



# TOWN OF NORTHBOROUGH Zoning Board of Appeals

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Approved 8-26-08

## Zoning Board of Appeals Meeting Minutes June 24, 2008

**Members Present:** Richard Rand, Chairman; Mark Rutan, Clerk (arrived at 7:10PM); Richard Kane; Sandra Landau, Alternate; Gerry Benson, Alternate

**Members excused:** Dan Ginsberg

**Others Present:** Bill Farnsworth, Building Inspector; Elaine Rowe, Board Secretary; Judy Barrett; Tim Shay; Ziad Ramadan; Attorney Francis Parisi; Terri Feuersanger, Tower Resource Management; Aquilino Ben Orichi, MetroPCS

**Chairman Rand called the meeting to order at 7:02PM.**

Chairman Rand appointed Sandra Landau as the third voting member for the first hearing.

**Public Hearing to consider the petition of Tim Shay for a Variance/Special Permit/Site Plan Approval to convert second-floor office space to a single-unit residence on the property located at 10 Church Street, 7:05PM**

Tim Shay discussed his proposal for the property located at 10 Church Street. He explained that there is an existing tea house and retail business on the first floor, office space on the second floor, and an additional building on the property that is currently used as a retail store selling folk art. He stated that he would like to convert a portion of the second floor of the main building, which was previously occupied by Northborough Counseling, into a 2-bedroom apartment. Mr. Shay noted that there are a number of other apartments nearby, so this proposal is in line with the character of the neighborhood.

Mr. Shay also noted that he had been before this board 4 to 5 months ago seeking permission to install additional parking, and that work has now been completed with the exception of some of the striping in front of the folk art store. He voiced his opinion that converting the second floor to a residential unit should help to alleviate some of the parking issues that have existed in the past.

Mark Rutan arrived.

Mr. Kane asked if multi-use is allowed at this location. Mr. Farnsworth noted that the use is allowed under special permit. Mr. Kane commented that the application is not clear about what the applicant is seeking to do.

Chairman Rand asked if the remainder of the second floor will remain as office space. Mr. Shay confirmed that it will. Chairman Rand commented that the property is served by town

water and sewer. Mr. Shay displayed a proposed layout for the apartment, which will be similar to what currently exists with the addition of a kitchen. Mr. Kane noted that there are already two means of egress for the second floor.

Chairman Rand inquired about the current parking situation. Mr. Shay noted that the additional parking he recently added seems to have greatly improved the parking problems. Ms. Landau noted that the hairdresser in the adjacent building has complained about visitors to 10 Church Street using her parking area in the past. Mr. Shay stated that the additional parking should alleviate that problem. Chairman Rand asked how many parking spaces were added. Mr. Shay indicated that he had added 7 or 8 additional parking spaces. He commented that the re-striping of the parking lot has also helped, but that there are some people that will always park poorly, regardless of any efforts to make improvements.

Mr. Farnsworth voiced support of Mr. Shay's proposal. He noted that removing the office space on the second floor and replacing it with a residential unit decreases the parking requirements. He also stated that the split use will result in varying parking requirements at the different times of the day.

Mr. Farnsworth reiterated the need for a special permit for the residential use within a multi-use property. In addition, site plan approval is required because of the change in use.

Ms. Landau requested that the applicant confirm that the information as submitted in the application is in compliance with the referenced section of the bylaw. Mr. Shay stated that the site is appropriate for the proposed use, and there is no adverse impact to the neighborhood. Mr. Farnsworth agreed, and noted that the proposal does not present a nuisance or serious hazard to traffic or pedestrians. He also noted that the proposal provides adequate and appropriate facilities, including a full bath and kitchen and two means of egress.

Richard Kane made a motion to close the hearing. Sandra Landau seconded, vote unanimous.

**Public Hearing to consider the petition of MetroPCS Massachusetts for a Variance/Special Permit to allow installation of additional antennas, associated wires and ground equipment to an existing wireless communication site on the property located at 119 Bearfoot Road (formerly 119 Colburn Street), 7:17PM**

Chairman Rand noted that the voting members for this hearing will be himself, Mark Rutan, and Richard Kane.

Attorney Francis Parisi explained the applicant is seeking a modification of a special permit granted several years ago in order to allow them to attach additional antennas to an existing wireless communication tower. He noted that the original tower pre-dates the town's bylaw, and since the original decision was granted by the ZBA, they must come before this board for the modification.

Attorney Parisi explained the town has historically encouraged co-locations on a single antenna. Since the original approval only contemplated six companies for the original antenna, a modification is needed for the additional antenna.

Attorney Parisi explained that Metro PCS is prominent in the southern states, has recently started serving the west coast market and will soon enter the northeast region with a commitment to open the Boston market by the end of the year. He explained the existing tower currently contains six antenna arrays, and MetroPCS is seeking permission to locate a seventh array on this tower in lieu of constructing additional towers.

Ms. Landau voiced the board's desire to encourage co-location, and noted that this does not differ from other approvals that have been granted in the past. Mr. Kane asked if MetroPCS service is completely digital, and Attorney Parisi confirmed that it is. Chairman Rand asked about the appearance of the arrays. Attorney Parisi stated that MetroPCS uses a much lower profile set of antennas, so their array will be slightly smaller than the existing.

Mr. Rutan inquired about ownership of the tower. Attorney Parisi indicated that the tower is owned by AT&T. Mr. Rutan asked if the tower owner has agreed to the installation of this additional array, and has confirmed that the structural capacity of the tower is sufficient to accommodate it. Attorney Parisi noted that a structural analysis will be provided to the Building Inspector prior to construction. Mr. Farnsworth stated that this is required as part of the Building Permit application process.

Aquilino Ben Orichi, Radio Frequency Engineer for Metro PCS, displayed a map detailing the site location and other tower sites nearby. He explained the objective is to be able to link sites to provide adequate coverage. He noted that an antenna location at this site is needed to provide coverage to Route 290. Attorney Parisi explained that MetroPCS will co-locate on additional towers in town in an effort to gain thorough coverage.

Ziad Ramadan voiced his desire for MetroPCS to be truthful in their advertising, specifically about any holes in their coverage area. Attorney Parisi explained that potential customers will receive copies of coverage maps, and noted that the FCC regulates how MetroPCS can advertise.

Richard Kane made a motion to close the hearing. Mark Rutan seconded, vote unanimous.

**Dunia Gardens** – Ziad Ramadan discussed his request for a change to the bonding requirement for his project at 239 Hudson Street. He explained that he is now at the stage where he would like to start the building process, but the decision currently requires the posting of a bond before filing for a Building Permit. Mr. Ramadan noted that the project is progressing nicely, but that the difficult real estate market has resulted in a change in his financial picture. Therefore, he is back before the board seeking permission to build a model unit prior to posting the bond. Mr. Ramadan explained that, if approved, he will agree to a condition that he cannot obtain an occupancy permit or sell the unit until the bond has been posted.

Mr. Ramadan also noted that much of the infrastructure work will need to be done while the model is being constructed, so the bond requirement will also be less. He reiterated that a bond will be posted before any of the units are sold.

Chairman Rand asked Mr. Farnsworth for input. Mr. Farnsworth explained that he had discussed the issue with Fred Litchfield, Town Engineer, and that Mr. Litchfield did not seem to have an issue with the request as long as there is a clear stipulation that the bond is to be posted in full before the sale of any unit. He suggested that the board can further stipulate that the action must be taken before the second set of building permits can be issued. Mr. Farnsworth also stated that Mr. Litchfield has not yet had the opportunity to calculate what the amount of the bond should be.

Mr. Kane voiced his opinion that this is a logical request, as long as there will be no occupancy permits granted until the bond is posted. He commented that all of the risk falls to Mr. Ramadan. Mr. Farnsworth reiterated that the stipulation that no additional building permits can be issued without a bond will provide further assurances for the board. Mr. Ramadan agreed. Ms. Landau agreed that allowing Mr. Ramadan to construct a model to help with the marketing of units is a viable plan.

Mr. Ramadan also discussed the requirement for a sprinkler system. He explained that he had received one quote for \$400,000 for the sprinkler work, which is much more costly than he had expected. He noted that this will cause him an extreme financial hardship, and he is seeking relief from this condition. He also noted that the code does not require sprinkler systems for triplexes.

Mr. Farnsworth explained that the Fire Chief was adamant about the installation of a sprinkler system during the original hearing. Chairman Rand suggested that the matter be placed on the agenda for the next meeting. Mr. Kane stated that he is strongly in favor of requiring the sprinkler system, given the density of the development. He also voiced his opinion that this would be a selling point, but Mr. Ramadan did not believe that he would be able to get the additional \$20,000 per unit to cover the cost of sprinkler installation.

Mr. Farnsworth encouraged Mr. Ramadan to obtain additional quotes, and noted that the quote provided appears to be excessive. He also reiterated that the Fire Chief's wishes were made clear during the original hearing and voiced his opinion that it is unfair to now be back before the board for relief at this stage of the project.

Chairman Rand suggested that Mr. Ramadan put his request in writing for consideration at the next meeting. Ms. Landau stated that she would want to hear from the Fire Chief, either in person or in the form of a written response. Mr. Farnsworth suggested that Mr. Ramadan discuss the matter with the Fire Chief and ask the Chief to submit a comment letter to the board.

The Zoning Board of Appeals entered into a joint meeting with the Planning Board at 7:54PM.

The joint meeting with the Planning Board adjourned at 9:45PM, at which time the Meeting of the Zoning Board of Appeals resumed.

## **DECISIONS**

**10 Church Street** – Mr. Farnsworth reiterated his support for the proposal, and noted there was previously an apartment housed in the building.

Richard Kane made a motion to grant a special permit to allow for a single family residential unit on the second floor at 10 Church Street as shown in the plan. Sandra Landau seconded, vote unanimous.

Sandra Landau made a motion to grant Site Plan approval as submitted and as shown on the as-built plan this evening. Richard Kane seconded, vote unanimous.

**119 Bearfoot Road** - Members of the board all voiced approval of the proposal.

Mark Rutan made a motion to grant a special permit to allow an additional antenna array to be placed on the tower as requested, and as per the plan submitted by MetroPCS dated 2/15/08. Richard Kane seconded, vote unanimous.

**Dunia Gardens** – Mr. Rutan questioned who the bond is intended to protect. Mr. Farnsworth explained that the bond is intended to protect the town prior to finalization of the project, and covers restoration of the site to its natural state in the event the project is abandoned.

Chairman Rand noted that substantial changes to a 40B project require a public hearing, and questioned whether the change to the bonding requirement is a substantial change.

Mark Rutan made a motion to determine that this is not a substantial change. Richard Kane seconded, vote unanimous.

Mark Rutan made a motion to approve the applicant's request to delay posting of the bond until after construction of a model unit. It was agreed that the bond must be posted prior to issuance of any Certificate of Occupancy or the sale of the first unit, whichever comes first. Members of the board were insistent that this condition must also be recorded at the Registry of Deeds. Richard Kane seconded, vote unanimous.

**Election of Offices** – Richard Kane made a motion to retain the same officers as are currently in place (Richard Rand, Chairman and Mark Rutan, Clerk). Mark Rutan seconded, vote unanimous.

**Approval of Minutes** – the approval of the minutes was postponed until the next meeting.

**Adjourned at 10:00PM.**

Respectfully submitted,

Elaine Rowe  
Board Secretary