

*Filippova v. Framingham ZBA, Trial Court, Massachusetts Land Court, 20 MISC 000073(HPS)*

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The Building Commissioner granted a building permit for an 80’-tall amateur radio tower as an accessory use. The ZBA revoked the permit, applying the setback requirements of the Wireless Communications Facilities (WCF) special permit Bylaw to the tower proposed by Misha Filippov, KD1MF. The Land Court reversed, annulling the decision of the ZBA and ordering the Building Commissioner to reinstate the permit.

The WCF Bylaw’s definition of a tower is very broad, and the ham’s tower appeared to fit within that definition – causing the ZBA to require the WCF setback of structure height plus 20’. However, the next sentence in the same WCF paragraph required that “any such facility shall be a minimum of three hundred feet from a residential zoning district or residential use.” The Board suggested that KD1MF “re-apply to place the tower in a more central location on the lot, farther away from the abutters.”

The court recognized that amateur radio towers, under the Framingham Bylaw, are exempt from the WCF special permit requirements. The court wrote: “By its decision, the Board has taken the position that it may pick and choose which of those requirements will remain applicable to uses that are, by the explicit terms of the Bylaw, exempt from the special permit requirement. No reasonable reading of the Bylaw permits this unfettered exercise of discretion.” The court decided that it could not accept the Board’s construction of the Bylaw “if the consequences of doing so are absurd or unreasonable, such that it could not have been what the [legislative body] intended.”

The court decided that applying the accessory use setback for amateur radio towers was “[t]he only result that gives effect to the entire Bylaw and is consonant with common sense and reasonableness. This conclusion is buttressed by the Board’s inelegant attempt to reconcile irreconcilable provisions of the Bylaw by simply declaring that it has the discretion to pick and choose which shall apply.”

“[T]he Board appears to have claimed the roving and unfettered discretion to selectively apply and to disregard dimensional requirements as it chooses.”

This was not a PRB-1 decision, but rather a question of which setback rule applied. Mr. Filippov is a very happy radio amateur.