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STAFF COMMENTS

ZONING BOARD OF APPEALS MEETING

May 13, 2016

Case # 4228: **SPECIAL PERMIT**
Utility Pole #370
Kathleen Street
Map: 132, Lot: 509

Owner: Eversource Energy

Applicant: Cellco Partnership d/b/a
Verizon Wireless c/o
Marisa Desautel, Esq.

Overview of Request: The petitioner has submitted an application for a **Special Permit** relative to the subject property located within a **Residential A [RA]** zoning district. The petitioner proposes to install a Cloud Radio Access Network (C-RAN) unit for wireless communication on an existing utility pole #370 owned by Eversource Energy. The utility pole is located within a private utility easement along Kathleen Street; therefore the project requires a special permit from the Zoning Board of Appeals for wireless communication facilities.



Utility Pole #370
Looking northeast from Kathleen St.

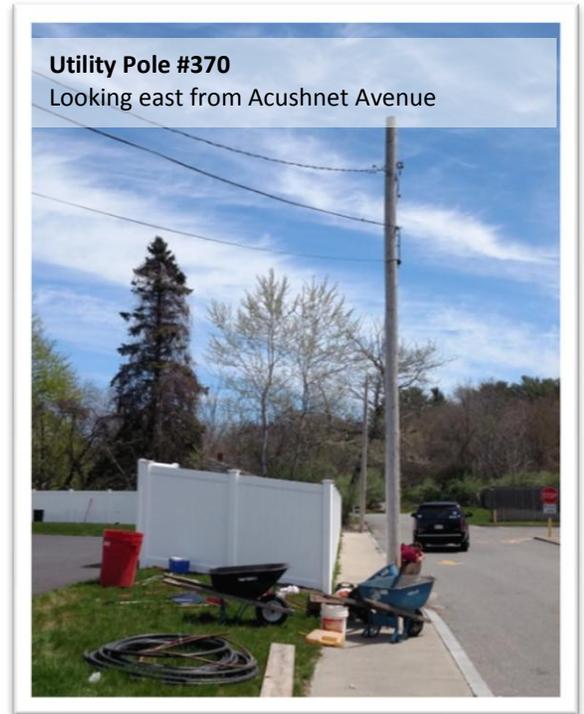
As with all Special Permits, the ZBA must determine that the benefit to the City and the neighborhood outweighs the adverse effects of the proposed use.

In regards to special permits for wireless communication facilities [WCF], the board shall consider each of the following in its determination:

- a.) communication needs served by the proposal;
- b.) traffic flow and safety, including parking and loading;
- c.) adequacy of utilities and other public services;
- d.) neighborhood character, including aesthetics;
- e.) impacts on the natural environment, including visual impacts;
- f.) and potential fiscal impact, including impact on city services, tax base, and employment; and
- g.) that existing or approved facilities cannot accommodate or reasonably be made to accommodate, the equipment planned for the proposed facilities.

Additionally, all WCF proposals are subject to the conditions of Ch. 9 §4950 of the New Bedford Code of Ordinances incorporated into these staff comments.

Existing Conditions: Located within a privately held utility easement along Kathleen Street, the existing utility pole, itself, stands 29' in height. It is located on a sidewalk on the north side of Kathleen Street, a private road located in the far north end off of Acushnet Avenue. This street serves as an entrance to the Walgreens and provides access to the residential properties northeast of Walgreens. Kathleen Street has shared private ownership. The north portion owner granted a utility easement to New Bedford Gas and Edison Light Company in 1966. Through company acquisitions and mergers the easement was assigned to subsequent utility companies, it is currently held by Eversource Energy (d/b/a NStar Electric). The attorney representing this petition before the ZBA has presented staff with a letter discussing this easement in greater detail and it is anticipated that this material will be presented to the board at its hearing with a request to enter the documentation substantiating said easement into the record.



The surrounding neighborhood may be characterized as being predominantly residential to the north and east sides of the site with a mix of some commercial uses along Acushnet Avenue. The immediately adjoining northern abutters to the pole location are single family residential properties. The direct south abutter is the delivery area for Walgreens. The photo to the right shows the northern abutting property has a 6'± tall fence located approximately 4'± north of the utility pole.

Proposal: The petitioner proposes to install a “cloud radio access network” (C-RAN) unit on the existing utility pole. The unit is considered a “self-contained C-RAN node” which includes: a cylindrical canister antenna (28.7”± tall, 12”± in diameter, and weighing 26.7± pounds); remote radio head; electrical junction box and meter; and fiber optic and power connections. The electrical meter will be the lowest mounted portion of the unit, installed at 8'± from grade. Wires for the unit will connect at the existing height of overhead utility wires at 26'± and 22'± from grade; the top of the canister antenna will be mounted at 18.8'± from grade and extend approximately 3.5'± northerly from the utility pole.

NOTE: As is standard procedure, an independent wireless consultant has been retained on behalf of the ZBA to ensure a complete review of the installation of the proposed C-RAN unit and anticipate that the consultant’s technical overview report will be available to the board members for their consideration at the board’s meeting.

The applicant indicates that this installation will improve telecommunications coverage for the residents of the area, “which has dense voice and data demand”. The petitioner highlights that the installation will be on a pre-existing utility pole. The applicant’s petition presents the design as being one which is “discreet and intended to target small areas of great demand and usage,” while “eliminating the perceived adverse visual impact of larger ‘macro facilities’ like traditional wireless towers”. The petitioner states the equipment is “designed to look like a traditional electric transformer, which matches the character of the surroundings.” As part of the application, the petitioner describes the project as a one-time installation that will not have any negative fiscal impacts on the city or its inhabitants and has no anticipated impacts to traffic flow, or the natural environment. The applicant indicates the condition of Ch. 9 § 4951-4953, in regards to monopoles and freestanding facilities, does *not* apply for this application.

With respect to the other conditions, the petitioner notes there is no structure associated with the project, that the height is integrated with the existing utility pole, fencing will not be required as entry is not possible with the pole attachment, and the applicant's authorized operation frequencies are separate from existing television, radio, emergency systems and, public safety.

For Board Member Consideration: This board has previous reviewed free standing facilities such as monopoles and lattice towers as well as the installation of units on existing structures such as smokestacks. The Board should note the proposed installation—unlike most it has previously seen—is designed to be attached onto an existing utility pole. There is no freestanding facility such as a monopole or lattice tower proposed as part of this application. This petition is unique as the petition is for an installation on a utility pole within a private easement. Petitions for utility poles located in the public right of way fall under the purview of the City Council acting in its capacity as a Special Permit Granting Authority. Because this application is for a wireless device that will be located in a private easement and not within a public right of way the case for the Special Permit must be heard by the Zoning Board of Appeals.

Without benefit of the technical information that is anticipated from the wireless consultant's review, Planning staff does wish to express concern for the possibility of any potential impacts to abutting residential properties as a result of the proposed installation of the C-RAN unit as presented. Given the commercial corridor along Acushnet Avenue and the location of the directly abutting commercial property, the board may wish to inquire as to the need for the unit to be installed on this specific utility pole facing a residential use rather than another pole entirely within a commercial setting. In addition, the board may wish to also ask the petitioner why the C-RAN unit [cylindrical canister antenna] is proposed for installation in such a manner as to be facing the residential abutter rather than the commercial abutter.

In further reviewing this application against the city's Code of Ordinances c.9 §4950 which specifically lays out threshold criteria for the evaluation of wireless communication facilities [noted below], staff offers the following additional considerations by section:

§4951 To the extent feasible, the facility shall be designed and constructed so it is capable of accommodating co-location. Facilities shall be designed to structurally accommodate foreseeable users (within a ten-year period), including wireless services providers and local Police, Fire and Ambulance companies, unless the applicant demonstrates to the Zoning Board of Appeals that it is technically infeasible to do so.

This section is not applicable given that the proposal seeks to place a wireless device on an existing utility pole, not a new free standing facility.

§4952 The height of any facility shall not exceed the height restrictions of the zoning district within which the facility is to be located absent a specific finding by the Board, in addition to any finding required under Section 4940, that such additional height is necessary to meet the needs of the facility and/or the City. Existing ground elevations may not be altered or distorted in order to achieve additional height.

The proposed installation height is below the height of the existing utility pole and below the maximum height allowed in the zoning district.

§4953 Freestanding facilities shall be set back from the nearest residential dwelling by a minimum distance equal to the height of the facility (as measured to its highest point, including antennas, etc.) and further, said WCF shall not be located closer than twenty-five (25) feet from any street or lot line.

This section is not applicable given that the proposal seeks to place a wireless device on an existing utility pole, not a new free standing facility. Staff also notes the 29' utility pole is located approximately 60'± from the nearest residential dwelling.

§4954 WCFs may be placed upon or inside existing buildings or structures, including water tanks and towers, church spires, electrical transmission towers, and the like. In such cases, the facility height shall not exceed two (2) feet above the height of the existing structure or building.

The height of the proposed antenna is 9' below the height of the utility pole to which it will be attached.

§4955 All structures associated with WCF shall be removed within one year of cessation of use at the expense of the applicant. The Board of Appeals may require a performance guarantee to effect this result, including a bond of an amount to be determined by the Board of Appeals.

The petition states "there is no structure associated with the proposed facility." Given the request to attach a small unit to an existing pole, it would appear that a performance guarantee is not necessary in this instance. That said, the ZBA may wish to consider a condition requiring removal within one year of cessation of use of the unit should it feel that approval of the application is warranted.

§4956 To the extent feasible, all network interconnections from the communications facility shall be via land lines. **Determination as to compliance and/or applicability of this section should be reviewed with the petitioner in the course of the board's deliberation.**

§4957 Existing on-site vegetation shall be preserved to the maximum extent feasible.
As proposed this condition is met.

§4958 The facility shall minimize, to the extent feasible, adverse visual effects on the environment. The Zoning Board of Appeals may impose reasonable conditions to ensure this result, including painting, lighting standards, landscaping, and screening.

The proposed C-RAN unit is similar in design and scale to transformers and other typical utility pole equipment but staff reiterates its concern with the need of the cylindrical canister antenna to be installed facing the residential abutter rather than the commercial abutter.

§4959 Traffic associated with the facility shall not adversely affect public ways.
No traffic impacts are anticipated as proposed.

§4959A Fencing may be required to control unauthorized entry to the WCF.
Fencing is not required to control unauthorized entry to this WCF as proposed.

§4959B. No interference to existing broadcast television, cable television, or radio signals, including emergency systems and public safety communications, shall be permitted from the WCF or components thereon. If interference occurs, the applicant must remedy the interference within the time period affixed by the Zoning Board of Appeals.

The ZBA may wish to solicit confirmation from the petitioner's representative in the course of its hearing on this matter to ensure its satisfaction (and documentation as to testimony within the minutes of the hearing) that there shall be no interference to broadcast television, cable television, or radio signals, including emergency systems and public safety communications. As required, the board should set a time period the applicant must remedy any possible interference and may wish to consider doing so through a condition if the membership moves toward approval of the petition.

§4959C The Zoning Board of Appeals may require an applicant to pay for costs incurred by the Board to review the application for a WCF. These costs may include, without limitation, engineering, planning, technical or legal consulting services necessary for review purposes.

The petitioner has paid all required application fees and associated consultant fees.



Utility Pole #370, Kathleen Street

NOTE: Utility Pole location is approximate and not to scale; for discussion purposes, only.

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Google earth

41°42'03.38" N 70°56'06.75" W elev 113 ft eye alt 1223 ft