

Town of Johnston
Zoning Board of Review
Planning Board of Review
1385 Hartford Avenue
Johnston, Rhode Island 02919
401-351-6618

APPLICANT/OWNER: The Narragansett Electric Company d/b/a National Grid

DATE: September 4, 2009

FILE NO.: SB-2008-002

JOINT ADVISORY OPINION TO THE STATE OF RHODE ISLAND PROVIDENCE
PLANTATIONS ENERGY FACILITY SITING BOARD AND JOINT DENIAL OF THE
NARRAGANSETT ELECTRIC COMPANY D/B/A NATIONAL GRID'S ZONING
PETITION

WHEREAS, joint meetings of the Johnston Zoning Board of Review and Planning Board of Review were held on May 19 2009, May 25, 2009 and September 1, 2009, wherein the instant application was considered;

WHEREAS, The Narragansett Electric Company d/b/a National Grid, (hereinafter "National Grid"), as applicant and owner of a utility right of way that is approximately 5.5 miles long running through the Town of Johnston, filed an application with the Johnston Zoning Board of Review seeking a Dimensional and Use Variances as well as a Special Use Permit in order to relocate two existing 115kV transmission lines and to construct a new 345kV transmission line within the existing right of way;

WHEREAS, the Energy Facility Siting Board ordered that the Zoning Board of Review and the Planning Board render an Advisory Opinion as to whether the Reliability Project would meet the requirements of the respective zoning ordinances and whether any required special use permits or variances should be granted;

WHEREAS, public hearings on the instant application and Advisory Opinion Order were held by the Johnston Zoning Board of Review and Planning Board of Review on May 19 2009, May 25, 2009 and September 1, 2009, after due and public notice as provided under the Johnston Zoning Ordinances and the Rhode Island General Laws;

WHEREAS, at said hearings all those who desired to be heard were heard and their testimony recorded:

WHEREAS, the Boards have heard National Grid's representations that:

1. National Grid's right of way is located west of I-295 and generally east of Route 5. It encompasses the following parcels: Assessor's Plat 29, lots 30, 15 and 33; Assessor's Plat 30, lots 133, 14, 15, 17, 30, 41, 42 and 76; Assessor's Plat 31, lots 10, 11, 27 and 8; Assessor's Plat 43, lot 2; Assessor's Plat 44, lots 176, 22, 23, 293, 296, 351, 414, 415, 419, 420, 421, 481, 167, 168, 169, 170, 173, 174, 198, 24, 307 and 353; Assessor's Plat 44, lots 37 and 71; Assessor's Plats 50, lot 45; Assessor's Plat 51, lots 16, 17, 9, 10, 11, 15, 4 and 55; Assessor's Plat 53, lots 16, 17, 18, 19, and 25; Assessor's Plat 54, lots 25, 26, 3, 5, 28, 36, 55, 204, 27, 30 and 96; Assessor's Plat 541, lots 336, 341, 371; Assessor's Plat 55, lots 79, 171, 172, 36, 37 and 43.
2. National Grid's right of way is located in the following zoning districts: R-40, R-20, B-2, B-3, and I-L.
3. The proposed project in Johnston involves the relocation within the existing right of way of two 115kV transmission lines and the construction of a new 345kV transmission line. The new transmission line will be constructed primarily with steel pole davit arm structures with heights varying approximately 80' and 135'. The reconfigured 115kV lines will each be constructed primarily with steel pole davit arm structures with heights between approximately 60' and 125'.
4. The proposed construction in Johnston is part of National Grid's Rhode Island Reliability Project which involves the upgrade of approximately 21.4 miles of transmission line that pass through North Smithfield, Smithfield, Johnston, Cranston, West Warwick and Warwick. The overall project must be approved by the Rhode Island Energy Facility Siting Board.
5. National grid seeks a Special Use Permit to construct the new and relocated transmission lines in R-40, R-20, B-2 and I-L districts under Ordinance, art. III, Table III, § 5 and art. III, § P.
6. National Grid seeks a use variance to construct the new and relocated transmission lines in the B-3 district. *See* Ordinance No. 999 and Ordinance, art. III, § O and R.I. Gen. Laws § 45-24-41.
7. National Grid seeks a dimensional variance from the height restrictions of the Ordinance F, Table III F-1 for the new and relocated transmission lines.

WHEREAS, at the hearings:

1. The Boards heard the testimony of National Grid experts William H. Bailey, PhD, National Grid expert David Beron, P.E., Susan Molberg, PWS and Webster A. Collins, MAI., CRE FRICS.
2. The Boards expressed safety concerns relative to construction of various types of buildings, antennas, swimming pools, and other various structures along the edge of the right of way.
3. Mr. Beron testified that it is safe to build any structure right up to the edge of the right of way.
4. Dr. Bailey testified that before a resident built structures up to the edge of the right of way "it would be prudent to check with National Grid and see if they had any specific recommendations based upon their experience and practices." *See Transcript dated May 27, 2009, page 69; L21-24 (rough draft).*
5. The Boards were provided exhibits which demonstrate that Town Officials, as far back as January of 2009, attempted to get guidance from National Grid as to the issue of building structures within twenty (20) feet of the edge of the right-of-way in light of the pending Rhode Island Reliability Project. National Grid failed to provide any response.
6. As a result of this concern, the Boards engaged Edward G. McGavran III, P.E. as an expert to determine whether it would be safe and/or advisable to build structures as allowed in R-40, R-20, B-2 and I-L Districts right up to the edge of the right-of-way in light of the proposed 115 kV high voltage transmission lines being anywhere from twenty-eight (28) feet to thirty-five (35) feet from the edge of the right-of-way.
7. Mr. McGavarn provided written testimony that it is advisable that the EFSB not approve the Project without the EFSB imposing a setback from the edge of the right of way in the Town of 20' for any new construction. *See Testimony attached hereto as Exhibit A.*
8. National Grid represented that the Project would provide the Town with approximately \$1,000,000.00 in additional property taxes per year ("Additional Tax Revenue Estimate").
9. The Town requested detailed support of the Additional Tax Revenue Estimate.
10. National Grid failed to provide detailed support of the Additional Tax Revenue Estimate.
11. The Board was informed by Timothy J. Chapman, attorney for the Town of Johnston, that the Town is currently involved in litigation with National Grid in which National Grid is attempting to reduce the amount of annual, tangible, personal property taxes it pays to the Town by contesting the tax rate which is currently \$56.00 per \$1,000.00.

12. Research was then done by interviewing the Statewide Planning Program to determine that \$47 million in new construction would be attributed within the borders of the Town of Johnston, if the Rhode Island Reliability Project were to go forward.
13. If that new construction were depreciated pursuant to R.I. Gen. Laws § 44-5-12.1, and assessed at 95% of cost and the resulting assessed value were taxed at \$56.00 per \$1,000.00, resulting tax revenue to the Town of Johnston would be approximately \$2.5 million. Accordingly, there is a significant gap in the economic benefits that the Town may experience as a result of the project which must be resolved.
14. Counsel for the Town of Johnston submitted nineteen (19) proposed limiting conditions on the project which are attached hereto as Exhibit B. A twentieth (20) condition was added by the Building Official after the last hearings. Said additional condition is likewise incorporated into Exhibit B. National Grid stipulated to Conditions Nos. 1, 3, 4, 5, 6, (with 3 business days notice), 7 (absent public input), 8 (limited to e-mail notice), 9, 1, 12, and 13 (but for required roadway lighting).

WHEREAS, the standards for granting a special use permit in the Town of Johnston as provided in Article III, § P of the Ordinance are as follows:

1. That granting of the special use permit will be compatible with the neighboring uses and will not adversely effect the surrounding neighbors' use and enjoyment of their property;
2. That granting of the special use permit will be environmentally compatible with the neighboring properties and the protection of property values;
3. That granting of the special use permit will be compatible with the orderly growth and development of the Town of Johnston, and will not be environmentally detrimental therewith;
4. That the best practices and procedures to minimize the possibility of any adverse effects on neighboring property, the Town of Johnston, and the environment have been considered and will be employed, including but not limited to, considerations of soil erosion, water supply protection, septic disposal, wetland protection, traffic limitation, safety and circulation;
5. That the purposes of this Ordinance, and as set forth in the Comprehensive Plan shall be served by said special use permit;
6. That granting of the special use permit will substantially serve public convenience and welfare; and

7. That granting of the special use permit will not result in or create conditions that will be inimical to the public health, safety, morals and general welfare of the community.

WHEREAS, the standards for a grant of a dimensional and use variance by the Johnston Zoning Board of Review are as follows:

- a) That the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant;
- b) That the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain;
- c) That the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of Ordinance of the Comprehensive Plan upon which this Ordinance is based; and
- d) That the relief granted is the least necessary.

WHEREAS, in addition to the above variance standards the Zoning Board must be provided with evidence that;

1. In granting a use variance the subject land or structure cannot yield any beneficial use if it is required to conform to the provisions of the Johnston Zoning Ordinance. Nonconforming use of the neighboring land or structures in the same district and permitted use of lands or structures in an adjacent district shall not be considered in granting a use variance; and
2. In granting a dimensional variance, that the hardship that will be suffered by the owner of the subject property if the dimensional variance is not granted shall amount to no more than a mere inconvenience, which shall mean that there is no other reasonable alternative to enjoy a legally permitted beneficial use of one's property. The fact that a use may be more profitable or that a structure may be more valuable after the relief is granted shall not be grounds for relief.

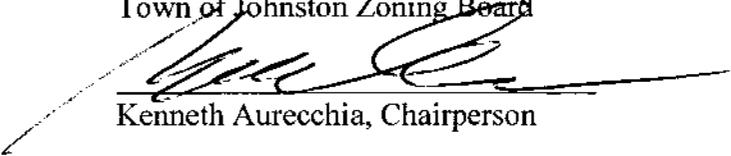
WHEREAS, in addition the Planning Board must be provided with evidence that the Project would be a land use consistent with the municipality's comprehensive plan approved pursuant to the Comprehensive Planning and Use Act, R.I. Gen. Laws § 45-22.2-1.

NOW THEREFORE BE IT RESOLVED by a unanimous vote by the Johnston Zoning Board of Review and Johnston Planning Board that the application as filed by National Grid is hereby DENIED for the following reasons:

1. The Boards find that based on expert testimony, that it is not safe to build any structures right up to the edge or along the right of way.
2. The project is not consistent with the Town's Comprehensive Plan, nor with R.I. Gen. Laws § 45-22.2-1 through 14.
3. The application for special use permit is denied as the Boards find that the surrounding neighbors may be adversely effected by the Project because citizens who own property abutting the right of way will lose use of their property to the extent that it is not safe to build any structures to the edge or along the right of way;
4. The Boards deny National Grid's Application for a special use permit as National Grid has not shown that granting the permit would be compatible with the orderly growth and development of the Town due to the fact that National Grid has not provided adequate assurances as to the additional property tax revenues that the Project will generate for the Town.
5. The Boards deny National Grid's application for a dimensional and use variance as the requested variance will alter the general character of the surrounding area as the Project may make it unsafe to build structures up to the edge of the right of way.
6. The Boards recommend that the EFSB Order that National Grid re-file it's application with the Town in a manner that: resolves the conflicting testimony as to whether it is safe to build all structures along the edge of the right of way, provides the Town with adequate assurances that National Grid will work with the Town to ensure that building to the edge or along the right of way will be safe, and provides a more definite statement as to the amount of tax revenue that the Town will receive as a result of the Project.

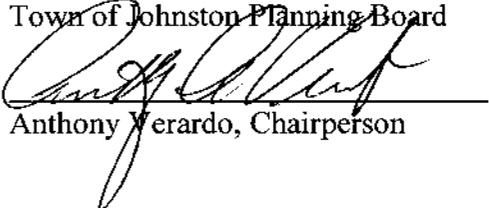
If the EFSB is inclined to grant the application of National Grid, the Boards respectfully request that the EFSB impose the limited conditions referenced in Paragraph 14 above and incorporated herein as Exhibit B.

Town of Johnston Zoning Board



Kenneth Aurecchia, Chairperson

Town of Johnston Planning Board



Anthony Verardo, Chairperson

Dated: September 4, 2009

**SB-2008-2 Narragansett Electric Co. – RI Reliability Project Application
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