



CHESTER PLANNING BOARD
CHESTER TOWN HALL
Meeting Minutes
9 February 2024

Members Present: Muriel Hall Liz Massa
Rich Holzman Bob Daley
Nick Chiusano

Members Absent: none

Others present: Wilma Foley Eileen Duane
Veronica Mass John Foley
Steve Salvini 2 AT&T Reps

Meeting called to order by Chair Liz Massa at 5:pm

Agenda item #1

Review & Approval of 25 January Minutes
Motion to approve by Hall Seconded by Holzman
Vote = 5 Yes No 0

Agenda item #2 New Business

Steve Salvini, ANR presentation on behalf of 11 & 15 Main St, dba Drowsy Dragon Kitchen and 348 Skyline Trail, property owner Albert Grant Holland
Steve answered members questions... Both documents signed by 5 Board members
AT&T request for Special Permit modification of cell tower at 39 Sylvester Hamilton Road
Two AT&T Reps presented overview of proposed upgrade to 5G capability
Robust discussion between the Board & Public in attendance. Expression of Health concerns for nearby residents within 1000'. Eileen Duane presented wireless radiation concerns, asking the Board not to approve the upgrade. The Board's belief is, the request meets all requirements of Chester cell tower By-Laws, so no reason exists to deny AT&T to proceed. The Board declined to Vote at this time, pending advise from Town Counsel. Further action contingent on more information

Motion to Adjourn

Motion by Chiusano Seconded by Hall
Vote = 5 Yes No 0
Meeting Adjourned 6:20pm

*Approved 04-04-24
Elizabeth Massa*

Planning Board

From: Mullen, Thomas <tmullen@thomasamullenpc.com>
Sent: Sunday, February 11, 2024 11:45 AM
To: Planning Board
Cc: Town Administrator; Brian Fogue
Subject: Re: Planning Board Meeting 02-09-24 question

Liz:

Is AT&T presenting their petition as an "eligible facilities" request?

A 2012 federal law provides that a "local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." 47 U.S.C. § 1455(a)(1). An "eligible facilities request" is one that seeks approval of "collocation of new transmission equipment; ... removal of transmission equipment; or ... replacement of transmission equipment." *Id.*, § 1455(a)(2). A "substantial change" is defined as one that increases height by 10% or more or 20 feet for a tower, or doubles the width of a tower or increases it more than 20 feet. For a base station, the rule is not more than 10% or 10 feet in extra height, whichever is greater, or 6 feet in width. The FCC issued an order which provides that an industry applicant may submit an application to a municipality to support its contention that a proposed modification is protected by the statute, and the municipality has 60 days in which to decide whether it is correct. If the application is incomplete, the municipality must notify the applicant in writing within 30 days of submission, specifying the missing pieces. This stops the 60-day clock until the applicant responds. The municipality then has 10 days to review the application a second time and notify the applicant of any missing information. The municipality must then determine if the application meets building code standards as well as existing conditions or requirements on the previously approved structure, such as camouflaging. If the application meets those standards and conditions, it must be approved. The Massachusetts Attorney General has opined that an eligible facilities request "cannot be subject to a discretionary special permit." Attorney General Letter to Town of Mt. Washington (6/12/13) at 3.

Whenever there is a purported "eligible facilities" request, I recommend the Board consider the request at an open meeting (making sure to list this item on the agenda) and determine immediately whether there is sufficient information in the application to say whether this is an eligible facility. If the information is not sufficient, demand supplementation in writing right away to stop the 60-day clock, specifying what's missing. If the application suffices,

make up your mind and either approve the request or deny it. Note, again, that you can only deny if the request falls outside the definition of an eligible facilities request, if, for example, the applicant wants to put up a wholly new base station, or wants to increase the height or width of a tower beyond the maximums allowed by statute. If you deny the request because it doesn't fit within the statutory limits, then the applicant has to file a new application for a special permit, and at that point we have to advertise and mail notice.

I hope this is helpful. If I've missed anything (for example, if there's something going on here that clearly takes the petition out of the category of an "eligible facilities" request), then I think it best that we talk by phone. Thanks.

Tom

On Sun, Feb 11, 2024 at 9:20 AM Planning Board <planningboard@townofchester.net> wrote:

Good Morning Atty. Mullen,

At our Friday planning Board meeting, we had the cell tower folks presenting their plan of the modifications of the cell tower on 39 Sylvester Hamilton Road. They are removing outdated panels and replacing them with newer technology 5g panels. A handful of concerned citizens spoke at the meeting and insisted that the board had the right to refuse the modifications. The board was split in its decision if we had the right to refuse this modification. The presented material followed the current cell tower bylaws of chester and listed is it can be denied if not inline with FCC regulations. The specific concern voiced by the citizens is the cell tower does not need to modified unless the cell company (AT&T) produced evidence that there were dropped calls/lack of service in the area. This is not specified in our bylaw. We voted to accept the modifications to the cell tower after reaching out to town council for clarification, please advise. Thank you, Liz

Town Of Chester

Planning Board

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