

Carvin
Katsufries
Avery
Harrison

CITY OF PORTLAND, MAINE
ZONING BOARD OF APPEALS

R-2 Residential Zone:

Conditional Use Appeal

DECISION

Date of public hearing: February 4, 2016;

Name and address of applicant: Verizon Wireless d/b/a Portland Cellular
Partnership
118 Flanders Road
Westborough, MA 01581
c/o
Kelly B. Boden
Verrill Dana
One Portland Square
Portland, ME 04112

Location of property under appeal: 1877 Congress Street
Portland, ME 04102

For the Record:

Names and addresses of witnesses (proponents, opponents and others):

see attached

Exhibits admitted (e.g. renderings, reports, etc.):

Application
Submissions of 1-4-16
1-20-16
2-1-16
of Verizon
tree plan (Z-1)
graphical summary of
modeling of decisions

Opponents
1-14-16 and 2-3-16
Submission of David Silk
list of questions of David Silk
definition of head end 27-2
2014 Verizon annual Report
map of Stroudwater historic District (2)
Description of Stroudwater Historic District
General generator info
memo 2-1-16 of Chaetler Smith

Findings of Fact and Conclusions of Law:

Telephone communications
fifty

The applicant, Verizon Wireless, is seeking a conditional use pursuant to § 14-78(c)(1) to construct at the 1877 Congress Street site, a thirty foot by ~~thirty-five~~ ^{fifty} foot equipment shelter to house cellular equipment. It also proposes to place an external generator on a 5 x 10 concrete pad immediately outside the equipment shelter. According to Verizon's proposal, the shelter will be accessed by a new 12-foot wide gravel driveway with a parking area.

A. Conditional Use Standards pursuant to Portland City Code §14-78(c)(1)

1. The structures are utility substations, including sewage and water pumping stations and standpipes, electric power substations, telephone electronic equipment enclosures, or other similar structures.

Satisfied Not Satisfied

Reason and supporting facts: Contains shelter for telephone electronic equipment, the application ~~is~~ sewer is not a regulated public utility and is still considered a utility. ~~Not~~ doesn't have to be a regulated, public utility to fit utility definition.

2. The uses are suitably screened and landscaped so as to ensure compatibility with the surrounding neighborhood.

Satisfied Not Satisfied

Reason and supporting facts:

Applicant has submitted new plan-plantings & screenings meant to make the building less intrusive. Fence at least as high as generator. Leave existing trees as identified on the site plan, through Level II site plan arborist would review plantings. ~~elevation~~ height of building couldn't be increased from what is presented in the application.

B. Conditional Use Standards pursuant to Portland City Code §14-474(c)(2):

The Board shall not authorize issuance of a conditional use permit unless there has been a showing that the proposed use, at the size and intensity contemplated at the proposed location, will not have substantially greater negative impacts than would normally occur from surrounding uses or other allowable uses in the same zoning district. Accordingly, the Board shall only grant approval if each of the following is satisfied:

1. The volume and type of vehicle traffic to be generated, hours of operation, expanse of pavement, and the number of parking spaces required are not substantially greater than would normally occur at surrounding uses or other allowable uses in the same zone.

Satisfied Not Satisfied

Reason and supporting facts:

1 vehicle per week, not a staffed facility, parking spaces are not substantially greater than other permitted uses in zone. This zone has other conditional uses of greater impact like colleges and universities. No great concern of public in this particular standard.

2. The proposed use will not create unsanitary or harmful conditions by reason of noise, glare, dust, sewage disposal, emissions to the air, odor, lighting, or litter.

Satisfied Not Satisfied

Reason and supporting facts:

Public concern for generator noise.
No testimony unsanitary or harmful motion sensor, down ward facing light to allow night access by technicians
Decibel levels in record
exhaust emissions were quantified as minimal
generator will not be a continuous noise, it will be on 30 minutes, once a week. Figure 1 - decibel levels - show less than lawn mower³

3. The design and operation of the proposed use, including but not limited to landscaping, screening, signs, loading, deliveries, trash or waste generation, arrangement of structures, and materials storage will not have a substantially greater effect/impact on surrounding properties than those associated with surrounding uses or other allowable uses in the zone.

Satisfied

Not Satisfied

3-1 (Avery)

Reason and supporting facts:

Height of structure is 17 feet. Max height in zone is 35 feet. Design as presented - won't have a greater impact than ~~most~~ other ^{allowable} ~~allowable~~ uses in zone. ~~For~~ University, art school & places of assembly are allowed and this use has no greater impact. Dissent indicates this is a Commercial use and Conclusion: (check one) will have a substantial impact on residential zone, including reducing property values.

Option 1: The Board finds that Standards (1 and 2) described in section A above have been satisfied and that all of the standards (1 through 3) described in section B above have been satisfied, and therefore GRANTS the application.

Option 2: The Board finds that while Standards (1 and 2) described in section A above have been satisfied, and that while all standards (1 through 3) described in section B above are satisfied, certain additional conditions must be imposed to minimize adverse effects on other property in the neighborhood, and therefore GRANTS the application SUBJECT TO THE FOLLOWING CONDITIONS:

Option 3: The Board finds that Standards (1 and 2) described in section A above have not been satisfied and/or that not all of the standards (1 through 3) described in section B have been satisfied, and therefore DENIES the application.

Dated: 2/4/16

A. J. J. J.
Board Chair

Fence at least as high as the generator
Leave existing trees as identified on the site
Plan
Level II site plan reviews will occur with
City Arborist & reviewing plantings
Elevation of the building can't be
increased from what is presented in the
application.

Witnesses

PRO -

Applicant - Kelly Boden
Verrill + Dana
Counsel to Verizon
Matt Burke of Verizon

move building 18 ft west & drop hill
eliminates need to cut any trees

proposing wooden stake fence around
building

issues - who makes use determination

① argues → zoning administrator makes
it then appeal is to ZBA
zoning administrator determined it is
a utility substation

② wireless facilities are utilities
equipment shelter housing equipment
generator runs only in emergencies -
no antennas or towers

once a week, will run for a half hour -
to keep generator running

Opponents

David Silk

Curtis Thayer, representing
Carlton & Mary Smith
85 Rivers Edge, Portland

argues - not a use that is listed as a
conditional use - it is a
telecommunications facility - not a
utility substation - delays in B-6, not
R-2 - larger than any house in area

Issues: Does EPA have jurisdiction to
determine if this use is a conditional use
to it a conditional use

if it is, will the use
have substantial impact on the
neighborhood

Adamke → Board has jurisdiction to
determine if this is a
utility substation -

This what they are proposing a
conditional use in the R-2 zone
"head end" - part of telecommunication
network - making it a permitted use in
B-6 + B-7 zones -

rezone characterizes it as a "head end"
building - making it a telecommunication

facility. This is not allowed in R-2 zone
argues Utility is a regulated
Utility - argues that these are not
utilities because they aren't regulated -

3rd issue - impact of use on surrounding
neighborhood

20 feet from ~~west~~ Stroudwater historic
district edge

cites generator as an issue - industrial
size generator in residential zone -
Just being there is a problem - out of
Character with the neighborhood -

Peter Thornton, Realtor

- Legacy Properties - Southbay Internat-
national

30-35 years a broker -

R-2 zone - one of better neighborhoods
in Portland - feels like rural area,
but in City - houses hold their
values - unique area - average
selling price \$453,000 -

10% price reduction in value
of properties if this type of structure
is put up - it isn't usually found
in residential neighborhood

Dan Peaco
58 Rivers Edge Drive
Direct Abutter

Location of building + generator within
view of property

opposed to conditional use

- Questions -

What is equipment to be housed
in building - what business purpose
it will be put to - Is it essential?
to public good - Why does it have
to be at that location
They aren't regulated by P.U.C.

Mike Rogers
66 Rivers Edge Drive
Commercial use - new location creates
more problems - grade now increases
height of building -
Proposed trees won't ~~be~~ properly
screen building - also landscaping plan -
want Eastern White Pine -
Propose Arbor Vitae - Should submit a
new landscaping plan

Hendley Peaco
58 Rivers Edge Drive
not a utility - therefore they don't
qualify

Charlton Smith of Rivers EDGE

Strongwater Farms Neighborhood Association
argues significant decline in
property values if this use is allowed
will affect rural character of neighborhood
moving building doesn't help
it isn't a public utility for public
good - structure would be seen
between the houses as you walk the
neighborhood.

This building is bigger than living
area of buildings in neighborhood
will ruin unique character of
building

Ed Resnaiski (SP?)

50 Rivers Edge Drive

affect quality of life

Visuals, noise, unknown impact on
TWS, phones etc., concerns on
future expansion site
change natural beauty of lot +
visuals from his home

Concern for change of nature on lot

Scott Horton

1859 Congress

See facility from back yard -
located in Historic District -
building proposed shouldn't be allowed
next to historic District
building placed every 50 miles on State
Route - also used for collocation

Bill Linnell

1905 Congress St.

residential / rural character
concerned with generator - industrial
size - belongs in industrial zone
resale of house harder
another places to be developed

Burton Orlando

88 Rivers Edge Drive

- concern if they are considered a
utility - lots of others will be allowed
to use this as well

ask what equipment will be
in building -

disputes Head End Title - one's can
harm to community of radio ~~st.~~
equipment

Kelly Boden -

~~Site~~
Telecommunications facilities
allowed B6-B7 - (1095 of City)
current frequency has been
this has been considered a
utility substation

Head end is what all these
projects are called
neighborhood next to other commercial uses

Matt Burke - Radio equipment -
analogous to cell tower - allows
fiber to be strung ~~at~~ along other
rights of way - smaller sites -
this site is needed for fiber
presence on Congress St -

move building to satisfy neighborhood
not a CO - this is a hub
location - not subject to
co location because it isn't
central office -

Same or lower height as original
application - further away from property lines

shuffled - Cape cod structure -
Can put in windows -

zero interference - this site will
connect to fiber optics -
Trees won't be cut - But willing
to put new trees -

6 foot fence proposed - 8 foot fence
generator behind fence + generator

agrees they are not public utility

David Silk → clearly communications
facility from description of what is in
building - has equipment you'd find in
cell tower site -

30 people from neighborhood here -

motion to table - Carin / Avery
fails 1-3