APPROVED

TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING
November 13, 2017
APPROVED – December 11, 2017

The Chairman David Hennessey called the meeting to order at approximately 7:00 pm.

The acting Secretary Peter McNamara called roll:

PRESENT: David Hennessey, Svetlana Paliy, Peter McNamara, Diane Chubb, Alternate Heather Patterson, Planner/Zoning Administrator Jennifer Beauregard

ABSENT: Bill Kearney, Alternate Deb Ryan, Alternate Darlene Culbert, Alternate Lance Ouellette, Alternate Thomas Kenney

Ms. Patterson was appointed to vote in Mr. Kearney's absence.

PLEDGE OF ALLEGIANCE

REQUEST FOR REHEARING

Case #ZO2017-00028
Map 42 Lot 10-211
MENDES, David - 50 Jericho Road – seeking a Variance concerning Article III, Sections 307-7, 307-12, Table 1, 307-13 (B) & 307-14 to permit construction of a new home on a non-conforming pre-existing lot of record that does not meet minimum lot size or have required road frontage. The lot contains 19,396 s.f. or .44 acres and has 99' of frontage on Jericho Road. Motion for Rehearing by Christina Miller Regarding a Decision of the Pelham Zoning Board of Adjustment.

Mr. Hennessey stated the Board had heard the case and voted to approve the variance at their last meeting (October 12, 2017). He indicated that the Board had received a letter from Mr. Mendes' attorney opposing the request for rehearing. He stated the first argument in front of the Board was the matter of 'standing'. Mr. Hennessey noted that the Board received a very good summary letter listing the reasons for taking up a rehearing. The letter speaks to 'standing', and for that, a person would have to have some statutory interest in the case. He believed the Board should address and decide the question of 'standing'. If they decide the person requesting the rehearing has 'standing', they would then need to decide if the case should be reheard. The Board members understood.

Mr. McNamara understood in order to have 'standing' they would either have to be a direct abutter or have some interest that was different from the interest of the general public or a direct pecuniary interest. He questioned if the applicant was a direct abutter. Mr. Hennessey answered no. Mr. McNamara stated he read the petition for rehearing and didn't see any allegation that the petitioner had specialized standing.

Mr. Hennessey stated one of the arguments was that the 'standing' was different from what they've seen in other cases. He said 'standing' was perhaps conferred upon the petitioner as someone with interest who was in the neighborhood and had voted whether or not to dispose of the property on a warrant, based on the Town description. The question was if that conferred 'standing' or not.

Ms. Chubb reviewed the materials provided by Ms. Beauregard that described 'standing'. She believed the petitioner fit into the category of 'public at large'.

Mr. Hennessey explained the case. He said there was a parcel of land put up for sale to the public. The parcel sold for $100. He said the wording of the Voter's Guide indicated the lots (there were more than one on the warrant) were to be purchased by abutters and other wording in the Voter's Guide that indicated they wouldn't be developed. He said the Board voted at their last meeting to allow the purchaser to build a house. Mr. McNamara read aloud the explanation that was in the Voter's Guide, which didn't mention any lien on the title or a blockage of the ability to develop the land, even though one would need a variance to do so. Ms. Chubb replied that description didn't address the 'standing' issue. Mr. Hennessey noted if there was no 'standing' there was no further discussion. Mr. McNamara stated he was more than willing to disregard 'standing' and vote on the merits of the application. Ms. Chubb agreed. Mr. Hennessey asked if the Board felt the petitioner had 'standing'. Ms. Chubb said according to the material provided to the Board by Ms. Beauregard, she felt there was a strong argument that there was no 'standing'. She said she would then argue even if the Board gave the petitioner 'standing' the petitioner's grievance wasn't with what the Board had done. She didn't feel the Board had done anything that could be considered a mistake. She believed the issue was what the Selectmen had done.

Mr. Hennessey stated the Board had to first discuss the question of 'standing'. Ms. Paliy didn't feel the petitioner had 'standing'; the case didn't impact them as it would the abutters. She noted the abutters hadn't filed anything. She didn't feel that being in the same neighborhood created 'standing'. Mr. McNamara agreed but felt the Board would be on stronger ground giving the petitioner the benefit of the doubt and deciding strictly based on what they presented the Board, which was a mistake by the Selectmen. Ms. Paliy felt if the Board stopped enforcing the situation as the State did regarding abutters and impact, and started giving people standing who normally would not have it, the Board would create possible problems with future approvals. She didn't see any impact to the petitioner, other than they didn't agree with the Board. Mr. McNamara replied all of what Ms. Paliy said may be true, but the Board wouldn't be creating a precedent by voting as everything is looked at on a case by case basis.

Ms. Chubb said she would be willing to grant standing on differentiating the part of the standard that says the person requesting the hearing is not impacted differently than the public at large. She said the petitioner told the Board that they relied on what was in the Voter's Guide as opposed to the plain language of the actual warrant. She said the Board could argue that the petitioner was personally more affected than the general public at large.

Ms. Patterson stated she was taking all the information in.

Mr. Hennessey asked for a hand/voice vote of Board members in favor of granting 'standing' (to the petitioner Christina Miller). Mr. McNamara and Ms. Chubb voiced their opinion that the petitioner had standing. Ms. Paliy, Ms. Patterson, and Mr. Hennessey voiced their opinion that the petitioner did not have standing. Voice Vote: (2-3-0) The petitioner did not have standing.

HEARING(S)

Case #ZO2017-00030
Map 28 Lot 7-144-2
MARATONE, Michael & Shauna 103 Marsh Road - seeking a Special Exception concerning Article XII, Section 307-74 to permit an accessory dwelling unit.

Mr. McNamara read the list of abutters aloud. There were no persons present who asserted standing in the case, who did not have their name read, or who had difficulty with notification.

Representing the applicant was Joseph Maynard of Benchmark Engineering. He summarized his letter of intent (dated October 15, 2017) provided to the Board with the application and stated he felt they met all the requirements.

Mr. Hennessey asked Ms. Beauregard if the accessory dwelling unit met the appropriate requirements. Ms. Beauregard told the Board that it did. Mr. McNamara confirmed that the Planning Department received an approved copy of the septic design. Ms. Beauregard replied she received a copy earlier in the day.

There was no public input.

BALLOT VOTE #ZO2017-00030:
Mr. Hennessey – Yes
Ms. Paliy –Yes
Mr. McNamara – Yes
Ms. Chubb – Yes
Ms. Patterson - Yes

(5-0-0) The Special Exception was Granted

SPECIAL EXCEPTION GRANTED

Mr. Hennessey noted there was a 30-day right of appeal.

Case #ZO2017-00031
Map 7 Lot 9-136-6
ANDERSEN, Donald, Jr. – 3 Andrea Lane - seeking a Special Exception concerning Article XII, Section 307-74 to permit an accessory dwelling unit.

Mr. McNamara read the list of abutters aloud. There were no persons present who asserted standing in the case, who did not have their name read, or who had difficulty with notification.

Ms. Beauregard noted there were new plans for the Board to review. Mr. Hennessey handed out the new (revised) plans to the Board members.

The applicant, Mr. Andersen came forward to discuss his request to construct an accessory dwelling unit to be occupied by his parents. He believed they met all the appropriate requirements.

Mr. Hennessey asked if anyone in the public would like to review the revised documents. No one came forward. Mr. Andersen noted that the revised plans only showed a different view of the unit to show the common wall as it will be. Mr. Hennessey thanked him for providing revised plans, as it made the case clearer. He asked Ms. Beauregard if the application met all the requirements, including the septic. Ms. Beauregard answered yes.

Mr. McNamara confirmed there were no questions about the common wall. Mr. Andersen answered no; he had the Building Inspector review the plans.

BALLOT VOTE #ZO2017-00031:
Mr. Hennessey – Yes
Ms. Paliy –Yes
Mr. McNamara – Yes
Ms. Chubb – Yes

Ms. Patterson - Yes

(5-0-0) The Special Exception was Granted

SPECIAL EXCEPTION GRANTED

Mr. Hennessey noted there was a 30-day right of appeal.

Case #ZO2017-00032
Map 39 Lot 6-179-6
MARCHAND, Paul - Moonshadow Drive - seeking a Special Exception concerning Article XII, Section 307-74 to permit an accessory dwelling unit.

Mr. McNamara read the list of abutters aloud. There were no persons present who asserted standing in the case, who did not have their name read, or who had difficulty with notification.

The applicant Paul Marchand came forward to discuss his application for an accessory dwelling unit. He explained he'd like to construct a single-family home with an accessory dwelling on the lot next to his. He noted they weren't adding to a building, they were starting from scratch and believed they met all the criteria. He said he would be moving into the house with his wife's parents.

Mr. Hennessey explained the new law regarding accessory dwelling units. Mr. Andersen understood. Mr. Hennessey confirmed with Ms. Beauregard that the plans met the criteria. Ms. Beauregard answered yes.

BALLOT VOTE #ZO2017-00032:
Mr. Hennessey – Yes
Ms. Paliy –Yes
Mr. McNamara – Yes
Ms. Chubb – Yes
Ms. Patterson - Yes

(5-0-0) The Special Exception was Granted

SPECIAL EXCEPTION GRANTED

Mr. Hennessey noted there was a 30-day right of appeal.

Case #ZO2017-00029
Map 31 Lot 11-33
KLECZKOWSKI, Charles Jr. Spring Street Off - seeking a Variance concerning Articles X, XIII, III & XV Sections 307-58 (B) (3), 307-83 (C), 307-84, 307-86, 307-87 (C), 307-88 (A) (2a), 307-12, Table 1, 307-14 & 307-100 to permit the construction, operation and maintenance of a Wireless Communication Facility.

Mr. Hennessey explained the review process for a variance. He noted if the variance was granted, the applicant would need to then go in front of the Planning Board for review. He stated they were recognizing that the property was near the Town line and therefore abutters residing in Dracut, MA were notified, as was a long list of NH towns (who were not direct abutters of Pelham).

Mr. McNamara read the list of abutters aloud. There were no persons present who asserted standing in the case, who did not have their name read, or who had difficulty with notification. There were members of the public who spoke about notification but stated no objection to the Board proceeding with the hearing.

Attorney Ed Pare of Brown Rudnick came forward to represent the applicant 'American Tower'. He noted T-Mobile was a co-applicant, who provided wireless service through its FCC licenses. Ryan DeRamos, Radio Frequency Engineer for T-Mobile and Mike Johnson of TRM – site acquisition work. Attorney Pare explained that T-Mobile had a significant gap in coverage and was looking to fill that gap. He spoke about the abutter list and commented there was a NH Statute which required them to notify any town/city which may have a view of the parcel/tower within twenty (20) miles. In an abundance of caution, they notified all the jurisdictions. He stated that T-Mobile engaged with American Tower to find a site location to fill its significant gap in coverage. TRM was sent out to 'scrub' the target area of coverage, which was along the Pelham, NH/Dracut, MA line. They reviewed the site criteria and understood a 'use' variance would be required. They found a landowner, with a ten (10) acre parcel, who was willing to rent to American Tower. T-Mobile approved the site. Attorney Pare informed they had approached the jurisdictions, spoken to public safety officials (Fire, Police, etc.) regarding communications. The Pelham Fire Chief submitted a letter of support. Through the Director of Community Development for the Town of Dracut, the Police and Fire Departments have expressed a significant public safety need and have asked to attach. The proposed height of the pole is 150ft., with the top 25ft. being reserved for public safety apparatus, equipment, microwave dishes, etc.

Attorney Pare called the Board's attention to the set of plans submitted earlier in the meeting, which had more details (specifically involving wetlands) than those previously submitted. He noted they were dealing with State lines and various towns. The referenced plans were displayed for the public and showed the proposed location of the tower and compound being on a dry spot out of the wetland; although it somewhat encroached into the buffer zone. They will be seeking a Special Permit from the Pelham Planning Board and Pelham Conservation Commission. Attorney Pare stated the site was landlocked, which was a significant problem; however, the owner secured an easement over the Dracut, MA parcel that leads into a cul-de-sac on Ruby Road. The cul-de-sac extends into the property owner's property; the owner retained the right of access. There is also a drainage easement that runs along the property line. The applicant is proposing a stone road/access drive from the end of Ruby Road through Dracut, MA onto the property owner's parcel up to the tower. The elevation of the property differs by about 20ft. going up the proposed access drive. The access drive will require relief from going into the buffer zone.

In reference to the second site plan, Attorney Pare spoke about the proposed compound, which will be 60ftx60ft. and have a chain link fence around it. There are two planned equipment pads, one being for T-Mobile's equipment, the other will be ground space for the Pelham and Dracut, MA public safety equipment for antennas. Cable bridges will be located from the pads for wires/cables, those wires/cables will then be located inside the pole and up to the antennas. The compound area will have a 6ft. in height chain link fence with barbed wire across the top and an access gate. The access drive will provide for a turn-around and parking. Attorney Pare commented that American Tower had committed to provide space for public safety departments free of charge. He reviewed an overhead depiction of the pole noting that T-Mobile had nine (9) antennas; three (3) on each side of the triangle array. He stated they had drainage information and would be installing stormwater erosion measures that include a ditch to handle runoff. The access drive (approximately 275ft-300ft in length) and compound with have crushed stone.

The coverage maps were displayed. Attorney Pare told the Board (based on the survey) the closest property line (Hadley) to the pole itself was approximately 270ft.; they were approximately 395ft. from the abutter (Peters) and approximately 333ft. from (Clement). He pointed out that most of the surrounding properties were owned by the same individual and family members. Attorney Pare discussed T-Mobile's objective of filling in coverage gaps. He showed the area of existing coverage and what coverage would be achieved by installing the proposed pole. There will be space on the tower for five (5) co-locaters, as was encouraged by Town and federal law. An emissions study was provided; the calculation showed they would be at 1.2% of the maximum permissible exposure levels in accordance with the FCC requirements. Attorney Pare understood the tower would go into a residential area, and there were concerns; however, he encouraged everyone to review their report and review material on the FCC webpage.

Based on a number of cases with the State, Mr. Hennessey informed that the Board would not take testimony regarding the hazard effect on the transmissions of the tower.

As part of the Board's package, Attorney Pare included an alternative site analysis where they reviewed approximately twenty (20) sites and explained why those sites wouldn't make sense for T-Mobile's gap. They will provide further testimony if the Board asks. He said a key issue was to schedule a balloon test for the Board and public at the time of a site visit. He said they can fly it at 150ft, or other different heights and drive around town, based on input from the Planning Board and other Town boards, and take pictures to see where it's visible. He noted that the photos would be taken from public ways. Another piece of the balloon test is for their expert to render an opinion on property values. In doing towers for twenty (20) years, they haven't run into a situation where a tower had a negative impact on property values. He said the facts don't bear it out and will provide the Board with a real estate study. Attorney Pare stated they were requesting two (2) waivers; one for additional landscaping and the other regarded the fall zone.

Attorney Pare read aloud the responses to the variance criteria as submitted with the application *(full response in Zoning Board file)*.

The Board took a brief recess. Upon return, Mr. Hennessey stated that the applicant had offered to conduct a balloon test and felt it would be in the Board's interest to review the site. He explained that a site walk was a continuation of a public hearing and anyone who wanted to attend was allowed to. He said site walks are run like a public hearing with all questions going through the Chair. He stated that the Pelham Planning Board and Conservation Commission would be invited. Attorney Pare spoke about limitations of a balloon test, such as wind. He said if they weren't able to do the balloon test on December 2nd, it could be rescheduled. Mr. Hennessey said if they aren't able to put the balloon up December 2nd, it could be done the following Saturday (December 9th). It was noted that when people enter the private property, it is at their own risk. Mr. Hennessey asked that people be respectful of the residents.

A site walk was scheduled for December 2, 2017, beginning at 9 am.

Mr. Hennessey stated if there is a weather event forecasted for December 2nd, the Planning Department will make a decision to postpone by Friday, December 1st 4 pm.

Mr. McNamara read aloud a letter submitted by Fire Chief James Midgley dated November 13, 2017, which stated support from a public safety standpoint and indicated that the Chief felt the tower would enhance Pelham's and the regional public safety communications systems in the future.

Mr. Hennessey noted that the case would be the second item on the December 11, 2017 agenda. If the balloon test is postponed, the hearing will also likely be postponed to a later meeting.

PUBLIC INPUT

Ms. Michele Greene, 13 Coral Drive (Dracut, MA) spoke about the character of the neighborhood and the community values she and her husband found in the area when purchasing their home (eighteen years ago). She felt if the tower went in they couldn't be guaranteed that a truck would go through only once or twice a month. They had a small neighborhood with children and she feared there would be more traffic than previously mentioned. She said the character of the neighborhood would be forever changed once the use was changed from residential to industrial. She told the Board she spent the past week trying to get informed but felt rushed in the process. She believed the Board could look to many studies regarding property value and find that towers negatively impact property values within direct vicinity. She commented there were many ongoing studies about the effects on wildlife and pointed out that Peter's Pond and wetlands were

nearby. She said it's a delicate ecosystem and the damaging impacts from Electro Magnetic Fields ('EMF') and radiating waves off the towers were still unknown.

Mr. Hennessey stated the 1996 federal law preempted any ability of a local municipality to question the health effects of EMF. Ms. Greene replied many communities were recently standing up and winning against that Act. She said those communities have stood up and indicated they would not put a tower in their residential communities because there wasn't enough undue hardship on the company. Mr. Hennessey stated that was a different argument; the health effects of the electromagnetic has been settled. Ms. Greene said she wasn't speaking about health effects, she was referring to environmental effects. Mr. McNamara provided a reference to the FCC law – 47 Code of Regulation, Section 1130, and 47 USC 332C-7 B, I and read a portion aloud. Ms. Greene pointed out that there were currently laws going forward in Massachusetts that countered the information Mr. McNamara referenced. Mr. McNamara replied he was referencing federal law. Ms. Greene replied the proposal would impact her in Massachusetts, and the applicant didn't have an easement yet in Massachusetts. She spoke about items the Massachusetts legislature was trying to put forward. Mr. Hennessey stated the information was irrelevant because the Board has been preempted. Ms. Greene noted that the applicant pointed out studies that said it would be safe. Mr. Hennessey stated the Zoning Board, as a land use board, was not allowed in New Hampshire to take the environmental and health effects of EMF into consideration when deciding a case. Ms. Greene pointed out that other areas were considering it and winning. Mr. Hennessey apologized to Ms. Greene and said unless she could show the Board that the federal appeals court in District 1 has overturned that federal law, the Board could not consider it.

Ms. Greene stated that the height of the pole concerned her because from what she read they fall down more often than people realize. This was especially concerning because it was being raised to 150ft. to include municipal use on the pole. Mr. Hennessey heard the applicant indicate that the fall zone wasn't germane because there was such a large (surrounding) area. He asked the applicant if there was a way to mark out a drop zone diameter from the pole. Attorney Pare replied they had provided the Board with a fall zone analysis; although they were designed not to fall over. They were more than 200ft. from any property line. He stated they had to comply with the building code. He explained their request wasn't relating to the applicability of the fall zone, it was with the enforcement of the fall zone after the tower went up. He indicated they were asking the Board for a waiver of the fall zone regarding future development on the parcel. Mr. Hennessey questioned if the applicant can mark the fall zone. Mr. McNamara commented that the waiver request was more of a question for the Planning Board; the request in front of the Zoning Board was for a variance relief. Attorney Pare pointed out that they weren't diminishing the fall zone; they were completely in compliance with it. Mr. Hennessey felt it would be appropriate to have the area marked when they conduct a site walk.

Ms. Greene spoke about the fire safety within both Pelham and Dracut. She noted in the past she was on her town's finance committee, and currently was a member of their capital improvement committee. Because of her involved role, she understood the financial difficulties both towns face; however, she felt having public safety weigh in regarding the variance for a pole was somewhat inappropriate because they would gain from the pole through receiving free access. Ms. Greene appreciated the financial aspect but didn't feel their input should carry weight because it was a conflict of interest. With regard to 'lack of coverage', in looking at the four-mile radius, there are thirteen (13) cell towers she believed they could link up to, sixty-seven (67) transmitter antennas, and in Pelham alone, thirteen (13) transmitters. From her perspective, there wasn't a lack of coverage, there was a lack of creativity on the part of T-Mobile to try to use existing infrastructure. She reiterated it was a highly residential area that contained a lot of wetlands. When looking at the amount of power generated from the cell towers, she commented that analog used a lot less power than wireless. Ms. Greene stated there was a lot of information to try to understand and was concerned that her neighborhood would change and never be the same again. She referenced a zoning case in Lafayette City, CO in which a variance was denied to install a pole at Indian Peaks Golf Course (public course). She said the board couldn't justify upsetting the neighborhood by having the pole installed and

commercial trucks going through residential neighborhoods; there was no unnecessary hardship on the company.

Ada and Mark Peters of 167 Ruby Road, Dracut MA came forward. Ms. Peters read aloud a prepared statement. She said her property abutted the parcel where the tower would be located. She noted although the address of the site on the application is stated to be off Spring Street in Pelham, it is much closer to Ruby Road in Dracut, MA. The access to the site was proposed off the front of her property. She noted the Pelham landowner didn't have the legal right to use her property for access or utilities for commercial use. The access easement across her property was created for access to a residential or agricultural use. The telephone and electricity easements end at the end of Ruby Road and do not extend across her land. Ms. Peters told the Board when the landowner began clear-cutting the area he informed them it was being cleared for agricultural use, as it had been rezoned through Pelham as such. She felt his lack of forthrightness about the planned use of the land should be taken into consideration by the Board. After the land was cleared a view corridor was created from her property to the tower site. She stated it was inconsistent with the Town's Zoning Ordinance to remove vegetation to make a wireless communications facility more visible to an abutting residence. If constructed, she said the 150ft. tower would be located on a part of the site which is approximately 17ft. higher in elevation than the Peters' property, thus the top of the tower would be approximately 167ft. above their property. Ms. Peter's stated the fence, gate and signage would be clearly visible from her property and believed the tower would significantly devalue her property. She said these things were also inconsistent with the Town's Ordinance.

Ms. Peters informed that approvals from Dracut, MA were needed, and not yet obtained. She said in Massachusetts in order for private land to be used as access for commercial or industrial use, the land where the access is located must be zoned for commercial or industrial use. She noted her land was residentially zoned by Dracut, MA. and in that district, wireless communication towers are prohibited unless they are located in a church steeple approved by the town. Ms. Peters stated in order to use her land for a wireless communications tower access the applicant must obtain a variance from the Town of Dracut Zoning Board of Appeals; no such variance has been applied for. She noted construction of the access way would occur 100 feet of a wetland in Massachusetts. Such work required approvals from Dracut Conservation Commission; no such approvals have been applied for. She commented since the site could not be accessed via her land without approvals from Dracut, MA, she believed the Pelham Zoning Board should not act on the American Towers application unless they first obtain the approvals. Lastly, Ms. Peters stated the applicant hasn't shown that there are no other sites or facilities available for its tower, or the carrier who will lease space on it that would not adversely affect residential properties, or that the site could be accessed from a more suitable site. Ms. Peters urged the Board to deny the request variance.

Mr. Cliff Hood, 37 Coral Drive understood when a tower is installed there was a lot of electricity and transmission lines that have to go to the tower. He questioned what route would be taken to get such to the tower. He believed every time an additional carrier wanted to connect to the tower additional cables and wires would need to be added and was curious how they would be brought in. In terms of conservation land, he said to the southeast of the wetland (north of Peters Pond) was a small pond called Cedar Pond, which was a highly protected area. He stated it was an important area for conservation reasons and expected that the State of Massachusetts would want a study and understanding how impacts would be mitigated. Mr. Hood assumed any additional carrier would have their own trucks accessing the area, which concerned him because of the children in the area. He wanted a fair estimate for the traffic volume and what type of vehicle would access the area.

Attorney Pare replied to the question regarding co-location and indicated if there were four carriers, there would be approximately four to eight trips per month. He said they weren't frequent and typically panel trucks or pick-up trucks. During construction, there would be excavation vehicles and/or typical construction vehicles. He informed that utilities had not yet been established. They've heard from some of the neighbors about a lack of access and utility easement; they will get that information from the utility

company. The preference would be to come up Ruby Road and tap off the existing pole and run it up to the compound. Attorney Pare noted they were speaking with the owner to see if there were alternative methods so they could avoid the Dracut, MA scenario. They've spoken with the building commissioner regarding the Dracut ByLaw and would be consistent with such in their application. He expected they would make that application in the next week or so. He said if they could come up with something that was more accommodating with the neighborhood that worked for T-Mobile, they would try to do so.

With respect to utilities, Attorney Pare stated they bring in one service that all the carriers would use. They also bring in telephone or fiber if it's in the area. He said if they get through the permitting process they'll put an order in for utilities. Mr. Hennessey referenced the 1996 Telecommunications Act and was aware that co-location was required. He understood that the top of the tower would not be telecommunications, and instead would be microwave. Attorney Pare stated 'telecommunications' was a broad concept and believed there would be whip antennas on top for public safety as well as a microwave dish. He also believed that the Pelham Fire Chief said they would use microwave as the backhaul so they don't use copper, which deteriorates. He stated public safety was going wireless as much as possible, although he didn't know if fiber had gone up in the area. Attorney Pare noted that the Telecommunications Act says service can't be prohibited and went on to note in 2012 Congress passed an Act that states co-location must be approved. He said once transmission equipment was located on a structure, other carriers can co-locate and towns must approve it. Mr. Hennessey said it was new information to him that microwave was included.

Mr. Hood didn't feel the hardship was proportional to demonstrate the need to change zoning. Attorney Pare replied they weren't requesting Pelham to change zoning. He said the case didn't create precedent; the precedent was already created through federal law. He commented if there is a gap and the proposed was the only feasible location that would service the gap, the 1996 Act says to go through the process and make sure the right site has been selected; it had to go somewhere in that area. He stated the proposal wouldn't create an industrial park and they weren't asking the Town to re-zone. Mr. Hennessey agreed that the Pelham wasn't re-zoning. He noted 'precedent' was limited in zoning cases. If the Zoning Board grants the variance based on the five criteria, a case on an abutting lot would be considered de novo.

Mr. Ron Hadley, 166 Ruby Road told the Board that the proposed tower would be almost in a direct line with his house. He understood that the site would have access only from the State of Massachusetts and wondered how fire and public safety would access the site. He wanted to know if Pelham Fire Department could reach the location before a potential forest fire reached the location. When he purchased his property, he understood that Pelham didn't allow buildings in an area that was only accessible from Massachusetts. Mr. Hennessey said that wasn't quite true, as there were several in Town that was only accessible through other towns. He said they had granted variances for those areas. Mr. Hadley understood that the landowner had a 40ft. right-of-way on the property in the Town of Pelham. He saw no reason why access could not be brought from there versus only having access only through Massachusetts. He questioned the definition of 'land-locked' that was addressed in the application as being a hardship to the owner. He briefly spoke about the history of the parcel, which had been acquired by the owner's father. He believed the owner's father owned property next to a right-of-way that could be acquired to meet the road requirements. Mr. Hennessey replied 'land-locked' meant there was no frontage on a Town approved road or right-of-way. Attorney Pare said they usually install on a lot that has frontage and when there's a lot that doesn't have it, the federal law gives them some leeway in seeking relief. He had no idea what the 40ft. right-of-way was and would look into it if they are given information. Mr. Hadley understood from the plot plans (at the time he purchased his home) that the applicant had a 40ft. right-of-way, which was insufficient to build a road because Pelham required a 60ft. right-of-way. He said when a house on Blueberry Circle became available, they (applicant) immediately purchased the property which was next to their right-of-way. Mr. Hadley said his main concern was the fire department's response to a fire given that his house is only 210ft away from the edge of the proposed fence. Attorney Pare believed if they provided access, it would provide easier and quicker access with improved response time. He didn't know if there were existing agreements between the two towns. Mr. Hennessey replied Pelham has reciprocal agreements with surrounding towns.

Mr. Hennessey asked if the Highway Safety Committee ('HSC') had provided a letter. Ms. Beauregard didn't believe the applicant had met with the committee yet. She said an applicant is sent to the HSC once the Planning Board takes jurisdiction. Attorney Pare replied the Zoning Board was their first meeting. Mr. Hennessey explained that Pelham had a safety committee (fire, police, highway etc.) that will conduct a review.

Ms. Susan Falvey, 161 Ruby Road, Dracut, MA told the Board she grew up in Dracut and prior to purchasing her home had looked at property all over town. She was concerned that the responses to the variance criteria only spoke to Pelham and didn't address Dracut. She didn't feel the area would remain 'residential' with the proposed a gravel road through Dracut to the tower with a gate and believed that situation was industrial. She said she would never want to buy a home with a gravel road and gate at the end of a cul-de-sac. She didn't see how the proposal would impact Dracut and believed they would see it more than Blueberry Circle in Pelham. She understood cell coverage needed to be filled but felt it should be done by better means. She wanted to see the difference in the coverage radius by positioning it in alternate locations and not positioning the tower in her neighborhood. Ms. Falvey suggested the applicant sell the land back to their father for the amount they purchased.

Ms. Mona Hajj, 14 Coral Drive told the Board that the applicant had cut down a lot of trees and believed 150ft. would be much higher than the tree line. She said when they purchased her house one of the things that impressed them was the friendliness of the neighborhood and community. She said she wouldn't have purchased her home if she saw a gravel road and a tower. She heard the testimony of the others that had spoken and reiterated that she felt the proposed tower would affect the real estate values.

Mr. Hennessey stated the Board would conduct a site walk on December 2nd and would also be continuing the case to December 11th.

Mr. Gary Stafford, 19 Coral Drive affirmed to the Board that he was in agreement with the testimony given by the other abutters. He's been in the same house since it was built, and had been told that the back of his property was 20ft. of right-of-way to access the land to Pelham. He wanted to know if the company installing the tower would buy the land, if not he wanted to know the lease right. Attorney Pare stated they were leasing the land and didn't disclose their business terms.

Ms. Peters came forward again. She noted the way the plan was presented to the Board involved accessing the tower site through her yard in Dracut, MA. She questioned if it made sense for the hearing to continue since the applicant didn't have a legal right to use her land. Mr. Hennessey said the Board hears that question a lot. He said he wouldn't give any opinion whether or not the applicant could use the opening; it would be a question for a land use lawyer. He couldn't believe that the applicant would have progressed this far in the process without some assurances that they would have access to the property. Ms. Peters said the applicant's representative told her earlier in the meeting that they were looking at an alternate plan because they apparently understood that the access might be a problem. She was anxious for the Board to visit the site as she felt there was no way they could determine that the proposal wouldn't have an adverse impact. Mr. Hennessey stated the access was a legal question and would not be addressed by the Board.

Attorney Pare told the Board that someone from the company met with a couple of the abutters and had been having discussions with the Town of Dracut. The applicant understood that they are poking through an existing cul-de-sac, which would have an impact on people. He said they heard those concerns from the folks in Dracut and entered discussions with the property owner to see if they could come up with a design that avoids using the proposed access way through Dracut. Attorney Pare didn't concede that they didn't have the legal right to do so for both access and utilities. He said there shouldn't be any statement that the applicant thinks it's in trouble; they are trying to be responsive to the neighbors. Mr. Hennessey stated the Board would not address that issue.

Mr. Hennessey suspended the hearing, which would be reconvened at the site walk and continued to the next Board meeting.

Case #ZO2017-00033
Map 40 Lot 6-159
SZCZECHURA, Stephen - Land off Hildreth Street - seeking a Variance concerning Article III, Section 307-14 to permit construction of a lot with no frontage on a public way.

Mr. Hennessey stated that the applicant requested a continuance to the Board's next meeting.

Mr. McNamara read the list of abutters aloud. There were no persons present who asserted standing in the case, who did not have their name read, or who had difficulty with notification.

Mr. Hennessey explained to the public that the property was in an area of Town with the only access being from Dracut, MA. He noted the Board had granted similar variances in the past off Hildreth Road. He stated that the Board would take the matter up at their December 11, 2017 meeting.

MOTION: (McNamara/Paliy) To continue the case to the December 11, 2017 Zoning Board meeting.

VOTE: (5-0-0) The motion carried.

SITE WALK - December 2, 2017

Case #ZO2017-00029 - Map 31 Lot 11-33 - KLECZKOWSKI, Charles Jr. Spring Street Off

DATE SPECIFIED CASE(S)- December 11, 2017
Case #ZO2017-00033 - Map 40 Lot 6-159 - SZCZECHURA, Stephen - Land off Hildreth Street
Case #ZO2017-00029 - Map 31 Lot 11-33 - KLECZKOWSKI, Charles Jr. Spring Street Off

MINUTES REVIEW

October 12, 2017
MOTION: (McNamara/Chubb) To approve the October 12, 2017 meeting minutes as amended.

VOTE: (5-0-0) The motion carried.

ADJOURNMENT

MOTION: (McNamara/Paliy) To adjourn the meeting.

VOTE: (5-0-0) The motion carried.

The meeting was adjourned at approximately 9:40 pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary