



# Department of Municipal Licenses and Inspections

## Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

Joseph C. Sullivan  
Mayor

### Meeting Minutes

February 24, 2009

**IN ATTENDANCE:**

Stephen Karll, Chairman  
Jack Gauthier, Member  
Michelle Lauria, Member  
Jay Nuss, Member

**ALSO PRESENT:**

Russell Forsberg, Inspector of Buildings/Code Compliance Officer  
Carolyn Murray, Town Solicitor

**Mr. Karll called the meeting to order at 7:04pm.**

**OLD BUSINESS:**

- 1) Petition Number 09-2  
MetroPCS Massachusetts, LLC  
RE: 35 Roc Sam Park**

Present: Ricardo Sousa, attorney representing petitioner

Mr. Sousa advised the Board that there are two matters on the agenda for MetroPCS. They are two different sites that fill the same gap in coverage. They originally filed this petition for 35 Roc Sam Park and after further consultation with members of the staff and counsel, they felt it would be in the best interest of the Town and also the applicant to go back out and investigate the 531 Pond Street site, which is also on the agenda. Mr. Sousa advised the Board that he would like to make a presentation on 531 Pond Street as this is the preferable site, and if in fact that petition is successful then the petition for 35 Roc Sam Park will be withdrawn.

On a motion made by Mr. Nuss and seconded by Mr. Gauthier, the Board voted unanimously to continue the hearing until March 24, 2009.

**NEW PETITIONS:**

- 2) Petition Number 09-3  
Omnipoint Communications, Inc  
RE: 25 Hayward Street**

Present: Ricardo Sousa, attorney representing petitioner

Mr. Forsberg advised the Board that the petitioner has requested a 60-day extension of this petition until the April 28, 2009 Zoning Board of Appeals meeting.

On a motion made by Mr. Gauthier, and seconded by Mr. Nuss, the Board voted unanimously to approve a 60-day extension of the petition to April 28, 2009.

**3) Petition Number 09-4  
MetroPCS Massachusetts, LLC  
RE: 531 Pond Street**

Present: Ricardo Sousa, attorney representing petitioner  
Sohail Usmani, Radio Frequency Engineer with Metro PCS  
Michael Johnsen, Site Acquisition Agent for Metro PCS

The petitioner, MetroPCS Massachusetts, LLC of 285 Billerica Road, Chelmsford, MA, seeks relief from the Zoning By-laws, Chapter 135, Section 1603 (B), and Section 403 (A) for the property located at 531 Pond Street to request dimensional variances to alter an existing wireless communication tower on the subject property, together with the applicant's antenna and ancillary equipment; and alterations to a pre-existing non-conforming structure on the subject property. The property is located within a Commercial Zoning District, as shown on Assessors' Map No. 1038, Plot 10, and contains 5.98 Acres +/- of land.

**NOTICE**

Pursuant to notice duly published in a newspaper in general circulation in the Town, posted at Town Hall, and by written notice mailed to all parties of interest pursuant to G.L. Chapter 40A, a hearing was held before the Zoning Board of Appeals on February 24, 2009 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on the petition was chairman, Stephen Karll, and members, Jack Gauthier and Jay Nuss. Alternate was member Michelle Lauria.

**EVIDENCE**

Mr. Karll advised that by a vote of 4-0-0, the Planning Board voted to send no recommendation to the Zoning Board of Appeal. However, the Planning Board wanted to note that they recognize the Applicant's efforts to co-locate on an existing facility.

Mr. Karll read into the record, a letter received from Sophie Real Estate Trust, former property owner, dated February 23, 2009.

The petitioner, represented by Mr. Ricardo Sousa explained to the Board that the applicant is seeking permission to utilize an existing tower that would fill their gap in coverage and is located at 531 Pond Street. Mr. Sousa advised that this existing tower does serve to accommodate the wireless antenna installations for two other wireless carriers. AT & T and T Mobile have installed their antennas at two different heights. Currently, the tower extends to a height of 84' to the top of the structure. There is 10' vertical separation between those two antennas. The tower itself is located within a knoll within the building and is accessed through an access road on the property. There is typically very little maintenance associated with these installations. They are typically passive installations. Once they are constructed there is only a need for a technician to visit the site every once in a while for maintenance. Metro PCS is proposing to utilize this existing structure, and will need enough vertical separation between the top wireless carrier and Metro PCS' antennas, which is 10'. They are proposing to extend the tower 10' and add six antennas at the top, together with their co-axial cables all the way to the bottom to a pad for their equipment cabinets adjacent to the tower. The proposed installation is very

similar to the two existing installations. The extension will also be similar in appearance to the other installations that are on the tower.

Mr. Sousa presented the Board with photo simulations that show what the tower looks like now, and proposed photo simulations of what the tower would look like with their traditional wireless installation.

Mr. Sousa advised the Board that under the Zoning Bylaws, this proposed installation is permitted pursuant to an extension/alteration of a pre-existing, non-conforming structure, which this structure is.

The standard is typically not substantially more detrimental than the existing structure and use. MetroPCS feels that this extension is in character with the current use of this tower and it does not substantially alter it.

Mr. Sousa advised that Mr. Johnsen looked at alternative sites. None of them were really viable other than this existing tower, or a brand new tower at 35 Roc Sam Park. They were proposing a flag style monopole at 35 Roc Sam Park extending up to 100' to be able to accommodate their antennas. They met some resistance relative to a new tower, so that is why they put the application for 35 Roc Sam Park on hold and asked for it to be continued pending review of this application.

Mr. Sousa advised that from MetroPCS' perspective, it has always been the case to utilize an existing structure before you build a new one.

Mr. Sousa advised that they are not altering the site plan or the footprint of the building in any way. The only thing they would do is place a pad at the bottom of the tower and place their equipment cabinets on the pad. Also, the pad will not protrude beyond the footprint of the building. MetroPCS will have access to their equipment, and will not be altering any equipment access to the other two carriers.

Mr. Johnsen advised that the existing carriers, AT & T and T Mobile have their equipment up on the original loading dock. MetroPCS wanted to put their equipment up on the loading dock as well, but in order for them to do that, they would have created access issues and problems for the existing carriers. So, they are forced down to ground level, and would place it up against the existing building and not extend at all beyond the footprint of the building or outer most edge of the building and not to impinge access.

Mr. Usmani advised the Board of the nature of the gap in coverage and how this proposal will fill that gap.

Mr. Sousa advised the Board that Mr. Johnsen submitted an alternative site analysis, and that it is their obligation to prove to the Board that they looked at alternatives. They just didn't look at proposing a tower. They looked at Reservoir Condominiums at 614 Pond Street; a fire station on Washington Street and Park Avenue; the Pond Street lattice tower, which is the subject of this application; and a new tower on the adjacent property.

Mr. Johnsen explained the elevation details to the Board.

No one else spoke in favor of the petition.

Mr. Charles Kokoros spoke in opposition of the petition. Mr. Kokoros advised the Board that he lives at 7 Solar Avenue, and is the District 1 Councilor in which this proposal is located. Further, that he has spoken to many residents that surround this area and they are in opposition of the first proposal that is on hold right now and they are also in opposition of adding to a pre-existing non-conforming use in an area that abuts neighborhoods. There is already a number of other issues because of the proximity to commercial property and

residential property. Mr. Kokoros thinks that the neighborhoods that surround this particular property should not have to endure any additional hardship because this company believes they have a hardship. He speaks on behalf of his district, and also as a resident in opposition to any new cell tower or addition to the pre-existing non-conforming tower.

Mr. Karll advised that the Board understands the concern, but they also are guided by the telecommunications act, which is quite strict. So, to a degree their hands are tied.

Mr. Kokoros advised that he thinks if the height level that it is at now is maintained that it would have less of an effect, even though MetroPCS would not get the 100% coverage they say they need, but that is just speculation based on a guess.

Mr. Roger Aiello spoke in opposition of the petition. Mr. Aiello advised that he is the abutter to this property. Further, that regarding the issue of non-conforming use, this building and property has a covenant in the deed.

Mr. Aiello expressed a concern about the height increase of this existing tower and the location of the equipment cabinet on a pad.

Mr. Aiello advised that he feels the property owner has enough variances.

Mr. Karll advised that the Board has set the record and agrees with him. However, the law is a different issue regarding the telecommunications act. Further, he knows nothing about a covenant, and they have no evidence of that.

Mr. Karll reviewed condition # 31 of 1994 Special Permit regarding this property which states "There shall be no permanent outdoor storage of materials or equipment..."

Mr. Karll advised that this is not storage of a material. It is a piece of equipment, but he thinks the condition is referring to construction equipment on the McCourt property. Further, that this is something that needs to be taken up with the owner, not the Zoning Board of Appeals.

Mr. Aiello disagreed. He advised that if this petition gets voted in then he will appeal it. He feels the covenant goes with the deed, and everyone in this town has sidestepped it. Further, he doesn't think they should have that unsightly tower, and nobody wants that tower.

Mr. Karll advised that Mr. Aiello and Mr. Korkoros have stated that nobody wants the tower, but other than Mr. Aiello and Mr. Kokoros, they are not here.

Mr. Aiello advised that Mr. Korkoros met with a lot of the neighbors and they are against it.

Mr. Karll asked why the neighbors are not here, they should be here.

Mr. Karll advised that he would like Ms. Murray to look at this documentation and provide a legal opinion.

Ms. Murray advised the Board that the current owners have a modification application pending with the Planning Board to modify the conditions of the special permit. She believes it is scheduled in March.

Mr. Karll advised that he would like to meet with the applicant, Mr. Aiello and Mr. Kokoros and get in there and walk the property.

Also, now that he knows this matter is coming up before the Planning Board to modify the covenants, he would like to postpone the matter until afterwards so they can act on it one way or another.

Mr. Gauthier asked Mr. Sousa if there was an enlarged electrical equipment plan available that showed the layout of the equipment down below.

Mr. Sousa reviewed the plans available this evening.

On a motion made by Mr. Gauthier and seconded by Mr. Nuss, the Board voted unanimously to continue the hearing until March 24, 2009.

**4) Petition Number 04-109 B**  
**St. Francis of Assisi/ Independence Manor III**  
**RE: 41-53 Independence Avenue**

Mr. Karll advised the Board that St. Francis of Assisi is requesting an extension of their comprehensive permit for Independence Manor III to 2010.

On a motion made by Ms. Lauria and seconded by Mr. Nuss, the Board voted unanimously to extend the comprehensive permit for Independence Manor III to 2010.

**5) Petition Number 03-81**  
**Ridge at Blue Hills**  
**RE: 800 West Street**

Mr. Forsberg advised the Board that this matter is before the Board for the acceptance of the As-Built plan for the Ridge at Blue Hills.

On a motion made by Mr. Gauthier and seconded by Mr. Nuss, the Board voted unanimously to accept the As-Built plan for the Ridge at Blue Hills.

**OLD BUSINESS:**

On a motion made by Mr. Gauthier and seconded by Mr. Nuss, the Board voted to accept the meeting minutes of December 17, 2008 and January 27, 2009.

The meeting adjourned at 8:32pm.