



IN CITY COUNCIL

FEBRUARY 22, 2010

Marlborough, Mass.,

ORDERED:

NOTICE OF DECISION GRANT OF SPECIAL PERMIT

In City Council
Order No. 09/10- 1002329E

Application of:
Clear Wireless, LLC
5808 Lake Washington Blvd., NE, Suite 300
Kirkland, WA 98033

Locus:
2 Mt. Royal Ave.
Map 73, Parcel 80

DECISION

The City Council of the City of Marlborough hereby **GRANTS** the Application of Clear Wireless, LLC as provided in the DECISION and subject to the following FINDINGS OF FACTS AND CONDITIONS.

Decision filed: **March 2, 2010**

The Decision of the City Council was filed in the Office of the City Clerk of the City of Marlborough on **March 2, 2010**.

APPEALS

Appeals, if any shall be made pursuant to Massachusetts General Laws, Chapter 40A, Section 17 and shall be filed within twenty (20) days after the date of the filing of this Notice of Decision in the Office of the City Clerk of the City of Marlborough, Ma.

This is to certify that twenty (20) days have passed since the filing of the within decision and no appeal has been filed with this office.
Given at Marlborough this 23rd day of March, 2010.

Given under Chapter 40A sec. 11 of the General Laws.

A TRUE COPY
ATTEST:


City Clerk



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ORDERED:

**DECISION ON A SPECIAL PERMIT
CLEAR WIRELESS, LLC
CITY COUNCIL ORDER NO. 09-100-2329**

Re: 2 Mount Royal Avenue

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to CLEAR WIRELESS, LLC, having a usual place of business at 5808 Lake Washington Blvd., NE, Suite 300, Kirkland, WA 98033, as provided in the Decision and subject to the following Findings of Fact and Conditions.

EVIDENCE

1. The Applicant is CLEAR WIRELESS, LLC, which has a business address of 5808 Lake Washington Blvd., NE, Suite 300, Kirkland, WA 98033 (hereinafter "Applicant").
2. Through its Application for a Special Permit, the Applicant seeks permission to allow the installation of three (3) panel antennas and three (3) "back-haul" dish antennas inside faux flues on the existing rooftop, as well as the placement of one (1) associated cabinet, one (1) GPS antenna and associated coax cables and cable trays (hereinafter "Proposed WCD Project"), substantially as depicted on a set of plans entitled "MA-BOS5412-A" by Bay State Design, Inc. and dated 1/19/10 provided as supplemental material to the Special Permit Application (hereinafter "Plans").
3. The location of the Proposed WCD Project is 2 Mount Royal Ave. The site is more particularly identified on the Assessor's Map of the City of Marlborough as Map 79, Block 33 ("the Site"). The owner of record for the site is Mount Royal Associates II Limited Partnership, c/o Haynes Management, Inc.
4. The Applicant is a lessee of the owner for purposes of this Special Permit Application.
5. The Site is zoned Business. Wireless communication devices are allowed by grant of Special Permit in Business Zoning Districts.
6. The Special Permit is being sought pursuant to Article VI, Section 200-25 and Article VIII, Section 200-59 of the Zoning Code of the City of Marlborough.



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7. Pursuant to the Rules and Regulations of Application for Special Permit ("Rules and Regulations"), the City Planner certified that the Special Permit application materials are complete and conform to said Rules and Regulations and that the Plans conform in all respects to the City Code.
8. The Applicant has complied with all of the applicable rules of the Rules and Regulations.
9. The City of Marlborough City Council held a public hearing on the Proposed WCD Project on October 26, 2009, for which proper notice had been published and for which proper notice had been given to all parties entitled to notice under the law. Pursuant to Mass. Gen. Laws c. 40A, § 9, the time limit for the City Council to take final action on the Application was extended, by written agreement with the Applicant, to March 31, 2010 at 5 p.m.
10. The Applicant presented oral testimony and demonstrative evidence at the public hearing demonstrating that the Proposed WCD Project meets all the applicable Special Permit criteria of Article VI, Section 200-25 and Article VIII, Section 200-59.
11. The Applicant provided further oral testimony and demonstrative evidence to the City Council's Wireless Communications Committee regarding the Proposed WCD Project's compliance with the applicable Special Permit criteria.
12. The Council, in reviewing the Applicant's Special Permit application, considered the Review Standards and Development Requirements, as enumerated in Article VI, Section 200-25 and Article VIII, Section 200-59 of the City of Marlborough Zoning Ordinance, applicable to the proposed Wireless Communications Device.

**BASED UPON THE ABOVE, THE MARLBOROUGH CITY
COUNCIL MAKES THE FOLLOWING FINDINGS OF FACT
AND TAKES THE FOLLOWING ACTIONS**

- A) The Applicant has complied with all the Rules and Regulations promulgated by the Marlborough City Council pertaining to the said Application for a Special Permit.
- B) The Site is an appropriate location for the Proposed WCD Project and the Proposed WCD Project is in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough when subject to the appropriate terms and conditions of this Approval.



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ORDERED:

- C) The Applicant has complied with the applicable Review Standards and Development Requirements pertaining to Wireless Communications Devices, enumerated in Article VI, Section 200-25 and Article VIII, Section 200-59 of the City of Marlborough Zoning Ordinance, by siting, designing and screening its proposed WCD Project to minimize adverse impact on the abutting neighborhood and on nearby residential properties.

- D) The Council, pursuant to its authority under M.G.L. Chapter 40A and the City of Marlborough Zoning Ordinances, **GRANTS** the Applicant its Special Permit, **SUBJECT TO THE FOLLOWING CONDITIONS NUMBERED 1 THROUGH 11:**
 - 1) The Proposed WCD Project shall be constructed, maintained and operated according to the specifications, terms and conditions of the Applicant's Special Permit Application, as amended during the application/hearing process, and in compliance with the Conditions of the Grant of Special Permit as well as with the conditions set forth in Chapter 200-25F of the Marlborough Zoning Ordinance.
 - 2) All plans, site evaluations, briefs and other documentation provided by the Applicant as part of this Special Permit Application are herein incorporated into and become a part of this Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council.
 - 3) The Applicant shall comply with all rules, regulations, ordinances and statutes of the City of Marlborough, the Commonwealth of Massachusetts and the Federal Government as they may apply to the construction, maintenance and operation of the Proposed WCD Project.
 - 4) All terms, conditions, requirements, approvals, plans and drawings required hereunder are hereby made a part of and incorporated herein as a condition to the issuance of this Special Permit.
 - 5) Applicant shall minimize the visual impacts of the Proposed WCD Project by screening and/or color coordination as may be depicted on the Plans and other demonstrative evidence submitted as part of the Application for Special Permit.



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- 6) Applicant shall pay to the City of Marlborough Open Space Account #100-2410-44515, as mitigation for the alleged impacts caused by the subject of this Permit, the annual sum of One Thousand Five Hundred (\$1,500.00) dollars, the first payment due and payable at the time of the issuance of the building permit hereunder, or within one year of the approval of Special Permit, whichever is earlier, and the subsequent payments to be due and payable on January 2, or the first business day thereafter, of each calendar year in which the WCD referenced in this Permit is still in operation. Failure to make the payment in a timely manner shall constitute a violation of the Special Permit, and the Applicant shall pay an additional sum of \$500 per quarter or portion thereof after the payment due date that the Applicant has failed to make payment.
- 7) Applicant shall not utilize a permanent electrical generator, of any type, in connection with the operation of the Proposed WCD Project. Applicant shall be permitted to use a temporary electrical generator in connection with the operation of the Proposed WCD Project only in cases of power outages to the Proposed WCD Project and for purposes of routine testing and maintenance. The temporary generator shall be affixed to the roof in a safe manner and the noise produced by the temporary generator shall conform to the City's noise ordinance set forth in Chapter 134 of the City Code.
- 8) No operation of this WCD shall commence until the Applicant has received written approval from the Building Inspector that all the above conditions have been satisfied.
- 9) Applicant shall be subject to site plan review if applicable.
- 10) In accordance with the provisions of Mass. Gen. Laws c. 40A, § 11, the Applicant at its expense shall record this Special Permit in the Middlesex South Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Special Permit has elapsed with no appeal having been filed. Applicant shall provide a copy of the recorded Special Permit to the City Council's office and to the City Solicitor's office.



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- 11) As soon as practicable but in any event within one (1) month after the date when a certificate of use and occupancy has been issued to the Applicant by the City of Marlborough's Building Commissioner for the Proposed WCD Project, Applicant shall submit a written report to the City Council; provided, however, that if the Proposed WCD Project has not yet become operational within the one-month period after said issuance date, then the Applicant must immediately provide the City Council with written notification as to the date when the Proposed WCD Project does become operational and, further, must submit said written report within one (1) month after said operational date. The written report to the City Council i) shall provide measurements as to the actual output of radio frequency energy emitted by the Proposed WCD Project; ii) shall include a professional opinion by a third party certifying that the Proposed WCD Project fully complies with all applicable health and safety standards; and iii) shall provide measurements of the actual output of the total radio frequency energy being emitted by all Wireless Communications Facilities (as defined in Section 200-25 of the Marlborough Zoning Ordinance) then located at the Site. The Applicant agrees to operate its Proposed WCD Project in compliance with all applicable health and safety standards. In the event that there are any changes in or upgrades to the Proposed WCD Project that may increase the actual output of radio frequency energy emitted by the Proposed WCD Project, the Applicant shall submit a letter to the City Council as soon as practicable but in any event within one (1) month after the date of completion of those changes or upgrades. The letter i) shall state what the changes or upgrades are; ii) shall provide measurements specifying how the actual output of radio frequency energy emitted by the Proposed WCD Project has been increased; iii) shall provide measurements of the actual output of all radio frequency energy being emitted by all hereinbefore-defined Wireless Communications Facilities then located at the Site; and iv) shall include a professional opinion by a third party certifying that the Applicant's changes or upgrades have not caused the total radio frequency energy being emitted by all hereinbefore-defined Wireless Communications Facilities then located at the Site to exceed any applicable health and safety standards.



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ORDERED:

Yea: 9- Nay: 1

Yea: Delano, Ferro, Elder, Juairé, Seymour, Clancy, Ossing, Pope, Levy

Nay: Vigeant

Absent: Landers

A large, stylized handwritten signature in black ink, which appears to read "A. Vigeant".

Signed by City Council President
Arthur G. Vigeant

ADOPTED

In City Council

Order No. 09/10-1002329E