

approved
2/23/22

ZONING BOARD OF APPEALS

Meeting Minutes of January 25, 2022

@ 7:00 p.m.

CARVER TOWN HALL

MEETING ROOM #4

Present: Stephen G. Gray, Chairman. Sharon Clarke, Vice Chairperson. Members: Frances Mello, Frank Casey, and Mark Poirier. Alternate Member, James Barrington, was also in attendance.

Recording Secretary, Patricia A. Pacella, was present as well.

Absent: Member, Mark Poirier

Meeting opened at 7:00 P.M.

A. Approval of Minutes:

Approval of meeting Minutes of January 11, 2022. Member Jim Barrington made a Motion to accept the minutes as written and Member Casey seconded the Motion. The Motion passed unanimously.

B. Public Hearing: Case 131-4-3 (Cont.): Petitioner: Industrial Tower and Wireless, LLC requesting a Special Permit pursuant to Sections 4600, 4660 and 4676 et. Seq. of the Carver Zoning By-law, for property located at 0 Federal Road in Carver, MA (Assessors Map 131 Lot 4-3), so as to construct a 150-foot monopole wireless telecommunication facility in the Industrial "A" District. The Special Permit request is made due to the fact that the tower must be set back from public ways and residential uses a distance of at least three (3) times the height of the tower.

Chairman Gray resumed the Public Hearing and acknowledged that Board Members were in receipt of submissions prior to the meeting and had read through all of them. He noted that these submissions indicated that there had been a "meeting of the minds" among Carver Public Safety, the Landowner, and the Petitioner with regard to certain concerns raised by Carver Public Safety.

Chairman Gray asked for Public Comment at this time. There was none.

Chairman Gray asked Board Members for any comment.

Member Barrington inquired if there would be lighting at the top of the monopole. Chairman Gray stated this would be addressed in one of the conditions to the Decision if the Special Permit were to be granted.

Chairman Gray noted that an undated letter had been received by the Board from resident, Sean Bogart, and asked if the Petitioner had received a copy of the letter. When this inquiry was answered in the negative, he gave the Petitioner a copy. Chairman Gray stated that the letter had expressed certain concerns regarding the monopole.

Vice Chairperson Clarke made a Motion to close the Public Hearing and was seconded by Member Barrington. The Motion passed unanimously.

Vice Chairperson Clarke made a Motion that the Board find that the adverse effects of the proposed wireless communications facility will not outweigh its beneficial impact to the Town of Carver, or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. Member Barrington seconded the Motion. The Motion passed unanimously.

Member Barrington made a Motion to grant the Special Permit pursuant to its authority under Sections 4600, 4660 et. Seq, 4676, and 4679 of the Town of Carver By-law. The Motion was seconded by Vice Chairperson Clarke. The Motion passed unanimously.

Conditions on the Motion were voted unanimously as follows:

1. The letters of A.D. Makepeace Co. and the Petitioner, Industrial Tower and Wireless, dated January 13, 2022, and January 14, 2022, respectively, and the specific commitments outlined therein, are incorporated by reference and become a part of the conditions to the grant of the Special Permit;
2. Before the Building Permit issues, the Petitioner, Industrial Tower and Wireless, A.D. Makepeace Co., and Carver Public Safety shall enter into a long-term lease agreement memorializing the terms of their agreement, said agreement to be filed with the Planning Department.
3. The 150-foot monopole may be located no closer than 347 feet from the 1973 County Layout of Federal Road, per Decree # 1478 (relief of 103 feet), and no closer than 423 feet from the closest edge of the pavement of the road (relief of 27 feet);
4. No more than .3 acres of trees are to be removed in order to gain access to the site.
5. No earth removal will be undertaken at the site.
6. No lighting will be required at the top of the tower.
7. If a gate is installed, it must be kept locked, and a key provided to Public Safety;
8. Upon notification from Carver Public Safety of interference with its communications, which interference is identified as originating from the subject tower site, the Petitioner must work promptly with Carver Public Safety to diagnose, and remedy said interference at no cost to the Town;
9. The Board must be notified of any sale or assignment of leasehold interests prior to completion of said sale or assignment. The Town must be advised at all times of the owner of the facility and/or leases relating to it. Any new leasehold interest is bound by this Decision;
10. A performance bond must be filed with the Planning Department of the Town of Carver before commencement of use, so as to guarantee removal of the subject wireless telecommunications facility within one year of cessation of use, per Section 4674 of the By-law.

11. Subject to the Plans of record.

C. Public Hearing: Case 96-16-0R: Petitioner: Nancy Rego requesting a Special Permit pursuant to Sections 2252, 5221, and 5300 et. seq. of the Carver Zoning By-law, for property located at 145 South Main Street Unit 4-B, in Carver, MA (Assessors Map 96 Lot 16-0R), for the purpose of operating a driving school (to include classes, as well as on-road driving instructions) in the General Business District.

Petitioner, Nancy Rego, was in attendance. She stated that she wanted to open a driving school, to include classes, as well as on-road driving instructions. Typically, classes would be conducted for one week (6 hours per week), once per month, approximately eight (8) months per year, most especially during school vacations and the Summer.

Classes would be between 8:30 A.M. to 3:30 P.M. and 5:00 P.M. to 8:00 P.M. Closure of the business would occur no later than 8:30 P.M.

Classes would be limited to no more than twenty (20) students.

Parking would not be an issue, as attendees would be dropped off and picked up.

The previous tenant at this location had operated a yoga studio. There was also a pre-school in the same plaza.

It was noted by the Board that the building in which the proposed business is to be located was constructed in 1987, prior to the acceptance of the Town of Carver Zoning By-laws of 1992, as amended.

An email was received from the Building Commissioner, Paul Boucher, dated November 16, 2021, who stated that the yoga studio was a non-conforming use in the General Business District and that, in his opinion, the driving school "would be (a) less detrimental" non-conforming use. Again, the need for parking was said to be minimal in this instance.

No opposition to the Petition was received by the Board.

A Motion to close the Public Hearing was made, duly seconded, and voted unanimously.

Vice Chairperson Clarke made a Motion that the Board find that the extension of the nonconforming use in this case is not substantially more detrimental than the previous non-conforming use to the neighborhood and is in fact a less detrimental non-conforming use. The Motion was seconded by Member Mello. The Motion passed unanimously.

Vice Chairperson Clarke made a Motion pursuant to M.G.L. c 40A, Section 6, and pursuant to the Board's authority under 5221, 5300 et seq., and 2252, that it grant a Special Permit to the Petitioner to operate a driving school at the subject location, all as more particularly described above. The Motion was seconded by Member Casey. The Motion passed unanimously.

Member Mello made a Motion to adjourn and was duly seconded. The Motion passed unanimously at 8:15 P.M.

Respectively submitted,

Patricia A. Pacella