

Judge revives ham radio enthusiast's plans for 80-foot tower

By: [Pat Murphy](#) July 29, 2021

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A group of Framingham homeowners will have to learn to live with an amateur radio antenna tower looming over their properties in the wake of a recent Land Court [ruling](#) setting aside the decision of the local zoning board.

Judge Howard P. Speicher reversed a decision by the Framingham Zoning Board of Appeals revoking a building permit for the construction of an 80-foot high, heavy-duty tower at 273 Prospect St., which is located in a neighborhood zoned for single-family homes.

In his ruling, Speicher characterized the board's action as an "inelegant attempt to reconcile irreconcilable provisions" of Framingham's zoning bylaw.

"By its finding, the Board appears to have claimed a roving and unfettered discretion to selectively apply and to disregard dimensional requirements as it chooses," Speicher wrote in *Filippova v. Framingham Zoning Board of Appeals*. "Such a claim to unfettered discretion to pick and choose which dimensional requirements apply and which do not is prohibited by the uniformity provisions of G.L.c. 40A, §4."

Ethan B. Dively, who represents the plaintiff property owner, says Speicher reached the correct result because the ZBA applied a portion of the town's zoning bylaw drafted exclusively to govern commercial wireless communications facilities rather than specific regulations governing amateur radio.

“The judge was able to examine the construction of the bylaw and determine correctly that the ZBA had misapplied the standard,” says Dively, of Miyares & Harrington in Wellesley.

The plaintiff also received a big assist from a Lincoln lawyer who’s considered a national expert in the field of amateur radio tower zoning. Telecommunications attorney Fredric J. Hopengarten hosts the website AntennaZoning.com and has represented amateur radio operators in zoning disputes across the country. He’s also written two books on the subject. Licensed in Maine and the District of Columbia, Hopengarten appeared in the Land Court case pro hac vice.

A licensed ham radio operator himself since the age of 10, Hopengarten became involved in the case through his over-the-airwaves acquaintance with the plaintiff’s husband, Mikhail Filippov.

“I knew him as an amateur radio operator when he was still living in Russia,” Hopengarten says. “I was happy to help him out.”

The property at 273 Prospect is owned by the plaintiff, Galina Filippova, who has lived in the home with Mikhail since 2010.

In October 2019, the city’s building commissioner granted a permit for Mikhail’s antenna tower and a 16-foot-by-20-foot service shed. The proposed tower is to be located at the rear of the property, 37 feet from the boundary line for 261 Prospect St.; 45 feet from the boundary with 259 Prospect St., which is owned by Fredric W. Schelong; and 90 feet from a third abutting property, 309 Prospect St.

The three abutters objected to the proposed tower. The ZBA heard those complaints and revoked the building permit.

Even though the proposed tower satisfied all local zoning regs specifically governing amateur radio antennas, the ZBA concluded that the tower was also subject to a 100-foot setback requirement found in the local regulation for “wireless communication facilities.”

Under federal law, states are required to allow amateur radio towers subject to "reasonable regulation." To that end, G.L.c. 40A, §3, provides amateur radio operators certain exemptions from local zoning regulations. Mikhail's proposed tower satisfied everything that Framingham required under its regulation for amateur radio operators. Specifically, the Federal Communications Commission had issued an amateur radio tower license for the structure; a copy of the federal license was attached to the application for a building permit; the total cost of construction was under \$10,000; and the proposed tower was to be located in the rear yard of the property. In overturning the ZBA, Speicher found that the board wasn't playing fair in applying the city's wireless communication facilities setback regulation when such a requirement was not included in the regulation specifically governing amateur radio towers.

Speicher wrote that Framingham's zoning bylaw "explicitly exempts amateur radio towers from the requirements of the entire Wireless Communications Facility section of the Bylaw and provides that instead, amateur radio towers are permitted as-of-right as accessory uses and may be erected upon the issuance of a building permit by the Building Commissioner."

Orleans attorney William C. Henchy, who represents abutter Schelong, says his client has filed a notice of appeal.

"The case arose because Mr. Filippov proposed an 80-foot wireless tower in a location that, if it fell, would put my client's property in the fall zone," Henchy says. "What Judge Speicher did was engage statutory construction, an analysis to determine how to read that bylaw, which in all candor is less than a model of clarity."

The ZBA has decided not to appeal Speicher's decision, says Framingham City Solicitor Christopher J. Petrini.

"The city has decided to issue the building permit based on the guidance of the Land Court," Petrini says. "Obviously, bylaws can be subject to different interpretations." **MLW**