



TOWN OF HINGHAM

Board of Appeals



NOTICE OF DECISION SPECIAL PERMIT RENEWAL

IN THE MATTER OF:

Applicant: SBA Monarch Towers I, LLC
8051 Congress Avenue
Boca Raton, FL 33487-1307

Property Owner: Town of Hingham
Hingham Select Board
210 Central Street
Hingham, MA 02043

Property: 900 Main Street, Hingham, MA 02043

Title Reference: Plymouth County Registry of Deeds Book 53171, Page 206

SUMMARY OF PROCEEDINGS:

This matter came before the Board of Appeals (the "Board") on the application of SBA Monarch Towers I, LLC (the "Applicant") to renew a Special Permit A2 issued under § V-E of the Zoning By-Law (the "By-Law") on September 24, 2007, as extended and/or renewed, and such other relief as necessary to maintain an existing Personal Wireless Services Tower located at 900 Main Street in the Official and Open Space District.

The Board opened a duly noticed public hearing on this application at a meeting held remotely on December 12, 2022 via Zoom as an alternate means of public access pursuant to Chapter 107 of the Acts of 2022, and all other applicable laws temporarily amending certain provisions of the Open Meeting Law. The Board panel consisted of regular members Robyn S. Maguire, Chair, Paul Healey, and Jed Ruccio. The Applicant was represented by Gregory M. Boucher, Esq. of Saul Ewing Arnstein & Lehr LLP.

At the conclusion of the hearing, the Board voted unanimously to renew the Special Permit for a successive five year period, beginning on December 31, 2022.

Throughout its deliberations, the Board was mindful of the statements of the Applicant and the comments of the general public, all as made or received at the public hearing.

BACKGROUND:

The Personal Wireless Services Tower, originally permitted in 2007, is located on property owned by the Town of Hingham. The existing Tower is a 130' tall and supports three main cell phone carriers: Verizon, AT&T, and T-Mobile, as well as Town public safety communication equipment.

Section V-E, 7.1 of the By-Law provides that Special Permits for Towers shall expire automatically five years from the date of issuance; however, the Massachusetts Permit Extension Act automatically extended, for four years beyond its otherwise applicable expiration date, any permit or approval that was "in effect or existence" during the qualifying period beginning on August 15, 2008 and extending through August 15, 2012. As a result, the 5-year expiration date for the 2007 Special Permit was automatically extended by four years, or until September 24, 2016.

The By-Law provides for a renewal process where applicants may request successive 5-year renewals, subject to a public hearing process. In 2016, the Applicant requested and the Board issued a renewal of the Special Permit through September 25, 2021. The decision was further extended through December 31, 2022 due to the deadlines for permits being tolled during the Covid-19 Pandemic State of Emergency under Section 17 (b)(iii) of Chapter 53 of the Acts of 2020.

In reviewing a renewal application, "the Board shall take into consideration whether there then exist any structures and/or technology available to the Applicant which would enable the Applicant to provide functionally-equivalent services in a less intrusive manner." The application includes an affidavit from Stephen Roth, Regional Manager of SBA Communications Corporation, dated October 13, 2022, stating that the only less intrusive wireless coverage that existing today would be in the form of small cells and/or DAS. The operator believes that these forms would not provide functionally equivalent services.

The application also includes an update on the status of permit requirements A-F under Section V-E. The application and supporting documents demonstrate that the existing facility continues to be operated in compliance with all provisions of the By-Law.

FINDING and DECISION:

Based on the materials submitted in support of the application and representations made at the public hearing, the Board finds that the functionally equivalent services cannot be provided in a less intrusive manner than the existing Tower. Upon a motion made by Jed Ruccio and seconded by Paul K. Healey, the Board voted unanimously to grant the requested Special Permit renewal for a successive five year period beginning on December 31, 2022 and that will expire on December 31, 2027.

This decision shall not take effect until a copy of the decision, bearing the certification of the Town Clerk that twenty (20) days have elapsed since the decision has been filed in the office of the 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 with the Plymouth County Registry of Deeds and/or the Plymouth County Land Court Registry, and indexed in the grantor index under the name of the record owner or is recorded and noted on the owner's certificate of title.

For the Board of Appeals,



Robyn S. Maguire, Chair
December 27, 2022