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J. Gregory Jacobsen, Vice Chairman
Scott M. Steeves
E. Patrick Maguire, MLA, RLA, CLARB, LEED AP®
Jason L. Mammone, P.E.

Jared F. Nokes, J.D., Associate Member



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**TOWN OF DEDHAM
ZONING BOARD OF APPEALS
DECISION**

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TOWN OF DEDHAM
CLERKS OFFICE

Applicant: T-Mobile Northeast, LLC.
Property Address: 5 Incinerator Road, Dedham, MA
Property Owner: Town of Dedham
Property Owner Address: 24 Bryant Street, Dedham, MA
Applicant Representative: Adam F. Braillard, Esq., of Prince Lobel Tye LLP
One International Place, Suite 3700, Boston, MA 02110

Legal Notice: The applicant seeks allowance for a temporary use and structure, and to the extent necessary, a special permit and dimensional variances, to allow the installation and operation of a temporary free-standing wireless communications service link tower.

Section of Zoning Bylaw: *Town of Dedham Zoning Bylaw Section 6.4*

Zoning District, Map and Lot: Highway Business ("HB"), Wireless Communications Services Overlay District (WCSOD), 77/68

Date of Application: June 20, 2018
Date of Public Hearing: July 18, 2018
Date of Decision: July 18, 2018
Vote: Approved 5-0
Voting Members: James F. McGrail, Esq., J. Gregory Jacobsen, Scott M. Steeves, E. Patrick Maguire, MLA, RLA, CLARB, LEED AP®
Jason L. Mammone, P.E.

Date Filed with Town Clerk: **August 7, 2018**

The Zoning Board of Appeals of the Town of Dedham, Massachusetts (the "ZBA"), held public hearings on July 18, 2018, commencing at 7:00 p.m. in the Town Office Building, Bryant Street, Dedham, MA. Present were members of the ZBA, Chairman James F. McGrail, Esq., J. Gregory Jacobsen, Scott M. Steeves, E. Patrick Maguire, LEED AP, and Jason L. Mammone, P.E. These

hearings and meeting of the ZBA were duly advertised in accordance with the requirements of MGL Chapter 40A, Section 11.

At 7:00 p.m., the Chairman called for the hearing on the application of T-Mobile Northeast, LLC, (the "Applicant") to allow for a temporary use and structure, and to the extent necessary, a special permit and dimensional variances, for the installation and operation of a temporary free-standing wireless communications service link tower (the "Temporary Tower") at 5 Incinerator Road, Dedham, MA, in the Highway Business ("GB") and the Wireless Communications Services Overlay District ("WCSOD") zoning districts (the "Property"), pursuant to the Town of Dedham Zoning Bylaws (Bylaws) sections 6.4.

The Applicant was represented by Adam F. Braillard, Esq., of Prince Lobel Tye LL, One International Place Suite 3700, Boston, MA 02110. Also present, on behalf of the Town of Dedham Department of Public Works (the "DPW") was Joseph Flanagan, the DPW Director. Attorney Braillard had previously submitted the following documents: a supporting statement addressing the requirements set forth in the Bylaws; plans providing a depiction of the existing wireless communications service facility and the proposed Temporary Tower (the "Plans"); the Applicant's Federal Communications Commission licenses; a study by Boston Chimney addressing the structural integrity of the existing smokestack on the Property; the proposed Temporary Tower specifications; radio frequency maps and affidavit; and photograph simulations of the proposed Temporary Tower.

The Property, pursuant to the Town of Dedham's assessors' maps, is located on Map 77, Lot 68, and is owned by the Town of Dedham. Moreover, and as referenced on the Town of Dedham zoning map, the Property is located in the HB and WCSOD zoning districts. The Property is fully developed and occupied by a DPW transfer station building with a large 135-foot smoke stack attached thereto (the "Smokestack"). The Applicant, as well as two (2) other wireless telecommunications carriers are currently operating building-mounted wireless communications service links on the Smokestack located on the Property. The Applicant's current building mounted wireless communications service link on the Smokestack consists of antennas and ancillary equipment adjacent to and on the Smokestack (the "Existing Facility"). Approximately twenty (20) years ago, the Applicant obtained the required relief to install and

operate the Existing Facility. Subsequent to that time, the Applicant constructed the Existing Facility and has been operating on the Property since that time. Recently, the Applicant determined that the Existing Facility requires modifications and upgrades to address the Applicant's network congestion in the vicinity. Through its procedural due diligence processes, the Applicant learned of the Smokestack's structural problems.

Section 6.4 of the Bylaws states, "In any district, the Board of Appeals in the case of a declared emergency, a catastrophe, or the substantial destruction of an existing building and in no other circumstance, may authorize a temporary building, structure, or use not in conformity with the provisions of this Bylaw, provided that such use will not be detrimental or injurious to persons, property, or improvements in the vicinity over more than a total of three (3) years, whether or not consecutive...". As referenced in the study by Boston Chimney addressing the structural integrity of the existing smokestack on the Property dated March 5, 2018, (the "Study") Boston Chimney states that "the majority of mortar joints are deteriorated, weathered or open; ...there are several fractures on the South and East elevations, with widths up to 1/8 inch; ...and the masonry at the upper buckstay of the breeching inlet has deteriorated". The Study further states that "the chimney is beyond repair...", and that the chimney should be demolished. Therefore, the Smokestack is substantially destroyed and it is rendered unusable for its current intended purpose; to house wireless communications service link facilities thereon, including the Existing Facility.

Section 10.0 of the Bylaws provides the definition of a "Building" as "a structure having a roof and designed, intended, or used as a shelter for occupancy, by persons, animals, or things, provided that any other building, structure, or part thereof sharing a wall with, touching, or having a permanent above-ground structural connection to a building shall be considered part of such building." As referenced on the Plans, the Smokestack is permanently connected to the building on the Property and therefore the Smokestack is considered a Building as defined in the Bylaws. Accordingly, the Smokestack is substantially destroyed and the ZBA may authorize the installation and operation of a temporary use and structure in the form of the proposed Temporary Tower on the Property, and that such use will not be detrimental or injurious to persons or property.

Mr. Joseph Flanagan, DPW Director, 5 Incinerator Road, spoke in favor of this application stating that the Smokestack is in disrepair and that it needs to be demolished, and to do so, the carriers located on the Smokestack need to temporarily relocate their equipment. Mr. Flanagan stated that the Applicant has been diligently working with the DPW to formulate a plan for the Temporary Tower.

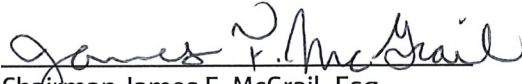
Mr. Royand Herman of East spoke in opposition of the application stating that he agreed the structure was in disrepair. However, he would prefer that T-Mobile take a survey of the existing buildings that currently had cell tower antenna, and make use of one of these instead. He felt if a new temporary tower was constructed it would cause increased traffic congestion to the area.

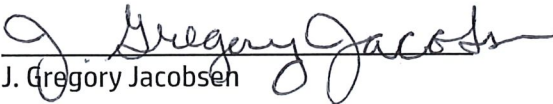
Ms. Elizabeth Guston of 8 Walker Lane raised the concern that the structure is within 200 feet of the MotherBrook area, and therefore was a Conservation matter. Chairman McGrail responded to her concern by explaining the applicant would need to go through the Conservation Commission for approval as well.

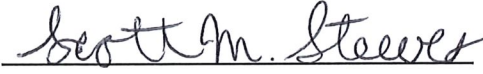
Upon motion being duly made by Mr. Steeves and seconded by Mr. McGrail, the ZBA voted unanimously (5-0) to grant relief under Section 6.4 of the Bylaws for the allowance of the Temporary Tower for a period of two (2) years on the Property located at 5 Incinerator Road, Dedham, MA. In granting this relief, the ZBA finds that the proposed Temporary Tower will not be detrimental or injurious to persons or property.

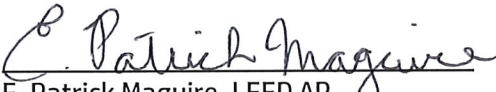
The Applicant is advised that, in accordance with MGL Chapter 40A, Section 11, no special permit shall take effect until a copy of this decision bearing the certification of the Dedham Town Clerk that twenty (20) days have elapsed after the decision has been filed with the Dedham Town Clerk and no appeal has been filed or that an appeal has been filed within such time shall be recorded in the Norfolk County Registry of Deeds or the Land Registration Office of Norfolk County.

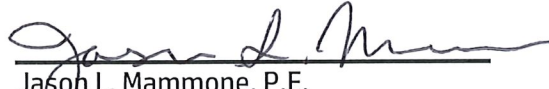
Dated: _____


Chairman James F. McGrail, Esq.

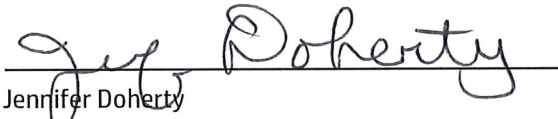

J. Gregory Jacobsen


Scott M. Steeves


E. Patrick Maguire, LEED AP


Jason L. Mammone, P.E.

Attest, by the Administrative Assistant:


Jennifer Doherty