

TOWN OF CAPE ELIZABETH
MINUTES OF THE PLANNING BOARD

March 15, 2016

7:00 p.m. Town Hall

Present: Peter Curry, Chair
Josef Chalot
Carol Anne Jordan
Elaine Falender

Jonathan Sahrbeck
Henry Steinberg
Victoria Volent

Also present was Maureen O'Meara, Town Planner.

Mr. Curry opened the meeting and called for approval of the minutes of the February 22, 2015 meeting. The minutes were amended and approved as amended, 5-0 (1 abstain).

OLD BUSINESS

Verizon Wireless Water Tank Antennas Site Plan - Verizon Wireless is requesting Site Plan Review to install antennas on the water tank and a 10' x 16' concrete pad supporting equipment cabinets and a generator located at 11 Avon Rd(U12-12), Sec. 19-9, Site Plan Public Hearing.

Ms. O'Meara noted that there were several corrections she wished to make to the memo she had prepared for the Board. She noted that there is no comment letter from the Town Engineer this month. On page 3, she cited sec. 19-3-3 (C) in the Tower and Antenna Performance Standards, it should be 19-3-2. On page 6, item 11, the word general should be generate.

Scott Anderson, the applicant's representative, showed some plans on the screen. He said they propose 3 antenna arrays at the top of the tank. They will have a 10' X 16' concrete pad. That will have 2 cabinets, one with the electric equipment, and the other with a battery cabinet. There will also be a backup 10 KW diesel powered generator next to the cabinets on the concrete pad. The generator will be tested once a week for 20 minutes or so during the day, and will only run in the event of a power failure after the batteries have died.

Power will run underground from a telephone pole across the street on Avon Road. They will use the existing driveway and parking lot for access. They propose some evergreens along the existing fence to provide additional buffering.

Mr. Curry asked for confirmation that the generator will be 10 KW. He also noted that generators used to provide emergency power to a home are anywhere from 7 KW to 20

KW. Mr. Anderson replied that this is different from one for household use. It has a muffler on it and is in a case designed to dampen the noise.

He showed more plans of the project and said each of the 3 arrays will have 4 antennas and will be shielded by a shroud. The fiber cable will run down the side of the tank. The cable tray and the shrouds will be painted the same color as the tank. They will add a wooden stockade fence around 3 sides for further buffering. One side of the fence will be metal. The gate will be locked. There will be no motion detectors and no lighting at all.

He said the tank and the land is owned by the Portland Water District (PWD) and Verizon Wireless would do nothing to interfere with another carrier who would wish to co-locate on the site.

The initial remediation of the lead has been done. There is no evidence of ongoing lead contamination. PWD will repaint the tank and Verizon will pay up to \$50,000 of that cost. The DEP will do another inspection after the tank is painted. Verizon will not begin any work or install any equipment until all this is finished.

Locating the equipment inside the tank would create greater noise impact because that would need a larger HVAC unit. There will be one small sign on the fence. They do not plan to remove any trees to install the underground electric service. They may need to cut some branches or trees for the sake of safety at the installation.

Mr. Steinberg asked if they would put the shroud 360 degrees around.

Mr. Anderson said the individual shrouds would be less bulky at the top of the tank. Then Mr. Anderson talked about the legal issue of whether it was completely concealed and if they would need to come to the Planning Board at all.

Mr. Curry asked if there was sound buffering inside the fence.

Mr. Anderson said they came back with a sound engineer. When the fan and the generator are running the decibel level is 52, which is less than the 55 daytime limit. When the fan is running by itself it will be 33-45, which is below the standard. So they feel no additional sound buffering is needed.

Mr. Curry opened the public comment period.

Pavel Darling of 9 Avon Road said he had submitted written comments. He would request conditions 1. no construction until the DEP has signed off. There should be ongoing testing, maintenance and remediation of lead paint on the tank. 2. He would

like to be assured that any future problems would be remediated and the terms be enforced.

Brad Kauffman of 1 Avon Road said he supports a cellular facility at the water tower so long as that facility complies with the Town's Zoning Ordinance. He thinks concealment continues to be an issue. He urges the Board to consider a wrap around shroud. He is concerned about noise. He cited the noise standard that includes intermittent noise levels and said Verizon needs to apply noise abatement.

Priscilla Armstrong of 18 Avon Road does not think Verizon meets all of the Ordinance requirements. She is concerned about the buffers and security. She is concerned about the houses on Trundy Road that have a better view of the tower. The current fence is 6 ft. tall. The fence needs to be brought up to the code. In 2004 the Town rejected a proposal because it would not provide good coverage due to the wooded aspect of the area. Verizon has not been clear about what neighborhoods would actually have improved cell phone coverage with this project. She would like to have a map on record so we know who will benefit from this. Please hold Verizon accountable for meeting the ordinances we have in place. She requests a moratorium until the Town Council has finished its work on cell phone coverage.

Roy Herrmann of 2 Avon Road wants a consideration of the cumulative effect of other co-locators at the same site. He is concerned about what standards a co-locator would have to meet.

Anthony Armstrong of 32 Lawson Road said the Verizon plan is deficient in several ways. There is an inaccuracy in the plan regarding the whip antennas. He is concerned that they are in the wrong location and said to be 18 ft. high. They are less than 18 ft. high. The tree buffer does not meet the performance standards. The lack of involvement of the water district is a problem. The failure to account for the future cell phone companies that we know are coming is another problem. He would like to address the judge's decision and the concealment issue. He does not agree with Mr. Anderson's interpretation of Judge Levy's decision.

Bob Cronin of 7 Avon Road said that in the 1990's Verizon came forth with a plan for this tower. It needed to be rezoned and the Planning Board rejected it. The Planning Board rejected it again in the 2000's. So Verizon changed the rules to make it a permitted use. That leaves a bad taste in his mouth. Once Verizon gets its foot in the door, AT&T will come in, Sprint and T Mobile can come in. This will become an intense telecommunications facility in a residential area. He cited the New York Times who predicts an increase in the need for facilities to service the demand for more telecommunications capacity.

Aaron Buterbaugh of 15 Trundy Road said his concerns are noise and violations of noise levels. He is concerned about the combined noise levels of two, three or four other companies on the site. What will be the combined noise levels of each carrier's generators and HVAC equipment running at the same time. If each carrier's unit meets the standard, what will be the combined level be? Is locating an industrial use tenant close to 11 children's homes what Cape Elizabeth really wants? He is concerned about his property value and the noise levels. Diesel is not the answer. It is noisy, it smells when it is running and is not a natural noise. He suggests an alternative which would not have the same negative qualities.

Daryl Hemeon of 8 Avon Road said he is a technologist by profession. He wants stipulations on the lead abatement and he wants alternative quiet energy sources to be considered. He wants the Board to be planful if other companies come on board. He wants someone to check back and see that the companies are complying with the rules and not have just a onetime approval.

Deb Hatton of 10 Avon Road asks that the Town's Zoning Ordinance not be compromised because there is a big bully in town. Verizon's suing the Town was not an act of collaboration, it created an atmosphere of fear and intimidation. We just ask that Verizon adhere to our planning process and our codes. This new tower is not going to solve our cell issues. It will not close the gaps that we have. As cell usage expands we will need more towers to support that bandwidth. Other neighborhoods will find themselves in our situation, grappling with Town needs versus neighborhood values. She wants the Board to hold Verizon to the standards and that there is recourse if they don't comply.

Dana Crovo of 5 Avon Road is a physician. He is concerned about the effects of industrial installations in a residential area. We don't know what the health effects are.

Todd Forsyth of 13 Trundy Road said he is concerned about the issue just raised by the previous speaker. He is not in opposition and recognizes the need for cell coverage. He wants ongoing testing of the promises made about the noise, the maintenance of the location, the smell of diesel. He is also concerned about co-location. We know that AT&T is on the site with a lease. Sprint and others will also be there so there will be cables running down the side and aerials all around. That's not the vision I had for my backyard and my neighbor's backyard.

Beth Lubetkin of 16 Salt Spray Lane said she is aware of all the concerns. She thanks the Town for recognizing the importance of cell phone coverage. She said they have very poor or no cell coverage. She is in support of better cell coverage and she would like to see what coverage is going to be obtained from this project. There is a safety issue if there are areas of Town where there is no cell phone coverage.

Frank Bellino of 35 Hunts Point Road respects everything the neighbors have said, but he wants the Board to consider the safety of the folks who use cell phones when they go out for a walk. If there is an accident or emergency, there is no way to call out. At home he runs a landline, because he has to. Please consider that there are areas where you cannot call for help if you need it.

No one else came to speak, so the public hearing was closed.

Mr. Curry said he would like to organize the discussion into these issues:

1. concealment
2. lead paint
3. noise
4. co-location
5. access lane to the property
6. fence height
7. performance guarantee
8. abandonment of the property

Concealment: Mr. Curry said it is not in a Tower Overlay District, but in the definition. He cited language in the Ordinance that says the alternative structure (water tower) would conceal the antennas. He did say that he thinks that making the antenna invisible is over-reading the statute.

Mr. Steinberg said that visiting the site made him aware that the tower looks like a rotting rust bucket. He thinks repainting and reusing it is a good idea. He said half a shroud brings your eye to it, and a 360 degree shroud would look like a complete installation.

Mr. Chalot asked if there was a shroud all around would you still be able to have a co-locator under the shroud.

Mr. Anderson said any co-locator would have to be at least 6-10 ft. away in height. There are no technological reasons against a 360 degree shroud.

Ms. Falender asked how you chose those three spots to put your shrouds.

Mr. Anderson said they were chosen to meet the coverage objectives of the site. Each shroud will have 4 antennas.

Mr. Curry asked if they have a coverage map?

Mr. Anderson said they do have one, but since it was not a requirement here they have not filed one. He will supply one.

Ms. Falender asked if our Town Attorney has been consulted on the legal issue that has been raised.

Ms. O'Meara said he is on board with the Planning Board considering this application.

The Board then discussed the issue of how concealment was not the same as completely blocking one's view.

Mr. Anderson noted that the tank is the most visible thing on the site. Anyone coming upon it would see the tank and not necessarily the antennas on the top of it.

Mr. Sahrbeck said there is the new construction of the concrete pad at the bottom of the tank.

Ms. Jordan said they need to consider this in two parts. The antennas and the concrete pad are two separate issues.

Lead Paint: Mr. Curry said there is a note on the plan that Verizon would not proceed until the tower has been scraped and repainted.

Mr. Anderson said it is his understanding that they have remediated the lead on the ground and that the DEP will require the PWD to retest after the painting is finished.

The Board than discussed with Mr. Anderson whether they need a stronger guarantee than the note on the plan. Mr. Anderson reiterated that Verizon will comply with whatever the DEP requires.

Mr. Curry wants the PWD to have an obligation to the Town. We have no recourse against the PWD.

Ms. Jordan wants to have a clear obligation for maintenance going forward.

After a discussion of whether Verizon could be stopped if the PWD does not go ahead with the remediation, Ms. O'Meara said they would be unable to go ahead because of the note on the plan.

Mr. Anderson said the purpose of the note was to indicate that whatever the DEP required, Verizon would comply with it.

Mr. Curry thinks the PWD should be a party to this project.

Ms. Falender would like to condition this approval on DEP certification that all lead remediation has been done. No Verizon work can be done until that certification is obtained.

Ms. Jordan also wants to see a condition that the water tower should be painted even if the DEP doesn't require it.

Noise: Ms. Jordan suggests that there be a post-installation study of whether the numbers presented actually comply with the requirements.

Mr. Scott replied that the fan, which will run continuously is well below standard. The generator, and the fan together will be below the standard for daytime use. They are fine with the post construction monitoring.

Mr. Steinberg was concerned about the nature of the sound and how it will blend into the ambient sound.

Mr. Sahrbeck said he is satisfied with the sound studies, but he is concerned about the possibility of co-location. He is not sure we can address this now, because this is what we have in front of us right now. He suggested that they consider more sound buffering on the site.

Mr. Anderson said it is speculative to consider more co-locators. The tower is only 80 ft. high and if AT&T came in they would have to be 10 ft. below us. If anyone else came in, it would be another 10 ft. below. It loses feasibility at that point.

Ms. Falender said it has been said that there is newer technology for the generator etc, that would be quieter. We should do all that is possible at this time to make it quieter since we need to consider co-location.

Mr. Anderson said we have shown that we are in compliance with your noise ordinance. The generator and the fan together come in at 52 decibels and your standard is 55 decibels.

Mr. Curry said he gets a sense that the Board would like them to dampen the sound further instead of just getting under the wire on the sound.

Mr. Anderson said if they make it a condition of approval, Verizon will comply.

Co-location: The Board had no further thoughts on Co-location.

Access to the property: Mr. Chalot said he is quite concerned that not much attention has been paid to what is going on at the base of the tower. He noted that there is no buffering of the tower at the base. As you walk down the road there is nothing blocking the view of the tower. He would like to see better definition of the driveway, reducing the width from 48' to around 24' and more dense buffering. He would like better adherence to the buffering standard. (Mr. Chalot referred to the submitted site plan and sketches he added to the plan during his remarks.)

Mr. Anderson said there is grass on either side of the driveway. They propose to put a split rail fence to delineate the parking area. They also propose additional vegetation to provide buffering.

There was a discussion of parking, buffering standards and what standards apply to this project.

Mr. Sahrbeck said he agrees with Mr. Chalot's comments. He also favors limiting the size of the driveway to discourage people from congregating or interfering with the tower.

Mr. Anderson asked that they not be held to the buffering standard for a tower.

Ms. O'Meara said she does not think they need to go to the tower standards, but to site plan review standards. She recommends that they get help from a landscape architect.

Mr. Chalot said he agrees with Ms. O'Meara.

Fence height: The Board discussed whether a 7ft. 6in. fence was ok, or whether barbed wire was needed at the top for security.

Mr. Anderson said they would make sure it is 8 ft. all around.

Ms. Jordan said she wants it to be 8 ft. all around.

Ms. Falender said we need to apply the tower standards.

Performance guarantee: Yes they will have one.

Ms. Falender asked about the mistaken location on the plans of the antennas that exist on the top of the tank.

Mr. Anderson said they have corrected the plan. They have not, or will not alter the antennas, so they are just part of an existing condition.

Since the Board is not ready to finalize their decision tonight, they are going to have a list of what they want to see before the next meeting.

Mr. Anderson said that the top of the list is a buffering plan and wanted guidance from the Board as to what they want.

Ms. O'Meara said she advises the applicant to avail themselves of professional services.

The list includes a revised plan showing the corrected location of the antennas.

Mr. Sahrbeck said he would like to see that RF report that will show what areas would be covered.

A condition of approval will be that no work will be done until the tower is painted and lead remediation is taken care of. They will need something in writing from the DEP that that is finished.

There was a discussion of making the PWD become a co-applicant. The concern was how to be sure that the PWD is complying with the DEP order. The result was that they were going to beef up the note on the plan and make it a condition of the approval that Verizon may not proceed until all the DEP conditions are met.

On the issue of noise it was agreed that the additional buffering would be added to the fencing.

On co-location they agreed to modify the language in the note to comply with the Ordinance.

Ms. Jordan made the following motion:

THEREFORE BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Verizon Wireless is requesting Site Plan Review to install wireless antennas on the existing water tower located at 11 Avon Rd, and to construct a 10' x 16' concrete pad at the base of the tower to support equipment cabinets and a generator be tabled until the regularly scheduled meeting April 25, 2016 meeting.

Ms. Falender seconded and the motion passed, 6-0.

Mr. Sahrbeck left the meeting.

Ms. Volent arrived at the meeting.

Mr. Steinberg made a motion to suspend the rules to take up a new item at this time (after 10 pm.).

Ms. Jordan seconded and it passed 6-0.

NEW BUSINESS

Cape Chiropractic & Acupuncture 3-lot minor subdivision and 2 Mixed Use Buildings Site Plan - Two Penguin Properties LLC are requesting Minor Subdivision Review of a 3-lot subdivision and Site Plan Review of 2 buildings containing 6,205 sq. ft. of medical office space, 10 multi-family residential units and a 357 sq. ft. building connector, located at 12 Hill Way (U22-74), Sec. 16-2-3, Minor Subdivision Completeness and Sec. 19-9, Site Plan Completeness.

Mr. Curry said this application will only be reviewed tonight on the issue of completeness. The merits of the application will not be considered tonight.

Amber Myerowitz and her husband is Dr. Zeb Myerowitz are the ones proposing the project. They plan to not only practice at this location, but also to live at this location. She introduced the WBRC team, Rob Frank, engineer and director of civic and commercial studio, John Kenney, civil engineer, Jocelyn Boothe, Architect and Will Pogar, Architect and Region Director.

Robert Frank showed plans and maps of the project. He said it is an infill project in the Town center District. The property is on Hill Way. There are two things before you. One is a land subdivision. They are proposing 3 lots. Lot 1, of 1.3 acres is the lot that will be subject to site plan review as a mixed use development. Lot 2 consists of the existing farmhouse, which is a 2 unit residence and is .43 acres. Lot 3 is currently undeveloped, with no plans for development. The development on Lot 1 consists of a mixed use project. It is a 10 unit town home on the upper floors and on the ground level it will be medical office space. The building 1 footprint is 3789 sq. ft.. The building 2 footprint is 2416sq. ft. A small connector that will provide access into the lower level office space is between the two buildings.

Mr. Frank then outlined the parking areas for all the buildings and the uses. The requirement for all uses is 50 spaces, and they have provided 51. They showed proposed sidewalks and noted that Hill Way is undergoing some changes and their proposal will be modified as that new plan gets finalized by the Town. He showed plantings and grading and storm drainage.

John Kenney talked more about drainage. There is a catch basin at Hill Way and Ocean House Road. They will use porous pavement which will allow drainage right through the pavement. A rain garden will be incorporated into the plan. He showed utility

plans of water, sanitary and electric service. The underdrain system for the porous pavement was shown.

Mr. Frank then showed how it fits into the surrounding buildings in respect of height and bulk.

Jocelyn Boothe said they have designed these two buildings to represent a traditional coastal home. She showed pictures of what the buildings will look like and how they meet the design criteria. Because of the slope of the lot, 2/3 of the building is designed to look like a 2 story building.

The design team showed samples of the materials they are planning to use. There were samples of shingles, trim, stone base, and the colors will be a neutral palette.

Ms. Boothe said some of the height reducing techniques they have used are dormers, gables, woven corners, accent bands, and articulation of surfaces. She also showed the entry landscaping with trees and fencing.

The public comment on completeness was opened.

Chris Straw of 597 Shore Road said he cannot tell from the presentation, but the required minimum setback for a corner lot is the minimum front on each street. He could not see a depiction of the setback from Route 77 to the parking lot.

John Voltz of 33 Philip Road said he did not see a figure for the total square footage being developed. He said there is no elevation of what it will actually look like when it's done with the trees that will either be there or not. He said that because of the lateness of the hour, he saw several people who would have liked to be here, have left.

No one else came forward to speak, so the public comment period was closed.

Ms. Volent asked about the Engineer's letter and his comments.

Ms. O'Meara said the comments were to the merits, not completeness and that she expected that the applicant would address them at a later date.

The applicant confirmed that they will address those comments.

Ms. Falender asked about the parking on Lot 2.

The applicant replied that there is existing parking on Lot 2.

Ms. Falender was concerned about the calculations of parking did not include the requirement for Lot 2.

There was a discussion about a sidewalk at Lot 3. It was determined that since Lot 3 is not being developed right now, the Planning Board will consider a waiver of that sidewalk on Scott Dyer Rd.

There was a further discussion of the setbacks and how they have complied with the ordinance.

They have talked about how the plans might change because of the changes proposed for Hill Way.

Ms. Volent then raised some points about the plans. She looked at the plans of the lighting and had some questions about those plans. She questioned the open space calculation and the open space impact fee. She also questioned the lack of specifics on the phasing.

Mr. Chalot made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Two Penguin Properties, LLC for Minor Subdivision Review of a 3-lot subdivision and Site Plan Review of two buildings containing 6,205 sq. ft. of medical office space, 10 multi-family residential units and a 357 sq. ft. building connector, located at 12 Hill Way, be deemed complete.

Ms. Jordan seconded and it passed, 6-0.

The Board scheduled a site walk for Saturday, March 19, 2016 at 7:30 am.

Ms. Jordan made the following motion:

BE IT ORDERED that the above application be tabled to the regular April 25, 2016 meeting of the Planning Board, at which time a public hearing will be held.

Mr. Chalot seconded and the motion passed, 6-0.

No one came forward for public comment.

The board voted unanimously to adjourn at 10:55 pm.

Respectfully submitted,

Hiromi Dolliver
Minutes Secretary.