

**300 CONCORD ROAD
COPIES OF VARIANCES AND/OR SPECIAL PERMITS**

THE COMMONWEALTH OF MASSACHUSETTS

BILLERICA

City or Town

BOARD OF APPEALS

Date: June 29, 1995

Certificate of Granting of Variance or Special Permit
(General Laws Chapter 40A, Section 11)

The Board of appeals of the City or Town of Billerica

hereby certifies that a Variance or Special Permit has been granted

To Wang Laboratories, Inc., and Bull HN Information Systems, Inc.
By Stephen J. Lentine, Esq.
Address 409 Boston Rd.

City or Town Billerica, MA 01821

affecting the rights of the owner with respect to land or buildings at 300 Concord Rd, Billerica
Assessors Map 86, Parcels 107, 108, and 1; Recorded in MNDRDS Book 7379,
Page 234, and Book 2059, Page 323

And the said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision granting said variance — special permit, and that copies of said decision, and of all plans referred to in the decision, have been filed with the planning board and the city or town clerk.

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section 11 (last paragraph) provides that no variance or special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the town or city clerk that twenty days have elapsed after the decision has been filed in the office of the city or town clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for such recording or registering shall be paid by the owner or applicant.

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John F. Gray, Jr.
Chairman
Ellen Sargent
Clerk

TOWN OF BILLERICA, MASSACHUSETTS
BOARD OF APPEAL

PROCEEDINGS: Including Findings and Decision

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LOCUS: 300 Concord Road, Billerica, MA

ASSESSOR'S MAP 86, Parcels 107, 108 and 1; Recorded in MNDRDS, BOOK 7379, PAGE 234 and BOOK 2059, PAGE 323.

APPLICANT: WANG LABORATORIES, INC., and
BULL HN INFORMATION SYSTEMS, Inc.
BY STEPHEN J. LENTINE, ESQ.

ADDRESS: 409 Boston Road, Billerica, MA

NATURE OF PETITION OR APPEAL: Appeal to the Board of Appeal for VARIANCE pursuant to Sections 16.1.E and 16.4.D.5 (multiple and larger signs); Section 16.4.D.5.H (free standing signs setbacks) and to make the signs conforming in all respects under Section 16 of the Zoning By-Law.

DATE OF HEARING BEFORE THE BOARD OF APPEAL: June 21, 1995

PROCEEDINGS AND FINDINGS

Findings of Fact: A set of plans labeled "WANG Business Park Exterior Sign Program" Concord Road, Billerica, MA, dated 5/31/95, prepared by Green Dot Design, 21 Southwest Cutoff, Northborough, MA 01532, was presented to the Board and made part of this file.

Relief Sought: Attorney Stephen J. Lentine requested a Variance to allow 21 signs for the 71.44 acre WANG Business Park, to allow larger and additional signs than permitted, and to allow free standing signs within ten feet of a paved area all pursuant to Sections 16.1.E, 16.4, 16.4.D.5 and 16.4.D.5.H as well as to make the signs conforming in all respects under Section 16. Sign 22 on said plans labeled "Integris Data Services" was intentionally omitted from the presentation by Attorney Lentine and is therefore not included in the Decision and Relief below granted.

Vote of the Board: The Board of Appeals, with five members present and voting, granted the Petitioner a Variance as follows:

- A. Relief from the requirement that Free Standing Signs be ten feet from a paved area.
- B. Allowance for larger and additional signs than permitted.

C. All work is to be done "as per the plans submitted" for signs numbered 1 through 21 inclusive as shown on said plan.

VOTING TO GRANT: John F. Gray, Jr., Doris M. Pearson, Ellen Sargent, Francis M. Fraine and Jay H. Thomas, III.

Reasons for Vote:

- 1.) Relief could be granted without a detriment to the public good.
- 2.) Relief could be granted without nullifying or substantially derogating from the intent and purpose of the Zoning By-Law.
- 3.) Literal enforcement of the provisions of the Zoning By-Law would cause the Petitioner a hardship, financial or otherwise.

Special Conditions Affecting the Variance:

A.) The applicant shall, after the 20-day appeal period has expired, return to the Town Clerk to have Decision stamped, record notice of same in the Registry of Deeds and file a copy of the Registry Receipt with the Board of Appeal within ninety (90) days of filing of the Decision by the Board of Appeal with the Town Clerk. Failure to record this Decision shall cause it to be null and void.

B.) The Variance shall be used within a one (1) year period or shall be null and void.

The use and structures granted by this Variance are confined to all of the following: 1.) the scope of the advertisement of the public hearing, 2.) the specific exceptions to the Zoning By-Law identified in this Decision, and 3.) only to the extent of the relief requested in the application to the Board of Appeal. No other relief is implied and thus other variances, special permits and/or comprehensive permits may be required in order to obtain a valid building permit. Such other requirements of the Zoning By-Law, may be, but not limited to, compliance with: 1.) dimensional controls on setbacks, heights and area; 2.) surface run-off rates; 3.) parking and loading; 4.) signage; 5.) green areas; 6.) earth migration; 7.) buildings and uses;

8.) accessory uses; 9.) slopes, walls and fences; 10.) curb cuts; and 11.) areas subject to flooding.

It is further ordered that a copy of these proceedings shall be immediately filed in the Office of the Town Clerk and Office of the Planning Board and it is hereby certified that copies of this Decision and plans referred to in this Decision have been filed with the Planning Board and Town Clerk, as required by Section 11 of Chapter 40A of the General Laws of Massachusetts. Notice of a Decision by the Board shall be mailed forthwith to the parties in interest as designated in Section 15 and to each person present at the hearing, who requests that notice be sent to him and states the address to which notice is to be sent.

It is hereby ordered that the secretary of the Board make a note in his records of compliance with this order.

Date of Decision:

I, Shirley E. Schult, clerk of the Town of Billerica, Mass. hereby certify that the decision from the Board of Appeal has been received and recorded at this office and no appeal was received during the twenty days next after such receipt and recording of said decision.

DATE: July 20, 1995

Shirley E. Schult
Shirley E. Schult, CMC
Town Clerk

June 29, 1995

John F. Gray, Jr.
John F. Gray, Jr.
Chairman

Doris M. Pearson
Doris M. Pearson
Vice-Chairman

Ellen Sargent
Ellen Sargent
Secretary

Francis M. Fraine
Francis M. Fraine

Wang Laboratories, Inc, and
Bull HN Information Systems, Inc.
by Stephen J. Lentine, Esq.
Variance - Granted

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Jay H. Thomas, III
Jay H. Thomas, III
Alternate

DECLARATION OF COVENANTS AND EASEMENTS

This Declaration of Covenants and Easements (the "Declaration") is made as of the 30th day of September, 1997, by WANG Laboratories, Inc., hereinafter referred to as "Declarant" with each successor owner of "Lot 2" (as hereinafter defined) being deemed "Declarant" from and after the date of its acquisition of Lot 2.

W I T N E S S E T H:

WHEREAS, the Declarant is the owner of the Property (as defined below) in Billerica, Middlesex County, Massachusetts; and

WHEREAS, it is the desire and intention of the Declarant to impose upon the Property mutually beneficial covenants and easements for the benefit of the Property, the improvements thereon and the future owners thereof.

NOW, THEREFORE, the Declarant hereby declares that the Property is and shall be held, conveyed, encumbered, leased, used, occupied and improved, subject to and with the benefit of the covenants and easements hereinafter set forth (collectively "covenants and easements"). All of the covenants and easements shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall inure to the benefit of and bind each owner thereof and their respective successors in interest, and are imposed upon said Property and each and every portion thereof as a servitude in favor of said Property and each and every portion thereof as the dominant tenement or tenements, subject to provisions for enforcement thereof as set forth herein.

ARTICLE I

DEFINITIONS

Section 1.01 - Certain Definitions. The following capitalized terms as used in this Declaration shall have the following meanings:

"Agreement" shall mean this instrument together with the exhibits attached hereto and made a part hereof.

"Applicable Rate" shall at any time mean the lesser of the then prime or base rate charged by BankBoston, Boston, Massachusetts (or its successors) to its most creditworthy borrowers as reflected in the appropriate records of the bank plus two percent (2%) per annum or the maximum interest rate permitted to be charged by applicable law.

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"Assessments" shall mean the charges due and payable from one Owner to another Owner, as set forth herein, together with interest thereon as provided herein, attorneys' fees, court costs, and other costs of collection thereof.

"Common Area" shall mean the common ring road and common drainage and sewer lines located within the drainage and sewer easement areas, all as shown on the plan attached hereto as Exhibit A (the "Site Plan").

"Improvements" shall mean any building or other improvement which may affect the appearance of the Property, including, but not limited to, any building, garage, driveway, fence, parking area, antenna, curbing, paving, tree (including trees indigenous to the site), wall or hedge more than two (2) feet in height, signboard, or any temporary trailer. "Improvements" also means (i) any excavation, fill, ditch, diversion, dam, berm, or anything or device that alters the natural flow or any water in any natural or artificial drainage channel from, or upon, any portion of the Property; (ii) any change in the grade of any portion of the Property of more than six (6) inches from that existing at the time of purchase by an Owner, and (iii) any slope or embankment adjacent to or bordering on any public or private roadway.

"Lot" shall mean an individual parcel of land on the Property, subdivided from the whole. Any such parcel owned by the Declarant shall also be considered a Lot.

"Lot 1" shall mean the parcel of land shown as Lot 1 on a plan entitled "Wang Laboratories, 600 Technology Park Drive, Billerica, MA 01821 Plan of Land", prepared by Howe Surveying Associates, 73 Princeton Street, North Chelmsford, MA 01863, dated April 18, 1997, recorded with Middlesex County Northern Registry of Deeds, Book of Plans 194, Plan 59 (the "ANR Plan").

"Lot 2" shall mean the parcel of land shown as Lot 2 on the ANR Plan.

"Lot 3" shall mean the parcel of land shown as Lot 3 on the ANR Plan.

"Lot 4" shall mean the parcel of land shown as Lot 4 on the ANR Plan, excluding and excepting therefrom that portion thereof being a strip of land approximately 33 feet wide located along the southeasterly boundary of said Lot 4 being the line marked S 30° 42' 27" W 962±, the excluded portion being included in a deed dated April 6, 1973 recorded with said Deeds in Book 2059, Page 323.

"Occupant" shall mean any Person from time to time entitled to the use and occupancy of any portion of the Property under this Agreement, or under any lease, license or concession agreement, or other similar agreement.

"Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to a Lot (including, but not limited to, the Declarant)

but shall not mean or refer to those having such title merely as security for the performance of an obligation unless and until such person or entity obtains title to a Lot by foreclosure or deed in lieu thereof.

"Ring Road Easement" shall mean the rights and obligation with respect to the common ring road shown on the Site Plan as set forth in the Grant of Access and Parking Easements dated November 30, 1990 and recorded with the Middlesex North Registry of Deeds in Book 5550, Page 151, which rights and obligations benefit and burden each of the Lots.

"Permittee" shall mean any Occupant and its respective officers, directors, employees, agents, contractors, customers, visitors, invitees, licensees, subtenants and concessionaires.

"Person" shall mean any individual, partnership, firm, association, corporation, trust, company or any form of business or government entity.

"Property" shall mean Lot 1, Lot 2, Lot 3 and Lot 4.

Section 1.02 - Other Definitions. Other terms defined elsewhere in this Agreement shall have the meaning therein given.

ARTICLE II

EASEMENTS

Section 2.01 - Access.

A. Each Owner shall have the right to use the Common Ring Road, all subject to and in accordance with the Ring Road Easement.

B. Declarant grants and conveys to the Owners of Lot 1 and Lot 3 and reserves to itself for the benefit of Lot 2 an easement for pedestrian and vehicular access over Lot 4 unless and until the common ring road shown on the Site Plan is provided access to Concord Road, adjacent to the Property. The rights reserved under this paragraph are subject to the following:

(i) The Declarant and the applicable Owner shall cooperate in good faith with respect to determining a method of access to the benefited Lot (which access may be over the common ring road to the extent practical) in such a manner as to provide reasonable access thereto while minimizing the burden over Lot 4; and

(ii) The Owner of the benefited Lot shall be responsible for maintaining and constructing any additional roadways necessary in connection with the exercise of such rights and shall reimburse the Owner of Lot 4 for all out-of-pocket costs incurred by such Owner in connection therewith; and

(iii) The rights of such Owners under this Section 2.01(B) shall be of no further force and effect once such common ring road is provided such access to Concord Road.

C. To the extent reasonably necessary, each Owner shall cooperate with each neighboring Owner in establishing mutually satisfactory access and egress use for emergency vehicles to and from the Improvements constructed on each Lot.

Section 2.02 - Utilities.

A. With respect to utility lines or systems presently located on the Property, or those which may subsequently be installed pursuant to the last sentence of this Section 2.02(A), Declarant hereby grants and conveys to each Owner (including Declarant) a non-exclusive easement in, to, over, under and across each Lot for the installation, operation, flow and passage, use, maintenance, repair, replacement, and removal of such utility lines, including without limitation, sanitary sewers, storm drains, water and gas mains, electrical power lines, telephone lines and other utility lines or systems, to serve each other Lot, provided that all such utility lines or systems located on the Property shall (i) be installed and maintained in a good and workmanlike manner, (ii) be underground, except for such services as may be currently existing above ground and except as may be necessary during periods of repair or temporary service, (iii) shall not cause unreasonable interference with the use and operation of the parcel under which such utility line or system is installed, and (iv) subject to the provisions of Section 2.02(B) below, the Owners shall permanently establish the location of all such utility lines and systems by executing and recording an amendment to this Declaration after each further installations of such lines or systems which includes a plan showing the location of all such utility lines and systems as soon as is reasonably practicable after the date of such installation. With respect to the location and installation of any future utility lines or systems to be installed on the Property, the Owners shall mutually cooperate in coordinating such potential installation with utility providers and over the common ring road shown on the Site Plan.

B. At any time, the Owner of the land upon which the utility easements granted pursuant to Subsection 2.02(A) above are located shall have the right to relocate on the land of such Owner any such facilities then located thereon, provided that such relocation shall be performed only after thirty (30) days notice of such Owner's intention to so relocate shall be given to all Owners with such rights, and such relocation:

- (i) shall not interfere with or diminish the utility services to the other Owners;
- (ii) shall not reduce or unreasonably impair the usefulness or function of such utility;
- (iii) shall be performed, in a good workmanlike manner, without cost or expense to the grantee and the materials and design standards used in connection with such relocation shall be equal to or exceed those originally used.

Documentation of the relocated easement area shall be accomplished as soon as possible by the Owner of the Lot undertaking such relocation at its sole expense.

Section 2.03 - Construction.

A. Declarant grants and conveys to each Owner (including Declarant) and to its respective contractors, materialmen and workmen, such temporary license over and across the Common Area located upon the grantor's Lot, for construction as shall be reasonably necessary to construct the improvements and buildings contemplated for the grantees Lot; provided, however, that such license shall be in effect only during a period or periods in which actual construction or maintenance is being performed; and provided further that such license shall be exercised so as not to unreasonably interfere with the use and operation of the affected Common Area, or unreasonably interfere with the other party's business unless such interference is unavoidable, in which case it will be to the minimum extent possible, it being understood that the Common Area of the granting Owner may be utilized by vehicles transporting construction materials and equipment and persons employed in connection with any work provided for herein, but that temporary storage of materials and vehicles being utilized in connection with such construction may only occur on the constructing Owner's Lot. Prior to exercising any right under this temporary construction license, the Owner wishing to cause such work to be performed shall provide the Owner which will be the granting Owner with a written statement showing the need for the exercise of such rights and a copy of a certificate of insurance showing that its contractor has obtained proper insurance coverage which shall be not less than the minimum insurance coverage set forth below; all such insurance shall provide that the same cannot be cancelled without thirty (30) days prior written notice to the granting Owner:

- (i) Worker's Compensation, statutory limits;
- (ii) Employer's Liability, \$100,000.00;

(iii) Comprehensive General and Comprehensive Auto Liability covering the following matters:

- (a) Bodily Injury, \$5,000,000 combined single limit;
- (b) Property Damage, \$5,000,000 combined single limit;
- (c) Independent Contractors' Contingent Liability or Owner's Protective Liability; same coverage as set forth in (a) and (b) above;
- (d) Products Completed Operations Coverage; kept in effect for two (2) years after completion of work;
- (e) "XCU" Hazard Endorsement, if applicable;
- (f) "Broad Form" Property Damage Endorsement;
- (g) "Personal Injury" Endorsement;
- (h) Contractual Liability Insurance.

Any Owner availing itself of such temporary license hereby agrees to indemnify and hold harmless the granting Owner from any liability (including reasonable attorneys' fees and cost of suit of the indemnified Owner) or obligation arising out of or related to the use of such license, except for claims caused by the negligence or willful act or omission of such indemnified Owner, its licensees, concessionaires, agents, servants or employees, or the agents, servants or employees of any licensees or concessionaires wherever the same may occur. In addition, such Owner agrees to promptly pay all costs and expenses associated therewith to diligently complete such work and to promptly clean the area and restore the affected portion of the Common Area to a condition which is equal to or better than the condition required by the initial construction specifications related thereto.

Section 2.04 - Sign Easement.

The Declarant reserves for the benefit of Declarant (including all successor Owners of Lot 2) and grants and conveys to the Owners of Lot 1, Lot 3 and Lot 4, a permanent perpetual easement to construct and maintain signs for the benefit of the Occupants of such Lots as follows: after consultation and cooperation with each other Owner, the Declarant shall establish sign standards pursuant to which two signs shall be erected in the approximate locations shown as the sign easement area (the "Sign Area") on the Site Plan. Such signs shall be of equal size and comparable prominence. The Owner of Lot 2 shall have the sole right to use one of such signs

(the Owner of Lot 2 having the right to specify at the time such sign standards are established which sign shall be for the benefit of the Owner of Lot 2) and the Owners of Lot 1, Lot 3 and Lot 4 shall each have a right to utilize one-third of the area of the other sign, such areas to be reasonably allocated in a mutually satisfactory manner to be negotiated in good faith, such allocation being designed, to the extent practical, to provide equal prominence to each such third.

Section 2.05 - Parking Easements.

A. Declarant grants and conveys to the Owner of Lot 3, to the extent required for hotel operations, the non-exclusive right to use up to 50 parking spaces within each of two easement areas shown on the Site Plan one such easement area being on Lot 2 and the other being on Lot 4; provided, however, to the extent, from time to time, that the Owner of Lot 3 is not required to have rights in one hundred off-site parking spaces in order to comply with the zoning by-laws of the Town of Billerica or approvals or variances granted pursuant to such by-laws, the easement granted under this paragraph shall be reduced on a one-for-one basis for each space less than said one hundred spaces required by such Owner of Lot 3, with the easement burdening Lot 4 being reduced to zero parking spaces prior to any reduction in the easement burdening Lot 2.

The Owner of Lot 3 hereby agrees to indemnify and hold harmless the Owner of Lot 2 and the Owner of Lot 4 for any liability (including reasonable attorneys' fees and cost of suit of the indemnified Owner) or obligation arising out of or related to the use of such parking spaces described in this Section 2.05(A).

Section 2.06 - Drainage.

The Declarant grants and conveys to each Owner (including Declarant) an easement to the extent shown on the Site Plan over the drainage easement areas shown thereon, such easement being for the purpose of allowing drainage from the property of the benefitting Owner and for the purpose of constructing drainage systems in connection therewith.

With respect to the drainage easements shown on the Site Plan, the Owner of Lot 2 shall be obligated to do all work in connection therewith in compliance with the Order of Conditions issued by the Billerica Conservation Commission on July 9, 1997 and recorded with the Middlesex County Northern District Registry of Deeds on September 3, 1997 as Instrument No. 44949 (the "Order of Conditions") in the areas indicated on the plan attached hereto as Exhibit B and the Owner of Lot 4 shall be obligated to do all work in connection therewith in compliance with the Order of Conditions in the areas indicated on the plan attached hereto as Exhibit C.

Notwithstanding anything set forth to the contrary herein, no such work shall be required and no easement shall exist over areas presently under or necessary to support and keep watertight the existing structures on Lot 4 unless and until the Owner of Lot 4 shall demolish such existing structures. After such demolition, the easement rights described herein shall be deemed to exist without any further action by the Owners and the Owner of Lot 4 shall complete the work for which it is responsible pursuant to this Paragraph.

Notwithstanding anything to the contrary herein, no Owner shall develop its Lot in a manner inconsistent with the design capacity of the drainage systems on any other Lot constructed in compliance with the Order of Conditions. To the extent that any such Owner does so overburden the design capacity of such drainage systems, such Owner shall be responsible for making all necessary improvements to such drainage systems and shall be required to reimburse any other Owner for its actual out-of-pocket costs incurred as a result of such overburdening.

Section 2.07 - Sewer Line Easement.

Declarant grants and conveys to the Owners of Lot 2, Lot 3 and Lot 4 (including Declarant) sewer easements as shown on the Site Plan for the benefit of each such Owner, such easement being for the purpose of allowing the construction, maintenance, repair and use of sewer lines servicing the Improvements on each such Lot, such lines to be constructed, repaired, maintained and used in a manner consistent with the provisions of Section 2.02 hereof. Notwithstanding the foregoing, upon the completion of the sewer line within the sewer easement areas shown along the eastern border of the Property, the easements granted hereunder benefitting Lot 4 in the area shown as the Temporary Sewer Easement on the Site Plan and being to the west of such new sewer line shall be deemed to have been discontinued.

Section 2.08 - General Easement Provisions.

With respect to the rights and easements granted in Sections 2.01, 2.02, 2.03, 2.04, 2.05, 2.06 and 2.07, such rights and easements shall include a right of access and egress to and from the applicable Common Area or Sign Area across those portions of the Property as is reasonably necessary, provided such right of access and egress is exercised in such a manner as not unreasonably to interfere with the Owner's use of the affected Lot. Nothing in this Section 2.08 shall be deemed to broaden the access easements granted in Section 2.01.

The rights and easements granted to the Owners in Sections 2.01, 2.02, 2.03, 2.04, 2.05, 2.06 and 2.07 above shall be perpetual, notwithstanding the expiration of this Declaration pursuant to Section 6.01 herein.

ARTICLE III

MAINTENANCE AND REPAIRSection 3.01 - Common Area.

A. By acceptance of a deed or other conveyance creating in it the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance, the Owner of a Lot (each an "Operator") is deemed to covenant and agree that it shall cause the Common Area on its Lot (other than the common ring road which shall be maintained pursuant to the Ring Road Easement) to be maintained, repaired and replaced commencing on the date the Common Area is substantially completed in accordance with the applicable provisions set forth below. Each Operator shall undertake such maintenance, repair and replacement at its own cost and expense.

The standard of maintenance for the Common Area shall be comparable to the standards of maintenance, repair and replacement followed in other first-class multi-use developments of comparable size in suburban Boston, Massachusetts.

Section 3.02 - Right of Self-Help.

If Operator shall fail to comply with the provisions of this Agreement as to maintenance of the Common Area, then any Owner may give the Operator thirty (30) days' written notice and if the Operator does not cure such default within such period, or in the case of a default which by its nature cannot be cured within such thirty (30) day period does not commence to cure the same within such period and thereafter diligently prosecute the curing thereof to completion, such Owner may proceed to take such action as is reasonably necessary to cure such default, all in the name of and for the account of the Operator. The Operator shall within fifteen (15) days of written demand reimburse such Owner for the monies actually expended, which demand shall reasonably document such monies actually expended, together with all penalties, if any, arising from such default, if paid by such Owner, with interest computed at the Applicable Rate from the date fifteen (15) days after the date of demand to date of payment. Owner, with reasonable promptness shall give notice to the Operator of the doing of such work and the claimed failure; such notice, notwithstanding any other provisions of this Agreement, need not be in writing if the giving of a written notice would not be reasonably possible under the circumstances, so long as given to an officer or responsible official of the Operator. Written notice of the action taken shall be given as soon as reasonably possible.

Section 3.03 - Creation of Lien and Personal Obligation for Assessments.

Each Owner, by acceptance of a deed or other conveyance creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to any Owner owed hereunder any and all Assessments levied against such Owner's Lot. Such Assessments are to be fixed, established and collected as provided in this Declaration. Any and all Assessments shall be a charge on and a continuing lien upon the Lot against which such Assessment is made. Each Owner vests in the Owner to whom such sums are owed the right and power to bring all actions of law or lien foreclosure against such Owner or other Owners for the purpose of collecting delinquent Assessments. The lien for Assessments shall be enforced in the manner provided in Section 5 of Chapter 254 of the Massachusetts General Laws. Each such Assessment shall also be the personal obligation of the Owner of such Lot at the time when the notice of such Assessment is sent in accordance with the terms of this Agreement.

Section 3.04 - Priority of Mortgages and Deeds of Trust.

The lien for Assessments provided for herein shall be subordinate to the lien of any mortgage or deed of trust now or hereafter placed upon any of the Lots; provided, however, that such subordination shall apply only to Assessments and such maintenance expenses which have become due and payable prior to a foreclosure sale or deed in lieu of foreclosure or transfer of a Lot, or any other proceeding in lieu of foreclosure. Such a sale or transfer shall not relieve such Lot from liability for any Assessment and such maintenance expenses thereafter becoming due, nor from the lien of any such subsequent Assessment and from the responsibility for such maintenance expenses.

ARTICLE IV

DESIGN REVIEW

Each Owner, by acceptance of a deed or other conveyance creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree that, prior to the construction, erection, placement or alteration by addition or deletion of any building or structure on any portion of the Property that such Owner shall deliver to the Declarant plans for such work and consult with Declarant as follows: after the delivery of such plans, any Owner planning such work shall allow the Declarant a reasonable period of time given the scope of the work proposed to review such plans and to raise any concerns the Declarant may have that the work described thereby would have an adverse effect on the use and occupancy of Lot 2 and the status of the Property as a first-class, multi-use development. If the

Declarant raises any such concerns, the Owner proposing to do such work shall reasonably and in good faith take into account such concerns in undertaking its developments. Notwithstanding the foregoing, the Declarant shall not have the right to forbid or prescribe any particular work on the Property, the Declarant's rights under this Article being limited to the consultation rights described herein. The rights of the Declarant to be consulted pursuant to the provisions of this Article IV shall be of no further force and effect from and after the time that the Owner of Lot 2 is neither Wang Laboratories, Inc. nor a successor thereto by merger or acquisition (as opposed to a successor by purchase of Lot 2).

ARTICLE V

MISCELLANEOUS

Section 5.01 - Consent To Be Reasonable.

Wherever under this Agreement consent or approval is required, each Owner shall not unreasonably withhold, condition or delay such consent or approval unless this Agreement specifically provides otherwise.

Section 5.02 - Estoppel Certificate.

Each Owner shall, upon written request from time to time of another Owner, issue, within ten (10) days of request, to a prospective purchaser or mortgagee of such other Owner or to such other Person reasonably specified, an estoppel certificate stating:

- (i) whether the Owner to whom the request has been directed knows of any default by the requesting Owner under this Agreement and if there are known defaults, specifying the nature thereof;
- (ii) whether to its knowledge this Agreement has been assigned, modified or amended in any way (and if it has, then stating the nature thereof);
- (iii) that to the Owner's knowledge this Agreement as of that date is in full force and effect.

Such statement shall act as a waiver of any claim by the Owner furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement. However, such statement shall in no event subject the Owner furnishing it to any liability

whatsoever, notwithstanding the negligence or otherwise inadvertent failure of such Owner to disclose correct and/or relevant information.

Section 5.03 - Notices.

A. Except as otherwise expressly provided herein, any notice, communication, request, agreement, reply or advice in this Agreement required or permitted to be given, made, sent or accepted by any Owner to any other Owner must be in writing, and must, unless otherwise in this Agreement expressly provided, be given or be served by depositing the same in the United States mail, postpaid and registered or certified and addressed to the Owner to be notified, with return receipt requested, or by delivering the same in person to such Owner, or by prepaid telegram, or by private courier guaranteeing next day delivery, when appropriate, addressed to the Owner to be notified. Notice deposited in the mail in the manner hereinabove described shall be effective, unless otherwise stated in this Agreement, as of the date deposited in the mail. Notice given personally or by telegram or by private courier guaranteeing next day delivery, shall be effective only if and when received or refused by the Owner to be notified. For purposes of notice the addresses of the Owners shall, until changed as hereinafter provided, be as follows:

If to Declarant: WANG Laboratories, Inc.
 600 Technology Park Drive
 Billerica, MA 01821-4130
 Attention: Michael Farley

with a copy to: Hale and Dorr LLP
 60 State Street
 Boston, MA 02109
 Attention: Joel H. Sirkin, Esq.

At such time as any Owner transfers a Lot so as to create a new Owner, such Owner shall send notice to each other Owner of the name and address to which notice to that new Owner, when such is required herein, shall be sent. Until such time as such Owner sends such notice, the conveying Owner, shall be deemed to be agents for such new Owner for purposes of service of notices. Any Owner shall have the right from time to time and at any time, upon at least fifteen (15) days' prior written notice thereof, to change its respective address and to specify any other address within the United States of America and to add one additional person to whom notices must be sent; provided, however, that notwithstanding anything herein contained to the contrary, in order for the notice of address change or notice of additional person to be effective, it must actually be received.

B. In order to bind any Owner pursuant to any provision of this Agreement wherein it is provided that the failure to take certain action within a

prescribed period of time constitutes approval, or have some other binding effect, any notice or plans shall include a legend which shall state that failure to give a reply within the prescribed period of time shall be deemed to constitute approval, or have some alleged effect, as the case may be, with respect to the matter described. This legend shall be set forth conspicuously on the face of plans or notices. Unless a specific provision is made herein for a specific time period, approval shall be deemed given within thirty (30) days of the receipt of the request of approval, and if any Owner shall neither approve or disapprove within said thirty (30) day period, the Owner shall be deemed to have given its approval. If an Owner shall disapprove, the reasons therefor shall be stated. Except with respect to an approval given by lapse of time, all approvals shall be in writing.

Section 5.04 - Binding Effect.

All of the provisions herein contained shall run with the land and shall be enforceable at law and in equity.

Section 5.05 - Singular and Plural.

Whenever required by the context of this Agreement, the singular shall include the plural, and vice versa, and the masculine shall include the feminine, and vice versa.

Section 5.06 - Negation of Partnership.

None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Owners in their respective businesses or otherwise, nor shall any terms or provisions of this Agreement cause them to be considered joint venturers or members of any joint enterprise. This Agreement is not intended, nor shall it be construed, to create any third party beneficiary rights to any Person who is not an Owner hereunder, unless expressly otherwise provided.

Section 5.07 - Not a Public Dedication.

Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property or of any Lot or portion thereof to the general public, or for the general public or for any public use or purpose whatsoever; it being the intention and understanding of the Declarant hereto that this Agreement shall be strictly limited to and for the purposes herein expressed solely for the benefit of the Owners hereunder.

Section 5.08 - Unavoidable Delays.

Whenever performance is required of any Owner hereunder, that Owner shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if performance or completion of performance shall be delayed at any time by reason of (i) act of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or materials, governmental restrictions or inability to obtain governmental approvals or permits, damage to work in progress by reason of fire or other casualty, unavoidable casualty, unusual weather or (ii) other events beyond the control of the Owner, financial inability excepted, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. The provisions of this Section 5.08 shall not operate to excuse any Owner from the prompt payment of any monies to be paid pursuant to this Agreement.

Section 5.09 - Severability.

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provisions to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 5.10 - Amendments.

Amendments to this Agreement must be in writing and must be signed by all Owners.

Section 5.11 - Captions.

The captions preceding the text of each Section hereof are included only for convenience of reference and shall be disregarded in the construction and interpretation of the Agreement.

Section 5.12 - Minimization of Damages.

In all situations arising out of this Agreement, all Owners shall attempt to avoid and minimize the damages resulting from the conduct of any other Owner. Each Owner shall take all necessary measures to effectuate the provisions of this Agreement.

Section 5.13 - Agreement Shall Continue Notwithstanding Breach.

It is expressly agreed that no breach of this Agreement shall entitle any Owner to cancel, rescind or otherwise terminate this Agreement.

Section 5.14 - Conveyance of Lots.

Each Owner shall be liable for performance of all covenants, obligations and undertakings herein set forth with respect to such Owner which accrue during the period such Owner is the owner of its respective Lot; provided, however, the liability of an Owner as to all or a portion of its respective Lot shall terminate upon conveyance by such Owner of such interest provided that such Owner:

(i) shall not be in default in the performance of any provision of this Agreement or shall not have committed any act or omission which with the passage of time would constitute a default, and all amounts which may be due and owing under this Agreement shall have been paid by such Owner as required under this Agreement, provided that, to the extent in default on amounts not paid, such Owner shall continue to be liable notwithstanding such conveyance; and

(ii) shall have given notice to the other Owners of the sale, transfer, conveyance or assignment together with reasonable proof of same and shall have delivered with such notice a written assumption statement executed by the transferee in which:

- (a) the name and address of the transferee shall be disclosed;
- (b) the legal description of the Lot transferred shall be clearly stated; and
- (c) the transferee shall acknowledge that it is bound by this Agreement and shall agree to perform all obligations imposed under this Agreement which are obligations of such Owner.

Section 5.15 - Late Payments.

In the event that any Owner shall fail to timely make any payment required hereunder when due, then such amount shall bear interest at the Applicable Rate until paid.

Section 5.16 - No Merger.

In the event that any Owner, or its successor or assign, shall hold title to the entire Property, there shall be no merger for any purpose under this Agreement and this Agreement shall survive unless and until all parties then having an interest in the ownership of the Property shall join in a written instrument effecting such merger and termination of this Agreement and shall duly record the same.

Section 5.17 - Declarant's Title.

For Declarant's title to the Property, see the Deed from Bull HN Information Systems, Inc. dated January 30, 1995 recorded with the Middlesex County Northern District Registry of Deeds in Book 7379, Page 234.

ARTICLE VI

TERM

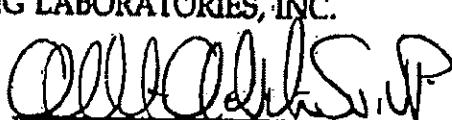
Section 6.01 - Term.

This Agreement shall remain in full force and effect at all times with respect to all of the Property and each part thereof, now or hereafter made subject hereto for a term of thirty (30) years from the date this Agreement is recorded, unless thereafter this Agreement is extended by a majority vote of the Owners for one or more additional periods of twenty (20) years each in the same manner as provided by the provisions of Massachusetts General Laws Chapter 184, Section 27.

EXECUTED as a sealed instrument as of the date first written above.

WANG LABORATORIES, INC.

By:



Name: Albert A. Nutin
Title: Senior Vice President

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

January 30, 1997

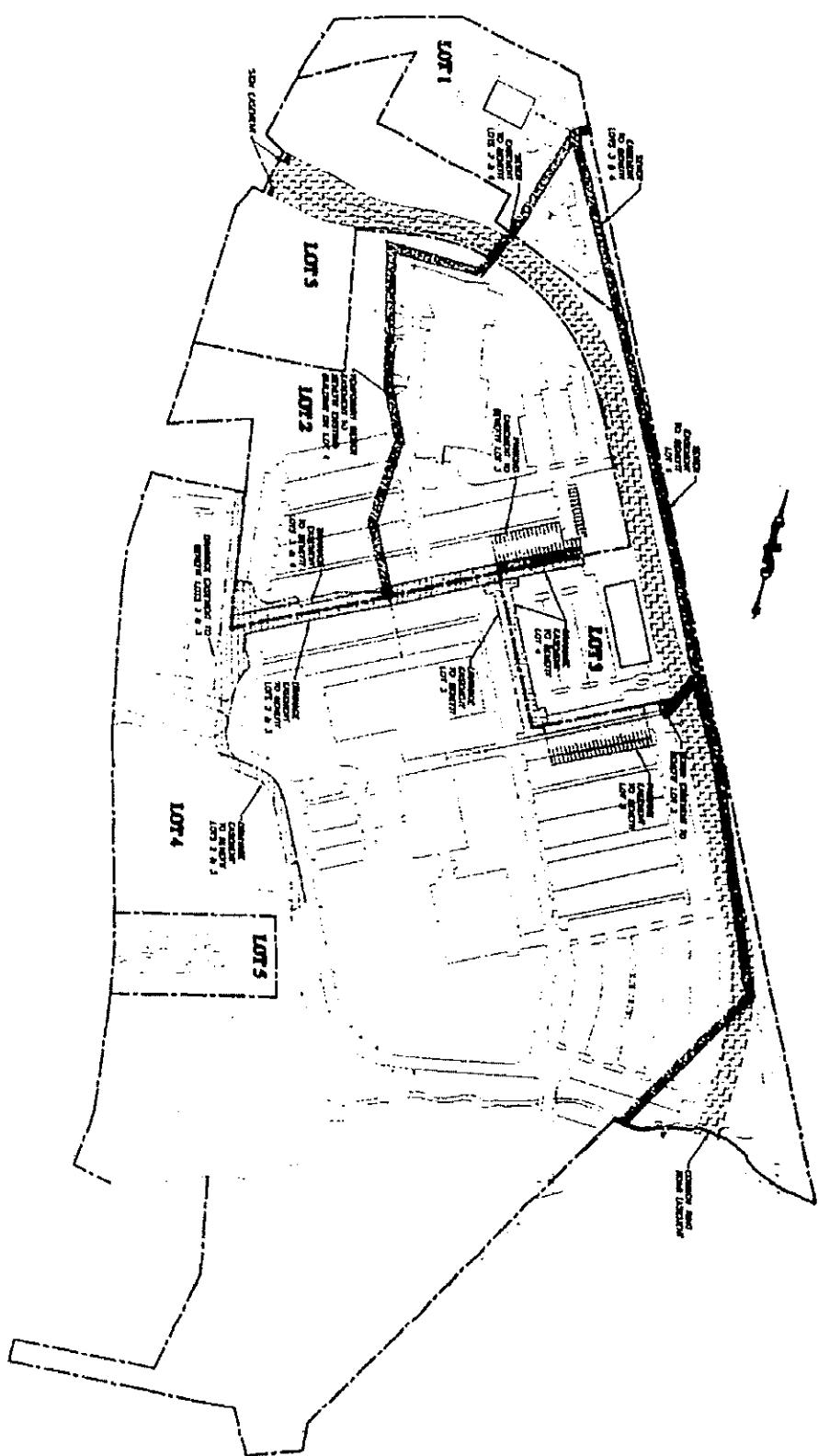
Then personally appeared before me the above-named Albert A. Nutin, who acknowledged the foregoing instrument to be his free act and deed as Senior Vice President of WANG Laboratories, Inc., before me,



Notary Public
My commission expires:

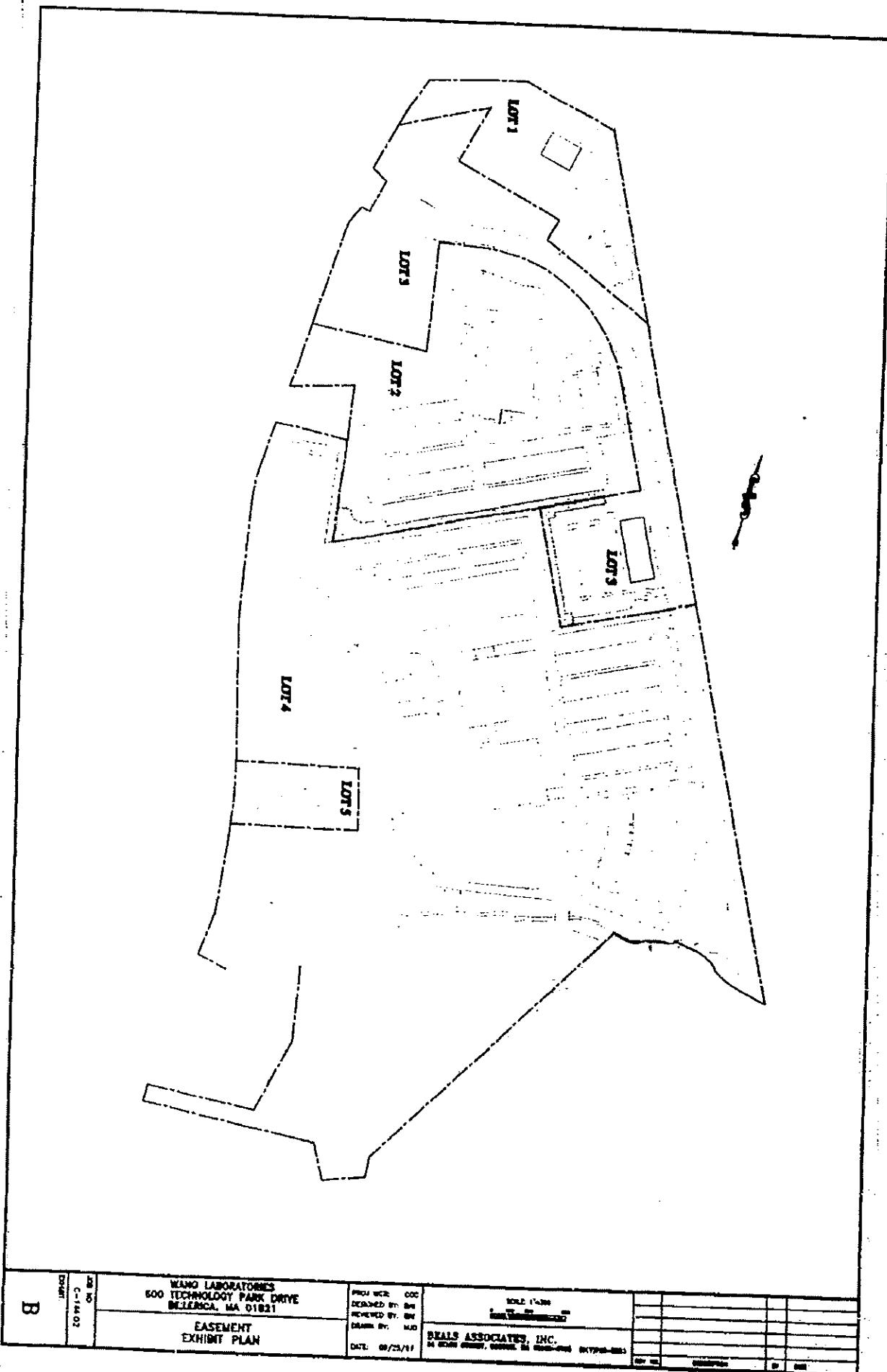
KEITH BARNETT, Notary Public
My Commission Expires July 7, 2000

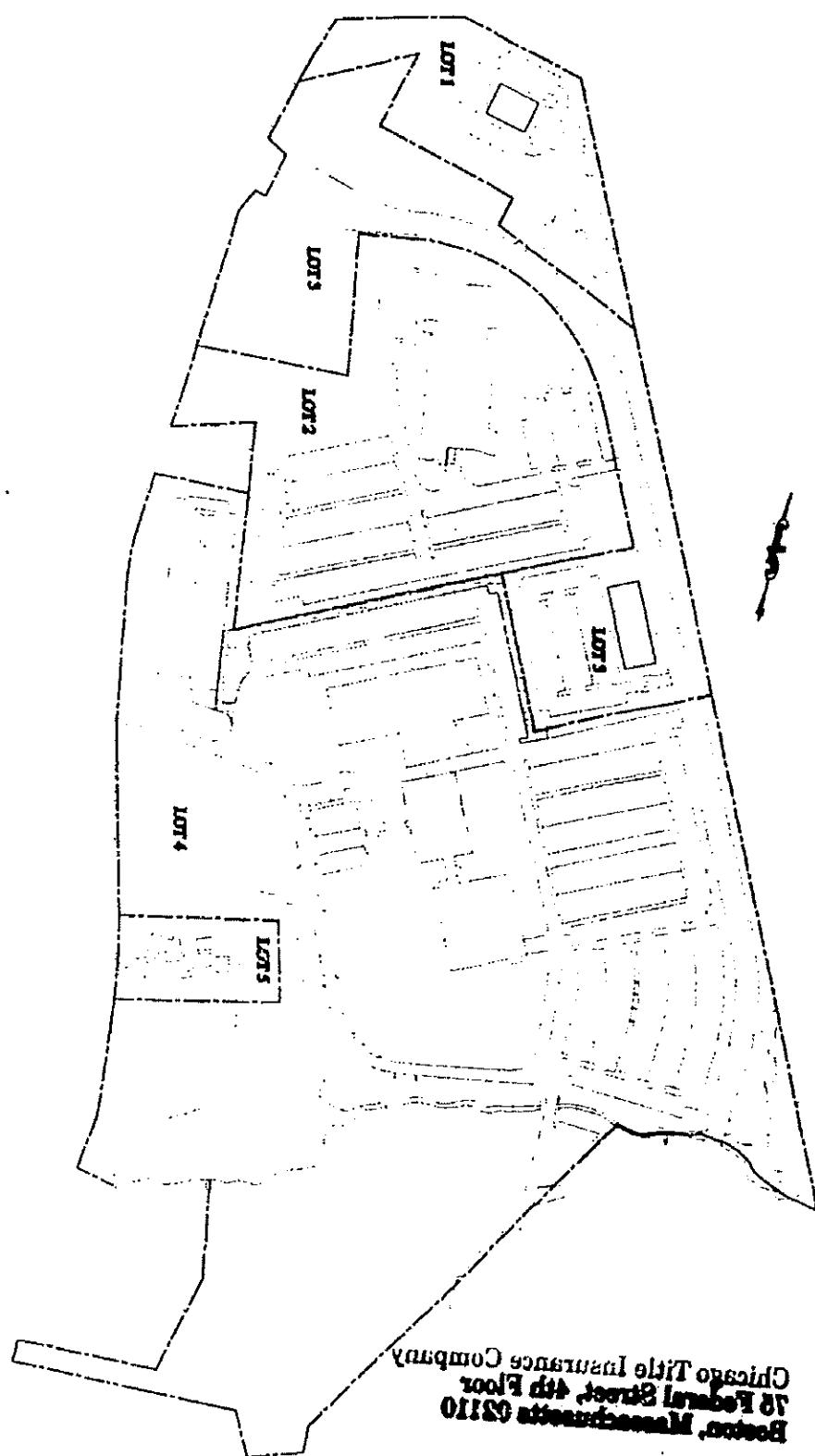




200812	000	300	1-300			
ISSUED BY:	REVIEWED BY:	APPROVED BY:				
C-144-01						
DATE:	06/25/01					
WAHO LABORATORIES 800 TECHNOLOGY PARK DRIVE WILLERICKA, MA 01821		REALE'S ASSOCIATES, INC. 41 WOOD STREETS, SUITE 200, NEWARK, DE 19713-2624				
EASEMENT EXHIBIT PLAN		DATE: 06/25/01				

A





C	10441-C	WANO LABORATORIES 600 TECHNOLOGY PARK DRIVE BILLERICA, MA 01821	PROJ. NO. 988 DESIGNED BY 988 REVISED BY 988 CHECK BY 988 DATE 09/23/01	SCALE 1:1000 100' 200' 300' 400' 500' 600' 700' 800'	REALE ASSOCIATES, INC. 41 STATE STREET, BOSTON, MA 02109-2000 (617) 426-0000		
		EASEMENT EXHIBIT PLAN					



TOWN OF BILLERICA

Planning Board

TOWN HALL

365 BOSTON ROAD, BILLERICA, MA 01821
Telephone 508-671-0962

RECEIVED

97 JUL 28 PM 3:26

TOWN CLERK
BILLERICA

08/27/97 10:59:36

4354 18:57

6

CERTIFICATE OF DECISION OF SITE PLAN SPECIAL PERMIT APPLICATION

WANG

APPLICANT

Wang Laboratories, Inc.
600 Technology Park Drive
Mail Stop # 01C-90
Billerica, Ma. 01821-4130

PERMIT SOUGHT

The applicant seeks a Site Plan Special Permit from the Billerica Planning Board pursuant to section 18 of the Zoning By-Law to construct a 150,000 sq.ft. facility on Concord Road on lot 2. This decision applies to the Site Plan entitled "Site Plans, Wang Corporate Center, Concord Rd., Billerica, Mass" dated May 23, 1997, submitted to the Planning Board on May 23, 1997, prepared by Beals Associates, Inc.

300 Concord Rd
B7379 P 234

PROCEDURE

A public hearing was held on June 23, 1997 at 8:45 p.m. and July 21, 1997 at 8:15 p.m. at the Billerica Town Hall, 365 Boston Road, Billerica, Ma. Advertisement appeared in the Billerica Minuteman on June 5, 1997 and June 12, 1997. A notice of the hearing was posted prior to the hearing. Notices were sent to interested parties as specified in General Laws, Chapter 40A, Section 11, in accordance with certification from the Assessor's Office setting forth the names and addresses of such parties. Notices were also sent to the Planning Boards of abutting towns.

Wang
600 Technology
Park Drive

(2)

PLANNING BOARD
FINDING

The Planning Board finds that the Site Plan and associated application documents meet the requirements in section 18 of the Zoning By-Law for the following reasons:

1. The plan protects the premises from detrimental or offensive uses given the fact that the building will be sited in an Industrial District. The site plan provides adequate separation of uses so as to prevent detrimental impacts.
2. The increases in vehicular and pedestrian movements and volumes will not have a detrimental impact on the area. The nearby roads have the capacity to accommodate the additional traffic generated by this project.
3. The plans are adequate to address sewage, refuse, drainage and waste disposal methods as reflected in the various town department comments and the review performed by Fay, Spofford and Thorndike, Inc.
4. Ingress and egress to and from the site and provisions for loading and unloading of vehicles are adequate.
5. Lighting will be shielded from adjacent properties.
6. The landscaping and open space will act to buffer the site from adjacent uses.
7. The siting of the facility and its location on Technology Park Drive helps to prevent incompatibility of uses.
8. The proposal is not located on any known historic site.

VOTE

At their regularly scheduled meeting on July 21, 1997 the Planning Board voted to approve the Site Plan Special Permit with conditions by a vote of Five (5) in favor and Two (2) absent.

CONDITIONS

1. All revisions to the submitted plans reflecting all conditions outlined herein shall be made prior to building permit preapplication sign off. A letter from Fay, Spofford and Thorndike stating that all such revisions have been made must be submitted to the Planning Board before building permit preapplication sign off.
2. All construction and installation shall in all respects conform to the Zoning By-Law and all applicable General Laws.
3. Failure to comply with all conditions herein shall be deemed cause to revoke or modify this approval.
4. This Site Plan Special Permit shall not take effect until a copy of the decision is recorded in the Registry of Deeds within 90 days of filing of this decision with the Town Clerk. The copy of this decision shall bear the certification of the Town Clerk that 20 days have elapsed after the decision has been filed in the office of the Town Clerk and no appeal has been filed, or if filed, such appeal has been dismissed or denied.
5. This Site Plan Special Permit shall be used within two (2) years of the filing of this decision with the Town Clerk or shall be null and void.
6. The plans shall show any new dumpster locations or shall note that no new additional dumpsters will be added. All new dumpsters shall be gated and screened to a height of six (6) feet with stockade fencing. Evergreen shrubs shall be provided to fully screen the exterior of all new dumpster enclosures. Trash compactors loaded from the inside shall be exempt from this requirement.
7. All lighting shall be shielded from adjacent properties.
8. A bond shall be provided to secure completion of the landscaping in accordance with the landscape plan.
9. All parking spaces shall be striped so as to demonstrate compliance with section 12 of the Zoning By-law and the Architectural Barrier Board or the A.D.A whichever is more stringent.

10. This decision applies to construction of phase I and does not include the proposed addition to the building on lot 4 nor any associated site improvement except for the parking area between the proposed addition and the new access drive. This approval also does not include the proposal to demolish the Stoker House on Concord Road for parking use.
11. The plans shall satisfy the Board of Health's comments to the Planning Board in their correspondence dated 6/11/97. (Attachment I)
12. The plans shall satisfy the Fire Department's comments to the Planning Board in their correspondence dated July 1, 1997. (Attachment II)
13. "No Parking" signs shall be provided along the entire length of the new access drive at appropriate intervals.
14. A second means of access to the Wang Headquarters Building for Fire Apparatus access purposes shall be investigated and shall be approved by the Fire Department.
15. Guard rails shall be provided along the access drive at appropriate locations.



BILLERICA BOARD OF HEALTH

TOWN HALL
BILLERICA, MA 01821
TELEPHONE 508-671-0931

Arnold Ventresca, *Chairman*
Bernard Hoar, *Vice Chairman*
Marie O'Rourke, *Secretary*
Wallace Mallett
Robert Reader

BILLERICA PLANNING BOARD

John Morris
Director
Joseph Walsh
Deputy Director

JUN 11 1997

RECEIVED

TO: Planning Board *JMM*
FROM: Board of Health
SUBJECT: Wang Laboratories - 600 Technology Park Drive
Site Plan Review
DATE: June 11, 1997

Please be advised that the Board of Health has received documents and plans related to the above referenced site plan.

The site plan includes the proposed construction of an office building with an employee cafeteria, a restaurant and a hotel. The Board of Health also has a variance request for construction of buildings within 100' of the Flood Plain and filling in the Flood Plain.

Each of these proposed buildings will require in depth review for compliance with applicable regulations and will also require operating permits.

The drainage and variance request will require a review by the Board's consulting engineer.

At this time, a recommendation cannot be made. If the Planning Board grants approval of this site plan, a condition should be imposed to require a Board of Health approval prior to the start of construction.

If you have any questions regarding this matter, please feel free to contact Mr. John Morris, Director of Public Health at 671-0931.

(ATTACHMENT I)



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC SAFETY — DIVISION OF FIRE PREVENTION
BILLERICA FIRE PREVENTION BUREAU
8 GOOD ST., BILLERICA, MA 01821
(508) 671-0940
FAX (508) 671-0935

FIRE EDUCATION
CODE ENFORCEMENT
FIRE INVESTIGATIONS

TO: Larry Bavis, Chairman
FROM: Captain Al Melaragni *AM*
SUBJECT: Wang Laboratories
300 Concord Road
DATE: July 1, 1997

The Fire Prevention Bureau has received and reviewed the Site Plan of Wang Corporate Center, Concord Road, dated May 23, 1997. A walk-thru was also undertaken at the site with the Town Planner on June 6, 1997.

The Fire Department approves the Site Plan layout, subject to review of hydrant(s) locations.

(ATTACHMENT II)

BILLERICA PLANNING BOARD

JUL 1 1997

R E C E I V E D

FIRE PREVENTION SAVES LIVES

CERTIFICATE OF DECISION ON SPECIAL PERMIT APPLICATION

Planning Board Members: _____ 2/3rds vote

Mary P. Blanck F. R. L.
Donald L. Donatto John L. Noonan
Robert G. _____

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

July 28, 97

Then personally appeared John L. Noonan one of the above named members of the Planning Board of the Town of Billerica, Massachusetts, and acknowledged the foregoing instrument to be the free act and deed of said Planning Board, before me.

Christine M. L. Notary Public
My Commission expires NOV 10 2000

I, Shirley E. Schultz, Town Clerk of the Town of Billerica, Massachusetts hereby certify the the Certificate of Special Permit by the Billerica Planning Board has been received and recorded at this office and no appeal was received during the twenty days next after such receipt and recording of such notice.

Date: August 27, 1997.

Shirley E. Schultz
Town Clerk

8f
THE COMMONWEALTH OF MASSACHUSETTS

BILLERICA

City or Town

BOARD OF APPEALS

Date: FEBRUARY 18 , 1998

Certificate of Granting of Variance or Special Permit

(General Laws Chapter 40A, Section 11)

The Board of appeals of the City or Town of Billerica

hereby certifies that a Variance or Special Permit has been granted

To CONCORD OPCO, LLC BY LEGGAT MC CALL OPPORTUNITY INVESTOR, LLC ITS MEMBER
BY LM OPPORTUNITY MANAGEMENT, LLC, ITS MEMBER AND MANAGER C/O WILLIAM M. ETHIER, V.P.
Address 300 CONCORD ROAD

City or Town BILLERICA, MA. 01821

Lot 4, 300 Concord Road
affecting the rights of the owner with respect to land or buildings at Billerica, Ma.

Plate 86 Parcel 108; recorded in M.N.D.R. of D's Book 8812 Page 152

And the said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision granting said variance — special permit, and that copies of said decision, and of all plans referred to in the decision, have been filed with the planning board and the city or town clerk.

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section 11 (last paragraph) provides that no variance or special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the town or city clerk that twenty days have elapsed after the decision has been filed in the office of the city or town clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for such recording or registering shall be paid by the owner or applicant.

Chairman

Clerk

TOWN OF BILLERICA, MASSACHUSETTS

BOARD OF APPEAL

RECEIVED

PROCEEDINGS: Including finding and decision 98 FEB 27 AM 11:49

LOCUS: LOT 4, 300 CONCORD ROAD, BILLERICA, MA.
PLATE 86 PARCEL 108; RECORDED IN THE
M.N.D.R. OF D'S BOOK 8812 PAGE 152

APPLICANT: CONCORD OPCO, LLC BY LEGGAT MCCALL,
OPPORTUNITY INVESTOR, LLC ITS MEMBER
BY LM OPPORTUNITY MANAGEMENT, LLC,
ITS MEMBER AND MANAGER
C/O WILLIAM M. ETHIER, V.P.

ADDRESS: 300 CONCORD ROAD, BILLERICA, MA.

NATURE OF PETITION OR APPEAL: Appeal to the Board of Appeal for a SPECIAL PERMIT pursuant to Sections 5.6 and 5.6.E (Flood Plain), 5.7.2.C and 5.7.3.C (Above-Ground Utilities), 5.7.2.E, 6.1.1.B (Earth Migration) and 6.3.1 (Slopes), 16.1.E (Special Permit Signs) and 16.2.E (Internal Illumination) of the Zoning By-Law to erect buildings, fill and pave in the flood plain, to permit an above-ground utility, to allow transmission equipment shelters and pads associated with the communications tower, to allow internally illuminated signs for their business located in an Industrial District, also to modify the Special Permit granted to Wang Laboratories, Inc., GRANTED in part to the petitioners.

Date of hearing before the Board of Appeal:

February 18, 1998

PROCEEDINGS AND FINDINGS

Finding of Fact:

Site Plans for 300 Concord Road, dated November 11, 1997 and January 16, 1998, prepared by Beals Associates, Inc., 31 State Street, Boston, Ma. and GEO Consulting Engineers, Inc., 164 Westford Road, Tyngsboro, Ma., were submitted to the Board of Appeal and made part of the file. Also, the plan was stamped with the Board of Health approval on January 22, 1998 by J. W. Morris.

Relief Sought:

Lawrence M. Beals, Beals Associates, Inc., representing the petitioners, requested a Special Permit to erect buildings, fill and pave in the flood plain, to permit an above-ground utility, to allow transmission equipment shelters and pads associated with the communications tower, to allow internally illuminated signs for their business located in an Industrial District, also to modify the Special Permit granted to Wang Laboratories, Inc., and to confirm that the Special Permits as so modified and granted are available to CONCORD OPCO, LLC., owner of Lot 4, and its tenants, successors and assigns, pursuant to Sections 5.6 and 5.6.E (Flood Plain), 5.7.2.C and 5.7.3.C (Above-Ground Utilities), 5.7.2.E and 6.1.1.B (Earth Migration) and 6.3.1 (Slopes) of the Zoning By-Law. The petitioners Withdrew Without Prejudice their request for a Special Permit pursuant to Sections 16.1.E and 16.2.E of the Zoning By-Law.

Vote of the Board:

The Board of Appeal, with four members present and voting, Granted the petitioners a Special Permit pursuant to Sections 5.6 and 5.6E, 5.7.2.C, 5.7.3.C, 5.7.2.E, 6.1.1.B, 6.3.1 of the Zoning By-Law to erect buildings, fill and pave in the flood plain, to permit an above-ground utility, to allow transmission equipment shelters and pads associated with the communications tower, to allow internally illuminated signs for their business located in an Industrial District, also to modify the Special Permit granted to Wang Laboratories, Inc., and confirm that the Special Permits as so modified and granted are available to CONCORD OPCO, LLC, owner of Lot 4, and its tenants, successors and assigns.

Vote of the Board Continued:

The Board of Appeal voted to grant Special Permits and modify the existing Special Permits to the full extent necessary to permit Concord OpcO L.L.C. to construct, maintain and use the project with the improvements, structures, layout, dimensions, and features substantially as shown on the Site Plans. The Board of Appeal voted that these Special Permits, as modified and granted, will be available to the petitioner, Concord OpcO L.L.C., and its tenants, successors and assigns, without the need for any further application to, or relief or approval from, the Board of Appeal. Without limiting the generality of this vote, the Board of Appeal voted to allow construction, maintenance and use of the telecommunications tower, the equipment shelters, shed, and pads associated with the telecommunications tower, and the related telecommunications facilities and equipment, by Concord OPCO, L.L.C. and its successors, assigns and tenants including without limitation those tenants and uses identified on the Site Plans, without the need for any further application to, or relief or approval from the Board of Appeal.

The Board specifically found and voted that the relocated telecommunications tower and the shed, shelters, pads and related telecommunications facilities and equipment proposed by the applicant and shown on the Site Plans, are minor changes and modifications to the Special Permit previously granted to the applicant's predecessor, and consistent with the approval of the Special Permit previously granted, and are all approved as acceptable and proper modifications to the existing Special Permit.

Vote of the Board Continued:

Also, the Board of Appeal found and voted that the construction of the telecommunications tower facility was commenced within six months after the issuance of both the building foundation permit and the Special Permits previously granted, that the construction has been continued as continuously and expeditiously as is reasonable, and that the Special Permits and Variances previously granted are available and in force, as modified by this decision. The Board of Appeal granted the Special Permit, as per plans submitted, legal ad and testimony given.

The Board of Appeal voted to allow the petitioners to Withdraw Without Prejudice their request for a Special Permit pursuant to Sections 16.1.E and 16.2.E of the Zoning By-Law.

Voting to Grant: Doris M. Pearson, Ellen Sargent Joseph P. Shaw
and Jay H. Thomas, III.

Reasons for Vote:

1. After reviewing the plans and hearing the testimony, and based on the Board's familiarity with the site, the Board of Appeal felt the request for a Special Permit and for modification of existing Special Permits was in the best interest of the petitioner and the Town of Billerica and would not derogate from the intent and purpose of the Zoning By-Law.
2. Granting the petitioner a Special Permit and modifying the existing Special Permits would not derogate from the neighborhood
3. The public welfare and convenience will be substantially serviced by the granting and modification of the Special Permits.

Special Conditions Affecting the Special Permit:

A) The applicant and also Wang Laboratories, Inc. ("Wang") Development Management Billerica Hotel LLC ("DMBH/Wyndham") and The Neighborhood Committee for Sensible Development of Concord Road, an unincorporated association of residents of Billerica in the vicinity of Concord Road on behalf of themselves and others similarly concerned (the "Members of the Community") have entered into a Settlement Agreement (the "Agreement") executed as of February 9, 1998, a copy of which has been filed with the Board of Appeals. The applicant shall comply with the following conditions:

- 1) Upon the issuance of all of the final certificates of occupancy for the Wang Corporate Center on Lot 2 (owned by Wang), the office building and the communications tower on applicant's parcel, Lot 4, and the hotel on Lot 3 (owned by DMBH/Wyndham), the applicant will (in a manner consistent with and to the extent required by the Agreement) record an appropriate restrictive covenant setting forth the substantial terms of so much of the restrictions set forth in paragraphs 2 and 5 of the Agreement (as it may be modified by the parties to it) as relates to Lot 4.**
- 2) Applicant shall, no later than the time a final certificate of occupancy is issued for the new office building on Lot 4, install berms and landscaping on the "Green Strip Area" of Lot 4 (as that term is defined in the Agreement) substantially as required by Section 2 of the Agreement, as it may be modified by the parties to it.**

Special Conditions Continued:

- B) The applicant shall, after the twenty day appeal period has expired, return to the Town Clerk's Office to have decision stamped, record notice of same in the Registry of Deeds and file a copy of the Registry Receipt with the Board of Appeal within ninety days of filing of the decision by the Board of Appeal with the Town Clerk. Failure to record of this decision shall make the decision null and void.**
- C) The Special Permit shall be used within a two year period or shall be null and void.**

The uses and structures granted by the Special Permit are confined to all of the following: 1) scope of the advertisement of the public hearing, 2) specific exceptions to the Zoning By-Law identified in this decision and only to the extent of the relief requested in the application to the Board of Appeal. No other relief is implied and thus other variances, special permits and/or comprehensive permits may be required in order to obtain a valid building permit. Such other requirements of the Zoning By-Law, may be, but not limited to, compliance with: 1) dimensional controls on setbacks, heights and area; 2) surface run-off rates; 3) parking and loading; 4) signage; 5) green areas; 6) earth migration; 7) buildings and uses; 8) accessory uses; 9) slopes, walls and fences; 10) curb cuts; and 11) areas subject to flooding.

It is further ordered that a copy of these proceedings shall be immediately filed in the office of the Town Clerk and the Planning Board and it is hereby certified that copies of this decision and plans referred to in this decision have been filed with the Town Clerk and Planning Board, as required by Section 11 of Chapter 40A of the General Laws of Massachusetts. Notice of a decision by the board shall be mailed forthwith to the parties in interest as designated in Section 15 and to each person present, who at hearing requests that a notice be sent to him/her and states the address to which notice is to be sent.

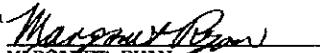
It is hereby ordered that the secretary of the board make a notice in his/her records of compliance with this order.

Date of Board of Appeal Decision:

February 18, 1997

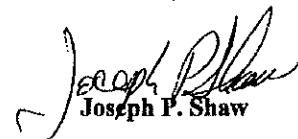
I MARGARET RYAN, Asst. Town Clerk for the Town of Billerica, Mass. hereby certify that the decision from the BOARD OF APPEALS has been received and recorded at this office and no appeal was received during the twenty days next after such receipt and recording of said decision.

DATE: MARCH 23, 1998

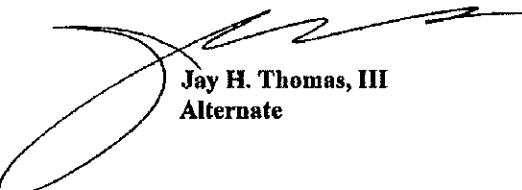

MARGARET RYAN
Asst. Town Clerk


Doris M. Pearson
Chairman

Ellen Sargent
Secretary


Joseph P. Shaw

Concord Opco, LLC
By Leggat McCall
C/O William M. Ethier
Special Permit - Granted


Jay H. Thomas, III
Alternate

THE COMMONWEALTH OF MASSACHUSETTS
8 0 9 0 7 7 P 1 0 2

BILLERICA

City or Town

BOARD OF APPEALS

Date: January 7, 1998

Certificate of Granting of Variance or Special Permit
(General Laws Chapter 40A, Section 11)

The Board of appeals of the City or Town of Billerica

hereby certifies that a Variance or Special Permit has been granted

To WANG LABORATORIES, INC., ALBERT NOTINI, S.V.P AND DEVELOPMENT MANAGEMENT BILLERICA
HOTEL LLC BY DEVELOPMENT MANAGEMENT CORPORATION, HAROLD THERAN, V. P.

Address 50 FEDERAL STREET

City or Town BOSTON, MA. 02110

Lot 3 at Wang Corporate Center
affecting the rights of the owner with respect to land or buildings at 300 Concord Road, Billerica, Ma.
Plate 86 Parcel 108; recorded in M.N.D.R. of D's Book 7379 Page 235 - 239

And the said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision granting said variance — special permit, and that copies of said decision, and of all plans referred to in the decision, have been filed with the planning board and the city or town clerk.

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section 11 (last paragraph) provides that no variance or special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the town or city clerk that twenty days have elapsed after the decision has been filed in the office of the city or town clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for such recording or registering shall be paid by the owner or applicant.

Dom J. MacLean
Chairman

John S. Gray Jr.
Clerk

TOWN OF BILLERICA, MASSACHUSETTS

BOARD OF APPEAL

RECEIVED

98 JAN 21 AM 11:40

PROCEEDINGS: Including finding and decision

JOHN CLERK
BILLERICA

LOCUS: LOT 3 AT WANG CORPORATE CENTER,
300 CONCORD ROAD, BILLERICA, MA.,
PLATE 86 PARCEL 108; RECORDED IN THE
M.N.D.R. OF D'S BOOK 7379 PAGE 235 - 239

APPLICANT: WANG LABORATORIES, INC., ALBERT NOTINI, S.V.P.
AND DEVELOPMENT MANAGEMENT BILLERICA
HOTEL LLC BY DEVELOPMENT MANAGEMENT
CORPORATION, HAROLD THERAN, V. P.

ADDRESS: 50 FEDERAL STREET, BOSTON, MA.

NATURE OF PETITION OR APPEAL: Appeal to the Board of Appeal for a VARIANCE
pursuant to Sections 2.7 (Building Heights), 5.4.E (Curb/Sidewalk Openings), 6.3 (Earth
Migration/Slopes), 7.3 (Yard Spaces), 7.4 (Green Strips), 8.4 (Heights), 9.5 (Zoning
Dimensions) 12.J (Parking Requirements), 16 (Signage), 16.4 (Business/Industrial District
Signs), 16.4.A.1 (Principal Wall Signs), 16.4.A.2 (Secondary Wall Signs), 16.4 and 16.4.D.5
(Free-Standing Signs) of the Zoning By-Law to construct a restaurant and a hotel, and to
permit a retail store, bank and personal services as an accessory use within the hotel, on
their land located in an Industrial District, GRANTED to the petitioners.

Date of hearing before the Board of Appeal:

January 7, 1998

PROCEEDINGS AND FINDINGS

Finding of Fact:

Plans prepared by Beals Associates, Inc., 31 State Street, Boston, Ma., GEO
Consulting Engineers, Inc., 164 Westford Road, Tyngsboro, Ma. and Howe Surveying
Associates, Inc., 73 Princeton Street, No. Chelmsford, Ma., were submitted to the Board
and made part of the file.

Relief Sought:

Attorney Andrew H. Cohn, Hale and Dorr LLP, Counsellors At Law, 60 State Street, Boston, Ma., appeared before the Board of Appeal requesting a Variance pursuant to Sections 2.7 (Building Heights), 5.4.E (Curb/Sidewalk Openings), 6.3 (Earth Migration/Slopes), 7.3 (Yard Spaces), 7.4 (Green Strips), 8.4 (Heights), 9.5 (Zoning Dimensions), 12.J (Parking Requirements), 16 (Signage), 16.4 (Business/Industrial District Signs), 16.4.A.1 (Principal Wall Signs), 16.4.A.2 (Secondary Wall Signs), 16.4 and 16.4.D.5 (Free-Standing Signs) of the Zoning By-Law to construct a restaurant and a hotel, and to permit a retail store, bank and personal services as an accessory use within the hotel, on their land located in an Industrial District

Vote of the Board:

The Board of Appeal, with five members present and voting, granted the petitioner a Variance pursuant to Sections 2.7 (Building Heights), 5.4.E (Curb/Sidewalk Openings), 6.3 (Earth Migration/Slopes), 7.3 (Yard Spaces), 7.4 (Green Strips), 8.4 (Heights), 9.5 (Zoning Dimensions), 12.J (Parking Requirements), 16 (Signage), 16.4 (Business/Industrial District Signs), 16.4.A.1 (Principal Wall Signs), 16.4.A.2 (Secondary Wall Signs), 16.4 and 16.4.D.5 (Free-Standing Signs) of the Zoning By-Law to construct a restaurant and a hotel, and to permit a retail store, bank and personal services as an accessory use within the hotel, on their land located in an Industrial District

The Board of Appeal granted Development Management Billerica Hotel LLC and Wyndham Gardens Hotel a Variance, as per legal ad, testimony given and plans submitted.

Voting to Grant: Doris M. Pearson, John F. Gray, Jr., Joseph P. Shaw,

Francis M. Fraine and Jay H. Thomas, III

Reasons for Vote:

1. Relief could be granted without a detriment to the public good.
2. Relief could be granted without nullifying or substantially derogating from the intent and purpose of the Zoning By-Law.
3. Literal enforcement of the provisions of the Zoning By-Law would cause the petitioner a hardship, financial or otherwise.

Special Conditions Affecting the Variance:

- A) The signage on the side elevation of the hotel building facing Concord Road shall not be internally illuminated.
- B) The parking areas servicing the hotel (and the walkways from such parking areas to the hotel building) shall be well-lighted after dusk, daily.
- C) There shall be no cooking facility in the suites.
- D) The applicant shall, after the twenty day appeal period has expired from date the decision was recorded by the Town Clerk, return to the Town Clerk to have the decision stamped, record notice of same in the Registry of Deeds and file a copy of Registry Receipt with the Board of Appeal within ninety days of filing of decision by the Board of Appeal with the Town Clerk. Failure to record this decision shall cause it to be null and void.
- E) The Variance shall be used within a one year period or shall be null and void.

The uses and structures granted by this Variance are confined to all of the following

1) scope of the advertisement of the public hearing. 2) specific exceptions to the Zoning By-Law identified in this decision and only to the extent of the relief requested in the application to the Board of Appeal. No other relief is implied and thus other variances, special permits and/or comprehensive permits may be required to obtain a valid building permit. Such other requirements of the Zoning By-Laws may be, but not limited to, compliance with: 1) dimensional controls on setbacks, heights and area; 2) surface run-off rates; 3) parking and loading; 4) signage; 5) green areas; 6) earth migration; 7) buildings and uses; 8) accessory uses; 9) slopes, walls and fences; 10) curb cuts; and 11) areas subject to flooding.

It is further ordered that a copy of these proceedings shall be immediately filed in the office of the Town Clerk and office of the Planning Board and it is hereby certified that copies of this decision and plans referred to in this decision have been filed with the Town Clerk and Planning Board, as required by Section 11 of Chapter 40A of the General Laws of Massachusetts. Notice of a decision by the board shall be mailed forthwith to the parties in interest as designated in Section 15 and to each person present who at hearing requests that a notice be sent to him/her and states the address to which notice is to be sent.

It is hereby ordered that the secretary of the board make a note in his/her records of compliance with this order.

Date of Board of Appeal Decision:

January 7, 1998

I MARGARET RYAN, Asst. Town Clerk for the Town of Billerica, Mass. hereby certify that the decision from the BOARD OF APPEALS has been received and recorded at this office and no appeal was received during the twenty days next after such receipt and recording of said decision.

DATE: FEBRUARY 24, 1998

Margaret Ryan
MARGARET RYAN
Asst. Town Clerk

Doris M. Pearson
Doris M. Pearson
Chairman

John F. Gray, Jr.
John F. Gray, Jr.,
Vice-Chairman

Joseph P. Shaw
Joseph P. Shaw

Francis M. Fraine
Francis M. Fraine

Jay H. Thomas, III
Jay H. Thomas, III
Alternate

**Development Management Billerica Hotel
By Development Management Corp.
Variance - Granted**

THE COMMONWEALTH OF MASSACHUSETTS

BILLERICA

City or Town

BOARD OF APPEALS

Date: APRIL 5, 2000

Certificate of Granting of Variance or Special Permit

(General Laws Chapter 40A, Section 11)

The Board of appeals of the City or Town of Billerica

hereby certifies that a Variance or Special Permit has been granted

To CONCORD OPCO, L.L.C. BY LEGGAT MCCALL OPPORTUNITY INVESTORS, LLC, ITS MANAGING MEMBER BY LM OPPORTUNITY PRINCIPALS, LLC, ITS MANAGING MEMBER BY ERIC B. SHEFFELS, E.V.P. C/O LEGGAT MC CALL PROPERTIES GROUP, LLC.

Address 10 POST OFFICE SQUARE

City or Town BOSTON, MA 02109

affecting the rights of the owner with respect to land or buildings at 300 Concord Road (Lot 6) Billerica, MA

Billerica MA, Plate 86 Parcel 108-1; recorded in M.N.D.R. of D's Book 8812 Paged 152

And the said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision granting said variance – special permit, and that copies of said decision, and of all plans referred to in the decision, have been filed with the planning board and the city or town clerk.

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section 11 (last paragraph) provides that no variance or special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the town or city clerk that twenty days have elapsed after the decision has been filed in the office of the city or town clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for such recording or registering shall be paid by the owner or applicant.

Chairman

Form 1094

RECEIVED

TOWN OF BILLERICA, MASSACHUSETTS

00 APR 19 AM 10:09

TOWN CLERK
BILLERICABOARD OF APPEALDECISION GRANTING SPECIAL PERMIT WITH CONDITIONS FOR LOT 6**I. THE PETITION**

Concord Opco, L.L.C. by Leggat McCall, Opportunity Investor, LLC its member By LM Opportunity Management, LLC, Its member and manager By Eric B. Sheffels, V.P. C/O Leggat Mc Call Properties, Group, LLC, 10 Post Office Square, Boston, MA (hereinafter "Applicant) request for a SPECIAL PERMIT pursuant to Section 11D (Non-Conforming Uses/Structures) of the Zoning By-Law to conform existing special permit as now in effect and to modify them and to grant necessary further special permits required with respect to the proposed Lot 6 for the Stoker House, to permit the extension or alternation of a pre-existing nonconforming structure and to grant any other or additional relief from other relevant sections of the by-laws to permit construction, maintenance and use of the Project in an Industrial District, shown on Original Site Plan, as modified by the Site Plans submitted

This matter was previously before the Board in or about October, 1998. At that time, the evidence presented to the Board was not convincing on the issue of whether a realistic plan for the preservation of the Stoker House was in place. On December 16, 1998, the Board, by a three to two vote denied the applicant's request for a special permit and variances. The decision was appealed to the Superior Court by the Town Planning Board and Town Historical Commission. The matter is presently before the Board pursuant to a Stipulation of Remand which was filed with the Court.

The requested special permit would allow the Applicant to subdivide Lot 4 as shown on the site plan previously approved by the Planning Board and would create Lot 6 which would consist of a .6 acre parcel with the Stoker House thereon. The Applicant would then be able to preserve the Stoker House at its existing location without demolition while at the same time being able to go forward with its other construction on Lot 4 as was planned.

II NOTICE AND HEARING

The petition for a Special Permit was filed with the Board of Appeals on March 8, 2000. Notices of the public hearing were sent to abutters and others and the hearing was duly advertised. The Zoning Board of Appeals held a public hearing on the petition on April 5, 2000.

III. FINDINGS

1. The proposed Lot 6 will include the Stoker House which is a historically significant building and since August 18, 1998 has been included in the Commonwealth Inventory of Historical Assets.

2. On May 23, 1997, Applicant's predecessor in title, Wang Laboratories, Inc., received site plan special permit approval from the Town of Billerica Planning Board to allow it to construct an office building and related structures on the locus. Said site plan special permit was transferred to the Applicant on February 9, 1998, thereby allowing the Applicant to use proposed Lot 6 to the full extent allowed in the site plan. Under that plan, the historic Stoker House would be demolished.

3. There has been substantial and vocal public support for the preservation of the Stoker House.

4. If the Stoker House is to be preserved, the Special Permit is required.

5. A grant of this Special Permit is consistent with the purpose and intent stated in Section I of the Zoning By-Laws.

6. The Applicant is holding a valid demolition permit for the Stoker House and a denial of this variance will result in the immediate demolition of the Stoker House.

7. A denial of this Special Permit would be contrary to the public interest in preserving the structure recognized by the state and local historical commission as having unique historical value.

8. Demolition of the historically significant Stoker House would result in irreparable harm to the public interest.

9. The Applicant and Middlesex Community College Foundation, Inc. (MCCF) have entered into an agreement whereby Applicant will transfer to MCCF Lot 6 which includes the Stoker House. The deed will include restrictions which insure that the building be utilized for uses which are compatible with both its proximity to a residential neighborhood and an office park; the deed will include a covenant that the property and grounds be maintained to a standard compatible with its surroundings. Applicant will retain a right of first refusal should MCCF or a subsequent owner intend to sell the property.

10. Owing to circumstances relating to the soil conditions, shape or topography of the property and which circumstances especially affect such property and do not affect generally the zoning district in which is located, a literal enforcement of the provision of the by-law would involve substantial hardship, financial or otherwise, to the Applicant and to the general public and desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the by-law.

IV. DECISION WITH CONDITION

At the meeting of the Board of Appeal on April 5, 2000 and on motion made by Board member Patricia C. Flemming and seconded by Board member Ellen Sargent, it was voted unanimously by the Board members Doris M. Pearson, Joseph P. Shaw, Patricia C. Flemming, Sandra C. Sharpe and Ellen Sargent to grant the Special Permit for Lot 6, as set forth in Applicant's Petition and plans presented to the Board, pursuant to Mass. Gen. Laws C.40A, ss 6 and 9 with the following conditions which are reasonable and necessary to promote the health, convenience, safety, morals and welfare of the inhabitants of the Town of Billerica.

1. That this permit shall take effect upon the transfer by Applicant of Lot 6 to MCCF pursuant to the terms set forth in the agreement between the parties dated April 5, 2000.
2. That the Special Permit shall remain valid only for so long as the property is owned by MCCF and shall terminate immediately upon a transfer of the property by MCCF unless permission for said transfer is obtained from the Zoning Board.
3. That this Special Permit may not be assigned or transferred without the permission of the Zoning Board.

Date: April 5, 2000

Doris M. Pearson
Doris M. Pearson, Chairman

Joseph P. Shaw
Joseph P. Shaw, Vice-Chairman

Patricia C. Flemming
Patricia C. Flemming, Secretary

Sandra C. Sharpe
Sandra C. Sharpe, Member

Ellen Sargent
Ellen Sargent, Alternate Member

I MARGARET RYAN, Asst. Town Clerk for the Town of Billerica, Mass. hereby certify that the decision from the BOARD OF APPEALS has been received and recorded at this office and no appeal was received during the twenty days next after such receipt and recording of said decision.

DATE: May 12, 2000

Margaret Ryan
MARGARET RYAN
Town Clerk

Appeals, if any, to this decision must be made pursuant to Mass. General Laws, Chapter 40A, Section 17, and shall be filed within twenty (20) days after the date of filing of the notice in the office of the Billerica Town Clerk, Billerica, Massachusetts.

Concord Opco, L.L.C.
Leggat McCall Properties
By Eric B. Sheffels, E.V.P.
Special Permit - Lot 6 - Granted

END OF DOCUMENT

Richard P. Howie Jr.

THE COMMONWEALTH OF MASSACHUSETTS

BILLERICA

City or Town

BOARD OF APPEALS

Date: APRIL 5, 2000

Certificate of Granting of Variance or Special Permit
(General Laws Chapter 40A, Section 11)

The Board of appeals of the City or Town of Billerica

hereby certifies that a Variance or Special Permit has been granted

To CONCORD OPCO, L.L.C. BY LEGGAT MC CALL OPPORTUNITY INVESTORS, LLC, ITS
MANAGING MEMBER BY LM OPPORTUNITY PRINCIPALS, LLC, ITS MANAGING MEMBER
BY ERIC B. SHEFFELS, E.V.P. C/O LEGGAT MC CALL PROPERTIES GROUP, LLC.

Address 10 POST OFFICE SQUARE

City or Town BOSTON, MA 02109

affecting the rights of the owner with respect to land or buildings at 300 Concord Road (Lot 4) Billerica, MA

Billerica MA, Plate 86 Parcel 108-1; recorded in M.N.D.R. of D's Book 8812 Paged 152

And the said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision granting said variance – special permit, and that copies of said decision, and of all plans referred to in the decision, have been filed with the planning board and the city or town clerk.

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section 11 (last paragraph) provides that no variance or special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the town or city clerk that twenty days have elapsed after the decision has been filed in the office of the city or town clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for such recording or registering shall be paid by the owner or applicant.

Don McLean
Chairman

Patricia Flanagan

RECEIVED

TOWN OF BILLERICA, MASSACHUSETTS

00/APR 19 AM 10:02

CLERK
BILLERICABOARD OF APPEALDECISION GRANTING VARIANCE WITH CONDITION FOR LOT 4**I. THE PETITION**

Concord Opco, L.L.C. by Leggat McCall, Opportunity Investor, LLC its member By LM Opportunity Management, LLC, Its member and manager By Eric B. Sheffels, V.P. C/O Leggat Mc Call Properties, Group, LLC, 10 Post Office Square, Boston, MA (hereinafter "Applicant) request for a VARIANCE pursuant to Sections 5.4.E (Curb Cuts), 7.3 (Yard Spaces), 9.2, 9.4 and 9.5 (Zoning Dimensions), 12 (Parking Requirements) and 12.K (Parking Lot Landscaping) of the Zoning By-Law and to grant any other or additional relief from other relevant sections of the by-laws, to confirm existing variances as now in effect and to modify them and grant necessary further variances to subdivide land, permit construction, maintenance and use of the Project in an Industrial District, shown on Original Site Plan, as modified by the Site Plans submitted

This matter was previously before the Board in or about October, 1998. At that time, the evidence presented to the Board was not convincing on the issue of whether a realistic plan for the preservation of the Stoker House was in place. On December 16, 1998, the Board, by a three to two vote denied the applicant's request for a special permit and variances. The decision was appealed to the Superior Court by the Town Planning Board and Town Historical Commission. The matter is presently before the Board pursuant to a Stipulation of Remand which was filed with the Court.

The requested variance would allow the Applicant to subdivide Lot 4 as shown on the site plan previously approved by the Planning Board and would create Lot 6 which would consist of a .6 acre parcel with the Stoker House thereon. The Applicant would then be able to preserve the Stoker House at its existing location without demolition while at the same time being able to go forward with its other construction on Lot 4 as was planned.

II NOTICE AND HEARING

The petition for a Variance was filed with the Board of Appeals on March 8, 2000. Notices of the public hearing were sent to abutters and others and the hearing was duly advertised. The Zoning Board of Appeals held a public hearing on the petition on April 5, 2000.

III. FINDINGS

1. The proposed Lot 6 will include the Stoker House which is a historically significant building and since August 18, 1998 has been included in the Commonwealth Inventory of Historical Assets.

2. On May 23, 1997, Applicant's predecessor in title, Wang Laboratories, Inc., received site plan special permit approval from the Town of Billerica Planning Board to allow it to construct an office building and related structures on the locus. Said site plan special permit was transferred to the Applicant on February 9, 1998, thereby allowing the Applicant to use proposed Lot 6 to the full extent allowed in the site plan. Under that plan, the historic Stoker House would be demolished.

3. There has been substantial and vocal public support for the preservation of the Stoker House.

4. If the Stoker House is to be preserved, the variance is required.

5. A grant of this variance is consistent with the purpose and intent stated in Section I of the Zoning By-Laws.

6. The Applicant is holding a valid demolition permit for the Stoker House and a denial of this variance will result in the immediate demolition of the Stoker House.

7. A denial of this variance would be contrary to the public interest in preserving the structure recognized by the state and local historical commission as having unique historical value.

8. Demolition of the historically significant Stoker House would result in irreparable harm to the public interest.

9. The Applicant and Middlesex Community College Foundation, Inc. (MCCF) have entered into an agreement whereby Applicant will transfer to MCCF Lot 6 which includes the Stoker House. The deed will include restrictions which insure that the building be utilized for uses which are compatible with both its proximity to a residential neighborhood and an office park; the deed will include a covenant that the property and grounds be maintained to a standard compatible with its surroundings. Applicant will retain a right of first refusal should MCCF or a subsequent owner intend to sell the property.

10. Owing to circumstances relating to the soil conditions, shape or topography of the property and which circumstances especially affect such property and do not affect generally the zoning district in which is located, a literal enforcement of the provision of the by-law would involve substantial hardship, financial or otherwise, to the Applicant and to the general public and desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the by-law.

IV. DECISION WITH CONDITION

At the meeting of the Board of Appeal on April 5, 2000 and on motion made by Board member Joseph P. Shaw and seconded by Board member Ellen Sargent, it was voted unanimously by the Board members Doris M. Pearson, Joseph P. Shaw, Patricia C. Flemming, Sandra C. Sharpe and Ellen Sargent to grant the Variance for Lot 4, as set forth in Applicant's Petition and plans presented to the Board, pursuant to Mass. Gen. Laws C.40A, S10, with the following condition which is reasonable and necessary to promote the health, convenience, safety, morals and welfare of the inhabitants of the Town of Billerica.

That 36 of the parking spaces proposed for Lot 4 be land-banked and be constructed only at the request of the owner or the Town of Billerica Building Inspector.

Date:

April 5, 2000

Doris M. Pearson, Chairman

Joseph P. Shaw, Vice-Chairman

Patricia C. Flemming, Secretary

Sandra C. Sharpe, Member

Ellen Sargent, Alternate Member

I MARGARET RYAN, Asst. Town Clerk for the Town of Billerica, Mass. hereby certify that the decision from the BOARD OF APPEALS has been received and recorded at this office and no appeal was received during the twenty days next after such receipt and recording of said decision.

DATE: May 17, 2000

MARGARET RYAN
Asst. Town Clerk

Appeals, if any, to this decision must be made pursuant to Mass. General Laws, Chapter 40A, Section 17, and shall be filed within twenty (20) days after the date of filing of the notice in the office of the Billerica Town Clerk, Billerica, Massachusetts.

Concord Opco, L.L.C.
Leggat McCall Properties
Variance - Lot 4 - Granted

END OF DOCUMENT

Richard P. Howe Jr.

THE COMMONWEALTH OF MASSACHUSETTS

4P

BILLERICA
City or Town

BOARD OF APPEALS

Date: MARCH 3, 1999

Certificate of Granting of Variance or Special Permit
(General Laws Chapter 40A, Section 11)

1/7/98

The Board of appeals of the City or Town of Billerica

original
NOTICE

9077/102

Extension
hereby certifies that a Variance or Special Permit has been granted

To WANG LABORATORIES, INC. ALBERT NOTINI, SVP AND DEVELOPMENT MANAGEMENT
BILLERICA HOTEL LLC BY DEVELOPMENT MANAGEMENT CORPORATION, HAROLD THERAN, VP
Address 50 FEDERAL STREET

City or Town BOSTON, MA. 02110

Lot 3 at Wang Corporate
affecting the rights of the owner with respect to land or buildings at Center, 300 Concord Road

Billerica, Ma. Plate 86 Parcel 108; recorded in M.N.D.R. of D's Book 7379
Page 235-239

And the said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision granting said variance — special permit, and that copies of said decision, and of all plans referred to in the decision, have been filed with the planning board and the city or town clerk.

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section 11 (last paragraph) provides that no variance or special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the town or city clerk that twenty days have elapsed after the decision has been filed in the office of the city or town clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for such recording or registering shall be paid by the owner or applicant.

Doris M. Pearson
Chairman

Ellen Sargent
Clerk

TOWN OF BILLERICA, MASSACHUSETTS

BOARD OF APPEAL

RECEIVED

EXTENSION

99 MAR 16 PM 12:58

PROCEEDINGS: Including finding and decision

TOWN CLERK
BILLERICA

LOCUS: LOT 3 AT WANG CORPORATE CENTER,
300 CONCORD ROAD, BILLERICA, MA.,
PLATE 86 PARCEL 108; RECORDED IN THE
M.N.D.R. OF D'S BOOK 7379 PAGE 235 - 239

APPLICANT: WANG LABORATORIES, INC., ALBERT NOTINI, S.V.P.
AND DEVELOPMENT MANAGEMENT BILLERICA
HOTEL LLC BY DEVELOPMENT MANAGEMENT
CORPORATION, HAROLD THERAN, V. P.

ADDRESS: 50 FEDERAL STREET, BOSTON, MA.

NATURE OF PETITION OR APPEAL: Appeal to the Board of Appeal for a VARIANCE
pursuant to Sections 2.7 (Building Heights), 5.4.E (Curb/Sidewalk Openings), 6.3 (Earth
Migration/Slopes), 7.3 (Yard Spaces), 7.4 (Green Strips), 8.4 (Heights), 9.5 (Zoning
Dimensions) 12.J (Parking Requirements), 16 (Signage), 16.4 (Business/Industrial District
Signs), 16.4.A.1 (Principal Wall Signs), 16.4.A.2 (Secondary Wall Signs), 16.4 and 16.4.D.5
(Free-Standing Signs) of the Zoning By-Law to construct a restaurant and a hotel, and to
permit a retail store, bank and personal services as an accessory use within the hotel, on
their land located in an Industrial District, GRANTED to the petitioners.

Date of hearing before the Board of Appeal:

January 7, 1998

PROCEEDINGS AND FINDINGS

Finding of Fact:

Plans prepared by Beals Associates, Inc., 31 State Street, Boston, Ma., GEO
Consulting Engineers, Inc., 164 Westford Road, Tyngsboro, Ma. and Howe Surveying
Associates, Inc., 73 Princeton Street, No. Chelmsford, Ma., were submitted to the Board
and made part of the file.

Extension Request:

At the Board of Appeal meeting on March 3, 1999, Harold A. Theran of Development Management Billerica Hotel LLC, 50 Federal Street, Suite 512, Boston, Ma, requested a six month extension to the Variance granted by the Board of Appeal on January 7, 1998 and recorded with the Town Clerk on January 21, 1998 for the Wyndham Garden Hotel. They have obtained all the proper permits for the construction of the hotel, however, they have not obtained permits for the sign construction. Therefore, an extension for the signage may be necessary. (See letter from Attorney Andrew H. Cohn, Hale and Door, LLP, dated March 1, 1999 in file.)

Vote of the Board:

The Board of Appeal, with five members present and voting Granted the petitioners one six-month extension only, according to M. G. L. Chapter 40A, to the Variance granted by the Board of Appeal on January 7, 1998 and recorded with the Town Clerk on January 21, 1998.

Voting to Grant the Extension: Doris M. Pearson, Ellen Sargent, Francis M. Fraine
Sandra C. Sharpe and Jay H. Thomas, III.

Special Conditions Affecting the Extension:

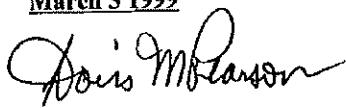
All Special Conditions affecting the Variance granted to the petitioners on January 7, 1998 shall remain in effect.

It is further ordered that a copy of these proceedings shall be immediately filed in the office of the Town Clerk and office of the Planning Board and it is hereby certified that copies of this decision have been filed with the Town Clerk and Planning Board, as required by Section 11 of Chapter 40A of the General Laws of Massachusetts. Notice of a decision by the board shall be mailed forthwith to the parties in interest as designated in Section 15 and to each person present at hearing who requests that a notice be sent to him/her and states the address to which notice is to be sent.

It is hereby ordered that the secretary of the board make a note in his/her records of compliance with this order.

Date of Board of Appeal Extension:

March 3 1999



Doris M. Pearson
Chairman



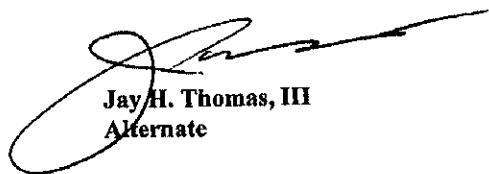
Ellen Sargent
Secretary



Francis M. Fraine



Sandra C. Sharpe



Jay H. Thomas, III
Alternate

Development Management Billerica Hotel LLC
For The Wyndham Garden Hotel
Extension - Granted



9

BILLERICA PLANNING BOARD

Town Hall
365 Boston Road Billerica, MA 01821
978-671-0962
978-670-9448 Fax

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TOWN CLERK
BILLERICA

Paul A. Marasco, *Chairman*
Justin McCarthy, *Vice Chairman*
Marti Mahoney, *Secretary*



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Edward R. McLaughlin
Richard J. Baraldi Sr.
Vincent D. MacDonald
Robert W. Casey

**CERTIFICATE OF DECISION
SPECIAL PERMIT**
Metro PCS – 300 Concord Road**APPLICANT**

Metro PCS
285 Billerica Road, Third Floor
Chelmsford, MA 01824

PERMIT SOUGHT

The applicant seeks a Special Permit from the Billerica Planning Board pursuant to Section 5.G of the Zoning By-Laws, to install six antennas on an existing 180 foot tower at a height of 134' (one hundred thirty-four feet) and to site equipment cabinets within the existing compound. This installation is to be placed on a previously approved lattice tower for telecommunication use located at 300 Concord Road, (Plate 86, Parcel 108-5). The subject plans are entitled "BOS0222A, CB RICHARD ELLIS BILLERICA, 300 CONCORD ROAD, BILLERICA, MA 01821, MIDDLESEX COUNTY", contain 9 sheets and were received by the Planning Board on April 17, 2008.

PROCEDURE

A public hearing was opened at the Billerica Town Hall, 365 Boston Road, Billerica, MA. on June 9, 2008. Advertisement appeared in the Billerica Minuteman on May 22, 2007 and May 29, 2008. A notice of the hearing was posted prior to the hearing. Notices were sent to interested parties as specified in General Laws, Chapter 40A, Section 11, in accordance with certification from the Assessor's Office setting forth the names and addresses of such parties. Notices were also sent to the planning boards of abutting towns.

PLANNING BOARD **FINDINGS**

The Planning Board finds that the Site Plan and associated application documentation meet the requirements in of the Zoning By-Law, if the conditions herein are met, for the following reasons:

1. The SPGA finds the project is in compliance with the purpose, intent and criteria contained in Sections 5.G and Section 13 of the Billerica Zoning By Law.
2. The applicant is not already providing adequate coverage or is unable to provide adequate coverage as defined within the contents of the Billerica Zoning By-law.
3. The applicant is using the most preferred site available, see Section 5.G.III.3.
4. The proposed wireless communications services and facility minimizes and does not substantially adversely impact any historic resources, scenic views, residential property values, and natural or manmade resources.
5. The applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the facilities, including but not limited to, the aesthetic and auditory concerns of the residential neighbors.
6. The applicant is locating in available space on a previously approved lattice tower within Billerica.
7. The facility will comply with the appropriate FCC regulations regarding emissions and arrangements for monitoring said emissions.
8. There is a substantial gap in telecommunications service and the proposal is the least intrusive means to fill the gap.

VOTE

At their regular scheduled meeting on June 9, 2008 the Planning Board voted to approve the Special Permit with conditions by a vote of 7 in favor and 0 opposed.

CONDITIONS

1. All revisions to the submitted plans and documentation reflecting all conditions outlined herein shall be made prior to building permit pre-application sign off. The Director of Planning shall be satisfied that all such revisions have been made.
2. All construction and installation shall in all respects conform to the Zoning By-Law unless otherwise granted relief by the Board of Appeal or Planning Board as applicable.
3. Failure to comply with all conditions herein shall be deemed cause to revoke or modify this approval.
4. This Site Plan Special permit shall not take effect until a copy of the decision has been recorded in the Registry of Deeds within 90 days of filing of this decision with the Town Clerk. The copy of this decision shall bear the certification of the Town Clerk that 20 days have elapsed after the decision has been filed in the office of the Town Clerk and no appeal has been filed, or if filed, such appeal has been dismissed or denied.
5. This Site Plan Special Permit shall be used within two (2) years of the filing of this decision with the Town Clerk or shall be null and void.
6. There shall be no new dumpsters associated with this installation.
7. Any additional lighting shall be shielded from adjacent properties and shall meet the requirements of Section 5.G. IX of the Zoning By Law.
8. The applicant shall provide the name and phone number of the Facilities Manager to be contacted by the abutters in case of any problem that might occur during installation.
9. This approval is contingent on the ongoing compliance of Concord OPCO, LLC to their previously approved special permit date stamped by the Town Clerk on February 27, 1998 and signed by the Board of Appeal on February 18, 1997 (sic).
10. The plans shall satisfy the comments of the attached review performed by Broadcast Signal Lab and dated June 4, 2008(Attachment 1).
11. The applicant shall document their obligation to remove their equipment from the tower if they abandon its use.

12. The noise generated at the facility shall not exceed the standards spelled out under Section 5.G. XIV of the Zoning By Law.
13. There is no electrical generator approved as a part of this proposal.
14. Any change of equipment other than that described under this approval shall not be done unless approved as a modification to this decision.
15. The applicant shall provide documentation from a structural engineer that the existing tower has the capacity to support the addition of the proposed antenna and associated equipment. If the proposal includes altering the structure to add capacity the documentation shall indicate that the modification can accommodate the new installation.
16. The applicant shall provide written documentation that the placement of the proposed antennas and associated equipment is not in conflict with any previously approved co-location approvals. The Director of Planning shall be satisfied with this documentation.

CERTIFICATE OF DECISION ON SPECIAL PERMIT APPLICATION

2/3rds vote of the Planning Board

Veronique Marasco

Richard J. Basile Paul Marasco

John W. Coughlin

Mark Mahoney

Bob Tracy

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

June 23, 2008

Then personally appeared Paul Marasco one of the above named members of the Planning Board of the Town of Billerica, Massachusetts, and acknowledged the foregoing instrument to be the free act and deed of said Planning Board, before me.



MIDDLESEX, SS
Notary Public
Commonwealth of Massachusetts My Commission expires: July 18, 2008
July 10, 2008

Maynard Tracy

Notary Public

TOWN CLERK CERTIFICATION

I, Shirley E. Schult, Town Clerk of the Town of Billerica, Massachusetts hereby certify that the Certificate of Special Permit by the Billerica Planning Board has been received and recorded at this office and no appeal was received during the twenty days next after such receipt and recording of such notice.

Shirley E. Schult
Town Clerk

July 14, 2008
Date



Broadcast Signal Lab

**Technical Review of Applications
By MetroPCS
For Additions to Wireless Facilities at
300 Concord Road, Billerica**

Introduction

Broadcast Signal Lab was engaged by the Town of Billerica Planning Board to review the April 7, 2008 application by "MetroPCS" to install a new MetroPCS wireless facility at 300 Concord Road, Billerica, Massachusetts ("Site").

The 135-foot tall tower presently supports the communications equipment of four wireless service providers, plus that of the Billerica Fire Department. (Additional dish antennas and equipment employed by Fiber Tower support the operations of one or more wireless facilities at the Site.). MetroPCS would add equipment within the existing building housing Billerica F.D. and Fiber Tower electronics, resulting in no increase in ground space consumed within the fenced compound. MetroPCS would install an antenna array at the 134-foot level. The antenna array is shown on the site plan as having six panel antennas – two per face of the triangular antenna mounting platform. It appears that existing coaxial cables would be utilized from the equipment shed to the antennas on the tower. These appear to be left over from the consolidation of Cingular Wireless and AT&T Wireless.

While the company is known as MetroPCS, the present application relates to its service offering in the Advanced Wireless Service spectrum ("AWS"). AWS is, in this case, essentially the same as the familiar service called PCS (Personal Communications Service). (The other carriers operating at the site include those that offer service in the PCS spectrum). The proposed AWS installation operates on frequency spectrum that straddles the PCS band and has similar operating characteristics to PCS.

The coverage shown on the single-color plots in the application is at an unspecified signal level defined by the applicant as "reliable coverage." It is reassuring that the coverage shown is consistent with recent submissions of coverage from similar services operating at the Site. Ordinarily we might request details on the coverage analysis, including a definition of "reliable

Broadcast Signal Lab, LLP
503 Main Street
Medfield, MA 02052
508 359 8833

BILLERICA PLANNING BOARD

JUN 06 2008

Attachment 1

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“coverage” and a rationalization of the chosen threshold. However, since MetroPCS is new to the market, and Billerica is presently an undeveloped greenfield region for MetroPCS service, it stands to reason that collocating at an existing facility in Billerica would enable the provision of MetroPCS’s personal wireless services in Billerica.

The proposed facility places MetroPCS antennas at a mounting elevation of 134 feet above ground. We received no structural documentation with the application. However this is a matter that could be addressed at the time of application for a building permit. With the addition of MetroPCS to the tower, the five major carriers in the market will each have dedicated space on the tower for their antennas.

The proposed antennas do not create any technical conditions that would alter the safety of the entire facility at the Site. Based on the characteristics of the proposed facility changes, there will be no alteration in the facility’s compliance with FCC limitations of Radio Frequency Emissions. The antennas are passive and generate no noise. The alteration in appearance, if any, is only incremental.

We did not find a professional noise analysis in our application package. However, the ground equipment will be contained within an existing shed and the extent to which there is already any heating or cooling apparatus that makes exterior noise is not likely to change. Only a modest increase in the shed’s air conditioning cycle time would be demanded to handle the extra heat loading of the newly installed MetroPCS equipment. Also, the Site is adjacent to Route 3 and in an industrial area, such that the ambient noise near the Site is expected to overwhelm the audibility of the Site, even short distances from the Site.

Section 5.G.III.3 of the Billerica Zoning Bylaw indicates the use of an existing wireless facility for the addition of a new facility is the most preferred approach. The present application conforms to this preference.

Below we insert comments on the Approval and Denial Criteria of the Zoning Bylaw.

XXIII. APPROVAL CRITERIA

1. Special permit may be granted under this section only if the SPGA finds the project is in compliance with the purpose, intent and criteria contained in this section 5.C.1.j.(2) (c) and section 13 of this Bylaw. In addition, the SPGA shall make the applicable findings before granting the special permit as follows:
2. That the applicant is not already providing adequate coverage or is unable to provide adequate coverage as defined within the contents of this By-law.

New network with no present coverage.

3. That the applicant is using the most preferred site available, see Section 5.C.1.j.(2) (c).III.3.

Co-location on existing wireless facility structure.

4. That the proposed wireless communications services and facility minimizes and does not substantially adversely impact any historic resources, scenic views, residential property values, and natural or man made resources. The SPGA shall consider the cumulative impact of all related applications in the same geographic area.

Co-location on existing wireless facility structure.

5. That the applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the facilities, including but not limited to, the aesthetic and auditory concerns of the residential neighborhoods.

Board must identify such concerns, if any. Photo simulations provided by applicant.

6. That the applicant has agreed to rent or lease available space on any tower it controls within Billerica or its contiguous towns, when appropriate and applicable, as determined by SPGA and/or supportive documentation submitted by the applicant, under the terms of a fair-market lease, without discrimination to other providers to the extent it is technically feasible.

Applicant is a tenant on a third-party owned facility with existing co-location of other service providers.

7. That the facility shall comply with the appropriate FCC regulations regarding emissions and arrangements for monitoring said emissions.

Facility design is inherently compliant. No monitoring is necessary to maintain FCC compliance.

8. That there is a substantial gap in telecommunications service and the proposal is the least intrusive means to fill the gap.

New network with no present coverage. New antenna array added to tower with four existing arrays.

9. If a special permit is granted, in addition to such terms and conditions as may be authorized by Section 5.C.1.j.(2) (c) of this Bylaw the SPGA may impose such additional conditions and safeguards as public safety, welfare and convenience may require.

XXIV. DENIAL CRITERIA

1. Should the applicant substantially fail to meet any of the requirements set forth in Section 5.C.1.j.(2) (c).XXIII, and then the Special Permit shall be denied.
2. The SPGA shall deny a special permit to an applicant that has not demonstrated a good faith effort to provide for co-location if applicable and appropriate.

Co-location exists at Site. It is unknown whether the proposed facility is the last such facility that could be added to the tower or the Site.

3. A special permit shall not be denied if the denial of the special permit would unreasonably discriminate among providers of functionally equivalent services. Note that only "unreasonable" discrimination among providers is prohibited, and that the Federal Telecommunications Act of 1996 allows facilities that create different visual, aesthetic or safety concerns to be treated differently.

If a denial were imminent, the Board would have to consider whether one could expect there to be reasonable alternatives to the proposal. Advice of counsel is recommended in matters relating to the Act.

4. A special permit shall not be denied if the denial of the special permit would prohibit, or have the effect of prohibiting, the provision of personal wireless services within the town of Billerica. Note that applications to construct a WCF in an under-served area, if the service gap can be filled by less intrusive means, may still be denied. The SPGA shall not use this clause for granting of the special permit unless an independent assessment of the applicant's proposal is certified by an independent RF engineer, hired by the Town at the applicant's expense, stating that the applicant can not build a town-wide network without this site.

If specific reasons under the bylaw that apply to the proposed facility were to prompt the denial of permission for the facility, the Billerica Zoning Bylaw appears to be sufficiently open to alternative locations and facility designs that it does not appear a denial would effectively prohibit the provision of wireless services.

Conclusion

In summary, the proposed antenna changes at the Site are technically beneficial, with no apparent technical detriments. The proposal would add a new wireless service to the Site, possibly as the last service that is practicable to add to the tower and/or Site. Visual characteristics may be evaluated by the Board based on the dimensional information and photosimulations (except for lack of simulation of external cabling).

David Maxson
Municipal Wireless Consultant
June 4, 2008



BILLERICA PLANNING BOARD

TOWN HALL
365 BOSTON ROAD, BILLERICA, MA 01821
Telephone 978-671-0962
Fax 978-670-9448

Paul A. Marasco, *Chairman*
Walter J. Bradbury, *Vice Chairman*
Vincent D. MacDonald, *Secretary*

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TOWN CLERK
BILLERICA

BK 7379 pg 234

Justin McCarthy
Stephen L. Hart
Edward R. McLaughlin
Richard J. Baraldi, Sr.

CERTIFICATE OF DECISION SPECIAL PERMIT

APPLICANT

TRM for Fiber Tower
30 Lyman Street, Suite 12
Westborough, MA 01581



2006 00050142
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PERMIT SOUGHT

The applicant is applying for a Special Permit from the Billerica Planning Board pursuant to Section 5.G of the Zoning By-Laws, to locate two new dish antennas to on an existing tower at 300 Concord Road. The site is designated on the Assessor's maps as Plate 86, Parcel 108-5. This decision applies to the documents and materials filed with the plans entitled "FiberTower, SITE NUMBER FTX1083425, 300 CONCORD ROAD, BOS SITE NUMBER: BOS0630" issued on 5/31/05 and filed with the Planning Board on March 22, 2006.

PROCEDURE

A public hearing was held on April 24, 2006 and continued to July 10, 2006. All meetings were held at the Billerica Town Hall, 365 Boston Road, Billerica, MA. Advertisement appeared in the Billerica Minuteman on April 6 and April 13, 2006. A notice of the hearing was posted prior to the hearing. Notices were sent to interested parties as specified in General Laws, Chapter 40A, Section 11, in accordance with certification from the Assessor's Office setting forth the names and addresses of such parties. Notices were also sent to the planning boards of abutting towns.

PLANNING BOARD
FINDINGS

The Planning Board finds that the Site Plan and associated application documentation meet the requirements in of the Zoning By-Law, if the conditions herein are met, for the following reasons:

1. The SPGA finds the project is in compliance with the purpose, intent and criteria contained in Sections 5.G and Section 13 of the Billerica Zoning By Law.
2. The applicant is only augmenting the provision of service so the issue of adequate coverage is not relevant.
3. The applicant is only augmenting the provision of service so the issue relating to using the most preferred site available as described under Section 5.G. does not apply
4. The proposed addition of two satellite dishes to the existing facility does not adversely impact any historic resources, scenic views, residential property values, and natural or man made resources.
5. The applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the facilities, including but not limited to, the aesthetic and auditory concerns of the residential neighborhoods.
6. The applicant is leasing available space on a previously approved monopole within the town of Billerica.
7. The facility will comply with all applicable FCC regulations regarding emissions and arrangements for monitoring said emissions.
8. Because this proposal only acts to augment service, the issue of whether there is a substantial gap in telecommunications service does not apply.

VOTE

At their regular scheduled meeting on July 10, 2006 the Planning Board voted, on a positive motion to approve, 6 in favor, 0 opposed, with 1 absent. Therefore, the board approves the proposal.

CONDITIONS

1. All revisions to the submitted plans reflecting all conditions outlined herein shall be made prior to building permit pre-application sign off. A letter from the town's engineering consultant stating that all such revisions have been made must be submitted to the Planning Board before building permit pre-application sign off.
2. All construction and installation shall in all respects conform to the Zoning By-Law unless otherwise granted relief by the Board of Appeal or Planning Board as applicable.
3. Failure to comply with all conditions herein shall be deemed cause to revoke or modify this approval.
4. This Site Plan Special permit shall not take effect until a copy of the decision has been recorded in the Registry of Deeds within 90 days of filing of this decision with the Town Clerk. The copy of this decision shall bear the certification of the Town Clerk that 20 days have elapsed after the decision has been filed in the office of the Town Clerk and no appeal has been filed, or if filed, such appeal has been dismissed or denied.
5. This Site Plan Special Permit shall be used within two (2) years of the filing of this decision with the Town Clerk or shall be null and void.
6. There shall be no dumpsters associated with this installation.
7. The applicant shall provide the name and phone number of the Facilities Manager to be contacted by the abutters in case of any problem that might occur during installation.
8. This approval is contingent on the ongoing compliance of the facility owner to conform to the site plan special permit originally granted to the existing facility at the site.
9. The plans shall satisfy the comments of Fay Spofford and Thorndike, LLC, in their correspondence to the Planning Board dated April 20, 2006 (Attachment 1).
10. The applicant shall document their obligation to the lessor of the facility to remove their equipment from the facility if they abandon its use or in the alternative the applicant shall provide a removal cost estimate for the removal of its equipment stamped by a registered profession engineer licensed by the Commonwealth of Massachusetts and shall provide a removal bond consistent with such amount in which case the town shall be granted authorization to enter upon said premises to effectuate removal concomitant with provision of the bond.
11. The applicant shall have a structural engineer certify the capacity of the facility to accommodate additional carriers without the addition of the proposed dishes and its capacity to accommodate additional carriers once the subject dishes have been installed.

For the purposes of certification the engineer may assume the technology used is the same as any of the carriers currently located at the facility. Fay, Spofford and Thorndike shall determine if the engineer is qualified to make such certification.

12. If all the wireless carriers abandon the facility this permit shall be invalidated unless granted an extension by the Planning Board pursuant to the special permit process.
13. The applicant shall provide documentation that the owner of the facility authorized this application on the date of submittal of this application.
14. This permit is granted pursuant to section 5.G of the Zoning By Law which pertains to Wireless Communication Carriers as described by the Telecommunications Act of 1996. If at some point it is determined that this proposal is not provided for by the law additional relief may be required.



FAY, SPOFFORD & THORNDIKE, LLC

Engineers • Planners • Scientists • Landscape Architects • Surveyors

5 Burlington Woods
Burlington, MA 01803
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Fax 781.229.1115
www.lstinc.com

April 20, 2006

Mr. Paul A. Marasco, Chairman
Billerica Planning Board
Town Hall
365 Boston Road
Billerica, MA 01821

BILLERICA PLANNING BOARD

Subject: Special Permit Application for
For Wireless Communications Facility
300 Concord Road
TRM for Fiber Tower, Westborough, MA

APR 20 2006

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Dear Mr. Marasco:

We have reviewed the Application for Special Permit for a Wireless Communications Facility by TRM for FiberTower, Westborough, MA with respect to Section 5.G "Wireless Communications Facilities" of the Town's zoning by-laws. The Applicant proposes to co-locate two dish antennas on self-support tower and a new equipment cabinet within the existing compound. In preparing this report, we have retained the services of a radio frequency expert, David P. Maxson, of Broadcast Signal Lab, Cambridge, MA. On April 6, 2006, we forwarded to Mr. Maxson the application package for his technical review. On April 17, 2006, we received his technical review of the wireless communication facility (see attached report). In general, we believe the proposed project will not adversely impact any historic resources, scenic views, residential property values, and natural or man-made resources. The following are our findings and recommendations:

1. Siting Criteria: The Applicant is utilizing the most preferred site available (co-location within an industrial zone). The Applicant states that a coverage map is not required because the proposed project is back end equipment to assist other carriers in handling calls at the site. The equipment cabinet will be consistent with the equipment cabinets that are already on site.
2. Setbacks: These requirements do not apply to the Applicant because it is a co-location project.
3. Fall Zone: The Applicant is not proposing to increase the height of the tower. The Applicant also states that the dish antennas will meet all Fall Zone requirements; however, the Applicant did not provide any documentation for us to verify this statement.
4. Height Criteria: Because the Applicant is not proposing to increase the height of the existing tower, these requirements do not apply to the Applicant.
5. Camouflage: The Applicant will meet this requirement by installing equipment that is an off-white, grayish color.

6. Security: The Applicant meets this requirement because the equipment will be installed in an area that currently has restricted access.
7. Lighting: The Applicant is not proposing any additional lighting because the height of the tower will not be increased.
8. Signage: The Applicant will meet these requirements. Signage will be limited to the equipment to indicate emergency contact information.
9. Parking: These requirements do not apply to the Applicant because it is a co-location project.
10. Interference: The report prepared by Mr. Maxson indicates that the proposed project will present no interference risks.
11. Emissions: The report prepared by Mr. Maxson indicates that the proposed project will be compliant with federal and state emissions requirements. The Applicant has also provided an emissions assessment from Dr. Donald Haes, a radiation safety specialist, which concluded that emissions are well below allowable levels.
12. Noise: The Applicant states that the proposed project will not increase noise at the site. No documentation supporting this claim was provided; however, the Applicant is willing to conduct a noise study once the site is operational.
13. Environmental: These requirements do not apply to the Applicant because it is a co-location project. However, the Applicant indicates a willingness to perform additional studies if required.
14. Co-Location: The Applicant has provided documentation demonstrating the appropriateness of the co-location.
15. Aesthetics: Based on a review of the photo simulations, the proposed project will not impact aesthetics.
16. Cessation: The Applicant agrees to abide by the cessation requirements.
17. Maintenance: The Applicant agrees maintain this project site.
18. Modifications: The Applicant agrees to apply for future modifications through the SPGA.
19. Structural: The Applicant provided a structural report prepared by Kenneth Alley, P.E. His review found that the load increase from the wind and gravity load due to the addition of the antennas is less than 2% of the existing design load, which he found to be acceptable.
20. Construction Details: The concrete slab detail on Sheet A02 "Construction Details" shows 4 inches of compacted crushed stone or gravel under the concrete slab. We recommend a minimum of 12 inches of compacted crushed stone or gravel to minimize cracking of the concrete slab. The elevations for the antennas are labeled as 130 ft and 150 ft, but the elevations scale off to be approximately 127 ft and 147 ft, respectively. We recommend the Applicant resolve the discrepancy between the scaled height and labeled height of the proposed antennas. Finally, the tower shown in the plans does not appear to be the same type of tower shown in the photosimulations. We recommend the Applicant resolve this inconsistency, if it exists.

The report prepared by Mr. Maxson raised three issues that the Planning Board may want to consider before issuing the permit:

1. Whether the existing wireless communications service (WCS) providers at the site should be active in the application process or parties to the application;
2. Whether the installations should be permitted if all the WCS providers vacate the site or fail to use the service offered by the Applicant; and,
3. Whether the Applicant should be entitled to use the tower to relay signals from other sites.

In summary, the documentation that the Applicant has submitted is complete at this time. The Board will need to consider the issues raised in Mr. Maxson's technical review before deciding whether to issue the Special Permit.

Very truly yours,

Fay, Spofford & Thorndike, LLC
By



Dianne E. Velardocchia, P.E.
Senior Engineer

cc: Marion Saunders/FiberTower
Sean Conway/TRM



Broadcast Signal Lab

Technical Review of TRM Applications on Behalf of FiberTower Corporation for Wireless Communications Facilities at Each of Four Tower Sites in Billerica, Massachusetts

Introduction

The Town of Billerica Planning Board is hearing applications for Special Permits for wireless communication facilities ("WCF's") proposed by TRM on behalf of FiberTower Corporation. The facilities would be located at the towers existing on 20 Republic Road, 41 Sullivan Road, 55R High Street, and 300 Concord Road. Broadcast Signal Lab was engaged by the Board, through its civil engineering consultants Fay, Spofford and Thorndike ("FS&T"). Broadcast Signal Lab provides municipal wireless consulting services to scores of New England communities.

This technical review is focused on the Applicant's claims that specifically relate to WCF's, but not to site development in general. It is presumed that FS&T are providing the Board with the necessary input on the routine siting issues relevant to this application.

Facilities

The proposed facilities would be co-located on existing WCF towers occupied by licensed personal wireless service providers as they are defined under the Telecommunications Act of 1996. The proposed facilities do not specifically provide personal wireless services to the public. This presents an interesting series of challenges in evaluating the applications against the zoning bylaw and federal regulations.

- Are the proposed facilities eligible under the bylaw?
- Do the proposed facilities enjoy federal protections with which the community must comply?

Relationships and Terms

FiberTower Corporation appears to be the applicant that would be the beneficiary of the Special Permits, if granted. TRM is a site acquisition company representing FiberTower in this proceeding.

FiberTower provides private services to wireless companies. It holds licenses in Massachusetts for “common carrier fixed point to point microwave” services. It does not hold any licenses for Cellular, PCS, or Enhanced Specialized Mobile Radio services.

The Billerica Zoning Bylaw regulates WCF's and defines them this way:

5.G.II. Definitions:

22. WIRELESS COMMUNICATION FACILITIES - “WCF”: A facility for the provision of wireless communication service, including, but not limited to, towers, monopoles, antennas, antennas attached to existing structures and associated accessory structures, if any, which facilitate the provision of wireless communication service.

23. WIRELESS COMMUNICATION SERVICES – “WCS”: The provision of the following types of services: Cellular Telephone, Personal Communications and Enhanced Specialized Mobile Radio Service as described in the Telecommunication Act of 1996.

The WCS definition is just a subset of the entire class of services that are protected under the Telecommunications Act of 1996 (“TCA”) as “Personal Wireless Services.”¹ FCC licensees that qualify for the WCS designation are companies such as Cingular Wireless, Verizon Wireless, Omnipoint (d.b.a. T-Mobile), and Sprint. Nextel has merged with Sprint and AT&T Wireless has merged with Cingular Wireless. Some smaller companies operate Specialized Mobile Radio Services in the area that may or may not qualify as Personal Wireless Services under the bylaw or under the corresponding definitions in the TCA.

¹ The TCA protects Commercial Mobile Radio Services, in which the services mentioned in the bylaw are included— Cellular, PCS and ESMR. However, the TCA also includes other services not relevant to this discussion, such as “unlicensed wireless services.” This minor misalignment between the Zoning Bylaw’s definition of Wireless Communications and that of the TCA is a potential source of regulatory conflict if these overlooked services were to rise to the level of needing permits for facilities. Presently such services are generally below the planning radar.

Process

Personal Wireless Services provide *commercial services*² that are available to the general public. Their WCF's provide the link between the subscriber's mobile phone or computing device and the provider's network. It has become customary for the wireless service providers to link their WCF's with their networks using *land lines*. In other words, if a caller places a call on his mobile phone, the call is linked to a nearby cell site that contains a WCF. The WCF connects the caller to the provider's network via cable or fiber optic link that connects back to the wireless provider's regional switching center.

Using land lines to connect large volumes of cell-phone calls back to the network is a common way to make the link. (Figure below) In some instances, microwave radio links are installed to bypass the land line connections. If a particular WCF has the space on its tower and the elevation necessary to link to another site, these links can be a cost effective means of bypassing land lines and routing calls within a provider's network.

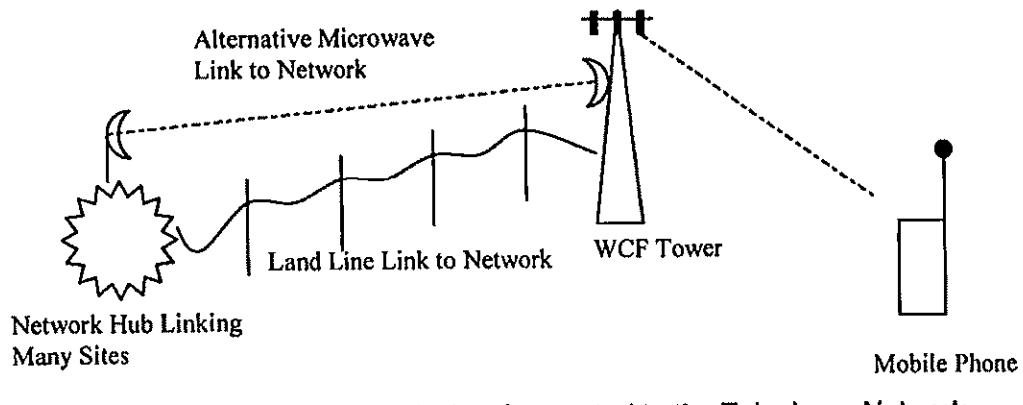
Rather than having each wireless provider install its own private links, FiberTower increases the efficiency of the radio links by offering its services to any provider at the site. These links are licensed under FCC regulations, 47 CFR 101, as "common carrier fixed point to point microwave" services. Historically, a telephone company or a wireless company would install and license its own links. Because these companies were common carriers³ in the eyes of the FCC, they were entitled to use this spectrum for these links.

The FCC recognized that independent companies might provide these links on behalf of the common carrier telephone companies. 47 CFR 101.135 permits companies such as FiberTower to license these frequencies as long as they use them in the manner for which a common carrier is entitled to use them. This means that FiberTower is not a common carrier, but a private carrier eligible to use the frequencies for the benefit of the common carriers.

² 47 CFR Sec. 20.3 Definitions.

Commercial mobile radio service. A mobile service that is:

(a)(1) provided for profit, i.e., with the intent of receiving compensation or monetary gain;
(2) An interconnected service [ed. note- interconnected with the US telephone network]; and
(3) Available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or
(b) The functional equivalent of such a mobile service described in paragraph (a) of this section.



Manner in Which Mobile Calls Are Connected to the Telephone Network

What Is Proposed

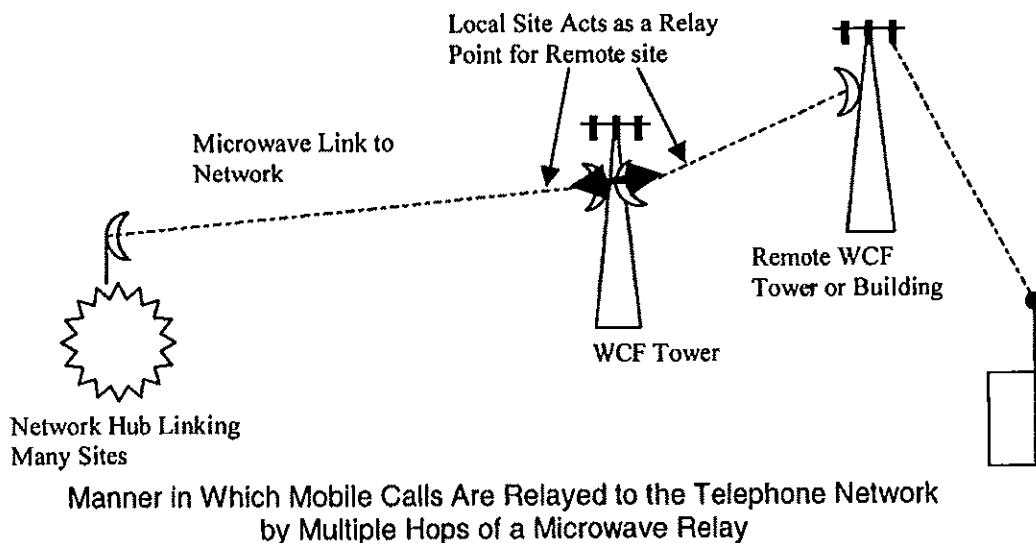
FiberTower would install radio equipment at the tower sites and dish antennas on the towers. The FiberTower installations would be a part of the "facility for the provision of wireless communication services." This would make them components of existing WCF's at the sites. Arguably, because the FiberTower installations would have no purpose without the presence of the wireless carriers at the sites, it would be sensible to tie the existing Special Permits for the WCF's with permissions for the FiberTower links.

FiberTower proposes to install dishes ranging from one to four feet in diameter on the towers. Two dishes are proposed at each site.

It may be inferred from this configuration that FiberTower's use of the sites is not limited to backhauling telephone traffic solely from the site. That would require one dish. The additional dish antennas might be used to pick up communications from other sites which are then relayed to the same destination as the locally-originated traffic. (Figure below) While it was suggested above that there would be no purpose for the FiberTower links without WCS providers at the site, this relay configuration is a potential exception. It is imaginable that the WCS providers could vacate a tower and FiberTower could still have a use for the tower as a relay point. The Board may wish to consider this possibility, as it will color how it decides to approve these FiberTower installations, if an approval is forthcoming. It will also set the tone for possible future

³ 47 CFR Sec. 20.3 Definitions. Communication common carrier. Any person engaged in rendering

applications from FiberTower or other similar companies to place relays at locations where there are no WCS facilities.



Fundamentally the question is, if a tower is no longer needed as a cell site for communicating with local mobile phones, should it be allowed to remain standing solely for use as a relay point for call traffic from other cell sites? Issuing separate special permits for the FiberTower installations would provide authorization for the facilities independent of the cessation of use of the sites by wireless carriers.⁴

Bylaw Section XX. Modifications states,

1. Any proposed change in technology for an existing WCS, adjusted power input or output change, extension in the height, addition of cells, antennas, panels or carriers, or construction or modification of a new or replacement WCF shall require a new application for a special permit to Section 13 of Billerica's zoning bylaws.

It may be helpful to consider the FiberTower proposal in the same manner that any other proposal to modify an existing WCS installation might be considered. For instance, under an existing Special Permit a carrier might propose to add a generator, build a new equipment shed, add an antenna, or the like, and seek approval for such a change. The change might not be one that

communication service for hire to the public.

⁴ A counterargument to this possibility would be that there is no reason for a carrier to leave such towers. It is not necessary to have a crystal ball on the issue, but only to be sure that in the worst case, a tower with nothing but FiberTower equipment on it, the Town's expectations are clearly stated.

provides more coverage, but one that improves the quality, reliability, cost or other characteristics of the permittee's WCS.

A new application would be required for such a change, but if it were a WCS provider filing the application it is likely the new Special Permit would be linked to or replace the prior Special Permit. Does a WCS provider at any of the sites plan to take advantage of the FiberTower installation? Have the WCS providers submitted official documentation to this effect for the record?

Similarly, it may be useful to know whether the proposal is intended to enable the transport of communications from other cell sites. In this regard, the Town may desire to have the direct input of the WCS providers who will benefit from the service or even to have them be the ones applying for (or co-applying for) the Special Permits.

On the other hand, if the proposed installations are considered acceptable under the bylaw in their own right, the Board may prefer to treat the FiberTower applications as entirely independent of any qualified WCS provider's needs and permit criteria.

Coverage

The bylaw has coverage criteria in its approval process:

Approval Criterion #2

Is the applicant not already providing adequate coverage or unable to provide adequate coverage in the locus of the proposed WCF?

Approval Criterion #8

Is there a substantial gap in telecommunications service and is the proposal the least intrusive means to fill the gap?

The proposed FiberTower installations do nothing to increase the coverage of WCS's in Billerica. As such, they are not necessary to enable the provision of wireless services, both under the bylaw and under the TCA. A denial of the applications would not appear to be a prohibition of the provision of wireless service under the TCA.

However, to the degree that the installations are compatible with and compliant with the objectives of the bylaw, they are reasonable means for supporting the operation of the wireless services operating at the sites.

Co-Location

The Purpose of the bylaw is to minimize adverse impacts:

“These regulations seek to minimize the number and height of associated facilities, provide standards and criteria regulating siting, promote the sharing of facilities...”

Facility sharing is promoted through “co-location:”

XVI. CO-LOCATION 1. Licensed carriers shall share WCF sites where feasible and appropriate, thereby reducing the number of WCFs that are stand-alone facilities.

Certainly, using existing towers to further facilitate the operations of WCS providers is reasonable in that it minimizes the number of facilities (that is, towers) and supports the sharing principle.

Interference

The bylaw has an interference clause. Localities must understand that the courts have determined that the regulation of radio frequency interference issues is pre-empted at the federal level. In our experience however, these facilities present no interference risks in the neighborhood. Interference to other users of the microwave link spectrum is managed by the coordination process described in the applications.

Emissions

The radio frequency emissions of each proposed FiberTower facility, will be compliant with federal and state requirements by a large margin, as clearly demonstrated in the reports by Don Haes, with whose conclusions we agree. The margin is so large, that the existing emissions from other facilities at or near the site are the dominant feature in the RF environment on the ground, and these emissions have previously been demonstrated as being compliant with federal standards individually and in the aggregate. No further assessment or monitoring of the FiberTower emissions will be necessary.

Federal Protections

As mentioned above, the absence of FiberTower facilities presently is not precluding the provision of wireless service in Billerica. Consequently, a denial of these applications would not be prohibitive of the provision of Wireless Communication Service. It would appear that there is no role for the TCA "prohibition of service" clause in this case.

The applications also contain an ominous blurb from the FiberTower website about the OTARD rules. OTARD stands for over the air reception devices. Congress mandated that the FCC create protections for certain communications services. They are codified in 47 C.F.R. Section 1.4000. By including this document, FiberTower takes the posture that it has a federal preemption for the placement of these antennas. In the absence of credible and cogent analysis supporting this claim, Broadcast Signal Lab strongly disagrees. If the Applicant does not intend to invoke the OTARD rules, this material which appears to be misinformation, has no place in the application. In the event of a denial, the Town should vigorously defend against the application of the OTARD rule.⁵

Site Discrepancies

Some finer details of the applications have discrepancies.

41 Sullivan Road

The type of tower in the elevation drawing is different than that shown in the photograph. While it is not unusual to see a generic drawing used for permit application purposes, it is indicative of two things. First, there may not have been any structural analysis done by tower-qualified structural engineers to determine compliance with Massachusetts Building Code and the TIA 222 standard that the Code references, *Structural Standards for Steel Antenna Towers and Antenna Supporting Structures*. This should not be overlooked by the building inspector.

Second, the generic tower drawing disagrees with the scale next to it. If the proposed antennas are proportionally in the right elevation on the drawing, their position in the photo simulation may be incorrect.

⁵ Appended to this report is a discussion of the OTARD situation and Common Carrier antennas. This is not legal advice. Rather, it is a brief overview of the background that, if it were to become a point of contention, should be threshed out with appropriate legal advice.

20 Republic Road

Actual tower height is not indicated on the elevation drawing. Scaling the height, the tower is 123 feet tall. The proposed antenna is at 125 feet on the tower, but below the top of the tower. What tower height is in the initial permit for the structure? What is the actual tower height?

300 Concord Road

Total tower height on the elevation drawing does not scale correctly; but from the top, down, the antenna placements seem to agree with the scale. The structure depicted is not the same as in the photograph. See the remark above about Sullivan Road.

55R High Street

Tower height on the elevation drawing scales to 120 feet, although the height is not indicated. Antenna height indicated as being at 119 feet, but below the top set of antennas. The actual height of the tower and the permitted height of the tower should be verified.

Conclusion

In general, the use of microwave radio links for telecommunication backhauls is reasonable. The emissions will be compliant with applicable safety standards.

There are implications in considering permitting the installation of the proposed antennas and systems. These implications include

- whether the installations should be entitled to relay signals from other sites,
- whether the installations should be permitted even if all WCS providers at a particular site cease to use the site or fail to use the FiberTower service at the site,
- whether bona fide WCS providers should be active in the application process or even parties to the applications.

David Maxson

Municipal Wireless Consultant

April 17, 2006

Appendix
Layman's Overview of the OTARD Question

The FiberTower OTARD blurb attached to the applications attempts to cover the basic requirements of OTARD, claiming the following conditions apply:

Antennas one meter or less in diameter;

Transmission and/or reception of commercial, non-broadcast fixed wireless signals;

Property controlled by the user;

No credible safety or historical objective in preventing their installation.

Indeed, these criteria cited by FiberTower are rooted in OTARD regulations. Their applicability to FiberTower's installations is questionable. The FCC July 2005 Information Sheet on the subject summarizes the antenna requirements this way:

Q: What types of antennas are covered by the rule?

A: The rule applies to the following types of antennas:

(1) A "dish" antenna that is one meter (39.37") or less in diameter (or any size dish if located in Alaska) and is designed to receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals via satellite.

(2) An antenna that is one meter or less in diameter or diagonal measurement and is designed to receive video programming services via broadband radio service (wireless cable) or to receive or transmit fixed wireless signals other than via satellite.

(3) An antenna that is designed to receive local television broadcast signals. Masts higher than 12 feet above the roofline may be subject to local permitting requirements.

Item 2) above applies to "fixed wireless signals," which FiberTower claims applies to their services. The FCC Information Sheet says:

Q: What are "fixed wireless signals"?

A: "Fixed wireless signals" are any commercial non-broadcast communications signals transmitted via wireless technology to and/or from a fixed customer location. Examples include wireless signals used to provide telephone service or high-speed Internet access to a fixed location. This definition does not include, among other things, AM/FM radio, amateur ("HAM") radio (but see 47 C.F.R. §97.15), Citizens Band ("CB") radio, and Digital Audio Radio Services ("DARS") signals.

The crux of the definition is in what the FCC means by the word “commercial.” The FCC distinguishes between services that are common carrier, private, and commercial, among others. In general use, the term “commercial” seems to apply to a for-profit enterprise making the service available to the general public, or effectively so. On first blush, the service FiberTower provides is distinctly private and internal to the needs of an elite group of parties called common carriers. It is the common carriers—the WCS providers—that provide the commercial services with their antennas. The FiberTower system does not “provide telephone service.” FiberTower would not be providing a commercial service under OTARD. The intent of OTARD, which was included in the TCA, was related to consumer ability to receive broadcasts:

TCA SEC. 207. RESTRICTIONS ON OVER-THE-AIR RECEPTION DEVICES.

Within 180 days after the date of enactment of this Act, the Commission shall, pursuant to section 303 of the Communications Act of 1934, promulgate regulations to prohibit restrictions that impair a viewer’s ability to receive video programming services through devices designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution service, or direct broadcast satellite services.

The FCC further clarifies in its Information Sheet that relay points do not qualify under OTARD. If FiberTower uses the sites for relay purposes, it is certain that the relay antennas would not be covered:

Q: Does the rule apply to hub or relay antennas?

A: The rule applies to “customer-end antennas” which are antennas placed at a customer location for the purpose of providing service to customers at that location. The rule does not cover antennas used to transmit signals to and/or receive signals from multiple customer locations.

Without further documentation from credible legal experts on the OTARD matter, it is reasonable to disregard this implicit threat that the FiberTower dishes have federal rights to be installed regardless of the town’s decision. In the event of a denial, the Town should vigorously defend against the application of the OTARD rule.

CERTIFICATE OF DECISION ON SPECIAL PERMIT APPLICATION

2/3rds vote of the Planning Board

Edward McLaughlin

Justine W. Gau

Veronica Mazzoni

Richard J. Baralshi

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

8/14, 2006

Then personally appeared Edward McLaughlin one of the above named members of the Planning Board of the Town of Billerica, Massachusetts, and acknowledged the foregoing instrument to be the free act and deed of said Planning Board, before me.

Margaret Ryan Notary Public
Massachusetts Notary Public
My Commission Expires JUN 14
Commonwealth of Massachusetts
My Commission Expires
July 18, 2008

TOWN CLERK CERTIFICATION

I, Shirley E. Schult, Town Clerk of the Town of Billerica, Massachusetts hereby certify that the Certificate of Special Permit by the Billerica Planning Board has been received and recorded at this office and no appeal was received during the twenty days next after such receipt and recording of such notice.

Shirley E. Schult
Town Clerk

September 7, 2006
Date
END OF DOCUMENT

Richard P. Howe Jr.

**BILLERICA PLANNING BOARD**

Town Hall
365 Boston Road Billerica, MA 01821
978-671-0962
978-670-9448 Fax

PLANNING BOARD

TUE - 4 PM 1:58

TOWN CLERK
BILLERICA

Paul A. Marasco, *Chairman*
Robert W. Casey, *Vice Chairman*
Marti Mahoney, *Secretary*

Edward R. McLaughlin
Richard J. Baraldi Sr.
Vincent D. MacDonald
Justin McCarthy

**CERTIFICATE OF DECISION
SPECIAL PERMIT**

300 Concord Road - Clearwire

APPLICANT

Sprint c/o Clearwire Wireless LLC
960 Turnpike Street
Suite 28
Canton, MA 02021



2010 00013284
Bk: 23848 Pg: 30 Page: 1 of 14
Recorded: 03/31/2010 02:00 PM

PERMIT SOUGHT

10086-243

The applicant seeks a Special Permit from the Billerica Planning Board pursuant to Section 5.G of the Billerica Zoning By-Laws to install an array of three panel antennas on the existing Sprint mount at the top of the tower and three point to point backhaul antennas on the same mount. They will also install an equipment cabinet within the existing compound for telecommunication to be located at 300 Concord Road, (Plate 86, Parcels 108-5). The subject plans are entitled "Concord Rd, Billerica; MA-BOS5452a/BS03XC142" contain 11 sheets and were revised through 12/08/09.

PROCEDURE

A public hearing was opened at the Billerica Town Hall, 365 Boston Road, Billerica, MA. on February 8, 2010. Advertisement appeared in the Billerica Minuteman on December 24, 2009 and December 31, 2009. A notice of the hearing was posted prior to the hearing. Notices were sent to interested parties as specified in General Laws, Chapter 40A, Section 11, in accordance with certification from the Assessor's Office setting forth the names and addresses of such parties. Notices were also sent to the planning boards of abutting towns.

300 Concord/Clearwire

PLANNING BOARD
FINDINGS

The Planning Board finds that the Site Plan and associated application documentation meet the requirements in of the Zoning By-Law (ZBL), if the conditions herein are met, for the following reasons:

1. The SPGA finds the project is in compliance with the purpose, intent and criteria contained in Sections 5.G and Section 13 of the ZBL.
2. The applicant is not already providing adequate coverage or is unable to provide adequate coverage as defined within the contents of the ZBL.
3. The applicant is using the most preferred site available, see Section 5.G.III.3. of the ZBL
4. The proposed wireless communications services and facility minimizes and does not substantially adversely impact any historic resources, scenic views, residential property values, and natural or man made resources.
5. The applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the facilities, including but not limited to, the aesthetic and auditory concerns of the residential neighbors.
6. The applicant is locating in available space on a previously approved monopole or lattice tower within Billerica.
7. The facility will comply with the appropriate FCC regulations regarding emissions and arrangements for monitoring said emissions.
8. There is a substantial gap in telecommunications service and the proposal is the least intrusive means to fill the gap.

VOTE

At their regular scheduled meeting on February 8, 2010 the Planning Board voted to approve the Site Plan Special Permit with conditions by a vote of 6 in favor, 0 opposed, and 1 abstaining.

CONDITIONS

1. All revisions to the submitted plans reflecting all conditions outlined herein shall be made prior to building permit pre-application sign off. The Director of Planning shall verify that all such revisions have been made before building permit pre-application sign off. In addition any condition which can be satisfied prior to construction shall be.
2. All construction and installation shall in all respects conform to the Zoning By-Law unless otherwise granted relief by the Board of Appeal or Planning Board as applicable.
3. Failure to comply with all conditions herein shall be deemed cause to revoke or modify this approval.
4. This Site Plan Special permit shall not take effect until a copy of the decision has been recorded in the Registry of Deeds within 90 days of filing of this decision with the Town Clerk. The copy of this decision shall bear the certification of the Town Clerk that 20 days have elapsed after the decision has been filed in the office of the Town Clerk and no appeal has been filed, or if filed, such appeal has been dismissed or denied.
5. This Special Permit shall be used within two (2) years of the filing of this decision with the Town Clerk or shall be null and void.
6. There shall be no new dumpsters associated with this installation.
7. Any additional lighting shall be shielded from adjacent properties and shall meet the requirements of Section 5.G. IX of the Zoning By-Law.
8. The applicant shall provide the name and phone number of the Facilities Manager to be contacted by the abutters in case of any problem which might occur during installation.
9. This approval is contingent on the ongoing compliance of Concord Opco LLCsprint to their previously approved special permit date-stamped by the Town Clerk on February 27, 1998 and signed by the Board of Appeal on Feb.18, 1998.
10. The plans shall satisfy the comments of the BROADCAST Signal Lab in their correspondence to the Planning Board received by the Planning board on Jan. 06, 2010 (Attachment 1).
11. The applicant shall document their obligation to remove their equipment from the tower if they abandon its use.

12. The noise generated at the facility shall not exceed the standards described under Section 5.G. XIV of the Zoning By Law.

CERTIFICATE OF DECISION ON SPECIAL PERMIT APPLICATION

2/3rds vote of the Planning Board

Mark Mahan Paul Marasco
Vernon Masland Tom Pursey
Richard Baraldi Shirley Schultz

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

March 4, 2010

Then personally appeared Richard J. Baraldi one of the above named members of the Planning Board of the Town of Billerica, Massachusetts, and acknowledged the foregoing instrument to be the free act and deed of said Planning Board, before me.

Donna McCoy Notary Public
My Commission Expires: July 15, 2016
DONNA MCCOY Notary Public
Commonwealth of Massachusetts
My Commission Expires
July 15, 2016

TOWN CLERK CERTIFICATION

I, Shirley E. Schultz, Town Clerk of the Town of Billerica, Massachusetts hereby certify that the Certificate of Special Permit by the Billerica Planning Board has been received and recorded at this office and no appeal was received during the twenty days next after such receipt and recording of such notice.

Shirley E. Schultz March 29, 2010
Town Clerk Date

Broadcast Signal Lab

Technical Review of Application
By Clearwire
For Additions to Wireless Facilities at
300 Concord Road, Billerica

Introduction

Broadcast Signal Lab was engaged by the Town of Billerica Planning Board to review the application by Clearwire US, LLC, ("Clearwire") to install a new Clearwire wireless facility at 300 Concord Road, Billerica, Massachusetts ("Site").

The 180-foot tall tower presently supports the communications equipment of several wireless service providers. (Additional dish antennas and equipment employed by FiberTower support the operations of one or more wireless facilities at the Site.). Clearwire would add outdoor equipment to the existing Sprint equipment ground frame within the fenced compound. Clearwire would install an antenna array of three wireless panel antennas on the existing Sprint mount at the top of the tower. In addition, Clearwire would install three point-to-point "backhaul" antennas on the same mount (2 to 2.5-ft diameter each). The backhaul antennas provide direct radio links with other tower sites and are not used to connect to subscriber devices. The panel antennas are the link between the subscriber and the cell site.

Wireless Services Offered

The present application relates to Clearwire's service offering in the Broadband Radio Service ("BRS") spectrum. BRS is, in this case, frequencies (channels) in the radio spectrum near to the more familiar service called PCS (Personal Communications Service). (The other carriers operating at the site include those that offer service in the PCS spectrum; Sprint utilizes PCS spectrum). The proposed BRS installation operates on frequency spectrum (~2600 MHz) that is somewhat higher in frequency than the PCS spectrum (1900 MHz). It has similar operating characteristics to PCS, although with all factors being equal, the BRS communications will have moderately less coverage than an equivalent PCS system due to increased foliage loss and decreased antenna area.

BILLERICA PLANNING BOARD

JAN 06 2010

RECEIVED

Attachment 1

Coverage

The coverage shown on the single-color plots in the application (Tab 6) is at an unspecified signal level defined by the applicant as "reliable coverage." It is reassuring that the coverage shown is consistent with recent submissions of coverage from similar services operating at the Site, although the overall footprint of the proposed Clearwire coverage appears to be depicted at a level that is of the lowest general quality (possibly "outdoor" coverage, which is the weakest of several coverage thresholds, and therefore has the largest coverage footprint of the several thresholds, such as in-vehicle and in-building coverage). This is expected for a company that is new to the market, but it suggests that as their network grows, and the desire for more robust service increases, Clearwire, like many other carriers before it, could come back later with a redefinition of its coverage footprint from this site to show smaller, more robust coverage areas that will require additional facilities where the present maps suggest there is no need for.

Ordinarily we might request details on the coverage analysis, including a definition of "coverage" and a rationalization of the chosen threshold. However, since Clearwire is new to the market, and Billerica is presently a developing greenfield region for Clearwire service, it stands to reason that co-locating at an existing multicarrier wireless facility in Billerica would enable Clearwire to competitively offer personal wireless services in Billerica utilizing many of the same sites as the other providers who preceded Clearwire.

Facility

We saw no structural analysis of the proposed installation. However, the terms of the redacted lease and the state building code both require the installation to meet structural standards. It may be sufficient to leave structural compliance enforcement to the code enforcement officer.

The proposed antennas do not create any technical conditions that would alter the safety of the entire facility at the Site. Based on the characteristics of the proposed facility changes, there will be no alteration in the facility's compliance with FCC limitations of Radio Frequency Emissions. The applicant provided an emissions report that corroborates what is obvious to the experienced analyst. The aggregated emissions of all Clearwire antennas proposed for the Site, assuming the extreme case of all antennas pointing directly to the ground, results in an exposure condition that is below 5% of the FCC thresholds for the general population. Under 47 CFR 1.1307 and the FCC Office of Engineering and Technology Bulletin 65, any facility that generates less than 5% of the allowable exposure in a multi-facility site is not obligated to remedy any overexposure

condition caused by other parties at the Site. Therefore, there is no need to perform a simultaneous analysis of all emitters at the site. Analysis has been performed on a case-by-case basis as each carrier has been added to the Site. To date, no carrier on the site contributes more than 5% of the limit to publicly accessible areas. (In reality, the extreme case analysis that assumes antennas are pointed directly at the ground generally overestimate potential exposures about 100-fold; thus, the extreme case estimates showing less than 5% per provider are more realistically less than 0.05% per carrier.) The emissions of the proposed facility and the existing facilities are so feeble that there is no potential for exceeding the FCC criteria.

The antennas are passive and generate no noise. The alteration in appearance of the tower results primarily from the new antennas, and particularly from the addition of the three backhaul antennas, which are more distinctive in appearance than the three panel antennas. However, other backhaul antennas already occupy the tower, and each and every antenna is relatively small with respect to the overall proportions of the tower (as proposed, two to two and a half feet diameter).

The noise analysis indicates that the ground facility will be compliant with the Billerica requirements within the industrial area in which the facility is embedded. The noise produced by the proposed outdoor Clearwire equipment will be insignificant. Like the radio emissions analysis, the noise analysis over-predicts the extreme case by ignoring the noise losses caused by terrain, structures and vegetation and only counts the losses due to free space distance. The actual noise level the proposed facility will produce at the property lines will be even less than predicted in the noise study.

Local Preference

Section 5.G.III.3 of the Billerica Zoning Bylaw indicates the use of an existing wireless facility for the addition of a new facility is the most preferred approach. The present application conforms to this preference.

Discussion of Applicant

The relationship between Clearwire and Sprint is a complex one. Sprint is reportedly a majority owner of Clearwire (although the details are more intricate). Sprint holds a lease on the Site with Concord Opco, LLC which controls the Site. In the lease exhibits the site lease between Sprint and Concord Opco indicates Sprint may assign or sublease its interest in the Site to certain types of affiliates (lease p.12). Nevertheless, Sprint signed a lease addendum granting Sprint the right

to sublease its leased space in return for a rent increase. This arrangement makes it clear that Clearwire is considered by all parties to be a separate entity from Sprint.

Initially, the applicant filed with the building inspector a letter of intent indicating that "Clearwireless, LLC, on behalf of Sprint-Nextel is seeking to modify an existing wireless facility..." at the Site. In the most favorable light, taking Sprint and Clearwire as one entity would still be subject to the bylaw's modification rule. Section 5.G.XX of the bylaw indicates that modifications to wireless facilities require new special permits. In light of the distinction in ownership of Clearwire versus Sprint, and of the sublessee's role taken by Clearwire on Sprint's space, we suggest that Clearwire is an applicant independent of Sprint.

As an applicant independent of Sprint, Clearwire is not directly a lessee of Concord Opco. To the extent that the Board has an interest in assuring an applicant has the right to locate its facility at a site, the Board might be interested in seeing the sublease agreement between Sprint and Clearwire.

On the record are the lease between Sprint and Concord Opco, a lease addendum between Sprint and Concord Opco permitting subleasing in some manner, and a letter from Concord Opco's agent indicating that Clearwire has landowner permission to move forward with the permit application. One missing link, whose importance only the Board can determine, is formal permission from Sprint to its sublessee Clearwire to develop and permit the Clearwire facility on Sprint space at the Site.

We also note some ambiguity in the formal identification of the applicant. The December 8, 2009 application document cover labels Clear Wireless LLC as the applicant. Form W, the Board's application form, is marked by the applicant as "Sprint c/o Clear Wireless, LLC." Also, the applicant's narrative (November 23, 2009) included in the application indicates the applicant is "Sprint Spectrum Realty Company c/o Clear Wireless LLC ("Clearwire")." We suggest that Clear Wireless, LLC is, by itself, the applicant, and Sprint has nothing to do with the application other than acting as sublessor to Clearwire. Resolving this ambiguity at this time may prevent issues in the future if the relationship between Clearwire and Sprint changes, or if other parties become involved in the Sprint space at the Site.

Complicating matters, it is customary for a local FCC spectrum license to be held by a subsidiary license holding company, which in this case is NSAC, LLC of Washington, D.C. as shown on the applicant's copy of a license confirmation from the FCC website. The licensee contact filed with the FCC is Clearwire Corporation of Washington, D.C. In contrast, the applicant in the current matter is another company, Clear Wireless, LLC. It is not uncommon for a local, regional or national operating company to be handling wireless infrastructure matters while a parent company holds both the licensee companies and the operating companies. It would be helpful to be certain which company should be receiving the special permit, if one is granted.

We note, however, that while there is satisfactory approval from the Site owner enabling Clear Wireless to pursue permits, there is no corresponding documentation indicating that Centerline is authorized to act as Clearwire agent in this matter.

Below we insert comments on the various Criteria of the Zoning Bylaw.

III. Siting Criteria

Existing WCF Site; location is most preferred.

IV. Setbacks

OK

V. Fall Zone

Proposal does not increase fall zone calculation of presently installed and permitted facilities on Site.

VI. Height Criteria

Proposal maintains 180-foot height limit in Industrial district; does not increase current height.

VII. Camouflage

Installation on existing wireless tower does not increase height or breadth of existing facilities.

VIII. Security

Existing security fencing.

IX. Lighting

X. Signage

XI. Parking

No new lighting, signage or parking proposed. (Applicant indicates ID sign will be posted as required)

XII. Interference

Interference is regulated by the FCC which pre-empts local interference regulation. Nevertheless, facility as proposed is inherently compatible to the extent practicable, and applicant has a duty as an FCC licensee to resolve any interference that it causes.

XIII. Emissions

Compliant with FCC requirements as established by the Act.

XIV. Noise

Noise study confirms compliance.

XV. Environmental

We take a slightly different interpretation than the applicant, but arrive at same conclusion that this item is not applicable. An Environmental Assessment ("EA") is only required if a facility as proposed will not comply with one or more NEPA criteria. Applicant anticipates no NEPA non-compliance. Thus, no EA is required. Nevertheless, all FCC licensees are obliged to comply with NEPA, and the use of an existing structure provides no exemption that we are aware of.

However, because the facility is already approved and occupied by licensees, it is reasonable to assume that there are no flaws in NEPA compliance on site, unless something new has come up relating to NEPA issues since the last review at the Site. The Board should decide whether there is cause for the applicant to have a NEPA checklist (not an EA) filled out by a qualified professional to verify there are no new or old NEPA issues to contend with.

XVI. Co-Location

Applicant employs this most-favored approach by utilizing existing WCF tower.

XVII. Aesthetics

Board may review pictorial and verbal evidence submitted by applicant and/or by other interested parties pro or con.

XVIII. Cessation

Board should establish expiration of permit (up to 20 years) and determine if removal bond is necessary.

XIX. Maintenance

XX. Modifications

These are forward-looking requirements of the bylaw.

XXI. Specifications

XXII. Application Specifications

We have sufficient information to perform our evaluation. Board may wish to review the Specifications to determine if any critical information is missing.¹

XXIII. APPROVAL CRITERIA

1. Special permit may be granted under this section only if the SPGA finds the project is in compliance with the purpose, intent and criteria contained in this section 5.C.1.j.(2) (c) and section 13 of this Bylaw. In addition, the SPGA shall make the applicable findings before granting the special permit as follows:
2. That the applicant is not already providing adequate coverage or is unable to provide adequate coverage as defined within the contents of this By-law.

New network with developing coverage.

3. That the applicant is using the most preferred site available, see Section 5.C.1.j.(2) (c).III.3.

Co-location on existing wireless facility structure is a desired method.

Also note that a new ruling by the FCC (Nov 18, 2009) applies a decision "shot clock" to wireless facility applications. FCC defines "collocation" as the installation of a wireless facility on an existing structure whether or not there is another wireless facility at the site. In contrast, the Billerica zoning bylaw defines "co-location" as the use of a single structure by more than one carrier. The bylaw intent is to encourage wireless facilities to utilize sites already developed for wireless facilities before creating new sites. The FCC intent is to require permit applications for facilities going on existing structures to be decided within 90 days of application². In the present case, both collocation and co-location apply to the application.

4. That the proposed wireless communications services and facility minimizes and does not substantially adversely impact any historic resources, scenic views, residential property values, and natural or man made resources. The SPGA shall consider the cumulative impact of all related applications in the same geographic area.

Co-location on existing wireless facility structure, sharing same height as an existing special permittee.

5. That the applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the facilities, including but not limited to, the aesthetic and auditory concerns of the residential neighborhoods.

Board must identify such concerns, if any. Photo simulations and noise analysis provided by applicant.

6. That the applicant has agreed to rent or lease available space on any tower it controls within Billerica or its contiguous towns, when appropriate and applicable, as determined by SPGA and/or supportive documentation submitted by the applicant, under the terms of a fair-market lease, without discrimination to other providers to the extent it is technically feasible.

¹ In the future, the Board should be aware that the FCC ruling of November 18, 2009 gives boards 30 days from receipt of application to determine if the application is complete. If determined to be incomplete within that period, the 90/150 day decision shot-clock can be paused pending completion; otherwise, the shot clock continues to run unless extended by mutual agreement of board and applicant.

² For new tower construction, which does not apply in the present matter, the FCC permits a 150-day decision clock to run. Advice of counsel should be sought to clarify interpretations of the FCC ruling.

Applicant is a subtenant on existing tower space leased from a third-party who leases from the property owner. Applicant has no authority to make space available to additional co-locators. tower.

7. That the facility shall comply with the appropriate FCC regulations regarding emissions and arrangements for monitoring said emissions.

Facility design is inherently compliant. No monitoring is necessary to maintain FCC compliance.

8. That there is a substantial gap in telecommunications service and the proposal is the least intrusive means to fill the gap.

New network with developing coverage. New antenna array added to tower with other existing arrays.

9. If a special permit is granted, in addition to such terms and conditions as may be authorized by Section 5.C.1.j.(2) (c) of this Bylaw the SPGA may impose such additional conditions and safeguards as public safety, welfare and convenience may require.

XXIV. DENIAL CRITERIA

1. Should the applicant substantially fail to meet any of the requirements set forth in Section 5.C.1.j.(2) (c).XXIII, and then the Special Permit shall be denied.
2. The SPGA shall deny a special permit to an applicant that has not demonstrated a good faith effort to provide for co-location if applicable and appropriate.

Not applicable. Co-location exists at Site.

3. A special permit shall not be denied if the denial of the special permit would unreasonably discriminate among providers of functionally equivalent services. Note that only "unreasonable" discrimination among providers is prohibited, and that the Federal Telecommunications Act of 1996 allows facilities that create different visual, aesthetic or safety concerns to be treated differently.

If a denial were imminent, the Board would have to consider whether one could expect there to be reasonable alternatives to the proposal. Nevertheless, the proposal is entirely consistent with previous applications at the Site, including the use of shared equipment space and shared antenna space with another permittee, thereby minimizing any increases in bulk or intensity of use at the Site. Advice of counsel is recommended in matters relating to the Act.

4. A special permit shall not be denied if the denial of the special permit would prohibit, or have the effect of prohibiting, the provision of personal wireless services within the town of Billerica. Note that applications to construct a WCF in an under-served area, if the service gap can be filled by less intrusive means, may still be denied. The SPGA shall not use this clause for granting of the special permit unless an independent assessment of the applicant's proposal is certified by an independent RF engineer, hired by the Town at the applicant's expense, stating that the applicant can not build a town-wide network without this site.

If specific reasons under the bylaw that apply strictly to the proposed facility were to prompt the denial of permission for the facility, the Billerica Zoning Bylaw appears to be sufficiently open to alternative locations and facility designs that it does not appear a denial would effectively prohibit the provision of wireless services.

Conclusion

In summary, the proposed antenna changes at the Site are technically beneficial, with no apparent technical detriments. The proposal would add a new wireless service to the Site, possibly as the last service that is practicable to add to the tower and/or Site. Visual characteristics may be evaluated by the Board based on the dimensional information and photosimulations.

David Maxson
Municipal Wireless Consultant
December 11, 2009

Middlesex North Registry of Deeds

Electronically Recorded Document

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Middlesex North Registry of Deeds

Richard P. Howe Jr., Register

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Lowell, Massachusetts 01852

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BILLERICA PLANNING BOARD

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TOWN CLERK
BILLERICA

David C. Saviano, *Chairman*
Vincent D. MacDonald, *Vice Chairman*
Marti Mahoney, *Secretary*
Edward R. McLaughlin
Robert W. Casey
David A. Kinsella
Patricia C. Flemming

**CERTIFICATE OF DECISION
SPECIAL PERMIT
AT&T LTE/4G Upgrades**

88
Page
17969
Book
55 High Street
300 Concord Road
41 Sullivan Road ✓
Crosby Hill Water Tank
20 Republic Road
Town Farm Lane

APPLICANT

New Cingular Wireless PCS, LLC d/b/a AT&T
c/o Terra search
157 Riverside Drive
Norwell, MA 02061

PERMIT SOUGHT

17969
Book
The applicant seeks a Special Permit from the Billerica Planning Board pursuant to Section 5.G of the Zoning By-Laws, to install and/or switch out several new antennas on existing structures at six locations (see Attachment 1, "Locations and Previous equipment). The six subject plans are entitled "at&t SITE NUMBER: MA 3115, SITE NAME: BILLERICA HIGH STREET", "at&t SITE NUMBER: MA 3098, SITE NAME: BILLERICA 2", "at&t SITE NUMBER: MA 3204, SITE NAME: BILLERICA SULLIVAN ROAD", "at&t SITE NUMBER: MA 3374, SITE NAME: BILLERICA CROSBY HILL", "at&t SITE NUMBER: MA 3450, SITE NAME: BILLERICA REPUBLIC ROAD" and "at&t SITE NUMBER: MA 3463, SITE NAME: BILLERICA TOWN FARM LANE" and were received by the Planning Board on June 22, 2011.

PROCEDURE

A public hearing was opened at the Billerica Town Hall, 365 Boston Road, Billerica, MA. on July 18, 2011. Advertisement appeared in the Billerica Minuteman on June 30, 20011 and July 7, 2011. A notice of the hearing was posted prior to the hearing. Notices were sent to interested parties as specified in General Laws, Chapter 40A, Section 11, in accordance with certification from the Assessor's Office setting forth the names and addresses of such parties. Notices were also sent to the planning boards of abutting towns.

PLANNING BOARD FINDINGS

The Planning Board finds that the Site Plan and associated application documentation meet the requirements in of the Zoning By-Law, if the conditions herein are met, for the following reasons:

1. The SPGA finds the project is in compliance with the purpose, intent and criteria contained in Sections 5.G and Section 13 of the Billerica Zoning By Law.
2. The applicant will improve their coverage adequacy as defined within the contents of the Billerica Zoning By-law.
3. The applicant is using a site prioritized under Section 5.G.III.3. of the Billerica Zoning By Law.
4. The proposed wireless communications services and facility minimizes and does not substantially adversely impact any historic resources, scenic views, residential property values, and natural or man made resources.
5. The applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the facilities, including but not limited to, the aesthetic and auditory concerns of the residential neighbors.
6. The applicant is co-locating on available space on an existing monopole and within an existing equipment area.
7. The facility will comply with the appropriate FCC regulations regarding emissions and arrangements for monitoring said emissions.
8. Absent these improvements there would be a substantial gap in telecommunications service. This proposal is the least intrusive means to fill the gap.

VOTE

At their regular scheduled meeting on July 18, 2011 the Planning Board voted to approve this Special Permit with conditions by a vote of 6 in favor, 0 opposed.

CONDITIONS

1. All revisions to the submitted plans and documentation reflecting all conditions outlined herein shall be made prior to building permit pre-application sign off. The Director of Planning shall be satisfied that all such revisions have been made.
2. All construction and installation shall in all respects conform to the Zoning By-Law unless otherwise granted relief by the Board of Appeal or Planning Board as applicable.
3. Failure to comply with all conditions herein shall be deemed cause to revoke or modify this approval.
4. This Site Plan Special permit shall not take effect until a copy of the decision has been recorded in the Registry of Deeds within 90 days of filing of this decision with the Town Clerk. The copy of this decision shall bear the certification of the Town Clerk that 20 days have elapsed after the decision has been filed in the office of the Town Clerk and no appeal has been filed, or if filed, such appeal has been dismissed or denied.
5. This Site Plan Special Permit shall be used within two (2) years of the filing of this decision with the Town Clerk or shall be null and void.
6. There shall be no new dumpsters associated with this installation.
7. Any additional lighting shall be shielded from adjacent properties and shall meet the requirements of Section 5.G. IX of the Zoning By Law.
8. The applicant shall provide the name and phone number of the Facilities Manager to be contacted by the abutters in case of any problem that might occur during installation.
9. The plans shall satisfy the comments of the attached review performed by Isotrope Wireless dated July 11, 2011 (Attachment 2).

10. The noise generated at the facility shall not exceed the standards spelled out under Section 5.G. XIV of the Zoning By Law.
11. There is no electrical generator approved as a part of this proposal.
12. Any change of equipment other than that described under this approval shall not be done unless approved as a modification to this decision.
13. Prior to pre-application signoff the applicant shall provide documentation from a structural engineer that the existing tower has the capacity to support the addition of the proposed antenna and associated equipment. If the proposal includes altering the structure to add capacity the documentation shall indicate that the modification can accommodate the new installation.
14. This approval is contingent on the ongoing compliance of AT&T or the facility owners to the specifications and conditions associated with all previously approved cell tower special permit and variance decisions for each site.

Locations and Previous equipment

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JUN 23 2011

BILLERICA PLANNING BOARD

300 Concord Road

This site was originally permitted and built with 9 antennas. 3 antenna were removed in 2006. This Install will install the 3 antenna back on the tower. The new loading will not be greater than what was originally permitted.

55 High Street

This site currently has 9 antenna installed. 3 antennas will be replaced.

41 Sullivan Road

This site was originally permitted and built with 12 antennas. 6 antennas were removed in 2006. This install will install 3 antennas back on the tower. The new loading will not be greater than what was originally permitted.

Crosby Hill Water Tank – Boston Road

This site currently has 9 antenna installed. 3 antennas will be replaced.

20 Republic Road

This site was originally permitted and built with 12 antennas. 6 antennas were removed in 2006. This install will install 3 antennas back on the tower. The new loading will not be greater than what was originally permitted.

Town Farm Lane

This site was originally permitted and built with 12 antennas. 6 antennas were removed in 2006. This install will install 3 antenna back on the tower. The new loading will not be greater than what was originally permitted.

All sites currently have updated structural's being performed on them. These structurals will be submitted either before the hearing or with the building permit application. As all have been done before and all had previous passing structurals, no issues are anticipated.

In addition, there is not any equipment being installed outdoors at each site that emits noise.



Thinking outside the sphere

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JUL 11 2011

BILLERICA PLANNING BOARD

Memorandum

To: Billerica Planning Board, David C. Saviano, Chairman

From: David Maxson, WCP®

Re: AT&T Application for six site upgrades

July 11, 2011

I have reviewed the combined application by New Cingular Wireless ("AT&T") received by the Billerica Planning Board on June 22, 2011. The applicant proposes to upgrade six existing wireless facilities with one additional or one replacement antenna for each of the three "sectors" at each of the six sites. The six sites are 300 Concord Road, 55 High Street, 41 Sullivan Road, Crosby Hill Water Tank at Boston Road, 20 Republic Road, and 26 Town Farm Lane.

The Billerica Zoning Bylaw requires special permits for the placement and modification of Wireless Communications Facilities ("WCF"). AT&T holds special permits for cellular and personal wireless service communications at each of the six sites and presently operates such services at those sites. The bylaw defines a Wireless Communications Service ("WCS") as:

"23. WIRELESS COMMUNICATION SERVICES – "WCS": The provision of the following types of services: Cellular Telephone, Personal Communications and Enhanced Specialized Mobile Radio Service as described in the Telecommunication Act of 1996."

AT&T proposes to upgrade its existing installations with antennas and equipment that provide data services in the 700 MHz and AWS radio frequency bands, which are distinct bands from the original Cellular and Personal Communications Service ("PCS") bands. AT&T presently uses the Cellular and PCS bands to provide voice and data communications services.

The fourth generation ("4G") services AT&T proposes to provide with the new equipment at each site are cellular in nature. However, these 4G services are not specifically voice communications services. Voice telephone communications using the national telephone network (based on the North American Numbering Plan) are the focus of the current FCC definition of Personal Wireless Services. There has been some consideration in other venues as to whether data-only services are truly Personal Wireless Services under the Telecommunications Act of 1996 ("TCA"), and indirectly, whether they are Wireless Communications Services under local bylaws. For instance, in Acton, Massachusetts, a land use board declined to grant a special permit to Clearwire for its data-only services facility application on the basis that it lacked the essential ingredient of being a voice telephone service under the TCA. There may also be recent court cases involving this question. (Advice of counsel is encouraged if the Board considers this question to be material to its decision making process.)

From the point of view of the AT&T's subscribers, AT&T's new 4G services are an adjunct to its existing voice and data services. Wireless smartphone devices will make voice calls on the existing 3G network and will be able to utilize the 4G network to obtain fast data connections to the internet. Various messaging services presently available to subscribers will continue to be available as well. [In addition, dedicated data devices are available that do not specifically support voice services.]

In practical terms, Congress and the FCC are supportive of the role of broadband data services in the wireless communications marketplace. AT&T has provided its perspective on this subject in other matters in which Isotrope has been involved. We agree that the strict terminology of the TCA has not necessarily anticipated the evolution of wireless services to date. Accordingly, the language of local bylaws may also be restrictive or ambiguous in light of the current state of the wireless marketplace.

The Board might consider making an interpretation of the bylaw definition of a WCS and/or WCF regarding the use of such facilities for broadband data services. On the one hand, it may be a practical and logical extension of existing WCS conducted at such sites, while on the other hand,

the bylaw definition presently seems more narrowly focused on the traditional Cellular and PCS voice communications under the TCA.

With respect to the actual facility proposals, the bylaw treats modifications as new facilities, calling for all the same information that documents a proposed new facility.

XX. MODIFICATIONS

1. Any proposed change in technology for an existing WCS, adjusted power input or output change, extension in the height, addition of cells, antennas, panels or carriers, or construction or modification of a new or replacement WCF shall require a new application for a special permit to Section 13 of Billerica's zoning bylaws.

As with other antenna change-outs in Billerica in the past, the proposed six-facility upgrade effects a relatively minor cosmetic change to the exterior of existing facilities. It relies on the bylaw-preferred method of using existing WCFs and WCF sites to expand the service offerings of the applicant. However, it also involves the addition of antennas and equipment, which may or may not affect the noise and radio frequency emissions of the facilities at each site.

Based on our experience, the radio frequency emissions increases at each site will not materially affect the overall compliance with FCC radio frequency energy emissions exposure requirements.

As for noise, we note that the bylaw has detailed noise assessment requirements, and that in at least one existing permit in the application the air handling gear was to be placed on the inboard end of the AT&T shelter to help minimize noise emissions into the neighborhood. It appears that there will not be a substantial change in the ground equipment at the AT&T facilities, thereby causing no change to the noise generated at ground level. Further, the application shows a set of six remote radio heads will be mounted on the tower/water tank structures. These units generate no noise because they have no cooling fans. These are small electronics packages that relocate the "brains" of the facility from the ground to the antenna mount. This reduces the cabling requirements between ground and antenna, which places less demand on the tower structure and allows for more overall expansion of the towers in the future.



If our assumptions about the minimal increase in equipment at the AT&T facility, then it would not be necessary or productive to require a full noise assessment.

Overall, the mechanical and pictorial information provided by the applicant for each facility upgrade is reasonably representative of the applicant's proposed changes. We note some minor discrepancies. The Crosby Hill Water Tank drawings show the before- and after- antenna mounts differently than the before- and after- photographs. This apparent discrepancy is a relatively fine distinction in position and number of antennas. Also, the existing conditions photograph seems to show that the existing antennas are not colored to match the water tank as required in the permit conditions. The proposed conditions photosimulation shows the antennas as being colored to match. If the issue of coloration is a continuing concern of the Town, then the Board might consider ways to more surely obtain the colorations required in the permit ongoing in the future.

In summary, this application is for the evolution of the existing AT&T facilities to respond to marketplace developments. It touches on the meaning and interpretation of the bylaw because it is a 4G data service offered as an adjunct to the existing voice and data services. As this is just the beginning of the evolution of facilities in Billerica (and not just AT&T facilities) the Board might consider the questions of interpretations particularly carefully to help clarify and streamline the present and future such applications.

CERTIFICATE OF DECISION ON SPECIAL PERMIT APPLICATION

2/3rds vote of the Planning Board

Marilyn Mahoney

Patricia Harrington

John Thierry

Lincoln Maynard

Edward McLaughlin

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

Aug. 1, 2011

Then personally appeared Edward P. McLaughlin one of the above named members of the Planning Board of the Town of Billerica, Massachusetts, and acknowledged the foregoing instrument to be the free act and deed of said Planning Board, before me.



STEPHANIE L. ODELL
Notary Public
Commonwealth of Massachusetts
My Commission Expires
October 7, 2016

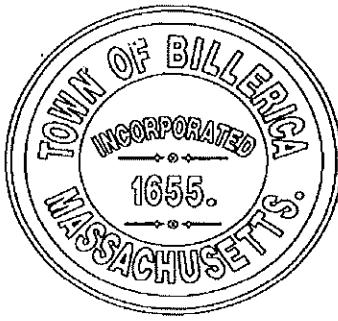
Stephanie L. O'Dell Notary Public
My Commission expires: OCT. 7, 2016

TOWN CLERK CERTIFICATION

I, Shirley E. Schult, Town Clerk of the Town of Billerica, Massachusetts hereby certify that the Certificate of Special Permit by the Billerica Planning Board has been received and recorded at this office and no appeal was received during the twenty days next after such receipt and recording of such notice.

Shirley E. Schult
Town Clerk

August 23, 2011
Date



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14

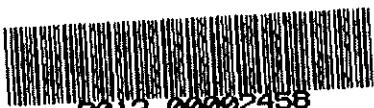
BILLERICA PLANNING BOARD

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2011 NOV 23 AM 9:18
TOWN CLERK
BILLERICA

David C. Saviano, *Chairman*
Vincent D. MacDonald, *Vice Chairman*
Marti Mahoney, *Secretary*

Edward R. McLaughlin
Robert W. Casey
David A. Kinsella
Patricia C. Flemming



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CERTIFICATE OF DECISION

SPECIAL PERMIT

Sprint Spectrum Upgrades

300 Concord Road

B60K PAGE
10886 - 243

APPLICANT

Sprint Spectrum, LP
14 Hollywood Ave.
Narragnasett, RI 02498

PERMIT SOUGHT

The applicant seeks a Special Permit from the Billerica Planning Board pursuant to Section 5.G of the Zoning By-Laws, to install and/or switch out several new antennas and add additional equipment onto the existing lattice tower structure at 300 Concord Road (Plate 86, Parcel 108-5). The subject plans are entitled "Sprint VISION, SITE NUMBER: BS03XC142, SITE NAME: BILLERICA, SITE ADDRESS: 300 CONCORD ROAD, BILLERICA, MA 01821" and were received by the Planning Board on October 14, 2011.

PROCEDURE

A public hearing was held at the Billerica Town Hall, 365 Boston Road, Billerica, MA, on November 14, 2011. Advertisement appeared in the Billerica Minuteman on October 27, 2011 and November 3, 2011. A notice of the hearing was posted prior to the hearing. Notices were sent to interested parties as specified in General Laws, Chapter 40A, Section 11, in accordance with certification from the Assessor's Office setting forth the names and addresses of such parties. Notices were also sent to the planning boards of abutting towns.

PLANNING BOARD **FINDINGS**

The Planning Board finds that the Site Plan and associated application documentation meet the requirements in of the Zoning By-Law, if the conditions herein are met, for the following reasons:

1. The SPGA finds the project is in compliance with the purpose, intent and criteria contained in Sections 5.G and Section 13 of the Billerica Zoning By Law.
2. This upgrade will improve overall coverage adequacy as defined by the Billerica Zoning By-law.
3. The applicant is using a site prioritized under Section 5.G.III.3. of the Billerica Zoning By Law.
4. The proposed wireless communications services and facility minimizes and does not substantially adversely impact any historic resources, scenic views, residential property values, and natural or manmade resources.
5. The applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the facilities, including but not limited to, the aesthetic and auditory concerns of the residential neighbors.
6. The applicant is co-locating on available space on an existing monopole.
7. The facility will comply with the appropriate FCC regulations regarding emissions and arrangements for monitoring said emissions.
8. Absent these improvements there would be a substantial gap in telecommunications service. This proposal is the least intrusive means to fill the gap.

VOTE

At their regular scheduled meeting on November 14, 2011 the Planning Board voted to approve this Special Permit with conditions by a vote of 5 in favor, 0 opposed.

CONDITIONS

1. All revisions to the submitted plans and documentation reflecting all conditions outlined herein shall be made prior to building permit pre-application sign off. The Director of Planning shall be satisfied that all such revisions have been made.
2. All construction and installation shall in all respects conform to the Zoning By-Law unless otherwise granted relief by the Board Appeal or Planning Board as applicable.
3. Failure to comply with all conditions herein shall be deemed cause to revoke or modify this approval.
4. This Site Plan Special permit shall not take effect until a copy of the decision has been recorded in the Registry of Deeds within 90 days of filing of this decision with the Town Clerk. The copy of this decision shall bear the certification of the Town Clerk that 20 days have elapsed after the decision has been filed in the office of the Town Clerk and no appeal has been filed, or if filed, such appeal has been dismissed or denied.
5. This Site Plan Special Permit shall be used within two (2) years of the filing of this decision with the Town Clerk or shall be null and void.
6. The plans shall satisfy the comments of the attached review performed by Isotope Wireless dated October 24, 2011 (Attachment 1). The applicant shall address the issues in writing which shall be approved by the Director of Planning in consultation with the RF Engineering consultant.
7. This approval is contingent on the ongoing compliance of the applicant and tower owner to the specifications and conditions associated with all previously approved cell tower special permit and variance decisions for this site as applicable.

CERTIFICATE OF DECISION ON SPECIAL PERMIT APPLICATION

2/3rds vote of the Planning Board

D. Knell
Mark Mahan R. W. W.
Lynd Maguire
Patricia Remond

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

Nov. 22, 2011

Then personally appeared Robert W. Casey one of the above named members of the Planning Board of the Town of Billerica, Massachusetts, and acknowledged the foregoing instrument to be the free act and deed of said Planning Board, before me.

Margaret Ryan Notary Public
My Commission expires: July 2, 2015

TOWN CLERK CERTIFICATION

I, Margaret Ryan, Asst., Town Clerk of the Town of Billerica, Massachusetts hereby certify that the Certificate of Special Permit by the Billerica Planning Board has been received and recorded at this office and no appeal was received during the twenty days next after such receipt and recording of such notice.

Margaret Ryan Asst.
Asst. Town Clerk

1-17-12
Date



Thinking outside the sphere

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NOV 14 2011

BILLERICA PLANNING BOARD

Technical Review of Sprint Application for Modifications to Its Wireless Facility at 300 Concord Road, Billerica, Massachusetts

Introduction

The Town of Billerica Planning Board ("Board") is hearing an application for a Special Permit for modifications to a wireless communication facility ("WCF") operated by Sprint Spectrum, LP ("Sprint") on the tower structure ("Structure") at 300 Concord Road ("Site"). Isotrope, LLC was engaged by the Board to review the application. Isotrope, LLC is the successor to Broadcast Signal Lab, LLP, which has performed evaluations of other facilities proposed for the Site.

Fundamentally, the modification is intended to increase the number of FCC licensed wireless services that operate from the Sprint antenna mount on the tower. Sprint leases the top ten-foot aperture on the tower from the property owner. (There are other antennas mounted above the tower that are not relevant to the application.)

Facilities

Sprint originally installed three pairs of PCS antennas on the 15 foot wide mounts on the tower. In 2007, Sprint applied for a modification of its Special Permit to add antennas and equipment to support its planned "4G" service. To understand the complexity of wireless facility usage as it has evolved, a brief tutorial in wireless services is in order.

Sprint holds a license from the FCC to operate in the Personal Communications Service ("PCS") radio spectrum. The radio spectrum is divided up into "frequencies" in the same manner that the visible light spectrum is divided into colors. Sprint developed its wireless network on its portion of the PCS spectrum, while other carriers, such as T-Mobile and AT&T, operate in other parts of the PCS spectrum.



Isotrope, LLC

When Sprint and Nextel merged in 2005, Nextel held licenses to operate in the Specialized Mobile Radio service spectrum ("SMR"), which Sprint continued to operate under the Sprint/Nextel brand. Nextel also had obtained licensing to use another part of the radio spectrum labeled the Broadband Radio Service ("BRS")¹. BRS spectrum is above the PCS spectrum. Sprint was preparing to launch a new broadband data service using the BRS spectrum, under the brand name Xohm (pronounced "zome") when Sprint and another company, Clearwire, merged their nationwide plans. Sprint owns more than half of Clearwire as a result; however Clearwire operates as an independent company.

In 2007, Sprint applied to the Billerica Planning Board to modify its facility at 300 Concord Road (and others) to accommodate the new "4G" Xohm system using the BRS frequencies. At that time it proposed to add three 4G antennas operating in the BRS spectrum and one backhaul dish antenna to the array on the tower. To the extent that the 2007 application was acceptable to the Board, the current application is similar in nature and scope. The Board might ask the applicant to certify that the 2007 permit lapsed without being constructed.

In 2009, Clearwire applied "on behalf of Sprint/Nextel" to install a new variation on the original 4G system. It included three new BRS antennas, as before, and three (instead of one) backhaul dish antenna. In both 2009 and 2007 the new ground equipment was to occupy existing leased space within the fenced compound. To the extent that the 2009 Clearwire application was acceptable to the Board, the current application is similar in nature and scope (no backhaul antennas in the current application, but new remote radio heads would be added behind the antennas). The Board might ask the applicant to certify that the 2009 permit lapsed (or will lapse) without being constructed.

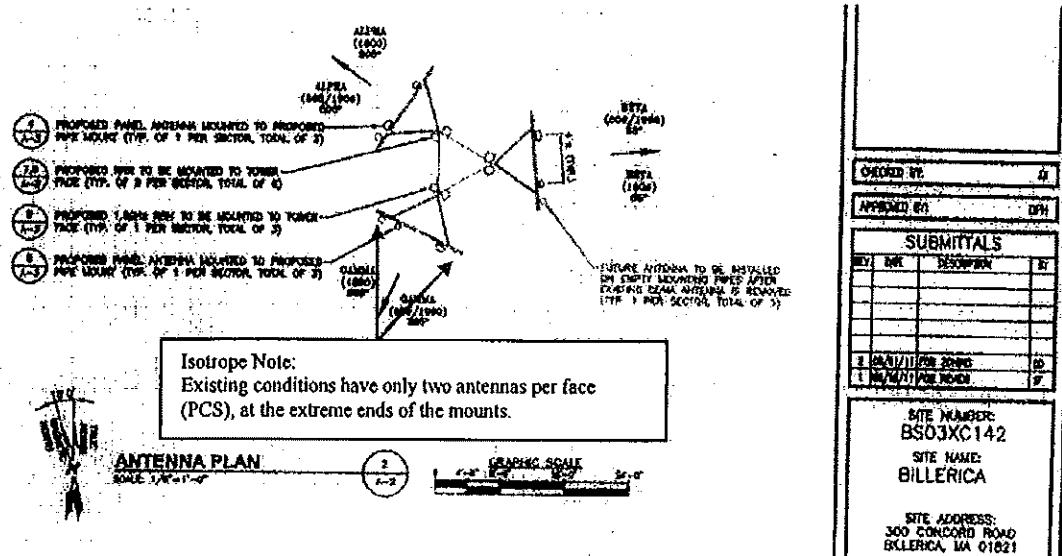
The proposed facility is described and shown in conflicting ways. On one hand, the antennas are described in the applicant's narrative as the "swapping of" six antennas, while, on the other hand, the antennas are shown as being in addition to some existing antennas. The most reliable

¹ For comparison, the nominal frequency ranges of the various services are: Nextel SMR, 800 MHz; PCS, 1900 MHz; BRS, 2500 MHz; Cellular, 850 MHz.



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Information is the plan view of the antenna installation shown on sheet A-2 of the site plans. It is shown below.



Based on the information above, we conclude that the applicant is removing one existing panel antenna per face, and adding two panel antennas per face. One existing antenna per face is left alone, and the plans indicate that at some future time this antenna will also be swapped for a new one. Of the two new panel antennas per face, one antenna is indeed a replacement designed to support continuing PCS services as well as adding support for services in the original Nextel SMR spectrum.

The second antenna added to each face is not a replacement. It is designed to support services in the as-yet not approved 1600 MHz Mobile Satellite Service ("MSS") spectrum. A company called LightSquared operates a satellite phone service in this band and is seeking FCC approval to use the same spectrum for land based wireless service facilities. LightSquared, not Sprint, is the FCC licensee of this spectrum. LightSquared has contracted with Sprint to build the LightSquared network in the USA. LightSquared retains ownership of the spectrum. While Sprint is building and operating the LightSquared network, for which LightSquared is paying



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Sprint, Sprint has the right to buy from LightSquared up to half of the capacity of the LightSquared network if it gets approved and constructed.²

This relationship raises a question similar to that which we raised during the Clearwire applications two years ago. Sprint has a leasehold interest in the location on the tower where the new equipment is proposed. LightSquared is the FCC licensee operating the would-be LightSquared network. In effect, LightSquared is a subtenant of Sprint on the site. From a land use regulation perspective, and regarding the 1600 MHz MSS antenna, is it sufficient to issue a Special Permit to Sprint for the Sprint-owned equipment that LightSquared will be using to deliver LightSquared services, or is it necessary to involve LightSquared in the proceeding? Further, is the use of LightSquared spectrum not owned by Sprint to be treated as a different WCF under the bylaw, or is it part of the Sprint WCF?

This question is further complicated by the fact that under the Telecommunications Act of 1996 ("TCA"), a denial of permission may not effectively prohibit the provision of personal wireless service. Does the applicant claim that dis-approval of the proposed antennas (LightSquared 1600 MHz MSS antenna, and the Sprint/Nextel 1900/800 MHz PCS/SMR antenna) would be in violation of the TCA? For which carrier(s)? No coverage analysis has been submitted to the record regarding the proposed use for LightSquared services or for the proposed use for the former Nextel's SMR services.

Coverage

Ordinarily we might request details on the coverage analysis, including a definition of "coverage" and a rationalization of the chosen threshold. However, since LightSquared is new to the market, and Billerica is presently a developing greenfield region for LightSquared service, it stands to reason that co-locating at an existing multicarrier wireless facility in Billerica would enable LightSquared to competitively offer personal wireless services in Billerica utilizing many

² Those who follow technology news will recognize the LightSquared MSS spectrum as the spectrum next to the GPS band. There is considerable controversy as to whether it is safe to allow LightSquared ground facilities to operate on this band because of the demonstrated risk of interference with reception of GPS signals. The matter is under review by the FCC.



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of the same sites as the other providers who preceded LightSquared. On the other hand, the FCC has not approved terrestrial wireless facility operations in the LightSquared spectrum, so it might not be subject to the TCA just yet (advice of counsel on this and other issues is always recommended).

With respect to the SMR facilities, based on public information, it appears that the Nextel facilities were never moved from 270 Concord Road (a rooftop) to the 300 Concord Road tower after the Sprint/Nextel merger. In the present application, the presence of proposed 800 MHz radio heads on the tower along with antennas capable of operating in the 800 MHz spectrum suggests that the Nextel facility may be moving from the building at 270 Concord Road to the tower at 300 Concord Road. If so, the action is a net reduction of wireless facility sites in Billerica: an existing facility might be decommissioned and moved to join the existing facilities of other wireless services on the existing tower. One can readily infer that the Nextel SMR coverage of the new facility at 300 Concord Road, if it is indeed a replacement for the existing facility at 270 Concord Road, provides a net gain in coverage area due to the significant difference in height. It might not effectively prohibit the provision of Nextel SMR services if the permit modification were not allowed, because of the presence of the existing facility.

By and large, any increased use of tower space on an existing active wireless facility site is consistent with the bylaw's expectation that existing structures and facility sites be fully developed before proposing new facilities at new locations. The present application is consistent with this objective. The challenge presented by this application is with respect to minding the details of what services, licensed by what parties, are proposing to install for the first time at the site, and what their rights and obligations are under the bylaw and the TCA. Ultimately the Board might be interested in assuring there is a clear chain of responsibility for permit compliance for each of the wireless facilities.

Facility

The structural analysis in the application is based on the absence of the 2007 and 2009 modifications that presumably were never carried out. The structural analysis shows the



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proposed facility is assumed to include three new 800/1900 MHz antennas, three new 1600 MHz antennas, 9 remote radio heads, and none of the existing antennas. This is not consistent with the site plan drawing showing not only these items, but also showing that three of the six existing antennas are to remain. This discrepancy should be addressed prior to the issuance of a building permit. Does the structural analysis have to be corrected, or is the Antenna Plan on A-2 incorrect?

The proposed antennas do not create any technical conditions that would alter the safety of the entire facility at the Site. Based on the characteristics of the proposed facility changes, there will be no alteration in the facility's compliance with FCC limitations of Radio Frequency Emissions on the ground and in nearby places.

The antennas are passive and generate no noise. The alteration in appearance of the tower results primarily from the new antennas, as well as (to a lesser degree by virtue of size and placement) the nine radio heads.

We agree with the applicant's generalized conclusion regarding noise compliance. Considering the number and density of facilities operating at the Site, the addition of one equipment cabinet on the ground (and one battery cabinet) will have a *de minimus* impact on the overall noise generated from the site. The remote radio heads mounted on the tower are designed to be maintenance free, relying on heat sinks to convection cool the units without the aid of fans.

Local Preference

Section 5.G.III.3 of the Billerica Zoning Bylaw indicates the use of an existing wireless facility for the addition of a new facility is the most preferred approach. The present application conforms to this preference.

Below we insert comments on the various Criteria of the Zoning Bylaw.

III. Siting Criteria

Existing WCF Site; location is most preferred.



IV. Setbacks

No change

V. Fall Zone

Proposal does not increase fall zone calculation of presently installed and permitted facilities on Site.

VI. Height Criteria

Proposal maintains 180-foot height limit in Industrial district; does not increase current height.

VII. Camouflage

Installation on existing wireless tower does not increase height or breadth of existing facilities.

VIII. Security

Existing security fencing.

IX. Lighting

X. Signage

XI. Parking

No new lighting, signage or parking proposed. (Applicant indicates ID sign will be posted as required)

XII. Interference

Interference is regulated by the FCC which pre-empts local interference regulation. Nevertheless, facility as proposed is inherently compatible to the extent practicable, and applicant has a duty as an FCC licensee to resolve any interference that it causes.

XIII. Emissions

Compliant with FCC requirements as established by the Act.

XIV. Noise

We recommend that it be considered *de minimus* and not needing further analysis.

XV. Environmental

The Board should decide whether there is cause for the applicant to have a NEPA checklist (not an EA) filled out by a qualified professional to verify there are no new or old NEPA issues to contend with.

XVI. Co-Location

Applicant employs this most-favored approach by utilizing existing WCF tower.



XVII. Aesthetics

Board may review pictorial and verbal evidence submitted by applicant and/or by other interested parties pro or con.

XVIII. Cessation

Board should establish expiration of permit (up to 20 years) and determine if removal bond is necessary.

XIX. Maintenance

XX. Modifications

These are forward-looking requirements of the bylaw.

XXI. Specifications

XXII. Application Specifications

We have sufficient information to perform our evaluation, unless a coverage analysis of the three services is determined to be necessary for the purposes of establishing compliance with the TCA. (Three services: Sprint PCS modification, Sprint/Nextel SMR addition, LightSquared addition) If approval is likely under the bylaw, then the extra effort of doing a TCA analysis may not be necessary. Advice of counsel is recommended. The Board may wish to review the Specifications to determine if any critical information is missing.

XXIII. APPROVAL CRITERIA

1. Special permit may be granted under this section only if the SPGA finds the project is in compliance with the purpose, intent and criteria contained in this section 5.C.1.j.(2) (c) and section 13 of this Bylaw. In addition, the SPGA shall make the applicable findings before granting the special permit as follows:

2. That the applicant is not already providing adequate coverage or is unable to provide adequate coverage as defined within the contents of this By-law.

- 1) *New network with developing coverage (LightSquared MSS),*
- 2) *Existing network(Sprint PCS) with antenna modification to*
- 3) *Accommodate relocated service (Nextel SMR).*

3. That the applicant is using the most preferred site available, see Section 5.C.1.j.(2) (c).III.3.

Co-location on existing wireless facility structure is a desired method.

Also note that a new ruling by the FCC (Nov 18, 2009) applies a decision "shot clock" to wireless facility applications. FCC defines "collocation" as the installation of a wireless facility on an existing structure whether or not there is another wireless facility at the site. In contrast,



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the Billerica zoning bylaw defines "co-location" as the use of a single structure by more than one carrier. The bylaw intent is to encourage wireless facilities to utilize sites already developed for wireless facilities before creating new sites. The FCC intent is to require permit applications for facilities going on existing structures to be decided within 90 days of application³. In the present case, both collocation and co-location apply to the application.

4. That the proposed wireless communications services and facility minimizes and does not substantially adversely impact any historic resources, scenic views, residential property values, and natural or man-made resources. The SPGA shall consider the cumulative impact of all related applications in the same geographic area.

Co-location on existing wireless facility structure, sharing same height as an existing special permittee.

5. That the applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the facilities, including but not limited to, the aesthetic and auditory concerns of the residential neighborhoods.

Board must identify such concerns, if any. Photo simulations and noise analysis provided by applicant.

6. That the applicant has agreed to rent or lease available space on any tower it controls within Billerica or its contiguous towns, when appropriate and applicable, as determined by SPGA and/or supportive documentation submitted by the applicant, under the terms of a fair-market lease, without discrimination to other providers to the extent it is technically feasible.

Applicant is a subtenant on existing tower space leased from a third-party who leases from the property owner. Applicant has no authority to make space available to additional co-locators. tower.

7. That the facility shall comply with the appropriate FCC regulations regarding emissions and arrangements for monitoring said emissions.

Facility design is inherently compliant. No monitoring is necessary to maintain FCC compliance.

8. That there is a substantial gap in telecommunications service and the proposal is the least intrusive means to fill the gap.

New network with developing coverage. New antenna array added to tower with other existing arrays.

9. If a special permit is granted, in addition to such terms and conditions as may be authorized by Section 5.C.1.j.(2) (c) of this Bylaw the SPGA may impose such additional conditions and safeguards as public safety, welfare and convenience may require.

XXIV. DENIAL CRITERIA

³ For new tower construction, which does not apply in the present matter, the FCC permits a 150-day decision clock to run. Advice of counsel should be sought to clarify interpretations of the FCC ruling.



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1. Should the applicant substantially fail to meet any of the requirements set forth in Section 5.C.1.j.(2) (c).XXIII, and then the Special Permit shall be denied.
2. The SPGA shall deny a special permit to an applicant that has not demonstrated a good faith effort to provide for co-location if applicable and appropriate.

Not applicable. Co-location exists at Site.

3. A special permit shall not be denied if the denial of the special permit would unreasonably discriminate among providers of functionally equivalent services. Note that only "unreasonable" discrimination among providers is prohibited, and that the Federal Telecommunications Act of 1996 allows facilities that create different visual, aesthetic or safety concerns to be treated differently.

If a denial were imminent, the Board would have to consider whether one could expect there to be reasonable alternatives to the proposal. Nevertheless, the proposal is entirely consistent with previous applications at the Site, including the use of shared equipment space and shared antenna space with another permittee, thereby minimizing any increases in bulk or intensity of use at the Site. Advice of counsel is recommended in matters relating to the Act.

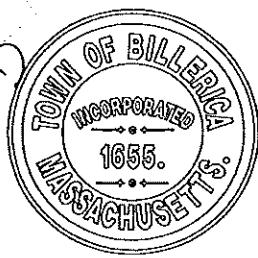
4. A special permit shall not be denied if the denial of the special permit would prohibit, or have the effect of prohibiting, the provision of personal wireless services within the town of Billerica. Note that applications to construct a WCF in an under-served area, if the service gap can be filled by less intrusive means, may still be denied. The SPGA shall not use this clause for granting of the special permit unless an independent assessment of the applicant's proposal is certified by an independent RF engineer, hired by the Town at the applicant's expense, stating that the applicant cannot build a town-wide network without this site.

If specific reasons under the bylaw that apply strictly to the proposed facility were to prompt the denial of permission for the facility, the Billerica Zoning Bylaw appears to be sufficiently open to alternative locations and facility designs that it does not appear a denial would effectively prohibit the provision of wireless services.

Conclusion

In summary, the proposed antenna changes at the Site are technically beneficial, with no apparent technical detriments. The proposal would add a new wireless service to the Site, assuming the FCC approves the use of the new service, and appears to add the Sprint/Nextel SMR service to the site as well.

David Maxson
Municipal Wireless Consultant
October 31, 2011



BILLERICA PLANNING BOARD

Town Hall
365 Boston Road Billerica, MA 01821
978-671-0962
978-670-9448 Fax

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Michael Riley, *Chair*

Matthew Battcock, *Vice Chair*
Chris Tribou
Blake Robertson

Pat Flemming, *Secretary*
Janet Morris
Marlies Henderson

APPROVED CERTIFICATE OF DECISION SITE PLAN SPECIAL PERMIT 300 CONCORD ROAD, BILLERICA, MA

APPLICANT

KS Partners
150 East 58th Street, Suite 2000
New York NY 10155

Seed
34968/197

TOWN OF BILLERICA
BILLERICA

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PERMIT SOUGHT

The applicant seeks a Site Plan Special Permit from the Billerica Planning Board pursuant to Section 6 of the Zoning By-Laws to construct an approximately 150,000 square foot Good Manufacturing Practice (GMP) lab facility building in the Industrial Zoning District and located at 300 Concord Road, Billerica, MA. This decision applies to the Site Plan entitled "Site Development Plans for KS Partners Proposed GMP Lab Facility, 300 Concord Road, Billerica, Massachusetts" prepared by Bohler, 45 Franklin Street, 5th Floor, Boston, MA 02110, consisting of sheets C-101, C-102, C-301, C-302, C-401, C-501, C-601, C-602, L-101, L-201, L-301, C-901, and C-902; dated May 14, 2021 and revised through September 28, 2021.

PROCEDURE

A virtual public hearing was advertised for June 14, 2021. Advertisements appeared in the Billerica Minuteman on May 27, 2021 and June 3, 2021. A notice of the hearing was posted on the Town website prior to the hearing. Notices were sent to interested parties as specified in General Laws, Chapter 40A, Section 11, in accordance with certification from the Assessor's Office setting forth the names and addresses of such parties. Notices were also sent to the Planning Boards of abutting towns. The hearing was opened on June 14, 2021, was continued to July 19, 2021, August 16, 2021, September 20, 2021 and October 25, 2021. The public hearing was closed on October 25, 2021, 2021

SPSP-300 Concord Road

MATERIALS

1. Form S Special Permit Application and associated materials dated May 14, 2021
2. Site Plan entitled "Site Development Plans for KS Partners Proposed GMP Lab Facility, 300 Concord Road, Billerica, Massachusetts" prepared by Bohler, 45 Franklin Street, 5th Floor, Boston, MA 02110, consisting of sheets C-101, C-102, C-301, C-302, C-401, C-501, C-601, C-602, L-101, L-201, L-301, C-901, and C-902; dated May 14, 2021 and revised through September 28, 2021.
3. Drainage Report prepared by Bohler and dated May 14, 2021
4. Traffic Assessment Report prepared by McMahon Associates and dated May 14, 2021
5. Peer Review Memos prepared by Beta Group Inc. and dated June 11, 2021 and October 5, 2021.
6. Parking Calculation Memorandum prepared by Mark LaLumiere and dated June 14, 2021
7. Zoning Letter prepared by Attorney Mark B. Johnson dated July 12, 2021
8. Zoning Letter prepared by Attorney James Dangora and dated August 10, 2021
9. Parking Summary document prepared by Bohler and dated September 15, 2021
10. DPW Engineering Division Comments dated June 10, 2021

PLANNING BOARD FINDINGS

The Planning Board finds that if the conditions included herein are met, the Site Plan and associated application documents meet the requirements of Section 5 and 6 of the Zoning By-Law for the following reasons:

1. The use is not detrimental to the area in which it is located
2. Vehicular and pedestrian movements and volumes anticipated from the proposed building can be accommodated by the adjacent roads. The increase, in vehicular and pedestrian movements and volumes will not have a detrimental impact on the area. The nearby roads have the capacity to accommodate the additional traffic generated by this project.
3. The plans are adequate to address sewage, refuse, and waste disposal methods as reflected in the various Town department comments.
4. The siting of the facility and its location within an existing industrially developed area helps to prevent incompatibility of uses.

SPSP-300 Concord Road

5. Ingess and egress to and from the site, site circulation and provision for loading and unloading of vehicles are established and adequate.
6. Lighting will be shielded from adjacent properties.
7. The proposed landscaping will act to buffer the site from adjacent uses, and green strips for the site and the proposed building are found to be sufficient by the Board pursuant to Section 7.G.7 of the Zoning ByLaws.
8. The use will not result in any odors, fumes, noise, vibrations, chemical spills, or hazardous wastes
9. The plans do not show that unreasonable demands will be placed on Town services and infrastructure.
10. The proposed use is not located in any known historical area
11. The parking proposed on the site for the proposed use is acceptable. Furthermore, there is sufficient data to support the need for a reduction in parking and should it be necessary to increase the parking on site in the future, the site plan shows that the property contains sufficient open space to accommodate the required parking on site.

VOTE

At their regularly scheduled meeting on November 15, 2021, the Planning Board voted with seven (7) in favor, none (0) opposed, and none (0) absent to approve the site plan special permit (Section 5.B.5) and parking exception special permit (Section 8.D) with conditions as amended.

In addition, the Planning Board voted with seven (7) in favor, none (0) opposed, and none (0) absent to waive the following:

1. Green Strips and Screening (Section 7.G.7): The provisions of this section may be reduced or waived as part of and in conjunction with the Site Plan Special Permit Process described under Section 6. The Planning Board finds that waiving the Green Strips and Screening requirements does not effectively detract from the enhancement of the natural, scenic and aesthetic qualities of the development.

CONDITIONS

1. This Site Plan Special Permit shall not take effect until a copy of this Decision has been recorded at the Registry of Deeds within 90 days of filing of this decision with the Town Clerk. The copy of this decision shall bear the certification of the Town Clerk that 20 days have elapsed after the decision has been filed in the Office of the Town Clerk and no appeal has been filed, or if filed, such appeal has been dismissed or otherwise resolved.
2. Per Section 13 of the Zoning By-Laws this Special Permit shall lapse if a substantial use or construction thereunder has not begun, except for good cause, within two (2) years of the

SPSP-300 Concord Road

filings of this decision with the Town Clerk (plus any time required to pursue or await the determination of an appeal). The Planning Board may, upon request of the applicant citing good cause, grant such extensions of time, each no longer than one (1) year, as it shall deem necessary to carry the use into effect.

3. Per Section 6 of the Zoning By-Laws, this Site Plan Special Permit is not valid until the project complies with all Board of Health Rules and Regulations.
4. The applicant shall arrange for a pre-construction meeting at its own expense with the Town's Fire, Police, Engineering, Planning, Board of Health and Building officials to review permit requirements.
5. Per Section 16(b)(1) of the Zoning By-Laws, all construction and installation shall in all respects conform to the Zoning By-Laws unless otherwise granted relief by the Board of Appeals or by the Planning Board. Failure to comply with all conditions herein shall be deemed cause to revoke or modify this approval. All improvements shall be constructed in accordance with the approved site plan and all conditions herein.
6. Per Section 1.C.16 of the Zoning By-Laws, construction management and site control shall include the following:
 - a. Construction related dust, dirt, and debris shall be controlled on-site. Any off-site impact shall be mitigated fully the day on which it is documented.
 - b. The applicant shall provide the name and phone number of the Facilities Manager to be contacted by the abutters in case of any problems occur during construction.
 - c. No off-site storage of construction materials or staging shall be permitted.
7. Per Section 9 of the Zoning By-Laws, all new lighting shall be glare shielded from adjacent properties and streets.
8. All required landscaping shall be installed and stabilized. Following construction, landscaping shall be subject to field enhancements as reviewed and approved by the Planning Director.
9. Any and all operation that takes place at the site must meet all noise and dust By-Laws in the Town of Billerica.
10. Any new signage to be located on the building must be approved by the Planning Director prior to installation.
11. The applicant shall adhere to the Order of Conditions issued by the Conservation Commission.
12. This Special Permit is not valid until the project complies with all Board of Health Rules and Regulations, including the issuance of a Storm water Permit.

SPSP-300 Concord Road

13. A final elevation of the building shall be submitted to the Planning Director for review and approval prior to the issuance of a building permit.
14. The generator shown on the site plan shall be relocated to the landscape island on the north side of the building. A plan showing final location of the generator, including landscaping improvements shall be submitted and approved by the Planning Director prior to installation.
15. The applicant shall provide a walkway from the parking lot to the existing walkway located to the southwest of the proposed building. A plan showing the location and design of the walkway shall be submitted to the Planning Director for review and approval prior to installation.

SPSP-300 Concord Road

Majority of the Planning Board

Matthew Buffardi
Michael C. Bailey
Blake Col
Marlin Henderson

Christopher Trilivon

Commonwealth of Massachusetts

Middlesex, ss

November 29, 2021
Dated

Then Personally appeared Michael Riley, one of the above-named members of the Town of Billerica Planning Board and acknowledged the foregoing instrument to be the free act and deed of said Planning Board, before me.

Elizabeth T. Ells

Notary Public



ELIZABETH T. ELLS
Notary Public
Commonwealth of Massachusetts
My Commission Expires
September 9, 2022

September 9, 2020

My commission expires

I, Marguerite Axt, Town Clerk of the Town of Billerica, Massachusetts hereby certify that this Decision by the Billerica Planning Board has been received and recorded at this office and no appeal was received during the twenty days next after such receipt and recording of such notice.

Marguerite Axt
Town Clerk

Dec. 27, 2021
Date

SPSP-300 Concord Road