

Edward D. Pare, Esq.
direct dial: 401-276-2639
epare@brbilaw.com

10
Memorial
Boulevard
Providence
Rhode Island
02903
tel 401.276.2600
fax 401.276.2601

January 15, 2014

VIA EMAIL

City of Waltham
Zoning Board of Appeals
c/o Pam Doucette
119 School Street
Waltham, MA 02451

RE: Case Number: 2012-26 – Bear Hill Road Tower Replacement – Request for Extension

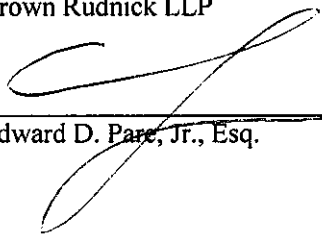
Dear Honorable Members of the Waltham Zoning Board of Appeals:

On behalf of American Towers, LLC, we respectfully request that the Waltham Zoning Board of Appeals (the “Board”) grant a six month extension with respect to the above-referenced zoning approval. For the Board’s convenience, enclosed please find a copy of the written decision (the “Decision”). As you will note, the Decision was filed with the Waltham City Clerk on February 15, 2013 and is due to expire on February 15, 2014. In accordance with the Waltham Zoning Code and Section 10 of Chapter 40A of the Massachusetts General Laws, we respectfully request a six-month extension to August 15, 2014. As you may know, the Waltham City Council approved the required special permit and American Tower is finalizing the survey for presentation to the Waltham Board of Survey and Planning to complete the land swap in accordance with the conditions contained in the decision of the Waltham City Council.

If there is anything more you require, please do not hesitate to contact us. We understand that the Board will consider this request at its regularly scheduled meeting on February 11, 2014, and we will certainly attend to respond to any questions.

Sincerely,

Brown Rudnick LLP



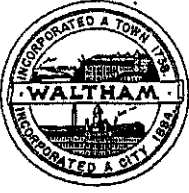
Edward D. Pare, Jr., Esq.

EDP/jad

cc: Bonnie Belair

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The City of Waltham
ZONING BOARD OF APPEALS

CITY OF WALTHAM
CITY CLERK'S OFFICE
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RECORDED

NOTICE OF DECISION

CASE NUMBER: #2012-26
NAME OF PETITIONER(s)/OWNER(s): American Towers, LLC and Hilltop 110 Bear Hill, LLC
LOCATION OF PROPERTY: 50 R (46) Bear Hill Road (the "Site") and 110 Bear Hill Road (the "Access Lot")
DATE OF HEARING(S): November 27, 2012; January 8, 2013 and February 5, 2013
DATE OF DECISION: February 5, 2013
DATE OF FILING OF DECISION WITH CITY CLERK: February 15, 2013
DATE OF NOTIFICATION TO BUILDING INSPECTOR: February 15, 2013
FINAL DATE FOR FILING OF APPEAL FROM THIS DECISION: March 7, 2013

Appeals, if any, shall be made pursuant to Section 17 of the General Laws of Massachusetts Chapter 40A. All plans referred to in the decision have been filed with the Planning Board and with the City Clerk.

DECISION

GRANTED
DENIED

XX

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ROLL CALL

	<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>
Barbara Rando	X		Edward T. McCarthy, Jr.	X	
Michael J. Cotton			Oscar L. LeBlanc		
John Sergi			Marc S. Rudnick		
Mark A. Hickernell	X		Michael R. Squillante		
Glenna Gelineau	X		Gordon LaSane	X	

*American Towers LLC
10 Presidential Way
Woburn, MA 01801*

PETITION

Case No.: 2012-26. **Petitioner/Owner:** American Towers, LLC and Hilltop 110 Bear Hill LLC. **Nature of Application/Petition:** Application for a Special Permit for the reconstruction/alteration of a nonconforming structure and dimensional variances from required height and setback provisions. **Subject Matter:** Petitioners requests the Board to allow the removal of an existing 300 foot above ground level lattice tower located at 110 Bear Hill Road and replace it with a 240 foot above ground level lattice tower at 50R Bear Hill Road (may also be known as 46 Bear Hill Road) which includes a proposed land swap, removal of an existing 365 foot guyed tower from 50R bear Hill Road, transfer of all existing antennas from the two towers to be removed to the new 240 foot lattice tower, and an access road to 50R Bear Hill Road over 110 Bear Hill Road. **Location and Zoning District:** Subject lot 50R Bear Hill Road and access lot 110 Bear Hill Road, Commercial C Zoning District. **Provisions of Zoning Ordinance Involved:** Article VII, Article III, Sections 3.5 and 3.722; Article IV, Section 4.11; and Article X, Sections 10.33, 10.374, 10.542, and 10.543 of the City of Waltham Zoning Ordinance. **Specific Manner in Which Subject Matter Varies from Zoning Ordinance:** The existing lattice tower located on 110 Bear Hill Road is 300 feet above ground level and exceeds the height limitations of Article IV, Section 4.11, which limits the height of buildings to 80 feet (to the extent applicable to towers) and Article X, Section 10.542, which limits the height of towers to 75 feet. Also, the existing lattice tower does not satisfy the current setback and fall Zone requirements of Article X, Section 10.543. Pursuant to Article III, Section 3.722 of the Code, reconstruction or a change of a nonconforming structure may be permitted with a grant of a special permit from the Board. The proposed tower, with relocated antennas extending to a height of 244 feet 6 inches above ground level and a lightning rod extending to a total of 250 feet above ground level, will likewise exceed the height limitations. The proposed tower will also not satisfy the setback requirements of Article 10, Section 10.543 of the Code. Section 10.543 requires that telecommunications equipment be set back 125 feet from all property lines, four (4) feet for every one (1) foot of height from the nearest residential structure and any public right-of-way, and two (2) feet for every one foot of height from any nonresidential structure. The Tower equipment will be 25 feet from the nearest property line. The proposed tower will be 467 feet from the nearest residence and 93 feet from the nearest nonresidential structure, an equipment shelter already located on 50R Bear Hill Road.

ON MOTION DULY MADE AND SECONDED THE BOARD ADOPTED THE FOLLOWING FINDINGS OF FACT:

The Board of Appeals of the City of Waltham makes the following findings of fact after a hearing on the above captioned Petition for Variances and a Special Permit:

1. This Board of Appeals, having met all legal prerequisites by proper publications and postings as provided in Massachusetts General Laws Chapter 40A, Section 11, and having also notified by mail all parties in interest and having heard all the evidence, is now empowered

to exercise the power to grant or deny the petition for variances and a special permit sought by the Petitioners.

2. The loci are situated at 50R Bear Hill Road and 110 Bear Hill Road and located within a Commercial C Zoning District.
3. Petitioners request that the Board allow the removal of an existing 365' guyed tower located at 50R Bear Hill Road and the replacement of an existing 300' lattice tower located on 110 Bear Hill Road with one 240' lattice tower to be located at 50R Bear Hill Road, including a proposed land swap, removal of the associated guy wires, transfer of all existing antennas from the two towers to be removed to the proposed 240' lattice tower, and an access driveway to 50R Bear Hill Road over and through 110 Bear Hill Road.
4. The variances requested by the Petitioners are as follows:
 - Section 4.11 limits the height of buildings to 80' and, to the extent applicable to the tower, the proposed rebuilt tower will be 250' to the top of its highest appurtenance. The Board notes the proposed tower is significantly shorter than the two existing towers being removed and more conforming to the Code. The Board finds that pursuant to Section 3.620 of the Code, the Waltham City Council has jurisdiction with respect to the height of towers over 75 feet tall. The Board further finds that the height limitation contained in Section 4.11 of the Code is applicable to buildings, not to towers.
 - Sections 10.33 and 10.542 appear to limit the height of towers to 75' and the proposed rebuilt tower will be 250' to the top of its highest appurtenance. The Board notes the proposed tower is significantly shorter than the two existing towers being removed and more conforming to the Code. Pursuant to the Code, the Board finds that the height of the proposed tower, which is the subject this Petition, remains subject to the review and approval of the City Council pursuant to the Code. The Board finds that pursuant to the Code, the City Council, and not the Board, has jurisdiction with respect to height of the proposed tower.
 - Section 10.543 of the Code requires a setback of 125' from the property line, a setback of four (4) feet for every one (1) foot of height from the nearest residential structure, and a setback of two (2) feet for every one (1) foot of height from any nonresidential structure. The equipment associated with the proposed rebuilt tower will be setback 25' from the nearest property line, which is the Access Lot and is owned by co-Petitioner Hilltop, 467' from the nearest residential structure, and 93' from the nearest nonresidential structure. The Board notes that the setbacks for the proposed tower will be greater than the existing setbacks associated with the existing towers. The Board finds the proposed replacement tower will be more conforming to the Code with respect to the required setbacks. The Board finds that the proposed tower does not add any new nonconformities and will greatly reduce the existing nonconformities.
5. The special permit requested by the Petitioners is pursuant to Section 3.722 of the Code which requires a special permit for the reconstruction of nonconforming structures. The

existing towers are nonconforming by dimension because they exceed the height limitations in the Code and do not satisfy the setback requirements of Section 10.543.

6. This Board has the power (Massachusetts General Laws, c. 40A, Sections 10 and 14) and the authority (Zoning Ordinance Article VII) to grant the variances requested.
7. This Board has the power (Massachusetts General Laws, c. 40A, Sections 9 and 14) and the authority (Zoning Ordinance Section 3.722) to grant the special permit requested.
8. As to the facts concerning the requested variances, this Board takes note of the following:
 - The Plans and photographs/photo simulations submitted to the Board and presented at the public hearing in this Petition, illustrate that the parcels on Bear Hill have high elevation with very irregular, sloped topography, but also heavily screened with trees and vegetation.
 - Currently, there are five (5) towers on the two subject parcels on Bear Hill. The proposed project concerns two (2) of these towers.
 - One of the American Tower-owned towers involved in the proposed project is a bulky 300', four-legged lattice tower located on the Access Lot (identified on the Plans as ATC Site #88024) which contains a number of antennas.
 - The other American Tower-owned tower is a 365' guyed tower located on the Site (identified on the Plans as ATC Site #10354) which also contains a number of antennas. The Board notes that the associated equipment shelter and guy wire encroach on the Access Lot.
 - Petitioners propose to remove the existing 365' guyed tower and relocate the existing 300' lattice tower by constructing a new tower at a height of 240' on a portion of Site which will be transferred from the Access Lot in exchange for an equivalent sized portion of the Site.
 - No new lots will be created and both parcels will continue to comply with the minimum lot size requirements of the Code.
 - Transfer of this square footage is contingent upon receiving the necessary approvals for the entire project. Such transfer is not the subject of this Petition and will be sought by Petitioners from the appropriate authorities.
 - Petitioner American Tower proposes to relocate the existing antennas and equipment from the existing towers to the reconstructed 240' lattice tower.
 - The tallest feature of the proposed tower will be the lightning rod extending to a height of 250', significantly lower than the two existing towers and more conforming to the Code.
 - Petitioner American Tower proposes to remove the existing anchors and guy wires associated with the 365' guyed tower.
 - Petitioner American Tower proposes to remove the existing 300' lattice tower from the Access Lot.

- This project will reduce the number of towers on Bear Hill by one and significantly improve the view shed of Bear Hill, as evidenced by the photographs and photo simulations submitted with the Petition.
 - Currently, no adequate legal access exists to the Site for public safety vehicles.
 - During reconstruction and removal, temporary access to the Site will be provided by an access driveway over and through the Access Lot.
 - Petitioners will provide a permanent access driveway over and through the Access Lot which will be adequate for access to the Site by public safety vehicles.
 - The Site abuts the Access Lot.
 - The project will benefit the public by minimizing the adverse visual effects of the towers, providing adequate access to the Site, encouraging collocation and reducing the number of towers to serve the community, all in accordance with the intent and purpose of the Code.
 - No members of the public spoke in opposition at the hearings.
9. As to the facts concerning the requested special permit, this Board of Appeals takes note of the following, in addition to the finding of facts above:
- The existing towers are nonconforming by dimension because they exceed the height limitations of the Code and do not satisfy the setback provisions of Section 10.543 which were enacted in 1997.
 - A guy wire and equipment shelter associated with the 365' guyed tower encroach on the Access Lot.
10. The Board further finds that the requested relief is necessary to adequately address the telecommunications needs of the petitioners and the petitioners' tenants.

THEREFORE, THE ZONING BOARD OF APPEALS FOR THE CITY OF WALTHAM AFTER DUE DELIBERATION, ON A MOTION DULY MADE AND SECONDED, VOTED UNANIMOUSLY:

To grant the variances and the special permit requested in Case No. 2012-26 and incorporates by reference the Findings of Fact and further cites as reasons the following:

The Variances

Owing to Circumstances Relating to the soil Conditions, Shape or topography of such Land or Structures and Especially Affecting such Land or Structures but Not Affecting generally the Zoning District in which It Is Located

A literal enforcement of the provisions of the By-Law would involve substantial hardship, financial or otherwise, to the petitioner.

Bear Hill rises up significantly above the interstate highway with a steep and challenging topography. The existing lattice tower on the Access Lot and guyed tower on the Site are uniquely tall structures in the subject area of the Commercial C zoning district making this structure and property suitable for the installation of a wireless communications facility. The elevation of Bear Hill makes the Site well suited for communication towers, as evidenced by the presence of several existing towers. Without the requested relief, Petitioner American Tower will not be able to rebuild the existing lattice tower at a location further away from the residential structures along Kodiak Way, nor will it be able to provide a tower of a suitable height for relocation of existing antennas so that two existing towers may be removed from Bear Hill. Without the height requested, FCC licensed providers of wireless services would not be able to provide adequate coverage. Likewise, NSTAR would not be able to maintain adequate communications for its purposes, including their emergency network. Without the requested relief, access to the Site is a significant hardship for Petitioner American Tower and its wireless carrier tenants and the Site is not accessible by public safety vehicle. Likewise, without the requested relief, Petitioners would not be able to consolidate the existing antennas onto one tower and replace two very tall towers with one significantly shorter tower. Without the relief requested, Petitioner American Tower must service and maintain two towers rather than one tower. Lastly, without the requested relief, the existing imposing tower adversely affects Petitioner Hilltop 110 Bear Hill's ability to redevelop the Access Lot in keeping with the first class commercial projects in the area.

The hardship is owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land and structures but not affecting generally the zoning district in which it is located.

The hardship, as it pertains to the variances for setbacks, is owing to the size, elevation, topography and shape of the Site. Given the size of the parcel, there is no location on the Site which will satisfy the four (4) foot setback for every one (1) foot of height from the nearest residential structure as required by Section 10.543 of the Code. Likewise, due to the size and shape of the lot, there is no location on the Site which would satisfy the 125' setback from property lines as required by Section 10.543 of the Code. Lastly, given the size and shape of the Site, as well as the location of existing structures thereon, there is no location on the Site which would satisfy the two (2) foot setback for every one (1) foot of height from the nearest nonresidential structure. As a Petitioner, the owner of the Access Lot has no objection to the request for variance relief.

Without the requested relief relating to height, Petitioner American Tower's tenants would not be able to provide adequate coverage or maintain comparable communications if the rebuilt tower is limited to the 75' height allowed under the Code. The Board notes that pursuant to the Code, the Waltham City Council has jurisdiction with respect to the height of tower. The Board notes that without the height relief requested, the existing coverage provided by the operators of the antennas currently providing service from the towers on the Site and the Access Lot would not be adequate and would create significant gaps and interruptions in service coverage.

Additionally, at 75' the proposed tower would not be economically feasible. The proposed tower will be constructed to a height of 240', with a lightning rod extending to 250', which is 50' lower than the existing lattice tower and 115' lower than the existing guyed tower, both of which will be removed if all required approvals are obtained.

Desirable relief may be granted without either substantial detriment to the public good or nullifying or substantially derogating from the intent or purpose of the By-Law.

Currently, there are five towers located on Bear Hill. Petitioner American Tower proposes to effectively remove the existing 365' guyed tower and replace the existing 300' lattice tower by constructing a 240' tower on the Site. Petitioner American Tower will relocate the existing antennas and equipment from the existing towers to be removed to the proposed 240' lattice tower, with the tallest feature being the lightning rod extending to a height of 250', effectively lowering the height by over 115'. Petitioner American Tower will also remove the associated anchors and guy wires. This project will reduce the number of towers on Bear Hill by one and achieve a more orderly and aesthetically preferable appearance, as evidenced by the photo simulations provided with the Petition. Additionally, if this project is approved, the proposed tower will be 50' and 115' shorter in height as compared to the existing towers. Also, as evidenced by the photographs and photo simulations provided by Petitioners, the overall tower footprint on Bear Hill will be dramatically reduced with the removal of the two existing towers referenced herein. Furthermore, the proposed tower will be farther from the residences along Kodiak Way and the Access Lot will become a more conforming lot as a result of the reconstruction and removal of the 300' lattice tower. Petitioners will also provide adequate access to the Site for use by American Tower, its customers and public safety vehicles. Petitioners respectfully argue that the project will benefit the public by minimizing the adverse visual effects of the towers, maximizing the use of existing towers, encouraging and accommodating collocation thereby reducing the number of towers to serve the community, all in accordance with the intent and purpose of the Code.

The Special Permit

In accordance with Section 3/512 of the Code, the proposed use will be in compliance with the provisions of Sections 3.531, 3.533, 3.534, 3.535 and 3.538 of the Code and the proposed use will not adversely impact upon the health and safety of the surrounding neighborhoods.

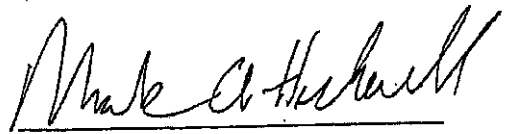
The project proposed by Petitioners will not adversely impact upon the health and safety of the surrounding neighborhoods. The proposed tower will comply with all applicable state and federal regulations and building codes. Once the project is completed, there will be no increase in traffic or noise as a result of the project. A more orderly development of Bear Hill will be achieved because: the proposed tower will be constructed at a height significantly lower than the existing tower and the existing guyed tower; the proposed tower will be located a greater distance from the nearest residential structure than the existing lattice tower; and, both the existing lattice tower on the Access Lot and the existing guyed tower, associated guy wires and anchors will be removed from the Site. Greater conformance to the Code will also be achieved. Additionally, an adequate access driveway will be provided to the Site over and through the

Access Lot which will provide needed access for public safety vehicles. Petitioners' project will have no negative impact on any municipal services or facilities including fire, police, education and recreation. Lastly, the project will have no impact on sewerage, does not generate refuse or other waste or create drainage or surface water issues.

* * * * *

The granting of these variances and the special permit are subject to the following conditions:

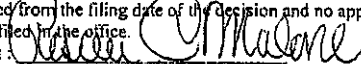
1. All necessary permits shall be issued and work commenced within one (1) year of the date of the filing of this decision with the City Clerk's Office; and,
2. All construction and use of the premises shall be in substantial accordance with the plans entitled "American Tower, Site Name: Bear Hill Rebuild MA, Site Number: 275069, Site Address: 50R Bear Hill Road (110 Bear Hill Road) Waltham, MA 02451 Proposed Relocation and Replacement of Towers" stamped by James Reyes and dated September 25, 2012.
3. The existing 365' guyed tower and its associated guy wires and anchors will be removed from the Site.
4. The existing 300' lattice tower will be removed from the Access Lot.
5. The height of the tower shall be as determined by the Waltham City Council.
6. After completion of the project, including the proposed land swap, no tower shall be allowed on 110 Bear Hill Road. The Board notes that the owner of 110 Bear Hill Road offered this restriction to the Board and the Board relied upon such restriction in rendering its decision.



Mark Hickernell, Clerk

DATE: 15 Feb. 2013

A True Copy Attest: 
Rosario C. Malone, CMC City Clerk

In accordance with the provisions of MGL, Chapter 40A Section 11, I hereby certify that this decision and any authorized signature are true copies of the original and that 20 days have elapsed from the filing date of the decision and no appeal has been filed in the office.
Attest: 
Rosario C. Malone, CMC, City Clerk