

APPROVED
TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT MEETING
June 11, 2018

The Chairman Bill Kearney called the meeting to order at approximately 7:00 pm.

The Secretary Diane Chubb called roll:

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

ABSENT: Alternate Darlene Culbert, Alternate Thomas Kenney, Alternate Lance Ouellette

PLEDGE OF ALLEGIANCE

HEARING(S)

Case #ZO2018-00012

Map 39 Lot 6-179-2

STURTEVANT, Donald - 29 Moonshadow Drive - Seeking a Variance concerning Article III, Section 307-12(E) to permit a new detached garage within the required rear & side setbacks

Mr. Kearney informed that the applicant had submitted a request to withdraw their application. He stated that the Board would not hear the case.

Case #ZO2018-00013

Map 10 Lot 13-167-9

WHITE, Trena - 10 Plower Road - Seeking a Special Exception concerning Article XII, Section 307-74 to permit an accessory dwelling unit

Ms. Chubb 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 Ms. Trena White came forward.

Ms. Beauregard stated that the Building Inspector and Code Enforcement Officer had confirmed that the application met all the criteria for a special exception.

Ms. White told the Board she was requesting an in-law apartment to make it legal for her sister to stay with her.

Mr. Kearney opened the hearing to public input. No one came forward.

Mr. McNamara confirmed that the current home had two bedrooms and the accessory dwelling unit would have one bedroom. Ms. White stated that was correct.

BALLOT VOTE
#ZO2018-00013:
 Mr. Kearney – Yes
 Ms. Paliy – Yes
 Ms. Chubb – Yes
 Mr. Hennessey – Yes
 Mr. McNamara – Yes

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

SPECIAL EXCEPTION GRANTED

(There is a 30-day right of appeal)

Case #ZO2018-00014

Map 28 Lot 7-170

ERB, James - 8 Economou Avenue - Seeking a Special Exception concerning Article XII, Section 307-74 to permit an accessory dwelling unit

Ms. Chubb 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. James Erb, Jr. and Mr. James Erb, Sr. came forward to discuss the application for Special Exception. Mr. Erb, Jr. told the Board he was seeking an accessory dwelling unit for his mother-in-law.

Ms. Beauregard told the Board that revised plans had been passed around to the Board. The initial plans didn't meet the common wall requirement; however, the plan had been redesigned and reviewed by the Building Inspector. She stated the revised plans met the criteria. She believed the applicant was converting a four-bedroom into a three-bedroom with an in-law apartment. She recommended placing a stipulation on any approval that the house remain a three-bedroom, or to require a septic design if the owner wanted to add additional bedrooms.

Mr. Hennessey understood the applicant currently had a four-bedroom septic and they would be converting to a three-bedroom plus accessory dwelling unit. He asked if that would require a five-bedroom septic. Ms. Beauregard replied the State's approval reads 'approved to convert a four-bedroom dwelling to a three-bedroom dwelling with an accessory apartment'.

Mr. Kearney opened the hearing to public input. No one came forward.

MOTION: (Chubb/Hennessey) To place a restriction that the main house remains with three-bedrooms. If the owner wants to add additional bedrooms, a septic design will be required.

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

BALLOT VOTE
#ZO2018-00014:
 Mr. Kearney – Yes
 Ms. Paliy – Yes
 Ms. Chubb – Yes, stipulation of three-bedroom with accessory dwelling unit unless seeking further approval
 Mr. Hennessey – Yes
 Mr. McNamara – Yes, with conditions stated in motion

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

SPECIAL EXCEPTION GRANTED

(There is a 30-day right of appeal)

Case #ZO2018-00015

Map 31 Lot 11-33 Spring Street Off (site) and Map 31 Lot 11-37 64 Blueberry Circle (access)

KLECZKOWSKI, Charles Jr. (site owner) and AMERICAN TOWERS, LLC (applicant)

Seeking a Variance concerning Section 307-58(B)(3) of the Town of Pelham Zoning Ordinance (hereinafter the 'Ordinance') for a Wireless Communications Facility pursuant to: Sections 307-83(C) and 307-88(A); a Dimensional Variance from the minimum frontage requirements of Sections 307-12, Table 1 and 307-14; Dimensional Variances from the terms of Sections 307-58(C)(2) (175ft. setback) and 307-58(C)(3) (fall zone) of the Ordinance; and to the extent necessary, all rights reserved, a Variance from the frontage and access requirements of Section 307-100 of the Ordinance; NH Revised Statutes, Annotated Chapters 12-K and 674:33; and the Federal Telecommunications Act of 1996 (the 'TCA') for the construction, operation and maintenance of a Wireless Communications Facility, and such other relief as deemed necessary, all rights reserved.

Ms. Chubb read the list of abutters aloud. Mr. Larry Horgan (32 Blueberry Circle) came forward and informed the Board that the owner Herb & Catherine Motschman (58 Blueberry Circle) was called with the list of abutters; however, they had sold their home last June. Attorney Pare (representing American Towers, LLC) stated they had an engineer pull the list of abutters from the Assessor's list. He asked if the new property owner was present. Ms. Beauregard stated if the new property owner was present the Board could still hear the case. Mr. Matt Roderick and Mr. John Masterson came forward and told the Board they (owned) resided at 58 Blueberry Circle. They had no objection to the hearing proceeding as scheduled.

Representing American Towers, LLC and TMobile was Attorney Ed Pare of Brown Rudnick. The Board was provided the following information:

- 1) Letter of Intent
- 2) Variance Application
- 3) Statement of Site Acquisition Specialist
- 4) Mobile License
- 5) Report of Radio Frequency Engineer
- 6) Existing LTE 2100 MHz Coverage in Pelham
- 7) Federal Airways & Airspace
- 8) Map Showing Site
- 9) Tower facility removal estimate
- 10) American Tower Site Map
- 11) Location Maps
- 12) Confirmation of Tower Structural Capacity
- 13) Letter from Mike Eacho
- 14) Real Estate Consultants of New England, Inc packet

Attorney Pare stated they had come in front of the Board during the winter with a proposed site location just over the Dracut, MA line (in Pelham) with access coming from Dracut. He stated they were proposing to use the same property with a relocation of the tower and access drive. He displayed a plan showing the proposed and surrounding lots and pointed out the original location which had significant opposition and the newly proposed location. In the prior application they conducted a balloon test (to indicate the proposed height of the tower) and flew a second balloon in the area of the current proposed location. He noted that second location was found to have wetlands and had since been shifted approximately 100ft. He showed the location of the 60ft.x60ft. compound on the plan for consideration. He spoke about access to the tower and stated that the applicant's father was the owner of a lot on Blueberry Circle. The proposal was to put the access drive off Blueberry following the property line (of the applicant's father). The site was designed

to avoid wetland crossings; however, they touched upon some wetland buffer zones that would require relief from the Planning Board. He noted that the proposed location didn't satisfy the 175ft. setback requirement or the 1.5 times the tower height from other property lines. He noted that the abutting property was the same owner as their eventual landlord; the other property that would be impacted is Town conservation land. He stated that the tower had been moved away from residences and folks that would have a clear view, although it would require additional relief as compared to the original site. However, they felt it was a far better location from an aesthetics and location standpoint for the people in Dracut, MA.

Attorney Pare reviewed the plan for the tower and antenna detail noting that TMobile had a height need for 120ft.; the additional height (25ft) would be reserved for public safety. The compound will be a 60ft.x60ft. fenced-in area that would include ground space for public safety equipment. Both Pelham and Dracut, MA were interested in public safety space. He outlined the conclusion of the access road and area reserved for parking. Attorney Pare displayed a map showing the existing long-term evolution ('LTE') 4G coverage in Pelham and the coverage they would be able to achieve with a pole at 120ft. He noted there were no other towers or tall structures in the vicinity that they could attach to or co-locate on. The proposed pole has been designed to have five co-locators including public safety. He stated they are seeking a Use Variance based on the Telecommunications Act of 1996 and case law of providing coverage to a significant gap. An updated radio frequency emissions analysis report (dated May 21, 2018) was submitted to the Board. The emissions report shows they will be at 3.2% of the maximum output allowable by the FCC. Attorney Pare displayed and explained the photo simulations.

Mr. Mark Correnti of Real Estate Consultants of New England, Inc came forward and introduced himself and his qualifications. He highlighted the methodology and information contained in his report dated April 30, 2018, which addressed the question of how granting the application would impact property values. The information contained a summary of the research and rationale used to arrive at their conclusion that the proposed tower will have no measurable impact on surrounding property values due to proximity or visibility.

Ms. Paliy questioned why an analysis hadn't been done to show data of an area that had cell service compared to an area that didn't have cell service. Mr. Correnti replied he appraises properties within the State that have no service; however, he understood that the concern was the view of the tower, which is what he addressed in his report. Ms. Paliy wanted to know if the area had coverage. Mr. Correnti stated he wasn't implying that there was coverage in the subject neighborhood. Attorney Pare commented there was outdoor coverage by TMobile marked as yellow on the coverage map and no coverage in the area marked white. He said the purpose of hiring Mr. Correnti's firm was to determine the impact of the visibility of the tower and antennas. He suggested adding cell coverage would increase the value. He added that cell coverage was a huge public safety issue and the proposed tower would provide coverage for the people in the area.

Mr. Hennessey referenced the variance criteria and said surrounding properties couldn't be negatively affected. He said the last time a cell tower proposal came in the appraiser provided bad data. He said the Board turned the variance down and the decision was upheld in Federal court. He told Mr. Correnti that he had done a nice job on his report. He saw that the data dated back to 2014-2016, which ordinarily he would pick at; however, he felt Mr. Correnti was right to go back to get a more stable market.

Attorney Pare spoke about and showed proposed coverage maps of the alternative site locations that had been reviewed. He then read aloud the responses to the variance criteria. He wanted to know if the Board wanted them to do another balloon test, or if the prior balloon test satisfied the Board.

Mr. McNamara spoke about the fall zone variance request. He understood the tower height would be 150ft. and located 51ft. from the nearest lot line. He wanted to know if it was from the nearest property, or the owner's property. Attorney Pare believed it was from the owner's property (lot 13). Mr. McNamara asked

if there was currently any development on that lot. Attorney Pare replied it was a large parcel and he wasn't familiar with development to the east; there was nothing in the location of the tower. Mr. McNamara commented if the parcel was sold off and developed in the future anything near the lot line would be within the fall zone. He understood the structural engineer was fairly certain that the tower collapses with wind stress. Attorney Pare replied the tower doesn't collapse, it bends from the weight of the antennas. He said they built them next to highways and buildings. He stated they were requesting a waiver for building within the fall zone even though he didn't think anything would be built in the area. He questioned why someone would be restricted from building next to the tower if the tower was up and someone wanted to build next to it.

Mr. Hennessey asked that the wetland situation be reviewed. He recalled there was a wetland crossing needed for the previous site and understood the proposed site would be in the buffer zone. Attorney Pare replied they hadn't gotten to the point of knowing the exact relief required with the first application. He knew they would be impacting wetlands but didn't know to what extent. With the proposed plan, they would be able to avoid wetland crossings (but not the buffer) even with the access drive. Mr. Hennessey was concerned with the tower being in a buffer zone and wanted to know the impact to the wetlands during construction. Attorney Pare stated they would have to remediate and take precautions in the buffer zone and get permission from the Planning Board to design an access during construction. They will meet with the Conservation Commission as part of the Planning Board review.

Ms. Ryan questioned if the access drive would be located strictly on the owner's property. Attorney Pare replied that the access drive was on the owner's father's property (64 Blueberry Circle). The access drive will be 14ft. wide. Ms. Ryan asked if there would be tree clearing to create the access road that would aesthetically change the nature of Blueberry Circle. Attorney Pare believed the area was cleared to the wall area, but they would do their best to avoid trees; the property owner has insisted on such. He said the idea was to do minimal clearing.

Ms. Paliy asked Mr. Hennessey if he was an abutter. Mr. Hennessey answered no.

PUBLIC INPUT

Mr. John Masterson, 58 Blueberry Circle stated he had cell service through Verizon and had no problems in any other area. He said he moved to his home approximately one year ago and told the Board there was virtually no traffic in the area and parents felt comfortable with children playing outside. He was concerned with construction vehicle traffic during construction and the increase in traffic from the companies monitoring the tower. Mr. Masterson stated he went to school with the owner and knew they owned other property. He said owner owned the big parcel of land behind the (cell tower) area and was concerned if an access road was allowed, that further development may occur.

Mr. Brian Carton, 7 Falcon Road told the Board his property was directly across from where the entrance road was proposed. He said since there were two owners that would have things done on their property (tower site and access road) he wanted to know if the owner of property with the access road needed a variance. Mr. McNamara answered no. Mr. Carton told the Board he purchased his property in 1996 making a deliberate and conscious decision to purchase in an area that was strictly residential. They didn't want to be near any retail, industrial or commercial sites. He stated the enjoyment of his home would be diminished by the proposal and believed the tower would be visible from windows, yard, deck and pool. He added that he worked at home daily and seldom left for more than a couple hours at a time. The balloon for the site test at the proposed location is very visible in the photos taken by his neighbor during a meeting (at 9am for the original site) on Ruby Road, Dracut, MA. Mr. Carton stated approximately two hours after the balloon was launched it had gotten windier and didn't believe the balloon was at the same height it was initially. His main point was that he didn't want to be near any industrial, retail, commercial or service type of business and had deliberately chosen a house in a residential area. He feared allowing the tower would

open the ‘flood gates’ for other non-residential activities. He wanted the Board to consider the fact that people make deliberate decisions to move to residential neighborhoods for a reason. He felt the application was over-reaching by asking not only for a Variance on usage, but also for setback, frontage and access requirements. He opposed the broad wording in the application that reads ‘*and such other relief as deemed necessary, all rights reserved*’ and felt the Board should reject it. Mr. Carton stated his concern that the proposal would create an attractive nuisance. He said having a road to a secluded area would encourage the use of ATVs, substance misuse, illegal dumping, etc. He commented that having a gate to block it off would be visibly more objectionable, but at the same time useless without fencing the whole property. Mr. Carton spoke about a time that his home had been broken into by people on ATVs that used the open land as a staging area. He didn’t think they needed to create an additional staging area. When Mr. Carton looked at the property from Ruby Road at the edge of the owner’s property he saw an extremely large concrete cylinder that had been there (per the neighbors) for twenty years and there was also an attachment for large equipment. He had no confidence that the project would be managed or that the property would look any cleaner when it’s done.

Ms. Rebecca Geragosian, 46 Blueberry Circle was unsure why the Board was entertaining the proposal because most customers in Pelham use Verizon. She and her husband use Verizon and have perfect cell reception; it’s not her problem that TMobile doesn’t have service. She heard a lot about appeasing Dracut, MA residents and was a little offended and perplexed that the problems they had were somehow okay to bring to Pelham. She didn’t know why Pelham would be treated any differently. She hadn’t heard anyone speak regarding electromagnetic field (‘EMF’) concerns. Ms. Geragosian told the Board the primary reason they located to Pelham was because of the lack of industrial zones. She spoke about choosing the neighborhood because of its unique layout that allows her children to ride bikes and walk safely because seeing a car is a rare occasion. She said seeing a tower and having additional traffic is undesirable; they wouldn’t have chosen Pelham if that had been the case.

Ms. Susan Tesch, 43 Blueberry Circle told the Board she was asked to read a statement into the record. First, she told the Board she moved to Blueberry Circle forty-two years ago, built a home and raised three children. She stated the neighborhood was quiet and residential, not industrial, or meant for cell towers or any kind of industry. She spoke about when the neighborhood was Woodcrest Park and informed there was an approved and recorded subdivision plan that clearly indicates “*No driveway having its access to Blueberry Circle within the shown area may be constructed until a temporary turnaround has been provided or Blueberry Circle is extended to the north through the land of A. Sharpe*”. She said that plan directly affected the owner’s parcel.

Ms. Tesch read from Mrs. Michelle Johnson’s (6 Partridge Lane) letter, which stated the variance request was in violation of Pelham’s Zoning Ordinance, Article X, specifically:

- 1) Citing priority – where all existing facilities (including pre-existing towers and antennas) where co-location can exist given adequate consideration (reference made to 18 Atwood Road, 98 Old Lawrence Road both contain existing towers);
- 2) Why was 121 West Street, Methuen, MA rejected;
- 3) Has the applicant met the burden of proof for co-locating;
- 4) Pelham has defined a specific telecommunication overlay zone – Industrial Zone 1,2,3 and Business Zones 1,2,3 & 4;
- 5) The proposal is a commercial use in a residential area;
- 6) Why is the Town considering building the tower at the location given the request to diminish the setback requirements and access road needs to cut through wetland area;
- 7) The proposed 14ft. wide access road is shown to be built along side a residential home (64 Blueberry Circle) which is located directly on a 25ft. wide drainage easement established for the subdivision;
- 8) Concern regarding maintenance, safety and diminished home values;
- 9) Proposed tower will be within 500ft. of several residential properties;

- 10) Residents moved to neighborhood with no tower and didn't want to see one in the future;
- 11) Concern about increased traffic from co-locators maintaining their equipment;
- 12) Question if tower will become obsolete with 5G technology;
- 13) Applicant should seek alternate access not through residential neighborhood;
- 14) If Town is concerned about emergency services in the area the problem needs to be addressed by the voters and taxpayers.

Mr. Craig Geragosian, 46 Blueberry Circle commented that it was the job of the applicant's representative to convince the Board that a tower wasn't that bad; however, he felt it was bad. He stated he wouldn't have purchased his home, and a lot of his neighbors wouldn't have, if they knew a cell tower would be erected. He told the Board that his brother was a top 1% real estate agent in Massachusetts who sells million-dollar homes across the state. He said when people move out of Boston to the suburbs, one of the first things they notice is what's around them. He said his brother's buyers wouldn't purchase in a neighborhood with a cell tower if they had an equal opportunity to purchase a home in the proximity that didn't have a cell tower next to the property. Mr. Geragosian said it was disappointing that they had to attend the meeting. He noted all the things about the property that should block the proposal and felt it would be insulting to the existing residents to allow the tower.

Mr. Larry Horgan, 32 Blueberry Circle told the Board he moved to Blueberry Circle in 1985. He and his wife wanted a residential neighborhood with no airports, power lines, commercial, industrial, highway sounds or throughway. He felt the proposal was a commercial use and didn't belong in a residential zone. He believed his property value would be decreased and noted that the real estate professional interviewed buyers and not the homeowners who live in the neighborhood. Mr. Horgan commented that he had done research and found on the subdivision plan that the area designated as the access point indicates there should be no driveways and added that it was also within a 25ft. drainage easement. He added that the owner of the property didn't live in the neighborhood; the father of the property owner rents the house out. He said some of the information in the photographs was incorrect, noting that an intersection of Diamond Drive and Blueberry Lane doesn't exist. He questioned who was checking the reports being presented. Regarding coverage, Mr. Horgan noted that there was always 'roaming'. He provided the Board with a copy of the variance criteria that needed to be met for the Board to grant an approval. He believed that the character of the neighborhood would be changed if the proposal was allowed. He said it wasn't a permitted use and believed it would decrease his property value. These criteria items contradict what is being proposed.

Mr. Ron Hannon, 31 Blueberry Circle told the Board he and his wife moved to the neighborhood approximately twenty-five years ago. He said he couldn't ask for a better place to live; the neighbors were great and people in the Town have been great. He stated that he opposed the project and wasn't convinced that it would be beneficial to Falcon Road, Blueberry Circle, Partridge Lane, to the neighborhood, to Pelham or to New Hampshire.

Ms. Judy Portanova, 17 Falcon Road said she was really bothered about the wetlands. She explained she tried to install a pool to the side of her home and couldn't locate it there because of the wetlands and had to find another location on her property. She didn't want the Board to forget about the wetlands. She was concerned about a possible fire and pointed out that they didn't have fire hydrants anywhere (in the neighborhood), which made her homeowner's insurance increase. Ms. Portanova lived in the neighborhood for thirty-five years and wanted it to stay the same, with the sounds from nature and view of the wildlife.

Ms. Ada Peters, 167 Ruby Road, Dracut, MA asked the Board if the hearing would be continued to another session; if so, she offered to hold her remarks. Mr. Kearney couldn't say either way. Ms. Peters read a prepared statement (that was submitted for the record during the meeting). She pointed out that Article X provided for plenty of opportunity for towers in the telecom overlay district in 'certain designated commercial and industrial areas'. She had Verizon and had no issue with her coverage. Since other carriers had found ways to service their customers proves that TMobile had alternatives. She said Pelham didn't

have an obligation to provide personal wireless service in the least costly manner. Co-location is available, and the applicant has not shown there are no other facilities available that will not affect residential properties. Ms. Peter addressed the variance criteria and pointed out that there was no hardship; the land owner was only landlocked by the extent of his father's lot (64 Blueberry Circle) which blocks access. She pointed out that the landowner created the hardship; Mr. Kleczowski, Sr. owned all the property until 2016 when he sold some of the land to his son for one dollar, thereby creating the 'hardship'. She had maps and documentation (quitclaim deed of purchase, tax map of the area, assessor card) relating to her testimony, which she displayed for the Board and public.

Ms. Peters understood that 64 Blueberry Circle would be used for access to the cell tower and that same access could be used to build residential homes. On two occasions she was told by Mr. Kleczowski, Jr. that that houses would be built on the property, but not for about twenty years and likely be built by his children. She said by these comments about building homes, the owner knew he had no hardship. She said the owner was seeking to become a commercial landlord in a residential district, which would be inconsistent with Article X of Pelham's Zoning Ordinance. She said she had taken a screenshot (on Google Map) and scaled it to match the map from the American Tower's application (sheet #C-101, revision 2) to line up the tower location. She said the satellite image showed there was not thick/lush vegetation to block the tower (visibility). She noted 7 Falcon would have clear sight to the tower, and once the area is cleared for the access road and the 60ftx60ft tower area there would be many homes on that section of Blueberry Lane and Falcon Road that would have a clear view of the tower. Ms. Peters understood the testimony provided regarding property values and noted that the images showed towers off in a distance. In this application, the tower would be in close proximity of 7 Falcon Road as well as other abutters. Additionally, there will be noise associated with the tower, which were known to hum. The area often loses power and a generator would be required to be on the tower site, which would be very noisy. She stated that the tower access road would create an attractive nuisance for curious children and teens that would be a safety issue. Ms. Peters commented that cell towers were known to collapse and/or catch fire and pointed out there were no working hydrants on Falcon Road, Partridge Lane, Blueberry Circle, Coral Drive or the Ruby Road neighborhoods. She said studies had shown that EMF has a significant effect on birds, insects and other vertebrates in wetland areas, this environmental impact is also inconsistent with Article X.

Speaking to traffic, Ms. Peters believed utility vehicles would enter the residential area several times per week. The American Tower's application reads 'on average, only one or two round trip visits per month are required to service and maintain the Facility'. That statement refers to TMobile maintenance, other wireless carriers leasing space will send their own vehicles, meaning utility vehicle traffic will increase with each new carrier. She informed the Board that American Tower was in the business of leasing space on towers and will actively seek other carriers to lease the maximum number possible. She noted everything she's discussing is inconsistent with Article X of Pelham's Zoning Ordinance and will significantly diminish the character of the neighborhood. She said diminished character meant diminished home values. She said there were studies that showed the impact of cell towers on home values and provided a copy of one that was done for the National Institute for Science, Law and Public Policy of Washington, D.C. She discussed the information contained in the survey; 94% said a nearby cell tower or group of antennas would negatively impact interest in a property or price they would be willing to pay, and 79% said under no circumstance would they ever purchase or rent a property within a few blocks of a cell tower or antennas. Ms. Peters asked the Board to look around the room, which clearly showed people didn't want to live next to a cell phone tower and asked that they please protect the Pelham and Dracut residents that would be greatly impacted and to deny the application.

Mr. Michael Maal, 38 Blueberry Circle told the Board he moved to Pelham approximately twenty-five years ago. He said Pelham was known as a 'bedroom' community and his neighborhood had very little traffic. He heard American Tower stated they moved the tower away from the residential area. He said they might have moved it from Dracut, MA, but it was now abutting the Pelham houses which were closer than the houses on the Dracut side. He said the tower may need a variance for the wetlands and he voiced

concern for the tower sitting on the property line and the possibility of it failing. He didn't believe the lawyer was a certified expert in stress analysis, momentum, inertia, etc.; simple math shows if the tower comes down it will go half way over the property at 64 Blueberry Circle. Mr. Maal heard testimony about speaking with real estate agents. He said whether they are the seller's or buyer's agent, all the care about is to find that one person in a crowd that will buy, whether or not a tower is present because its what they could afford. He said an agent will only report that the property sold and felt a poll should have been done with people who viewed the houses. Mr. Maal inquired about the average tree height in the area and questioned if there were any statistics of lightening strikes for the area. He knew of a tree on his property and other trees in the neighborhood that had been struck. He said everyone on the east side of Blueberry Circle would be able to see the tower 'like a sore thumb' because it wasn't shielded. He told the Board he had a young child and didn't want to be concerned about service vehicles flying through the neighborhood.

Speaking of cell service, Mr. Maal stated he was a TMobile customer and believed that most people who had internet at home (though Comcast) would use wifi to use the services on their cell phone without being charged for data. He wondered why the area at Old Gage Hill Road wasn't being address if there was an issue about providing coverage. Other areas without service were Dutton Road, Route 38 (toward Salem), Sherburne Road and Mammoth Road. With the photos shown, there was no clear indication to show how far the tower was moved and that it came a lot closer to the houses on the east of Blueberry Circle. He wanted the Board to consider all the questions and concerns raised by the residents.

Ms. Susan Falvey, 161 Ruby Road, Dracut, MA spoke about the variance criteria. She said the application spoke to TMobile's hardship and felt it should speak about the property owner's hardship. She told the Board that the residents on Ruby Road were able to see the balloon from the second location and voiced concern about the proposal being in a residential area. Ms. Falvey told the Board she lived on Ruby Road for the last twenty-five years and had chosen the neighborhood specifically because it was zoned residential. She would not have purchased a home near a cell tower. She called attention to the coverage charts contained on TMobile's website that showed the specific area (from 2014 up to 2017) as having coverage. She said the conflicting information called the situation to question; the website showed that TMobile had coverage in the area but the information being presented to the Board showed they needed coverage.

Mr. Mike Ausevich, 8 Falcon Road stated he had lived at his residence for approximately eleven years. He displayed a photo of the balloon test in December. He stated he purchased his home knowing it was a residential neighborhood and stated his opposition to the cell tower being in that residential area. He wouldn't have purchased his home if there was a cell tower in view of his front yard. He and his wife have great cell service through Verizon. Mr. Ausevich commented that the request contradicts the Zoning Ordinance and believed those laws were in place for a reason. He didn't know if the balloon was at 150ft. when the photograph was taken because it was a windy day and it might have been lowered. He noted it was very visible at whatever height it was at. He added there was potential for noise nuisance from loss of power and use of generators. Mr. Ausevich believed there would be a negative impact on home values. He recalled not going to look at houses if they had high tension wires and said a real estate agent wouldn't have the data from people not viewing a home. He asked that consideration be given to conducting another balloon test. He ended by noting trees would be removed for the access road and site location, and in the winter, there would be even less foliage to block the view.

Attorney Pare responded to the comments that were made. The construction period will be approximately 60-90 days; the biggest thing is to get an excavator to grade the compound. The design of the foundation will be done once the geotech is completed. He described the erection of the tower. One of the drivers for the height is public safety; TMobile needs 120ft, the additional height (visibility) is for public safety. He told the Board that nowhere in the materials was there mention of hardship to the property owner because it was TMobile's hardship of a gap in coverage. This hardship had nothing to do with the Town's Zoning Ordinance, it has to do with Congress enacting the 1996 Telecommunications Act. He said the bottom line was Congress drove the industry to compete. The Federal law supersedes State laws. He spoke about cellular

competition reducing costs and benefitting customers. Attorney Pare understood that towers weren't invisible and stated that service drove the industry. He noted that the towers would continue to exist with 5G technology. He discussed the proposed location and commented that they needed more relief from the Board in the new location than they needed in the old location. He noted they hadn't withdrawn the application for the old location and could go back to it. He understood everything was a balance and was trying to address everyone's concerns. They felt the new location was better because they didn't have to address a lot of the visibility concerns. He said they were happy to go in either location; the hardship was the gap.

Mr. Hennessey pointed out that Attorney Pare stated correctly that they were asking for more relief with the new site. He said with as much sense as the new site might make, it calls for the Board to grant a 'bigger' variance on the property. He said it was hard to see how the Board could review hardship and grant a variance when the applicant had requested less relief under the old plan. He understood it would be a 'pain' for the applicant because they would need to deal with another town and state, but it was self-made and didn't see any way he could vote for the (new) variance. The new application created a bigger hardship for the applicant. Attorney Pare replied he wouldn't say it was 'bigger' it was 'additional'; the request was for a 'use' variance. The additional variances were for setback and fall zone, which were satisfied at the other location. When considering the Federal Law, there were certain limitations that Attorney Pare said were based on substantial evidence and an effective prohibition. He explained 'effective prohibition'. Mr. Hennessey pointed out that the Town had been through the process in the past and had won. He stated the applicant was requesting relief from the zoning laws when they had another way of getting it that was less onerous. He saw no way that they could vote in favor of the request because the applicant had increased the hardship to themselves by choosing the route. Attorney Pare replied if they came through Dracut, MA there would be wetland issues and an impact they would have to deal with. That location (first location) was more visible to some people (not all). He said it was a balance and if they literally went by the standards without considering the Federal Law, the first location was probably best. As they compile the application they conduct due diligence. He noted receiving a variance was key for them to be able to go to the planning board to discuss the site. Attorney Pare pointed out that some of the folks that argued against the first location were now claiming (he assumed) that they preferred that location. He said they had spent thousands of dollars to accommodate what he thought were concerns of abutters. He understood if the Board felt another balloon test would be warranted.

Ms. Paliy didn't see proof that they didn't have coverage because the TMobile maps (on their website) showed there was coverage. She said testimony was given by people that TMobile had coverage in the area. She questioned where the maps came from that showed they didn't have coverage. Attorney Pare replied the maps were new for the proposed location and done by a radio frequency engineer and based on drive tests and actual network performance. The maps discussed (on the website) include disclaimers that state they are depictions and customers may not get the coverage on the maps. Ms. Paliy suggested that the Board do another site walk and check if there is coverage in the area. She spoke about the original site and noted it would have issues in Massachusetts and how the property is accessed. She said one application might have less (issues) in front of the Board. However, based on what she's heard, both sites had different groups of people concerned with the tower being visible and unique problems. She felt they should first figure out if there was a coverage gap in the area because the testimony indicated there wasn't. In the past she said the Board didn't 'say no' because there had always been real gaps that people could agree on.

Mr. Hennessey felt it was a 'fool's errand' to argue against the engineer and the data submitted. He said to do so the Board would have to hire their own experts. He believed the applicant had made their case about there being a gap in coverage and a right to use the land. With respect to the abutters, he felt there was sufficient evidence that there is minimal effect on values. He said there was a case asking for a variance to be able to use the land to put up a tower that Federal Law says they have a right to do, but in fact the Town must bend its rules by granting a bigger variance to allow it. He saw no reason to conduct an additional

site walk. Mr. Hennessey felt the people present were making a huge mistake in arguing for a more onerous solution, but it was clear that the Board had little choice. Mr. Kearney concurred.

Regarding coverage zones, Ms. Chubb stated she would listen to the engineers. She said she lived in the 'ultimate' dead zone near Muldoon Park. She was frustrated when people came to her home and could use their cell phone and she couldn't. She commented that a little competition may lower the prices. With regarding to land use, she said someone may not like what someone else is doing with their land, but they have the absolute right to do what they want. She would like to have a new site walk and second balloon test because a lot of neighbors are concerned about what the view is going to be. She recalled that the (original) balloon had shifted and a lot of the neighbors invited to the first site walk weren't necessarily aware that the Board planned to also walk Blueberry Circle. Ms. Chubb wanted all the neighbors to be able to see the site and take pictures to bring back to the Board. She noted the original site walk and balloon test was done in December when all the leaves are off the trees; the area will look vastly different now. She suggested inviting the Conservation Commission to the site walk and voiced concern about the buffer zones and granting more variances.

Mr. Kearney understood Ms. Paliy wanted to conduct a site walk and took it as a motion on the floor. Mr. Hennessey said he would be voting against a site walk but would ask the Board to vote to reset the 'shot clocks' for both variance requests submitted by the applicant (Case #ZO2017-00029 and Case #ZO2018-00015).

Mr. McNamara felt the Board needed to conduct a site walk because it would be fair for the neighbors. He agreed that it would be foolish to argue about gap in coverage and felt the applicant more than abundantly demonstrated the gap. They had also demonstrated to his satisfaction the real estate study. He believed the information submitted by Ms. Peters basically spoke to EMF in terms of real estate value, which the Board was not allowed to consider. The applicant showed they complied with the Federal standard. Mr. McNamara explained to the public that the law allows for a variance request if the zoning unduly impacts the property.

MOTION: (Paliy/Chubb) To conduct a site walk with a balloon test.

VOTE: (3-2-0) The motion carried. Mr. Kearney and Mr. Hennessey voted in opposition.

Mr. Hennessey asked the applicant to push back the 'shot clocks' for both the variance requests. Attorney Pare replied he had a letter ready to extend the shot clock date for the original location. In reference to the new application, he said there was no need because the Board had 150 days from the date they filed. He stated they would extend the shot clock for the original application (ZO2017-00029) to August 31, 2018 when the case was opened by the Board (later in the meeting).

A site walk and balloon test was scheduled for July 14, 2018 (at 64 Blueberry Circle) beginning at 9am. The balloon test will be conducted July 14, 2018 from 9am to noon. Rain date scheduled for July 15, 2018 with the same time and place for site walk and balloon test. If the applicant is unable to conduct the test on the specified dates, they will notify abutters within a 200ft radius (as well as the Town of Dracut) by certified mail of newly scheduled date. Attorney Pare understood the notification stipulation. The Conservation Commission and Planning Board will be invited to attend the site walk/balloon test.

Mr. Richard Garioke (sp?) provided a brief explanation of the coverage map and what the color coding depicted.

Mr. Horgan inquired if the proposed access road would be marked. Attorney Pare replied they would stake the access and the area where the tower would be located.

Ms. Peters spoke about the document she submitted and clarified that the survey was not on EMF and was actually a survey on people's desirability for purchasing property near cell towers or antennas. Mr. McNamara replied it was a focus on EMF and the Board was not allowed to consider it.

The Case was date specified to August 13, 2018.

CONTINUED

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)(#), 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 Communications Facility

The Board addressed the 'shot clock'. Attorney Pare provided the Board with letters (for signature) that would extend the shot clock. He noted that he had anticipated a July date, but asked the Board to change the date to August and initial next to the change. The extension letters were signed by the appropriate parties. The shot clock was extended to August 31, 2018, which allowed for the hearing date and decision writing.

The Case was date specified to August 13, 2018.

HEARINGS CONTINUED

Case #ZO2018-00016

Map 6 Lot 4-175-1

PAWTUCKET ROAD LANDHOLDINGS, LLC - Valley Hill Road – Seeking a Variance concerning Article III, Sections 307-12 Table 1 & 307-14 to permit the construction of a driveway from Valley Hill Road within an existing 50-foot right-of-way, to provide access to this lot for residential construction, where 200-feet of frontage is required.

Ms. Chubb 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 Attorney David Groff. He said the application was straight forward. The applicant's parcel of land contains ten-acres with the only access being off Valley Hill Road through a 50-foot wide right-of-way. Before the subdivision on Valley Hill was approved, there had been a winding path (used for access) that went to the parcel of land. At the time that the Planning Board considered the subdivision (1995), the owner and abutter made an arrangement that resulted in the 50-foot wide right-of-way access. Attorney Groff told the Board that the current owner was seeking a variance for frontage only so the parcel could be developed (for residential), either a single-family or duplex, not a housing development. He then read aloud the responses to the variance criteria as submitted with the application.

Mr. McNamara asked if the applicant would be against an approval stipulation limiting construction on the lot to either a single-family home or a duplex. Attorney Groff didn't object since he didn't believe the owner could do anything other than a single-family or duplex with a single driveway without seeking an additional variance.

MOTION: (McNamara/Paliy) If the Variance is approved, the construction shall be limited to one single-family or one duplex.

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

Mr. Kearney opened the hearing to public input. No one came forward.

BALLOT VOTE Mr. Kearney – Yes to all criteria
#ZO2018-00016: Ms. Paliy – Yes to all criteria
Ms. Chubb – Yes to all criteria
Mr. Hennessey – Yes to all criteria
Mr. McNamara – Yes to all criteria with stipulation in motion

(5-0-0) The Variance was Granted

VARIANCE GRANTED

(There is a 30-day right of appeal)

SITE WALK (beginning at 9am)/BALLOON TEST (9am-12noon)– July 14, 2018

Case #ZO2018-00015 - Map 31 Lot 11-33 Spring Street Off (site) and Map 31 Lot 11-37 64 Blueberry Circle (access) - KLECZKOWSKI, Charles Jr. (site owner) and AMERICAN TOWERS, LLC (applicant)

DATE SPECIFIED CASE(S) – August 13, 2018

Case #ZO2018-00015 - Map 31 Lot 11-33 Spring Street Off (site) and Map 31 Lot 11-37 64 Blueberry Circle (access) - KLECZKOWSKI, Charles Jr. (site owner) and AMERICAN TOWERS, LLC (applicant)
(New Application)

Case #ZO2017-00029 - Map 31 Lot 11-33 - KLECZKOWSKI, Charles Jr. – Spring Street Off (Original Application)

MINUTES REVIEW

May 14, 2018

MOTION: (Chubb/Hennessey) To approve the May 14, 2018 meeting minutes as amended.

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

ADJOURNMENT

MOTION: (Hennessey/Chubb) To adjourn the meeting.

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

The meeting was adjourned at approximately 10:22pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary