



## Town of Mashpee

16 Great Neck Road North  
Mashpee, Massachusetts 02649

### MASHPEE ZONING BOARD OF APPEALS DECISION FOR A VARIANCE V-2019-10

Blue Sky Towers II, LLC  
101 Red Brook Road  
(Map 104 Parcel 2)  
Mashpee, MA 02649

Bk.: #1467  
Page: 760

A Petition was filed on January 10, 2019 by Blue Sky Towers II, LLC requesting a Variance under all provisions of §174-45.3 (E) (1) and §174-45.3 (E) (2), of the Zoning Bylaws, and M.G.L. 40A §10 to allow for a Personal Wireless Service Facility on property located in an R-3 Zoning District, Map 104 Parcel 2, Mashpee, MA.

Notice was duly given to abutters in accordance with Massachusetts General Laws Chapter 40A. Notice was given by publication in The Mashpee Enterprise, a newspaper of general circulation in the Town of Mashpee, on January 18, 2019 and January 25, 2019 a copy of which is attached hereto and made a part hereof.

The Mashpee Zoning Board of Appeals issues this Decision pursuant to the provisions of Massachusetts General Laws Chapter 40A §10 and the Town of Mashpee Zoning By-laws.

Public Hearings were held on the Petition at the Mashpee Town Hall on Wednesday, February 13, 2019 at which time the following members of the Board of Appeals were present; Chairman, Jonathan Furbush, Vice Chairman, William Blaisdell, Board Members, Scott Goldstein, Norman J. Gould, and Associate Members, Brad Pittsley and Sharon Sangeleer. Also present was Building Commissioner, Michael Mendoza.

Attorney, Elizabeth Thompson represented the applicant for the proposed cell tower. The application is for a 150 ft. Variance for a monopole type wireless tower at 101 Red Brook Road, which is located at the Mashpee Fire Station #2. Also present was Jesse Moreno, Project Engineer with ProTerra Design Group, Dan Brown, the Radio Frequency Engineer for Verizon Wireless, and Rick Karinki, the Radio Frequency Engineer for T-Mobile. The Team present was a result of the past four proposals that were issued in May 2017 by the Town of Mashpee for a personal wireless service at this location. Blue Sky Towers was the successful bidder of the "Request for Proposal" (RFP). The reason she pointed out the RFP is because it's indicative that the Town presumably recognizes that there was a significant gap in wireless coverage in south Mashpee that necessitated a new tower to remedy that gap. Blue Sky Towers has a letter of intent by two wireless service providers, Verizon Wireless and T-Mobile who both have evidence of this significant gap, and needs this height to remedy the gap. In addition to the gap, there is significant capacity problems of both which radio frequency engineers discussed.

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Ms. Thompson said the process began with the Planning Board when the applicant filed for a Special Permit, and immediately the proceedings were suspended because this is a development of regional impact referred by the Cape Cod Commission. Those proceedings began in September of 2018. On October 18, 2018. After four hearings of the sub-committee, and the Cape Cod Commission, the facility was approved at this location at 150 ft. above ground level. In that decision, which is in the application packages, the Commission retained a wireless expert David Maxson, principal with Isotrope, LLC who for over 20 years has been advising municipalities and regional authorities on wireless facilities. He reviewed all of the radio frequency data that was presented in the package, and made additional requests which were met. He reviewed this with the professional staff of the Commission, and presented this to the sub-committee and full Commission, and based upon that data this height was approved at the minimal height necessary to close the gaps and coverage.

Mr. Jesse Moreno, with ProTerra Design Group was retained by Blue Sky Towers to help design the site plans for the 150 ft. monopole tower. He presented the site plans as given to the Board depicting the location of the tower and how it will be accessed. The parcel is triangular shaped and is located on the right hand side of Great Neck Road South, Red Brook Road, and along the north of Blue Castle Drive. The tower will be placed in the center of the lot 175 ft. away from the Mashpee Fire Station building. The existing paved driveway will be utilized and will extend 150 ft. to the corner of the parking lot with a gravel driveway toward the woods. There will be a 70' x 70' compound with a six foot chain link fenced within the 100' x 100' leased area with 3/4" stone at the base. There are no buildings within 300 ft. of the site except for the fire station itself. Inside the compound will be 150 ft. tower inside the leased space.

There are two carriers, Verizon Wireless and T-Mobile. Mr. Moreno pointed out the compound plan and elevation of what the tower will look like. It's a tapered steel structure, 150 ft. in height with a lightning rod on the top. Approximately every 10 ft. down the tower has a potential location for a wireless carrier. In this case, it's Verizon and T-Mobile at the top. The surrounding trees are approximately 50 to 60 ft. tall, as measured on site, and is necessary for the tower to be above the tree line for Radio Frequency (RF) propagation. Inside the compound area is about 200 sq. ft. where each individual carrier will have their equipment. A typical wireless site consists of antennas and radio equipment with a series of cables that go down through the structure to the bottom. There is refrigerator sized equipment that house some of the power and communication equipment.

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These particular carriers are proposing backup powered by generators that run on propane. As Mr. Moreno stated earlier, the site location was identified in the RFP by using the existing infrastructure of the fire station, and will reduce the amount of clearing, and the effort to reduce impact to the area expressed by the Cape Cod Commission. The total disturbance area is a little over 18,000 sq. ft. There were no wetlands identified for the project within 200 ft. of the site. The site is not located in a habitat, it is not in any type of flood plain and does not require additional landscaping. It is an unmanned facility, and will not generate any trash, and there are no water or sewer requirements. There is a proposal for utilities that will be from the street pole, and will run along the fire station to the facility, for both telecommunication, and power. At the Plan Review hearing on February 5, 2019, it was suggested to have underground power lines. The applicant has agreed to place the utilities underground rather than using the utility poles.

Attorney Thompson said that a study was performed on April 14, 2018, that consisted of a balloon test at the site, and was publicly noticed. Both the Cape Cod Commission and the Town of Mashpee gave the applicant a number of locations that were photographed of specific addresses and historical features around the site where the pole was either visible or not visible. Every photograph taken was provided to the Attorney and a photo simulation was rendered. During the Cape Cod Commission process, certain requests were made on the design. One request was that a rendering of a mono pine or big tree be seen esthetically at the location. A second request depicted a rendering of the pole as light blue or as light grey. The applicant would accept the preference made by the Town of Mashpee. The Cape Cod Commission wanted tests taken at 150 ft. and 125 ft. to see if this had any impact on the visibility of the tower. They concluded there was no impact on the visibility of the tower.

Mr. Dan Brown, the RF Engineer on behalf of Verizon Wireless, and Rick Karinki, the RF Engineer on behalf of T-Mobile both presented site plots depicting the current situation of the gap areas in south Mashpee without the cell tower, and the significant improvement in the coverage areas when the cell tower is up and running. The Verizon plots depicted the installed equipment at 146 ft., and showed what the coverage would look like at 121 ft. which represents a 25 ft. reduction in coverage. T-Mobile provided plots depicting increased coverage of the equipment on the tower at 135 ft.

Chairman Furbush commented that one or two plots had a significant coverage gap close to the area along the water in Popponeset. The engineers said that these gap areas have hills specifically located along Rock Landing Road. There were other road tests performed in the south Mashpee area depicting issues with the topography.



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Mr. Furbush recited the M.G.L. 40A Sec. 10. "applicable zoning ordinance or by-law where such permit granting authority specifically finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, 1) a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant." Mr. Furbush believes that it's important to determine which Variance is required, and he believes it is topography. He said there's hills in the way, there's a lower area. He thinks this is the basis of the topography issue.

Mr. Furbush asked the Board to read in the resident letters, and Town Department comments into the record.

Sharon read the Conservation Department comment dated February 8, 2019 into the record.

Sharon read the Board of Health comments dated February 12, 2019 into the record.

Sharon read a resident at (2 Bowsprit Point) letter dated February 7, 2019 into the record who is in favor of the proposed tower.

Mr. Furbush read the Inspection Department comments dated February 4, 2019, and February 6, 2019 into the record.

Sharon read a memorandum dated February 5, 2019 from Scott Carline, Chief of Police into the record.

Mr. Furbush read a memorandum dated February 11, 2019 from Evan Lehrer, Town Planner into the record.

Scott Goldstein read a memorandum dated January 30, 2019 from Thomas C. Rullo, Fire Chief into the record.

Sharon read a resident at (41 Triton Way) letter dated January 18 2019 into the record who is in favor of the proposed tower.

Mr. Furbush opened the meeting to the audience.

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Attorney Paul Revere, from Centerville, MA represented two residents who oppose the cell tower. He handed the Board his written comments, and recited the M.G.L. Ch. 40A Sec. 10 bylaw stating that there was no evidence of a hardship for this proposal. He said that he never heard a word from the applicants regarding the hardship relating to soil, shape or topography or anything of the site that says it's different than the rest of the zoning district. The impact is on the people of New Seabury's homes, they're the ones getting this service, and they ought to have the impact, not his clients. This is about coverage, not about the property.

There were several abutters that spoke in opposition of the cell tower;

- Michael Ronhock
- Teresa Ronhock
- Brian Hyde
- Sharon, on Scituate Road
- Carl Lubekzyk
- Linda Lubekzyk
- Dan Kupperman
- Sharon Muller

Attorney Thompson concluded under the Massachusetts Zoning Act, G.L. c. 40A §10 certainly would submit that topography makes it challenging to necessitate the height as one of the many reasons. In addition with the configuration of a cell site, it has to be particularly located at a height in a particular area, and based upon the topography in this area it necessitates 150 ft. in order to accomplish the goal of filling that coverage gap. Therefore, the unusual topography at this site is a hardship and meets the burden of proof for a variance from the Bylaw requirements with respect to height.

The issue here is a topographical hardship due to the valleys and hills which require the necessary height in order that the tower can be usable, thus effective. The Board reviewed the detailed presentations from both the Verizon Wireless and T-Mobile Representatives, and determined that due to the shape and topography of the south Mashpee area, the height of a 150 ft. cell tower would provide the coverage necessary to fulfill the service gap. The Board also based their determination from the Board of Health comments that were read into the record as stated; "The plans have been reviewed along with Dr. Haes report on the RF signal strength and exposure probabilities. The FCC, CDC and American Cancer Society website reports on cell towers have been reviewed. The above information indicates that the cell towers offer very little chance of exposure to ground level occupants.

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The ZBA is reviewing the height variance for the tower. The higher the tower, the less chance of exposure. BOH recommends approval as presented.”

In view of the foregoing, the Board determined the Petitioner met the criteria for a Variance. Upon motion duly made and seconded at the Public Hearings on Wednesday, February 13, 2019, the Zoning Board of Appeals voted unanimously to issue a Variance for 101 Red Brook Road, Petitioners, Blue Sky Towers II, LLC request for a Variance under all provisions of §174-45.3 (E) (1) and §174-45.3 (E) (2), of the Zoning Bylaws, and M.G.L. 40A §10 to allow for a Personal Wireless Service Facility on property located in an R-3 Zoning District, Map 104 Parcel 2, Mashpee, MA based on the following conditions:

The Board has determined that the applicant meets all the conditions of a Variance for the height of 150 feet under Mass General Law 40A Section 10 based on the following:

**Hardship:**

- The issue here is a topographical hardship due to the valleys and hills which require the necessary height in order that the tower can be usable, thus effective.
- The reason for the height requested is that the tower has to be usable. It has to be taller than the surrounding tree canopy which is part of the topography issue, therefore the request of 150 feet.
- The literal enforcement of the bylaw would prevent addressing a known condition of a gap in cellphone coverage in the southern part of the Town of Mashpee. There are court decisions which state that preventing the closing of significant gaps in the availability of wireless service violates the Federal Telecommunications Act regarding the construction and placement of wireless towers.
- The applicant has demonstrated that the proposed height of the cell tower will significantly close this gap.
- The question to be asked and has been asked and answered is “Will the proposed variance be a substantial deterrent to the public good?” Letters from our first responders (the police and fire departments) have clearly demonstrated a need for this coverage. This is not a deterrent but, in fact, a positive effect on the public because of its ability to assist the first responder’s ability to serve and protect our public in a time of need.

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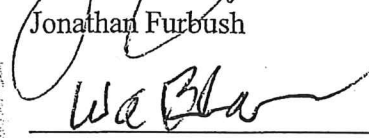
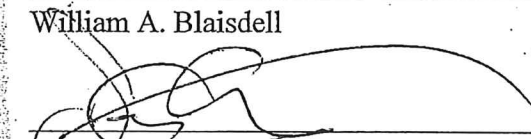
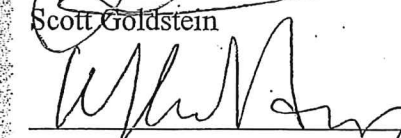
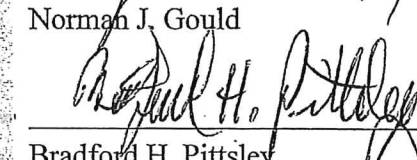
- We also have letters from our local residents which show the medical need for this tower and, therefore, it has been clearly demonstrated that advancements in medical technology need a cell tower to deliver an internet connection, in which it provides the lifesaving monitoring that only a cell tower can provide. It should also be noted that radio waves cannot be the basis for a denial for a variance.
- It has been established that there is a substantial gap in the coverage in the southern part of the Town of Mashpee.
- That the location of the proposed tower will significantly close this gap.
- That the proposed height is not excessive but is high enough to address the topographical impediments to provide the necessary coverage.
- That the letters from our first responders and local residents have demonstrated that there is a need for this tower to provide for the safety for our citizens.
- It has been stated that medical technology has evolved to use the internet to monitor their patients and this cannot happen without a cell tower.

The ruling is also based on the following conditions:

1. **Plans:** Blue Sky Towers II, LLC, Site Name: Mashpee Fire Station #2, Site Number: MA-5112, Address: 101 Red Brook Road, Mashpee, MA 02649. Prepared by: ProTerra Design Group, LLC, 4 Bay Road, Building A: Suite 200, Hadley, MA 01035. Title Sheet: T-1, Date: 09/27/17, Drawn: BLM/STZ, Check: JMM/TEJ, Scale: See Plan, Job No.: 17-063, Abutters Plan: C-1, Existing Conditions: C-2, Aerial & USGS Maps, A-1, Compiled Plot Plan: A-2, Overall Site Plan: A-3, Compound Plan & Elevation: A-4, Siting Elevations: SE-1, Siting Elevation: SE-2, Details: D-1, Tenant Details: CA-1, Tenant Details: CA-2, Tenant Details: CA-3, Tenant Details: CA-4, Erosion Control Plan & Details: EC-1.
2. The electrical power from the street is to be underground.
3. All Town Department comments previously read into the record.
4. The Variance relief required is 116 ft. to build a 150 ft. cell tower.

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Address: 101 Red Brook Road, Map 104 Parcel 2, Mashpee, MA 02649  
Case: V-2019-10

	IN FAVOR	TO DENY
 Jonathan Furbush	<input checked="" type="checkbox"/>	<input type="checkbox"/>
 William A. Blaisdell	<input checked="" type="checkbox"/>	<input type="checkbox"/>
 Scott Goldstein	<input checked="" type="checkbox"/>	<input type="checkbox"/>
 Norman J. Gould	<input checked="" type="checkbox"/>	<input type="checkbox"/>
 Bradford H. Pittsley	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sharon Sangeleer	<input type="checkbox"/>	<input type="checkbox"/>

**Legal Notices**



**MASHPEE  
ZONING BOARD  
OF APPEALS  
PUBLIC HEARINGS NOTICE  
FEBRUARY 13, 2019**

The Mashpee Zoning Board of Appeals will hold Public Hearings on Wednesday, February 13, 2019 at 6:00 p.m. in the Waquoit Meeting Room at the Mashpee Town Hall, 16 Great Neck Road North, on the following:

**NEW HEARINGS**

101 Red Brook Road. Petitioners, Blue Sky Towers II, LLC request a Variance under all provisions of §174-45.3 (E) (1) and §174-45.3 (E) (2), of the Zoning Bylaws, and M.G.L. 40A §10 to allow for a Personal Wireless Service property located in an R-3 Zoning District, Map 12, Mashpee, MA.

Plans may be viewed prior to the hearings in the ZBA office and the Town Clerk's office.

**Per Order of:**

Jonathan D. Furbush, Chairman  
Mashpee Zoning Board of Appeals

January 18, 25 2019

This Decision has been duly filed on February 27, 2019 with the Town Clerk of Mashpee. Any Appeals shall be made pursuant to Section 17 of the Massachusetts General Laws Chapter 40A within Twenty days after the date of said filing.

This Decision is effective when a Certified Copy is filed at the Barnstable County Registry of Deeds. A Certified Copy may be obtained from the Town Clerk the next business day after the expiration of the 20-day Appeal phase, which lasts through March 19, 2019. Special Permits shall lapse three years after date of grant. Written Findings shall lapse two years after date of grant. Appeals shall lapse one year after date of grant. If the rights authorized by a Variance are not exercised within one year of date of grant of such Variance, such rights shall lapse unless: (1) substantial use or construction has commenced, or (2) a Petition for a six-month extension has been filed prior to the expiration date, or (3) the property that is the subject of the Variance has been conveyed in reliance on said Variance prior to the expiration date of such one year period.

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MASHPEE TOWN CLERK

FEB 27 2019

RECEIVED BY cd