

JAMESTOWN ZONING BOARD OF REVIEW

Minutes of the August 22, 2023 Meeting

A regular meeting of the Jamestown Zoning Board of Review was held at the Jamestown Town Hall, 93 Narragansett Avenue. The Chairman called the meeting to order at 7:00 p.m. The clerk called the roll and noted the following members present:

Richard Boren, Chair
Dean Wagner, Vice-chair
Terence Livingston, Member
James King, Member
Jane Bentley, Member
John Shekarchi, 1st Alternate
James Sisson, 2nd Alternate

Also present:

Wyatt Brochu, Counsel
Peter Medeiros, Zoning Officer
Brenda Hanna, Stenographer
Pat Westall, Clerk

MINUTES

Minutes of July 25, 2023

A motion was made by Terence Livingston and seconded by James King to accept the minutes of the July 25, 2023 meeting as presented.

The motion carried by a vote of 5 – 0.

Richard Boren, Dean Wagner, Terence Livingston, James King, and Jane Bentley voted in favor of the motion.

John Shekarchi and James Sisson were not seated and Robert Maccini was absent.

CORRESPONDENCE

A letter dated July 26, 2023 from Mary Lou Sanborn re: Sanborn Zoning Variance Request.

OLD BUSINESS

Navigator

A motion was made by Richard Boren and seconded by Terence Livingston to grant the request of Navigator Properties, LLC d/b/a Mariner Tower (Carr Homestead Foundation Inc. – Owner) whose property is located at 90 Carr Lane, Jamestown, RI 02835, and further identified as Tax Assessor’s Plat 4, Lot 17 for a Special Use Permit from Article 3, Section 812-301 and 82-305, and Article 6, Sections 82-600-602. Specifically, the Applicant seeks a Special Use Permit for a Transmission lines, towers or substations use pursuant to Sections 82-301 and 82-600-602; and (2) Special Use Permit for height exception in the RR-200 Zoning District pursuant to Section 82-305 to construct a 160’ above ground level (“AGL”) monopole that will structurally accommodate up to four (4) wireless telecommunications carriers including without limitation their associated antennas, radio communications equipment and cabling. The proposed 75’x75’ fence surrounding the proposed compound at the base of the tower will accommodate the carriers’ ground-based radio communications equipment. The proposed ground equipment will be located within the proposed fenced compound. The Facility will be constructed to accommodate the co-location of other wireless communications providers on the tower as well as associated radio communications equipment, backup power, and/or weatherproof cabinets to be located within the fence. By allowing wireless communications providers to fill a significant coverage gap in their respective networks, the Facility will assist them in providing adequate and reliable wireless communications services in and around the Town of Jamestown and to other parts of Rhode Island.

This Board has determined that this application does satisfy the requirements of Article 6, Sections 600 and 602.

This Special Use Permit is granted with the following restriction/condition(s):

This project must be constructed in strict accordance with the site and building plans duly approved by this Board.

The findings of facts and conditions of approval set forth in the 6/22/23 Planning Commission Memorandum are incorporated in this decision and such conditions of approval shall be complied with except that the security fence shall be 6 feet in height, not 8 feet in height.

I. JAMESTOWN ZONING ORDINANCE

1. The applicant “Mariner Tower” on 6/23/23 has applied for
 - 1) Special Use Permit for a “Transmission Lines Tower or Substation Use, all pursuant to Section 82-301 and Sections 82-600-602
 - 2) Special Use Permit for height exception in the RR200 Zoning District pursuant to Section 82-305
2. Section 82-301 Uses and Districts includes Table 3-1 Section V. Transportation and Utilities, subsection 12 also permits Transmission lines, towers or substations in a RR200 Zone by Special Use Permit.
3. Section 82-103 Definitions (145) Special Use is a regulated Use which is permitted pursuant to the special use permit issued by the authorized governmental entity pursuant to RIGL §45-24-42
4. Section 82-305 Exceptions to Height Regulations
 - A. Provides that a tower may be erected above the specified height regulations in accordance with subsection B, which provides that a structure such as a tower may exceed the height regulations provided, they are set back from all lot lines, and one foot for each foot of excess, any

such structure in excess of 50 feet shall be required to receive a special use permit from the Zoning Board.

5. Thus, the applicant requires the special use permit from the Zoning Board of Review
6. Section 82-601 of the Zoning Ordinance provides that a special use permit may be granted by the Zoning Board of Review for the uses listed in Sec. 82-301 and 82-602 provides that the burden is on the applicant to show that the granting of the special use permit will not result in conditions inimical to the public health, safety, morals and welfare and the granting of the special use permit will not substantially or permanently injure the appropriate use of the property in the surrounding area or district. In granting a special use permit, the Zoning Board of Review may impose conditions necessary to maintain harmony with other lots in the same or abutting zoning district
7. Since the enactment of the 1991 RI Zoning and Enabling Act, there has been published a plethora of case law on the subject of special use permits

II. Federal Telecommunications Act of 1996

8. Under this Statute, the FCC licenses carriers to provide wireless telephone service on a competitive basis, 47 USC € 332.
9. The Statute preserves state and local authority over the placement and construction of towers subject to certain limitations including a local zoning ordinance or board cannot regulate to the extent of having the effect of prohibiting the provision of personal wireless services.
10. One of the first federal cases interpreting the competing aims and goals of zoning boards and carriers in Town of Amherst, N.H. v. Omni point Communications 173 F. 3 and 9 (1st Cir. 1999)
11. The Amherst opinion sets forth the following guidelines:
 - a) The Telecommunications Act is a deliberate compromise between the aim of facilitating the growth of wireless service and maintaining substantial local control over siting of towers.
 - b) The strictness of local zoning codes is preempted by the Supremacy Clause of the U.S. Constitution
 - c) Under federal law, the town can control the siting of facilities, but the town cannot preclude wireless service
12. Since the Amherst case, federal courts have had numerous opportunities to rule on cases similar to the present application before the Jamestown Zoning Board.

13. Typically, the cases concern the applications for monopole towers from 100 feet to 190 feet.

14. In Cellco Partnership d/b/a Verizon Wireless v. Zoning Board of Clifton Park 361 F.Supp.3rd 248 (N. D New York, 2019), in a written decision the senior federal judge found the following:

a) A ZBR must evaluate a cellular company application on the basis of whether the public utility has shown a need for its facility and whether the needs of the broader public would be served by approving the application.

b) This need is called the “public necessity” Standard and wherein the applicant is required to show

1. there are gaps in service

2. the location of the tower will remedy the gaps

3. the tower presents a minimal intrusion on the community

c) Objections on aesthetic grounds may not constitute substantial evidence of an adverse impact on the community

d) A few generalized concerns about a substantial decrease in property values do not constitute substantial evidence

e) Mere speculation that alternative sites were more appropriate or that a wireless provider could have tried harder to find others less obstructive locations do not constitute substantial evidence. Courts have concluded that providers do not need to consider every potential alternative to satisfy the least restrictive means first. The law only requires carriers to engage in a good faith effort to evaluate alternative sites.

f) The mere fact that members of the community raised health concerns does not violate the TCA and cannot constitute substantial evidence to deny the cell tower application. In fact, the TCA expressly prohibits zoning boards from denying an application for a tower on community health or safety grounds if the application is compliant with FCC emission regulation levels 47 USS £332 (c) (7) (B) (IV).

III. The 6/23/23 Application

15. Marked as a full exhibit was the 6/23/23 application for S.U.P. to the ZBR and 17 subparts constituting the complete application. Approximately 7 – 10 days before the hearing on 7/25/23, members of the ZBR were provided a copy and the public could view a complete copy.

16. Pertinent to this decision and specifically referenced are the following subparts

#2 Project narrative and supporting statement

#4 Planning Commission Memorandum

#5 Alternative Site Analysis

#6 Real Estate Valuation Study

#7 Site Plan

#8 FCC Compliance Report

#9 R F Report and Height Analysis

#10 FAA Determination of No Hazard

#13 Visibility Percentage Analysis

17. Subpart #2 is an overview of the application, the Telecommunications Act of 1996, and the relief requested

Subpart #4 is Planning Commission Memorandum to the ZBR unanimously recommending approval with findings of fact, and conditions of approval.

Subpart #5 is an Alternate Site Analyses provided to the applicant by Lisa Bryer, Town Planner. Eight alternate sites were considered and either rejected as not adequate or the landowner was not willing to lease their property.

Subpart #6 is a surrounding property valuation performed by Fair Market Advisors, LLC opining that the proposed tower will have no measurable impact on the price paid for surrounding properties due to the proximity or visibility.

Subpart #7 is the Site Plan with attached 9 sheets.

Subpart #8 Theoretical Radio Frequency (RF) were calculated and assuming that the full capacity of 4 PWS carriers, the facility would comply with all regulatory guidelines for RF exposure.

Subpart # 9 is a 7 page report with attachments from C. Squared Systems, LLC. In summary there are areas of Jamestown of deficient coverage. Without the installation of the proposed site multiple wireless operators will be unable to maintain their existing communications in this area of Jamestown. Site maps are attached setting forth different degrees of coverage.

Subpart #10 is an aeronautical study by Obstruction Evaluation Group opining that the proposed structure does not exceed obstruction standards and would not be a hazard to air navigation.

Subpart #13 Are 6 sets of tower visibility analyses of a tower height of 160 feet from various locations and varying percentages, prepared by VSS.LLC using VSS-IVS Interactive Viewshed Analysis Tool

18. Since the application and it's 17 Subparts have been marked as a full exhibit, the ZBR accepts the documents, reports, and analyses subject to cross examination, and to the extent applicable, the testimony of objectors.

IV. TESTIMONY

19. The applicant presented an 8 page report with a Table of Site information and 6 attachments. The Report is entitled RF Report, Jamestown, RI 90 Carr Lane, Jamestown, RI by C Squared Systems, LLC. The author of the 2/7/23 report is Sohail Usmani, a registered and licensed radio frequency engineer.

20. Mr. Usmani testified that he has been a RF engineer for over 25 years and has worked for every cellular carrier in the U.S. His educational background is electrical engineering. Mr. Usmani discussed all of the factors that are considered in deciding upon a site, the height of the tower, the location of the tower, and the number of carriers on the tower. For factors, consider vegetation, topography, urban or suburban environment, direction of antenna, and prevailing tree height. If there are 4 carriers, need tower 40 - 50 feet above the line as each antenna is about 8 feet tall and need a 10 foot physical separation. For the location of the tower is partially driven by the zoning set back requirements. Mr. Usmani explained in detail

why the need for 160 foot tower and what occurs in loss of coverage as you decrease the height of the tower in terms of loss of roadway coverage. It was Mr. Usmani's opinion that the propose tower site at 90 Carr Lane will allow operators an opportunity to provide significant coverage improvements to residents, businesses, visitors and traffic corridors within Jamestown that are currently located within deficient service areas. Mr. Usmani was a creditable witness.

21. On behalf of the applicant, Louis Vitale testified. Mr. Vitale identified himself as the manager, CEO and president. Mr. Vitale's background is 20 years in telecommunications, developing, acquiring, and operating wireless towers in New England and N.Y. State. His company's goal is to work with carriers and build one good site to accommodate multiple carriers. Mr. Vitale testified that the Town commissioned a firm named "Dewberry" to determine that coverage was needed in the north end of Jamestown. From that report, Mr. Vitale worked with the Town Manager and the town Planner to discuss various site options proposed. By a process of elimination and from an RF standpoint, the best location was 90 Carr Lane, for numerous reasons. Mr. Vitale was a creditable witness.

22. At the conclusion of the applicant's presentation approximately 10 residents living in the north end of Jamestown testified in favor of the application. The common theme was dropped calls., safety of communicators, and inability to make calls of necessity – including testimony by Dr. Vaccaro, a physician.

23. Approximately 10 Jamestown residents living in close proximity to the proposed tower testified in opposition to the tower. The common theme was visual blight, reduction of property values, decreasing the health and safety from radio frequency, and any location but the Carr Lane location.

V. CONCLUSION

24. Based upon the Jamestown Zoning Ordinance, The Federal Telecommunications Act of 1996, the federal cases interpreting the act and its relationship to zoning ordinances, the application for zoning relief, the documentary evidence presented and introduced as full exhibits, the testimony of witnesses, the application for relief is granted.

The motion carried by a vote of 3 – 0.

Richard Boren, Terence Livingston, and James King voted in favor of the request.

James Sisson abstained and Robert Maccini was recused. Dean Wagner, Jane Bentley, and John Shekarchi were absent.

NEW BUSINESS

Alexander

A motion was made by Dean Wagner and seconded by Terence Livingston to grant the request of Alexander Revocable Living Trust whose property is located at 959 East Shore Road, and further identified as Tax Assessor's Plat 1, Lot 90 for a Variance granted under Article 6, Special Use Permits and Variances, Section 600 and 606. This application is made pursuant to the provisions of section 82-302, Table 3-2, District Dimensional Regulations for the RR80 Zoning District of the zoning ordinance. The Applicant seeks Corner yard setback relief of 14.7 feet where 40 feet is required and the existing structure is located 14.7 feet from the corner yard line.

Out of an abundance of caution, his application also seeks a Special Use Permit granted under Article 6 Section 82-600 and 602, pursuant to Article 14. Accessory Family Dwelling Units, Section 82-1403 and 82-1404. General Requirements and Standards and Application Procedures, to obtain a permit for an accessory family dwelling unit to be located within the proposed addition. Said property is located in a RR-80 zone and contains 29,533 square feet.

Regarding this request, this Board has determined that this application does satisfy the requirements of Article 6, Section 600

Regarding the request for a Variance, this Board has determined that this application does satisfy the requirements of Article 6, Section 606, Paragraphs 1 through 4, and Section 607, Paragraph 2.

Regarding the request for a Special Use Permit, this Board has determined that this application does satisfy the requirements of Article 6, Section 602.

This Variance is granted with the following restriction(s):

This project must be constructed in strict accordance with the site and building plans duly approved by this Board.

This approval is conditioned on the owners fully complying with Section 82-1403, the general requirements and standards for accessory family dwelling units.

This motion is based on the following findings of fact:

1. The lot is small, less than 30,000 sq. ft. in an R80 zone.
2. This is an existing non-conforming lot by size.
3. The majority of the lot is unbuildable.
4. The allowed lot coverage is 20% and the proposed site coverage is 11.5%.
5. The total habitable space of the proposed accessory family dwelling unit is 32.5% of the total dwelling structure.
6. The Technical Review Committee voted in support the citing and variance based on the location of the existing structure.
7. There were no objectors.

The motion carried by a vote of 5 – 0.

Richard Boren, Dean Wagner, Terence Livingston, Jane Bentley and John Shekarchi voted in favor of the motion.

James King was recused; James Sisson was not seated and Robert Maccini was absent.

40 Bayberry

A motion was made by Terence Livingston and seconded by Dean Wagner to grant the request Application of 40 Bayberry, LLC, whose property is located at 40 Bayberry Road, and further identified as Tax Assessor's Plat 12, Lot 71 for dimensional relief granted under Article 6, Special Use Permits and Variances, Section 600 and 602. This application is made pursuant to the provisions of section 82-302, Table 3-2, District Dimensional Regulations of the zoning ordinance for a front yard setback of 26 feet where 30 feet is required and a side yard setback of 4 feet where 10 feet is required. The Applicant seeks to construct an addition to the existing structure. Said property is located in a R-40 zone and contains 8,000 square feet.

This Board has determined that this application does satisfy the requirements of Article 6, Section 600, Section 606, and Section 607, Paragraph 2.

This Variance is granted with the following restriction/condition(s):

This project must be constructed in strict accordance with the site and building plans duly approved by this Board.

This motion is based on the following findings of fact:

1. The applicant is reconfiguring the house to move the front door from the west side to the Bayberry Road side.
2. Adding steps to the front door because of the grade of the yard is the reason for the variance on the front side.
3. The applicant is removing the current decks on the west side due to safety concerns and do not really work since they are too small, 4 feet in depth.
4. The applicant is proposing adding new decks on the west side replacing the current decks which will be 7'2" in depth that are more usable, which is the reason for the variance on the side setback.

The motion carried by a vote of 5 – 0.

Richard Boren, Dean Wagner, Terence Livingston, James King, and Jane Bentley voted in favor of the motion.

John Shekarchi and James Sisson were not seated and Robert Maccini was absent.

Macintyre

A motion was made by James King and seconded by Dean Wagner to grant the request Andrew K. Macintyre et ux Colleen D., whose property is located at 9 Maple Avenue, and further identified as Tax Assessor's Plat 9, Lot 14 for a variance from Article 7 Non-Conforming Uses, Sec. 82-705. Alteration of a non-conforming structure.

The applicant seeks to enclose an existing side deck into living area (138.6 sq. ft.) which is within the allowed setbacks. The existing structure is non-conforming regarding front setback along Maple Avenue. 30' required, 19'6" existing.

This Board has determined that this application does satisfy the requirements of Article 6, Section 600, Section 606, and Section 607, Paragraph 2.

This Variance is granted with the following restriction/condition(s):

This project must be constructed in strict accordance with the site and building plans duly approved by this Board.

This motion is based on the following findings of fact:

1. Said property is in an R-20 Zone and contains 30,214 sq. ft.
2. The property is non-conforming due to a front deck within a front setback.
3. The proposed change does not alter the original foot print of the house.
4. The addition is replacing a rotting deck and is not within the side setback.
5. No neighbors objected.

The motion carried by a vote of 5 – 0.

Richard Boren, Dean Wagner, Terence Livingston, James King, and Jane Bentley voted in favor of the motion.

John Shekarchi and James Sisson were not seated and Robert Maccini was absent.

ADJOURNMENT

A motion was made and seconded to adjourn at 8:55 p.m.
The motion carried unanimously.