



# Department of Municipal Licenses and Inspections

## Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

Joseph C. Sullivan  
Mayor

### Meeting Minutes

July 28, 2009

**IN ATTENDANCE:** Stephen Karll, Chairman  
Jay Nuss, Member  
Michelle Lauria, Member

**ALSO PRESENT:** Russell Forsberg, Inspector of Buildings  
Carolyn Murray, Town Solicitor

**Mr. Karll called the meeting to order at 7:00pm.**

#### **OLD BUSINESS:**

- 1) Petition Number 08-42  
Thomas J. O'Keefe  
RE: 105 Brookside Road**

This is a petition filed by Thomas J. O'Keefe of 105 Brookside Road, Braintree, MA regarding the same property. Mr. O'Keefe is seeking relief from the Town of Braintree Zoning By-laws under Chapter 135, Sections 135-403, 407, and 701 to build a 16' x 16' deck on an existing dwelling. The property is located in a Residence B Zoning District as shown on Assessors Plan 3021, Plot 69 and contains 7,268 SF +/- 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 scheduled before the Zoning Board of Appeals on September 30, 2008, and after several extensions were granted, a hearing was held on July 28, 2009 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Stephen Karll, and members, Jay Nuss and Michelle Lauria.

#### **Evidence**

In his application, the petitioner sought variances from the front and side yard setback requirements of the Zoning By-laws in order to construct a 16' x 16' deck on an existing dwelling. At the request of the petitioner, multiple extensions had been granted by the Board, but all extensions had expired. At the opening of the Board's meeting, no one responded when the Chairman called this petition. The Board proceeded with all other business on its agenda before calling this petition for a second time. Again, no one appeared on behalf of

the petition. The Chairman inquired as to whether another request for extension had been received and was informed that no such request had been made.

In September, 2008, the Planning Board submitted a report to the Board noting that the petitioner had requested a continuance to obtain a revised plot plan, and therefore, the Planning Board offered no recommendation on this petition.

No one else spoke in favor of or opposition to the petition.

### **Findings**

There being no one in attendance at the hearing to represent the petitioner and lacking any further request from the petitioner to extend the hearing, the Board made no findings as to the merits of this petition. The Board noted that the original application dated back to September, 2008 and determined that the petitioner had been granted ample time to present his petition.

### **Decision**

On motion made by Mr. Nuss and seconded by Ms. Lauria, it was unanimously voted to deny the requested relief, due to the petitioner's failure to appear and the lack of request for a further extension.

- 2) Petition 09-02**  
**Metro PCS**  
**RE: 35 Roc Sam Park**

Mr. Karll advised the Board that the petitioner through their attorney Ricardo Sousa has requested a 60-day extension of this petition until the September 22, 2009 Zoning Board of Appeals meeting.

On a motion made by Mr. Nuss, and seconded by Ms. Lauria, the Board voted unanimously to approve a 60-day extension of the petition until September 22, 2009.

- 3) Petition Number 09-20**  
**Harry Powers**  
**302-304 Quincy Avenue**

Present: Attorney Carl Johnson representing the petitioner  
Harry Powers, petitioner

This is a petition filed by Harry Powers of 10 James Road, Harwich, MA 02643 regarding the property located at 302/304 Quincy Avenue in Braintree, MA. Pursuant to Section 135-202(A) of the Zoning By-laws, the petitioner appeals the action of the Building Inspector, who issued a Cease and Desist Order with respect to a fourth rental unit at this site. The petitioner asserts that the property is grandfathered as a multi-family dwelling and seeks a finding and/or variance to legitimize the presence of a fourth rental unit. The petitioner also seeks relief under Zoning By-laws Section 135-403, 407, 705, and 806. The property is located in a Residence C Zoning District as shown on Assessors Plan 3050, Plot 34 and contains 6,000 SF +/- 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 July 28, 2009 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Stephen Karll, and members, Jay Nuss and Michelle Lauria.

### **Evidence**

The petitioner, represented by Attorney Carl Johnson, explained to the Board that the applicant is seeking a variance and/or finding relative to a 4-unit apartment building. Attorney Johnson submitted materials to substantiate the petitioner's claim that the multi-family apartment building is a pre-existing nonconforming use, which was allowed by right under the Zoning By-laws when originally constructed in 1947. Attorney Johnson provided a copy of the Town of Braintree Zoning Map dated May 2, 1940, which shows the subject lots on Quincy Avenue as lying within a Residence C Zoning District. Attorney Johnson also submitted an attested copy of the Town's Zoning By-law, as adopted by Town Meeting on June 18, 1940 and bearing the approval of the Attorney General, which stated under Sec. III Residence C Zoning Districts: "In a residence C district no building shall be erected or altered and no building or premises shall be used for any purpose except...2. Dwelling, including apartment or tenement house but not a hotel..." Attorney Johnson also submitted a building permit, granted on August 20, 1947 to Nora Spillane to construct a dwelling, which was accompanied by a Lot Plan, noting a two apartment house with dimensions corresponding to the information contained on the building permit. This, according to Attorney Johnson establishes the apartment house as a lawfully existing non-conforming use under the Zoning By-laws.

In 1991, this site was acquired by the petitioner. In response to questions posed by members of the Board, the petitioner stated that when he purchased this property, it was represented to him as having three rental units. However, the petitioner submitted an affidavit, describing the composition of the building, in which he states that at the time of purchase, the basement contained a full bath, three rooms, and a kitchen. According to the affidavit, between 1993 and 1994, the petitioner upgraded and finished the basement unit, without obtaining any building permits, and subsequently rented the unit until March 2009, when the Building Inspector issued a Cease and Desist Order for the unauthorized basement unit.

The petitioner also submitted an Assessors field card from an inspection dated May 4, 1993, which indicates that the building contained three units, comprised of 4 full baths, 15 rooms and 6 bedrooms. According to Attorney Johnson, this description comports with the petitioner's affidavit, which states that the first floor unit contained 6 rooms, 3 bedrooms, and 1 full bath, the second floor contained 2 units, each with 3 rooms, 1 bedroom, 1 full bath, a kitchen and living room, and a basement unit with 1 full bath, 3 rooms, and a kitchen. In addition, Attorney Johnson provided copies of permits for plumbing, gas fitting, and electrical work dated 1991 to 1995, which reflect the presence of 4 boilers, 4 water heaters, 4 hot water tanks, and 4 gas burners. Therefore, Attorney Johnson asserted that these documents are evidence that the fourth unit in the basement was in existence dating back to 1993.

Attorney Johnson reminded the Board of the language contained in G.L. c. 40A, §7, which states that no enforcement action can be maintained for a violation of a zoning by-law unless the action is brought within ten years of the alleged violation. Since there is evidence on the record to support a finding that the fourth rental unit in the basement has been in existence since 1993, Attorney Johnson concluded that the time for the Town to initiate enforcement proceedings has lapsed. Therefore, the petitioner seeks recognition of the fourth unit as a legal unit by operation of law, or in the alternative, the petitioner seeks a finding that the alteration of the pre-existing nonconforming apartment building, by the addition of a fourth unit, is not substantially more detrimental to the neighborhood than the existing apartment building. As a further option, Attorney Johnson noted, that if the Board did not endorse the 3-unit apartment building as pre-existing nonconforming or find that

the fourth unit was not substantially more detrimental to the neighborhood, would be to grant a variance on the grounds that the building is unique, and the petitioner would suffer a hardship if forced to abandon the unit.

The petitioner also seeks relief relative to the on-site parking. As currently configured, six parking spaces to the rear of the property share a common driveway and conform to the Zoning By-law. However, one parking space is accessed solely by backing out onto Quincy Avenue, a state highway, which is a maneuver prohibited under Section 135-808 of the Zoning By-laws. To correct this situation, the petitioner proposes to remove an existing shed and install two tandem parking spaces which would exit the site by driving forward onto Quincy Avenue, thereby eliminating the illegal maneuver. The reconfiguration of the parking constitutes and alteration of a pre-existing nonconforming structure, and therefore, the petitioner requests a finding that the alteration is not substantially more detrimental to the neighborhood.

The petitioner submitted two plans: one entitled "Harry Powers, 302 Quincy Avenue, Braintree, Massachusetts, Existing Conditions Plan," dated June 19, 2009, prepared by Kelly Engineering Group, Inc. and the other entitled "Harry Powers, 302 Quincy Avenue, Braintree, Massachusetts, Parking Plan," dated June 13, 2009, also prepared by Kelly Engineering Group, Inc. of Braintree, MA.

No one else spoke in favor of or opposition to the petition. John DiTullio of 308 Quincy Avenue submitted a letter noting that he had no objections to any changes proposed at the site. The Planning Board voted 5-0 to make no recommendation on the requested relief due to insufficient information.

### **Findings**

The Board noted that the petitioner admitted that he purchased a 3-unit apartment building believing it was only permitted for 3 units. The Board expressed concern about condoning an illegally constructed apartment, particularly in light of recent negative publicity regarding the dangers of illegal apartments in surrounding communities. The Board was also hesitant to take any action that might encourage other owners of illegal apartments to follow suit. While this apartment may ultimately be deemed valid by operation of G.L. c. 40A, Section 7, the Board did not want to take any affirmative steps towards rewarding someone for violating the Zoning By-laws or constructing an apartment without obtaining the necessary building permits. With respect to the parking reconfiguration, the Board found that if they took action to approve the parking, it might be construed as recognition of the fourth rental unit.

### **Decision**

On motion made by Ms. Lauria and seconded by Mr. Nuss, it was unanimously voted to deny the requested relief.

#### **4) Petition Number 09-22 Patrick and Maria Plante RE: 555 Washington Street**

This is a petition filed by Patrick and Maria Plante of 18 Grace Drive, Cohasset, MA 02025 regarding the property located at 555 Washington Street in Braintree, MA. Pursuant to Section 135-202(A) of the Zoning By-laws, the petitioners are appealing the action of the Building Inspector, who issued a Cease and Desist Order to the petitioners to cease the operation of a business, APEX Medical Supplies, within a residential zoning district. The petitioners assert the business has been in operation for over twelve years and seeks a variance or finding that the operation is not substantially more detrimental to the neighborhood. The property is located in a Residence A/Residence C Zoning District as shown on Assessors Plan 2036, Plot 28.

### 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 scheduled before the Zoning Board of Appeals on June 23, 2009 and continued to July 28, 2009 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Stephen Karll, and members, Jay Nuss and Michelle Lauria.

### Evidence

Neither the petitioners nor their representative appeared when the case was called. Attorney Carl Johnson, who happened to be appearing on behalf of another petitioner, addressed the Board, advising that the petitioners had sought his counsel. Attorney Johnson emphasized that he was not representing the petitioners, but it was his understanding that the petitioners were not going forward with their appeal of the Building Inspector's order. The Chairman inquired as to whether the petitioner had requested a further extension and was informed by the Building Inspector that no such request was received.

No one else spoke in favor of or opposition to the petition.

### Findings

As an initial matter, the Chairman advised that the tenants at this property are neighbors and that his intention was to recuse himself from acting on this petition. However, the Chairman noted that there were only three members of the Board present, and therefore the Rule of Necessity would require him to sit on the petition.

There being no one in attendance at the hearing to present this matter, the Board made no findings as to the merit of the petition.

### Decision

On motion made by Mr. Nuss and seconded by Ms. Lauria, it was unanimously voted to deny the petition and to uphold the Building Inspector's interpretation and actions under the Zoning By-laws.

### **NEW BUSINESS:**

- 5) **Petition Number 09-24**  
**Carol Walsh**  
**RE: 98 Storrs Avenue**

Mr. Karll advised the Board that the petitioner has requested a 30-day extension of this petition until the August 25, 2009 Zoning Board of Appeals meeting.

On a motion made by Mr. Nuss, and seconded by Ms. Lauria, the Board voted unanimously to approve a 30-day extension of the petition until August 25, 2009.

- 6) **Petition Number 09-25**  
**AMB Property LP and AMB Property Corporation**  
**RE: 175 Campanelli Drive and Campanelli Drive respectively**

Mr. Karll advised the Board that the petitioner has requested through their attorney Frank Marinelli, a 30-day extension of this petition until the August 25, 2009 Zoning Board of Appeals meeting.

On a motion made by Mr. Nuss, and seconded by Ms. Lauria, the Board voted unanimously to approve a 30-day extension of the petition until August 25, 2009.

**7) Petition Number 09-26  
Sprint Spectrum, L.P. and Clear Wireless, LLC  
RE: 639 Granite Street**

Mr. Karll advised the Board that the petitioner has requested through their attorney Ricardo Sousa, a 30-day extension of this petition until the August 25, 2009 Zoning Board of Appeals meeting.

On a motion made by Mr. Nuss, and seconded by Ms. Lauria, the Board voted unanimously to approve a 30-day extension of the petition until August 25, 2009.

**8) Petition Number 09-27  
Daniel Carroll, Jr.  
RE: 89 Cotton Avenue**

Present: Daniel Carroll, Jr., petitioner

This is a petition filed by Daniel Carroll, Jr. of 89 Cotton Avenue, Braintree, MA, regarding the same property. Mr. Carroll is seeking relief from the Town of Braintree Zoning By-laws under Chapter 135, Sections 135-403 and 701 to add a second and third story addition to an existing dwelling. The property is located in a Residence B Zoning District as shown on Assessors Plan 3052, Plot 28 and contains 4,800 SF +/- 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 July 28, 2009 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Stephen Karll, and members, Jay Nuss and Michelle Lauria.

**Evidence**

The petitioner, represented himself, explained to the Board that the existing dwelling is a bungalow-style with a partial addition on the second story. The petitioner is seeking permission to build out a full second story and add a third story to increase living space and to improve the appearance of the house. The addition will fall within the footprint of the existing dwelling; in fact, the addition will slightly shrink the footprint of the dwelling, when considering the extension of the framing and soffits.

The petitioner's house is a pre-existing nonconforming structure on a nonconforming lot. The lot is undersized, containing only 4,800 SF when 15,000 SF is the minimum lot size. The lot lacks sufficient width, offering only 50 feet where 100 feet is required under the Zoning By-laws. The lot also lacks sufficient depth, containing 97.5 feet, where the Zoning By-law requires 100 feet. The structure is also nonconforming as to the front yard setback, offering only 15.9 feet, where the Zoning By-law requires a setback of 20 feet. Further, the house encroaches into the side yard setback on the westerly side, as it is located 8.5 feet from the lot line,

whereas a setback of 10 feet is required. Since the proposed addition will be located within the current footprint of the dwelling, it will not add to or intensify any of the pre-existing nonconformities.

The petitioner submitted a plan entitled "Carroll Residence, 89 Cotton Avenue, Braintree, Massachusetts," dated June 24, 2009, prepared by Kelly Engineering group of Braintree, MA.

No one else spoke in favor of or opposition to the petition. The Planning Board voted 5-0 in favor of the requested relief.

### **Findings**

The Board found that the existing dwelling was pre-existing nonconforming as to the side and front yard setbacks and that the proposed addition would not create or intensify any nonconformities. Therefore, the Board found that the addition would be an enhancement to the site as well as the neighborhood and would not be substantially more detrimental. Finally, the Board found that the requested relief could be granted without detriment to the public good and without nullifying or substantially derogating the intent and purpose of the Zoning By-law.

### **Decision**

On motion made by Mr. Nuss and seconded by Ms. Lauria, it was unanimously voted to grant the requested relief, subject to the plan presented.

**9) Petition Numbers 09-28 and 09-29  
Anthony Spadea, Trustee of Braintree Lodge 760 Realty Trust  
RE: 157 and 161 King Hill Road**

Present: Attorney Michael Modestino representing the petitioner  
Anthony Spadea, Trustee and petitioner  
Robin Pistorini, Trustee

This is a petition filed by Anthony Spadea, of 60 Cherry Lane, Braintree, MA, in his capacity as Trustee of Braintree Lodge 760 Realty Trust regarding the property located at 157 and 161 King Hill Road in Braintree, MA. The petitioner is seeking relief from the Town of Braintree Zoning By-laws under Chapter 135, Sections 135-402, 403, and 701 to adjust the lot lines for both parcels to eliminate an encroachment of the building on the lot of 161 King Hill Road onto the lot of 157 King Hill Road. The petitioner also seeks a finding to alter pre-existing nonconforming lots and use to allow access across a residential zoning district to access a commercial zone. The property is located in a Residence A Watershed Zoning District and a Commercial Watershed Zoning District as shown on Assessors Plan 1033, Plots 10 and 10A.

### **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 July 28, 2009 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Stephen Karll, and members, Jay Nuss and Michelle Lauria.

### **Evidence**

The petitioner, represented by Attorney Michael Modestino, appeared with Robin Pistorini, another trustee of the Braintree Lodge 760 Realty Trust. The properties at issue are the Sons of Italy Hall, located at 161 King Hill Road, and the abutting lot at 157 King Hill Road, on which a single family dwelling is located. Attorney Modestino explained that the trust owns both lots but is considering selling the lot with the single family house. However, it was recently discovered that a corner of the Sons of Italy building is actually located on the lot of the single family home. To correct this situation, the Trust proposes to adjust the lot lines of both lots, while keeping each lot essentially the same size. The lot containing the Sons of Italy is currently 111,089 SF in area, while the house lot is 24,999 SF.

The petitioner proposes to shift the easterly lot line at the southeasterly corner of the Sons of Italy approximately 22 feet in a southeasterly direction, thereby changing what was a square lot for the house lot and creating an angled northwesterly lot line for the house lot. In so doing, approximately 534 SF of area is removed from the corner of the house lot. In addition, the petitioner proposes carving out an 820.4 SF triangular portion from the easterly edge of the Sons of Italy lot and conveying this portion to the house lot. By adjusting the lot lines, the house lot will become more conforming, as it will contain 25,001 SF, which meets the minimum lot size for a Residence A Zoning District. The house lot will still not meet the one-acre lot size required for the Watershed Protection District. The increased size house lot will also become more conforming as to lot coverage, and open space.

The adjusted size of the Sons of Italy lot will measure 111,087 SF. The lot will conform to side yard setbacks and will offer more width at the front of the building.

The lots are currently divided by Commercial and Residence A Zoning Districts. The petitioner will continue to use the Residential Zoning District to access the Sons of Italy building, located in a Commercial District. This access is currently pre-existing nonconforming, as a Special Permit from the Planning Board is required for such access under the Zoning By-laws, yet no Special Permit has been issued. The petitioner seeks a finding that the alteration of the lots and continuation of the residential zoning district to access the commercial zoning district is not substantially more detrimental to the neighborhood than the existing conditions at the site.

The Petitioner submitted a plan entitled "Plan of Land, 161 King Hill Road, Braintree, Massachusetts," dated April 21, 2009, prepared by Hoyt Land Surveying of Weymouth, MA.

No one else spoke in favor of or opposition to the petition.

### **Findings**

The Board found that the adjustments to the lot lines had a de minimus effect on the size of the lots and that the adjustments would actually make each lot slightly more conforming in some respects. The Board also found that the adjusted lot lines, as well as the continued use of the Residence A Zoning District to access the Commercial Zoning District, would not be substantially more detrimental to the neighborhood. Finally, the Board found that the requested relief could be granted without detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the Zoning By-law.

### **Decision**

On a motion made by Mr. Nuss and seconded by Ms. Lauria, it was unanimously voted to grant the requested relief, subject to the plan presented.

**10) Petition Number 09-30**  
**Braintree Electric Light Department**  
**RE: 150 Potter Road**

Present: Chuck Coyne, BELD representative for petitioner  
Representative from engineering firm of Meridian Associates, Inc.

This is a petition filed by William Bottiggi, as General Manager for Braintree Electric Light Department (“BELD”), regarding the property located at 150 Potter Road in Braintree, MA. The petitioner is seeking relief from the Town of Braintree Zoning By-laws under Chapter 135, Sections 135-402, 403, 407 and 701 in order to remove two existing warehouse structures and replace them with one larger warehouse measuring 8,060 SF, which will encroach into side and rear yard setbacks. The property is located in a Highway Business District as shown on Assessors Plan 3045, Plot 1D and contains 1,165,230 SF +/- 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 July 28, 2009 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Stephen Karll, and members, Jay Nuss and Michelle Lauria.

**Evidence**

The petitioner, represented by Chuck Coyne from BELD, appeared with a representative from Meridian Associates, Inc, the engineers for this project. Mr. Coyne explained to the Board that the applicant is seeking permission to raze two existing one-story warehouse buildings and replace them with a larger 8,060 SF warehouse with a 2,795 SF mezzanine. Mr. Coyne noted that in 2007 BELD previously sought and obtained relief from the Board for the construction of the new warehouse in the same location, but BELD subsequently reviewed and updated their plans by enlarging the building by 20 feet. The proposed warehouse is to be located on the Citgo Terminal side of the property. The warehouse will be used to store supplies for the power plant, and therefore, the building must be located as close as possible to the power plant.

The proposed warehouse will encroach into the side and rear yard setbacks, and therefore, variances are required. The building will be located 10 feet off the westerly property line, yet the Zoning By-law requires a 30 foot side yard setback. Also, the warehouse will be located 10 feet off the rear northerly property line, yet the Zoning By-law requires a 50 foot rear yard setback. The petitioner noted that the setback variances were granted by the Board in the previous application. As grounds for the variances, the petitioner noted the unique and unusually angled shape of the lot, with its long driveway and lot abutting the Fore River. The petitioner also highlighted the present configuration of buildings on the lot and noted there were few locations on the site that could accommodate a warehouse, which by its nature and intended use should be as close to the power plant as possible.

The petitioner submitted plans entitled “Permit Plan of Land (To Accompany a Request for Permits) Located in Braintree, Massachusetts (Norfolk County),” Sheets nos. 1of 2 and 2 of 2, dated November 7, 2007 and revised through November 28, 2008, prepared by Meridian Associates, Inc. of Beverly and Westborough, MA.

Town Councilor Thomas Bowes was recognized and expressed concerns that BELD’s residential neighbors have been dealing with noise, traffic and nuisances of construction over the past 18 months, particularly when construction occurred on weekends. While Councilor Bowes is not opposed to the new warehouse per se, he

inquired as to the hours of construction and whether work would be permitted on weekends. The Building Inspector explained that the warehouse building was pre-manufactured and would be located on a pre-engineered concrete slab, which requires little on-site construction, and therefore, should cause little disturbance to the surrounding neighborhood. The petitioner also advised that they would commit to no construction of the warehouse outside of normal business hours. No one else spoke in favor of or opposition to the petition. The planning Board submitted a recommendation in favor of the requested relief.

### **Findings**

The Board found that the petitioner had demonstrated hardship based on the irregular shape of the lot and the present configuration of buildings on the lot, making it difficult to locate the warehouse elsewhere on the site. Such hardships owing to the lot make it difficult for the petitioner to comply with the setback requirements. The Board also concluded that the replacement of two existing warehouses with one larger warehouse to accommodate the new power plant would not be substantially more detrimental to the neighborhood. Finally, the Board found that the requested relief could be granted without detriment to the public good and without nullifying or substantially derogating the intent and purpose of the Zoning By-law.

### **Decision**

On motion made by Mr. Nuss and seconded by Ms. Lauria, it was unanimously voted to grant the requested relief, subject to the plan presented and subject to the condition that construction would be limited to the hours of 7 a.m. to 5:30 p.m. Monday through Friday only.

- 11) Petition Number 09-31**  
**Sprint Spectrum. L.P. and Clear Wireless, LLC**  
**RE: 257 Ivory Street**

Mr. Karll advised the Board that the petitioner has requested through their attorney Ricardo Sousa, a withdrawal of this petition.

On a motion made by Mr. Nuss, and seconded by Ms. Lauria, the Board voted unanimously to approve a request for withdrawal of the petition.

- 12) Petition Number 09-32**  
**T-Mobile d/b/a Omnipoint Communications, Inc.**  
**RE: 300 River Street**

Present: Jennifer Lougee, petitioner  
Don Nguyen, Engineer with T-Mobile

This is a petition filed by T-Mobile d/b/a Omnipoint Communications, Inc. of 30 Lymm Street, Suite 12, Westborough, MA 01581 regarding the property located at 300 River Street in Braintree, MA. The applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-402, 403(A) and 407 and Article XVI to modify an existing wireless communication facility. The property is located in an Open Space Conservation Zoning District as shown on Assessors Plan No. 2009, Plot 14 and contains 46 +/- 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 scheduled before

the Zoning Board of Appeals on July 28, 2009 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Steven Karll, and members, Jay Nuss and Michelle Lauria.

### **Evidence**

The petitioner was represented by Jennifer Lougee of T-Mobile, who appeared with Don Nguyen, an engineer for T-Mobile. T-Mobile seeks approval to locate nine (9) antennae to an existing 140 ft. communications tower located on East Middle School property, plus locate three related 6 ft. high equipment cabinets on top of a building currently housing Verizon Wireless's equipment within a 286 SF leased area on a steel platform at a height of 16 feet. A screen will enclose the entire area around the cabinets. The antennae will be located at a height of 74 feet on the tower.

The use and structure as a telecommunications tower is pre-existing nonconforming, and the site has been used as a wireless communications facility for several years by AT&T, Verizon Wireless and other carriers. Since the antennas will be located at an elevation of 74 feet, this petition will require no extension of the pole. The antennas will be connected by cables to the existing equipment cabinets located at the base of the pole. The petitioner noted that the Zoning By-law and the Telecommunication Acts encourage co-location of wireless antennas on a single tower, and this petition meets this goal.

The petitioner also submitted a statement from Scott Adams, a registered civil engineer, certifying that he inspected this site and determined that the T-Mobile installation will not have an adverse impact on the physical condition or integrity of the existing tower or building. The petitioner also submitted radio frequency maps, demonstrating that the proposed site will fill a gap in coverage and improve service.

The petitioner submitted an application package accompanied by plans entitled "4BS-0579-C Braintree Crown Map, 300 River Street, Braintree, MA 02184," numbered T-1,C-1, and Z-1, dated June 24, 2009, prepared by EG Advanced Engineering Group, Inc. of East providence, RI, along with a radio frequency coverage map and two pictures depicted existing conditions and the proposed conditions.

The Town Solicitor advised that the Town, as the owner of the property, must consent to this installation in writing, which the Town has not yet done. However, the Town Solicitor advised that the Mayor is not opposed to the proposed petition but is in negotiations with Crown Castle, the entity who holds the master lease for this tower.

No one else spoke in favor of or opposition to the petition. The Planning Board voted 5-0 in favor of the requested relief.

### **Findings**

The Board found that the petitioner had satisfied the goals of co-location as promoted under the Telecommunications Act and the Town's Zoning By-law. The Board also found that the petitioner had proven that the additional antennas were needed to provide enhanced service to the area. The Board concluded that the requested relief would not be substantially more detrimental to the surrounding neighborhood than the existing structure with its current wireless facilities and that the relief could be granted without detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the Zoning By-law.

### **Decision**

On a motion was made by Ms. Lauria and seconded by Mr. Nuss, it was unanimously voted to grant the requested relief, subject to the plans submitted and subject to the petitioner obtaining the Mayor's consent per the terms of the master lease agreement.

The meeting adjourned at 9:15pm.