



Town of Medway
ZONING BOARD OF APPEALS
155 Village Street, Medway, MA 02053

Eric Arbeene, Chair
Brian White, Vice Chair
Carol Gould, Clerk
Bridgette Kelly, Member
Rori Stumpf, Member

**DECISION
SPECIAL PERMITS
15 WEST STREET**

Date Application Filed: January 5, 2018

Applicant(s): Cellco Partnership d/b/a Verizon Wireless ("the Applicant")
118 Flanders Road
Westborough, MA 01581

Location of Property: The Project is located on a parcel of land in Medway located at 15 West Street (Assessor Parcel ID: 66-005).

Approval Requested: Special Permit under Section 8.7 of the Zoning Bylaw for a Wireless Communications Facility, as well as Section 5.6.1 for a Flood Plain District Special Permit, and Section 5.5 Nonconforming Uses & Structures Special Permit to change/extend the existing nonconforming use.

Members Participating: Eric Arbeene (Chair), Brian White (Vice Chair), Carol Gould, Bridgette Kelly, and Rori Stumpf

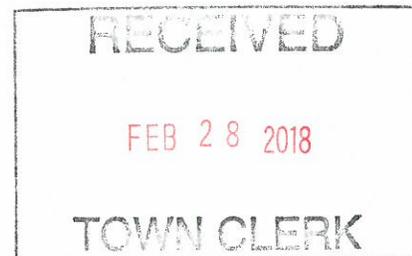
Members Voting: Eric Arbeene (Chair), Brian White (Vice Chair), Carol Gould, and Rori Stumpf

Hearing Opened: February 7, 2018

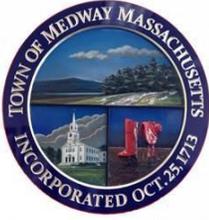
Hearing Closed: February 21, 2018

Date of Decision: February 21, 2018

Decision: Granted with Conditions



*20 Day Appeal
March 20, 2018*



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I. PROCEDURAL HISTORY

1. On December 21, 2017, the Applicant's Representative filed a Special Permit under Section 8.7 of the Zoning Bylaw for a Wireless Communications Facility, as well as Section 5.6.1 for a Flood Plain District Special Permit.
2. Upon review, Staff determined that the application was incomplete as submitted and would require a request for a Special Permit under Section 5.5 Nonconforming Uses & Structures to change/extend the existing nonconforming use. The applicant submitted the additional information on January 3, 2018. The application was deemed complete on January 3, 2018.
3. The application was stamped in with the Town Clerk on January 5, 2018 following the complete submittal.
4. Notice of the public hearing was published in the Milford Daily News on January 17, 2018 and January 24, 2018, and notice sent by mail to all interested parties and posted in Town Hall as required by G.L. c. 40A §11.
5. The public hearing was opened on February 7, 2018. The public hearing was continued to February 21, 2018. The Board closed the public hearing that evening.
6. The Property is located in the Agricultural Residential II (AR-II) District. The front setback requirement is 35 feet and the side and rear setback requirements are 15 feet. The minimum lot area requirement is 22,500 s.f.
7. The Site is located within the Flood Plain Zoning District.
8. The existing use of the property as an excavating/contractor's yard is pre-existing nonconforming.
9. The applicant has proposed to utilize a portion of the property at 15 West Street, roughly 90 feet by 40 feet, for the Facility and Appurtenant Devices, as well as an easement for an entry drive and parking spot, all which will have a twenty year lease.
10. The Applicant was represented by Michael S. Giaimo, Esq. Robinson+Cole LLP, One Boston Place, 25th Floor, Boston, MA 02108.
11. The Board notified Town departments, boards and committees of this application. The Board received comments from Conservation Agent Bridget Graziano, Fire Chief Jeff Lynch and the Administrative Site Plan Review Team (Building Commissioner Jack Mee and Planning and Economic Development Coordinator Susan Affleck-Childs).
12. All documents and exhibits received during the public hearing are contained in the Zoning Board of Appeal's files and listed in Section V. of this Decision.

II. TESTIMONY

At the February 7, 2018 meeting, the hearing was opened by the Board. The Applicant's Representative provided an overview of the proposed Wireless Communications Facility and how it will improve wireless service and fill in a substantial coverage gap that now exists in the Verizon Wireless network. He also addressed how it satisfies the requirements of the Medway Zoning Bylaw.

The Board also discussed with the Applicant's Representative the comments of the Town of Medway Administrative Site Plan Review Team.

There was one comment from the public supporting the need for additional coverage in that area of Medway and suggesting that the height of the tower be increased to increase the amount of coverage.

III. FINDINGS

In making its findings and reaching the decision described herein, the Board is guided by G.L. c. 40A, as amended, and by the Medway Zoning Bylaw. The Board also considered evidence and testimony presented at the public hearing and comments submitted by residents placed in the public record during the course of the hearings.

A. Section 3.4 Special Permit Decision Criteria

1. *The proposed site is an appropriate location for the proposed use.*
2. *Adequate and appropriate facilities will be provided for the operation of the proposed use.*
3. *The proposed use as developed will not create a hazard to abutters, vehicles, pedestrians, or the environment.*
4. *The proposed use will not cause undue traffic congestion or conflicts in the immediate area.*
5. *The proposed use will not be detrimental to the adjoining properties due to lighting, flooding, odors, dust, noise, vibration, refuse materials, or other undesirable visual, site, or operational attributes of the proposed use.*
6. *The proposed use as developed will not adversely affect the surrounding neighborhood or significantly alter the character of the zoning district.*
7. *The proposed use is in harmony with the general purpose and intent of the Zoning Bylaw.*
8. *The proposed use is consistent with the goals of the Medway Master Plan.*
9. *The proposed use will not be detrimental to the public good.*

The Applicant has demonstrated through testimony and submitted written materials the following:

- a. The proposed site is appropriate for the WCF use because the Property has been used for commercial/industrial purposes for decades. The Property is adjacent to other commercial and industrial uses, including major power generation and high-tension power lines. It is also more than 250 feet away from the nearest abutting residential property line.
- b. The WCF does not require water or sewer connections and, as an unmanned facility, will not require more than one parking space. The parking space shall be used for maintenance of the WCF. All public facilities provided are adequate.
- c. The Conservation Commission's Order of Conditions, dated October 20, 2017, will protect the environment, and the location of the WCF within a fenced lot and separately fenced and secured compound will keep the general public, abutters, vehicles and pedestrians from accessing the WCF.
- d. The existing fencing extending along the frontage of the property provides for adequate screening from the roadway.
- e. Because the WCF only requires infrequent visits by technicians in ordinary passenger vehicles, and a parking space is provided, there will be no traffic congestion or conflicts caused by the WCF.
- f. The proposed WCF will not create any odors, refuse materials, or noise that will reach adjacent properties. The proposed lighting will not spill onto adjoining properties. Any visual impact of the proposed WCF on adjoining properties will be mitigated by tree cover and the relative impact of the tower is minimal in light of the existing high-tension transmission towers and wires and the 160-foot exhaust stacks included as part of the redevelopment of the Exelon property at 34 West Street. The WCF will comply with the established maximum radio-frequency exposure guidelines, established by the Federal Communications Commission and the Massachusetts Department of Health.
- g. The existing use as a commercial/industrial contractor's yard and excavating company provides a suitable site for a wireless communications facility. The immediate neighborhood around this property is already developed with several industrial and commercial uses. The proposed WCF is located over 250 feet away from the nearest residential property and will be substantially screened from view by tree cover. The addition of the proposed WCF, at the edge of the AR-II district

adjacent to the Energy Resource district, on property already developed and in active commercial/industrial use, will not adversely affect the character of the AR-II district.

- h. The proposed WCF is in harmony with the general purpose and intent of the Zoning Bylaw because the WCF is permitted by special permit.
- i. Goal 2 of the Medway Master Plan Land Use Goals and Objectives is to encourage commercial and industrial development. Increasing the availability and reliability of wireless voice and data services in Medway will be an important factor to those who might seek to locate a commercial or industrial business in this area. In addition, the Medway Master Plan addresses traffic safety and public safety concerns generally. Having reliable wireless service in the area of the coverage gap, including within homes and along nearby roads, will be beneficial to public safety and increase the opportunity for timely reporting of incidents requiring emergency response.
- j. The proposed WCF will improve the public good by improving wireless communications services for residential and commercial customers, which will increase public safety and provide economic benefit, without using water or sewer service and without measurable increase in traffic.

B. Section 8.7 Wireless Communications Facilities Special Permit Criteria

- 1. The Applicant is licensed by the Federal Communications Commission to provide personal wireless services in the market area that includes the Town of Medway and the proposed Wireless Communications Facility will be a personal wireless services facility within the meaning of the Federal Telecommunications Act, 47 U.S.C. § 332(c)(7)(C)(ii), and a WCF under the Medway Zoning Bylaw.
- 2. Through the testimony provided and the application materials submitted, the Applicant has demonstrated (1) that a significant gap in coverage exists in the southern part of Medway; (2) that the Applicant is unable to reduce this coverage gap by locating on any existing WCF; and (3) there is no other feasible alternative location to the Property within the preferred locations described in Section 8.7.E.2 of the Medway Zoning Bylaw that will address the coverage gap.
- 3. The Applicant has demonstrated that the 150-foot height of the WCF is necessary to provide sufficient transmission distance to reduce the identified coverage gap,

to make co-location of additional carriers more feasible, and will increase public safety by increasing reliability of wireless communications in the area.

4. The WCF meets all Medway Zoning Bylaw setback requirements.
5. All other applicable general, design, and procedural requirements of Section 8.7 and all other applicable sections of the Medway Zoning Bylaw have been met.

C. Section 5.6.1 Flood Plain District Special Permit Criteria

1. *The land is not subject to flooding or unsuitable because of drainage conditions.*
2. *The proposed use of such land will not interfere with the general purposes for which the Flood Plain District has been established, and will not be detrimental to the public health, safety and/or welfare.*
3. *The proposed use or structure will comply with all other provisions of the underlying district within which the land is located.*

The Applicant has demonstrated through testimony and submitted written materials the following:

- a. The Applicant has demonstrated that the proposed location of the WCF will not be subject to flooding or drainage conditions that make it unsuitable for the proposed use. These issues were addressed extensively during the Applicant’s hearing before the Medway Conservation Commission on its Notice of Intent filing, which carefully considered issues of stormwater runoff and compensatory flood storage. The location of the WCF will accommodate the existing commercial operation of the Property and reduce drainage impacts and impact to wetland resource areas as much as possible by placing it primarily outside the 100 foot wetland buffer and by the gravel surface of the equipment compound. The Applicant will offset all flood storage volume lost due to the constructed facility and mitigate any drainage impact with vegetated areas of compensatory storage as required by the Medway Conservation Commission’s Order of Conditions.

D. Section 5.5 Nonconforming Uses & Structures Special Permit Criteria

1. *Section 5.5.D of the Medway Zoning Bylaw requires the Board to determine that the proposed use is not substantially more detrimental to the neighborhood than the existing nonconforming use.*

- a. The Board finds that the proposed use is not substantially more detrimental to the neighborhood because it will not increase traffic, the ground equipment will be minimally visible from the public way and neighboring properties, there will be some restoration of the wetland buffer area, and is similar in character to the existing and neighboring commercial and industrial uses.

IV. CONDITIONS OF APPROVAL

Based upon the findings of the Board and testimony and information received into the record during the public hearing process, the Board **GRANTS** the Applicant, Cellco Partnership d/b/a Verizon Wireless, a **SPECIAL PERMIT** for a Wireless Communications Facility under Section 8.7.H, a **SPECIAL PERMIT** under Section 5.6.1 Flood Plain District, and a **SPECIAL PERMIT** under Nonconforming Uses & Structures under section 5.5.D of the Medway Zoning Bylaw for the property located at 15 West Street (Parcel ID: 66-005), substantially in accordance with the plans submitted with this application, prepared by Hudson Design Group of 43 Beechwood Drive, North Andover, MA 01845, last revised October 24, 2017.

1. The fenced enclosure shall be constructed of wooden stockade fencing, and not chain link fencing as shown on the plans, of sufficient height to fully screen the ground equipment from view.
2. In order to ensure that the facility is accessible for emergency responders and maintenance personnel, the access driveway and parking area be regularly maintained, cleared, plowed, and managed to ensure unobstructed access to the WCF at all times. No equipment, materials, or otherwise from existing or future business operated on the property shall obstruct the access driveway and parking space easement so long as the facility is operational.
3. The equipment compound crushed stone surface shall be inspected and maintained by the service provider(s), maintenance personnel, and/or owner(s) of the facility on a regular basis so that it remains in good condition for access by emergency responders.
4. The access driveway shall be capable of supporting 75,000 pounds, at all times.
5. The parking space for the WCF shall be clearly delineated with permanent material at all times. The parking space shall be used only for purposes of maintenance of the WCF.
6. While constructing the equipment compound, if organic soil is encountered deeper than 3 inches, it will be removed and replaced with crushed stone, however, final surface elevations will remain consistent with the approved plans.
7. Construction drawings shall include a foundation design stamped by a Massachusetts structural engineer and in accordance with applicable building code requirements.
8. A shut-off safety switch external to the fenced enclosure shall be provided for Fire, Police, and Safety services. Such switch shall be reviewed and approved by the Fire Chief and/or Police Chief.

9. The Zoning Enforcement Officer, Zoning Board of Appeals Staff, and/or emergency responders (Fire & Police Department) may inspect the property on an as-needed basis, giving 24 hour notice to the owner(s) of the property and facility, unless in case of an emergency, to ensure that the WCF and the property remain in compliance with this Decision.
10. The Special Permit is subject to all subsequent conditions that may be imposed by other Town departments, boards, agencies, or commissions. Any changes to the Special Permit that may be required by the decisions of other Town boards, agencies or commissions shall be submitted to the Board for review as a modification.

Any work or use that deviates from this Decision shall be a violation of the *Medway Zoning Bylaw*.

11. Upon receipt of a written request by the applicant filed at least thirty (30) days prior to the date of expiration, the Board may grant an extension for good cause. The request shall state the reasons for the extension and also the length of time requested. If no request for extension is filed and approved, the Special Permits shall lapse two years from the date of Decision, unless action is taken, or as may be otherwise specified herein, and may be reestablished only after a new filing, hearing, and decision.

V. INDEX OF DOCUMENTS

A. The application included the following plans and information that were provided to the Board at the time the application was filed:

1. Statement in Support of Application for a Proposed Wireless Communications Facility, prepared by Robison+Cole
2. Search Area Aerial Image
3. Affidavit of Sean Mahoney, project manager for SAI Communication, LLC, in regards to gap in coverage and suitability of proposed location of Wireless Communications Facility
4. Opinion of Donald L. Haes, Jr., Ph.D., CHP, Radiation Safety Specialist, regarding compliance with Local, State, and Federal regulations
5. RF Report, C² Systems, LLC, Location, Coverage, and Site Study
6. 15 West Street Plan Set, 11 sheets, prepared by Hudson Design Group, LLC, 1600 Osgood Street, Building 20 North, Suite 3090, North Andover, MA 01845, and Northeast Survey Consultants, 115 Pleasant St, Suite 302, Easthampton, MA 01027, dated 08/19/16, revisions through 10/24/17

B. During the course of the review, the following materials were submitted to the Board by Town Departments/Boards:

1. Correspondence: between M. Leahy and D. Valentine, dated December 28, 2017
2. Correspondence: between M. Leahy, J. Mee, and K. Bailey, dated January 2, 2018
3. Correspondence: between J. Mee and K. Bailey, dated January 2, 2018
4. Correspondence: between M. Leahy and K. Bailey, dated January 3, 2018
5. Comments: Conservation Agent, Bridget Graziano, dated January 29, 2018
6. Comments: Fire Department, Chief Lynch, dated January 30, 2018
7. Memo: Administrative Site Plan Review Team, dated February 7, 2018

C. During the course of the review, the following materials were submitted to the Board by the Applicant and Town Consultants:

1. Addendum to Application filed by Cellco Partnership, received January 3, 2018
2. Peer Review: Tetra Tech, "General Site Plan Review," dated February 14, 2018
3. Correspondence: between M. Giaimo and M. Leahy dated February 20, 2018.

The Board and the Applicant have complied with all statutory requirements for the issuance of this Decision on the terms hereinafter set forth. A copy of this Decision will be filed with the Medway Town Clerk and mailed to the Applicant, and notice will be mailed to all parties in interest as provided in G.L. c. 40A §15.

Any person aggrieved by the decision of the Board may appeal to the appropriate court pursuant to Massachusetts General Laws, Chapter 40A, §17, and shall be filed within twenty days (20) after the filing of this notice in the Office of the Medway Town Clerk.

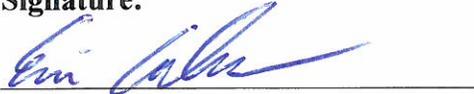
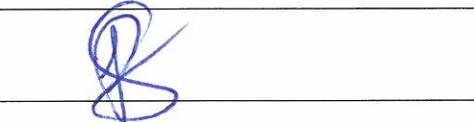
In accordance with MGL c. 40A, Section 11, no variance or special permit shall take effect until a copy of the Decision is recorded in the Norfolk County Registry of Deeds, and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title, bearing the certification of the Town Clerk that twenty days have elapsed after the Decision has been filed in the Office of the Town Clerk and no appeal has been filed within said twenty day period or that any duly filed appeal has been dismissed or denied. The fee for recording or registering shall be paid by the Applicant. A copy of the recorded Decision certified by the Registry, and notification by the Applicant of the recording, shall be furnished to the Board.

The next page provides the signatures of the Board.

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VI. VOTE OF THE BOARD

By a vote of 4 to 0, on a motion made by Rori Stumpf and seconded by Brian White, the Zoning Board of Appeals hereby **GRANTS** the Applicant, Cellco Partnership d/b/a Verizon Wireless, a **SPECIAL PERMIT** for a Wireless Communications Facility under Section 8.7.H, a **SPECIAL PERMIT** under Section 5.6.1 Flood Plain District, and a **SPECIAL PERMIT** under Nonconforming Uses & Structures under section 5.5.D of the Medway Zoning Bylaw for the property located at 15 West Street (Parcel ID: 66-005), substantially in accordance with the plans submitted with this application, prepared by Hudson Design Group of 43 Beechwood Drive, North Andover, MA 01845, last revised October 24, 2017.

Member:	Vote:	Signature:
Eric Arbeene	Yes	
Brian White	Yes	
Carol Gould	Yes	_____
Bridgette Kelly	--	_____
Rori Stumpf	Yes	

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