

The meeting opened at 8:20 p.m.

Present were: Brown (Acting Chair); McDonough (Clerk); Boness (Member); Baime & Bargnesi (Associate Members)

Petition No.: 4018

Premises affected: 15 Pine St

Petitioner: Gordon

Members: Brown (Acting Chair); McDonough (Clerk); Boness (Member); Baime & Bargnesi (Associate Members)

Attorney Pamela Schwartz presented Mr. Gordon, who was also present. The requested variance from Section 4.1.2 &/or special permit under Section 3.3.5 is for additions & alterations that will not meet the minimum front or rear yard depth requirements. The project includes adding a second garage stall, adding a second story on the right side of the house, adding dormers, and adding closed porches to the front. The lot is trapezoidal thus limiting options for expansion. There will be no living space on the 'ornamental' third floor depicted on the plans. The house was built in 1949. Other houses on the street are closer than the Gordon's. The Dillman's, abutters to the rear at 121 Elm St., voiced concern over the portions at the rear infringing on the buffer between the lots. Schwartz submitted photos of the Gordon house, depicting the very short driveway. There were no further public comments or questions. Schwartz argued that the proposed construction is in character with the neighborhood and that a hardship exists due to the shape & topography of the lot and that it will not be detrimental to the neighborhood. McDonough made a motion to waive a site view & close the public hearing. Bargnesi seconded the motion & the Board voted (5-0) to waive the site view & close the public hearing. The Board then proceeded to deliberate. Boness noted the shape of the lot restricting options, especially the rear lot line being at an angle to the house. McDonough, Baime & Bargnesi agreed. The Board discussed the fact that the further encroachment into the setbacks is increasing the non-conformity & therefore a variance is necessary. McDonough made a motion to grant a variance to allow the proposed construction in substantial conformance with the plans submitted with the hardship being the shape & size of the lot and to deny the special permit as moot. Boness seconded the motion & the Board voted (5-0) to grant the variance with conditions. Brown will write the decision.

Petition Nos.: 4021 & 4022

Premises affected: 1 Elm Sq. & 311 Lowell St.

Petitioner: Radio Mobile Access

Members: Brown (Acting Chair); McDonough (Clerk); Boness (Member); Baime & Bargnesi (Associate Members)

Attorney Brian Grossman represented both applications. Also present were Phu Thieu, radio frequency engineer, and Paul Mucci, architectural engineer. The requested special permits under Article VIII, Sections 3.1.3.F.13, 3.1.3.F.15 and involve the installation of 6 panel antennas, radio heads, 1 dish, cabling and equipment inside the building at 1 Elm Sq. and 3 panel antennas, remote radio heads, 2 dish antennas, cabling, and an equipment shelter at 311 Lowell St. The proposed use is for research & development, not wireless service to customers. The product being developed is radio mobile access antennas, cabinets & radio heads. In order to test the equipment, it is necessary to set up a mini network (cells). It will be monitored 24 hrs per day with 4-6 of those hours performing tests Monday – Friday. They need the cells close to each other, two being in Andover, and one in Tewksbury (where the company is based). They have an FCC license for one of the cells already. The other two are experimental licenses (1/5 power). Visits to the sites are low impact: 1/day at the start, 1 per week and eventually 1-2 per month. The Board discussed screening, alternative locations and the request for relief as a scientific use due to the fact that it is not commercial wireless facility or provider. The installations will be in place for an indefinite period of time since research is continuous. However, the number of antennas should not change at either location. Boness expressed concern over the 311Lowell Street tower that is currently at 99% capacity. Attorney Grossman assured the Board that the tower owner required a structural analysis prior to installation. Mucci agreed to submit the analysis. Boness also voiced concern with the frequency

emitted at the Lowell Street site. Grossman informed the Board that the emissions are below FCC guidelines. Mucci offer to conduct an exposure emissions report, emphasizing that the emissions are at 1/5 power & the installation is below the other antennas on the pole. The Board discussed the request for permission to change the equipment for continued research as long as the number/location of antennas, radio heads, etc. doesn't change.

The Board kept the public hearing open for the purpose of discussion. Boness voiced concern over the potential sale of this right in the future to a wireless operator. He cautioned the Board to be careful with the wording of the rights in regards to the people who have the rights in the decision. Baime noted that any change in operator/owner of the antennas & equipment would require further action from the ZBA. The Board discussed whether or not this proposal is classified as a wireless communications facility. The Applicant believes that it is not a wireless communication facility under the bylaw's definition. It is for research & development. Brown suggested that relief can be granted in the form of a special permit under section 3.1.3.c.13 as an accessory scientific use; deny the wireless requests, but note in the findings that the Applicant has demonstrated compliance with the relevant bylaw sections governing wireless communications just the same. Brown suggested a condition that this facility shall not be connected with or communicate with the external wire, but shall be a self-contained facility. It shall not connect with other elements of the wireless communications network. Further, the special permit shall be granted specifically to the Applicant and not be transferable. The Applicant shall be allowed to swap out equipment as long as neither the aesthetics nor the number of antennas changes. McDonough suggested asking Attorney Grossman to submit draft language. Bargnesi added the condition that the FCC licenses be submitted when obtained, if not already issued. Grossman informed the Board that the Applicant will be changing its corporate entity name, but not being sold. He asked to include the new name as part of the permit. He also asked that rather deny the alternative relief under Section 6.1, he asked to withdraw the request. Boness suggested another condition that the facility not be used for commercial purposes. McDonough made a motion to close the public hearing. Baime seconded the motion & the Board voted (5-0) to close the public hearing. The Board then proceeded to deliberate.

Brown asked the Applicant for a written request to withdraw the request for a special permit under Sections 6.1 & 3.1.3.F.15. Grossman agreed. Boness made a motion to allow the Applicant to withdraw the requests for relief under Sections 6.1 & 3.1.3.F.15. Baime seconded the motion & the Board voted (5-0) to allow the withdrawal without prejudice. Baime made a motion to approve the special permit for accessory scientific use under Section 3.1.3.F.13 with the following conditions (#4021, 1 Elm Square):

1. Nontransferable, except for corporate name change;
2. Not for commercial use;
3. All necessary permits for governing authorities, including, but not limited to FCC, shall be obtained;
4. Not be connected to the wireless network as defined in the bylaw;
5. The aesthetics of the facility shall not be significantly altered from that presented to the Board
6. Antennas or equipment may be changed or substituted so long as the number of antennas & equipment does not exceed that presented in the original application and the appearance is not substantially altered;
7. Any change that might alter the capacity of the tower will require further structural analysis;
8. For 311 Lowell Street, cables must be internal to the tower.

Boness seconded the motion & the Board voted (5-0) to grant the special permit under Section 3.1.3.F.13 with conditions. Baime then made a motion to grant a special permit with conditions under Section 3.1.3.F.13 at 311 Lowell St (#4022). Boness seconded the motion & the Board voted (5-0) to grant the special permit with conditions. Grossman will submit a draft decision. McDonough will review it.

There being no other business, Baime made a motion to adjourn the meeting. Boness seconded the motion & the Board voted (5-0) to adjourn the meeting.