



**Office of
Kingston Board of Appeals**

Town House
26 Evergreen Street
Kingston, MA 02364

**BUSINESS MEETING MINUTES
ZONING BOARD OF APPEALS
April 20, 2011**

MEMBERS PRESENT: John Haas, Carl Pike, Paul Dahlen, David Rose, George Boerger, Philip Ricardi OTHERS PRESENT: Paul Armstrong, Zoning Enforcement Officer. NOT PRESENT: George McAdams

Mr. Haas opened the meeting at 7:30 pm.

7:30 T Mobile-# 1279 SP – 66 Landing Road

Mr. Rose read the public hearing notice. Attorney Francis Parisi was present for the hearing along with Brian Asins and Mike Johnson, real estate specialists.

The proposal is for a wireless communications facility on 66 Landing Road. Mr. Parisi explained the need for this location to fill in the gaps in service and improve the quality of coverage and to meet the growing demands for service. This will also satisfy the requirement to improve public safety to pinpoint where a 911 call is coming from. Mr. Parisi explained that with today's technology the designs of the cell towers are better developed and have a svelte design. The plan is for a unipole structure 120 feet tall and it will likely be painted brown to blend into the heavily forested area. The antenna and cabling will all be inside the structure. The applicant is seeking a special permit in order to comply with conservation commission restrictions. There are wetland and bogs in the area. There was a struggle to find a lot outside of wetlands which was also less than the tower height setback. The proposed location was moved closer to Route 3 so as to move further away from other uses in the area. Mr. Parisi explained that it could be moved closer to residences to meet the setback but feels it would be more desirable to move it closer to Route 3. The facility will be 50x60 diamond shaped secured with fencing. A small 15 foot wide access road will have to be built off Landing Road to access the facility. There will be a tree buffer from Landing Road to mitigate the view from Landing Road. Mr. Parisi referenced the aerial view photos and there was further discussion as to the gaps in coverage and the need to have the tower located in this site. The tower will be constructed at this time for T Mobile only, however there is space for two other providers.

Mr. Haas referenced a memo from the Planning Board dated March 11, 2011 approving the site plan and explained to the public that the cell phone providers are required to provide coverage as a matter of public safety.

Attorney Parisi stated they are seeking a variance from the side setback in order to go closer to Route 3 and the tower height setback. They could find a space but it would be closer to residences and to the wetlands. They feel it is a more appropriate location on this lot.

Mr. Rose went over the criteria to issue a variance. Attorney Parisi responded indicating that there is a hardship due to the topography of the lot and the ability to get signals.

The applicant was asked if they have gone before Conservation Commission. The applicant stated that they had their own wetland delineation done. Mr. Rose commented that the Conservation Agent has not looked at the property nor has reviewed the wetland delineation done by the applicant. It was discussed that a letter from the Conservation Agent with approval would be a condition if this were approved. Mr. Parisi agreed that this could be conditioned.

There was discussion concerning the fall down setback. Mr. Parisi referenced a letter from the structural engineer and explained that the structure is designed to bend and fall on itself and designed for specific wind loading and soil analysis.

Mr. Haas asked if any members of the public were present to speak about the project.

Joe Costa of Wapping Road stated that the applicant shouldn't have a hardship until all possibilities have been exhausted. He also stated that the applicant should be required to go to conservation commission first.

Mark Hanndin, owns Lot 67 and is an abutter. He provided a set of plans to build a one story single family home and wanted more information as to where the tower would be located in proximity to his land. Once reviewed he was satisfied as the tower is not close to his property.

Gerry Powell, corner of River and Landing Road. He stated he just learned of the proposal and hasn't had a chance to review. He is concerned that conservation needs to get involved

Mr. Boerger moved to close the hearing. Mr. Pike seconded. The vote carried unanimously.

Robert Flood of 42 Bay Farm Road, wanted to submit additional material.

Mr. Ricardi moved to re-open the hearing. Mr. Pike seconded. The vote carried unanimously.

Mr. Flood presented a letter in opposition to the proposal. He feels it is conservation land.

Mr. Ricardi moved to close the hearing. Mr. Pike seconded. The vote carried unanimously.

Mr. Boerger moved to instruct the clerk to prepare a written decision granting the Special Permit and variance requested by the applicant for the cell tower with the condition that the applicant go before conservation commission and get confirmation that they do not need approval from the conservation commission and if they do require approval, then they must come back before this Board. Mr. Pike seconded. The vote carried unanimously.

7:42 Independence Center – SP 101 Independence Mall Way

Mr. Rose read the public hearing notice. Jerad Cartwright was present on behalf of the applicant to request a dimensional variance for signage of 230 ± square feet. There is already signage in place for which a variance was granted for the same store front. The proposed signage will be roughly equivalent to what was previously granted. The plans were reviewed for a sign approximately 10 feet high by 23 feet wide. After discussion the Board members had no issue with the proposal. No one from the public came forward.

Mr. Boerger moved to close the hearing. Mr. Dahlen seconded. The vote carried unanimously.

Mr. Boerger moved to instruct the clerk to prepare a written decision granting the variance requested by the applicant for signage no greater than 10x28 feet on the store front as requested. Mr. Pike seconded. The vote carried unanimously.

8:50 Wrightington

Attorney Robert Kraus and Kevin and Linda Wrightington were present for the hearing.

Attorney Kraus began by stating that the subject of tonight's discussion goes back to 2004 when the Board was made up of different members. He stated that it is his opinion that the intent and position of the Board at that time was that the Wrightingtons were operating a propane business and that the business operation was part of the decision. Mr. Kraus referenced the memorandum provided to the Board and specifically referenced the affidavits of Mr. Wrightington, Janet Butler and Dick Dennehy. Mr. Kraus stated that the building was first intended as a propane and boat business. The fire Chief asked at that time that the building be sprinklered and a car port be added. The site plan by Webby Engineering was referenced. Mr. Kraus stated that the business had started in 1950 and continued on Route 106 and there are a number of businesses that co exist with residences on Route 106.

Mr. Haas stated that he does not feel there is a permit in place to operate a propane business. Mr. Haas referenced the minutes in 2009 wherein there was a mention of the operation of the propane business but it was an issue identified outside of what was being requested at that time.

There was substantial discussion concerning the issue of the actual use of the business. Questions were raised as to whether it was used strictly for boat repair and storage. Mr. Kraus contented that the intent all along was for a propane and boat storage/repair business and referenced memos from the fire department and affidavits in his Memorandum. In addition, prior minutes and decisions made by the previous Board were reviewed. It was pointed out by some members of the Board that there is no evidence on record to permit a propane business to be operated. There are special permits granted for a carport and boat storage only.

The applicant stated after being asked that the propane distribution center is located in Carver, MA. The office for the business is located at 63 Wapping Road. The Wapping Road location is also used to store bobtails and large trucks.

Joel Michaud, 28 South Street, stated that he was a member of the Planning Board in 2004 at that time. He stated that when the applicant came before the Planning Board, everyone spoke about the propane business and it was understood by all that the propane business existed and that was the reason for the subject of the sprinklering and the carport for the bobtails. The propane business was the focus of the meeting. The reason for the carports is because the trucks could not park inside.

Fred Swanson, 9 Smelt Pond Road, stated he was with the Water Commission at that time. He remembered they had to hook up for the sprinkler system and that he was aware of the propane business.

Bruce Santos, 67 Pembroke Street, owns the landscaping business across the street. He stated that he was aware and knew of the business all along. He stated Mr. Wrightington moved his business from Peck Avenue to this property for the purpose of conducting the propane business.

Ralph Labriola, 26 Nelson Street, stated his opposition to the propane business. He is representing on behalf of about 12-14 people in the area who are in opposition to the propane business. He stated that it was his impression that the business was solely for boat storage. He is concerned with insurance liability issues and loss of property value. He is also concerned with noise at early hours in the morning.

Ben Magoun, 15 Nelson Street, spoke in opposition. He feels this area is not properly zoned for this type of business and is also concerned with insurance liability issue and house value.

Pat Kelleher, Wapping Road, stated his support of the propane business.

Mr. Boerger requested from Attorney Kraus that he provide specifically which exceptions the Board can rely upon within the Bylaws where a Special Permit can be allowed.

Mr. Armstrong stated that he was hoping for a solution. The past is muddy at best and if it is possible to move toward a special permit then other issues such as noise complaints need to be addressed.

Mr. Haas suggested that the applicant try to resolve issued with the dissenters to get some matters rectified and then the applicant could apply for a special permit. It was discussed that the hearing be continued to allow time for this.

Mr. Boerger moved to continue the hearing to June 15, 2011 at 7:30 pm. Mr. Pike seconded. The vote carried unanimously.

10:30 General Business

The South Shore Housing Decision was reviewed. Mr. Pike moved to approve the decision as amended. Mr. Dahlen seconded. The vote carried unanimously. (voting were C. Pike; P. Dahlen; J. Haas; D. Rose; P. Ricardi)

The minutes of April 6, 2011 were reviewed. Mr. Dahlen moved to accept the minutes as amended. Mr. Pike seconded. The vote carried unanimously. (voting were C. Pike; P. Dahlen; J. Haas; D. Rose; P. Ricardi)

Mr. Haas reviewed the request to sign a mylar plan for Indian Pond with the Board. Mr. Haas stated that he does not want to sign until all past due bill are cleared up by the applicant.

Mr. Boerger moved that the chairman be instructed to sign the mylar plan upon receipt of paid bills for peer review fees. Mr. Pike seconded. The vote carried unanimously.

It was unanimously voted to adjourn the meeting at 10:40 pm.