



Department of Municipal Licenses and Inspections

Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

Joseph C. Sullivan
Mayor

Meeting Minutes

August 24, 2010

IN ATTENDANCE: Stephen Karll, Chairman
John Gauthier, Member
Michael Calder, 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 10-13
T-Mobile Northeast, LLC
RE: 197 Quincy Avenue**

Present: Attorney Scott Lacy of Prince, Lobel, Tye and Glovsky
Jennifer Lougee, site acquisition specialist
Shaikh Mahmood, radio frequency engineer

This is a petition filed by T-Mobile Northeast, LLC of 30 Lyman Street, Suite 12, Westboro, MA 01581 regarding the property located at 197 Quincy Avenue in Braintree, MA. The applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-1603(C)(1)(a), 1603(C)(2)(b), 1603(C)(2)(h), and a use variance under the Federal Telecommunications Act of 1996 for the construction of a 60 foot wireless communication facility in the form of a unipole, disguised as a stealth flagpole, and associated cabling and equipment to be located on the property of 197 Quincy Avenue, all in accordance with the plans of record. The property is located in a General Business Zoning District, as shown on Assessors' Plan No. 3043, Plot 59 and contains 65,578 +/- 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 August 24, 2010 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 Michael Calder.

Evidence

The petitioner, represented by Attorney Scott Lacy of the law firm of Prince, Lobel, Tye and Glovsky, appeared with Shaikh Mahmood, a radio frequency engineer, and Jennifer Lougee, a site acquisition specialist. Attorney Lacy explained to the Board that the petitioner is seeking a special permit or use variance under the Federal Telecommunications Act to locate a wireless communications facility within a General Business Zoning District; currently, Section 135-1603(C)(1)(a) the Town's Zoning By-laws only permits a wireless communication tower in a Highway Business Zoning District. The petitioner is also seeking permission to locate the wireless communication facility within 2 miles of an existing tower at BELD's property at 100 Potter Drive, but Section 135-1603(C)(2)(b) of the Town's Zoning By-laws only permits a tower to be located within 2 miles of an existing tower if the applicant can demonstrate that the location will result in a lower tower, will allow more uses on the tower, or will significantly improve the view shed of the Town. The petitioner also seeks relief from Section 135-1603(C)(2)(h), which establishes a minimum distance of 500 feet from a school, hospital, convalescent or nursing home, playground/athletic field, or residential lot line; the petitioner proposes to locate the tower within 64 feet of the closest residential property.

The site is a former school building, which has been closed as a school and converted to general business uses, including office space, a car rental facility, and a gymnasium. This site currently houses a 50 foot flagpole, which the Planning Board suggested be removed, if the requested relief is granted. Attorney Lacy described the proposed wireless communication facility as a flagpole style tower with a height of 60 feet; the maximum height allowed under the Town's Zoning By-laws for a tower is 100 feet. The flagpole will conceal 3 antennas at the 57 foot elevation and 3 antennas at the 47 foot elevation for T-Mobile's use. The tower will also accommodate another wireless carrier at the 37 foot elevation. A 6 foot tall stockade fence will enclose the tower at its base. Underground cables will connect the tower to the building, where the equipment cabinet will also be stored.

The approximate diameter of the tower at its base is 30 inches, tapering to approximately 18 inches at the top. The proposed tower will be located within a 25 foot x 25 foot area on the southerly side of the lot within the existing paved parking lot, closest to the corner of Quincy Avenue and Arbor Drive. This corner of the building currently houses a karate facility.

The applicant submitted a series of plans entitled "RL-197 Quincy Ave., 197 Quincy Avenue, Braintree, MA 02184, Norfolk County, Site No: 4BS-2546-A, Raw Land/Unipole", sheets numbered T-1 (Title Sheet), C-1 (Existing Conditions/Plot Plan & Notes), Z-1 (Locus, Plan & 500' Radius Plan), Z-2 (Site Plan and Notes), and Z-3 (Elevations, Room Plan & Details), prepared by Scott Adams, R.P. E. of Advanced Engineering Group, P.C., dated October 26, 2009 with revisions through June 1, 2010. The applicant also submitted a series of photos for Site No. 4BS2546A, RL-197 Quincy Ave, Braintree, MA, 02184, entitled "Key Map of Photos," "View #1 Existing Conditions from Quincy Ave." with and without the unipole, "View #2 Existing Condition from Quincy Ave." with and without the unipole, "View #3 Existing Condition from Quincy Ave." with and without the unipole, "View #4 Existing Condition from Arthur St." with and without the unipole, and "View #5 Existing Condition from Quincy Ave." with and without the unipole, prepared by Advanced Engineering Group, P.C. of East providence, RI, dated July 16, 2010.

1. Special Permit Or Use Variance Under The Federal Telecommunications Act

Attorney Lacy acknowledged that the Town's Zoning By-laws do not permit a wireless communications tower to be located within a General Business zoning district. However, under the Federal Telecommunications Act

of 1996 (“TCA”) and case law interpreting same, a town, through its zoning by-laws may not discriminate against a telecommunications carrier, enact a by-law that prohibits telecommunication facilities, or adopt a by-law that has the effect of prohibiting a telecommunication facility. In response to a question posed by the Chairman relative to the Board’s authority to grant use variances, the Town Solicitor advised the Board that while the Board cannot grant use variances under G.L. Chapter 40A, the Zoning Act, the Board could grant a special permit to locate a facility under the TCA.

In support of its requested relief, Attorney Lacy explained that while the tower would immediately benefit T-Mobile, there would be sufficient space on the tower at the 37 foot elevation to lease space to another telecommunication carrier. Accordingly, the placement of this tower would further the TCA’s goal of promoting co-location of carriers on the same tower.

Attorney Lacy advised the Board that T-Mobile has a need to locate a tower at 197 Quincy Avenue in order to satisfy a significant gap in coverage. In support of this request, a radio frequency engineer, working on behalf of T-Mobile, submitted maps depicting T-Mobile’s existing coverage and gaps in coverage without the proposed tower, as well as maps depicting proposed coverage and gaps in coverage with the proposed tower and antennas located at elevations of 37, 47, and 57 feet above ground level. T-Mobile’s service is most improved at the 57 foot placement on the tower, thus necessitating a 60 foot tower.

Attorney Lacy also asserted that T-Mobile’s gap in service area is also best served by locating at 197 Quincy Avenue. T-Mobile explored alternative sites in this general location and generated maps depicting service coverage from those sites. The alternate sites explored were:

- a. 74A Commercial Street: Located in a Residence B Zoning District, the applicant would still need a use variance or special permit under the TCA for this site. The applicant considered a rooftop mounted facility at a height of 55 feet above ground level, which did not provide sufficient coverage.
- b. 95 Commercial Street: This site is also located in a residential zoning district and would still require a special permit under the TCA. T-Mobile explored a rooftop mounted facility at a height of 49 feet above ground level. However, this site did not provide sufficient coverage.
- c. 37 Commercial Street: Located in a General Business Zoning District, this site would still require a special permit under the TCA. T-Mobile explored a rooftop mounted facility at a height of 55 feet above ground level. This site did not significantly increase T-Mobile’s service area.
- d. 85 Commercial Street in Weymouth: T-Mobile explored a rooftop mounted facility at a height of 43 feet above ground level. However, this site did not significantly improve T-Mobile’s gap in coverage.
- e. 75 Commercial Street in Weymouth: T-Mobile explored a rooftop mounted facility at a height of 76 feet above ground level. Due to the topography of the area, this site did not improve T-Mobile’s gap in coverage.
- f. 55 Commercial Street in Weymouth: T-Mobile explored a rooftop mounted facility at a height of 55 feet and 115 feet above ground level. Due to the topography of the area, this site did not improve T-Mobile’s gap in coverage.
- g. 39-47 Washington Street in Weymouth: T-Mobile explored a rooftop mounted facility at a height of 37 feet above ground level, but this site did not significantly improve T-Mobile’s gap in coverage.
- h. 100 Potter Drive in Braintree: T-Mobile explored the possibility of co-locating on a tower on the property of Braintree Electric Light Department at a height of 147 feet above ground level, but due to the topography of the area, a facility at this site did not significantly improve T-Mobile’s service coverage.

Lacking any suitable alternative site, Attorney Lacy asserted that the proposed location, with its topography, is uniquely situated to address T-Mobile’s need to close its gap in coverage. Without a

wireless communications facility at or near this proposed location, T-Mobile's service would be unreliable and would not be consistent with the goals of the TCA. Therefore, the applicant seeks a special permit to locate this tower within a General Business Zoning District.

2. Relief Requested Under Section 135-1603(C)(2)(B) Of The Town's Zoning By-Laws To Locate A Tower Within 2 Miles Of An Existing Tower

The proposed tower would be located within 2 miles of an existing tower at 100 Potter Drive, property owned by Braintree Electric Light Department ("BELD"). As the radio frequency maps depict, locating on BELD's tower, even at a height of 147 feet, did not satisfy T-Mobile's gap in coverage. Thus, the location of the proposed tower within 2 miles of BELD's tower is not sufficient to address T-Mobile's gap in coverage.

In addition, the applicant explored numerous alternative sites, detailed above, but was unable to identify a site more than 2 miles from the nearest tower that would satisfy T-Mobile's need to improve coverage in this area.

3. Relief Requested Under Section 135-1603(C)(2)(H) Of The Town's Zoning By-Laws To Locate A Tower Within 500 Feet Of A Residential Lot Line

As noted above, the applicant explored numerous alternative sites that may have supported a tower more than 500 feet from a residential lot line. However, for the reasons stated above, these alternate sites did not significantly improve T-Mobile's service coverage. The proposed site is within 64 feet of the closest residential property.

In conclusion, Attorney Lacy asserted that a literal enforcement of the Zoning By-laws would present a substantial hardship, as T-Mobile has demonstrated a significant gap in coverage in the area surrounding the site, and no alternative sites proved viable to address this coverage issue. Attorney Lacy noted the unique location of the site and the topography of the area as bases for granting the variances. This particular site provides the needed height to accommodate T-Mobile's and other carriers' transmissions and is strategically located in an area that addresses T-Mobile's gap in service. Further, Attorney Lacy 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 concealed cylinder within the unipole, which can be disguised as a flagpole, and therefore would not be aesthetically or visually intrusive.

Mr. Gauthier expressed concern about the dance, gymnastics and karate school at this site and the safety of the unipole's short distance from the school and nearest residence. Attorney Lacy responded that the proposed unipole complies with the Federal Communications Commission standards for radio frequency emissions.

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 with recommendations as to certain conditions noted in the Planning Department report.

Findings

A majority of the Board found that the petitioner had demonstrated a need to fill gaps in coverage and had explored a sufficient number of alternate sites to identify the proposed site as the only viable location, thereby rendering this location unique. A majority of the Board also found that disguising the tower as a flagpole would minimize any visual or aesthetic impact to neighbors. A majority of the Board also found that the petitioner satisfied the goals of co-location encouraged under the Telecommunications Act. Finally, a majority of 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

Mr. Calder made a motion to approve the petition, subject to the plans presented and with the conditions that the existing flagpole on site be removed, that the unipole be used as a flagpole with the United States flag displayed and illuminated at night, and that any new carrier seeking to locate on the tower be treated as a new petition. By a vote of 2-1, the motion failed to obtain the quantum of vote need to grant the variances.

2) Petition Number 10-18

Wen Fang Zheng

RE: 910 Washington Street

Present: Wei Jia, Attorney representing the petitioner and Wen Fang Zheng, petitioner

This is a petition filed by Wen Fang Zheng of 1210 Matthew Wood Drive, Braintree, MA, on behalf of Sake Japanese Restaurant, regarding the property located at 910 Washington Street in Braintree. The applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-701, 806, and 815. The applicants seek a permit and/or variance to convert the former retail showroom into a restaurant, all in accordance with the plans of record. The property is located in a General Business Zoning District as shown on Assessors' Plan No. 1006, Plots 26 and 27.

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 27, 2010 and continued to August 24, 2010 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, Jack Gauthier and Michael Calder.

Evidence

The applicant, Wen Fang Zheng appeared along with her attorney, Wei Jia of Boston. The applicant explained that she plans to open a Japanese restaurant within the complex known as 900-914 Washington Street, specifically at the address known as 910 Washington Street, in South Braintree Square, in the space formerly occupied by Norfolk Kitchen and Bath. The applicant does not plan to make any exterior alterations to the structure. However, a variance is sought from the parking requirements of Section 135-806 and 815 of the Zoning By-laws. The entire 900-914 Washington Street complex has a parking lot in the rear containing 24 parking spaces, which are shared by all tenants of the building. Currently, the building tenants consist of Giovanna's Salon and Sintra's Restaurant. According to the Planning Department's analysis, when Norfolk Kitchen and Bath occupied the space that the applicant proposes to occupy, Norfolk required 10 parking spaces. However, according to a Zoning Board of Appeals decision on petition number 06-56, Norfolk Kitchen and Bath required 12 parking spaces, when Norfolk expanded its space into that previously occupied by the All-Star Deli. Attorney Jia represented to the Board that Norfolk Kitchen and Bath required 10 parking spaces; the proposed restaurant will offer 42 seats, and therefore requires 12 parking spaces. According to Attorney Jia, only 10 parking spaces were allocated for Norfolk Kitchen and Bath, so a variance is required from the 12 parking spaces required for the restaurant.

The applicant presented a plan entitled "Proposed Building Location Plan for #900 Washington Street, Braintree, Mass.," prepared by Russell Petersen, R.P. E. dated May 8, 1989, along with a plan depicted the interior lay-out of the restaurant entitled "Sake Japanese restaurant, 910 Washington Street, Braintree, MA, Equipment Plan and Layout," prepared by Frank Kouchen Kao, dated June 6, 2010. The layout plan reflects a

restaurant with 42 seats, while the 1989 building plan shows 24 parking spaces in the rear of 900 Washington Street.

The applicant was asked whether her lease reserved 10 of the 24 parking spaces in the rear of this property for her exclusive use, and Attorney Jia confirmed that none of the parking spaces were specifically designated for the proposed restaurant. The applicant stated that the hours of operations would be 11 am to 9:45 pm Tuesday through Sunday and closed on Monday. In response to a question from the Board regarding the number of employee parking spaces required, Ms. Zheng stated that the restaurant would have four employees, all of whom would use public transportation and not occupy any parking spaces.

During the presentation, Ms. Zheng stated that the restaurant would also offer take-out, and when asked what percentage of her business would be take out, she estimated 50%, which is similar to her experiences with restaurants she had experience with in Newton and Nashua, NH. Based on this representation, the Town Solicitor advised the Board that this restaurant would be categorized as a fast-food establishment under the Town's Zoning By-laws, in which case, the applicant requires 22 parking spaces for this use. The Board members expressed concern about sufficient parking at this site, with other tenants in the building competing for the same parking spaces and the high take-out percentage, which will generate more parking. The Board members noted that South Braintree Square is already heavily congested without this new restaurant, and on-street parking in the square has been reduced by the MBTA bus stop.

The Board asked the applicant to explore other parking arrangements, such as an agreement with the Knights of Columbus across the street. By mutual agreement of the parties, the public hearing on this petition was continued for 60 days to allow the applicant time to pursue parking alternatives.

At the continued public hearing held on August 24, 2010, Attorney Jia informed the Board that he and his client had conducted a survey of other Chinese and Japanese restaurants in the area to determine what percentage of their business was dedicated to take-out. Restaurants surveyed in Westford, Dedham, Bedford, Quincy, and Waltham reported 20% or less of their business is take-out. A restaurant in Cambridge reported a significantly higher percentage dedicated to take-out, but that anomaly was attributed to its proximity to Massachusetts Institute of Technology and the higher surrounding student population. Based on this survey, the applicant revised her estimate of business dedicated to take-out to be under 20%, thereby releasing the restaurant from the higher parking requirements of a fast-food establishment.

Attorney Jia also stated that the applicant proposed reducing the number of seats at the restaurant from 42 to 35, so that only 10 parking spaces would be required, which is the same as Norfolk Kitchen and Bath. In light of this representation, the Building Inspector advised the Board that a parking variance was no longer required, but a finding under G.L. Chapter 40A, Section 6 would be required. The Town Solicitor advised the Board as to the hours of operation for the other building tenants: Giovanna's Salon is open Tuesday through Thursday from 8:30 am until 9 pm, Friday 8:30 am until 7 pm, and Saturday 6:30 am until 7 pm, while Sintra's Restaurant is open Tuesday through Friday 11:30 am until 2:30 pm and Tuesday through Saturday from 5 pm until 9:30 pm.

The Board again expressed concern that parking at this location will be tight, particularly with the expanded hours of the other tenants, which is not the same as when Norfolk Kitchen and Bath occupied the site. The Building Inspector advised that any retail establishment occupying this site would require 10 parking spaces.

No one else spoke in favor of or opposition to the petition. The Planning Board voted 4-0 to take no action on the petition due to lack of adequate information provided.

Findings

The Board found that while parking in South Braintree Square and at this location in particular is tight, any retail establishment proposing to occupy this site would require 10 parking spaces. In light of the reduced number of seats to 35 and lower estimated percentage of business dedicated to take-out, such that the applicant would only require 10 parking spaces, the Board found that the proposed restaurant would not be substantially more detrimental to the neighborhood than the pre-existing nonconforming retail use at the site. Further, 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 Mr. Gauthier, it was unanimously voted to grant the requested relief with the condition that the restaurant seating be reduced to 35 seats and with take-out business limited to 10-20%, subject to the presentation of a revised floor plan.

NEW BUSINESS:

3) Petition Number 10-25

SBA Towers, Inc.

RE: 220 Grove Street

Present: Attorney Kevin Eriksen of Deschenes and Farrell, PC
Shaikh Mahmood, radio frequency engineer
Jennifer Lougee, site acquisition specialist

This is a petition filed by SBA Towers, Inc., through their attorneys, Deschenes and Farrell, P.C., One Billerica Road, Chelmsford, MA 01824, regarding the property located at 220 Grove Street in Braintree, MA. The applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-1603(C)(1)(a), 1603(C)(2)(b), 1603(C)(2)(h), and a use variance under the Federal Telecommunications Act of 1996 for the construction of a 100 foot concealed antennae mount wireless communication facility and associated cabling and equipment to be located on the property of the Heritage United Methodist Church at 220 Grove Street in Braintree, all in accordance with the plans of record. The property is located in a Residential B Zoning District, as shown on Assessors' Plan No. 1084, Plot 04A, and contains 244,780 +/- 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 August 24, 2010 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 Michael Calder.

Evidence

The petitioner, represented by Attorney Kevin Eriksen of Deschenes and Farrell, P.C. appeared with Shaikh Mahmood, a radio frequency engineer, and Jennifer Lougee, a site acquisition specialist. Attorney Eriksen explained to the Board that the petitioner is seeking a special permit or use variance under the Federal Telecommunications Act to locate a wireless facility within a residential zoning district; currently, Section 135-1603(C)(1)(a) the Town's Zoning By-laws only permits a wireless communication tower in a Highway Business Zoning District. The petitioner is also seeking permission to locate the wireless communication facility within 2 miles of an existing tower at 300 River Street, but Section 135-1603(C) (2) (b) of the Town's Zoning By-laws

only permits a tower to be located within 2 miles of an existing tower unless the applicant can demonstrate that the location will result in a lower tower, will allow more uses on the tower, or will significantly improve the view shed of the Town. The petitioner also seeks relief from Section 135-1603(C) (2)(h), which establishes a minimum distance of 500 feet from a school, hospital, convalescent or nursing home, playground/athletic field, or residential lot line; the petitioner proposes to locate within a Residential Zoning District, and therefore will be within 500 feet of a residential lot line.

Attorney Eriksen described the proposed wireless communication facility as a unipole style tower with a height of 100 feet, which is the maximum height allowed under the Town's Zoning By-laws. The approximate diameter of the tower at its base is 40 inches, tapering to approximately 28 inches at the top. T-Mobile's antennas will be located within the stealth unipole in concealed cylinders. The proposed tower will be located within a 100 foot x 100 foot area to the rear of the church property, and therefore, the tower will be screened by the church as well as surrounding tree cover, with heights of approximately 210 feet, which will minimize any visual impact of the tower. According to the applicant's radio frequency engineer, the radio frequency emissions generated by this proposed tower are substantially below the maximum allowable health and safety standards established by the Federal Communications Commission. The applicant also proposes to locate cables and associated equipment cabinets on an 8 ft. x 15 ft. concrete pad within the fenced enclosure.

The applicant submitted a series of plans entitled "Braintree Site I.D. MA11711-S, 236 Grove Street, Braintree, MA 02184 (Norfolk County)", sheets numbered T-1 (Title Sheet), N-1 (zoning Information), C-1 (Locus Plan and Map), C-1A (Site Plan), C-1B (Site Layout Plan), C-2 (Enlarged Site Plan), C-3 (Elevation View), C-4 (Fence Details), C-5 (Soil and Erosion Control Plan), and C-6 (Driveway Details), prepared by J. Russell Hill, R.P. E., dated June 23, 2010. The applicant also submitted a Balloon Test Report for tests conducted on July 16 and 17, 2010, prepared by George T. Swearingen, III of Tower Engineering Professionals, in which Mr. Swearingen concludes that the proposed wireless communications facility will pose no adverse visual impact to the area of potential effect surrounding the proposed facility, due to existing intrusions into the view shed and tree cover. The Balloon Test report was accompanied by plans entitled "Site Name: Braintree, Site I.D. MA11711-S, Site Address: 236 Grove Street, Braintree, MA 02184 (Norfolk County)," with sheets numbered T-1 (Title Sheet), C-1 (Site Notes and Site Plan), C-2 (Locus Plan and Enlarged Site Plan), and C-3 (Site Details), prepared by Tower Engineering Professionals of Raleigh, NC, dated June 23, 2010.

1. Special Permit Or Use Variance Under The Federal Telecommunications Act

Attorney Eriksen acknowledged that the Town's Zoning By-laws do not permit a wireless communications tower to be located within a residential zoning district. However, under the Federal Telecommunications Act of 1996 ("TCA") and case law interpreting same, a town, through its zoning by-laws may not discriminate against a telecommunications carrier, enact a by-law that prohibits telecommunication facilities, or adopt a by-law that has the effect of prohibiting a telecommunication facility. Attorney Eriksen noted that he is aware of similar relief sought by other telecommunications carriers that has been granted by this Board and indicated that failure to afford the same relief to the present petitioner may be a violation of the TCA. In response to a question posed by the Chairman relative to the Board's authority to grant use variances, the Town Solicitor advised the Board that while the Board cannot grant use variances under G.L. Chapter 40A, the Zoning Act, the Board could grant a special permit to locate a facility under the TCA.

In support of its requested relief, Attorney Eriksen explained that SBA Tower, Inc. would be the owner of the facility and would lease space on the tower to various telecommunication carriers, such as T-Mobile, with whom SBA Tower, Inc has an agreement. T-Mobile's antennas would be located at the 97 foot elevation on the tower. AT&T Mobility has also expressed an interest in locating on this tower. The tower is designed to accommodate up to five carriers. Accordingly, the placement of this tower would further the TCA's goal of promoting co-location of carriers on the same tower.

Attorney Eriksen advised the Board that T-Mobile has a need to locate a tower at 220 Grove Street in order to satisfy a significant gap in coverage. In support of this request, Attorney Eriksen submitted an affidavit of a radio frequency engineer, Shaikh Mahmood, on behalf of T-Mobile USA, Inc., along with maps depicting T-Mobile's existing coverage and gaps in coverage without the proposed tower and a map depicting an increase in T-Mobile's coverage with the proposed tower. Mr. Mahmood's affidavit also included maps of T-Mobile's coverage, assuming T-Mobile's equipment was to be placed on the proposed tower at elevations of 97 feet, 87 feet, 77 feet, 67 feet, and 57 feet; of all of these maps, T-Mobile's coverage is best served at a height of 97 feet, thus necessitating a 100 foot tower.

T-Mobile's gap in service area is also best served by locating at 220 Grove Street. T-Mobile also explored alternative sites in this general location and generated maps depicting service coverage from those sites. The alternate sites explored were:

- a. 200 Commerce Drive: Located in a Commercial Zoning District, the applicant considered a rooftop mounted facility at a height of 52 feet above ground level. T-Mobile is also on a monopole located approximately 0.4 miles from 200 Commerce Drive. Therefore, this location does not increase T-Mobile's coverage.
- b. 175 Grove Street: Also located in a Residence B Zoning District, T-Mobile explored a rooftop mounted facility at a height of 42 feet above ground level. However, it was determined that this structure was not constructed so as to bear the load needed for this equipment. Therefore, this was not a suitable location for the applicant.
- c. 193 Grove Street: Also located in a Residence B Zoning District, T-Mobile explored a rooftop mounted facility at a height of 42 feet above ground level. This site did not significantly increase T-Mobile's service area. Regardless, the property owner did not consent to the placement of a wireless communication facility at this site. Therefore, this is not a viable alternative for the applicant.
- d. 160-180 Grove Street: Also located in a Residence B Zoning District, T-Mobile explored a rooftop mounted facility at a height of 42 feet above ground level. However, this site did not improve T-Mobile's gap in coverage.
- e. 60 Columbian Street, Weymouth: The Massachusetts Lottery Commission has a 120 foot lattice tower on this site. As state property, it was not determined whether the state would allow private carriers to co-locate on the tower or what process the state would have to go through in order to lease space to a private carrier. Regardless, this site did not improve T-Mobile's gap in coverage.
- f. 238-310 Grove Street: This is the commercial property located in a General Business Zoning District immediately adjacent to the proposed site. The property owner was not interested in leasing space to the applicant; therefore, this is not a viable alternative for the applicant.
- g. 49 Proctor Road: This is the site of the Liberty School, located in an Open Space Conservation Zoning District. The Town would have to issue a request for proposals in order to lease space at this site, and the Town has not done so to date. Therefore, this site is not a viable alternative for the applicant.
- h. 1505 Braxton Street: This is a commercial site located in a Highway Business Zoning District. However, neither a rooftop mounted facility nor a 100 foot tower satisfied T-Mobile's gap in coverage.

Lacking any suitable alternative site, Mr. Mahmood asserted that the proposed location, with its topography, is uniquely situated to address T-Mobile's need to close its gap in coverage. Without a wireless communications facility at or near this proposed location, T-Mobile's service would be unreliable and would not be consistent

with the goals of the TCA. Therefore, the applicant seeks a use variance to locate this tower within a residential zoning district.

2. Relief Requested Under Section 135-1603(C)(2)(B) Of The Town's Zoning By-Laws To Locate A Tower Within 2 Miles Of An Existing Tower

The proposed tower would be located within 2 miles of an existing tower at 300 River Street. Attorney Eriksen reiterated that SBA Towers, Inc. has an agreement with T-Mobile to locate on this tower, and T-Mobile currently has antennas located on the tower at 300 River Street. Despite its equipment at the 300 River Street tower, T-Mobile still has a significant gap in coverage, which demonstrates that the location of this tower within 2 miles is not sufficient to address T-Mobile's gap in coverage.

In addition, the applicant explored numerous alternative sites, detailed above, but was unable to identify a site more than 2 miles from the nearest tower that would satisfy T-Mobile's need to improve coverage in this area.

3. Relief Requested Under Section 135-1603(C)(2)(H) Of The Town's Zoning By-Laws To Locate A Tower Within 500 Feet Of A Residential Lot Line

As noted above, the applicant explored numerous alternative sites that may have supported a tower more than 500 feet from a residential lot line. However, for the reasons stated above, these alternate sites either were not available for use by a telecommunications carrier or did not significantly improve T-Mobile's service coverage. Although the proposed location is within a residential zoning district and within 500 feet of a residential lot line, Attorney Eriksen noted that the proposed site is abutted by land owned by the state, used for the Old Colony MBTA rail line, and by a commercial strip mall. Attorney Eriksen also advised that the proposed tower would be located within a fenced-in enclosure, and the distance from the fence line to the front property line is 371.5 feet. Moreover, the distance from the actual tower itself to the front property exceeds 400 feet. Although the proposed tower is located within 500 feet of a residential lot line, Attorney Eriksen explained that the proposed tower is located more than 500 feet of the nearest residential dwelling, located across Grove Street near Hannah Niles Way.

In conclusion, Attorney Eriksen noted that a literal enforcement of the Zoning By-laws would present a substantial hardship, as T-Mobile has demonstrated a significant gap in coverage in the area surrounding the site, and no alternative sites proved viable to address this coverage issue. Attorney Eriksen noted the unique location of the site and the topography of the area as bases for granting the variances. Specifically, Attorney Eriksen 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 provides the needed height to accommodate the T-Mobile's and other carriers' transmissions and is strategically located in an area that addresses T-Mobile's gap in service. Further, Attorney Eriksen 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 concealed cylinder within the unipole, and therefore would not be aesthetically or visually intrusive.

Dave Clark, a resident of Pond Street and a member of the Administrative Board of the church, spoke in favor of the petition, particularly the revenue to be generated for the church. Jo Clark, also of Pond Street, is in favor of the petition for the benefit it will bring to the church, but she also stated that the unipole will not be visible from a distance but will be obscured by tree coverage, and therefore will not be detrimental to the neighborhood. Harold Randolph of Liberty Street and the treasurer and trustee of the church, is in favor of the petition and the use of currently fallow land without interfering with church activities or those of its neighbors. Joseph Tempesta of Columbus Ave and a member of the church's board of trustees, expressed frustration with his own dropped calls in the adjacent Stop and Shop plaza and reiterated that the proposed tower will be shielded by trees and have minimal visual impact on neighbors.

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 demonstrated a need to fill gaps in coverage and had explored a sufficient number of alternate sites to identify the proposed site as the only viable location, thereby rendering this location unique. The Board also found that the location of the tower on the site, behind the existing church and shielded by a line of mature trees, would minimize any visual or aesthetic impact to neighbors. Although the proposed tower is located within a residential zoning district, the Board acknowledged the provisions and goals of the Telecommunications Act and noted that this tower would be located 500 feet from the nearest residential dwelling, thereby honoring the intention of the Zoning By-laws' 500 foot setback. The Board also found that the petition satisfied the goals of co-location encouraged under the Telecommunications Act. 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. Gauthier and seconded by Mr. Calder, it was unanimously voted to grant the requested relief, subject to the plans presented and subject to the following conditions:

1. that the tower be white with a white vinyl fence enclosing the cabinet area; and
2. that this portion of the church's property be deemed taxable.

4) Petition Number 10-26 Virginia and John Holmes RE: 33 Cain Avenue

Present: Virginia and John Holmes, petitioners

This is a petition filed by Virginia and John Holmes of 33 Cain Avenue, Braintree, MA, regarding the same property, in which the applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-403, 407 and 701. The applicants seek a permit and/or variance to construct a second floor addition and rebuild a single story rear addition, all in accordance with the plans of record. The property is located in a Residence B Watershed Protection Zoning District as shown on assessors Plan No. 1081, Plot 55 and contains 8,214 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 August 24, 2010 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, Jack Gauthier and Michael Calder.

Evidence

The applicants, representing themselves, explained to the Board that they are seeking permission to construct a second story over the existing ranch-style dwelling, which will be within the footprint of the existing dwelling. The applicants also seek permission to add a 1.5 story salt-box style addition to the rear of the property in the

location of an existing porch, which will line up with and extend over an existing single-story bump-out structure to the rear of the property. The addition at the rear of the property measures 12 ft. x 15.9 feet over the existing porch and 12.1 ft. x. 20 ft. over the existing bump-out structure.

The applicant's lot and dwelling are pre-existing, nonconforming. The minimum lot size for the residence B Watershed Protection District is 1 acre, while the applicants' lot contains only 8,214 SF. In addition, the lot lacks the minimum lot depth of 100 feet, as the lot contains only 84 feet of depth. The existing dwelling on the lot is also pre-existing nonconforming, as it is located 23.8 feet at its closest point from the rear lot line, while the Zoning District requires a rear yard setback of 30 feet. With the proposed addition to the rear of the dwelling, the dwelling will be located 24.4 feet from the rear lot line, and therefore, the addition will not encroach further into the rear yard setback than the existing dwelling. Therefore, the Board noted that a finding under Chapter 40A, Section 6 is required.

The applicants submitted a plan entitled "Plan Showing Proposed Addition, 33 Cain Avenue in Braintree, MA," dated July 12, 2010, prepared by Hoyt Land Surveying of Weymouth, MA. The applicants also submitted plans entitled "Proposed Floor Plans," sheets A.1, A.2 and A.3, prepared by Concepts by Design, Inc. dated June 24, 2010.

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

Findings

The Board found that while the proposed addition encroaches into the rear yard setback, the proposed addition will not encroach any further than the existing structure. The Board also found that the proposed addition would not be substantially more detrimental to the neighborhood than the pre-existing nonconforming structure on the lot. Further, 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 Mr. Gauthier, it was unanimously voted to grant the requested relief, subject to the plan presented.

5) Petition Number 10-27

Fancher Land Development Services on behalf of California Pizza Kitchen

RE: 250 Granite Street

Present: Moni Dosoanjh, representative for Fancher Land Development Services

This is a petition filed by Moni Dosoanjh of Fancher Land Development Services of 1342 Bell Avenue, #3K, Tustin, CA 92780, on behalf of California Pizza Kitchen regarding the property located at 250 Granite Street in Braintree, MA. The petitioner seeks relief from the Zoning By-law requirements under Chapter 135, Sections 135-403, 407 and 904.2 to install one exterior wall sign measuring 12.46 SF in area. The property is located in a Highway Business District and contains 111.67 +/- acres of land, as shown on Assessors' Map No. 2089, Plot 22.

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 August 24, 2010 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Stephen Karll, members, John Gauthier and Michael Calder.

Evidence

The petition was presented by the applicant, Moni Dosanjh of Fancher Land Development Services on behalf of California Pizza Kitchen. The applicant seeks to install a total of five signs, but only one of those signs is the subject of this petition. The applicant is seeking permission to install one diamond-shaped wall sign, measuring 12.46 SF in area, to be located on the exterior of the South Shore Plaza, above the entrance to California Pizza Kitchen, located in the south garage near Target's vestibule, which is the primary access/egress to the restaurant. The sign is internally illuminated with white lights and states "California Pizza Kitchen" and "CPK" in black and white lettering on a yellow background.

According to Section 135-904.2(A) (5)(g) of the Zoning By-laws, only one wall sign for each store or business occupying a building is permitted, and the aggregate total of all wall signs allowed shall not exceed 150 SF in area, unless otherwise allowed by the Board. While the California Pizza Kitchen sign is only 12.46 SF, the aggregate total of all wall signs at the South Shore Plaza far exceeds the 150 SF allowed under the by-law, and therefore a variance is required.

The applicant explained that the proposed signage is the only exterior sign currently proposed for California Pizza Kitchen, and the proposed sign is needed to identify the location of California Pizza Kitchen within the South Shore Plaza and to safely direct the traveling public to the only means of access/egress from the restaurant to the exterior parking area. The applicant also noted that the illumination of the sign is linked to the landlord's requirements for turning on and off.

The petitioner submitted three renderings of the proposed sign, prepared by Chandler Signs of Texas for CPK at South Shore, Braintree, MA, dated January 12, 2010, with sheets numbered 1 of 12, 4 of 12, and 7 of 12.

By a vote of 3-0, the Planning Board recommended favorable action on this petition. No one else spoke in favor of or opposition to the petition.

Findings

The Board found that the petitioner had demonstrated the need for relief from the Zoning By-law. Specifically, the Board found that the proposed sign, as the only exterior sign for this restaurant, was necessary to identify the location of the restaurant within the larger expanse of the South Shore Plaza. The Board found that the proposed sign would increase the restaurant's visibility and improve traffic circulation which would lead to safer traffic conditions and greater public convenience in directing traffic to the site. The Board also concluded 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. Karll and seconded, it was unanimously voted to grant the requested relief, subject to the plans presented.

6. Petition Number 10-28
Clear Wireless, LLC
RE: 300 River Street

Mr. Karll advised the Board that the petitioner has submitted a letter requesting a 30-day deferral regarding this appeal.

On a motion made by Mr. Gauthier and seconded by Mr. Calder, the Board voted unanimously to approve a 30-day deferral until the Zoning Board of Appeals meeting on September 28, 2010.

APPROVAL OF MINUTES:

On a motion made and seconded, the Board voted unanimously to accept the meeting minutes of July 27, 2010.

The meeting adjourned at 9:50 pm