilized.

Opposed:

Peter Campbell, Holiday Drive, Lincoln, RI

Esthetics and beauty of Lincoln will be lost.

Attorney Pare stated the federal telecommunications act states it is a permitted use. Applicant has demonstrated gaps in coverage and what is being proposed is an allowed use. Each standard has been met and federal law pre-empts municipal law.

Member Blais asked if the Lincoln Woods site had been considered. Mr. Cook replied the location had not been brought to his attention. Member Blais felt the site should be considered. Attorney Pare stated he also was not familiar with the site.

Discussion:

Member Blais is concerned about the location. Towns can regulate but not prohibit proposed use and the analysis needs to be based on federal regulations. He is troubled by possible other tracts of land not being considered. Property to the right of MacColl field is a possibility. Tabling the application to August to allow applicant to search other sites is a possibility. Chair suggested continuing the application so applicant can return with other sites for the tower.

Attorney Pare asked that the application be continued to August agenda to allow applicant to further search for other locations.

Motion made by Member Blais to continue the application to the August 4th agenda. Motion seconded by Member Gobeille. Motion carried with a 5-0 vote.

**Andover Way d/b/a Storage America, 3900 NW 2nd Avenue, Miami, FL
– Application for Special Use Permit for the installation of signage on property located at 100 Higginson Ave, Lincoln, RI.**

AP 1, Lot 133 Zoned: MG 0.5

Applicant requested continuance to the August agenda. Motion made b Member DeAngelis to continue the application. Motion seconded by Member Trabulsi. Motion carried with a 5-0 vote.

Omnipoint Communications, Inc. a wholly owned subsidiary of T-Mobile USA, Inc., 15 Commerce Way, Suite B, Norton, MA/St. Lincoln Country Club, 31 Dexter Rock Road, Lincoln, RI – Application for Dimensional Variance for height relief and setback relief the operations of a telecommunications tower on property located at 31 Dexter Rock Road, Lincoln.

AP 22, Lot 47 Zoned: CR 1

Represented by: Edward Pare. Esquire

Attorney for applicant requested the application for Dimensional Variance be withdrawn.

Omnipoint Communications, Inc. a wholly owned subsidiary of

T-Mobile USA, Inc., 15 Commerce Way, Suite B, Norton, MA/Lincoln Country Club, 31 Dexter Rock Road, Lincoln, RI – Application for Use Variance for the operations of a telecommunications tower on property located at 31 Dexter Rock Road, Lincoln.

AP 22, Lot 47 Zoned: CR 1

Represented by: Edward Pare. Esquire

Chair read into the record standards that need to be met for a Use Variance.

Attorney Pare submitted into the record as Exhibit #1 T-Mobile FAA License. Applicant has a lease agreement with Lincoln Country Club. What is being proposed is similar to the YMCA application. Electronic equipment with 6 internal antennas will within 50'x50' leased piece of property and fenced in. Plantings will be on all four sides. Tower will be 2,100 feet from Dexter Rock Road with access through Holiday Drive. Area Planning Concern Committee recommended denial of the application and feels it is not compatible with the area.

Witness

Mohammed Abraham, Radio Frequency Engineer

He has appeared before this Board on the St. Jude application.

Motion by Member Bart to accept Mr. Abraham as an expert witness.

Motion seconded by Member Trabulsi. Motion carried with a 5-0 vote.

Attorney submitted into the record:

Exhibit #2 Map 4FR2047A showing existing T-Mobile coverage area

Exhibit #3 Map 4FR2047A proposed coverage map for Routes 146, 126 & 123

New coverage will be 1+ miles. Silos located on Great Road won't receive any signals. Terrain of the area is high.

Witness

Mark Cook, Site Acquisition Specialist

He has over ten years experience and has appeared before other boards. Motion by Member Trabulsi to accept Mr. Cook as an expert witness. Motion seconded by Member Gobeille. Motion carried with a 5-0 vote.

Mr. Cook reviewed the application and conducted a "scrub" by driving around the area. Feels there are no alternative sites for the tower. There is a silo at the corner of Breakneck Hill Road and Great Road but it is not compatible. The golf course is surrounded by residential property. Targeted the Country Club as a potential candidate because of its zoning status. Chase Farm on Great Road was not considered. Situated to the east are manufacturing zones but they are too west of the search area.

Submitted into the record:

Exhibit #4 Google Earth photo of area

Exhibit #4 Affidavit of Site Acquisition Specialist

Witness

Edward Pimentel, AICP

Motion made by Member Bart to accept Mr. Pimentel as an expert witness. Motion seconded by Member DeAngelis. Motion carried with a 5-0 vote. Submitted his report into the record as Exhibit #6.

Mr. Pimentel was retained by T-Mobile and reviewed the application and is familiar with content. Lonsdale comprises 10% of the town and densely developed. Most residential lots in the are quarter lots with historical areas of significance. Ordinance states monopole towers allowed to minimize height. Majority of land in industrial areas are suitable size and can accommodate towers.

Witness

George Valentine, Newport Appraisal Group

Motion made by Member DeAngelis to accept Mr. Pimentel as an expert witness. Motion seconded by Member Trabulsi. Motion carried with a 5-0 vote. Submitted his Consulting Report into the record as Exhibit #7.

Mr. Valentine reviewed the report and is familiar with the contents. He performed a market analysis and sales comparison and sees no indication of property loss. Pole will be galvanized gray in color to blend in.

Member Trabulsi asked if they considered locating the pole further up on Dexter Rock Road. Mr. Cook replied he did work with the country club on viable locations settling on the proposed site keeping in mind the parking lot and wetlands in the area. Chair asked if the country club placed a restriction on the pole location and Mr. Cook replied in the negative. He further stated there are mature trees on the site with residences on the other side. Chair feels that all possible locations have not been explored.

Chair read into the record Planning Board recommendation:

Members of the Technical Review Committee visited the site and reviewed the submitted project plans and application. The Planning Board recommends Denial of this application for a use variance for the installation of a 150 foot monopole telecommunications tower and associated equipment on property located at 31 Dexter Rock Road, Lincoln. The Planning Board feels that the application does not meet any of the standards for relief of a use variance as presented in the Zoning Ordinance. More specifically, the Planning Board feels that the site plan and application does not represent the least relief necessary and is not due to the unique characteristics of the subject land. The Planning Board feels that the use variance will alter the general character of the surrounding area. This tower will be visible from many locations along Great Road. As the board is aware, Great Road is designated as a Historic District. Breakneck Hill Road and Great Road are designed as a Scenic Highway by the State of Rhode Island. The installation of a 150 foot monopole tower at the proposed

location will greatly damage the integrity and distinctiveness of this very special area in Town. Letters submitted to the applicant from the Rhode Island Historical Preservation & Heritage Commission and the Blackstone River Valley National Heritage Corridor Commission expressed the same concern regarding this installation to the integrity of the historic resources in the Great Road area. Copies of these letters have been provided to the Board members for their review. The Planning Board feels that the installation of a 150 foot monopole tower at the proposed location will impair the intent and purpose of the zoning ordinance and the Comprehensive

Members of the Technical Review Committee visited the site and reviewed the submitted project plans and application. The Planning Board recommends Denial of this application for a dimensional variance for height relief and setback relief the operations of a telecommunications tower on property located at 31 Dexter Rock Road, Lincoln. The Planning Board feels that the application does not meet any of the standards for relief of a use variance as presented in the Zoning Ordinance. More specifically, the Planning Board feels that the site plan and application does not represent the least relief necessary and is not due to the unique characteristics of the subject land. The Planning Board feels that the use variance will alter the general character of the surrounding area. This tower will be visible from many locations along Great Road. As the Board is aware, Great Road is designated as a Historic District. Breakneck Hill Road and Great Road are designed as a Scenic Highway by the State

of Rhode Island. The installation of a 150 foot monopole tower at the proposed location will greatly damage the integrity and distinctiveness of this very special area in Town. Letters submitted to the applicant from the Rhode Island Historical Preservation & Heritage Commission and the Blackstone River Valley National Heritage Corridor Commission expressed the same concern regarding this installation to the integrity of the historic resources in the Great Road area. Copies of these letters have been provided to the Board members for their review. The Planning Board feels that the installation of a 150 foot monopole tower at the proposed location will impair the intent and purpose of the zoning ordinance and the Comprehensive Plan.

Opposed:

John Barr, 14 Sir Charles ROAD, Lincoln, RI

According to the residents in the area, T-Mobile does not have access to the site. Of the nine zones in Lincoln, only 3 allow towers. Feels the application should be denied because he does not see the required hardship per the 1996 Telecommunications Act.

Opposed

Maureen Moore, 32 Dexter Rock Road, Lincoln, RI

Has T-Mobile and does not have a problem with reception. Lives off the 9th hole.

Opposed

John Scanlon/Kathy Hartley, Friends of the Hearthside

Submitted as Opponents Exhibit #1 statement read into the record.

The area consists of historic properties and Great Road is the earliest roadway in Rhode Island. Installation of a tower will ruin the area.

Her grandfather was Mr. Chase of Chase Farm. High tension wires were removed from Chase farm and feels proposed towers will change the landscape.

Opposed

John Flynn, 23 Holiday Drive, Lincoln, RI

Holiday Drives ends at the proposed location. The Country Club took down a historic stone wall. This site has access to electrical power and a dead end street.

Opposed

Frank Molis, Esquire. He represents two abutters (Bedard & Shehan)

There is an option to lease the property and he wanted to know if it has been exercised. Attorney for applicant replied he was not sure.

Attorney Melor inquired of Mr. Valentine if the study he did in Middletown contemplated one or several towers and what was the height of the towers. Mr. Valentine replied the height to be 120 or 150 feet and the houses were medium sized colonial homes.

Attorney Melor further asked if there were any feasible alternative locations and felt little effort was made to find other locations. There could be alternative sites to fill in the gaps.

Opposed

Linda Sheehan, Pat Drive, Lincoln

Submitted into the record:

Exhibit #1 Petition of residents stating the objection to the application

Exhibit #2 Photos of the balloon test done at the site

Opposed

Bernie Bernard

Witnessed signatures 1-21 on Exhibit #1. Country club took down a wall four years ago on the seventh tee and never replaced it.. Feels proposed use will increase commercial traffic.

Opposed

Horace Martin, 57 Spring Street, Pawtucket, RI

Has grandchildren that live on Pat Drive and has studied radio frequency effects. Applicant did not submit any reports regarding population density in the area. Would also like to see elevation maps.

Opposed

Rosemary Quattrucci, 3 Pat Drive, Lincoln

Is one house away from the access road. Submitted photos of the proposed site into the record as Exhibit #3. Area is residential with

little traffic and is concerned about safety.

Discussion

Chair was concerned about the application that goes beyond alternative sites and has difficulty with the expert testimony presented which is not supported by evidence. Feels what is proposed will have an impact on the community and esthetics. She also has a problem with entry and egress on property if more than one carrier uses the tower. Member Bart feels the same way. Also feels proposal will alter the general character of the area and that applicant did not properly look at alternative sites. Member Trabulsi wished they would have looked at alternative sites.. Chair stated if the application is denied applicant can reapply for another location. Member DeAngelis had a problem with the coverage gap. Installing a pole to provide coverage to 1+ miles is not significant.

Attorney Pare closed by stating the 1996 Telecommunications Act states the town cannot prohibit what is proposed. There are no other parcels in the area to place the pole and the ordinance needs to be flexible. Use is passive and least intrusive. Hardship is the gap in coverage and not the result of anything applicant did. Federal law mandates the use.

Motion made by Member Bart to deny the application What applicant is asking for does not represent the least relief necessary, does alter the character of the historic and scenic area. He further stated:

- **The hardship from which the applicant seeks relief is not due to the unique characteristics of the subject land or structure.**
- **The hardship is the result of prior action of the applicant and does result primarily from the desire of the applicant to realize greater financial gain.**
- **The granting of this variance will alter the general character of the surrounding area and impair the intent or purpose of the Lincoln Zoning Ordinance or the Lincoln Comprehensive Plan.**
- **The relief requested is not the least relief necessary.**

Motion to deny seconded by Member DeAngelis. Motion to deny carried with a 5-0 vote.

David Stem and Lori Quinn, 590 Great Road, Lincoln, RI – Application for Dimensional Variances on several existing conditions for the construction of a small addition.

AP 22, Lot 5 Zoned: RS 20

Russell Hervieux, Zoning Official addressed the Board stating the notice issue from the last hearing had been rectified

Chair read into the record standards that need to be met for a Dimensional Variance.

Addition fits within the building envelope. Existing porch is screened in and applicant wants to carry it to the second floor.

Chair read into the record Planning Board recommendation :

Members of the Technical Review Committee visited the site and reviewed the submitted plans and application. The proposed dimensional variances are to clear up several pre-existing nonconformance of this parcel of land. This record lot was platted before present day zoning regulations. The Planning Board recommends Approval of this application. The Planning Board finds that the relief requested will not alter the general character of the surrounding area or impair the intent or purpose of the Lincoln Zoning Ordinance or the Lincoln Comprehensive Plan. The Planning Board would like to inform the applicant that they would require an RIDEM wetlands permit for the construction

Motion made by Chair Karampetsos to grant 30 foot front setback from the main house; 19'3.5" east side setback ; 2.9 foot relief from existing garage rear property line; 1.1 foot relief from the west side of the garage; 14.10 front yard setback from front garage; 6.24% lot coverage relief. She further stated:

- The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not due to the general characteristics of the surrounding area and is not due to a physical or economic disability of the applicant.**
- The hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to**

realize greater financial gain.

- **The granting of this variance will not alter the general character of the surrounding area or impair the intent or purpose of the Lincoln Zoning Ordinance or the Lincoln Comprehensive Plan.**
- **The relief requested is the least relief necessary.**
- **The hardship amounts to more than a mere inconvenience, meaning there is no other reasonable alternative to enjoy a legally permitted beneficial use of the property**

Motion seconded by Member Bart. Motion carried with a 5-0 vote.

Quinnville Fire Department, 861 Lower River Road, Lincoln, RI – Dimensional Variance seeking front and rear yard relief for existing building and construction of an addition.

AP 29, Lot 85 Zoned: RA 40

Represented by: Stephen Nunes, Chief

Chair read into the record standards that need to be met for Dimensional Variance

Applicant wants to build an addition to replace their apparatus room which is small and unsafe. Lot is 250 wide and 150 deep. Shed will remain on site. There is more land on the south side of the building to accommodate garage space. Parking area will be to the right of the addition with entrance at the front. Addition will house one truck.

Chair read into the record Planning Board recommendation:

Members of the Technical Review Committee visited the site and reviewed the submitted plans and application. The Planning Board recommends Approval of this application. The Planning Board feels that the proposed design and layout of the existing fire station and the configuration of the existing lot limits the owners to the area in which they can locate the proposed addition. The Planning Board finds that the applicant presents a realistic site layout that meets the intent of the zoning and would not be detrimental to the neighborhood.

Motion made by Member Bart to grant 19.86 feet front relief; 17.45 feet rear relief; 31.63 feet from the exiting building front; and 6.08 feet rear relief. He further stated:

- The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not due to the general characteristics of the surrounding area and is not due to a physical or economic disability of the applicant.**
- The hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain.**
- The granting of this variance will not alter the general character of the surrounding area or impair the intent or purpose of the Lincoln Zoning Ordinance or the Lincoln Comprehensive Plan.**
- The relief requested is the least relief necessary.**
- The hardship amounts to more than a mere inconvenience, meaning**

there is no other reasonable alternative to enjoy a legally permitted beneficial use of the property

Motion seconded by Chair. Motion carried with a 5-0 vote.

Motion made by Member DeAngelis to adjourn the meeting. Motion seconded by Member Bart. Motion carried with a 5-0 vote.

Respectfully submitted,

**Ghislaine D. Therien
Recording Secretary**