

WEST TISBURY ZONING BOARD OF APPEALS
MINUTES DECEMBER 2, 2009
2ND FLOOR TOWN HALL 6:30 PM

PRESENT: Eric Whitman (Chair), Nancy Cole, Tucker Hubbell, Bob Schwier, Larry Schubert

ABSENT: Toni Cohen, Tony Higgins

ALSO PRESENT for All or Part of the Meeting: Tamara Slade, Ken Spigle, Ginny Jones, David Finklestein, Mitch Gordon, Prudy Burt, Caitlin Jones, Richard Knabel, Matt Merry, Robert Potts, Susan Silk, Jim Hickey, Jonathan Revere, Andrew Nanaa, Glenn Hearn

BUSINESS

- The minutes of November 18 were approved.

HEARINGS

7:00 An application by Mitch Gordon for a Special Permit to bring an existing apartment over a garage into compliance with building code and zoning requirements. Sects. 4.4-3 and 4.4-4, of Zoning Bylaws; 554 State Road; Map 16 Lot 64; RU District. *No Correspondence*

The Board looked at Mitch's floor plan, elevations, and details of the outside staircase. After brief discussion, the Board made these findings and granted the Special Permit with the usual conditions:

- 1.) The granting of this permit satisfies the requirements of Section 4.4-3 as the apartment meets the dimensional requirements of the bylaw and there will be no other subordinate dwelling on the lot. There will be 2 egresses for the apartment. The apartment does not exceed 500 sq ft.
- 2.) The "garage" is not used for vehicles. It was once an artist's studio and gallery and is now used for storage. The Special Permit for the art gallery is no longer current, but the "garage" space could be a studio again or used for any allowed accessory use not requiring a new Special Permit.
- 3.) The granting of this permit satisfies the requirements of Section 4.4-4 as the applicant is aware of and will sign the affidavit concerning the occupancy restrictions and requirements for accessory apartments.
- 4.) The existing drive and parking will be used for the apartment.
- 5.) The habitable area will now be brought up to code and will not be substantially more detrimental to the neighborhood and Town and is of a moderate size, and the construction is in harmony with similar development in the neighborhood and town in scope, size, and design.

7:30 PRE-APPLICATION DISCUSSION

As required by Section 8.8-3 of the West Tisbury Zoning Bylaws, the Zoning Board of Appeals will be having a pre-application discussion with representatives for American Tower Corporation concerning a future application for a Special Permit for a Distributed Antenna System in West Tisbury. Notice of a public hearing for the application will be duly advertised and notified as required by M.G.L. 40A after a formal application is received and a hearing date has been set. *No correspondence*

Tamara Slade representing American Tower Corporation and MA attorney Ken Spigel represented ATC in this exploratory discussion for the permitting of a Distributed Antenna System. They distributed materials regarding their proposal. There are 23 node or pole sites planned for West

Tisbury. They said they recognize there is a question of whether zoning, requiring a Special Permit, applies to the DAS in a "row", the public right of way for utilities and asked to not begin with a presentation. They did not see how a proposed application from them could fit into the West Tisbury Cell Tower sections of their zoning bylaw, as, unlike Chilmark and Aquinnah, it does not have any provisions per se for a DAS. The alternative would be a hearing with the Board of Selectmen, not a zoning hearing.

The Board pointed out Section 8.8-2 of the zoning bylaw: "No tower, transmitting antenna or wireless communication facility shall be erected, constructed or installed without first obtaining a Special Permit from the ZBA." One of two kinds of Special Permits is required and either must be compliant with Section 8.8-5." 8.8-5 is made up of 3 paragraphs concerning adequate coverage, capacity and justification of need. The Board said this is the intent of the Bylaw regarding an application and should make it clear that a Special Permit application is required.

Tamara said there will be some new utility poles with equipment and backup batteries and 8' whip antennae at the top which are the transmitters. Knowing that Dave Maxson advised the ZBA on WCF applications, Atty Ken Spigel asked if Dave had commented. Julie Keefe said as they had had no prior submittals from ATC, there was nothing specific to show Dave Maxson. Ken replied that things kept changing. Special Permit #1 versus Special permit #2 was discussed. A #1 is for ground mounted towers. #2 is for on existing towers or buildings. Ken Spigel said a utility pole is not a monopole and there are no antennae or racks proposed for the outside of the poles. According to WT bylaw, a DAS can't be as there are no towers and nothing is roof mounted. He asked the Board if they had a conclusion opinion of whether a Special Permit is needed and if so, is it a one or a two. He said they would like to give their presentation but would like to reserve their rights if it's found a Special Permit is not needed; that is, giving a pre-application presentation would not bind them to applying for a Special Permit.

Tucker Hubbell said the WCF section of the zoning bylaw was written in 1999 and doesn't specifically cover or suit technological advances since then, but the intent of it is that all WCF's need a Special Permit. He agrees that the definition of monopole needs re-working. If you interpret a monopole as being a wooden pole it could be a #1. There would be 23 new poles, some on stub poles; stub poles out, new poles in. Of the 23 poles or nodes, 15 will be in new places. Tamara repeated what they had previously emailed the Board: ATC is a CLEC, a Competitive Local Exchange Carrier registered in MA. They have the ability to place poles for operation of business where they are needed. Tucker said that they raised this question at the 11th hour, two days before Thanksgiving. How long has this been an issue? The reply was a long time.

It was discussed that the Corporation had a letter of interest, not a letter of intent, from TMobile. Tucker pointed out that TMobile had been approved to be co-locaters on the Flanders tower, but never did so and Sprint now has that spot. Tucker said TMobile has the least amount of coverage in West Tisbury. They get a concentration of coverage out of a roof mounted antenna at the Animal Health Care Associates. Ken Spigel said because certain carriers have good coverage, you can't say no to others; all carriers have right to coverage. Tucker pointed out that the Telecommunications Act says if a Town has adequate coverage.

Tamara and Ken showed a photo of a DAS pole with a Nantucket style whip antenna. There will be 55 nodes (poles) for the 3 towns. Each node has been drive tested and they have reviewed all possibilities to use the existing infrastructure where possible. All major roads have coverage.

David Finklestein commented on the small coverage provided by each node. Tamara referred to "line of sight" coverage, about a half mile between nodes. Nancy asked about interference from trees. Andrew Nanaa said it's desirable to avoid trees. Signals bounce off trees, buildings. Matt Merry and David Finklestein asked if poles shown to be near their properties could be moved. The answer was ATC would accommodate them within 50 feet. There was discussion of whether Lamberts cove Road and Indian Hill Road were laid out for public utilities or if they were town roads. Richard Knabel said the State assumes the Town owns up to the edge of the pavement.

Larry said our WCF bylaw did not anticipate that applications would be in the public right of way, but they could make the bylaw work for a DAS system. A hearing would give people the chance to say don't put it right next to my driveway. Nancy questioned that the system is designed to go down main roads while it is outlying areas that have the least coverage. Richard Knabel said that American Tower is following the specifications of the RFP that the system be on the main roads. Tamara said they could supply additional nodes if there are coverage issues. Glenn Hearn said that if carriers already have coverage, they wouldn't sign up for DAS. ATC would have the fiber optics and the band width, but they won't build the system until they have carriers signed up.

Ginny Jones said it was said at one meeting that coverage between nodes would be ¼ to 1/3 mile and at another meeting ¼ to ½ mile. Tamara declared she was not an RF engineer, but it should be up to ½ mile, varying dependent on hills, trees. The new poles would be across the street from NStar poles. If new overhead utility lines are prohibited, they would have to go underground, under the road. Tucker said he found it problematical that the 3 town RFP only considered a DAS, they did not give the people a choice between one high tower say and a DAS. West Tisbury has five locations in town that are WCF's. Aquinnah and Chilmark do not. He faults the 3 town DAS committee which should have considered the whole region before going for a DAS system only. He'd like to know the answer to, would the addition of one more traditional tower complete West Tisbury's coverage needs. Would 3 towers in Chilmark serve them better? Tamara said RF engineers and designers would need to answer that. The higher you go, the better coverage.

Richard Knabel said that Chilmark and Aquinnah said they did not want towers, and therefore the committee looked into the alternative DAS. The West Tisbury bylaw was written to make it difficult to put a tower in place. Tucker said our bylaw is not so bad that it has prohibited towers. The ZBA has had 8 applications related to WCF, including improving service, and all 8 have been approved. Richard Knabel said he believed that the intent of the bylaw when it was written was to make it difficult for cell towers to be placed in West Tisbury. Tucker again found fault with the DAS committee for not laying it out to the public that we could have towers or DAS, not just DAS. The West Tisbury people voted money to investigate DAS, but were not asked which system they would prefer. Ginny Jones said the cell tower bylaw was written to give the community some control; it was not meant to be prohibitive.

It was discussed that if there is an application, abutters should be notified within 350' of the node, rather than 300 in order to give change in placement of poles some latitude.

Matt Merry asked, if the technology grows, would the number of poles be reduced? Tamara and Ken answered that more likely demand for more capacity would increase due to more technology like iphones. The number of poles might not be reduced but they could meet increase in demand by amping up their equipment. Andrew Nanaa introduced himself as the head of Global Protection Communication Systems. He spoke of how the power levels have decreased dramatically since the early clunky cell phones. The nodes are closer together, there are less gaps in coverage. He sees that

it's not a coverage issue, but a capacity issue. There's less power demand but more need for connectivity. Different carriers have different needs or wants. It would not be up to ATC to make the upgrades; it's the carriers.

Bob asked how many carriers could use the system. Tamara said there can be 4 carriers within the cabinet. T-Mobile has expressed interest and AT&T has provided coverage maps. The Board asked Richard Knable and Glenn Hearn (DAS committee members) if the system was working for Nantucket? The answer was yes. They started out with a certain number of nodes and carriers then added more. There are towers too.

David Finklestein asked if his coverage would expand from 2 bars to 5? How much more coverage with DAS overall? The answer is they would have to compare spot by spot. Richard Knabel said the amount of existing coverage doesn't matter; you can't say no if someone else wants in. The discussion ended with the ZBA agreeing that ATC should apply for a Special Permit. It was not made clear if that would be a #1 or #2.

OTHER CORRESPONDENCE

American Tower Corporation ...email of November 24

Tucker Hubbell...re DAS and ATC

Chuck Hodgkinson...many ATC/DAS submittals to Chilmark

Chris Seidel....Proposed DAS node/pole map

Phone call from Ron Rappaport

The meeting was adjourned at 9:30.

Respectfully submitted, Julie Keefe