



JONATHAN F. MITCHELL
MAYOR

City of New Bedford
ZONING BOARD OF APPEALS

133 William Street, New Bedford
Massachusetts 02740
Telephone: (508) 979.1488
Facsimile: (508) 979.1576

Registry of Deeds Use Only:

NOTICE OF DECISION

Case Number:	#4228			
Request Type:	Special Permit			
Address:	Utility Pole #370 – near Kathleen Street assessor's map 132 lot 509			
Zoning:	Residential A Zoning District			
Utility Pole				
Recorded Owner:	Eversource Energy d/b/a NStar Electric			
Owner's Address:	One NStar Way, NWBED 180 Westwood, MA 02090			
Applicant:	Cellco Partnership d/b/a Verizon Wireless c/o Marisa Desautel, Esq.			
Applicant's Address:	One Verizon Way, Mail Stop 4AW100 Basking Ridge, NJ 07920 900 Elm Street Manchester, NH 03101			
Application Submittal Date	Public Hearing Date(s)		Decision Date	
April 22 nd , 2016	May 19 th , 2016		May 19 th , 2016	
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
132	509	1490	393	

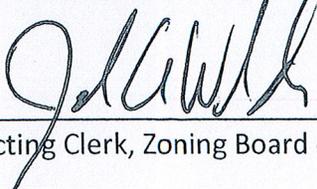
CITY CLERK'S OFFICE
 NEW BEDFORD, MA
 2016 MAY 27 P 12:41
 CITY CLERK

Special Permit under provisions of Chapter 9, comprehensive zoning sections 4900 (wireless communication facilities), 4910 (purpose), 4920 (location), 4940-4964 (special permit), 4950-4959C (conditions), and 5300-5330 & 5360-5390 (special permit); relative to property located at Utility Pole #370 - near Kathleen Street, assessor's map 132 lot 509 - in a residential A zoned district; to allow the petitioners to install a Cloud Radio Access Network [C-RAN] for wireless communication. The installation will occur on an existing utility pole owned by Eversource Energy as plans filed.

Action: GRANTED, WITH CONDITIONS, for the reasons set forth in the attached decision with the conditions as described in the attached decision. (See Attachment)

A copy of this Decision was filed with the City Clerk of the City of New Bedford on May 27th, 2016. Any person aggrieved by this decision has twenty (20) days to appeal the decision in accordance with the procedures set forth in Section 17 of Chapter 40A of the General Laws of Massachusetts.

May 27, 2016
Date


Acting Clerk, Zoning Board of Appeals

1.) APPLICATION SUMMARY

The petitioner proposes to install a Cloud Radio Access Network for wireless communication on an existing utility pole owned by Eversource Energy as plans filed, which requires a Special Permit under provisions of Chapter 9, comprehensive zoning sections 4900 (wireless communication facilities), 4910 (purpose), 4920 (location), 4940-4964 (special permit), 4950-4959C (conditions), and 5300-5330 & 5360-5390 (special permit). This petition is relative to property located at Utility Pole #370 - near Kathleen Street, assessor's map 132 lot 509 - in a residential A zoned district.

2.) MATERIALS REVIEWED BY THE BOARD

Plans Considered to be Part of the Application

- Plan Set, prepared by Chappell Engineering Associates, LLC, last revision date 3/7/16, date stamped received by City Clerk's Office April 22nd, 2016 including:
 - L-1 - Area Plan
 - L-2 – Elevation
 - L-3 – Equipment Details
- Plan Set, prepared by Chappell Engineering Associates, LLC, last revision date 4/27/16, date stamped received by City Clerk's Office April 27th, 2016 including:
 - T01 - Title Sheet
 - C01 – Existing Conditions Plan
 - C02 – Property Plan
 - A01 – Compound Plan & Elevation
 - A02 – Site Details
- Photo Simulations, pages numbered 1-5, prepared by Hudson Design Group, dated 4/20/16.

Other Documents & Supporting Material

- Completed Petition for a Special Permit Form, stamped received by City Clerk's Office April 22nd, 2016
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated May 2nd, 2016.
- Staff Comments to ZBA from City Planning Division dated May 13th, 2016.
- Report from Isotrope Wireless Consultant David Maxson, WCP, dated May 18th, 2016.
- Letter to ZBA from Marisa Desautel, Esq., dated April 22nd, 2016.
- Letter to ZBA from Marisa Desautel, Esq., dated May 12th, 2016.

3.) DISCUSSION

On the evening of the May 19th, 2016 meeting, board members: Deb Trahan, Sherry McTigue, Leo Schick, John Walsh, and Robert Schilling were present for the public hearing. City of New Bedford staff: Danny D. Romanowicz (Commissioner of Buildings & Inspectional Services) and Jennifer Gonet (Assistant Project Manager, Planning Division) were present during proceedings for the subject case review.

Mr. Walsh made a motion, seconded by Ms. McTigue, to receive and place on file the communications from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated May 2nd, 2016; Staff Comments from the Department of Planning, Housing & Community Development, dated May 13th, 2016; the appeal packet; the plan as submitted; and, that the owners of the lots as indicated are the ones deemed by the Board to be affected; and that the action of the Clerk in giving notice of the hearing as stated be and is hereby ratified. With all in favor, the motion carried.

Mr. Walsh made a motion, seconded by Ms. McTigue, to receive and place on file the report from Isotrope Wireless dated, May 18th, 2016; and a memo from Attorney Marisa Desautel, Esq., dated April 22nd, 2016. With all in favor, the motion carried.

Chair Trahan then declared the hearing open.

Representative of the petitioner: Marisa Desautel, Esq. (55 Pine Street Providence, RI 02903) presented the petition. She acknowledged Brian Sarchi of Structure Consulting and Victor Manougian of McLane Middleton PA (900 Elm Street Manchester, NH) as present and available to answer any questions. Attorney Desautel explained the proposal is for property located near 1 Kathleen Street New Bedford, MA. She noted the board had received the materials provided and therefore would not go into detail of any of them unless the board had particular questions. Attorney Desautel noted for the board that she had drafted a memorandum dated May 12th, 2016 which was submitted to the board and Planning division. The May 12th memorandum she explained was in response to a question from the Planning division with respect to owner authorization for this project. Attorney Desautel explained the title search for this property shows a historic easement originally granted to the utility company New Bedford Gas and Edison Light Company which was later assigned to Commonwealth Gas Company in 1981. She further indicated the memorandum explained the easement along with case law to demonstrate the owner authorization requirement for the project was satisfied.

Ms. McTigue asked if it is standard procedure to have only one unit per utility pole, or could there be more on the pole later on. Attorney Desautel directed the board to the photo simulations submitted and described the Cloud Radio Access Network [C-RAN] unit. She described the equipment housing the antennas as an approximately two foot high twenty-four pound canister, similar in shape to an office waste basket. She further explained the way that the unit is set on the poles does not provide for additional units to be installed there. Therefore, they would not expect another unit to be installed on the same pole.

Mr. Schilling asked if this technology replaced the controversy over the larger units. Attorney Desautel answered yes and no, explaining monopole or lattice tower type of applications will still exist. This is a different type of deployment to meet the current expanding data use needs she explained. The larger monopoles are utilized to send out a general signal out over a longer range, she described, now there is a need for cluster areas where data is needed in smaller specific areas. Therefore, these C-RAN units are a different type of deployment.

Mr. Schilling further asked how big of an area a unit like this can cover. Mr. Sarchi explained it is difficult to gauge as it depends on foliage and things like that, but he advised the board one could get a small cell unit covering a half mile or more.

Mr. Walsh confirmed with the applicant that the request was for an additional piece of equipment on an existing pole.

Mr. Schilling wanted to know how many of these units were in New Bedford right now. Attorney Desautel responded that what is proposed is a newer technology and as far as she was aware represented one of three currently in the approval process.

Mr. Schick asked if the unit was for voice and data. Mr. Sarchi confirmed yes for both.

Following the petitioner's testimony, Chair Trahan invited to the podium anyone wishing to speak in favor of the application. No one in attendance spoke in support of the petition or wished to be recorded in favor of the petition.

Chair Trahan invited to the podium anyone wishing to speak in opposition of the petition. Ms. Jean DeCoffe (North Street Mattapoisett, MA) stated she came for more information and she spoke on behalf of her sister and parents.

Ms. DeCoffe identified 179 Kathleen Street as her parent's home and Kathleen Street as their private street. Ms. DeCoffe questioned where 1 Kathleen Street is located as sited by the applicant. She indicated her family is only aware of an easement for access to Walgreens. She wanted to know if the utility pole was located on her parent's property and how this proposal came about. Mr. Schick responded that the proposal is being mounted on an existing Eversource utility pole.

Ms. DeCoffe questioned the easement cited by the petitioners and the necessity of the units. She also questioned whether the proposed device would be a cosmetic eyesore. Ms. DeCoffe stated there should be more information given to the neighboring landowners.

Mr. Schick explained the existing pole is located in an easement granted to Eversource and its precursors. What they are trying to do is put a two foot canister on that pole, in order to create a "hot spot" for service. Chair Trahan requested Ms. Gonet show Ms. DeCoffe the pictures and plans submitted to the Board. At the Chair's request, Ms. Gonet showed Ms. DeCoffe the plans and pictures submitted. Ms. DeCoffe viewed the submission and stated she still had questions about the petitioner's right to install the equipment.

Chair Trahan requested Attorney Desautel explain the deed information. Ms. McTigue noted the plans submitted had the roadway labeled "Kathleen Road" and not "Kathleen Street." Ms. McTigue asked where Kathleen Street it located. Board members expressed confusion over the roadway label on the site plan and discussed it was incorrectly labeled "road" and not "street".

Attorney Desautel called the Board members attention to the memorandum she submitted dated May 12th, 2016. She directed the Board to page three of the document, a copy of the original easement document that she had referenced and described previously. The document, she stated, was recorded in Book 1528 page 433 at the New Bedford land evidence records. She explained that the easement shows the owners at the time, Allen Spooner and Maria L. Spooner, husband and wife, granted to New Bedford Gas and Edison Light Company the perpetual easement to erect, operate, maintain and remove a line with the necessary poles, wires, cables, guys, and other fixtures and appurtenances for the transmission of electricity and intelligence upon, over, under, and across the land of the grantor. She then said it further goes on to describe the initial deed into 1 Kathleen Street, which is located at Book 1490 page 393.

Mr. Walsh asked if Attorney Desautel had any documents with the address on it. Attorney Desautel stated she did the title search herself and the easement document presented was the initial easement document. The reference to book 1490 page 393 is the initial deed of Allen Spooner and Maria Spooner; Attorney Desautel noted she did not provide a copy of the deed but could provide one if needed. Mr. Walsh asked if she had a copy with her, Attorney Desautel indicated on her cell phone. Mr. Walsh asked the Attorney for a representation of what the document says.

Attorney Desautel went to retrieve her cell phone during which time the board identified on the plans presented the location of the property owned by Mr. and Mrs. Spooner. Ms. DeCoffe addressed the board about the private road in connection with her family's property and indicated it had always been private and the only easement ever granted to her knowledge was a right of way for Walgreens and the previous business before it.

Chair Trahan indicated Attorney Desautel was ready with her information. Attorney Desautel then addressed the board and said the deed previously referenced, Book 1490 page 393, grants from Roswell Spooner to Allen Spooner and Maria Spooner land described by metes and bounds starting at a point easterly of Acushnet Avenue. She stated she cross referenced the deed with a set of plans recorded at the New Bedford land evidence records and the plans show Kathleen Street lot 1 being the lot the deed is tied to.

Mr. Walsh asked if the easement predated the existence of the street. Attorney Desautel stated she was not sure about that, the plan was created certainly after the easement was granted.

Chair Trahan offered an opportunity for rebuttal to Ms. DeCoffe. Ms. DeCoffe elaborated that the reference made to Roswell Spooner was her grandfather. At the time of that deed, she explained, her grandfather had decided to divide the property between her uncle and her parents. Her uncle and grandfather lived in the house at that time. Her parents later built their house on the land they were given, she said. She reiterated there was no easement ever granted as it is all family property. She explained her grandfather lived with her uncle and aunt until his death. Ms. DeCoffe explained that after her uncle passed away her aunt sold her property and added that later on the new owner applied to demolish the house previously owned by her aunt, uncle, and grandfather. She detailed going before the Historical Commission in opposition when that was proposed. She noted the Historic Commission agreed the house should not be knocked down but the City Council allowed the house to

be demolished. Ms. DeCoffe again indicated there was never an easement other than for the right of way given to Bickfords Restaurant and later Walgreens.

Chair Trahan stated she understood that Ms. DeCoffe spoke on behalf of someone else, but wished to ask her a question. The Chair indicated that the subject pole was an existing pole and according to the language in the deed the petitioner can use it. Given that, she asked Ms. DeCoffe what therefore was the objection to the proposal? Ms. DeCoffe stated it is “cosmetically inappropriate” and the proposal is based on their understanding there is an easement when there is not one. Mr. Walsh stated it is a matter of record before the board and at the registry of deeds. Ms. DeCoffe expressed disagreement with the easement as it said nothing about a pole. She also mentioned there had been an issue in the past with the electrical being incorrectly connected, electricity being used by Bickfords was being charged her parents home, which is part of why they don’t feel comfortable with this proposal.

No one else in attendance spoke in opposition of the petition or wished to be recorded in opposition of the petition.

Ms. McTigue asked the petitioner about the requirements for all the attachments shown on the pole in addition to the antenna. Mr. Sarchi explained there needs to be a meter for Eversource to be able to charge Verizon wireless for the electricity used by the small canister antenna. He further explained the RRH box or remote radio head box is the control operation of the whole unit. There are two small AC/DC converter boxes on the pole, which convert the direct current electricity to AC current, he detailed. All are necessary to work together to broadcast the frequency that allows everyone to use their cell phones and other data technology, he said.

Mr. Schick held up the equipment details sheet, and asked if it represented all the equipment that will be on the pole including the antenna and everything. Mr. Sarchi confirmed yes and he directed the board to the photo simulation to see how it would look on the pole. Mr. Schick asked if it would be installed so low on the pole and Ms. McTigue asked if there was any concern for tampering with the unit. Mr. Sarchi said there are certain parameters with respect to how high the equipment needs to be. In this particular case it is lower than what is typically seen but not uncommon. He further expressed that these units are meant as a capacity for the network. The macro towers signal is sent out over a large area more broadly; these need to be lower to broadcast the spectrum for a tighter more targeted high speed data over a much smaller area. The frequency waves are much shorter and quicker in regards to data use versus the normal voice uses you had 10-15 years ago, he explained. He described the voice radio wave are longer ranging radio waves. Ms. McTigue inquired if this proposal is helpful for when the network gets clogged. Mr. Sarchi stated that it does alleviate the need for additional larger towers, as it off-sets some of the capacity. Additionally, it is helpful in emergency situations when one tower goes down as this can serve a need in those instances because it diversifies the networks, he explained.

Ms. McTigue asked why this particular pole was chosen. Mr. Sarchi said it is based on existing activity and the macro towers capacity in that area. The macro tower facing that direction may be at capacity and this is meant to off-set the section of the tower covering the neighborhood. It provides a diversified coverage objective.

Ms. McTigue asked, what color were the units? Mr. Sarchi explained the antenna is white; the other attachments are metallic metal color.

Chair Trahan offered an opportunity for further response by Ms. DeCoffe. Ms. DeCoffe, viewing the plans and photo simulations submitted, commented that the equipment takes up one third of the middle section of the pole and reiterated that she felt it to be “cosmetically inappropriate.” She also stated she didn’t believe any of it was valid as the plans are labeled “Kathleen Road” which is incorrect. The roadway, she corrected, is “Kathleen Street” and had never been “Kathleen Road”; therefore the packet should be considered null and void, she asserted. Chair Trahan stated it had been advertised correctly. Chair Trahan asked Ms. DeCoffe if there were any other reasons for opposition other than cosmetics. Ms. DeCoffe reiterated that an easement had never been granted, and asked what’s the advantage of that pole as it’s a residential not business area.

Board members briefly discussed the plans being labeled “Kathleen Road”. Mr. Walsh stated the petition is for Kathleen Street. Chair Trahan stated everything had been advertised correctly as “Kathleen Street”.

Chair Trahan offered an opportunity for rebuttal by the petitioner. Attorney Desautel spoke in regards to the title of the application. She explained they had originally submitted to the building department with the address of 1 Kathleen Road, that was crossed out by city staff and “street” was written in. She noted for the board that plot 132 lot 509 had always been accurate and notice was afforded to all interested parties. She stated they do not believe there have been any procedural defects with the way the application had been processed. In concluding Attorney Desautel noted the easement had already been presented and is recorded at the registry in book 1528 page 433.

Chair Trahan offered a final rebuttal to Ms. DeCoffe. Ms. DeCoffe stated prior to receiving the letter they had no prior knowledge this was happening. She stated she does not believe this should go through.

Ms. McTigue asked if proper notice had been given. Chair Trahan confirmed proper notice had been given.

With no further questions or concerns, Chair Trahan closed the hearing, and opened the floor for discussion amongst board members.

Mr. Schilling explained he was ready to vote in favor of the petition because he felt the cosmetic issues did not seem to be that great. He indicated he thought this is a classic not in my back yard argument. He further noted walking to the meeting tonight he saw eight people on their cell phones and smart phones and therefore he felt this technology has to be somewhat ubiquitous to service the people in New Bedford. He also stated it seems the proposal is closer to Acushnet Avenue than the property Ms. DeCoffe represents.

Ms. McTigue stated that it appeared to her that there was an easement, so she was curious as to why it would seem there is not. Mr. Walsh and Chair Trahan confirmed there was an easement and the board has it in front of them. Chair Trahan stated she was not sure why they would think there wasn't one, but it was here.

Mr. Schick added that new technology isn't always pretty until a newer technology comes and replaces it; in any case he had no problems with this proposal.

Mr. Walsh indicated there was an appropriately filed proposal for Kathleen Street and an easement on record, and that as such, he was ready to vote.

4.) FINDINGS

This petition has been found to be in accordance with City of New Bedford Code of Ordinances Chapter 9 Sections 4900-4964 because having reviewed and heard testimony on the merits of this request, the board determines that the adverse effects of the proposed facility will not outweigh the need for the WCF [Wireless Communication Facility] in view of the particular characteristics of the site and of the proposal in relation to that site. This determination included consideration of each of the following:

§4941 Communication needs served by the facility.

- The addition of telecommunication equipment on a preexisting utility pole will improve telecommunications coverage for the residents of the area.

§4942 Traffic flow and safety, including parking and loading.

- There is no impact on traffic flow and safety.

§4943 Impact on neighborhood character, including aesthetics.

- The proposal has no negative impact on existing aesthetics.

§4944 Impacts on the natural environment, including visual impacts.

- There will be no negative impact on the natural environment as the equipment will be installed on an existing utility pole.

§4945 Potential fiscal impact, including impact on City services, tax base, and employment.

- The proposal is neutral; there will be no negative impact.

§4946 New facilities shall be considered only upon a finding that existing or approved facilities cannot accommodate, or reasonably be made to accommodate, the equipment planned for the proposed facilities.

- The board found this section is not applicable according to the findings of the board.

The Board found, in addition to the foregoing sections, this petition has also been found to be in accordance with City of New Bedford Code of Ordinances Chapter 9 Sections 5300-5330 and 5360-5390 relative to the granting of Special Permits because the board found that the benefit to the city and the neighborhood outweighs the adverse effects of the proposed use, taking into account the

characteristics of the site and of the proposal in relation to that site. In consideration of the following sections, the board found:

- *Social, economic, or community needs which are served by the proposal;*
 - The proposal will improve telecommunication coverage for the residents in the area.
- *Traffic flow and safety, including parking and loading;*
 - The Board found the project would have no effect on traffic flow and safety.
- *Adequacy of utilities and other public services;*
 - The Board found no impact on existing utilities or public services.
- *Neighborhood character and social structures;*
 - The Board found there to be no negative impact as the equipment will be mounted on an existing utility pole.
- *Impacts on the natural environment;*
 - The Board found the proposal will have no negative environmental impact.
- *Potential fiscal impact, including impact on City services, tax base, and employment*
 - The Board found this to be neutral, and will have no adverse impact.

In light of its review of the specifics noted within the motion, the board's finding that the material presented is complete and its careful consideration of the petitioner's request, the Zoning Board of Appeals finds that the petition satisfactorily meets the basis of the requested relief.

5.) RELIEF

With respect to the relief requested by the Applicant, the Board has been presented with sufficient information at the hearing to justify the relief described below, subject to the conditions set forth below in Section 6.

The Board grants the Applicant's request for relief from Chapter 9, comprehensive zoning sections 4900 (wireless communication facilities), 4910 (purpose), 4920 (location), 4940-4964 (special permit), 4950-4959C (conditions), and 5300-5330 & 5360-5390 (special permit); relative to property located at Utility Pole #370 - near Kathleen Street, assessor's map 132 lot 509 - in a residential A zoned district; to allow the petitioners to install a Cloud Radio Access Network [C-RAN] for wireless communication on an existing utility pole owned by Eversource Energy as plans filed with conditions.

6.) THE FOLLOWING CONDITIONS AND RESTRICTIONS SHALL APPLY

- a. The project shall be set forth according to plans, submitted with the application, with conditions;

- b. The applicant shall ensure that a copy of this decision, bearing the certification of the City of New Bedford Clerk's Office, is recorded in the Registry of Deeds;
- c. The rights authorized by the granted Special Permit must be exercised, by issuance of a Building Permit by the Department of Inspectional Services and acted upon within one year from the date they were granted or they will lapse.

7.) DECISION

Based on a review of the application documents, testimony given at the public hearing and the findings described above, the Zoning Board of Appeals hereby **GRANTS, WITH CONDITIONS**, the requested Special Permit.

On a motion by J. Walsh seconded by L. Schick to grant the requested Special Permit, the vote carried 5-0 with members J. Walsh, L. Schick, S. McTigue, R. Schilling, and D. Trahan voting in the affirmative, no member voting in the negative. (Tally 5-0)

Filed with the City Clerk on:

May 27, 2016

Date

John Walsh

John Walsh, Acting Clerk of the Zoning Board of Appeals