

---

# Zoning Board of Appeals Minutes 9/25/18 - 73 Chestnut Hill

## **ZBA Hearing Minutes**

Address: 73 Chestnut Hill Rd

**Date:** 9/25/18

Hearing began at: 3:34pm

**Members Present:** Jonathan Levin, Chair, Stanley Ross, Clerk, Scott Jensson, Susan Cooper and Gary Shaw

**Also present:** Stephen Kelleher, Francis Parisi, Attorney for Vertex Towers, John Szablowski, Kenn Basler, Steve Weisz, Don Torrico, Gareth Backhaus, Jeff Purvis, Peter Close, Martin Levan, Tom Johnson, Shawn Tryon, Jared Smith,

The hearing began with Jonathan Levin, Chair, explaining the hearing process and then Stanley Ross, Clerk, read the legal notice (which was posted for 2 consecutive weeks in the Berkshire Eagle and at the Town Hall) and letters from the Planning Board, Conservation Commission, and Board of Health.

Attorney for Vertex Towers, Francis Parisi summarized their special permit request. He also discussed the similarities of this application in relation to the application that was previously approved in 2011 but expired.

Chief Backhaus urged the Board to approve this as soon as possible (preferably tonight) expressing his concerns surrounding the lifesaving benefits of approving this permit. If this permit were to be approved today it is the Chief understanding that a tower could be erected before the winter. He emphasized the importance of getting this network up and running as soon as possible.

Attorney Parisi reviewed the photos from the balloon test. Next he asked to go over the consultant's preliminary report and argued that all of his recommendations are ones that shouldn't affect the Board's decision. Martin Levan also explained the design, proposed coverage and why the application was proposed as it was. Steve Kelleher explained that the current deal they have with Hume is for a maximum height of 130' so while going taller would provide more coverage it isn't an option at the moment. If you lower the pole height you diminish the future carriers interested in being added to the tower as well as the coverage area and possibly Vertex's interest to construct the tower. Attorney Parisi explained that every month the permit is delayed translates to 6 months in construction time and that if the permit isn't granted today he couldn't guarantee construction before December 31<sup>st</sup>.

The floor was opened to the public for any questions/comments.

John Szablowski asked that the paperwork be corrected to reflect that the applicant is Vertex Towers not Hume, they are the landlord.

Jared Smith, abutter to Camp Hume, appealed to the ZBA with regard to the proposed location and the personal detriment to him. He referred to sections 7.7.1 (line 5 referring to property values being affected), and provided supporting photos he took of the balloon test (line 10 about distance from structures) and how visible it is from his home, his cabin which he uses for solitude is within 600 feet (he guesses within 350ft). He is not opposed to the construction of the tower he would just prefer that its location be moved so that it is not a detriment to property value. He also noted that section 7.7.11, line 1 states that they must be placed to minimize visual impact.

Steve Weisz agreed that the aesthetics of a tower (he lives on the lake) are unappealing but with that said he feels that with the vast majority of Monterey being over 60, telecommunication service is no longer a luxury, it is a lifeline. He stated he would give up his visual purity to ensure the health and safety of the resident. As a realtor he noted that the first thing potential buyers ask about is cell service and from a professional standpoint, cell service will keep his property values high or at least remain even. He also implored that the Board rule on this permit tonight if at all possible.

Peter Close, resident on Lake Buel requested that the decision to not make the design of the tower a "tree".

Steve Kelleher noted that the previous application which was extended through 2017 under the permit extension act was valid through the time that Mr. Smith purchased his property, so he should've known at the time of purchase and design of his home that there was a potential for this tower to have been constructed at any time, unfortunately the permit expired which necessitated the need for today's resubmittal of the application.

Attorney Parisi questioned the assessor's present on how many abatements were filed after the construction of the tower on the west side of town and was an abatement granted. Stan Ross replied that there was 1 and no abatement was issued. He also argued that there are no supporting arguments that a tower diminishes their property values. There was also discussion on whether the cabin Mr. Smith referred to would be considered a residential structure. Mr. Smith referred to the MA state building code definition of a structure. Attorney Parisi argued that the cabin could not be considered a residential structure due to the fact that it is 144 square feet and did not require a building permit or Conservation Commission Scenic Mountain Act approval.

Attorney Parisi argued that the Board from 7 years ago granted the permit as submitted. He also felt that it would fall under the Zoning Enforcement Officer's purview to determine whether or not a further variance would be required with regard to the cabin.

Don Torrico requested that the Board collect plans with MA certified engineer stamps on them. He also requested that the Board thoroughly review color options.

Jon Levin, Chair of the ZBA stated that he understood the time requirements for construction however noted that there were still items that needed to be clarified or resolved prior to a permit being granted. Stan Ross agreed and felt that more time is necessary to review the waivers the applicant is requesting with the consultant. Susan Cooper also felt that there were still questions that needed to be answered before she would be comfortable issuing a permit. Scott Jensson and Gary Shaw were both in favor of having more time to address the issues that were raised tonight.

The Board would like the following information for the next meeting:

- Determination if the cabin is a residential structure and if it is what the effect would be on coverage to move the tower below the ridgeline or lower the height. Don Torrico commented that based on the information provided tonight the cabin would actually be an illegal structure because for it to be an accessory dwelling a primary residence would have to exist first. Attorney Parisi stated that because it wasn't permitted they are not aware of it as an existing structure and they would need permission from the landowner to enter the property. Attorney Parisi also stated that the landowner will not allow moving the tower and if he were it would most likely negatively affect other homeowners. Kenn argued that the Zoning Enforcement Officer has already given his opinion on the cabin and why would the Board require this additional information. The Board wants to have information so that we do not end up in an appeal because a particular issue wasn't addressed and will withstand scrutiny.
- The applicant will respond to the consultant's report.
- The applicant will also respond to any requests for the tower to be relocated.

After Motion, second and 5-0 vote, the Board voted to continue the public hearing until Tuesday, October 9<sup>th</sup> at 1pm.

The hearing concluded at 5:49pm

Submitted by  
Melissa Noe, Administrative Assistant