



# Department of Municipal Licenses and Inspections

## Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

Joseph C. Sullivan  
Mayor

### Meeting Minutes

September 28, 2010

**IN ATTENDANCE:** Stephen Karll, Chairman  
John Gauthier, Member  
Michael Calder, Member  
Jay Nuss, Member

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

**Mr. Karll called the meeting to order at 7:05pm.**

#### **OLD BUSINESS:**

- 1) Petition Number 10-28  
Clear Wireless, LLC  
RE: 300 River Street**

Present: Attorney Anne Malone of Prince, Lobel, Glovsky and Tye of Boston, representing the petitioner, Ramon Zamora, a radio frequency engineer.

This is a petition filed by Clear Wireless, LLC an affiliate of Sprint Spectrum, L.P. of 200 5<sup>th</sup> Avenue, Waltham, MA 02451 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, 701 and Article XVI to install three WiMax panel antennas, three wireless backhaul dish antennas, and one GPS antenna on an existing communications tower, along with supporting equipment, all in accordance with the plans of record. The property is located in an Open Space Conservancy District as shown on Assessors Plan No. 2009, Plot 14 and contains 19 +/- 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 September 28, 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, Jack Gauthier and Jay Nuss, with alternate, Michael Calder.

### Evidence

The petitioner, represented by Attorney Anne Malone of Prince, Lobel, Glovsky and Tye of Boston, appeared along with Ramon Zamora, a radio frequency engineer. Attorney Malone explained to the Board that the petitioner, Sprint Spectrum, currently operates a wireless communications facility on this tower, as approved by the Zoning Board of Appeals via Decision No. 04-85. Clear Wireless, LLC provides Sprint Spectrum's "4G" network, which is the fourth generation of broadband technology that will support advanced wireless services, such as high-speed wireless internet access and portable multimedia to transmit large quantities of data over a wide distance. The additional equipment is needed on this tower to support Sprint Spectrum's 4G network. The petitioner is seeking permission to add three "WiMAX" (meaning "wireless interoperability for microwave access") antennas, three wireless backhaul dish antennas, and one GPS antenna on the existing 132 foot high telecommunications tower located at East Middle School. The applicant's antennae would be located at the 105 foot elevation on the tower. The applicant is also seeking permission to install one supporting equipment cabinet, measuring 103 SF, at the base of the tower, within the roof area of a proposed steel platform on existing T-Mobil steel beams. The antennas will be painted to match the existing tower.

The use and structure are pre-existing nonconforming, as the tower has been used for telecommunications and leased to various entities for several years. According to Section 136-1603(C)(2) of the Zoning By-laws, a tower is limited to the Highway Business Zoning District, 100 feet in height and must be at least 500 feet from any school. This tower is pre-existing nonconforming, as it is located within the Open Space Conservancy Zoning District, presently exceeds the 100 foot height limit and is located on the grounds of East Middle School. The Zoning By-law also requires fencing to restrict access to the tower, and the petitioner will not alter the existing fence surrounding the site.

In support of its petition, the applicant asserted that the proposed alteration of the existing tower will not have a detrimental impact on the surrounding neighborhood, as the tower is a pre-existing nonconforming structure that currently serves six other carriers. In addition, the Federal Telecommunications Acts encourages co-location on existing towers, and this petition promotes this goal. The petitioner's radio frequency engineer verified that the proposed installation will not interfere with the signals of any other facility located on the tower and will serve to close a significant gap in coverage in this area.

The petitioner submitted a packet of materials, including plans entitled "Clear Wire Wireless Broadband, MA-BOS7019-a, Braintree East Middle School, 300 River Street, Braintree, MA 02184", dated Sept. 10, 2009 with revisions through April 5, 2010, prepared by EBI Consulting of Burlington, MA, with sheets entitled as follows:

1. Sheet No. T-1: Title Sheet;
2. Sheet Nos. GN-1 and GN-2: General Notes;
3. Sheet No. C-1: Locus Plan and 500' Radius Plan;
4. Sheet No. A-1: Compound Plan;
5. Sheet No. A-2: Elevation, Details and Antenna Specifications;
6. Sheet No. A-3: Details;
7. Sheet Nos. S-1 through S-4: Structural Details;
8. Sheet No. E-1: Electrical Riser Diagram and Notes;
9. Sheet No. E-2: Grounding Riser Diagram, Details and Notes; and
10. Sheet No. E-3: Grounding and Electrical Details.

The petitioner also submitted four color photos showing the tower with the proposed antennas installed.

James Smith of 100 Hillside Road indicated that he was not opposed to the petition but expressed concern that the fenced in area had been left open and could be an invitation for vandalism or for children to hurt themselves.

Mr. Smith recounted several incidents over the past few months when he has observed the fence and/or gate left open. Mr. Smith questioned who has keys to access this site and who is responsible for ensuring that the fence and gate are locked closed. The Chairman requested that the Building Inspector review all prior zoning decisions to ensure that all petitioners are in compliance.

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 co-location as promoted under the Telecommunications Act and that the location of antenna on the existing tower was needed to provide service to the area. The Board also concluded that the proposed alteration of the tower by the addition of three antennae, three backhaul dishes, one GPS antenna and an equipment cabinet would not be substantially more detrimental to the neighborhood than the pre-existing nonconforming structure with the installations of three other wireless carriers. 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 Mr. Gauthier, it was unanimously voted to grant the requested relief, subject to the plan presented.

### **NEW BUSINESS:**

- 2) **Petition Number 10-29**  
**Reda Veitas, Agent for Windjammer Realty Trust**  
**RE: 19-71 Shaw Street**

The petitioner never appeared at the Zoning Board of Appeals meeting regarding this matter, so Mr. Karll advised that he would consider granting a thirty day extension on this matter. Mr. Karll requested that Mr. Forsberg make contact with the petitioner to advise.

On a motion made by Mr. Gauthier and seconded by Mr. Nuss, the Board voted unanimously to approve a 30-day extension of this petition until the Zoning Board of Appeals meeting on October 26, 2010.

- 3) **Petition Number 10-30**  
**Brian Doherty**  
**RE: 268 Peach Street**

Present: Brian McGourty, builder representing the petitioner

After testimony received from Mr. McGourty regarding the proposed demolish and relocation of the existing two family dwelling located at 268 Peach Street, the Board accepted Mr. McGourty's request to withdraw the requested relief without prejudice.

On a motion made by Mr. Gauthier and seconded by Mr. Calder, the Board voted unanimously to accept the request to withdraw the petition without prejudice.

**4) Petition Number 10-31**  
**Robert Maynard and Joseph padula**  
**RE: 42 Georganna Avenue**

Present: Attorney Gregory Galvin, representing the petitioners  
Robert Maynard and Joseph Padula, petitioners

This is a petition filed by Attorney Gregory Galvin, 775 Pleasant Street, Weymouth, MA 02190 on behalf of his clients, Robert Maynard and Joseph Padula of 536 Columbian Street, Weymouth, MA 02190 regarding the property located at 42 Georganna Avenue in Braintree, MA. The applicants are seeking relief from the Town of Braintree Zoning By-laws Sections 135-402, 403,701 to demolish an existing single family home and build a new single family home on the same lot, all in accordance with the plans of record. The property is located in a Residence B Zoning District as shown on Assessors Plan No. 1004, Plot 7B and contains 33,498 +/- 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 September 28, 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, Jack Gauthier and Jay Nuss, with alternate, Michael Calder.

**Evidence**

The petitioners, represented by Attorney Gregory Galvin, appeared before the Board and explained that they are seeking permission to demolish an existing single family home on the lot and to construct a single family dwelling set further back than the existing house. The existing dwelling is a dilapidated single story ranch, measuring approximately 850 SF and located toward the front of the lot. The proposed dwelling will be a 3,200 SF Colonial style house with attached two-car garage situated in the center of the lot. The proposed dwelling will conform to all dimensional setback requirements of the Zoning By-laws. The lot is pre-existing nonconforming in that the lot lacks the required 50 feet of frontage along a way, as it provides only 35.5 feet of frontage. The lot is also nonconforming as to width, as the Zoning By-law requires a minimum lot width of 100 feet; while the lot does provide 100 feet of width in certain rear sections, the lot only provides 40 feet of frontage along Georganna Avenue.

Attorney Galvin explained that the lot is located at the end of the layout of Georganna Avenue, which was laid out on paper as a cul-de-sac, but the way has not been fully constructed as shown on the plan. The lot is diamond-shaped, with the narrowest portion fronting on Georganna Avenue and flaring out to the rear, where it eventually abuts land owned by the MBTA. Currently, access to the existing dwelling is achieved via an easement over the property abutting on the easterly lot line. If the proposed single family dwelling is approved, the petitioners intend to cease using the easement over the neighbor's property and will construct a T-section turnaround driveway to directly access this lot.

The petitioner submitted a plan entitled "Robert Maynard/Joseph Padula, 42 Georganna Street, Braintree, Massachusetts, Plan to Accompany ZBA Application," dated August 13, 2010, prepared by Kelly Engineering Group, Inc. of Braintree, MA.

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

**Findings**

The Board found that the lot was pre-existing nonconforming as to frontage. The Board also found that the

proposed dwelling would comply with all dimensional setback requirements, and therefore, no new nonconformities would be created. The Board further found that replacing the smaller dilapidated dwelling that is located closer to the street with a larger single family home centered on the lot would not be substantially more detrimental to the neighborhood than the existing dwelling. 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 Mr. Gauthier, it was unanimously voted to grant the requested relief, subject to the plan presented.

**APPROVAL OF MINUTES:**

On a motion made and seconded, the Board voted unanimously to accept the meeting minutes of August 24, 2010.

The meeting adjourned at 9:00 pm