

State of Rhode Island

County of Washington

In Hopkinton on the nineteenth day of October, 2017 A.D. the said meeting was called to order by Zoning Board of Review Chairman Philip Scalise at 7:00 P.M. in the Town Hall Meeting Room with a moment of silent meditation and a salute to the Flag.

PRESENT: Philip Scalise, Daniel Harrington, Jonathan Ure, Ronnie Sposato, Joseph York; Alternate: Michael Geary; Solicitor: Veronica Assalone; Zoning Board Clerk: Elizabeth Metcalf; Deputy Zoning Official: Sherri Desjardins; Absent: Tim Ward

Sitting as Board: Scalise, Harrington, Ure, York, Sposato

Petition I–Decision

A Petition on an Appeal of the Zoning Official filed by Patrick J McBurney, Attorney on behalf of Gregory Cooper of Cann Cure Cultivation, LLC for property located at 0 Wich Way, Ashaway, RI 02804 and owned by CTG Properties, LLC, identified as AP 7, Lot 17A an RFR-80 Zone and filed in accordance with Section 24 of Chapter 134 of the Zoning Ordinances of the Town of Hopkinton, as amended.

Attorney Patrick J McBurney is present representing Cann Cure Cultivation, LLC. A stenographer is present and a copy of the transcript will be attached to the minutes and be made part of the record.

A MOTION WAS MADE BY JONATHAN URE AND SECONDED BY JOSEPH YORK TO APPROVE THE FINDINGS OF FACT FOR THE APPEAL.

IN FAVOR: SCALISE, URE, HARRINGTON, YORK, SPOSATO

OPPOSED: NONE

SO VOTED

A MOTION WAS MADE BY JONATHAN URE AND SECONDED BY JOSEPH YORK THAT BASED ON THE FOREGOING FINDINGS OF FACT, REASONS DISCUSSED, TESTIMONY HEARD AND DOCUMENTS RECEIVED, WE THE HOPKINTON ZONING BOARD DENY THIS APPEAL AND UPHOLD THE ZONING OFFICIAL’S DECISION TO DENY THE PERMIT FOR THIS PROJECT, NAMELY TO CONSTRUCT THIS CULTIVATION CENTER AS PROPOSED ON THE SUBJECT VACANT LOT IN A RFR 80 ZONE.

IN FAVOR: SCALISE, HARRINGTON, URE, YORK, SPOSATO

OPPOSED: NONE

SO VOTED

Petition II – Hearing

A Petition for a Use Variance has been filed by Industrial Tower & Wireless, LLC for property owned by Stella Penzer and located at 346 Spring Street, Hope Valley, RI 02832, identified as AP 16, Lot 38 an RFR-80 Zone and filed in accordance with Section 5 of Chapter 134 of the Zoning Ordinances of the Town of Hopkinton, as amended.

Petition III - Hearing

A Petition for a Dimensional Variance has been filed by Industrial Tower & Wireless, LLC for property owned by Stella Penzer and located at 346 Spring Street, Hope Valley, RI 02832, identified a AP 16, Lot 38 an RFR-80 Zone and filed in accordance with Section 5 of Chapter 134 of the Zoning Ordinances of the Town of Hopkinton, as amended.

Ronnie Sposato recused himself as he has a business relationship with the applicant.

Petitions II & III were heard together.

Sitting as Board: Scalise, Ure, Harrington, York, Geary

Attorney Nicholas Gorham was present representing Industrial Tower and Wireless, LLC. Also present were Kevin Delaney and John Champ from Industrial.

Attorney Gorham noted that at the last meeting it was determined that a balloon test was necessary in order for the Board to make a decision. John Champ and Kevin Delaney from Industrial Tower were present to explain the results of the test. The balloon test was advertised and then commenced on September 12, 2017 at 10am and was completed on September 16, 2017 at 4pm. The balloon was 8 ½ feet in diameter, bright red and was located at the proposed site of the tower. Exhibit 1 was distributed to the Zoning Board members and the Zoning Board Clerk. It contained photos of the balloon test and also simulated photos of the cell tower in place of the balloon to approximate how the tower would appear from four different locations on Spring Street and Camp Yawgoog Road. The distances were 695 feet, 860 feet, 940 feet and 1225 feet from the site. Due to foliage, at some locations the tower was not visible at all. There will not be a generator at the site at this time; there will be one in the future, at which time they would come before the Board. There was discussion about the fall radius requirement.

A MOTION WAS MADE BY JONATHAN URE AND SECONDED BY JOSEPH YORK TO GRANT A WAIVER FOR THE FALL RADIUS REQUIREMENT OF 3 TIMES THE HEIGHT OF THE TOWER TO THE HEIGHT OF THE TOWER.

IN FAVOR: SCALISE, HARRINGTON, URE, YORK, GEARY

OPPOSED: NONE

SO VOTED

It was noted that the balloon test was done internally by John Champ and Kevin Delaney.

URE: I move that after due consideration, the Zoning Board makes the following findings of fact in regards to the Use Variance and Dimensional Variance applications:

1. Copy of a site plan dated 4/18/17 prepared by Mr. Curt Nunes PLS of Commonwealth Land Surveyors, Inc. detailing all existing structures and location of the proposed improvements at 346 Spring St, Hopkinton RI.
2. A radio frequency coverage map showing existing and proposed coverage within the subject area.
3. A map of existing tower sites in town and the surrounding area, as required in sec 5.1, sub sec 3a. Also submitted are radio frequency plots showing the gap of coverage in town and the resulting coverage provided by the proposed tower.

4. Letter of determination of no hazard to air navigation from the Federal Aviation Administration. The letter additionally notes that marking and lighting are not required for this proposal.
5. To accept the testimony heard at last month's meeting and this evening from Mr. Delaney and Mr. Champ from Industrial Communications stating;
 - a. The site chosen for this tower is the only feasible location to fill the coverage gap as noted by the propagation study provided.
 - b. The facility proposed at the location consists of a 175' lattice style tower and supporting wireless equipment shelters and concrete pads as detailed on the provided site plan.
 - c. The proposed tower height of 175' is the minimum height required to provide coverage and fill gaps in coverage in the anticipated service area. Therefore a 135' height variance is being requested.
 - d. No guy wires are structurally required for this antenna.
 - e. The 80'x80' communications compound shall be entirely surrounded by an 8' tall chain link fence with a 10' wide gate.
 - f. Traffic to the site shall be minimal as only periodic visits by technicians are required.
 - g. The compound will be accessible by a gated 10' wide by approximately 597'+\ gravel driveway. Other than the 10' wide gravel roadway and the fenced compound area the remainder of the lot shall remain in a vegetated state as to minimize visual impacts on surrounding neighbors.
6. Mr. Delaney further testifies that;
 - a. the proposal shall not create soil erosion or pose a risk to water supply or wetland and that this use shall emit no noise, fumes, traffic, heat, glare or discharge any noxious substances.
 - b. Also that no existing towers or structures are located within the geographic area required to meet coverage requirements as set forth by the Telecommunications Act of 1996.
 - c. The tower is designed and constructed to accommodate five typical cellular/PCS systems plus additional GPS and whip emergency service antenna.
 - d. There will not be any commercial signage on the tower or it's supporting equipment. The only signage that will be present is that required by law and as permitted by this ordinance.
 - e. The only lighting related to the tower and supporting equipment is that which is required by federal, state or local authorities and that the facility will otherwise be Dark Sky compliant.
 - f. The applicant will take all measures feasible to preserve existing mature tree growth and natural land forms on sight.
 - g. And that the tower shall maintain a galvanized steel finish as to blend into the skyline and that supporting equipment and facilities shall be a color that is as visually unobtrusive as possible.
7. To accept evidence that a helium balloon was flown at the site and at the proposed tower height for a duration of time consistent with the objective of the Ordinance and that notice of the dates that the balloon was flown was published in the local paper.

8. To accept the balloon test report from Mr. Delaney and Mr. Champ of Industrial Wireless and that the balloon was flown September 12th-16th.

A MOTION WAS MADE BY JONATHAN URE AND SECONDED BY DAN HARRINGTON TO APPROVE THE FINDINGS OF FACT FOR THE USE VARIANCE AND THE DIMENSIONAL VARIANCE.

IN FAVOR: SCALISE, URE, HARRINGTON, YORK, GEARY

OPPOSED: NONE

SO VOTED

The Zoning Board moves that the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structures and not to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant; as the 175' tower height is the minimum height required for the proposed tower to eliminate the coverage gap shown in propagation studies provided by the applicant. Co-location is not an option available as there are no existing towers or structures located within the geographic area to meet coverage requirements as set forth by the Telecommunications Act of 1996.

A MOTION WAS MADE BY JONATHAN URE AND SECONDED BY JOSEPH YORK THAT THE ZONING BOARD APPROVE THESE FINDINGS OF FACT FOR THE USE VARIANCE AND THE DIMENSIONAL VARIANCE.

IN FAVOR: SCALISE, URE, HARRINGTON, YORK, GEARY

OPPOSED: NONE

SO VOTED

The Zoning Board moves that the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain; as the tower height of 175' is determined by its ability to close the coverage gap within this location for cell phone users, residents, public safety and businesses to this area of Hopkinton as required by the Telecommunications Act of 1996.

A MOTION WAS MADE BY JONATHAN URE AND SECONDED BY MIKE GEARY THAT THE ZONING BOARD APPROVE THESE FINDINGS OF FACT FOR THE USE VARIANCE AND THE DIMENSIONAL VARIANCE.

IN FAVOR: SCALISE, URE, HARRINGTON, YORK, GEARY

OPPOSED: NONE

SO VOTED

The Zoning Board moves that granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of the zoning ordinance or the comprehensive plan upon which this ordinance is based; and that the relief to be granted is the least relief necessary. This is principally because the proposed tower shall be located almost central on the 13+ acre subject property and approximately 600' interior from the nearest roadway. The lot is heavily wooded and the existing vegetation will provide natural buffering from visual impact to the surrounding area. Also as previously stated the proposed tower is required to fill the gap in coverage which exists along Route 138 as governed by the Telecommunications Act of 1996. By filling the coverage gap that exists, the tower will provide enhanced wireless service in the area that is underserved. This not only serves the residents of Hopkinton and wireless customers- it also provides service to our emergency responders helping them in their ability to do their job which positively affects the quality of life of the citizens of the town.

A MOTION WAS MADE BY JONATHAN URE AND SECONDED BY MIKE GEARY THAT THE ZONING BOARD APPROVE THESE FINDINGS OF FACT FOR THE USE VARIANCE AND THE DIMENSIONAL VARIANCE.

IN FAVOR: SCALISE, URE, HARRINGTON, YORK, GEARY

OPPOSED: NONE

SO VOTED

The Zoning Board shall, in addition to the above standards, require that evidence be entered into the record of the proceeding showing that in granting a use variance the subject land or structure cannot yield any beneficial use if it is required to conform to the provisions of the zoning ordinance. Nonconforming use of a neighboring land or structures in the same district and permitted use of lands or structures in an adjacent district shall not be considered in granting a use variance; and also that in granting a dimensional variance, that the hardship that will be suffered by the owner of the subject property if the dimensional variance

is not granted shall amount to more than a mere inconvenience. The fact that a use may be more profitable or that a structure may be more valuable after the relief is granted shall not be grounds for relief.

A MOTION WAS MADE BY JONATHAN URE AND SECONDED BY DAN HARRINGTON, THAT FOR THE REASONS PREVIOUSLY STATED, THE TESTIMONY HEARD, THE DOCUMENTS RECEIVED AND BASED ON THE DISCUSSION, THAT THE BOARD APPROVE THESE FINDINGS OF FACT FOR THE USE VARIANCE AND THE DIMENSIONAL VARIANCE.

IN FAVOR: SCALISE, URE, HARRINGTON, YORK, GEARY

OPPOSED: NONE

SO VOTED

A MOTION WAS MADE BY JONATHAN URE AND SECONDED BY JOSEPH YORK, THAT BASED ON THE FINDINGS OF FACT, AS WELL AS THE TESTIMONY HEARD, THE DOCUMENTS RECEIVED, THAT THE ZONING BOARD OF REVIEW APPROVE BOTH THIS USE AND 135' DIMENSIONAL VARIANCE FOR THE INSTALLATION OF THE PROPOSED 175' LATTICE STYLE TELECOMMUNICATIONS TOWER TO BE LOCATED AT 346 SPRING ST. AP 16, LOT 38.

IN FAVOR: SCALISE, URE, HARRINGTON, YORK, GEARY

OPPOSED: NONE

SO VOTED

Petition IV- Hearing

A Petition for a Dimensional Variance has been filed by Hopkinton Industrial Park, LLC for property owned and located at 0 Gray Lane, Ashaway, RI 02804, identified as AP 4, Lot 13, a Commercial Zone and filed in accordance with Section 6 and Section 9 of Chapter 134 of the Zoning Ordinances of the Town of Hopkinton, as amended.

Attorney George Comolli is present representing Hopkinton Industrial Park, LLC and green cards for certified mail have been delivered to the clerk.

Sitting as Board: Scalise, Ure, Harrington, York, Sposato

The petitioner originally applied for a 60 foot variance which was amended at the last meeting to a 16.2 foot variance (based on input from the Zoning Official) in order to move away from the wetlands on the north end of the property. Of the 27.7 acres, 6.1 acres will be the solar array. The Petitioner's want the solar array to be a visible part of the Industrial Park. This property was formally a corn field, a turf farm and a vacant piece of property. The plan is for a 1.57 megawatt system which has been approved by the Planning Board and tentatively approved by National Grid. Hopkinton Industrial Park owns the property surrounding the lot. The array will have frontage on Gray Lane. There was a representative from Direct Energy Solar present; Doug Tellepman. There will be twenty rows of solar panels (4618 modules). The proposed use is benign compared to farming, which used a vast amount of fertilizer and water. The framework for the arrays will be above ground, with piles driven into the ground to support them. The effective life expectancy of the arrays is thirty-five plus years. The DC capacity is 1.57 megawatts. The excess energy will be sold back to the grid. The Petitioners have put together a decommissioning plan. Hopkinton Industrial Park is owner of the solar array and the property.

URE: I move that after due consideration, the Zoning Board makes the following findings of fact in regards to this Dimensional Variance Application:

1. A copy of a site plan prepared by Alfred DiOrio, RLS, Inc., showing all existing and proposed structures and improvements of the subject property and their relationship and setbacks to neighboring properties.
2. The subject property is located at 0 Gray Lane, Ashaway on AP 4, Lot13.
3. The parcel is currently vacant land and approximately 27.7 acres, of which 6.1 acres are being used for the proposed application.
4. The entire property lies within a Commercial Zone.
5. The presentation heard this evening from Attorney George Comolli representing Hopkinton Industrial Park, LLC stating that the applicant is seeking a dimensional variance of 16.2' from the required 60' front yard setback required in a commercial zone to accommodate for security fencing and 1.57MW solar array installation along Gray Lane.
6. No neighbors present this evening objecting.

A MOTION WAS MADE BY JONATHAN URE AND SECONDED BY DAN HARRINGTON THAT THE ZONING BOARD APPROVE THESE FINDINGS OF FACT FOR THE DIMENSIONAL VARIANCE.

IN FAVOR: SCALISE, URE, HARRINGTON, YORK, SPOSATO

OPPOSED: NONE

SO VOTED

In granting a variance, the Zoning Board shall require that evidence satisfying the following standards be entered into the record of the proceedings:

That based on the findings of fact as well as the testimony heard and the documents received the Zoning Board finds that the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structures and not to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant; this is principally based on the fact that the wetland buffer requirements from the stream and vegetation on the eastern portion of the property as well as the topography in the northeastern side limit the placement of the arrays to the area which is shown on the provided site plan.

A MOTION WAS MADE BY JONATHAN URE AND SECONDED BY JOSEPH YORK THAT THE ZONING BOARD APPROVE THESE FINDINGS OF FACT FOR THE DIMENSIONAL VARIANCE.

IN FAVOR: SCALISE, URE, HARRINGTON, YORK, SPOSATO

OPPOSED: NONE

SO VOTED

That based on the findings of fact as well as the testimony heard and the documents received the Zoning Board finds that the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain; this is based on the fact that the hardship is due to the unique nature of the property where wetland buffering requirements and topography limit the location of the proposed solar array. Also the unique nature of a solar photo voltaic panel facility must be considered. The fact that specific positioning of panels with reference to the sun is needed for optimal performance and also any obstruction from vegetation will be adverse to solar panel use.

A MOTION WAS MADE BY JONATHAN URE AND SECONDED BY JOSEPH YORK THAT THE ZONING BOARD APPROVE THESE FINDINGS OF FACT FOR THE DIMENSIONAL VARIANCE.

IN FAVOR: SCALISE, URE, HARRINGTON, YORK, SPOSATO

OPPOSED: NONE

SO VOTED

That based on the findings of fact as well as the testimony heard and the documents received the Zoning Board finds that granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of the zoning ordinance or the comprehensive plan upon which this ordinance is based; and that the relief to be granted is the least relief necessary. This is based on the fact that the use proposed is a passive low impact business use, complementing the other commercial uses surrounding the proposal. The disturbance of any site work will be minimal compared to that of many other allowable uses that are permitted within this commercial zone. The subject property was previously used as a turf business which required vast amounts of water and fertilizers. By utilizing this property for a Solar facility it creates a quiet, low impact, environmentally friendly use which requires no water or septic and creates very minimal traffic to the area.

A MOTION WAS MADE BY JONATHAN URE AND SECONDED BY
RONNIE SPOSATO THAT THE ZONING BOARD APPROVE THESE
FINDINGS OF FACT FOR THE DIMENSIONAL VARIANCE.

IN FAVOR: SCALISE, URE, HARRINGTON, YORK, SPOSATO

OPPOSED: NONE

SO VOTED

The Zoning Board shall, in addition to the above standards, require that evidence be entered into the record of the proceeding showing that in granting a dimensional variance, that the hardship that will be suffered by the owner of the subject property if the dimensional variance is not granted shall amount to more than a mere inconvenience. The fact that a use may be more profitable or that a structure may be more valuable after the relief is granted shall not be grounds for relief.

A MOTION WAS MADE BY JONATHAN URE AND SECONDED BY
RONNIE SPOSATO THAT BASED ON THE REASONS PREVIOUSLY
MENTIONED IN THE PRECEDING FINDINGS AND MOTIONS THAT
THE ZONING BOARD APPROVE THESE FINDINGS OF FACT FOR THE
DIMENSIONAL VARIANCE.

IN FAVOR: SCALISE, URE, HARRINGTON, YORK, SPOSATO

OPPOSED: NONE

SO VOTED

A MOTION WAS MADE BY JONATHAN URE AND SECONDED BY JOSEPH YORK, THAT BASED ON THE FINDINGS OF FACT, AS WELL AS THE TESTIMONY HEARD AND THE DOCUMENTS RECEIVED THAT THE ZONING BOARD FINDS BASED ON THE PREVIOUS FINDINGS OF FACT THAT WE APPROVE THIS DIMENSIONAL VARIANCE ALLOWING HOPKINTON INDUSTRIAL PARK TO LOCATE THE PROPOSED SOLAR ARRAYS 43.8 FEET AT THE FRONT YARD THUS GRANTING RELIEF OF 16.2 FEET FROM THE FRONT YARD SETBACK REQUIREMENT OF 60 FEET WITHIN A COMMERCIAL ZONE.

IN FAVOR: SCALISE, URE, HARRINGTON, YORK, SPOSATO

OPPOSED: NONE

SO VOTED

Petition V – Hearing

A Petition on an Appeal of the Zoning Official filed by George A Comolli, Attorney on behalf of Edward C and Julieta G Sherman of 163 Canal Street, Westerly, RI 02891 for property owned and located at 165 Ashaway Road, Ashaway, RI 02804 identified as AP 23, Lot 4 an RFR-80 Zone and filed in accordance with Section 24 of Chapter 134 of the Zoning Ordinances of the Town of Hopkinton, as amended.

A stenographer is present and a copy of the transcript will be attached to the minutes and be made part of the record.

Attorney Steven Surdut is present representing Edward C and Julieta G Sherman.

A MOTION WAS MADE BY JONATHAN URE AND SECONDED BY

JOSEPH YORK TO COMPLETE A SITE VISIT AT PATCEEZ ON

NOVEMBER 1ST, 2017 at 4:30PM.

IN FAVOR: SCALISE, URE, HARRINGTON, YORK, SPOSATO

OPPOSED: NONE

SO VOTED

A MOTION WAS MADE BY JONATHAN URE TO CONTINUE THIS MATTER TO THE NOVEMBER 16, 2017 ZONING BOARD OF REVIEW MEETING AT WHICH TIME A DECISION WILL BE MADE.

There was no second, but there seemed to be a consensus between the Zoning Board and the Petitioner's Attorney.

Petition VI – Hearing

A Petition for a Special Use Permit filed by George A Comolli, Attorney on behalf of Edward C and Julieta G Sherman of 163 Canal Street, Westerly, RI 02891 for property owned and located at 165 Ashaway Road, Ashaway, RI 02804 identified as AP 23, Lot 4 an RFR-80 Zone and filed in accordance with Sections 8C and 10 of Chapter 134 of the Zoning Ordinances of the Town of Hopkinton, as amended.

A MOTION WAS MADE BY JONATHAN URE AND SECONDED BY JOSEPH YORK TO CONTINUE THIS MATTER TO THE JANUARY 18, 2018 ZONING BOARD OF REVIEW MEETING.

IN FAVOR: SCALISE, URE, HARRINGTON, YORK, SPOSATO

OPPOSED: NONE

SO VOTED

A MOTION WAS MADE BY JONATHAN URE AND SECONDED BY JOSEPH YORK TO APPROVE THE MINUTES OF THE SEPTEMBER 21, 2017 ZONING BOARD OF REVIEW MEETING.

IN FAVOR: SCALISE, URE, YORK, SPOSATO, GEARY

OPPOSED: NONE

SO VOTED

A MOTION WAS MADE BY JONATHAN URE AND SECONDED BY JOSEPH YORK TO APPROVE THE ALLIED COURT REPORTERS' TRANSCRIPT OF THE SEPTEMBER 21, 2017 ZONING BOARD OF REVIEW MEETING PERTAINING TO THE CANN CURE CULTIVATION, LLC APPEAL.

IN FAVOR: SCALISE, URE, YORK, SPOSATO, GEARY

OPPOSED: NONE

SO VOTED

A MOTION WAS MADE BY JONATHAN URE AND SECONDED BY JOSEPH YORK TO APPROVE THE ADDENDUM TO ALLIED COURT REPORTERS' TRANSCRIPT OF THE AUGUST 24, 2017 ZONING BOARD OF REVIEW MEETING.

IN FAVOR: SCALISE, URE, YORK, SPOSATO, HARRINGTON

OPPOSED: NONE

SO VOTED

Chairman Phil Scalise signed the decision for Environmetals, LLC from the September 21, 2017 Zoning Board of Review meeting.

A MOTION WAS MADE BY JONATHAN URE AND SECONDED BY DAN HARRINGTON TO ADJOURN THE MEETING AT 9:05PM.

IN FAVOR: SCALISE, URE, HARRINGTON, YORK, SPOSATO

OPPOSED: NONE

SO VOTED

Respectfully Submitted,

Elizabeth Metcalf

Deputy Zoning Board Clerk