



# Department of Municipal Licenses and Inspections

## Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

Joseph C. Sullivan  
Mayor

### Meeting Minutes

September 27, 2012

**IN ATTENDANCE:** Stephen Karll, Chairman  
Jack Gauthier, Member  
Michael Calder, Member

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

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

#### **OLD BUSINESS:**

- 1) Petition Number 12-36  
T-Mobile Northeast, LLC  
RE: 531-533 Pond Street**

Present: Bill Hanrahan from Network Building and Consulting, LLC, an agent representing T-Mobile.

This is a petition filed by T-Mobile Northeast, LLC, 15 Commerce Way, Norton, MA 02766, regarding the property located at 531-533 Pond Street, Braintree, MA. The applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-402, 403, 407, and 1603. The applicant seeks a permit, variance and/or finding to modify an existing wireless communication facility located on an existing tower at 531-533 Pond Street, Braintree, all in accordance with the plans of record. The property is located in a Commercial Watershed Zoning District as shown on Assessors Plan No. 1038, Plot 10 and contains +/-260,488 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 for August 28, 2012 and continued until September 27, 2012 before the Zoning Board of Appeals at Town Hall at One J.F.K. Memorial Drive, Braintree, MA. Sitting on this petition was Chairman, Stephen Karll, and members, John Gauthier and Michael Calder.

#### **Evidence**

Bill Hanrahan from Network Building and Consulting, LLC, an agent representing T-Mobile, explained to the Board that the petitioner's equipment is already located on the existing tower at this site. The applicant is seeking permission to replace six existing antennas with six new antennas of similar size and in the same location. The applicant also seeks permission to replace related equipment located at the site, such as cables and equipment cabinets. Currently, the applicant has nine (9) amplifiers on the tower; the applicant proposes to remove six and retain three. The petitioner seeks this modification to replace the existing antennas with new antennas that will provide enhanced Global System for Mobile Communications for its 2G service, enhanced Universal Mobile Telecommunication Systems for its 3G network, and create a platform for the launch of its LTE network in 2013. All of the replacement antennas will be of the same size and location, and therefore will minimize any visual or aesthetic impact.

The tower at this site is a pre-existing nonconforming use, as it was previously a lattice tower used by the former owner/occupant of the building, Ainslie Corporation, who used the tower with an attached crane to test its equipment manufactured for the Department of Defense. In 2002, Omnipoint/T-Mobile sought permission from the Zoning Board of Appeals to alter this structure to attach telecommunications equipment to the tower. Over time, this lattice tower use evolved into a telecommunications tower, as several wireless communications carriers have equipment on this tower. The existing structure is 95 feet high, which exceeds the 45 foot building and tower height limit established by the Zoning By-laws. However, the tower was previously 83.4 feet high. In 2009, another wireless communications provider sought relief from the Zoning Board of Appeals to extend the tower to 95 feet for the purpose of adding wireless communications equipment, but the Board denied that request. The applicant appealed, and an agreement for judgment was entered by the Court, allowing the extension of the tower. Since the applicant is seeking to modify a pre-existing and nonconforming structure, a finding is required under G.L. c. 40A, Section 6.

The lot on which the tower is located is also nonconforming. The Zoning By-law requires 150 feet of frontage, but this lot provides only 144 feet of frontage. The Zoning By-law also requires 150 feet of lot width, but this lot contains only 144 feet of width. The configuration of the lot will not be altered by this petition.

As grounds for the finding, the petitioner explained that T-Mobile is in the process of upgrading their wireless communications facilities nationwide to enhance their existing 2G and 3G performance as well as to create a platform for their LTE network to be launched in 2013. These modifications and installations will also address a gap in coverage and provide adequate and reliable wireless communications services in and around Braintree, as the location and height of this particular building is uniquely situated to allow the applicant to address its gap in coverage.

In addition to the packet of information entitled "Minor Modification to the Existing T-Mobile Wireless Facility, 521-533 Pond Street," the petitioner submitted a copy of their Tower Lease Agreement and addendum, four sheets entitled "Site Name: BS554/Ainsley Braintree, 531 Pond Street, Braintree, MA 02184, Norfolk County, Site Number: 4BS0554D," with sheets numbered T-1 (Title Sheet), C-1 (Plot Plan), A-1 (Compound and Equipment Plan), and A-2 (Antenna Layout and Elevation), all dated June 14, 2012 and revised June 26, 2012, prepared by Daniel Hamm, RPE of Hudson Design Group, Inc. of North Andover, MA.

No one else spoke in favor of or opposition to the petition. By a vote of 5-0-0, the Planning Board recommended favorable action on the requested relief.

### **Findings**

The Board found that the requested relief was necessary in order to fill a gap in coverage and provide the Town with the most recent wireless communications technology. Further, the Board found that replacing the existing six antennas with six new antennas of the same height and in the same location and replacing nine amplifiers

with three new amplifiers would not be substantially more detrimental to the neighborhood than the pre-existing nonconforming structure on the lot. 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.

#### **2) Petition Number 12-40**

**Tom Le**

**RE: 67 Walnut Avenue**

Present: Tom Le, petitioner  
Ken Kirby, Kirby Construction

This is a petition filed by Tom Le 67 Walnut Avenue, Braintree, MA, regarding the same property, in which the applicant is seeking relief from the Town of Braintree Zoning By-laws under Chapter 135, Sections 135-403, 407, and 701. The applicant seeks a permit, variance and/or finding to construct two decks, one on the first floor and one on the second floor, all in accordance with the plans of record. The property is located within a Residential B District as shown on Assessors' Map 3020, Plot 11, and contains a land area of +/- 14,240 Sq. Ft.

### **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 for August 28, 2012 and continued until September 27, 2012 before the Zoning Board of Appeals at 7 p.m. at Braintree Town Hall, One J.F.K. Memorial Drive, Braintree, MA. Sitting on this petition was Chairman, Steve Karll, and members Jack Gauthier and Michael Calder.

### **Evidence**

The petitioner, Tom Le, appeared with his builder, Ken Kirby of Kirby Construction. Mr. Le explained that he is seeking permission to construct a first story deck measuring 16 ft. x 16 ft. to the rear of his existing dwelling and to construct a 4 ft. x 10 ft. deck on the second story, off of a bedroom. Currently, the house as it is located on the lot conforms to all zoning setbacks. The house is located 30.3 feet off the rear yard lot line. The proposed decks will encroach into the rear yard setback. The first floor deck, measuring 16 ft. x 16 ft., is proposed to be located 14.3 feet from the rear lot line, and the second story deck is proposed to be located 26.3 feet from the rear lot line. As both decks encroach into the 30 feet rear yard setback, variances are required.

The applicant's lot is pre-existing nonconforming. The lot contains only 14,440 SF of area and therefore lacks the 15,000 SF minimum lot size required under the Zoning By-laws. In addition, the lot offers only 95 feet of depth, while the Zoning By-law requires a minimum lot depth of 100 feet. The shape of the lot is rectangular with the applicant's house located in the center of the lot.

At the Planning Board meeting to review this matter, the Planning Board recommended locating the deck to either side yard, each of which offers at least 60 feet from the side lot lines. The Planning Board noted that there is ledge in this neighborhood, which could also impact this lot and impact the location of the deck. As an alternative, the Planning Board proposed a 10 ft. x 26 ft. deck, which would minimize the rear yard

encroachment. The applicant indicated that he was willing to change the dimensions of the deck in accordance with the Planning Board's recommendation.

As grounds for the variance, the petitioner stated that ledge impacts the westerly side of his property. On the easterly side of his property is a driveway. In response to a question posed by a Board member as to whether he could move the driveway to the westerly side of the house and build a deck on the easterly side, the applicant indicated that the slope of the lot would make relocating the driveway difficult. Mr. Kirby also stated that the presence of ledge on the westerly side of the lot would impede the relocation of the driveway.

Paul Keane of 62 Sterling Street abuts the subject property to the rear. Mr. Keane opposes the petition, stating that he feels strongly about zoning and wants to maintain the 30 feet setback that he considers to be "hallowed ground". Mr. Keane also questioned the presence of ledge on the subject property and indicated that there is sufficient room on either side of the house to locate a deck. Mr. Keane stated he would not object to a smaller deck, if the Board finds that Mr. Le has substantiated a hardship.

The petitioner submitted a plan entitled "Plot Plan Showing proposed Decks at 67 Walnut Avenue in Braintree, Mass.," dated June 27, 2012, prepared by Stephen DesRoches, registered Land Surveyor, of Neponset Valley Survey Assoc., Inc. of Quincy, Ma.

No one else spoke in favor of or opposition to the petition. The Planning Board voted 5-0-0 to recommend unfavorable action on a 16 ft. by 16 ft. deck, but recommended favorable action on a 10 ft. by 26 ft. deck.

### **Findings**

The Board found that the applicant had demonstrated a hardship based on the topography of the lot. Specifically, the Board found that the presence of ledge on the applicant's lot precludes locating the deck on the westerly side of the property or relocating the existing driveway on the westerly side of the house. However, the Board agreed that the dimensions of the first story deck should be altered to 10 ft. by 20 ft. to minimize the encroachment into the rear yard setback, so that the deck will be located 20 feet from the rear lot line. The Board also found that the same evidence supported a hardship for the second story deck, which will only encroach 4 feet into the rear yard setback. The Board also found that the location of the existing structure in the center of the lot, with the kitchen and bedroom located to the rear of the house, precludes locating either deck elsewhere. 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 a variance from the rear yard setback, subject to the plan presented but with the condition that the dimensions of the first story deck be altered to 10 feet wide by 20 feet long, to be located 20 feet from the rear lot line, and a second story deck with dimensions of 4 feet wide by 10 feet long.

### **NEW BUSINESS:**

- 3) Petition Number 12-44**  
**MSMM, LLC**  
**RE: 20 Pond Street**

Present: Attorneys Carl Johnson and Ron Marshall and Jennifer Turcotte, P.E, on behalf of the petitioner

This is a petition filed by MSMM, LLC of 400 Franklin Street in Braintree regarding the property located at 20 Pond Street, in which the applicant is seeking relief from the Town of Braintree Zoning By-laws under Chapter 135, Sections 135-403, 407, and 701. The applicant seeks a permit, variance and/or finding to demolish the rear portion of the existing structure and to renovate the remaining portion into 27 multi-family residential units pursuant to Section 135-614(A) of the Zoning By-laws, which allows for a conversion of a former nursing home, all in accordance with the plans of record. The property is located within a Residential B Watershed Overlay Zoning District as shown on Assessors' Map 1023, Plot 4, and contains a land area of +/- 64,265 Sq. Ft.

### **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 on September 27, 2012 before the Zoning Board of Appeals at 7 p.m. at Braintree Town Hall, One J.F.K. Memorial Drive, Braintree, MA. Sitting on this petition was Chairman, Steve Karll, and members Jack Gauthier and Michael Calder.

### **Evidence**

Attorneys Carl Johnson and Ron Marshall and Jennifer Turcotte, P.E., appeared on behalf of the applicant, MSMM, LLC. Attorney Johnson explained that the applicant purchased the former Franvale Nursing Home and is in the process of seeking a permit from the Planning Board pursuant to Section 135-614 of the Zoning By-laws to convert the former nursing home into 27 residential units. As part of the conversion, the applicant is seeking permission from the Zoning Board of Appeals to demolish a 6,750 SF section of the rear of the existing building along the westerly property line to allow for added parking. The remaining 3-story building will be maintained and converted into residential units, subject to Planning Board approval.

The existing structure is pre-existing nonconforming. The Zoning By-law requires a minimum side yard setback of 10 feet, yet the existing structure is located 7.92 feet from the westerly lot line. The existing structure also encroaches into the front yard setback, as the structure is located 12.88 feet from the front lot line, while the Zoning By-law requires a minimum front yard setback of 20 feet. The portion of the building which the applicant proposes to retain includes these sections with nonconforming front and side yard setbacks. Since the applicant is proposing to alter a pre-existing nonconforming structure, a finding is required under G.L. Chapter 40A, Section 6.

Attorney Johnson explained that the structure's overall footprint will be reduced via the demolition of this 6,750 SF section, and in its place, approximately 46 parking spaces, including handicapped accessible parking, will be added. Attorney Johnson provided a copy of an August 1993 Zoning Board of Appeals decision granting the nursing home a variance for the front yard setback of 12.88 feet. No record of similar relief was located for the side yard setback, although the 1993 Zoning Board decision notes that the front portion of the existing structure, which encroaches into the side yard setback, was clearly in place in 1993. Attorney Johnson also explained that the applicant proposes to remove the entry way and walkway along Pond Street, which will remove approximately 236 SF of impervious surface; landscaping will be added in this area. The proposed alteration of the structure will comply with all other dimensional requirements under the Zoning By-law. Moreover, the demolition of the 6,750 SF portion of the building will allow for more parking, open space, landscaping, while reducing building coverage. Maximum lot coverage will increase slightly from 61% to 65.6%, which is still under the 70% maximum threshold. Overall, Attorney Johnson asserted that the proposed alterations to the site will improve and not be more detrimental to the neighborhood.

Noting that this type of redevelopment does not trigger a traffic study under the Town's Zoning By-laws, Attorney Johnson provided a Trip Generation report of the proposed redevelopment, as prepared by Transportation Engineering, Planning and Policy, LLC of Salem, NH.

The applicant submitted three plans entitled "Proposed Site Improvements, 20 Pond Street, Braintree, Mass.," dated 5/22/12 prepared by Jennifer Turcotte, Registered Professional Engineer of Strategic Technology Solution, Inc., of Duxbury, MA, labeled drawing number C-0 (Existing Conditions Plan), C-1 (Demolition Plan) and C-2 (Layout Plan). Attorney Johnson also provided a revised Zoning Table.

Jennifer Avarett of 25 Pond Street noted the need for elderly housing within the Town and expressed concern about traffic at the intersection of Pond and Franklin Streets with two major accidents occurring recently. Patricia Rooney of 19 Pond Street echoed these concerns. Pat Wilson, currently of 205 Independence Avenue in Quincy, grew up at 25 Pond Street and worked at the nursing home; she noted that traffic trips to and from the residential site will be different from the trips previously triggered by the 24 hour shifts of a nursing home. Attorney Johnson explained that the traffic report compares traffic generated by a 128-bed nursing home to that of a 27-unit residential development, and based on this model, traffic trips are decreased. The Chairman advised that the planning Board will review traffic generated by the redevelopment of this site as part of its permitting process.

By a vote of 5-0-0, the Planning Board recommended favorable action on the requested relief. No one else spoke in favor of or opposition to the petition.

### **Findings**

Based on the evidence presented, the Board found that by demolishing 6,750 SF of existing building, the applicant will improve parking, open space, and landscaping on this site, while reducing building coverage. Although maximum lot coverage will increase slightly from 61% to 65.6%, the Board found that lot coverage will still be under the 70% maximum threshold. The Board found that the proposed alterations to the pre-existing nonconforming structure will not be more detrimental to the neighborhood than the existing structure. Further, the Board found that the requested relief could be granted without derogating from the purpose of the Zoning By-laws.

### **Decision**

On a motion made by Mr. Calder and seconded by Mr. Gauthier, the Board voted unanimously to approve the requested relief, subject to the plans presented, and based upon a finding that the proposed alterations are not substantially more detrimental to the neighborhood than the existing structure.

### **APPROVAL OF MINUTES:**

On a motion made by Mr. Calder and seconded by Mr. Gauthier, the Board voted unanimously to accept the meeting minutes of August 28, 2012.

The Board adjourned the meeting at 8:45 pm.