

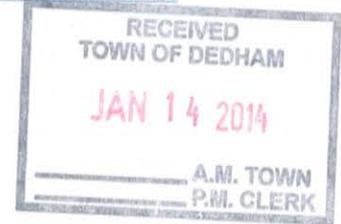
**ZONING BOARD MEMBERS**  
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**COMMONWEALTH OF MASSACHUSETTS  
TOWN OF DEDHAM  
ZONING BOARD OF APPEALS  
DECISION**



<b>APPLICANT:</b>	<b>T-Mobile Northeast, LLC, 15 Commerce Way, Suite B, Norton, MA 02420</b>
<b>PROJECT ADDRESS:</b>	<b>123 High Street, Dedham, MA</b>
<b>CASE #</b>	<b>VAR-10-13-1761</b>
<b>PROPERTY OWNER/ADDRESS:</b>	Town of Dedham, 26 Bryant Street, Dedham, MA
<b>MAP/LOT AND ZONING DISTRICT:</b>	96/112, General Residence
<b>DATE OF APPLICATION:</b>	October 18, 2013
<b>MEMBERS PRESENT AND VOTING:</b>	James F. McGrail, Esq., J. Gregory Jacobsen, Scott M. Steeves, E. Patrick Maguire, LEED AP, Jason L. Mammone, P.E.
<b>PETITION:</b>	To be allowed: A use variance for a proposed building-mounted wireless communications link not located in the Wireless Communications Services Overlay District pursuant to <i>Nextel v. Wayland</i> and MGL Chapter 40A, Section 10; Dimensional variance from Section 4.2.3 limiting the height of antennas to 50 feet above grade, pursuant to the Town of Dedham Zoning By-Law Section 9.2(2) and <i>Nextel v. Wayland</i> ; Dimensional variance from Section 8.3.6 (1) limiting the height of a building-mounted wireless communications link to a maximum of ten (10) feet above the rooftop, pursuant to Town of Dedham Zoning By-Law Section 9.2(2) and <i>Nextel v. Wayland</i> ; All other applicable zoning relief, if and to the extent necessary; all rights reserved.
<b>SECTION OF ZONING BYLAW:</b>	Town of Dedham Zoning By-law Sections 4.2.3, 8.3.6(1) and 9.2(2)
<b>REPRESENTATIVE:</b>	Martin Cohen, Esq., T-Mobile Northeast, LLC, 15 Commerce Way, Suite B, Norton, MA 02420 Anna Adkins, Senior RF Engineer, T-Mobile

The Zoning Board of Appeals ("ZBA") of the Town of Dedham, Massachusetts, held public hearings on Wednesday, November 18, 2013, in the Town Office Building, 26 Bryant Street, Dedham, MA. Present were members of the ZBA, James F. McGrail, Esq., Chairman, J. Gregory Jacobsen, Vice Chairman, Scott M. Steeves, E. Patrick Maguire, LEED AP, and Jason L. Mammone, P.E. The hearings were duly advertised for this meeting of the ZBA in accordance with the requirements of MGL Chapter 40A, Section 11.

At 7:21 p.m., the Chairman called for the hearing on the petition of T-Mobile Northeast, LLC (hereinafter referred to as the "Applicant"), 15 Commerce Way, Suite B, Norton, MA 02420. The minutes from the hearing are the primary source of evidence and are incorporated herein by reference.

The subject property is known and numbered as 123 High Street, Dedham, MA and is shown on Dedham Assessors' Map 96, Lot 112. The certified plot plan indicates that the Subject Property contains 3.8 acres of land and has 231.4 feet of frontage. According to the Dedham Zoning Map, the Subject Property is located in the General Residence zoning district. Currently, the property is occupied by Mother Brook Arts and Community Center. According to the records maintained by the Dedham Board of Assessors, the dwelling was constructed in 1921.

The Applicant seeks to be allowed a Special Permit as follows:

- A use variance for a proposed building-mounted wireless communications link not located in the Wireless Communications Services Overlay District pursuant to *Nextel v. Wayland* and MGL Chapter 40A, Section 10;
- Dimensional variance from Section 4.2.3 limiting the height of antennas to 50 feet above grade, pursuant to the Town of Dedham Zoning By-Law Section 9.2(2) and *Nextel v. Wayland*;
- Dimensional variance from Section 8.3.6 (1) limiting the height of a building-mounted wireless communications link to a maximum of ten (10) feet above the rooftop, pursuant to Town of Dedham Zoning By-Law Section 9.2(2) and *Nextel v. Wayland*;
- All other applicable zoning relief, if and to the extent necessary; all rights reserved.

The property is located in the General Residence zoning district. *Town of Dedham Zoning Bylaw Section 4.2.3, 8.3.6(1), and 9.2(2)*

T-Mobile Northeast, LLC responded to a Request for Proposal (RFP) issued by the Town of Dedham to place a cell tower on the roof of the old Avery School, now known as the Mother Brook Arts and Community Center, or MBACC. Following a review of the applicant's proposal, the applicant was selected by the Town to lease space and erect a cell tower subject to acquiring all applicable permits.

The MBACC has a chimney on the northeast side of the building. Originally T-Mobile considered putting up a pole on the middle of the roof, but it had to be 30 feet high. It was deter-

mined that it would be more feasible to extend the chimney instead. They plan to re-point and make repairs to the existing chimney, and build a 12-foot section on top of that. The brick will be matched as well as possible, and the six antennas, which will be attached to the outside of the chimney, will be painted to blend in with the chimney. They are seeking:

- A use variance for a proposed building-mounted wireless communications link not located in the Wireless Communications Services Overlay District pursuant to *Nextel v. Wayland* and MGL Chapter 40A, Section 10 **(the location is not within the Wireless Overlay District);**
- Dimensional variance from Section 4.2.3 limiting the height of antennas to 50 feet above grade, pursuant to the Town of Dedham Zoning By-Law Section 9.2(2) and *Nextel v. Wayland* **(there is a limitation on the height of the antennas about ground);**
- Dimensional variance from Section 8.3.6 (1) limiting the height of a building-mounted wireless communications link to a maximum of ten (10) feet above the rooftop, pursuant to Town of Dedham Zoning By-Law Section 9.2(2) and *Nextel v. Wayland* **(the height above the roof would be 37 feet, 10 inches; the entire equipment would be 67 feet from the ground);**
- All other applicable zoning relief, if and to the extent necessary; all rights reserved.

They will run a cable tray over the roof and down the middle of the lower section, dropping down at the rear of the building to the equipment cabinets (which will be within a fenced area measuring 10 feet x 20 feet). Mr. Cohen said they have worked closely with the MBACC, and have made changes at their request.

Anna Adkins, Senior RF Engineer for T-Mobile, presented a map showing the existing coverage for in-building use and the coverage for in-building use after the wireless installation on the MBACC. She noted that many people are giving up their land lines and using cell phones instead. There may be weak coverage along High Street and Bussey Street, however. She said this would address most of the coverage issues in Dedham, but they will have to go to Boston for additional antennas.

Steven Davey, 31 Lewis Lane, member of the Mother Brook Community Group, said that as part of the previous application by the applicant, the Telecommunications Act of 1996 stated that if a single person expressed a need in an area, the antennas could be put up. He said that T-Mobile does not have this for the current application, and asked if it mattered. Jackie Cowin, Town Counsel from Kopelman and Paige, replied that the statement about one person having a need is not accurate and would not be enough. She said that the carrier needs to prove enough of a gap in coverage to prove the need for the facility. T-Mobile did that through scientific and technological data that showed this gap in coverage. Mr. Cohen agreed, stating that Ms. Adkins presented technical evidence of a significant gap, which satisfies the criteria. Mr. Davey said that the MBACC has a community center to which children are invited. Mr. Davey suggested Brookdale Cemetery and the Department of Public Works as better locations, and that the MBACC is in the most populated area. Ms. Adkins noted that building a tower in the cemetery would be a difficult proposition, and the Department of Public Works building would require a large tower. Mr. McGrail said that the American Legion was also researched, but would require a "monster" tower. Mr. Davey said he was opposed to the petition.

Mr. Steeves made a motion to approve:

- A use variance for T-Mobile Northeast, LLC for a proposed building-mounted wireless communications link not located in the Wireless Communications Services Overlay District pursuant to *Nextel v. Wayland* and MGL Chapter 40A, Section 10.
- Dimensional variance from Section 4.2.3 limiting the height of antennas to 50 feet above grade, pursuant to the Town of Dedham Zoning By-Law Section 9.2(2) and *Nextel v. Wayland*;
- Dimensional variance from Section 8.3.6 (1) limiting the height of a building-mounted wireless communications link to a maximum of ten (10) feet above the rooftop, pursuant to Town of Dedham Zoning By-Law Section 9.2(2) and *Nextel v. Wayland*;
- All other applicable zoning relief, if and to the extent necessary; all rights reserved.

Mr. Mammone seconded the motion. The vote was unanimous at 5-0.

Mr. McGrail thanked Ms. Cowin for her assistance in this petition.

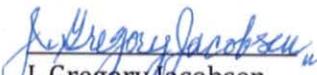
The Board was of the opinion that the Applicant meets the requirements of MGL Chapter 40A, Section 10, specifically that the Applicant would incur a hardship if the Special Permit was not granted. There is no detriment to the public good or derogation in the intent of purpose of the bylaw. In granting of said special permits, the ZBA finds that, after consideration of the criteria Dedham Zoning By-Law, the adverse effects of the Applicant's proposal will not outweigh its beneficial impacts on the Town and neighborhood and will not be substantially more detrimental to the neighborhood.

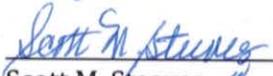
The Applicant is advised that, in accordance with MGL Chapter 40A, Section 11, a copy of this decision bearing the certification of the Dedham Town Clerk that twenty (20) days have elapsed after the decision has been filed with the Dedham Town Clerk and no appeal has been filed or that has been filed within such time shall be recorded in the Norfolk County Registry of Deeds or the Land Registration Office of Norfolk County. Applicant is further advised that no waivers/variance will be issued by the Building Department until evidence is presented that this decision has been recorded in the Norfolk County Registry of Deeds. The Applicant should furnish the Zoning Board of Appeals with a receipt from the Registry of Deeds indicating that the decision has been filed.

Dated: November 18, 2013

Attest, by the Zoning Board of Appeals:

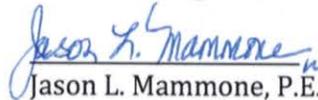
  
James F. McGrail, Esq., Chairman

  
J. Gregory Jacobsen

  
Scott M. Steeves



E. Patrick Maguire, LEED AP



Jason L. Mammone, P.E.

Attest, by the Administrative Assistant:

  
Susan N. Webster

**Copies of this decision are filed in the office of the Dedham Town Clerk. Copies of all plans referred to in this decision and a detailed record of the Zoning Board of Appeals proceedings are filed in the Dedham Planning/Zoning Department.**

Materials Submitted:

- Zoning Board of Appeals application
- Petition Statement written by Martin Cohen
- Lease agreement with Town of Dedham
- Plans prepared by Hudson Design Group, LLC, North Andover, MA
- Radiofrequency expert statement of Project Technical Objective and Design Criteria
- Map of existing T-Mobile In-Building coverage in Dedham
- Map of existing T-Mobile In-Building coverage with antennas at the Avery School
- Wireless site selection and alternative site analysis
- Photographic simulations of site
- T-Mobile's Federal Communications Radio Station Authorization (license)