

Department of Planning and Community Development

Melissa M. Santucci, Principal Planner
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APPROVED

Joseph C. Sullivan
Mayor

PLANNING BOARD

Robert Harnais, Chair
Joseph Reynolds, Vice Chair
Linda Cusick Woodman, Clerk
James Eng, Member
Darryl Mikami, Member

Braintree Planning Board
September 15, 2009
Town Hall - Johnson Memorial Chambers

Present:

Joseph Reynolds, Vice Chair Melissa Santucci, Principal Planner
Linda Cusick Woodman, Clerk
James Eng
Darryl Mikami

The Vice Chair called the meeting to order at 7:00 P.M.

Roll Call: Ms. Cusick Woodman, Mr. Eng, Mr. Mikami, Mr. Reynolds all present

New/Old Business

Zoning Board of Appeal Petitions – September

For details please see Ms. Santucci's staff report dated 9/10/09.

100 Grandview Road/Sprint Spectrum, L.P./Clear Wireless, LLC

Attorney James Hoyt was present to represent the applicant who seeks permission to install one façade mounted wireless backhaul dish antenna on the existing rooftop screen wall. He explained that this is not a new installation, but a modification to an existing one for which a variance had been granted. He passed out photo simulations and informed the Board that this upgrade will increase Sprint's capability to the 4-G level [WI-MAX].

Ms. Cusick Woodman asked if Attorney Hoyt was familiar with the report submitted for 639 Granite Street [no] and announced that until that document was reviewed by the Town Solicitor she would be abstaining from applications filed under Section XVI of the Zoning Bylaw.

Mr. Eng asked if the photo simulation depicted a computer-composed dish [yes] and if the size depicted was the actual size of the dish. Attorney Hoyt explained how the image was generated and to Mr. Eng's question if the photo "looked like the real installation" would look, responded that it would be less intrusive as it would be painted a dark color to blend in.

Mr. Mikami followed up on Ms. Cusick Woodman's concerns and asked if antennae had a different effect on human health than a dish. Attorney Hoyt responded that it is different technology. The dish has a negligible effect [radiation] on the ground as the installations are always above tree tops. The radiation is very focused and does not reach the ground. Both

dishes and antennae meet all FCC guidelines on emissions. To Mr. Mikami's conclusion that the emissions from both dishes and antennae are the same, Attorney Hoyt responded that they have similar power output and similar frequencies.

Mr. Reynolds stated that he feels the appearance of the installation on the face of the screen wall poses no problem and added that transmitting radio signals from a dish is a much more efficient method of transmission.

Diane Bottary, resident at 24 Dewey Road, asked how the radio waves were measured and Attorney Hoyt responded that they are measured in "rads and rems." But it is the emission that is measured not the reception.

Motion by Mr. Eng, second by Mr. Mikami to recommend the Zoning Board of Appeal grant the variance.

Vote: 3/0/1 [Ms. Cusick Woodman abstaining]

24 Dewey Road/Bottary

Mr. and Mrs. Bottary addressed the Board and showed their plans to expand their small home [about 900 SF] to accommodate their growing family [6 children]. The Bottarys are living in the house her grandmother owned. They wish to stay in Braintree and preserve the house.

Mr. Mikami asked if they had spoken with their neighbors about their expansion plans [not to all of the neighbors]. Ms. Santucci added that the common property line with neighbor they had not approached exceeds the setback requirement.

Motion by Ms. Cusick Woodman, second by Mr. Mikami to recommend the Zoning Board of Appeal grant the request to alter the pre-existing, non-conforming lot and structure.

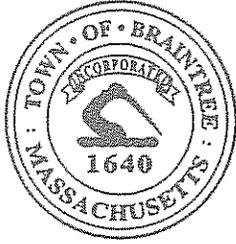
Vote: 4/0

Motion by Ms. Cusick Woodman, second by Mr. Reynolds to adjourn at 9:35 P.M.

Vote: 5/0

Respectfully submitted,

Linda Raiss



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Braintree Planning Board
September 15, 2009 Public Hearing @ 7:30 P.M.
Town Hall – Johnson Memorial Chambers

Present:

Robert Harnais, Chair [arrives at 7 :25 P.M.]
Joseph Reynolds, Vice Chair
Linda Cusick Woodman, Clerk
James Eng
Darryl Mikami

Christine Stickney, Director
Melissa Santucci, Principal Planner

531-533 Pond Street and Rear Pond Street/RMT Braintree, LLC and McCourt Construction Application for Major Modification to Planning Board Decision 94-3

Attorney Jeffrey Tocchio and Tom French of Cubellis were present with Applicant Ryan McCourt, who is before the Planning Board with a request to modify Planning Board Decision 94-3 to allow for interior repair of vehicles and outdoor storage of vehicles and material. Mr. French described the changes discussed at the last continued public hearing which have been incorporated on the revised plan. Attorney Tocchio noted that the Planning Board had asked the applicant to meet with the abutter to the north [Roger Aiello]. That meeting did not take place. The applicant's representatives did, though, meet with staff to discuss revisions to the plan.

Mr. French passed out to the Board reduced copies of the revised plan, information on the catchbasin inserts, calculations on the 25-year storm event, the snow storage plan and a turning radius plan. He described the changes to the proposal: 6' white vinyl fence along the north property line, catchbasin inserts [membrane-type] which achieve 80% removal of solids, the addition of absorbent pillows to the drainage system, the location of the snow storage area along the fence at the rear of the property, the removal of two parking spaces at the entry to increase the turning radius at Pond Street and to improve the appearance of the property. The calculations for the 3" berm confirm that it is sufficient to control runoff during a 25-year storm event. To accommodate the snow storage area, which will have the capacity to store snow from a 6" snow event, six parking spaces will be eliminated. The site has an excess of parking [16 spaces]. He also noted that the Operation and Maintenance Plan for the property [drainage system, snow storage and parking lot maintenance] had been submitted to staff. Mr. French explained the turning radius plan to the Board, noting that the turning radii allow for large vehicles to access the site.

Attorney Tocchio went over the narrative describing the operations protocol, including the rotation of vehicles and circulation on site. He indicated that the applicant would prefer to repair and maintain the company vehicles at construction sites [rather than bring them to Pond Street] as it is more efficient. Regular storage of vehicles will be at the company's South Boston site. They have defined "large size vehicles" as those which are not registered, such as bulldozers, and "medium size vehicles" as equipment which is registered. The protocol allows only two large vehicles inside the building for repair and two outside on the property, as well as five medium size vehicles [two inside and three outside]. It is the intent of the applicant to "space out" the arrival of equipment on site for repair and maintenance, unlike earlier when there was lots of equipment stored on site in a very disorderly manner. Ending his presentation, Attorney Tocchio stated that the goal of the applicant in submitting this request for modification was to use the rear of the property. The proposal decreases the impervious surface on site, improves the drainage, imposes order on the storage of vehicles with the addition of striping for designated parking and improves the look of the property by increasing the landscaping and installing a white vinyl fence.

The Chair asked for a motion to accept the correspondence submitted from 3/18/09 to 9/15/09. Motion by Mr. Eng, second by Ms. Cusick Woodman to accept the summary of correspondence from 3/18/09 to 9/15/09. Vote: 5/0.

The Chair then asked for comment from those in attendance.

Attorney David Kellem, representing Abutters Darlene and Roger Aiello, addressed the Planning Board stating that his clients vigorously oppose the proposal to modify the Planning Board's earlier decision. He had a few questions he wished to pose:

- 1) Does the revised plan address the issue raised in the Fire Chief's May 27, 2009 submission? Ms. Santucci responded that the Draft Conditions include an 18' wide Fire Lane in the middle of the access drive. Attorney Kellem asked if there were sufficient width to accommodate this Fire Lane given parking at the building and at the north property line. Mr. French calculated that there is more than 18' "clear space," as the driveway is between 24' and 30' in width.
- 2) How will the Fire Department access the rear of the property as there is currently a gate across the driveway? Ms. Santucci said the Draft Conditions include the requirement for a Knox Box or an alternative to allow the Fire Department to open the gate.
- 3) Noise is a substantial concern of the abutters and the Inspector of Buildings raised this concern in his September 8, 2009 letter. Has this been addressed? Attorney Tocchio responded that the applicant has located the storage and vehicle spaces as far as possible from the residential abutters. The doors to the building will always be closed during activity and the outdoor activities have been conditioned.
- 4) Will there be pressure washing outside? No.
- 5) Will the conditions apply to tenants as well?
- 6) Is access to the property limited to certain hours?

Attorney Kellem concluded by stating that a primary concern is the buffer between Residential and Commercial properties. This use at 531 Pond Street is still a direct violation of the buffer requirement in the Zoning Bylaw. The applicant has been using the property in violation of the earlier Planning Board decision and after the fact is trying to "make it right." The Planning Board decision and the Town's regulations and Bylaw do not allow for the proposed modifications. He noted that the earlier property owner had a low impact business, but since 2000 the applicant has ignored the restrictions placed on activities on the property. He raised the fact that having McCourt Construction is a financial benefit to the Town, while a detriment to the neighbors and the political pressure puts the Planning Board in a difficult position. He requested that the Planning Board deny the proposed modification and thanked the Board for their attention.

Attorney Tocchio responded to Attorney Kellem's remarks about "political pressure" by stating that the applicant, who had been a tenant at the property before purchasing, had disagreed with the interpretation of the Inspector of Buildings regarding site issues. These were worked out and resulted in the applicant agreeing to go to the Planning Board with a request to modify the 1994 decision. The applicant is proposing real improvements to the property which will result in real benefits to the Town.

The Chair asked for further comment from the public and hearing none closed the public input portion of the hearing and opened it to Planning Board comment.

Mr. Eng asked if the equipment currently on site had proper emissions control. Attorney Tocchio repeated earlier assertions that the applicant had been working with DEP in this area and had special filters installed on all company equipment which resulted in all equipment exceeding the state's regulations. He added that the equipment is not operated on site, only repaired on site.

Mr. Eng asked about the equipment decibel level. Attorney Tocchio responded that delivery trucks enter and leave the property and the tenants have been told that no vehicle is to idle on the property. Aerial photos reveal that the abutter to the north has a caterpillar tractor and a screening machine. It is possible that some of the ambient noise could be from the operation of that equipment. Mr. Eng asked if any equipment on site exceeded 60 [corrected to 70] decibels. Attorney Tocchio has no knowledge in that area. Mr. Eng asked if the proposed fence would be solid and Attorney Tocchio described it as completely opaque, adding that the fence was to accomplish two purposes – aesthetic and - at 6' high - a barrier to noise. Noting that the 3" berm was designed to withstand runoff from a 25-year storm, Mr. Eng asked if the engineers had considered designing for a 100-year storm event. Mr. French responded that the dirtiest runoff in a 100-year storm is the initial runoff and any excess is clean water. Smaller storms generate more sediment runoff. Mr. Eng said he was not interested in sediment runoff, but in the oil from the equipment stored and repaired on site which floats and will run off to the wetland. Nichole Dunphy, accompanying Mr. French from Cubellis, stated that they had designed for the 25-year storm because that was required by the Town. Calculations for a 100-year event would require a

4" berm. Mr. Eng wished the project to have a berm that would contain runoff from a 100-year storm event and Mr. French agreed to design to that event.

Ms. Santucci informed the Board that she had been visiting the site frequently and recommended that a 6' fence was not high enough because the property to the north is higher than 531 Pond Street. She also took issue with a white vinyl fence and recommended the Board consider an 8' high fence of wood or composite construction which would blend in better with the landscape.

Ms. Cusick Woodman had a number of issues with the applicant's proposal and earlier use of the property. She asked how many catchbasins were proposed [6] and if the new system was in place [no]. That means the runoff is currently entering the storm drains. She referred to the letter from the Inspector of Buildings dated 9/8/09 which raised issues of exhaust, noise and aesthetics. For a number of years the property has been cited many times for enforcement from the Conservation Commission and Inspectional Division. Noting that the applicant has tenants, she asked how many busses the tenant has [unknown], where the busses empty their toilets and where the carpet cleaner empties his wastewater. Attorney Tocchio responded that the busses do not have toilets and the carpet cleaner discharges wastewater into clients' toilets, NOT at 531 Pond Street. He further stated that there will be no discharge to the storm drains and would welcome a condition so stating. Ms. Cusick Woodman noted that Condition 27 of the Order of Conditions issued for 531 Pond Street required regular catchbasin maintenance and a recording of such. Is that record available? Attorney Tocchio responded that they have such record and Ms. Santucci said she thought the Conservation Commission was in possession of that record.

Ms. Cusick Woodman expressed dissatisfaction with the manner in which the property has been managed for the past 5½ years and stated she feels the applicant has done as he wished until he got caught. Her main concern is the disregard the applicant has shown for the runoff from his property to the wetlands and the Town's water supply. She also alluded to the noxious fumes from diesel vehicles and to the Baird and Maguire Superfund site in Holbrook.

Attorney Tocchio responded by referring to the issue of non-compliance with filling of wetlands [to access the rear of the property at 531 Pond Street] and to the fact that the applicant had spoken with the previous Director of Planning and Community Development about the issue, had been told to remove the fill and did so. The Conservation Commission issued a Certificate of Compliance for the work. He also mentioned the "conservation" issues which have arisen between the McCourt operation and Abutter Aiello, issues which have resulted in appeals, all of which have been found in favor of McCourt. He continued to emphasize that the applicant wants to improve the property, noting that when Mr. Eng mentioned at an earlier meeting that he did not feel the catchbasin inserts were good enough, the applicant researched the issue and came up with a superior insert. As for the cleaning records, they have been provided to the Conservation Agent.

Mr. Mikami raised a number of issues he felt were of concern to the neighbors. He asked how many complaints had been lodged against the McCourt operation and what penalties were incurred. Attorney Tocchio stated he was unaware of any complaints other than those lodged by Abutter Aiello, adding that his and his client's approach has been to "stay on the high road" during this hearing. However, he wished to point out that the abutter to the north has on his property – and operates on that property – equipment of a commercial nature.

Ms. Santucci stated that the Department does not have any record of complaints which might have been made to other departments.

Mr. Mikami asked when equipment would be brought to the site [between 7 A.M. and 4 P.M.] and how often traffic was tied up on Pond Street. [Perhaps once a week, but it varies.] Attorney Tocchio added that the Police Department was on record as stating that there were no problems with site operations. Mr. Mikami continued by asking if there had been any complaints lodged about noise, traffic or exhaust. Ms. Santucci responded that she knew of none other than from the abutter to the north. He also asked who was in charge of the repair facility [onsite manager], what kind of repairs would be done [Attorney Tocchio responded that the activities are similar to those at a regular car repair shop: replace hydraulic lines, equipment lubrication, electrical systems repair, oil changes. They also work on fabrication and assemblies.] He added that he is concerned for the residential abutters and the impact of the operation on their quality of life. Attorney Tocchio said all loud activities should be conducted on the south side of the property, furthest away from the residential neighbors. Mr. Mikami asked about the registration of McCourt's vehicles and the payment of excise taxes. The applicant, Ryan McCourt, responded that he is in the process of changing all registrations to Braintree and that by January 1, 2010 all the company's vehicles will be registered under the Braintree address, although they will be stored at their South Boston facility. He said that he had understood the message from the administration about "investing in Braintree" and was willing to do so.

Ms. Santucci wished to make sure there was no misunderstanding about the building's interior drain system and that it is not directed to the storm system. Mr. French said that there are floor drains with grease traps, a separate system from the outdoor drainage.

Mr. Harnais asked if the maintenance schedule was available [yes].

Mr. Reynolds said he shared Ms. Cusick Woodman's concerns about past violations and the runoff into the wetlands. The key to improving site conditions is a robust and effective drainage plan. He asked if staff had reviewed the plan and if the manufacturer's standards were incorporated into the maintenance plan [yes]. As for the berm, he concurs with Mr. Eng that it should be designed for the 100-year storm. Additionally, he wished confirmation that multiple snow storms would result in snow being removed from the site. He wants language to be very clear about the amount of snow that can remain in the storage area and what triggers removal.

He was assured that the calculations on storage resulted in the determination that only snow from a 6" snowfall could be stored on site. If there were a subsequent large snowstorm, then snow would need to be removed from the site. He then referred to Braintree Zoning Bylaw Chp. 135-702.B.11 and 12 and the pre-existing non-conforming nature of the property. He stated that he feels the applicant's proposal can work as long as he complies with the Bylaw. As for the Fire Lane issue, he would accept staff's recommendation and feels the proposed Fire Lane is adequate. Regarding the issue of noise, the Zoning Bylaw contains a noise ordinance which provides redress for the neighbors. He emphasized that this site will be under a "compliance microscope" and he wants the applicant to take the abutters' concerns seriously, adding that some of the ambient noise might be coming from other commercial activities in the area. He believes the applicant has followed the process and wants to emphasize that the applicant must understand the concerns voiced by Ms. Cusick Woodman.

Mr. Harnais repeated his belief [expressed at earlier hearings] that the applicant must respect the neighbors and that the neighbors must respect the applicant's right to conduct his business in this Commercial zone. In the past the applicant has not taken care of his property. However, the "could bes" and what ifs" mentioned in the letter from the Inspector of Buildings are hypothetical and the Planning Board needs facts on which to base their decision. He advised the applicant that this decision modification will be strictly watched and that the standards set by the Conditions of Approval must be met and adhered to. The Board received a letter from Town Counsel which addressed some issues of concern to the Board. [Please see letter dated and received 9/14/09.] Mr. Harnais stated that he feels the conditions drafted satisfy the concerns which have been raised.

Mr. Eng raised a concern about the location of the snow storage area. He wants the applicant to relocate it away from the fence, which will be damaged by stockpiling of snow.

Ms. Santucci suggested that the applicant spruce up the area to the right of the driveway by infilling with plantings.

Although the public comment period of the continued hearing had been closed, the Chair stated he would be willing to recognize Charles Kokoros, Councilor of District 1, and Paul "Dan" Clifford, Councilor of District 6, who had arrived during the hearing.

Mr. Kokoros spoke in opposition to the request for modification because of the impacts to the neighbors. He noted he has been on the Tri-Town Board of Water Commissioners for ten years and the water quality issue is the most important one for him. He thanked the Chair for offering the opportunity to speak and urged the Board to deny the request based on quality of life and water issues.

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Planning Board Minutes 9/15/09

Public Hearing @ 7:30 P.M.

Mr. Clifford stated he had become aware of the application and the issues surrounding the application about three weeks ago. He mentioned the suspicious demise of livestock on Abutter Aiello's property. *The Chair immediately responded that if the demise was due to the McCourt site activity, it would be the responsibility of the Town, not the Planning Board. The Board has no jurisdiction over such a matter. He asked what Councilor Clifford had done with the information. He should contact the Board of Health with his concerns. Mr. Harnais added that he had read and re-read the packet submitted by Mr. Aiello on the demise of his goats and could find absolutely no documented connection between the activity at 531 Pond Street and Mr. Aiello's property.*

Mr. Clifford stated he was present to support the residents and asked the Board to reject the applicant's request for modification.

Motion by Mr. Reynolds, second by Mr. Eng to close the public hearing

Vote: 5/0

Motion by Mr. Reynolds, second by Mr. Eng to approve the request for modification to Planning Board Decision 94-3 with the Draft Conditions as amended [correction of 60 decibels to 70 decibels, addition of oil absorbent drainage inserts, inclusion of grease trap maintenance in O & M Plan and of all turning radius plans in the decision, increasing the berm around the rear edge of pavement to accommodate the 100-year storm event, relocation of snow storage area and addition of conditions disallowing onsite pressure washing of vehicles/equipment, illegal discharges into the storm drains, and exterior vehicle/equipment repair, as well as a condition adding a condition requiring north facing doors to be closed when work inside building is in progress].

Vote: 4/1 [Ms. Cusick Woodman in opposition]

Mr. Reynolds wished to ensure inclusion in the Conditions of Approval of language which clearly describes what triggers removal of snow from the site.

Motion by Mr. Reynolds, second by Mr. Eng to adjourn at 9:30 P.M.

Vote: 5/0

Respectfully submitted,

Linda Raiss