



**TOWN OF LEICESTER
ZONING BOARD OF APPEALS**

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LEICESTER, MASS.

Certificate of Decision on Special Permit

Decision Date: March 9, 2016

Project Name: *Verizon Wireless Cell Tower*

Location of Project: *30 Huntoon Memorial Highway, Leicester*

Assessors Reference: *Map 37A, Parcel E3*

Deed Reference: *Book33669/Page 151*

Total Acreage: *2.830-acres*

Type of Use: *150-foot monopole telecommunication facility
(Wireless Communication, §3.2.05.4)*

Building Area: *26' by 12' (312 s.f.) equipment shelter*

Applicant: *Bell Atlantic Mobile d/b/a Verizon Wireless
c/o McLane Middleton, P.A.
900 Elm Street, Manchester, NH. 03101*

Owners: *Laura & Paul Morris, Trustees, Morris Realty Trust*

Plans Prepared by: *AEG Advanced Engineering Group, P.C.*

Plans Dated: *August 17, 2015, revised through January 8, 2016*

Application Date: *October 29, 2015*

Public Hearing: *December 9, 2015, continued to January 20, 2016, February 17, 2016, and
March 9, 2016 duly noticed and posted in accordance with the provisions
of the Zoning Act, MGL c.40A and the Open Meeting Law, MGL c. 39,
§23A - §23C*

ZBA Members¹: *David Kirwan, Chair; David Orth, Vaughn Hathaway, Jim Buckley,
Clerk; and Paul Schold*

ZBA Action: Disapproved

¹ Voting members of the ZBA for this application

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SUMMARY DESCRIPTION OF APPLICATION:

The project site is located in the Residential Industrial Business (RIB) Zoning District. Applicants request a Special Permit under Section 5.4, Wireless Communication Bylaw and Section 6.4.02, Special Permits, of the Town of Leicester Zoning Bylaws. The Applicant seeks approval to construct a 150 foot monopole telecommunications facility (cell tower) with associated antennae and equipment. The monopole tower as proposed would be painted a neutral non-contrasting color.

The monopole tower is proposed on a site with an existing commercial building. The tower is 63 feet from the closest property line to the rear of the tower and more than 100 feet away from all other property lines. The project will include a 50' by 50' fenced compound inside which a 26' by 12' (312 s.f) equipment shelter will house a supporting generator. A separate 1,000 gallon gas tank and transformer will be mounted alongside the monopole on a concrete pad inside the fenced area. The fence is proposed to be 6 foot chain link (required by the Planning Board decision to include opaque neutral-colored slats to screen ground equipment). The pole will support 12 panel antennae and associated surge/junction boxes at 150', with space for four additional carriers to install similar antennas in the future at acceptable heights. Technicians will visit the facility once or twice per month for maintenance. No water, sewer, or other municipal services are required. Existing vegetation along the perimeter of the site will remain.

The proposed project also required Site Plan Approval by the Planning Board. The Planning Board granted Site Plan Approval on January 19, 2016. Conservation Commission approval was not required as all proposed work is outside wetland buffers. The proposed project is exempt from the requirement for a Stormwater Permit under Leicester's Stormwater Bylaw and Regulations as it will affect an area of less than 2,500 within the Watershed Resources Protection Overlay district.

FINDINGS:

After the public hearing duly noticed and held on December 9, 2015, continued to January 20, 2016, February 17, 2016 and March 9, 2016 the Leicester Zoning Board of Appeals made the following findings as required by M.G.L. Chapter 40A, Section 9 (Special Permits) and Sections 5.5.03.2 and 6.4.02 of the Leicester Zoning Bylaws:

1. That the proposed use meets the special permit criteria in Section 5.5.03.2 (as required by Section 3.32.C²), as specified below:
 - A. Provision shall be made for convenient and safe vehicular and pedestrian circulation within the site and in relation to adjacent streets and property. The service level of adjacent streets shall not be significantly reduced due to added traffic volume or type of traffic in accordance with the most recent edition of the Massachusetts Highway Department Highway Capacity Manual;

The Board finds that the project meets this standard as there will be minimal traffic generated by the proposed facility.

² Section 3.32.C requires that development in the RIB district comply with some HB-1 Zoning District requirements.

B. The proposed use shall not overload the capacity of water and sewer systems, stormwater drainage, solid waste disposal facilities, and other public facilities;
The Board finds that this standard is met because the proposed facility involves no water, sewer, solid waste, or site work that would impact stormwater drainage.

C. The design of the project shall provide for adequate methods of disposal of sewage, refuse, or other wastes generated by the proposed use;

The Board finds this standard to be inapplicable to this project, as there will be no sewage, refuse, or other wastes generated by the proposed use.

D. The project shall comply with all applicable environmental laws and regulations;

The Board finds that the project complies with applicable environmental laws and regulations as reviewed through the Planning Board's Site Plan Review process.

E. The proposed project shall be consistent with Leicester's Master Plan;

The Board finds that the project is not inconsistent with the Leicester Master Plan. There is no specific language in the Leicester Master Plan Regarding wireless telecommunication facilities.

F. The project shall comply with all Site Development Standards required in the HB-1 District.

The Board finds that the application meets this standard, as stated in the Planning Board's Decision for this project dated January 19, 2016.

2. In accordance with MGL, Chapter 40A§9 and Section 5.4, Wireless Communication Bylaw, the Board finds that the proposed use is not in harmony with the general purpose and intent of the Leicester Zoning Bylaw as to the following specifics:

- a. The purpose of the Wireless Communications Bylaw includes "minimizing adverse impacts of wireless communications facilities on adjacent properties, historic areas, and residential neighborhoods..." The Board finds that the proposed project is inconsistent with this purpose when, as here, the proposed tower is in close proximity of residential neighborhoods and in some cases will overshadow the neighborhood which is an unacceptable result when balancing the competing interests between the need for allowing telecommunications while reducing the impact of the tower on the neighborhood. In balancing these two competing interests, the Board finds that the Applicant didn't sufficiently demonstrate that there were no alternative sites with less impact.
- b. The Board finds the Applicant did not sufficiently address the requirement for a Site Justification Statement. The information contained in the Radio Frequency Report and presented during the public hearing process didn't sufficiently demonstrate that the Applicant had conducted a thorough search for alternative sites that would have less impact on abutting residential neighborhoods. The alternate site evaluated by the Applicant at the request of the Board appeared adequate.
- c. The Board finds that the proposed project does not minimize visual impact. The visual impact in this instance can't be adequately mitigated because the proposed tower is in close proximity to abutting residential neighborhoods. In addition, much of the vegetation that screens the subject site from abutting properties is located off-site. Future clearing off-site would create greater visual impact.

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- d. The "fall zone" was described in the Applicant's submittals as half the overall structure height (fall zone of 75 feet). The proposed monopole tower is located 63 feet from the closest property line. The Board finds that the Applicant has adequately demonstrated that the tower wouldn't fall beyond the property lines in the event of catastrophic failure.

These findings are based on the Board's review of documents submitted and testimony received during the public hearing process. A list of documents received is included at the end of this Decision.

The Board specifically notes that the Board's decision is not based on any submitted documents or testimony related to potential or perceived health impacts of wireless telecommunication facilities. The Board also notes that this decision is based on the particular location of the proposed facility, not based on general opposition to monopole wireless telecommunication facilities.

DECISION:

Based on these findings, the Leicester Zoning Board of Appeals, as the Special Permit Granting Authority, pursuant to Section 6.4 of the Leicester Zoning Bylaws, voted **5 - 0** on **March 9, 2016** to **disapprove** the Special Permit to Bell Atlantic d/b/a Verizon Wireless for property located at 30 Huntoon Memorial Highway, Leicester as herein described.

LIST OF DOCUMENTS:

Applicant Submittals:

1. Application for Special Permit, Verizon, Proposed Wireless Facility at 30 Huntoon Memorial Highway, Leicester, MA 01524, document # 101533\9714167v.1 (includes Application form, Authorization Letter, Project Narrative, List of Abutters, Radio Frequency Report, Wetland Resource Evaluation, TOWAIR Determination, and site plans), dated October 28, 2015.
2. Set of Site Plans (6 sheets), titled "Verizon Wireless Leicester 4, 30 Memorial Highway Leicester, MA, Raw Land Monopole, Prepared by AEG Advanced Engineering Group, P.C., dated August 17, 2015, revised through January 8, 2016
3. Affidavit from Marc R. Chretien, P.E., Advanced Engineering Group, P.C, to the Zoning Board of Appeals and Planning Board dated December 31, 2015 (addressing monopole construction and fall zone).
4. Letter to the Zoning Board of Appeals from McLane Middleton dated January 15, 2016 with attachments (FCC License, Towair Determination Results, Photosimulations, Federal Airways & Airspace Summary Report, and Real Estate Property Valuation Report)
5. Affidavit from Marc R. Chretien, P.E., Advanced Engineering Group, P.C, to the Zoning Board of Appeals and Planning Board dated January 22, 2016 (addressing monopole construction and fall zone).
6. Email from Victor Manougian to Barbara Knox dated February 11, 2016, with attachments (corrections to pages 24 and 30 of McLane report)

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7. Letter/Report from Andrew G. LeMay of Real Estate Consultants of New England, Inc. to Victor Manougian, dated March 5, 2016 (response to George F. Leary Commentary)
8. Copy of United States District Court, District of Massachusetts, Industrial Tower and Wireless, LLC v. Zoning Board of Appeals of the Town of Falmouth (14-cv-13278-ADB), undated, submitted March 9, 2016
9. Diagrams related to potential alternate tower location (Leicester 4 – Area Terrain Map with Alternate Huntoon Memorial Site, Leicester 4 – Existing 700 MHz LTE Sector Footprints, and Leicester 4 - 700 MHz LTE Sector Footprints with Proposed Site, undated, submitted March 9, 2016

Other Submittals (Town Officials, Abutters, etc.):

12/9/2015 Hearing

1. Motion from the Board of Selectmen in opposition to the proposed tower (Board of Selectmen minutes dated December 7, 2016).
2. Site Consideration memo from the Building Inspector dated December 7, 2015 (no adverse effect)
3. Copy of Section of Section 704 of the Telecommunications Act of 1996 (related to limitation on regulation based on the environmental effects of radio frequency emissions). Read by Chairman Kirwin into record at meeting of December 9, 2015.
4. Letter from Gulla Magnusson, 494 Pleasant Street, dated December 7, 2015 (opposed)
5. Neighborhood Alert Flyer that was distributed to neighbors (undated), received by the Zoning Board of Appeals office December 7, 2015
6. Letter from Sandra Flink of 61 King Street dated December 9, 2015 (opposed)
7. Packet of information submitted by George Leary containing: Proposed Findings 1 – 7, undated, received December 9, 2015, and Real Estate Consulting Report prepared by Daniel E. Jalbert, MAI, ASA, and dated December 2, 2015.
8. Mr. Leary submitted into evidence: a packet consisting of Proposed Findings 1 thru 7 and a Real Estate Report.
9. Letter submitted by Laurel Leary, George Leary, Katherine Flynn, Patricia Soucie, Robert Alves, and Jessica Alves, undated, received December 9, 2016 (stating they have sufficient cell phone coverage).

2/17/2016 Hearing

10. Letter from James DiCentes to Leicester Town Hall dated December 10, 2015, with attachments related to lightning strike damage potential (opposed)
11. Letter from Sandra Flink of 61 King Street dated January 17, 2016 (opposed)
12. Email from Margaret Dix to Barbara Knox dated January 19, 2016 (opposed)
13. Letter from Attorney Joseph Cove to Kevin Mizikar, dated February 9, 2016 (regarding ZBA Chair David Kirwan)
14. Letter from Attorney Joseph Cove to Kevin Mizikar, dated February 11, 2016 (regarding member Vaughn Hathaway)

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15. Letter from Greg Richardson to Barbara Knox dated February 10, 2016 with attachment titled "Request for Recusal of David Kirwan."
16. Document submitted by Gregory Richardson titled "Supplemental Request to Recusal" undated, received February 16, 2016
17. Document submitted by Greg Richardson, titled "Comments of David Kirwan, ZBA Chairman, (hereinafter Chairman), at December 9, 2015 Meeting," undated, received February 13, 2016
18. Document submitted by George Leary titled "Board's Decision", undated, received February 17, 2016 (related to Board procedures for wireless communication facility applications and summary of court cases related to wireless communication facilities)
19. Documents Submitted by George Leary, undated, containing proposed Findings 8 – 10 with related attachments
20. Miscellaneous documents submitted by George Leary February 17, 2016: Page 21 of Appraisal Submitted by Andrew G. LeMay "Buyers Determine Property Values"; Letter from Jeff Burk of RE/MAX vision to Attorney Christopher Grady dated December 9, 2015; untitled document signed January 19, 2016 and February 17, 2016 related to licensure of Mr. Andrew Lemay; document titled "Commentary of George Leary, 487 Pleasant Street, Leicester, on the Real Estate Appraisal of Andrew G. Lemay, undated; and document titled "Detailed Commentary of George Leary on Appraisal Submitted by Andrew G. LeMay; document labeled "Statement of Andrew G. LeMay 6-15-2009;.
21. Letter from Reverend John M. Lizewski, pastor of St. Aloysius-St. Jude Parish, dated January 17, 2016 (opposed)
22. Letter dated January 19, 2016 from Scott Richardson (commentary on balloon test)
23. Document submitted by Greg Richardson, undated, titled "What Are Small Cells and Distributed Antenna Systems, received February 17, 2016

3/9/2016 Hearing

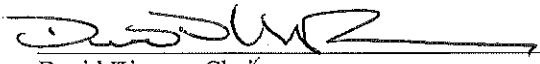
24. Memo from Michelle Buck, Leicester Town Planner/Director of Inspectional Services to the Zoning Board of Appeals dated January 16, 2016 (overview of applicable special permit criteria) with attachments: Findings Notes Worksheet, memo from Quinn Engineering, Inc. dated December 8, 2016 regarding review of the application (specifically drainage).
25. Planning Board Site Plan Approval Order of Conditions dated January 19, 2016
26. Email from Forrest Stephen Trimby dated March 8, 2016 (in support of application)
27. Documents submitted by George Leary March 9, 2016: Addendum to Proposed Finding #6 (Listing of Wireless Communication Towers), and copy of T-Mobile South, LLC v City of Roswell, Georgia Decided January 14, 2015
28. Documents submitted March 9, 2016 by Greg Richardson (Notes to Consolidated Financial Statements, Map Labeled "Transaction Creates Leading Nationwide Network", untitled undated document with text highlighted "What are American Tower's credit ratings?")
29. Document submitted by Tom Buckley titled "ZBA – March 9, 2016, My Brief Review/Observations"

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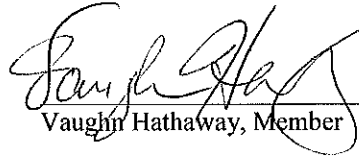
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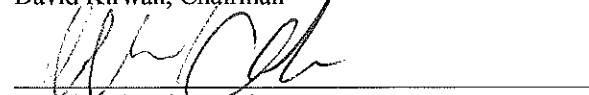
Leicester Zoning Board of Appeals:



David Kirwan, Chairman

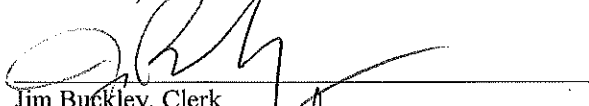


Vaughn Hathaway, Member



David Orth, Vice Chairman

X _____
Mary Moore - Alternate



Jim Buckley, Clerk

X _____
Richard Johnston - Alternate



Paul Schold - Member

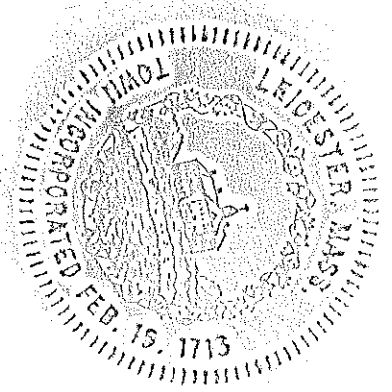
X _____
James Reinke - Alternate

This **Special Permit** shall not take effect until a copy is recorded hereof with the Worcester District Registry of Deeds Pursuant to Generals Laws, Chapter 40A, Section 11, as amended; and further that said recording shall be accomplished not later than six months from the date of this Decision; and further that any construction hereunder must commence no later than one year from the said recording.

It was ordered by the Board that persons notified of the hearing be notified of the forgoing Decision.

Any appeal to this Decision must be made to Federal District Court in accordance with Telecommunications Act of 1996 within thirty (30) days after the filing of this Decision with the Town Clerk.

Filed with the Town Clerk on the 22 day of March 2016





Town Clerk