

TRANSCRIPT OF PUBLIC RECORD
ZONING BOARD OF APPEALS MEETING
DECEMBER 16TH, 2009

This Regular Meeting of the **Zoning Board of Appeals**, was held in the Great Hall of Searles Building, City Hall, and was called to order at 7:07 PM.

MEMBERS IN ATTENDANCE:

Mr. Matthew D'Agostino, Chairman
Ms. Laura Walta, Vice Chairman
Mr. Richard Lacroix, Clerk
Mr. Jesse Ramirez, Member
Mr. Vincenzo Pesce, Member
Mr. Robert Andrew, Alternate Member

OTHERS IN ATTENDANCE:

Ms. Gwen Martone, Zoning Board Secretary

STATEMENT BY THE CHAIRMAN:

Matthew D'Agostino read a statement prior to the opening of this meeting advising appeal rights.

ATTENDENCE:

Board Clerk, Richard Lacroix called the roll with all members present at this meeting.

ROLL CALL:

Board Clerk, Richard Lacroix called the roll of Applicants.

ACCEPTANCE OF MINUTES: October 21st, 2009

MOTION: *Laura Walta moved to accept the Minutes*
 Vin Pesce seconded this motion.

VOTE: 5-0-0 UNANIMOUSLY APPROVED

MOTION: *Matthew D'Agostino moved to take items out of order by moving the T-Mobile Northeast application to the end of the Agenda and to begin with item 21, followed by item 22, followed by item 23.*
 Richard Lacroix seconded this motion.

VOTE: 5-0-0 UNANIMOUSLY APPROVED

NEW BUSINESS:

#2009 - 21 Scott & Dina Latuilippe, 50 Sevoian Drive, Methuen, MA 01844

Special Permit required under Section IX-B of the Comprehensive Zoning Ordinance of the City of Methuen to extend a non-conforming use by adding a second floor for office space in a Residential A (RA) District at # 8 Marshall Street, Methuen, MA 01844.

The petitioner appeared before the Board on this petition. According to Mr. Latuilippe he has recently obtained a building permit for one of the original Beeley's garage that was falling down. He indicated that he tore down and rebuilt the garage and chose to use that space for customer a customer service area for signing contracts, etc, so that they would not have to walk through the actual service bays. The garage was rebuilt with a second story that he would like to use for storage but has since been told that a variance should have been obtained prior to constructing the seconf story.

Chairman D'Agostino opened the hearing to Public Participation with no one speaking in opposition to this petition. The following individuals went on record speaking in favor of this petition:

Richard & Mary Ellen Beshara	9 Marshall Street	Methuen, MA 01844
George & Laura Flibolte	3 Waldo Street	Methuen, MA 01844

Each of the abutters expressed the same sentiments stating that since Mr. Latuilippe had taken over the property they have seen remarkable improvements. They further indicated that the structure was totally renovated actually enhancing the neighborhood, that the grounds are kept clean, and that it is a pleasure having Mr. Latuilippe as a neighbor.

Having no further discussion, Public Participation was closed and the petitioner returned to the podium.

At this time, Board Clerk Richard Lacroix read the following correspondence into the minutes of the meeting.

Stephen & Carrie Berube	63 Howe Street	Methuen, MA 01844	September 16, 2009
David & Gina Marcinkowski	59 Howe Street	Methuen, MA 01844	September 15, 2009
Bruce & Connie Stella	5 Walso Street	Methuen, MA 01844	September 15, 2009
Richard & Mary Ellen Beshara	9 Marshall Street	Methuen, MA 01844	September 13, 2009
George & Laura Flibolte	3 Waldo Street	Methuen, MA 01844	September 8, 2009

All correspondence was in favor of this petition and may be found attached to the rear of the Minutes on file in the Office of the City Clerk, 41 Pleasant Street, Methuen, MA 01844

ROLL CALL:

Mr. Richard Lacroix – yes, per plan
Mr. Jesse Ramirez – yes, per plan
Mr. Vincenzo Pesce – yes, per plan
Ms. Laura Walta – yes, per plan
Mr. Matthew D'Agostino – yes, per plan

VOTE: 5-0-0 APPROVED

Variance requested under Section VI-D of the Comprehensive Zoning Ordinance of the City of Methuen to construct a single-family dwelling without the required area in a Residential D (RD) District at AM 10-14, BLOCK 104, PARCEL 2A Paris Street, Methuen, MA 01844.

Attorney Anthony Copani of Copani, Tarlow & Cranney, 265 Broadway, Methuen, MA appeared before the Board on this petition. According to Atty. Copani this parcel of land has been in the Cafiso family since the 1920's. He indicated that the parcel before the Board this evening is a portion of a larger tract of land that was formulated into a sub-division plan that was recorded at the Registry of Deeds. At this time Atty. Copani presented the Board with a copy of the recorded plan. He went on to say that at the time the plan was created it was intended for the highlight lot on the plan to contain 10,000 square feet of area. He further explained that there was supposed to be some conveyance over to that parcel but that never occurred. He indicated that the hardship they have before the Board this evening is that they have a recorded plan of which one of the lots was conveyed when Lucy Cafiso died, but before the conveyance required to make each lot buildable occurred. They are now confronted with the situation where they have a lot that exists in the middle of a recoded plan and is not buildable because they do not have the required area. He stated that they comply in all other respects with zoning. He indicated that the parcel had a planted barrier of arborvitae that configures the lot. He explained that the arborvitae provides a screen from Buco Construction, which has heavy equipment stored across the street as well as provides a natural barrier with the abutting lot.

Chairman D'Agostino questioned if the front door was going to be on Paris Street. Atty. Copani indicated that it would be on Grace Street. He further stated that on either side of this lot, both houses have their rear yards on Grace Street and that it would look odd to have a front yard in the middle.

Chairman D'Agostino opened the hearing to Public Participation with no one speaking in favor to this petition. The following individuals went on record speaking in opposition of this petition:

Tina Nicolosi, 10 Grace Street, Methuen, MA 01844 indicated that she was in opposition to this petition because she felt that the lot was too small to build a house. She stated, "They'd walk out their door and into mine." She also believes that development of the lot would drop everybody's property value in the neighborhood.

Michele Cushman, 40 Paris Street, Methuen, MA 01844 indicated that she was a direct abutter and is opposed to this petition because the front door of the property would be on Grace Street. She further indicated that if you are coming down grace Street there is a little hill and that this property is below grade and would require filling. She is concerned that this would now put her property in a little valley. She further stated that she has a walk in basement and that this would cause a potential water problem in the future.

Having no further discussion, Public Participation was closed and Atty. Copani returned to the podium. He stated that it was their intention to keep in conformity with the other homes on the street but that his client would be willing to change the location of the front door. Discussion ensued relative to where the house would actually front.

Chairman D'Agostino asked Atty. Copani to address the issues with the elevation of the property. Atty. Copani responded that when ever there is issues with elevation or water problems the granting of the variance is the first step and that all other building codes and regulations would have to be complied with prior to issuance of an actual building permit for this office. He further indicated that the house being proposed for this site is a splint entry with a one-stall garage underneath and that it would not be a large footprint on the lot.

At this time it was evident that there was confusion as to what was intended to be the frontage and that other variances would be required. Chairman D'Agostino entertained the following motion to continue this petition to next month in order to have this issue clarified.

MOTION: *Laura Walta moved to continue this petition to the February 24th, 2010 Public Hearing
Vin Pesce seconded this motion.*

VOTE: *5-0-0 UNANIMOUSLY APPROVED*

Scott A. Martin, 500 Jackson Street Methuen, MA 01844

#2009 - 23 C/O Applicant: Joseph Stella, 35 Campus Road, Methuen, MA 01844

Special Permit required under Section IX-B of the Comprehensive Zoning Ordinance of the City of Methuen to extend a non-conforming use by converting a portion of an existing flower shop into a coffee shop in a Residential D (RD) District at # 500 Jackson Street, Methuen, MA 01844.

The Co-Applicant, Joseph Stella appeared before the Board on this petition. According to Mr. Stella he and his wife would like to put a small coffee shop on the left hand side of the building where Martins Flower shop is located. He informed the Board that the shop would operate 7 days a week from 6:00 AM to 2:00 PM.

Chairman D'Agostino opened the hearing to Public Participation with no one speaking in favor to this petition. Margaret Strobel the owner of 510 Jackson Street stated that she is a direct abutter and is opposed to this petition because within a 1 mile radius there is the high school with a cafeteria, a hospital with a cafeteria and coffee shop, a coffee shop at the crossroad, Mann's has a coffee shop, Dunkin Donuts is at the corner of Jackson Street and at the hospital, Target, Burger King, and McDonalds all have coffee shops. She further indicated that the traffic at this location is terrific with Methuen High School housing 2000 students and 200 staff members and the Timony Grammar school housing 1450 and 134 staff members. She indicated that all these people go there on a daily basis either by bus, by car or they walk. She believes that a coffee shop at this location would only acerbate the situation. She continued to say that Mr. Martin had received permission in 2001 to add storage space and an office. She indicated that she purchased the abutting property in 2002 and erected a privacy fence because Mr. Martin had installed a parking area next to her garage. She further stated that in 2005 there was additional work done at the flower shop and that they were dumping materials behind her house and that she has the police report and photos proving this. She further indicated that the illegal dumping was cleaned up several days later. She is now concerned that with a restaurant located next door to her that they would be dumping leftover food out which would attract all types of vermin to the area.

Having no further discussion, Public Participation was closed and Mr. Stella returned to the podium. At this time Board Clerk, Richard Lacroix read a letter in opposition into the record dated 12/2/2009, from Mr. Carmen Mele of 235 Jackson Street. A copy of this letter may be found attached to the rear of the Minutes on file in the Office of the City Clerk, 41 Pleasant Street, Methuen, MA 01844.

Discussion ensued relative to the type of services that would be offered and the hours of operation. Mr. Stella indicated that he was planning on serving breakfast and lunch only. He said that he has operated this type of a business at other locations and that the nature of the business is that it dies down after 2:00 PM. He also stated that he is aware of the traffic pattern in that area because he is a Plant Manager at the nursing home next door. He stated that this is a small operation both the flower shop and his proposed coffee shop and that the traffic would not compare to that in the Howe Street area. Additionally he stated that there is more than adequate off street parking and that he does not believe there would be a problem.

The Board found that granting the extension of the non-conforming use would cause undue traffic congestion and inhibit pedestrian safety in the area and voted as follows:

ROLL CALL:

Mr. Richard Lacroix – no
Mr. Jesse Ramirez – no
Mr. Robert Andrew – no
Ms. Laura Walta – no
Mr. Matthew D’Agostino – no

VOTE: 0-5-0 DENIED

Lorraine & Albert Gervais, 17 James Street, Lawrence, MA
#2009 - 20 Co-Applicant T. Mobile Northeast, LLC , 15 Commerce Way, Norton, MA

Variance requested under Section XI-D16, Paragraph C-3-A and C-3-C-1 of the Comprehensive Zoning Ordinance of the City of Methuen to construct a monopole for a wireless communications facility that will be over the allowable height and too close to a residential district in a Neighborhood Business (BN) District at # 24 Maplewood Avenue, Methuen, MA 01844.

Attorney Jennifer E. Lewis of Prince, Lobel, Glovsky & Tye LLP, 100 Cambridge Street – Suite 2200, Boston, MA 02114 and Dinesh Dasani, Radio Frequency Engineer for T-Mobile USA, INC appeared before the Board on behalf of the Applicant.. According to Atty. Lewis, the petitioner is seeking relief to install, operate and maintain a wireless communications facility (WCF) that will have 120 ft. set back from the closest residential property and not the required 250 feet. Additionally the applicant is seeking a variance from the height requirement which 10 feet higher than the tallest building in the area or 10 feet above the average tree height. She indicated that the average tree height in this area is 77 ft. and that 87 ft. is not sufficient to fill their gap in service or allow for collocation.

She informed the Board that T-Mobile is licensed by the FCC to construct and operate a wireless communications network in various markets throughout the country including Massachusetts and in particular in the City of Methuen. She further indicated that their network must provide customers with reliable and uninterrupted services. She explained that by using computer modules the RF Engineer analyzes T-Mobile network to determine where there is a gap in network coverage. She alleges that the gap in service in this instance is centered along Route 113 and believes that this is the most reasonably, feasible site to fill in this gap. She describes this site as being a large, 4½ acre parcel that is currently being use commercially. The WCF shall consist of a 100 ft. monopole, 9 wireless communication antennas with 3 antennas per sector and an antenna centerline height of 97 ft. She further indicate that coaxial cable will run from the ground equipment which contains 3 BTS cabinets and will be located in a fenced in compound. The coaxial cabling will run from the cabinets up through the monopole and connect from a port to the antennas. There will also be a small GPS E911 antenna attached to the ice bridge. She reiterated that the WCF is best placed on this site in order to fill the significant gap. Further this tower may enable up to 2 additional carriers to locate, which will obviate the need to construct another tower in this area. She indicated that the facility would be unmanned, would not produce objectionable noise, glare, dust, smoke, fumes or odors and that maintenance personnel may service the facility 2 times a month.

Chairman D’Agostino questioned if they had looked at any alternative sites in the area. Atty. Lewis indicated that one site they did look at was the police station but that the RF Engineers rules that it was too close to an existing cell site and would provide redundant coverage. He also questioned if they looked in the Town Yard or the water tower. At this time Atty.

Lewis deferred to her RF Engineer, Dinesh Dasani. Mr. Dasani presented the coverage maps and explained where the gap in service was located as well as a computer simulated coverage map showing what the area would look like if this site is approved at 100 ft. Discussion continued relative to possible other locations and if any public utilities or municipal services would be collocated on this site. Atty. Lewis explained that occasionally municipalities may request that they make available space on the tower for municipal services. Chairman D'Agostino was concerned and sited another location that was granted for 3 antennas that now had 5 or 6 because it was made available to the City. She further indicated that the ordinance promotes collocation and that if they were to make the tower smaller it would make it less appealing for other carriers to locate on that pole.

Board Member Vin Pesce said that he went on to T-Mobile's web site, which stated that there was good coverage in this area. Atty. Lewis explained that the web site did say that but that they were striving to construct a network that provides best service, which would be 99% of their calls, placed and received without dropping. Mr. Pesce also questioned if they had reports or number of complaints of dropped calls in the area. Mr. Dasani indicated that that was proprietary information that the company did not wish to share that information. Additionally he questioned if they had any capacity data that shows that there would be dropped calls at certain times. Mr. Dasani indicated that they do study that and that they analyze this data and the plots are actually based out of that. He indicated that he has an affidavit stating that but they really don't share any data.

Chairman D'Agostino opened the hearing to Public Participation with no one speaking in favor to this petition. The following individuals went on record speaking in opposition of this petition:

- | | | |
|----------------------------------|------------------------|-------------------|
| 1. Carolyn Mercier | 174-176 Oakland Avenue | Methuen, MA 01844 |
| 2. Councilor Jack Cronin | 33 Richard Avenue | Methuen, MA 01844 |
| 3. Mark & Ellen Paine | 20 Maplewood Avenue | Methuen, MA 01844 |
| 4. Stephen Johnson | 26 Maplewood Avenue | Methuen, MA 01844 |
| 5. Ronald & Kimberly Bowden | 22 Maplewood Avenue | Methuen, MA 01844 |
| 6. Dawn & Nelson Said | 10 Maplewood Avenue | Methuen, MA 01844 |
| 7. Maxine Shaw | 16 Maplewood Avenue | Methuen, MA 01844 |
| 8. Susan Junknavorian | 21 Maplewood Avenue | Methuen, MA 01844 |
| 9. Ruth Hollins (Owner of) | 17-19 Maplewood Avenue | Methuen, MA 01844 |
| 10. Paul Sirois | 198 Oakland Avenue | Methuen, MA 01844 |
| 11. Paul Desharnais | 200 Oakland Avenue | Methuen, MA 01844 |
| 12. Mary Angela Vouthourelis | 11 Maplewood Avenue | Methuen, MA 01844 |
| 13. Kate Sullivan & Mike Collins | 15 Maplewood Avenue | Methuen, MA 01844 |
| 14. Richard Jennings | 18 Maplewood Avenue | Methuen, MA 01844 |
| 15. Todd Kay | 44 Maplewood Avenue | Methuen, MA 01844 |

The majority of those in opposition expressed concerns that cell towers emit low level radiation, lack aesthetics and will bring property values down. They also believe that cell towers should never be allowed in residential communities and that families should not have to fight multi-billion dollar companies like T-Mobile for quality of life issues. Additionally they requested that the Board take into consideration not only that this site could solve T-Mobile's problem but also if in fact this is the best site to locate a tower that would not be detrimental to the neighborhood. Chairman D'Agostino explained that in cases like this the City requests the Applicant to participate in a peer review process prior to the Board making their decision. He explained the process, indicating that the Applicant must present the petition to the City's independent WCF expert to review, determine if a gap exists to and make recommendations. Another abutter expressed concerns with wetland issues. At this time Board Clerk Richard Lacroix read into the record a letter from Conservation Officer, Joseph T. Giarrusso, Jr. A copy of this letter may be found attached to the rear of the Minutes on file in the Office of the City Clerk, 41 Pleasant Street, Methuen, MA 01844

Although there was no further discussion at this time, Chairman D'Agostino left Public Participation open but invited Atty. Lewis and Mr. Dasani to the podium to address the abutters concerns. Atty. Lewis addressed location first and indicated that the most ideal situation is collocation. When this is not possible they then look at existing structures that would provide sufficient height. When this criterion is exhausted then they are forced to construct a tower that meets their requirements. Vice Chairman Walta questioned why other phone companies have coverage in that area except for T-Mobile then why is there no place to collocate. Mr. Dasani explained that all phone companies operate and have licenses for different frequencies, operate with different technology, engineering and equipment. He further explained that one carrier could go 1 mile with an 80 ft. tower as opposed to T-Mobile, which may only go .5 miles with the same tower. In other word some carriers can shoot from a further distance and cover their gap area where T-Mobile cannot. Atty. Lewis added that T-Mobile operates at one of the highest frequencies which means their RF only travel a shorter distance, that the higher you go the shorter you go. Mr. Pesce questioned why with such a large parcel were they located the tower so close to the homes. Chairman D'Agostino stated that the middle was all wetlands and that this was the only usable space. In terms of requirements Atty. Lewis indicated that all equipment would be installed and operated in compliance with all applicable Federal, State and local regulations, including but not limited to: the radio frequency emissions regulation set forth in the 1996 Federal Communications Act, applicable regulations administered by the FAA, the FCC and the Massachusetts Department of Health. Additionally she indicated that the radio frequency exposure levels generated by this facility would be substantially below the maximum health and safety standards established by the FCC.

With reference to concerns about interference from the tower, she indicated that they operate in different frequencies from other carriers, radio and television and will not cause any interference. With reference to the height of the tower, Mr. Dasani stated that trees block their signal and it is necessary for their towers to be above the canopy in order to cover the area. Atty. Lewis further indicated that there would be no generator or lights on the site and that the tower would have a backup battery in the event of a power outage. Chairman D'Agostino questioned if there was a capacity that this antenna could handle and if the height would have to be increased if a maximum capacity is reached. Mr. Dasani stated that they would address that issue with the equipment on the ground, that they would add in more radio cards and be able to handle more calls. Alternate Member Robert Andrew indicated that he was concerned that granting this variance would be a green light for numerous companies to collocate and felt that this should be regulated if possible. Additionally, Atty. Lewis indicated that with a decommissioned site, the tower would be removed as provided in the ordinance. Discussion continued relative to the height of the tower needing to be higher than the tree canopy as well as exploring alternative tower designs. Chairman D'Agostino informed the abutters that he actually went out to the site and went to all the locations that T-Mobile has provided pictures to view what the tower would look like from that location and that he would take that into consideration when making his decision. Richard Lacroix indicated that the presentation this evening alludes to this site as being the best feasible site to close the "gap". He questioned if the Petitioner had a list of the other sites that they looked at and rejected along with the reasons for rejecting each site. Additionally, he stated that he would like to see the definition of "gap" either in the industry or the legal community in order to prove that due diligence has been done in this case. Mr. Dasani stated that from an engineering point of view they define signals in DBM levels and that there is a different level for each of the colors shown on the maps and that each of the frequencies penetrate different barriers. He explained that one frequency will penetrate a house, another a car and yet another would be best for walking down the street in the open. Atty. Lewis stated that "gap" is not a legal term, that it is legal jargon and that we are best to request that information from our peer reviewer.

At this time Richard Lacroix read into the record a letter dated December 15th, 2009 from Kevin R. Dandrade, PE with TEC requesting that this be continued to the January 2010 Public Hearing.

MOTION: *Laura Walta moved to accept the recommendation from TEC to continue to the January 27th, 2010 public hearing.
Richard Lacroix seconded this motion.*

DISCUSSION: *Board Member Jesse Ramirez questioned who requested the peer review and who funds the review..
Chairman D'Agostino explained that it is the Board's/City's prerogative to request this and that the Applicant funds the review.*

ROLL CALL: Mr. Richard Lacroix – yes
Mr. Vincenzo Pesce – yes
Mr. Robert Andrew – yes
Ms. Laura Walta – yes
Mr. Matthew D’Agostino – yes

VOTE: 5-0-0 UNANIMOUSLY APPROVED

ADJOURNMENT:

MOTION: Matthew D’Agostino moved to approve at 9:42 PM adjournment.
Laura Walta seconded this motion.

VOTE: 5-0-0 UNANIMOUSLY APPROVED

Respectfully submitted,

Gwen Martone, Zoning Board Secretary
Methuen, MA 01844