

Kim DeNigro

From: Roland Bartl
Sent: Tuesday, August 15, 2006 12:09 PM
To: Michael Densen
Cc: Planning Board
Subject: RE:

Michael:

The Federal Telecommunications Act of 1996 does indeed very much limit the latitude of local authority in the matter. Mobile telecommunications providers are regarded as a necessary utility service that overrides a local authority's ability to refuse locating communications facilities within their jurisdiction. The Mass. Zoning Act, MGL Ch. 40A also provides for a mechanism to override local resistance, see section 3., Exemptions from Zoning Regulations - public service corporations and hearing before the Department of Telecommunications and Energy.

Given this framework, local zoning, and the Planning Board through its special permit, can impose reasonable regulations and restriction on the siting of such facilities and other matters to help minimize visual impacts. The applicant has an obligation to demonstrate a need for the proposed facility - either to create or improve coverage area, to service increased user volumes, or for other reasons and circumstances that make the facility necessary. We have engaged Broadcast Signal Lab to advise the Planning Board on precisely those questions. That said, need is a stretchable term that includes planning ahead for anticipate future growth. While we cover our bases just in case, I can hardly imagine that a service provider would propose and intend to build a facility if it were not needed, or not anticipated to be needed in their service area. It is also clear that, in the land of free enterprise and competition, every company gets the same bite at the apple. There are about 6 or 7 telecommunication providers licensed by the FCC for this area. A community must make accommodations for all of them equally. Also, coverage transcends town boundaries, and one community cannot restrict the installation of a needed facility on the basis, for instance, that most of the coverage area is actually in the next town over.

So, assuming there is a demonstrated need, the Planning Board's purview are location and aesthetics. Location is pretty much spelled out in the bylaw through setbacks. Due to the laws of physics, location is by necessity independent from the zoning district. At least in Acton it is highly unlikely that reliable mobile phone service could be provided from only commercial and industrial district locations without drastically increasing the tower height limit, which would then run into FAA requirements for lighting towers at night. The Board can ask for allowing co-locators on towers it approves and to insist that co-location opportunities are exhausted before new facilities are erected. In this application co-location alternatives are a remote possibility, but I know most of Acton's existing towers are at capacity and those that are not may only provide marginal service, if any, in the area where the tower is proposed. Insisting on another location for a new tower rather than the one proposed, can be done but alternative land and location must be available that provides the same or similar coverage area and meets the basic dimensional zoning requirements for such towers. So, if the need is there we won't be going far anyway.

On aesthetics, the Planning Board predominantly favored a monopole design, as opposed to towers with exterior antenna arrays, even though the exterior arrays are more space efficient allowing more carriers to co-locate on a single tower. The exceptions you see around town generally predate the Planning Board's special permit authority, which was adopted at Town Meeting in 1998, or so. Before then it was a Board of Appeals height variance issue. Another aesthetic consideration is a trade off between the number of towers versus height of towers and it goes back to co-location. Acton Town Meeting has adopted a maximum height of 175 feet to increase co-location opportunities on fewer towers around town. Other towns have gone the other way opting for more towers at lower heights. The Acton Planning Board has consistently required tower proponents to build towers with a foundation and base so that it could be fully extended to 175 feet, and it has required proponents to allow co-location on their facilities to maximize the height capacity. Given that this application is on a church property, the opportunity exists to disguise the tower as a new and taller church steeple or belfry. But it is unlikely that such a prettied up tower would reach a height of 175 feet. Co-location potential would then be more restricted, which increases the chance of another tower in the general area at some future date. It is much about trade-offs.

8/17/2006

Note that the 1996 Federal Telecommunications Act excludes health concerns from consideration, such as effects from microwaves or magnetic fields.

Regards -

*Roland Bartl, AICP
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-----Original Message-----

From: Michael Densen
Sent: Tuesday, August 15, 2006 8:19 AM
To: Roland Bartl
Subject:

Roland, I hope all is well. One of my neighbors went down to town hall to discuss his concerns (actually his "disgust" that the town would even concenter allowing a cell phone tower in a residential neighborhood) and this is what he was told, "I did go down to town hall and talk to someone there (Christine?) and she said that it will be really hard to stop the tower". Is this the case? We, as a town or as a planning board, have no say? I have pulled myself away from this issue as I am very close to the situation but I am getting a lot of calls abt this and folks are very unhappy. Pls advise. Thanks, Mike

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