Hyannis Main Street Waterfront
Historic District Commission

Petition FOR APPEAL

Hyannis Main Street Waterfront Historic District Commission Appeals Committee

______________________________
Verizon New England, Inc.
Appellant

vs.

Hyannis Main Street Waterfront Historic District Commission

1. This is an appeal from the decision of the Hyannis Main Street Waterfront Historic District Commission (copy attached) on June 5th, 2019 (Applicant) application for Verizon New England, Inc. ___ (Project) located at 49 Ocean Street, Hyannis, MA 02601 dated October 23rd, 2019 and approved/disapproved by the HMSWHDC on June 5th, 2019 (date) and filed on June 11th, 2019 (date).

2. The reason for the appeal is: The Appellant/Applicant is aggrieved by the disapproval of the application for Certificate of Appropriateness for the communications tower extension at 49 Ocean Street, as described in the application submitted on October 23, 2018. (See attached).

3. The relationship of the appellant to the subject of the appeal is that of Applicant and Property Owner (Applicant/abutter/other aggrieved party).

4. The remedy sought by the Appellant is The Appellant seeks a reversal of the HMSWHDC decision and the issuance of the Certificate of Appropriateness, consistent with the proposed findings attached, or a remand to the HMSWHDC for further proceedings consistent with the decision of the Decision of the Appeals Committee. (reversal of HMSWHDC decision/annulment of HMSWHDC decision/remand application to HMSWHDC)

5. I hereby certify that I have given notice of this appeal to Town Clerk, Town Committee & Applicant, if different. 6/28/19 (date)

Appellant's Signature

Tel. Number (508) 430-1900

Appellant's Address 6 Bowdoin Square, 9th Floor, Boston, MA 02114

Also include name, address & telephone of designee if appellant is not self-represented. Ford & Ford Attorneys at Law, 72 Main Street, PO Box 485, West Harwich, MA 02671
The Appellant is aggrieved by the Commission’s disapproval of the application for a Certificate of Appropriateness. The Commission Decision is unsupported by the evidence and exceeds the authority of the Commission as follows:

- The Commission failed to consider extensive oral and written testimony provided by the Applicant at the public hearing, as acknowledged by the Commission in Paragraph 8. of its findings.
- Prior to the opening of the evidentiary hearing, the Commission caused staff to draft extensive negative findings, which were distributed to each Commission member before the opening of the hearing. These draft findings substantially became the basis of the Commission’s Decision of denial. It was clear from the proceedings that the Commission had prejudged the Applicant’s request for a Certificate of Appropriateness.
- The Commission Decision was based in part on an analysis of the fall zone of the proposed tower extension, which was clearly outside the purview of the Commission jurisdiction under the Ordinance.
- The Commission Decision is unsupported by the evidence presented at the hearings and erroneously relies on reports filed in the proceedings of the Planning Board relating to matters beyond the jurisdiction of the Commission.
- The Commission Decision fails to consider the extensive evidence provided by the Applicant with respect to the minimal effect the tower extension will have on the historic resources within the district.
- The Decision of the Commission fails to take into consideration that the tower is an existing lawful structure that predates the creation of the Historic District.
- The Decision of the Commission in denying the Certificate of Appropriateness is otherwise erroneous, arbitrary, capricious and otherwise in excess of the authority of the Commission under the Ordinance.
CERTIFICATE OF APPROPRIATENESS FINDINGS

I. Standard

The Commission shall issue a Certificate of Appropriateness based upon the application if it determines that the construction, alteration ... for which the application has been filed will be appropriate for or compatible with the preservation of the district. (Section 112-31). (emphasis added)

II. Findings

1. The existing tower preexisted the adoption of the Historic District having been built in 1963 pursuant to a Decision of the Zoning Board of Appeals authorizing the 100-foot tower and antenna. (Appeal No. 1962-43)

2. The Hyannis Main Street Waterfront Historic District Commission granted a Certificate of Appropriateness authorizing a four foot extension of the tower in 1998 and in 2003 granted a Certificate of Appropriateness finding that the installation of two panel antennas, two remote radio heads and two sure arrestors within the 80 foot lease area and one panel antenna within the 66 foot lease area.

3. lease area on an existing telecommunications tower will not detract from the historic character of the Hyannis Main Street Waterfront Historic District and further found the proposed installation to be appropriate for the protection and preservation of the district.

4. In 2017 the applicant commenced the process to extend the tower an additional 45 feet in order to prevent potential outages on the Nantucket to Hyannis Microwave network including E911 calls. (See attached affidavits of Joseph Baker Licensed FCC General Radio Operator and Michael E. Shea Senior Manager of the E911 Customer Care Center for Verizon)

In January of 2017 the applicant received a DETERMINATION OF NO HAZARD TO AIR NAVIGATION from the Federal Aviation Administration. The DETERMINATION provides that marking and lighting are not necessary for aviation safety. Accordingly, there will be no marking or lights on the tower after the proposed extension. (See copy attached)

5. Also during 2017 the applicant prepared an Environmental Assessment (EA) of the proposed tower extension as required by Section 106 of the National Historic Preservation Act (NHPA). The purpose of the EA was to ascertain whether the proposed tower extension would affect historic and cultural resources. (A copy of the EA dated January 19, 2018 is attached.)

6. As part of the EA the applicant prepared a Historic Resource Review Documentation
which included identifying all historic resources within the area of the proposed site and a series of photographs for all parts of the Main Street Waterfront Historic District, the South Street Historic District, the Municipal Group Historic District, and the Main Street East Historic District. All of these photographs and related maps were submitted are part of the EA and are set out in Appendix D of the EA.

8. As part of the EA process an Invitation to Comment on the project was sent to the Barnstable Historical Society (November 2, 2017) and the Hyannis Main Street Waterfront Historic District Commission (October 31, 2017). (See Invitations to Comment attached). The applicant reported that no comments were received from either the Barnstable Historical Society or the Hyannis Main Street Waterfront District Commission.

9. The EA concluded that the proposed tower extension will have no significant environmental affect with regard to historic properties and the State Historic Preservation Office (SHPO) concurred with the conclusion of the EA. The approval of SHPO was issued on December 7, 2017 by Brona Simon, Executive Director of the State Historic Preservation Office of the Massachusetts Historical Commission (MHC) who concluded that the “MHC has determined that the proposed project will have “no adverse effect” on significant historic properties”. A copy of Ms. Simon’s approval was included with the EA and is attached.

10. The applicant’s proposed tower extension has been reviewed locally by the Site Plan Approval Committee (approved January 22, 2018, copy attached) and the Barnstable Planning Board which issued a Special Permit approving the project finding that:

19. Section 240-94.B.(4) – Expansion of a preexisting nonconforming use states that at the discretion of the [Planning Board], improvements may be required in order to reduce the impact of the nonconformity on the neighborhood and surrounding properties. Verizon has agreed to complete or fund improvements to the immediate area that will improve the quality of the pedestrian infrastructure and enhance the appearance and activity of adjoining public open space.

20. The continuation of structural nonconformities will not be substantially more detrimental to the surrounding neighborhood.

21. Section 240-24.1.2(E)(1) requires the Planning Board shall find issuance of the Special Permit is consistent with the Design and Infrastructure Plan. In this instance, the structure predates the Design and Infrastructure Plan and the Applicant is authorizing improvements to the surrounding area consistent the goals and objectives of the DIP to help mitigate the visual impact of the extension of the structure.

22. After an evaluation of all the evidence presented, the proposal fulfills the spirit and intent of the Zoning Ordinance and would not represent a substantial
detriment to the public good or the neighborhood affected.

11. The Commission finds and determines in light of all of the evidence that the proposed tower extension will be compatible with the preservation of the district and therefore the Commission issues a Certificate of Appropriateness pursuant to Section 112-31 of the Ordinance.

12. The Commission’s finding of appropriateness is further supported by the mitigation package the applicant agreed to with the Planning Board. The package will fund improvements, upgraded sidewalks to match the Town’s sidewalks which are part of the Walkway to the Sea and improvements to the surrounding area which will enhance the appearance of adjoining open space, all of which will be “appropriate for and compatible with the preservation and enhancement of the district” in keeping with Section 112-31 of the Ordinance.
Town of Barnstable
Planning & Development Dept.

Hyannis Main Street Waterfront Historic District Commission
www.town.barnstable.ma.us/hyannismainstreet

Decision – Certificate of Appropriateness
Verizon New England, Inc.
49 Ocean Street, Hyannis

Applicant: Verizon New England, Inc.
6 Bowdoin Square, 9th Floor
Boston, MA 02114

Property Address: 49 Ocean Street, Hyannis
Assessor’s Map/ Parcel: 326/025
Hearing Date: May 1, 2019; June 5, 2019

The Hyannis Main Street Waterfront Historic District Commission, pursuant to the Code of the Town of Barnstable Chapter 112, Historic Properties, Article III, Hyannis Main Street Waterfront Historic District, hereby issues a disapproval of a Certificate of Appropriateness for 49 Ocean Street, Hyannis, Assessor’s Map/Parcel 326/025.

Procedural & Hearing Summary
An application for a Certificate of Appropriateness for the proposed reinforcement and 50+/- ft extension to the existing tower at 49 Ocean Street, Hyannis, was filed at the Town Clerk’s office and office of the Hyannis Main Street Waterfront Historic District Commission on October 23, 2018. This application followed an application to the Barnstable Planning Board to permit the expansion of a preexisting nonconforming use and the expansion of a preexisting nonconforming structure to allow the tower extension. The Planning Board granted this Special Permit on September 24, 2018, with findings and conditions, referencing the necessity of approval from the Hyannis Main Street Waterfront Historic District Commission.

A public hearing before the Hyannis Main Street Waterfront Historic District Commission was duly advertised and notice sent to all abutters in accordance with MGL Chapter 40C and Chapter 112, Article III of the Code of the Town of Barnstable. Pursuant to section 112-31(f), the applicant agreed in writing to extend the time limits for the Commission to make a determination on the application on six occasions:

- November 8, 2018: Agreement to extend time limit to January 23, 2019
- January 16, 2019: Agreement to extend time limit to February 13, 2019
- February 4, 2019: Agreement to extend time limit to February 27, 2019
- February 14, 2019: Agreement to extend time limit to April 10, 2019
- April 2, 2019: Agreement to extend time limit to May 7, 2019
- May 1, 2019: Agreement to extend time limit to June 12, 2019

The public hearing on this application was opened on May 1, 2019 and continued to June 5, 2019. The applicant sought a Certificate of Appropriateness in order reinforce and extend an existing steel tower by 50+/- feet. Commission Members deciding this appeal were Cheryl Powell, Taryn Thoman, Marina Atsalis, Jonathan Kanter, Timothy Ferreira, and Cecelia Carey.
During the proceedings, Attorney Michael Ford represented the Applicants before the Board and submitted documents in support of Verizon's position that the Tower extension was appropriate. Ellen Cummings of Verizon New England, George Maier of Orion Broadcast Solutions, and other Verizon witnesses also provided testimony regarding the proposed tower extension.

The Commission received a significant amount of written and oral public comment in opposition to the application throughout the hearing process. Those in opposition generally questioned the appropriateness of the significant tower extension within the Hyannis Main Street Waterfront Historic District directly adjacent to the Municipal Group Historic District and in close proximity to the Pleasant - School Street Historic District, both of which are included in the National Register of Historic Places for their associations with the early development of Hyannis.

After consideration of the testimony given and materials submitted by the applicant and members of the public, the Commission unanimously made the following findings of fact for the Certificate of Appropriateness Application filed by Verizon New England on October 23, 2018:

1. The purpose of the Hyannis Main Street Waterfront Historic District as described in Section 112-24 is to "promote educational, cultural, economic and general welfare of the inhabitants of the Town of Barnstable, and the Town's unique community character" through several measures, including "the preservation, maintenance and improvement of appropriate settings for such buildings, structures, and places, and the encouragement of new design which is compatible with the existing historical and community character."

2. Along with application, the applicant submitted a Visual Impact Analysis prepared by Advanced Engineering Group, PC showing renderings of the proposed tower extension from roads, intersections, public parks, and gateways throughout Downtown Hyannis. The proposed tower extension will create one of the tallest structures in the Hyannis Main Street Waterfront Historic District, significantly increasing the visibility of a structure that will be incompatible with the character of the Hyannis Main Street Waterfront Historic District from major streets, public parks, and Hyannis Harbor. The tower's proposed height at .50' far exceeds that of other surrounding structures; for comparison, the height of Town Hall, one of the tallest buildings in the district, from grade to ridge is 71'.

3. The subject property is directly adjacent to the Municipal Group Historic District and in close proximity to the Pleasant - School Street Historic District, both of which are included in the National Register of Historic Places for their associations with the early development of Hyannis and the variety and quality of historic architectural styles found within the districts. In addition to Town Hall and the School Administration Building, the Municipal Group Historic District includes the Village Green (Town Common) as a significant landscape in the district. The communication tower at 49 Ocean Street is located approximately eighty feet from Town Hall, and approximately twenty-five feet from the Village Green landscape. Both of these National Register districts are within the Hyannis Main Street Waterfront Historic District. The immediate vicinity of the subject property also includes one building individually listed on the National Register of Historic Places, within 1000 feet of the project site. The position of the proposed tower extension in relation to buildings included on the National Register of Historic Places is not compatible with the districts' historical and community character.

The Commission considered, among other things, the historical and architectural value and significance of the site, structure, setting, and place; the general exterior design, scale, color, placement on the lot including dimensions and setback, arrangement, proportions, texture, material of the structure; the setting, topography, landscaping, and general appearance of the tower extension and the relation of the proposed tower extension to similar features of buildings and structures in the surrounding area; and the position of the tower extension in relation to the streets, ways and to other buildings or structures. The Commission also considered the appropriateness of the size, shape, and location of the building or
structure, both in relation to the land area upon which the building or structure is situated and to buildings, structures, and general setting in the vicinity. The proposed tower’s increased height, industrial appearance, and lack of any architectural value make it visually incompatible with historic residential, municipal, and commercial buildings in the immediate vicinity and throughout the district.

5. The topography of the site (at elevation 30’, as compared to portions of the district surrounding Hyannis Harbor, at elevations 3’ – 20’) make the tower and proposed extension highly visible within the district and, as demonstrated by the visual impact study.

6. The Commission finds the proposed tower extension at 49 Ocean Street, Hyannis, to be inappropriate for and incompatible with the preservation and protection of the Hyannis Main Street Waterfront Historic District.

7. The Commission reviewed several documents submitted to Planning Board in support of a Special Permit application, including:
   a. An affidavit from Michael Shea, Senior Manager of the E911 Customer Care Center for Verizon, submitted by the Applicant indicates that under normal conditions, 911 calls are carried via the microwave transmission system, which includes the Nantucket-Hyannis link.
   b. Regarding the necessity of tower extension, the Applicant submitted an affidavit from Joseph Baker, a licensed radio technician holding an FCC General Radio Operator’s License assigned to Cape Cod and the Islands for Verizon, which documents the Hyannis-Nantucket link’s high susceptibility to atmospheric conditions. Mr. Baker concludes that reengineering the path to include an elevated position for the transmitters and receivers should avoid total network outages in the future with regards to path interference.
   c. In accordance with MGL Chapter 44, Section 53G, the Applicant funded an independent consulting engineer who provided a peer review of the whether the proposal will fulfill the objectives outlined by the Applicant, an assessment that the proposed improvements to the tower are the minimum necessary to accomplish the Applicant’s stated objectives, and an assessment of any available alternatives that would equally serve the Applicant’s stated objectives. David Maxson, WCP, of Isotope, LLC, was the selected consultant. The consultants’ initial report was issued May 31, 2018 followed by additional correspondence with the Board and Applicant resulting in a Final Report issued on September 12, 2018. Mr. Maxson concludes that the Applicant’s design approach would be typical of a new tower proposed for the first time, but states there is no pressing need for the tower extension with respect to either public safety or the provision of Verizon’s telecommunications service. Mr. Maxson’s final report indicates that calculations submitted by the Applicant suggest the tower extension results in a nearly imperceptible increase in reliability of the Hyannis-Nantucket link. The report indicates it is best practice to study historical logs of link performance to assess the risk of subfraction events that cause the link to degrade or fail, but “the Applicant keeps no logs.” The report also indicates that the estimation method used in computer modeling submitted by the Applicant may result in excessive antenna heights.

8. The applicant submitted evidence to the record at the public hearing on June 5, 2019, giving the Hyannis Main Street Waterfront Historic District Commission insufficient time to review evidence prior to the deadline for the Commission to make a determination on June 12, 2019. The meeting on June 5, 2019 is the final regularly scheduled meeting before the deadline to make a determination on this application.

The vote to accept the findings was:
AYE: Cheryl Powell, Taryn Thoman, Marina Atsalis, Jonathan Kanter, Timothy Ferreira, and Cecelia Carey
NAY: None.
Based on the findings of fact, a motion was duly made and seconded to issue a disapproval of the application for a Certificate of Appropriateness for the communications tower extension at 49 Ocean Street, as described in the application submitted on October 23, 2018.

The vote was:
AYE: Cheryl Powell, Taryn Thoman, Marina Atsalis, Jonathan Kanter, Timothy Ferreira, and Cecelia Carey
NAY: None

Chair, Cheryl Powell
Hyannis Main Street Waterfront Historic District Commission

cc: Applicant
Building Commissioner
File

I, Ann Quirk, Clerk of the Town of Barnstable, Barnstable County, Massachusetts, hereby certify that twenty (20) days have elapsed since the Hyannis Main Street Waterfront Historic District Commission filed this decision and that no appeal of the decision has been filed in the office of the Town Clerk.

Signed and sealed this ______ day of __________________ under the pains and penalties of perjury.

Ann Quirk, Town Clerk

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