

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

TRIAL COURT
SUPERIOR COURT DEPT.
CIVIL ACTION NO. 2004-4904

_____)
CHRISTOPHER WHITLEY,)
)
Plaintiff.)
)
v.)
)
THE TOWN OF ACTON, JONATHAN)
WAGNER, KENNETH KOZIK, RICHARD)
FALLON, GARRY RHODES, and the)
ZONING BOARD OF APPEALS OF THE)
TOWN OF ACTON,)
)
Defendants.)
_____)

AFFIDAVIT OF EVA BOWEN

I, Eva Bowen, on oath depose and say as follows:

1. I am the Town Clerk of the Town of Acton, Massachusetts ("Town").
2. In that capacity, I have custody of the official records of the Town relating to votes taken at Annual Town Meetings.
3. I attended the 2005 Annual Town Meeting held on April 4 and April 5, 2005, and I kept the official records of the votes taken at the 2004 Annual Town Meeting.
4. Attached hereto as Exhibit A is a true copy of Article 25A on the Warrant for the April 4, 2005 Annual Town Meeting.
5. Town Meeting debated and voted on Article 25A. It required a 2/3 vote to pass; however, it failed to achieve a 2/3 vote.
6. The Planning Board then recommended passage of Article 25B.

7. Town Meeting debated and voted on Article 25B. Based on a standing vote count, Article 25B was adopted by more than a 2/3 vote.

Signed under the penalties of perjury this ~~12th~~ day of April, 2005.



Eya Bowen, Town Clerk

ARTICLE 25A AMEND ZONING BYLAW – AMATEUR RADIO INSTALLATION
 (Two-thirds vote)

[Notes in italic print are not part of the article but are intended for explanation only]
 To see if the Town will vote to amend the zoning bylaw as follows:

A. Insert under section 3.2 – General Uses, a new use definition as sub-section 3.2.4 as follows:

3.2.4 Amateur Radio Installation – One or more antennas or antenna STRUCTURES owned and used exclusively by an amateur radio operator with a valid and current amateur radio operator’s license issued by the Federal Communications Commission (FCC), subject to the following restrictions and limitations:

- 3.2.4.1 No antennas and antenna STRUCTURES shall be located in the front yard of a principal BUILDING as defined in Section 5.2.4.
- 3.2.4.2 The operator of the Amateur Radio Installation, or the owner of the LOT, shall dismantle and remove the antennas or antenna STRUCTURES within one year after the cessation of a FCC-licensed operator’s ownership or tenancy, or the expiration or rescission of the operator’s FCC license.
- 3.2.4.3 The base of an antenna or antenna STRUCTURE shall be surrounded by a fence with a locked gate or shall be equipped with an effective anti-climb device.

B. Insert under section 3 – Table of Principal Uses, a new line 3.2.4 as follows:

		RESIDENTIAL DISTRICTS					VILLAGE DISTRICTS					OFFICE DISTRICTS	
PRINCIPAL USES		R-2 R-8 R-10	R-4 R-8/4 R-10/8	R-A	R-AA	VR	EA V	EAV-2	NAV	SAV	WAV	OP-1	OP-2
3.2 GENERAL USES													
3.2.4	Amateur Radio Installation	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y

		BUSINESS DISTRICTS			INDUSTRIAL DISTRICTS					SP. DIST.	
PRINCIPAL USES		KC	LB	PM	GI	LI	LI-1	SM	TD	ARC	SITE PLAN
3.2 GENERAL USES											
3.2.4	Amateur Radio Installation	Y	Y	Y	Y	Y	Y	Y	Y	Y	NR

C. Delete section 3.10.3 – Applicability of Special Requirements for Wireless Communication Facilities, and replace it with a new section 3.10.3 as follows:

3.10.3 Applicability – This section 3.10 shall apply only to reception and transmission facilities for the purpose of personal wireless communication services identified in the Federal Telecommunications Act of 1996. Nothing in this section shall be construed to regulate or prohibit customary installations for the reception of wireless communication signals at home or business locations, or Amateur Radio Installations as defined in section 3.2.4.

[Note: Section 3.10.3 currently states as follows:

3.10.3 Applicability – This section 3.10 shall apply only to reception and transmission facilities for the purpose of personal wireless communication services identified in the Federal Telecommunications Act of 1996. Nothing in this Bylaw shall be construed to

regulate or prohibit customary installations for the reception of wireless communication signals at home or business locations, and nothing in this Bylaw shall be construed to regulate or prohibit an antenna installed solely for use by a federally licensed amateur radio operator, provided that the height of such antenna does not exceed applicable height limitations and, if freestanding, that it is set back from all LOT lines at least the distance equal to its height, but not less than the otherwise applicable minimum yard requirement.]

- D. In section 4.3.6.3 – Treatment and Renovation of Runoff, add the following sentence at the end of the section:

“This section shall not apply to Amateur Radio Installations.”

[Note: Section 4.3.6.3 currently reads:

4.3.6.3 Treatment and Renovation of Runoff – All water runoff from IMPERVIOUS COVERS shall be funneled into gas trap catch basins. In addition, the first (1st) inch of every storm event shall be directed into a retention pond(s), where it shall be retained for an average of at least 3 days prior to recharge into the ground or discharge from the site. The retention pond(s) shall be exposed to sunlight, vegetated, and lined with soil featuring a permeability of 0.0001 cm/sec (0.1417 in/hr) or less. A DIVERSION BOX shall direct all water, which falls onto the site in excess of one (1) inch during a single storm event, toward additional storage, direct infiltration, or discharge from the site. Alternate methods of runoff treatment and renovation may be approved by the Special Permit Granting Authority if the Special Permit Granting Authority determines the intent of this Section is met.]

- E. Insert in section 8 – Nonconforming Lots, Uses, Structures, and Parking; Exemptions; a new subsection 8.10 as follows:

8.10 Exemption for Amateur Radio Installations – The limitations of this Zoning Bylaw pertaining to the height of BUILDINGS and STRUCTURES and the requirements for a minimum number of parking spaces in Section 6.3 shall not apply to Amateur Radio Installations as defined in Section 3.2.4.

- F. Insert in section 9B.4 – Allowed Uses in a Senior Residence Development, a new subsection 9B.4.9 as follows:

9B.4.9 Amateur Radio Installations.

, or take any other action relative thereto.

SUMMARY

[Written by Planning Board]

Amateur radio operators, or “hams”, communicate with other stations nearby and all over the world. The ability to communicate both over long and short distances increases with the height of an antenna above the ground. Federal and State governments recognize hams for providing vital communications in the event of emergency or disaster.

This article establishes “amateur radio installation” as a new principal use category allowed in every zoning district and provides certain exemptions for their antennas and antenna structures including an exemption from the otherwise applicable height limitations of the Acton Zoning Bylaw. Standard setback requirements from the lot lines would apply. The article would prohibit the placement of antennas and antenna structures in the front yards of buildings; require their removal within a year of cessation of the use; and mandate fencing or anti-climb devices.

Federal Communications Commission (FCC) regulations state: "... local regulations which involve placement, screening, or height of antennas and antenna structures based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications, and to represent the minimum practical regulation to accomplish the local authority's legitimate purpose" (47 C.F.R. §97.15(e)); and "a station antenna structure may be erected at heights and dimensions sufficient to accommodate amateur service communications. State and local regulations of a station antenna structure must not preclude amateur service communications. Rather, it must reasonably accommodate such communications and must constitute the minimum practicable regulation to accomplish the State or local authority's legitimate purpose" (47 C.F.R. §97.15(b)). In further clarifications of its Rules, the FCC did not consider it a legitimate local government action to seek a balance between local interest and the needs of an amateur radio operation to achieve effective communications. Rather, the FCC has placed the interest of the amateur radio operator above that of the community and expects the least local regulation necessary for the welfare of the community to accommodate the needs of the amateur radio operators to engage in amateur radio communications. This article reflects the reality of FCC rules, which elevate effective amateur radio operations to a vital national interest and largely preempt local control.

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Selectman assigned: F. Doré Hunter: bos@acton-ma.gov

Recommendations:	<u>Board of Selectmen</u>	<u>Finance Committee</u>	<u>Planning Board</u>
	Not Recommended	Deferred	Recommended
