



The City of Waltham
ZONING BOARD OF APPEALS

NOTICE OF DECISION

CASE NUMBER: #2013-06
NAME OF PETITIONER(S)/OWNER(S): Anthony and Louis Antico
LOCATION OF PROPERTY: Prospect Hill Road
DATE OF HEARING(S): June 4, 2013
DATE OF DECISION: June 4, 2013
DATE OF FILING OF DECISION WITH CITY CLERK: June 17, 2013
DATE OF NOTIFICATION TO BUILDING INSPECTOR: June 17, 2013
FINAL DATE FOR FILING OF APPEAL FROM THIS DECISION: July 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

ROLL CALL

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

PETITION

Case #: 2013-06. **Petitioner:** Anthony J. Antico and Louis J. Antico. **Nature of Appeal:** Special Permit to alter or expand a nonconforming structure. **Subject Matter:** The locus is a parcel containing 214,800 square feet of land with an existing structure and wireless communication equipment situated thereon, are pre-existing nonconforming uses. The Petitioners propose to alter or enlarge the existing nonconforming use by altering the location of the tower within the complex and restructuring, using and maintaining a new tower thereon. **Location and Zoning District:** Prospect Hill Road; Residence A-2 Zoning District. **Provisions of Zoning Ordinance Involved:** Article 3, Sections 3.722 and 3.7222. **Specific Manner in Which Subject Matter Varies From Zoning Ordinance:** Sections 3.722 and 3.7222 state that nonconforming structures, uses, buildings and land may be altered or enlarged in that use to an extent not exceeding 10% of the ground floor area of the building or area of land used at the time of the passage of the chapter when a special permit has been granted by the Board of appeals for such alteration or enlargement. Here, the Petitioners propose to alter the location of the tower within the complex by reconstructing, using and maintaining a new tower within eight (8) feet of the existing tower. Upon reconstruction of the new tower and connecting it to the existing communication equipment the existing tower shall be removed.

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

The Board of Appeals for the City of Waltham makes the following findings of fact after a hearing on the above captioned Petition for a special permit:

1. This Board of Appeals, having met all legal prerequisites by proper publications and postings as provided in 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 to deny the special permit sought by the Petitioner.
2. The subject parcel of land is situated on Prospect Hill Road and comprises of an area of 214,800 square feet of land.
3. The Locus consists of a cement block building a Twenty-seven (27) tower and a Two Hundred Ninety-three (293) feet tower, which is the subject matter of the Petition.
4. A building permit was granted on November 26, 1962 by the building department for the construction of a Seventy-five (75) tower.
5. The tower was used for wireless radio and telecommunication services for various vital services including ambulance agencies, bus services for handicapped people, emergency vehicles as well as Fire, Police and other agencies of the City of Waltham.
6. The existing use of the tower, which began in 1962, was not regulated as to height at that time and was classified as a "nonconforming use".

7. The subject tower was extended to a height of One Hundred Seventy (170) in 1967.
8. The tower was extended again in 1982 to a height of Two Hundred Ninety-three (293) feet.
9. When the tower was extended to its present height the Petitioners were advised that Building Permits were not required since the Tower's use thereof was a pre-existing "nonconforming structure".
10. The subject property with its tower is tax parcel R41-001-007 situated on Prospect Hill Road located in a Residence A2 Zoning District.
11. The property with its tower and the wireless radio and telecommunications attached to said tower renders a vital service to numerous private and public agencies.
12. The Petitioners proposed to alter, reconstruct and relocate the large tower by constructing a new modern, sturdy tower eight feet from the original tower but still within the fenced area.
13. The proposed new tower will remain the same height as the replaced tower and will have installed thereon the same wireless and telecommunication equipment.
14. The Petitioners now request a Special Permit from the Board of Appeals to alter, enlarge, reconstruct and extended the present tower all in accordance with Art. III, sec. 3.7222 of the Zoning Board.
15. The Board of Appeals, pursuant to General Laws ch.40A, sec. 6 may enter a decision allowing the alteration or extension of a "nonconforming use" when the proposed extension or addition is not substantially more detrimental or hazardous to the surrounding neighborhood than the existing "nonconforming use" or structure.
16. The Following Statements Enumerate the Facts of the Petition.
 - a. The large tower was constructed in 1962 to a height of Seventy-five (75) feet according to the Building Permit issued thereto.
 - b. The subject property is situated in a Residence A2 Zoning District and contains 4.93 acres of land.
 - c. The tower was extended in 1970 to a height of One Hundred Seventy (170) and further extended in 1982 to its present height of Two Hundred Ninety-three (293) feet.
 - d. The Building Department did not require a building permit in either case since the use thereof was classified as a "nonconforming structure".
 - e. The tower was exempt from a height restriction pursuant to Sec. 21-10 "Height Exception".
 - f. The towers in 1960, 1967 and 1982 have continuously been used to broadcast wireless radio and telecommunication.

- g. The prospect tower, pursuant to the Petition submitted shall be constructed within Eight (8) feet of the present tower.
- h. The new tower shall be the same height and size of the present tower.
- i. The new tower shall be designed and fabricated by Rohn, a tower manufacturer, and shall be more modern, sturdier with solid rod construction.

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 Special Permit requested in Case No. 2013-06 and incorporated by reference thereto the findings of fact and further cites as reasons therefore, the following:

1. The Board of Appeals finds that the Special Permit requested pursuant to Article III, sec. 3.7222 of the City of Waltham Zoning Ordinance meets the criteria of Art. III, sec. 3.7222 and the alteration, extension and reconstruction reflects the nature and purpose of the prior use that there is no difference in the quality, character or degree in the use thereof and the pre-existing "nonconforming structure" is not substantially more detrimental to the area, the neighborhood or its residence than the existing structure.
2. The subject property and tower which is located on Prospect Hill Road has an area of 4.83 acres of land with a small concrete building and Two (2) towers thereon the large tower being 293 feet in height all encompassed by a chain link fence for public safety.
3. That the tower provides vital, wireless radio and telecommunication service to various private and public agencies that are necessary for the well-being of those being served.
4. That the replacement tower shall be constructed by a recognized tower construction company and will provide a modern, stronger, safer structure which will provide greater safety to the neighborhood and its residence.

The granting of the Special Permit shall be subject to the following restrictions:

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 work be completed within two (2) years of the filing of the decision with the City Clerk;
2. All construction and use of the premises shall be in substantial accordance with the plans introduced as evidence during the hearing entitled:
 - a. "Plan to Accompany Petition for a Special Permit at Locus, Prospect Hill Road, Waltham, MA, City Parcel ID R040 001 007, Owner, Anthony J. Antico and Louis J. Antico, 70 Charles River Road, Waltham, MA 02453" dated March 22, 2013, by O.S.C.S. Company;

- b. "Rohn, 290' 80SR Guyed Tower Design for A.J. & L.J. Antico", Sheet 1 of 1,
last revision date 1/13/09.


Barbara Rando, Chair

DATE: 6/17/13