

Minutes of the Board of Appeals Meeting, October 15, 2009

Members Present: Sherrill Gould – Chair
William Farnsworth – Vice Chair
Julia Adam – Clerk
John Cantino – Assistant Clerk
Jeffrey Yates – Member

Alternates Present: Marc Saucier
Cheryl Cowley-Hollinger – *arriving at 7:20 p.m.*
Rod Stewart – *arriving at 7:30 p.m.*

Also Present: Savos C. Davos, General Manager Littleton LELWD,
Scott Lacey Attorney for T-Mobile
Frank Kelly, SAI Communications
Scott Heffernan, T-Mobile
Please see sign-in sheets for others present.

7:15 p.m., Ms. Gould, Chair called the meeting to order.

Ms. Gould introduced the new administrative assistant Maureen Adema.

The Board reviewed the minutes of September 17, 2009 ZBA meeting.

Mr. Farnsworth updated the board on the granted withdrawal without prejudice of 19 Middlesex Drive. Mr. Farnsworth explained that the adjacent properties to this address are closer to the street than the proposed addition at 19 Middlesex Drive. Mr. Farnsworth stated the Building Commissioner, Roland Bernier sent a memo to the board stating that a building permit can be issued pursuant to section 173-10A without the need for a special permit.

Mr. Yates made motion to accept the minutes of September 17, 2009 as written.

Ms. Adam seconded the motion.

Vote: Aye 5 Nay 0 Unanimous

Review of mail. One invoice from GateHouse Media approved for payment by Chair Ms. Gould. Mr. Farnsworth asked if the stamps for ZBA invoices could be retrieved from the previous Administrative Assistant. He would like invoices to have the stamps indicating a place for approval signature and date received.

Citizen Planner Training Collaborative Fall Schedule was reviewed.

Ms. Gould took the time available prior to the 7:30 p.m. hearing to ask all present to sign in on the sign in sheets located in the back of the room. She also communicated meeting protocol and procedure.

7:30 p.m., 13 Beaverbrook Road T-Mobile Northeast, LLC

Ms. Gould opened the hearing for the petition for a Variance/Special Permit to allow a telecommunications facility in residential zoning district at **13 Beaverbrook Road**.

Mr. Lacey, attorney for T-Mobile presented the proposed telecommunication facility at **13 Beaverbrook Road, Littleton Sportsman Club** to the board members. Mr. Lacey reviewed plans located in the application. Mr. Lacey stated that the facility would need both a height variance and use variance. Mr. Lacey stated the facility would include a monopole that would be 140 feet high within a fenced in compound; a 73'x73' cement base would house the pole within a 75'x75' lease area. Existing roads would be utilized to access the site with a proposed 12' gravel access road with proposed 15' wide access easement over gravel road.

Mr. Lacey stated there is a gap in the coverage for T-Mobile in this area. The facility would be visited at the most two times a month by workers.

Mr. Lacey stated he has no issue with talking and working with Littleton Light and Water Department to explore the possible use of town property for the facility.

Mr. Heffernan, T-Mobile representative spoke to the board members about the gap in T-Mobile service on Route 495, west on Route 119. He stated calls are dropped in this area. Mr. Heffernan utilized a plot plan to demonstrate current wireless coverage, the lack of wireless coverage and T-Mobile's target area for coverage. Mr. Heffernan said the Sportsman Club location is desirable because the industrial area "here" is limited to two story building and T-Mobile needs 140' tall site.

Mr. Farnsworth asked if other locations were explored for the coverage they were looking for? Mr. Heffernan said yes, but the other properties do not meet the criteria. The ridgeline and height needed are critical to the coverage desired.

Mr. Yates asked how much reduction of coverage would there be with a shorter pole. Mr. Heffernan stated coverage is changed with every 10 feet.

Mr. Kelley, SAI Communications, Site Specialist stated that T-Mobile looked at utility poles in Westford. He stated that they needed more height. He said this site would be hidden with the coverage by the trees and conservation land. Mr. Kelly said the Sportsman's Club would receive money from the lease.

Ms. Gould asked the board to consider continuing the **13 Beaverbrook Road, T-Mobile** hearing, in order to hear the petition for Variance/Special Permit **28 White Street** to expand breezeway and add a second level to both the breezeway and two car garage.

Ms. Gould asked the audience if there was any objection to continuing **13 Beaverbrook, T-Mobile** hearing in order to hear the petition for Variance/Special

Permit **28 White Street** to expand breezeway and add a second level to both the breezeway and existing two car garage.

7:48 p.m., Motion made by Julia Adam to continue **13 Beaverbrook Road, T-Mobile** hearing with the intention of continuing the hearing at 8:15p.m.
Motion seconded by John Cantino.

Vote: Aye 5 Nay 0 Unanimous

7:50 p.m., 28 White Street

Ms. Gould opened the hearing for the petition for a Variance/Special Permit for **28 White Street** to expand breezeway and add second level to both the breezeway and existing two car garage at their residence.

Mr. Rivenburg, owner of **28 White Street** addressed the board members showing the plot plan of his property, plans of proposed addition and photos of property. He stated he is 38' from existing neighbor and the addition would be 20ft. The Plot Plan shows his property is 19' from Conservation Land.

Ms. Gould read memo from Building Commissioner, Roland Bernier. The memo stated applicant is seeking a special permit for reduced setback construction of proposed addition. Mr. Bernier's discussion with applicant suggested that the construction will encroach onto the required 15 foot setback, and that the existing construction already encroaches onto the required setback. The current footprint is nonconforming.

Mr. Rivenburg demonstrated utilizing his property plot plan that the side set back of the addition will not increase the nonconforming current setbacks. The addition will not be closer to the current lot line than the existing lot line.

Mr. Findley of 46 Beaverbrook Road and member of the Conservation Trust addressed the board, stating he was in support of the changes Mr. Rivenburg wished to make to his property.

Ms. Adam made a motion to close the hearing of **28 White Street**.
Mr. Farnsworth seconded the motion.

Vote: Aye 5, Nay 0, Unanimous

Discussion ensued among the board members. Mr. Yates stated the application was lacking the proper plans. Mr. Rivenburg replied he did not want to invest money into a project he could be told he could not do. Ms. Gould stated she understood the applicant's hesitation to invest money until he could move forward with the project. Mr. Farnsworth and Ms. Cowley-Hollinger discussed the property lines and the angle of the property lines. Mr. Farnsworth stated all the property is nonconforming and a Special Permit would be required for this addition.

Mr. Cantino made a motion to Grant a Special Permit to expand breezeway and add a second level to both the breezeway and existing two car garage at **28 White Street** as plans submitted, 173-10 B(1)

Mr. Farnsworth seconded the motion.

Vote: Aye 5, Nay 0, Unanimous

8:15 p.m., 13 Beaverbrook Road T-Mobile Northeast, LLC

Ms. Gould opened the continuance for the petition for a Variance/Special Permit to allow a telecommunications facility in residential zoning district at **13 Beaverbrook Road.**

Mr. Lacey restated that height and use variances are being requested for a telecommunications facility **at 13 Beaverbrook Road** from T-Mobile. He stated that if the board was interested in a site visit to please let him know. The proposed facility would have nine antennas at a height of about 137' and that five different carriers could use this site.

Mr. Danos, General Manager of Littleton Light and Water Department introduced himself and stated he was the caretaker of all cell towers in Littleton. He stated he had not been contacted by any of the individuals representing T-Mobile tonight regarding a new wireless communications facility in the Town of Littleton.

Mr. Danos prepared a written letter for the hearing that he summarized for the board. The letter included the historical background of cell towers in the Town of Littleton, Variance Request Discrepancies and Denial of Variance Requests.

Mr. Danos stated that approximately four years ago, a T-Mobile representative (an individual no longer with T-Mobile) approached Littleton Light and Water having interest in building cell towers in the town. Two sites, both on municipal land were desirable to T-Mobile. The first choice was the Westlawn Cemetery and the second was Well #2. Currently the cemetery site is in litigation. Mr. Danos stated he believes the Well #2 site is a great site for T-Mobile to look at for a cell tower. They could have a 120' cell tower. He stated a variance would be needed. Mr. Danos told the board the town receives \$250,000 per year from cell towers. Mr. Danos said he was willing to work with T-Mobile to discuss the Well #2 location.

Ms. Gould thanked Mr. Danos for his input, time and for the work he and others have done in regard to the cell towers in the town.

Ms. Cowley-Hollinger asked how many telecommunications could possibly come to town. Ms Gould stated the number of towers that could come to town was not relevant in this hearing.

Mr. Danos said that the way wireless companies come to town is via a bid process. It would be about a two week process. Littleton has five cell tower sites used by six companies.

Well #2 is adjacent to Conversation Trust land, full view of Beaverbrook. The closest residents are 800ft to 2000ft.

Ms. Gould read letters received from concerned residents. The letters were from Rick Findley, 46 Beaverbrook Road, Margaret S. Wheeler, 30 Beaverbrook Road, Rev. Mary LePage, 14 Beaverbrook Road, Jill Brown, 32 Beaverbrook Road, and Jason and Lelia Leary, 38 Beaverbrook Road.

Ms Alley of 27 Beaverbrook Road addressed the board on behalf of herself and neighbors Eric and Jaime Kaled who reside at 31 Beaverbrook. She summarized a hand delivered letter she prepared in opposition to the use variance sought by T-Mobile to the board members. Ms. Alley said her home would be the closest to the proposed cell tower. Ms. Alley questioned the measurement given of the closest house to the proposed cell tower. She stated keeping the green space in Littleton should be a priority. She believes the Well Site is more agreeable.

Ms. Alley stated that T-Mobile talked about wants tonight not “needs”. T-Mobile did not prove any hardship. Ms. Alley identified herself as an attorney and sighted the case of Nextel vs. Brookline case. Ms. Alley stated she believed the Sportsman Club was a better deal for T-Mobile vs. the town site. The Sportsman Club is a better financial deal for T-Mobile in her opinion. Ms. Alley stated she is in support of denial of variance. She believes Well #2 is much more a benefit to the town.

Public Input

Ms. Pickett, 36 Foster Street stated there are three options for this hearing to go at this time. 1. The board is in within its right to deny petition. 2. T-Mobile, applicant to withdraw and 3. Continue the hearing. The continuance would be 60 days to the date of December 18th. Ms. Pickett suggested that the board add an extension to the continuance, so the process is not rushed.

The board would not deny petition at this time. The applicant would not withdraw at this time.

The hearing would receive a continuance with an extension to February 1, 2010. Meetings to be held November 19, 2009 and December 17, 2009. Extension will be to February 1, 2010. The November 19, 2009 meeting is an information status report meeting not a hearing.

Mr. Farnsworth requested a Crane test to be done before the next meeting.

Mr. Kelly stated there could be issues with getting a Crane Test. Access to the site would be difficult. The crane can't get there across Beaverbrook and the crane would be close to residences. Mr. Kelly stated he would prefer a Balloon Test.

Mr. Farnsworth preferred to have a Crane Test. Balloon Tests can be unreliable. Wind, weather and other variables make the test unreliable.

Mr. Kelly will work on getting a Crane Test.

Ms. Gould asked for any additional public input. Mr. Mitchell 32 Beaverbrook Road stated he had sent in a letter also, and would resend it. He stated he believed there needs to be 500ft from a divided highway. Mr. Mitchell also expressed concern for the wetlands and protective species on the property. He stated there are spotted salamanders on the parcel. Mr. Mitchell said environmental approvals would have to be obtained.

Ms. Wheeler of 30 Beaverbrook Road asked the board how was it possible for T-Mobile to be developing the land already? Ms. Gould stated that was not a matter for this board.

Mr. McIver spoke about the “watershed” at the site of the Sportsman’s Club.

Ms. Gould asked Mr. McIver if he could provide the board with a summary of the watershed. Mr. McIver said he would get the information to the board.

Discussion among board members ensued. The November 19, 2009 will be an informational meeting only. There will be no posting in the newspaper and no abutter notices sent. The meeting details will be available on the town website and available at the Town Hall.

The December 17, 2009 meeting will be a continued hearing on the Variance/Special Permit of T-Mobile for a telecommunications facility in residential zoning district at **13 Beaverbrook Road**. The hearing time will be 7:15 p.m. or 7:40 p.m. depending on what other matters come before the board.

Mr. Farnsworth made a motion to continue the discussion of **13 Beaverbrook Road, T-Mobile** Variance/Special Permit to November 19, 2009 at 7:30 p.m. as an informational status report meeting.

Mr. Cantino seconded the motion.

Vote: Aye 5, Nay 0, Unanimous

Mr. Farnsworth made a motion to continue the hearing of Variance/Special Permit of T-Mobile for a telecommunications facility in residential zoning district at **13 Beaverbrook Road, at 7:40 p.m.,**

Ms. Adam seconded the motion.

Vote: Aye 5, Nay 0, Unanimous

The extension of time contract between T-Mobile and the Town of Littleton was signed by Mr. Lacey, attorney for T-Mobile and Sherrill Gould, Chair of the Board of Appeals Town of Littleton. The extension date is February 1, 2010.

Meeting Adjourned at 9:35 p.m.