



**Joseph C. Sullivan**  
Mayor

# Department of Municipal Licenses and Inspections

## Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

### Meeting Minutes

**October 27, 2009**

**IN ATTENDANCE:** Stephen Karll, Chairman  
Jack Gauthier, Member  
Michelle Lauria, Member  
Jay Nuss, Member  
Joseph Mulligan, Member

**ALSO PRESENT:** Michael McGourty, Local Building Inspector  
Carolyn Murray, Town Solicitor

**Mr. Karll called the meeting to order at 7:02pm.**

#### **OLD BUSINESS:**

- 1) Petition Number 09-02**  
**MetroPCS**  
**RE: 35 Roc Sam Park**

Mr. Karll advised the Board that the petitioner has submitted a letter requesting to withdraw this petition.

On a motion by Ms. Lauria and seconded, the Board voted unanimously to approve the withdrawal of this petition.

#### **NEW BUSINESS:**

- 2) Petition Number 09-40**  
**MetroPCS Massachusetts, LLC**  
**RE: 74 Commercial Street**

Present: Attorney Ricardo Sousa of Prince, Lobel, Glovsky and Tye of Boston, representing the petitioner;  
Sameer Parakkavetty, a radio frequency engineer;  
Gerry Squires, a site acquisition specialist.

This is a petition filed by MetroPCS Massachusetts, LLC of 285 Billerica Road, Third Floor Chelmsford, MA 01824, regarding the property located at 74 Commercial Street in Braintree, MA. The applicant is seeking

relief from the Town of Braintree Zoning By-laws Sections 135-1603(B), Section 1603 (B)(3) for the installation and operation of a stealth building-mounted facility consisting of three (3) antennas to be placed inside a faux chimney to be located on the existing roof and associated cabling and equipment, all in accordance with the plans of record. The property is located in a Residential B District, as shown on Assessors Plan No. 3005, Plot 15, and contains +/- 9900 Sq. Ft. 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 October 27, 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, John Gauthier, and Michelle Lauria, with alternate Jay Nuss.

### **Evidence**

The petitioner, represented by Attorney Ricardo Sousa of Prince, Lobel, Glovsky and Tye of Boston, appeared with Sameer Parakkavetty, a radio frequency engineer, and Gerry Squires, a site acquisition specialist. Attorney Sousa explained to the Board that the petitioner is seeking permission to add three wireless antennas housed in a single faux chimney to the rooftop of the Union Congregational Church rectory. The faux chimney will measure eight (8) feet in height. According to Section 135-1603.B(3) of the Zoning By-law, building-mounted wireless facilities are allowed in certain zoning districts and on certain structures, such as the Highway Business Zoning District, but this property is located in a Residential B District, which requires a variance. In addition, the Zoning By-law prohibits a building-mounted wireless communication facility from being located within 500 feet of a residential dwelling, schools, hospitals and nursing homes. This site is located within 500 feet of a dwelling, church and nursing home, and a school is operated out of the church building. Therefore, the petitioner seeks a variance to install and operate the three antennas within 500 feet of these protected uses.

In addition to the antenna, the applicant proposes to install two Lucent BBU cabinets and two Lucent outdoor mod cell cabinets, which will be located in a 10' x 16' equipment room in the basement of the rectory.

Attorney Sousa explained that MetroPCS currently has a gap in coverage due to the terrain in this area. As a result, the applicant seeks to add the three antennas to rooftop to improve the wireless network service in that area. Mr. Parakkavetty stated that the three antennas would be able to accommodate the new 4G technology, which allows high speed internet access on-the-go and allows the transmission of large quantities of data over a longer distance at faster speed. The applicant submitted radio frequency maps showing the gaps in coverage existing now and the increase of coverage with the additional proposed installation at this site, along with a statement by the radio Frequency Engineer averring that there is a gap in coverage, that the proposed installation is necessary to improve coverage in this area, and that the proposed installation will not interfere with public safety communications, commercial television and/or other radio signals.

With respect to fact that Section 135-1603(B) (1) of the Town's Zoning By-laws prohibit telecommunication installations in a residence B Zoning District, Attorney Sousa, as well as the Planning Board recommendation on this application, noted that a use variance for purposes of zoning may yield to the provisions of the Federal Telecommunications Act of 1996 ("TCA), which requires the applicant to fill gaps in coverage. Attorney Sousa also noted that if the provision of the Town Zoning By-law has the effect of prohibiting personal wireless services, the literal enforcement of the Zoning By-law may be found to violate the TCA, as noted in the case law cited in the application packet. Since the proposed installation will be located in a Residential B District and within 500 feet of a dwelling, church, and nursing home, variances are required.

As grounds for the variances, Attorney Sousa noted that a literal enforcement of the Zoning By-law would present a substantial hardship, as the applicant has a significant gap in coverage in the area surrounding the site. Attorney Sousa along with the Site Acquisition Specialist, Gerry Squires, noted that several other locations were considered before the decision to petition for the variance for this property. Mr. Squires submitted an affidavit stating that nine other locations in this area were explored but ultimately abandoned. Mr. Squires noted the church steeple at 74 Commercial Street already contains other antennas and therefore lacked sufficient space for MetroPCS. The Sacred Heart Church Steeple at 75 Commercial St. and Sacred Heart Elementary School rooftop were not made available by the Church's Faculty Committee. Mr. Squires stated that 20 Mill Lane was in the process of being demolished, and was therefore unavailable. The applicant also approached the owners of Royal Rehabilitation and Nursing Center as well as Union Towers, and neither was interested in leasing rooftop space to the applicant. Mr. Squires also explained that MetroPCS investigated the Chair Fair, Quirk Training Building, and 45 Washington Street in Weymouth, yet none of these buildings had sufficient height to provide the clearance needed to improve service coverage in this area.

Attorney Sousa also noted the unique location of the site and the topography of the area as bases for granting the variances. Specifically, Attorney Sousa explained that wireless communications antennas cannot transmit voice or data information through hills, and therefore, the facilities must operate above the hill tops. This particular site, on the rooftop of a building provides the needed height to accommodate the applicant's transmissions and is strategically located in an area that addresses the carrier's gap in service. Further, Attorney Sousa stated that the proposed installation will be designed in a way to minimize any visual impact. Specifically, he stated that the three antennas would be housed in a fiberglass faux brick chimney, and therefore would not be aesthetically or visually intrusive.

The petitioner submitted a packet entitled "APPLICATION for USE and DIMENSIONAL VARIANCES for a WIRELESS COMMUNICATION FACILITY", dated September 2, 2009, prepared by Jennifer E. Lewis, Esq. of Prince, Lobel, Glovsky & Tye LLP, 100 Cambridge Street, Suite 220, Boston, MA 02114 containing eleven (11) Tabs, which include five sheets entitled "BOS0703B Union Congo Rectory, 74 Commercial Street, Braintree, MA 02184 Title Sheet, T-1", "500' Property Offset Plan C-1", "Z-1", "Elevations Z-2", and "Equipment Details Z-3".

No one else spoke in favor of or opposition to the petition. The Planning Board voted 3-0 -0 in favor of the requested relief.

### **Findings**

The Board found that the petitioner had satisfied the goals of minimizing gaps in coverage as promoted under the Telecommunications Act and that the petitioner had proven a hardship as a basis for a variance, as the new antennas were needed to provide service to the area, and allow the 4G capability to be expanded. The hardship was also found to be owing to the unique location of the site, in that it satisfies the applicant's need to improve gaps in coverage, while nine other sites were explored and abandoned. The Board also concluded that the proposed alteration of the site by the addition of a faux chimney would not visually impact the neighborhood or be more intrusive on the rooftop. 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. Karll and seconded by Ms. Lauria, it was unanimously voted to grant the requested relief, subject to the plan presented.

**3) Petition Number 09-41**

**Donald Agnoli, Agent, Agnoli Sign Company, Inc.**

**RE: 300 Grove Street**

Present: Chris Morrow, Agnoli Sign Company

This is a petition filed by Agnoli Sign Company, Inc. of 722 Worthington Street, Springfield, MA 01101-1055 regarding the property located at 300 Grove Street, Braintree, MA. The applicant is seeking relief from the Town of Braintree Zoning By-laws Section 135-407, Section 135-904.1 to install four (4) secondary wall signs. The property is located in a General Business District, as shown on Assessors Plan No. 1084, Plot 10, and contains +/- 13.30 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 October 27, 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, John Gauthier, and Joseph Mulligan, with alternate Michelle Lauria.

Ms. Morrow provided the Board details of the request to install four secondary wall signs on the exterior of Stop & Shop located at 300 Grove Street.

The Board members expressed concerns about the proposed signage request.

Mr. Karll advised the Board that the Planning Board voted unfavorable action on the requested relief.

Mr. Karll requested a 30-day deferral of this petition until the November 24, 2009 Zoning Board of Appeals meeting, in order that the petitioner could revise the proposed signage, review the same with their clients and reappear at the November 24, 2009 meeting for reconsideration of the petition.

On a motion made by Mr. Karll, and seconded, the Board voted unanimously to approve a 30-day deferral of the petition until November 24, 2009.

**APPROVAL OF MINUTES:**

On a motion was made by Mr. Karll and seconded, it was unanimously voted to approve the meeting minutes of September 22, 2009.

The meeting adjourned at 8:15pm.

