

NOV 18 2021

10:20 AM

Essex Planning Board, Town of Essex, Massachusetts
Corrected¹ Decision on Special Permit Application by TowerNorth Development, LLC
Telecommunications Tower & Support Structures, 73 Eastern Avenue, Essex, MA

The **Essex Planning Board acting as the Special Permit Granting Authority** hereby approves the application for a Special Permit under Town of Essex bylaw 6-3.4 submitted by TowerNorth Development, LLC c/o Centerline Communications LLC, 750 W. Center Street, Suite 301, West Bridgewater, MA 02379, to erect a telecommunications tower and support structures. Proposed construction to be located at 73 Eastern Ave, identified on Town of Essex assessors Map 127 Lot 22 and 23.

Our decision is based on the testimony received at the public hearing opened on September 1st, 2021 and immediately continued to October 6th 2021, and again to October 20th 2021. No testimony or information was received September 1st or October 6th due to Essex Zoning Board of Appeals hearing for needed variances was not completed and decision filed with the Essex Town Clerk.

Other information considered in the decision process included the following:

1. Application for Special Permit, dated June 10, 2021,
2. Abutters and persons of interest list. Public hearing notifications were sent from this list certified by the Essex Board of Assessors, as included with the Special Permit Application,
3. Brief in support of the application which included brief descriptions on various aspects of the proposal including but not limited to the following:
 - a. Description of the property,
 - b. Description of the Balloon Test conducted on August 28, 2020,
 - c. Description of the project, including photo simulations as a separate Exhibit #4,
 - d. Stamped engineering plans as Exhibit #5,
 - e. Explanation of how the current application meets or will comply with the current standards for review,
 - f. An additional number of Exhibits are part of the application, for a total of 16 attachments.
4. Two additional reports requested by the Zoning Board of Appeals were submitted on October 4, 2021 for inclusion as part of the Special Permit application.
5. Additional information was submitted on October 14, 2021 regarding Federal licensing,
6. Written decision of the Essex Zoning Board of Appeals, dated October 15, 2021,
7. Comments, written and verbal, from several neighbors, members of the Public, Town Counsel for the Town of Essex, and the Applicants engineers were received during the Public Hearing and incorporated into the decision process.

This approval is subject to the following conditions, safeguards and limitations on use or time:

The Essex Planning Board, acting as the Special Permit Granting Authority finds the applicant adequately substantiated the following propositions in accordance with the Planning Board's Special Permit Issuance Rules and MGL c. 40A, § 9:

1. The proposed use will be in harmony with the general purpose and intent of the Zoning By-law.
2. The specific site is an appropriate location for such use.
3. The proposed project does not require water or sewerage disposal systems.
4. The proposed use as developed will not adversely affect the neighborhood.
5. No nuisance or serious hazards to pedestrians or vehicles will be caused by the project as proposed.
6. The facilities as designed are adequate and appropriate as proposed.

¹ The original Decision, filed with the Town Clerk on November 5, 2021, contains a clerical error in the first paragraph, second line. In the original decision, Bylaw Section 6-6.9.e was cited and should be Bylaw Section 6-3.4. This was an inadvertent error, and this Corrected Decision does not grant any relief different from that originally sought and shall not change the result of the original Decision.

This Special Permit is being approved based in part on the following:

- The proposed facility is an allowed use listed under Town of Essex Bylaw 6-3.4.2.e, Uses Requiring Special Permit, subject to specific additional requirements listed in section 6-3.4.5 Radio, Telecommunications, Cellular and Television Facilities, Including Free Standing Tower Type Structures.
- The property under review is located on Eastern Ave. The surrounding area is commercial / residential in nature, with nearest residential dwelling within 500 feet of the proposed tower location (ref sheet C-2 of the plan stamped by professional engineer final revision dated 02/28/2021, submitted with the application).
- The applicant applied for and received relief from non-conforming requirements of the Zoning Bylaw in a decision by the Essex Zoning Board of Appeals on October 4th 2021, decision filed with the Essex Town Clerk on October 15th 2021. This Special Permit will not be in full effect until the Essex Zoning Board of Appeals decision is certified by the Town Clerk to have expired the 20-day appeal period with no appeals having been properly filed, on or about November 4th 2021, or any appeals have been adjudicated by Superior Court or any court of competent jurisdiction.
- The proposed construction of a communications tower and supporting structures presented on the site plan, drawn by Scott N. Adams P.E. and dated 02/21/21, meets or has been granted relief from the minimum requirements of section 6-3.4.5 of the Essex Zoning Bylaws. Relief from compliance was granted by variance by the Essex Zoning Board of Appeals for the following requirements:
 1. 6-3.4.5.c. No Tower shall be located closer than two (2) miles from any other Tower.
 2. 6-3.4.5.e. Towers shall be set back from the front, rear and side property lines a distance equal to at least one hundred twenty-five (125) percent of the height of the Tower
 3. 6-3.4.5.g. All Towers shall be located a minimum of five hundred (500) feet from the nearest residential structure.
 4. 6-3.4.5.h. Multiple accessory buildings shall be connected by a common wall.
- Monopole tower is to be designed with an engineered break point to limit any structural failure to a maximum radius of 50 feet from the tower base.
- The applicant documented a need for the facility as part of the application by illustrating the low signal areas that will be enhanced to meet FCC mandates as part of their license to operate. These findings have been reviewed by an independent engineer provided by the applicant to review the application on behalf of the Zoning Board of Appeals and the Town of Essex. This peer review was documented on a report dated June 8th 2021 and submitted to the Zoning Board of Appeals by Isotope LLC.
- The applicant has applied for and was granted a license to operate a Personal wireless facility from the Federal Communications Commission. Grant letter is dated 6/2/2017. FCC Registration Number 0023077357 for the Antenna Structure was issued 06/14/2021.
- The Telecommunications Act of 1996 SEC. 704 (7) (a) (II) (iii): requires any denial of a request to place, construct, modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.
- The Telecommunications Act of 1996 SEC. 704 (7) (a) (II) (iv): prohibits the consideration of radio emissions as part of the decision process. The FCC regulates and licenses each carrier and facility in accordance with specific regulations promulgated and enforced by that commission.

- Pursuant to 47 U.S.C. 332(c)(7)(B)(i)(II), “The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof... shall not prohibit or have the effect of prohibiting the provision of personal wireless services” if the Board finds both that a significant coverage gap exists and the application presents the only feasible plan to address that significant coverage gap. The Board finds that it has been supplied with evidence that will allow the Board to infer that there is a significant gap in service due to a lack of capacity. The RF Report has documented that due to distances between the existing sites, the intervening topography, and volume of user traffic in the area, the existing facilities do not provide sufficient coverage and capacity to portions of town and that the proposed site is necessary to fill in these targeted gaps in service.
- The Board also finds (as mentioned during the hearings), that the quality of service and data connection speeds delivered to the users are not necessarily uniform throughout a coverage area. Connectivity issues and level of service issues do exist. Users located in stronger coverage areas will generally experience better service than those users located near the edges of coverage. This improved coverage will increase network capacity.
- The site for the Tower is appropriate for improved coverage and increased network capacity due to location and topography. Further, the alternatives site analysis provides that there is no reasonable viable alternative site for the target area.

The following conditions shall apply:

1. The Tower and all antennae authorized to occupy the tower shall comply with all applicable State and Federal guidelines concerning radio frequency emissions.
2. Fencing shall be provided to control access to the facility; a key(s) to the facility shall be made available to the Fire Chief of the Town of Essex to allow emergency access.
3. Night lighting of the facility shall be prohibited except that required for emergencies and maintenance.
4. No additional lighting will be allowed or required as per Federal Aviation Administration finding dated 03/24/2020 stating the structure does not exceed obstruction standards and will not be a hazard to air navigation. (ref. Aeronautical Study No. 2020-ANE-1476-OE). Extension authorized to 3/23/2023 from original expiration date of 09/24/2021.
5. The required access road above the currently developed, or any unrelated future development of remaining property shall be limited to not more than 16 ft wide gravel surface and not less than 14 feet vertical clearance to ensure adequate public safety vehicle access when required.
6. Tree removal required for this project shall be limited to minimum necessary as indicated on site plan submitted as part of this application.
7. Signs shall be limited to announcement, no trespassing, and shall include the phone number of a responsible party available on a twenty-four-(24) hour a day basis.
8. Any proposed extension of height, addition of cells, antennas, construction or reconstruction of any portion of this facility shall be subject to application for an amendment to this special permit.
9. This special permit and all subsequent amendments shall expire on November 17, 2031. At that time a new permit may be issued covering all existing carriers based on the continuing need for such a facility. An engineering assessment of the physical condition of the Tower structure will be required for renewal of the Special Permit. Renewal of this permit shall be conducted in accordance with all applicable rules in effect at that time.

10. The Property owner of record shall be held responsible to dismantle and remove this facility and all supporting structures upon expiration and non-renewal of this permit, or abandonment of the permitted use of this facility by the FCC license holders. Dismantling and removal shall occur within 90 days of either of the stated conditions.


This Special Permit is not in effect until the applicant has filed a certified copy of the decision with the Registry of Deeds. Certification that the twenty (20) day appeal period has expired with no appeals having been filed must be obtained from the Essex Town Clerk, or any appeals have been adjudicated by Superior Court or any court of competent jurisdiction.

Certified copies of this decision will be available at the Essex Town Clerks office and from the Essex Planning Board within 10 days of the date of this decision.

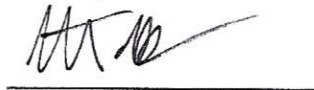
Appeals shall be made pursuant to Section 17 of Chapter 40A MGL and shall be filed within twenty (20) days after the date of filing this decision with the Essex Town Clerk.

In accordance with the Telecommunications Act of 1996, Section 704 (7) (a) (II) (v): "Any person adversely affected by any final action or failure to act by a State of local government or any instrumentality thereof that is inconsistent with this subparagraph may within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief."

Planning Board Vice Chairperson:


Lisa O'Donnell

Planning Board Vice Clerk:


Matt Greco