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Use Special Permit 19-05
100 Discovery Way
November 8, 2019



Planning Board

TOWN OF ACTON
472 Main Street
Acton, Massachusetts 01720
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www.actonma.gov

DECISION
19-05

100 Discovery Way
Use Special Permit

November 8, 2019

GRANTED with Conditions

Decision of the Acton Planning Board (hereinafter the Board) on the application of Cellco Partnership dba Verizon Wireless (hereinafter the Applicant) located at 100 Discovery Way on property in Acton, Massachusetts, owned by 100 Discovery Way, LLC (hereinafter the owner). The property is shown on the Acton town map as parcels G3-71 (hereinafter the Site).

This Decision is in response to an application for an use special permit, received by the Acton Planning Division on September 10, 2019 pursuant to Section 3.10 of the Acton Zoning Bylaw (hereinafter the Bylaw) and the Personal Wireless Facility Special Permit Rules and Regulations (hereinafter the Rules).

The Applicant presented the subject matter of the special permit to the Board at a duly noticed public hearing on October 15, 2019. Board members Mr. Derrick Chin (Chair), Ms. Emilie Ying (Vice-Chair), Mr. Jon Cappetta, Mr. Anping Liu, Mr. Sam Bajwa, and Mr. Ray Yacouby were

present throughout the hearing. The minutes of the hearing and submissions on which this decision is based upon may be referred to in the Planning Division or the Town Clerk's office at the Acton Town Hall.

1 EXHIBITS

Submitted for the Board's deliberation were the following exhibits:

- 1.1 Items and documentation required by the Rules consisting of:
 - A properly executed Application for an use special permit, received in the Planning Division on 09/10/19;
 - Cover page
 - Application page
 - Certified abutters list
 - Letter of authorization
 - Photographic simulations
 - RF Report
 - Statement of site acquisition specialist
 - Copies of FCC Licenses
 - Copy of recorded deed and plan for site
 - List of Mortgage Holders
 - Other Permits and Variance
 - Site Plans
 - Additional Waiver List 09-19-19.
- 1.2 Planning Board Third Party Peer Review
 - Summary of Technical Review of Verizon Application, 100 Discovery Way, dated 10/15/19, prepared by Dave Maxson, Isotrope Wireless.
- 1.3 Interdepartmental communication received from;
 - Planning Division, dated 10/10/19.

Exhibit 1.1 is referred to herein as the Plan.

2 FINDINGS and CONCLUSIONS

Based upon its review of the exhibits and the record of the proceedings the Board finds and concludes that:

- 2.1 The Site is located within the Office Park - 2 (OP-2) zoning district, partially within Zones 3 and 4 of the Groundwater Protection District. The proposed personally wireless facility is located in the Groundwater Protection District Zone 4. The Site has an existing two floor industrial building.
- 2.2 The Applicant requests a special permit to construct a personal wireless facility at 100 Discovery Way under Zoning Bylaw section 3.10. The proposed personal wireless facility will be located next to the existing building and will be located on existing pavement. The qualifying requirements in the Bylaw are below:
- 2.3 The applicant requested three waivers from the Zoning Bylaw and the Personal Wireless Facility Rules and Regulations:
 - a) Zoning Bylaw section 3.10.6.4 requires that Concealed-Antenna Monopole (CAM) be the primary method that the antenna shall be installed on the monopole. The

plans display external standard antennas on the proposed monopole. The application indicates that the personal wireless facility will have external standard antennas. The personal wireless facility will house 12 panel antennas.

- b) Zoning Bylaw section 3.10.6.5 requires that personal wireless facilities shall be built so that it can be extended to the maximum height of 175 feet. The applicant has also sought a waiver from those specific requirements from the zoning bylaw.
 - c) Personal Wireless Facility section 3.8.10 – Visibility Test and Visibility Map in the Personal Wireless Facility Rules and Regulations. The applicant has submitted existing conditions and the proposed conditions photo simulations with a map for the views at different locations along Route 2 & the neighborhood around the proposed personal wireless facility.
 - d) All three waivers requests were granted by the Planning Board under Bylaw Section 3.10.6.18.
- 2.4 The personal wireless facility is proposed to be 100 feet in height
- 2.5 The Town of Acton hired a third party reviewer. He concluded in his memorandum that the traditional coverage question alone might not rise to Significant Gap status under Bylaw 3.10.3.16. The applicant also considers capacity to be a driver for the proposal. From this data, one can infer the proposed facility will reduce the capacity loading of the two Great Hill sectors. More specific evidence of a capacity-overload trend would come in the form of historical and present data on the subscriber traffic on the Great Hill sectors. The proposed tower is not a concealed-antenna monopole ("CAM") design. 3.10.6.4 says, "On a case by case basis, generally when aesthetic considerations are less important [than that which calls for a CAM], the Planning Board may allow Monopoles with external Flush Mounted Antennas, or external standard Antenna mounting frames that extend laterally from the Monopole".
- 2.6 The third party reviewer also stated that the Planning Board could require a condition that states "to incorporate the possibility of a fourth wireless provider in the future, the applicant must design the personal wireless facility to be adapted to be increased to the height of 120 feet without the need of coming back to the Planning Board".
- 2.7 The Personal Wireless Facility is designed to minimize any adverse visual or economic impacts on abutters and other parties in interest, as defined in M.G.L. Ch. 40A, S. 11.
- 2.8 The Personal Wireless Facility is designed to provide, in the most community-compatible method practicable, Service Coverage to a Significant Gap within the Town. The applicant shall bear the burden of demonstrating, by clear and convincing evidence, the existence of such Significant Gap.
- 2.9 The Personal Wireless Facility is designed in the most community-compatible method practicable and is necessary to satisfy a Significant Gap in service. The applicant shall bear the burden of demonstrating that other methods preferred by the Town are not feasible for providing Service Coverage to satisfy such Significant Gap.
- 2.10 The Personal Wireless Facility cannot for technical or physical reasons be located on an existing Personal Wireless Facility or Tower that would be expected to provide comparable Service Coverage. Such alternative existing location or locations need not provide full service to the entire Significant Gap if, in the determination of the Planning

Board, the remaining Gap to have been served by the proposed Facility is not Significant and/or if remaining portions of the Significant Gap can be served by new Facilities preferred by the Planning Board.

- 2.11 The Personal Wireless Facility cannot be located at any other practicably available site that is less objectionable to the general public due to technical requirements, topography, or other unique circumstances. The applicant shall have the burden of showing what alternative sites and technologies it considered and why such sites and technologies are not practicably available.
- 2.12 The Personal Wireless Facility is sited in such a manner that it is suitably screened.
- 2.13 The Personal Wireless Facility is colored so that it will as much as possible blend with or be compatible with its surroundings.
- 2.14 The Personal Wireless Facility is designed to accommodate the maximum number of users technologically feasible.
- 2.15 The Personal Wireless Facility is necessary because there is no other existing Facility or Facilities with available space or capacity available to satisfy the Significant Gap.
- 2.16 The Personal Wireless Facility is in compliance with applicable Federal Aviation Administration (FAA), Federal Communications Commission (FCC), Massachusetts Aeronautics Commission, and the Massachusetts Department of Public Health regulations.
- 2.17 The Personal Wireless Facility complies with all applicable requirements of this Bylaw, including Section 10.3.
- 2.18 The Board has received comments from various Town departments, which are listed in Exhibit 1.2 above. The Board considered these comments in its deliberations, made them available to the Applicant, and incorporated them into this decision as deemed appropriate.

3 BOARD ACTION

Therefore, the Board voted unanimously to GRANT the requested special permit, subject to and with the benefit of the following conditions and limitations.

3.1 CONDITIONS

The following conditions shall be binding on the Applicant and its successors and assigns. Failure to adhere to these conditions shall render this use special permit null and void, without force and effect, and shall constitute grounds for the revocation of this use special permit, and of any building or occupancy permit issued hereunder. The Town of Acton may elect to enforce compliance with this use special permit using any and all powers available to it under the law.

- 3.1.1 Prior to the issuance of a building permit, in lieu of constructing the sidewalk as otherwise required by the Rules, the applicant shall donate \$22,000 to the Town of Acton sidewalk fund.
- 3.1.2 Prior to the building permit, the applicant must consult with the Health Division if a hazmat permit is required.
- 3.1.3 The height of the personal wireless facility shall not exceed 100 feet. However, if the applicant chooses to modify the plan so as to accommodate an additional carrier as

recommended by the Board peer reviewer the height limit shall be 120 feet. The Board recommends, but does not require this modification.

- 3.1.4 The style of the antennas shall be installed in compliance with the Plan.
- 3.1.5 The lighting proposed shall be set on motion detectors and comply with the zoning bylaw standards in Section 10.6.
- 3.1.6 The Applicant shall record this Decision at the Middlesex South District Registry of Deeds before the issuance of a building permit.
- 3.1.7 The Applicant shall meet all requirements of the Town Bylaws.
- 3.1.8 All taxes, penalties and back charges resulting from the non-payment of taxes, if any, shall be paid in full prior to the issuance of a building permit.

3.2 LIMITATIONS

This special permit shall be limited as follows:

- 3.2.1 The foregoing conditions have been stated for the purpose of emphasizing their importance, but are not intended to be all-inclusive or to negate the remainder of the Bylaw and the Rules.
- 3.2.2 This special permit applies only to the Site identified in this decision and to the proposed use as shown on the Plan.
- 3.2.3 Other approvals or permits required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this decision.
- 3.2.4 This special permit shall lapse if substantial use thereof has not commenced within two years of the filing date of this decision with the Town Clerk, except for good cause, or if construction under this special permit is not continued through to completion as continuously and expeditiously as is reasonable. A request to extend said time limits must be made in writing to the Board at least 30 days prior to said expiration dates. The Board herewith reserves its rights and powers to grant or deny such extension, to issue any appropriate changes to the special permit and to require any appropriate modifications of the Plan.
- 3.2.5 The Board hereby reserves its right and power to modify or amend the Plan and the terms and conditions of this special permit with or without a public hearing upon the request of the Applicant, his designees or assigns, or upon its own motion.

4 APPEALS

Appeals, if any, shall be made pursuant to MGL, ch. 40A, s. 17 and shall be filed within 20 days after the date of filing this decision with the Town Clerk.

Signed on behalf of the Acton Planning Board


Roland Bartl, AICP, Planning Director
for the Town of Acton Planning Board

This is to certify that the 20-day appeal period on this decision has passed and there have been no appeals made to this office.

Eva Szkaradek, Town Clerk

Date

Copies furnished:

Applicant -
Managers Department
Owner
Acton Water District

Land Use Department
Engineering Department
Fire Department

Town Clerk
GIS
Police Department