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BOARD OF APPEALS CASE NO. 18-15

PETITION OF NSTAR ELECTRIC COMPANY (dba EVERSOURCE)

DATE OF DECISION: JULY 10, 2018

1. Application

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of NSTAR ELECTRIC COMPANY (dba EVERSOURCE) (hereinafter the Applicant), for property located at 400 BRIMSTONE LANE. This Decision is in response to a Petition for a Special Permit for a Wireless Communications Facility and a Variance for height and setback (hereinafter the Application).

2. Applicant and Property Owner

Nstar Electric Company (dba Eversource and fka Boston Edison Co.)
One Nstar Way
Westwood, MA 02090-9230

3. Location

Property is located at 400 Brimstone Lane and identified by Assessors' Parcel ID 008-91-6399-000 (hereinafter the Site).

4. Board Action

After due consideration of the Application, the record of proceedings, and based upon the findings set forth below, on July 10, 2018 the Board voted to GRANT a SPECIAL PERMIT and VARIANCES by a unanimous vote in favor of the petition of three (3) members sitting on the Application. The record of the vote is stated as follows:

PHILIP R. OTTAVIANI, JR.	YES
SUSAN S. CRAIGHEAD	YES
EDWARD COSGROVE	YES

5. Proceedings

The Application was received by the Board on May 3, 2018 pursuant to MGL, Ch. 40A, §9-10, and the Framingham Zoning By-Law. The Application was considered by the Board at a duly noticed public hearing of the Board on June 12, 2018 at 7:45 P.M. in the Blumer Community Room of the Memorial Building. Board members Philip R. Ottaviani, Jr., Susan S. Craighead, and Stephen

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Meltzer were appointed voted members, with Edward "Ted" Cosgrove, John "Rick" McKenna, and Joseph Norton all as alternates due to potential imminent changes to the makeup of the Board. The Board voted to continue the hearing until July 10 at 7:15 PM, at which point a decision was made. Mr. Meltzer arrived late to the hearing, and Mr. McKenna was absent; Mr. Ottaviani appointed Mr. Cosgrove voting member. The minutes of the public hearing and submissions on which this Decision is based, which together with this Decision constitute the record of the proceedings, may be referred to in the Office of the Zoning Board of Appeals at the Memorial Building.

At the June 12 hearing, attorney Francis Parisi introduced himself and summarized the request to replace an existing 140' tall guyed tower with a new 190' tall guyed tower. The Tower would accommodate existing and new antennas for Eversource and the City of Framingham Department of Public Works and the City of Framingham Fire Department. He explained, Eversource maintained a private radio communications network to communicate with trucks serving areas in and around the City and beyond. Mr. Parisi explained the view shed analysis and photo simulations and summarized that the property, and the neighborhood, were appropriate for the use and structure. He proceeded to address the Special Permit and Variance criteria.

Mr. Ottaviani read comments submitted by the Conservation Commission, Brad and Susan Richelson (48 Juniper Lane), and Kathy Vassar (22 Carter Drive).

Members of the Board raised concerns about lighting on the tower, and discussion ensued regarding the FAA requirements.

Mr. Peter Sellers, City of Framingham Department of Public Works commented, the City was looking to enhance the existing network and make it more reliable and robust. He spoke in favor of the proposal.

Mr. Charlie Kiefer (355 Brimstone Lane) requested the Applicant be responsible for road maintenance should there be any road damage. He voiced concern about a smaller second and inactive tower existing on the site.

Ms. Kathy Vassar (22 Carter Drive) voiced concern regarding setting precedent, light color and blinking, and visibility.

Mr. Meltzer stated that he would like to see a balloon placed on the current and proposed height so that the correct tower was identifiable. He stated, too many towers were located in the neighborhood, making it confusing to know which one was before the Board. Mr. Parisi responded, a balloon test would be difficult and required wind levels to be less than one mile per hour to avoid damage to the antennas. The Eversource representative clarified that the FAA typically required white light in the day and red light at night.

Mr. Parisi stated his opinion that the tower was a replacement of an existing nonconforming tower and was therefore exempt from the need for variances. Mr. Meltzer responded that a height Variance was required. Mr. McKenna questioned, if the original tower was demolished and replaced, and whether the proposed tower would be considered new. Mr. Meltzer responded, he

did not feel comfortable making a decision until he could identify which of the multiple towers was the one before the Board.

Mr. Meltzer commented, the application before the board was not subject to the Telecommunications Act as other cell towers have been. Mr. Parisi agreed and clarified that it meant the proposal was subject to traditional Massachusetts zoning law. Mr. Ottaviani suggested a group site visit and the Board agreed. The site visit took place at 7:00 PM on Friday, June 22.

At the July 10 continued hearing, Mr. Ottaviani read into the record comments and noted the attached photograph submitted by Mr. McKenna, who was absent the meeting. He also read comments by Brad and Susan Richelson of 48 Juniper Lane. Mr. Parisi updated the Board, referencing an FAA letter requiring no lighting on the tower. He also introduced an expert witness to describe how the additional height of the tower enables automatic switching to help prevent power outages throughout the region.

Ms. Kathy Vassar (22 Carter Drive) thanked the applicant for the assurances there would not be lighting. She voiced concern about setting precedent for future towers.

Ms. Craighead moved to approve subject to no lighting, fencing of the guyed wires, and that the tower be decommissioned if use is discontinued. Mr. Cosgrove seconded the motion and the motion was carried.

6. Exhibits

Submitted for the Board's deliberation were the following exhibits:

- 6.1. Application filed with the Building Official for a permit for a Wireless Communications Facility dated April 12, 2018.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the City Clerk on May 4, 2018.
- 6.3. Filing fee in the amount of \$2,500.00.
- 6.4. "Photographic Simulation Package" prepared by Virtual Site Simulations, LLC, 28 Caswell Street, Suite 100, Narragansett, RI 02882, dated May 11, 2018.
- 6.5. Narrative entitled "Supplement No. 2 (rev 1)" dated June 12, 2018, including FAA Determination of No Hazard to Air Navigation, and Powerpoint Presentation for Public Hearing.
- 6.6. Narrative submitted with the application, dated May 2, 2018 (Binder section 4).
- 6.7. TOWAIR Determination Results, dated May 1, 2018 (Binder section 5).
- 6.8. Coverage maps comparing the 140-foot existing tower with the proposed 190-foot tower (Binder section 6).
- 6.9. Product data sheets (Binder sections 7 and 8).
- 6.10. Aerial imagery depicting towers in the vicinity and parcel boundaries (Binder section 9).
- 6.11. Plan set entitled "Zoning Drawings", including sheets Title Sheet (T01), General Notes (GN01), Property Plan (C01), Site Plan (C02), Compound Plan & Elevation (A01), Site Details (A02), Shelter Elevation (A03), Room Layout Plans (A04), Shelter Interior Plans (A05), Foundation Details (S01), Typical Tower Foundation (S02), Electrical Diagram

(E01), Grounding Details (E02), and Generator Details (E03), prepared by Chappell Engineering Associates, 201 Boston Post Road West, Suite 101, Marlborough, Mass., dated 3/2/18 and revised 4/26/18.

Exhibit 6.11 shall be hereinafter referred to as the “Plans”.

7. Findings and Conclusions

Based upon its review of the Application, exhibits, and the public hearing thereon, the Board makes the following findings and conclusions:

- 7.1. The property is located within the Single Family Residence (R-4) zoning district.
- 7.2. On April 12, 2018, the Building Official denied the Application for a permit to install a Wireless Communications Facility (WCF) consisting of a 190-foot-tall lattice tower with less than the required setback under Sections V.E.3.b.8, V.E.4.c(2), and V.E.4.b(2) of the Zoning By-Law.
- 7.3. On May 4, 2018, the Applicant filed with the City Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of obtaining a Special Permit and Variances from the Zoning By-Law.
- 7.4. Notice of the public hearing was duly published in “THE METROWEST DAILY NEWS” on May 28 and June 4, 2018 and mailed to all parties-in-interest, as defined by G.L. c. 40A, §11.
- 7.5. The Applicant is before the Board for a Special Permit for a WCF, and for dimensional Variances for height and setback from residential use. The proposed height is 190 feet, which exceeds the height limit of 80 feet, and is 50 feet taller than the existing 140-foot tower. The required setback from the nearest residential use is 300 feet; the nearest such use is more than 500 ft. away. The required setback from the nearest property line is required to equal the height of the tower plus twenty feet; the tower will be 65.1 feet from the nearest property line.
- 7.6. The applicant has made the case that the proposed tower constitutes a replacement of an existing nonconforming tower, and that therefore, the Board may grant a special permit in a residential zone for the lattice tower with guyed wires, and for height exceeding 80 feet, in the existing location. Variances are needed due to the additional height above what exists and insufficient setback distance.
- 7.7. Subject to the conditions stated in this Decision, the Board finds that the following conditions of approval of a Special Permit have been met:
 - 7.7.1. The specific site is an appropriate one for such a use or structure. *The Applicant has demonstrated a need for additional coverage in this location. There are already several antennae on Nobscot Hill, out of sight of most residents, and there are no residential abutters within 300 feet.*
 - 7.7.2. Adequate and appropriate facilities will be provided for the proper operation of the proposed use, including adequate off-street parking. *Adequate and appropriate facilities will be provided, and parking is not a concern for this use.*
 - 7.7.3. The use or structure as developed will not create a hazard to abutters, vehicles, or pedestrians. *The WCF will not significantly impact any abutters, vehicles, or pedestrians, as it is at a dead end in a forested area and does not*

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involve any significant activity associated with the use. It will be located at a safe distance from nearby residences.

- 7.7.4. The use or structure is consistent with the Intent of the district in which the use is proposed, and with the Purpose and Intent of this By-Law. *Although the By-Law prohibits new WCFs in residential zones, it allows replacements, the Applicant has presented a design that minimizes adverse impacts and respects the intent of the By-Law to the greatest extent possible.*
- 7.7.5. All municipal services necessary to meet the needs of the proposed use must be adequate and sufficient. *There are unlikely to be any municipal service needs associated with the WCF.*
- 7.8. The Variance standard established by the G.L. c. 40A §10 and the Framingham Zoning By-Law is a demanding criterion. The Board must find that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures, which especially affect such land or structures but do not affect generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law. Also, the circumstances under which a Variance may be granted are not unlimited.
 - 7.8.1. There are circumstances relating to the soil conditions, shape, or topography of the land or structures for which the Variance is being sought. *The existing structure is old and does not meet the needs of Eversource. The hill is home to several nonconforming towers due to the ideal location provided by the hill. The site is uniquely suited to the needs of this public service, covering a large swath of Eastern Massachusetts.* Such circumstances especially affect such land or structures but do not affect generally the zoning district in which the land or structures are located.
 - 7.8.2. Owing to such circumstances, a literal enforcement of the provisions of this By-law would involve substantial hardship, financial or otherwise, to the petitioner. *Due to the unique nature of the site for the intended purpose, denial of this tower could force Eversource to build a much more expensive tower in a less suitable location.*
 - 7.8.3. The desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the By-Law or from the intent of the district in which the Variance is being sought. *At 190 feet, the tower will still be shorter than other existing towers in the vicinity. It will not be lit. There are no residences in the immediate neighborhood that would be impacted by the additional height or insufficient setback.*
- 7.9. The Board grants the requested Special Permit and Variances subject to the following condition:
 - 7.9.1. The proposed WCF shall be developed as shown on the Plans.
 - 7.9.2. The tower shall not be lit.

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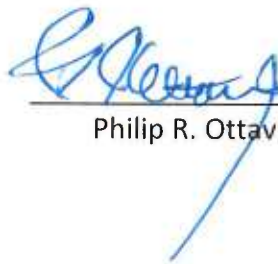
- 7.9.3. The guyed wires shall be secured with fencing.
- 7.9.4. The tower shall be decommissioned if it ceases to be used for the intended purpose.
- 7.10. This Decision applies only to the requested Special Permit and Variances. Other approvals or permits required by the By-Law, other governmental boards, agencies or bodies having jurisdiction, shall not be assumed or implied by this Decision.
- 7.11. If the rights authorized by this Special Permit are not exercised within three years of the date of filing of the Decision with the City Clerk, said Special Permit shall lapse; renewal of said permit shall require a new application for public hearing before the Board. The Board herewith reserves its rights and powers to grant or deny such extension, and to require any appropriate changes to this approval.
- 7.12. If the rights authorized by this Variance are not exercised within one year of the date of grant of such Variance, such rights shall lapse. The Applicant may request an extension to the one-year period by submitting a written Application for extension prior to expiration of the one-year period. However, it is solely within the discretion of the Board to grant such an extension. An extension shall be for a period not to exceed six (6) months. If the Board fails to act on the request for extension within thirty days of the date of the requested extension, all rights authorized by this Variance shall lapse at the expiration of the one-year period. If the Variance lapses, such rights pertaining to the Variance may only be reestablished after notice and a new hearing pursuant to G.L. c. 40A, §10.
- 7.13. This Decision shall be recorded at (as appropriate) the Middlesex South District Registry of Deeds or District of the Land Court prior to the issuance of a Building Permit. A copy of the recorded or filed Decision certified by the Registry, and notification by the owner of the recording, including recording information, shall be furnished to the Board and the Building Official.
- 7.14. The terms, conditions and provisions of this Decision shall run with the land and shall be binding upon the Applicant, its successors in interest and assigns, and shall be enforceable by the City of Framingham.

8. Appeals

Appeals, if any, shall be made pursuant to MGL, Ch. 40A, §17 and shall be filed within twenty (20) days after the date of filing this Decision with the City Clerk.

ZONING BOARD OF APPEALS

By:



Philip R. Ottaviani, Jr., Chairman

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