

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, NOVEMBER 16, 2010

Present: Ald. Hess-Mahan (Chairman), Ald. Crossley, Fischman, Albright, Blazar, and Merrill;
absent: Ald. Harney and Schnipper
Staff: Eve Tapper (Planning), Ouida Young (Law), Linda Finucane (Clerk's)

#215-10 CLEAR WIRELESS, LLC/CAPASSO ASSOCIATES LIMITED PARTNERSHIP petition to install 3 panel antennas and 2 wireless backhaul dishes within a stealth chimney on the roof of an existing apartment building at 199 LEXINGTON STREET, Ward 4, Auburndale, on land known as SBL 41, 31, 18A, containing ≈40,189 sf of land in a district zoned MULTI RESIDENCE 2. (Ref: Sec 30-24, 30-23, 30-18(A)(f) of the City of Newton Rev Zoning Ord, 2007.

ACTION: APPROVED 6-0

NOTE: Public Hearing

The public hearing on this petition was opened and closed on October 12. Present at the hearing were Committee members Aldermen Hess-Mahan (Chairman), Merrill, Fischman, Schnipper, Harney, Albright, Crossley, and Blazar; Aldermen Rice, Yates, and Baker were also present.

The petitioner was represented by Attorney Jason Ellis of Prince Lobel, 100 Cambridge Street, Boston. The petitioner, a Sprint affiliate, is seeking to install the wireless communication equipment in the above petition within a faux chimney, approximately 6' x 8' high, on the roof of an existing apartment building. The proposed chimney will fiberglass, painted and textured to match the brick exterior of the building; ancillary equipment will be located in an 8' x 11' attic equipment room; and, an HVAC unit will be installed at ground level at the rear of the building. The equipment in the attic will be installed on rubber membrane feet to minimize any noise vibrations. There is a similar chimney installed by a different applicant on the roof of the adjacent building at 181 Lexington Street, which is also owned by the co-petitioner; however, Mr. Ellis said the proposed chimney will be a better match. The proposed installation has fewer cabinets than the one at 181 Lexington Street and the property manager at that building has not had any complaints about noise in the two years since it was installed. There will be no interference as the equipment operates on different frequencies and the distance is great enough, usually a separation of only ten feet will suffice. This is a troubled area for all carriers with limited options for installations. Although this location is lower than normal, it is the only option in the area. The building at 181 Lexington Street cannot accommodate another installation.

There was no public comment.

Working Session This evening, the Committee discussed the color and appearance of the faux chimney. It needs to be fiberglass, not brick, to allow transmission of the radio frequencies. The petitioner is amenable to a condition that the Planning & Development Department have final approval of the material and color of the chimney.

The petitioner must comply with the noise ordinance. The membrane-foot installation should mitigate any vibration or noise from the attic equipment. If it doesn't, the petitioner agreed to isolate the equipment and consult with Inspectional Services for compliance. The proposed condenser unit will be located outside at the rear of the building on a concrete pad and will be screened with landscaping, just like the one at 181 Lexington Street.

Alderman Merrill moved approval of the petition, finding the public convenience will be served by providing greater coverage; the faux chimney will hide the outside equipment; and, interior ancillary equipment will be in the attic; and the exterior condenser will be screened with landscaping. Alderman Merrill's motion carried unanimously, 6-0.

#248-10 SCONNIX REALTY TRUST/ATS – NEEDHAM, LLC petition to amend and consolidate special permits and site plans approved via prior special permit nos. 105686, April 5, 1954, 781-73(2) and 462-05 and to extend a nonconforming structure/use (tower/transmission station) for existing equipment and the addition of a satellite earth station antenna at 1165 CHESTNUT STREET, Ward 5, Newton Upper Falls, on land known as SBL 51, 45, 5, containing ≈330,000 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: Sec 30-24, 30-23, 30-18(c)(2), 30-18(A)(e)(5), 30-18(e)(7)d, 30-18(A)(e)(8), 30-18(A)(f), 30-21(b), 30-8(b)(9), 30-9(b)(1) of the City of Newton Rev Zoning Ord, 2007.

ACTION: APPROVED 5-0 (Fischman recused)

NOTE: Public Hearing

The public hearing on this petition was opened and closed on October 12. Present at the hearing were Aldermen Hess-Mahan (Chairman), Merrill, Fischman, Schnipper, Harney, Albright, Crossley, and Blazar; Aldermen Rice, Yates, and Baker were also present.

Attorney Jason Rosenberg represented the petitioner who is seeking relief to extend a nonconforming structure which includes legalizing existing antennas and related equipment, replacing and relocating a generator, adding an additional earth satellite dish and consolidating previous special permits for a site that contains a 1,249 foot high tower and related buildings and equipment. The original special permit was granted for a television transmission tower in 1954. The site originally contained approximately 16 acres. In the 1960s, 4 acres were sold and the abutting Chestnut Grove condominium complex was developed. Additional special permits were granted in 1973 to construct a 2-story transmission station. Previous wireless antenna installations were approved in 1991 and 1997. In 1998 the petitioner was granted a special permit to replace the existing tower and to expand the transmission building and install related equipment; however, an appeal was filed and the petitioner ended up not exercising the special permit. In 1999 the Board of Aldermen granted Bell Atlantic a special permit for a controlled environmental vault. In 2006 the Board approved an amended site plan allowing the addition of two dish antennas and expansion of the transmission building, with the condition that the owner

petition to legalize the dishes and other equipment that had been added to the site without approval. The 2006 special permit also included a condition that the owner grant the city a pathway easement between Braceland Park and the railroad bridge. The easement was granted in 2007. Currently, the property is used for structures and equipment supporting television and FM radio broadcasting, and analog and digital telecommunications.

Sconnix purchased this site in 1995. It currently has 25,000 towers nationwide and places the onus on its tenants to obtain all the permits necessary to operate their equipment. The petitioner has submitted to the city all structural reports from 2001 on. The Inspectional Services Department has asked the petitioner to engage a consultant to evaluate the reports. Typically, this type of structure is evaluated every five years with a top-to-bottom climbing inspection. When a tenant approaches Sconnix an engineer runs a structural analysis to determine if and what must be reinforced according to the code in effect at that time. If necessary, the tower can be reinforced to accommodate more users.

Because a portion of this site borders the Charles River the expansion of the transmission building in 2006 required Conservation Commission review and approval; the Conservation Commission issued a Certificate of Compliance in 2008. Last month the Conservation Commission reviewed proposed amendments to the site plan, which include replacing the existing generator, adding snow covers to the dishes, and adding sound reduction materials. A spill containment system will be installed around the new generator to contain any fuel leaks to prevent a flow of fuel to the southern area of the site towards the Charles River.

The petitioner is proposing a fund to mitigate RF emissions. The petitioner also would agree to a condition to provide a periodic inventory of equipment to the Commissioner of Inspectional Services. The Committee asked the petitioner to provide a process for citizens aggrieved by RF emissions problems.

The Committee asked how the petitioner would enforce its tenants' responsibility for obtaining any necessary permits. The Planning Department has recommended that the petitioner be required to provide a removal bond for abandoned equipment. Section 30-18 requires that any unused equipment be removed within 30 days, but that time frame is impractical for certain installations and the petitioner would like a condition allowing a longer time in which to remove that type of equipment.

Some questions arose about noise from the HVAC equipment. The new state of the art generator will be quieter; although periodical decibel readings may indicate the need for some sort of acoustical wall. Visually, the 17 white pines planted under the 2006 special permit have grown and will continue to grow very tall. The petitioner is willing to add more coniferous trees and additional plantings underneath the existing trees although that might mean removing other deciduous trees.

Public comment:

Charles Verge, 1175 Chestnut Street, unit 4, said he is most affected by the proposed petition. He is a psychologist and a musician. He had to rent a studio because there was so much

interference with his musical equipment that the petitioner's engineers took it away for nine months and couldn't fix it. The petitioner ended up giving him a check to replace his equipment. He is afraid that more equipment on the tower will exacerbate the problem. He has complained to the petitioner about the illegal dishes a number of times. He has no faith that a 24/7 hotline will help.

Susan & Mark Sangiolo, 100 Indiana Terrace, submitted a letter dated October 12 in which they expressed their frustration with the petitioner's responses to date. Is the tower structurally sound? What about the violations dating back to 2006?

Robert Curtis, 1175 Chestnut Street, a condominium board trustee, complained of static on the phone lines, visual/audio static, intermittent ability to use his automatic garage door, car alarms, and humming from the equipment.

N.B. Please see the public comment re petition #8-10, below.

Working Session Subsequent to the public hearing, Aldermen Crossley and Rice visited the site with Eve Tapper. Ms. Tapper said that the second-story of unit 4 does look down at the satellite dishes and that relocating the dishes will remove them from view. An inventory of the equipment on the tower has been completed and submitted to the City. As of this date, all unpermitted equipment has been removed. The petitioner has instituted a process requiring all potential tenants to submit a copy of all applicable city permits prior to installing any new equipment. The Conservation Commission will review the final site plan, but has approved relocation of the generator.

In response to a structural report submitted by Tower Consultants Incorporated, a structural consultant hired by the petitioner, recommending a number of improvements that should be done to the tower to ensure its structural integrity, the petitioner has agreed to allow the City to hire at the petitioner's expense an independent structural consultant to perform an analysis of the tower. A climbing inspection was done in 2006 and another will be performed in 2011.

The petitioner would like to waive the 30-day removal requirement contained in Section 30-18 for equipment over 500 feet in height; a time frame of 90 days would be more reasonable. As to the requirement for a removal bond, Ms. Young explained that it is difficult to implement a removal bond, e.g., the City cannot go on the site to remove any equipment and if the owner declares bankruptcy, then all bets are off anyway. Instead, the Committee agreed that the petitioner should provide a yearly inventory of equipment and that if the inventory is missed two years in a row, within 30 days of the date due it will become a zoning violation. The Commissioner of Inspectional Services, unlike previous commissioners, has determined that a building permit is required for these types of installations.

The petitioner's acoustical engineer, Cavanaugh & Tocci, noted that regular maintenance and the proposed replacement of aging equipment, with the noisiest replaced first, should reduce the existing noise levels. Noise levels will be monitored regularly for compliance with the noise ordinance. The petitioner has agreed that, if necessary, it will build an acoustical wall to abate

the noise. Three reports from Cavanaugh & Tocci, dated 12/14/05, 12/12/06, and 1/12/07 were included in the petitioner's submittal.

The petitioner is proposing a 24/7 call center to deal with interference. As required by the FCC, a sign will be posted on the gate with contact information. A "ticket" will be issued and the complaint routed to the proper person. The petitioner will provide the City with quarterly reports on the tickets. The petitioner cautioned that there are three other antennas in the area and the difficulty is determining which one is causing the interference. The Health Department confirmed that test results taken in 1999 indicate the RF is well below the level allowed. Although the petitioner has offered to establish a \$25,000 mitigation fund, the City does not want to administer this type of fund. Ms. Young suggested that the petitioner instead commit to a 5-year obligation for mitigation as it previously did in the 1998 unexercised special permit.

Additional screening will be added to shield the transmission building. The petitioner has agreed to work with the Chestnut Grove condominium association to determine what other landscaping will provide screening, whether on the petitioner's or the Chestnut Grove property at 1175 Chestnut Street. The petitioner will consult with Director of Urban Forestry Marc Welch as to additional trees; shade tolerant plantings; and, whether the white pines are becoming too tall to be effective. Muted snow covers will be installed on the dishes.

Mr. Rosenberg asked if the Committee would consider giving the petitioner the right to add additional panels administratively through the building permit process; however, the Committee felt that given the history on this site, it preferred the petitioner return to amend the special permit.

Alderman Crossley moved approval of the petition for a special permit/site plan approval and extension of a nonconforming structure, with the findings and conditions contained in the draft board order dated December 6, 2010. The Committee approved the petition 5-0, with Alderman Fischman recused because his firm is a consultant for the owner.

Ms. Young noted that the previous special permits, with the exceptions of #33-99(2), granted to Bell Atlantic, and #8-10, the new petition below, will be incorporated into the new draft board order.

#8-10 CLEAR WIRELESS, LLC/AMERICAN TOWER petition to add a wireless antenna installation to an existing tower consisting of 3 panel antennas at the height of 115 feet and 9 wireless backhaul dishes at 250 feet in height, plus an ancillary ground-level equipment cabinet at 1165 CHESTNUT STREET, Ward 5, on land known as Sec 51, Blk 45, Lot 5, containing approx 284,000 of land in a district zoned MULTI RESIDENCE 1. Ref: Sec 30-24, 30-23, 30-18(A)(e)(3), (f) of the City of Newton Rev Zoning Ord, 2007 and board order nos. 105686, 781-73(2), 33-99(2), and 462-05.

ACTION: **APPROVED 5-0 (Fischman recused)**

NOTE: Public Hearing The public hearing on this petition was opened and closed on February 9, 2010. Present at the public hearing were Aldermen Hess-Mahan (Chairman), Merrill, Albright, Crossley, Fischman, Blazar, and Schnipper; Ald. Harney was absent.

Attorney Jason Ellis of Prince Lobel, 100 Cambridge Street, Boston, represented the petitioner. Clear Wireless, a Sprint affiliate, who is seeking a special permit to co-locate 3 panel antennas and 9 wireless backhaul dishes on an existing television tower and to install the cabinet for the required ancillary equipment inside an existing building that serves the tower. The site is abutted by the Chestnut Grove condominiums at 1175 Chestnut Street.

Consultant Donald Haes, a radio frequency engineer, spoke briefly about the RF fields. Mr. Haes submitted a written report, on file with the Clerk of the Board of Aldermen. He explained that radio frequencies such as x-rays, radio, etc. will propagate forever until they interact with something; the dishes direct the frequencies down and the backhauls bring data back to a central point to direct them. Alderman Crossley wanted to know if a rise in the topography interrupts a signal and, if so, will the signal interfere with other electronic devices. Mr. Haes said no, signals are very low in power; most household appliances have safeguards against RFI. AM broadcast is the biggest culprit. Any interference is from existing equipment on the tower or from one of the three other towers in the area. Over 1000 installations similar to this petition installed at this location would still be less RF than the maximum allowed by the FCC.

The Committee received a letter dated February 4, 2010 on file with the Clerk of the Board from Mark & Susan Sangiolo, 60 Indiana Terrace. One of the issues raised by the Sangiolos was whether residents would be exposed to higher-level RF exposure because of the topography of the area. They asked for documentation of existing conditions and a survey of the surrounding neighborhood with pertinent topographic information re the mounting heights of the proposed antennas and assurance that they have no conflicts with surrounding homes, schools, or business. They also questioned if the owner, American Tower, has complied with all the conditions of special permit #462-05, granted on April 6, 2006.

The Committee received an e-mail from Marguerite Hasbrouck, 43 Oak Street, which had a letter from February 13, 2006 attached, both on file with the Clerk of the Board. Ms. Hasbrouck expressed dismay that a previous request for zoning enforcement appears to not have been acted upon by the City.

Public comment

David Kaufman, 1175 Chestnut Street, unit 35, a member of the Chestnut Grove condominium board of board of trustees, said there is a problem with interference: telephones have static and stereos play radio stations.

Charles Verge, 1175 Chestnut Street, unit 4, said American Tower is not in compliance because of the dishes on top of the building that interfere with his view. A condition in the prior special permit stipulated they be removed. He has been trying for three years trying to get them removed. All the unpermitted equipment should be removed before this special permit is granted.

Another resident of 1175 Chestnut Street complained that the remote control for his car does not work in the driveway. Radio reception in the house is terrible. He wondered if it is possible that more interference is felt further rather than closer to the tower. He hopes American Tower will work with the condominium association relative to any landscaping improvements and toward better communications in general.

Michael Fleming, 959 Chestnut Street, a member of the Upper Falls Community Development Corporation, would like to be included in any discussions for communication with the community.

Subsequent to the hearing, the Committee received an e-mail from Brenda Lowe, 1144 Chestnut Street, in which she agreed with the Sangiolos about the history of the site and the owner's unresponsiveness relative to the unpermitted equipment. She also noted the trash on the site and the poor condition of the signage.

Attorney Jason Rosenberg represented the owner American Tower. Mr. Rosenberg explained that he is working with his client to clean up equipment currently not permitted on the tower. Some abandoned equipment has been removed. In response to a question about public benefit, he noted that the service itself is a benefit, as well as the Charles River pathway easement condition of the 2006 special permit. American Tower will offer additional screening when other special permits are filed to mitigate any negative visual impacts on the community. Mr. Rosenberg noted that this petition from Clear Wireless is for telecommunications equipment. It does not propose any new guy wires, etc. Alderman Albright stated she thought some of those benefits should come in with this special permit request. In response to Alderman Albright's suggestion about locating a dog park on the site, Mr. Rosenberg said it would not work because of the steep embankment to the Charles River and the proximity to the Chestnut Grove condominiums.

Alderman Albright asked what other towers in the area may be causing interference and what mitigation can be offered the abutters at 1175 Chestnut Street.

Alderman Merrill moved to close the hearing. Although several Aldermen questioned whether the hearing should be continued until the Committee receives information about compliance with previous special permits, Alderman Albright said that information could be provided for the working session. The Committee agreed and closed the hearing. *The Committee noted that although the petitioner unfortunately was caught in a situation not of its making, the owner needs to clean up the existing violations and if necessary seek a special permit(s) to legalize the unpermitted uses before any additional special permits are granted.*

Working Session This evening, the Committee noted that the testimony and questions raised at the public hearing primarily concerned the owner of the tower, not this petitioner. The petitioner has granted four extensions of time since the hearing closed on February 9 to allow the owner to file a special permit to legalize the remaining equipment currently on site. The owner filed an

application for a special permit, which was heard on October 12 (see note for petition #248-10, above).

Alderman Crossley moved approval finding the public convenience will be served by providing greater coverage and services for the petitioner's customers; the antennas will be co-located as encouraged in section 30-18; there should be no adverse impact from the ancillary equipment because it will be located in an existing structure; and, although the equipment will be visible from adjacent properties, the height at which it is located will not cause any change in the visual impact of the tower. Alderman Crossley's motion carried 5-0, with Alderman Fischman recused because his firm, Tetra Tech Rizzo, is a consultant for the owner.

Respectfully submitted,

Ted Hess-Mahan, Chairman