



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
JOSEPH A. CURTATONE
MAYOR

MICHAEL F. GLAVIN
EXECUTIVE DIRECTOR

PLANNING DIVISION

ZONING BOARD OF APPEALS MEMBERS

ORSOLA SUSAN FONTANO, CHAIRMAN
RICHARD ROSSETTI, CLERK
DANIELLE EVANS
ELAINE SEVERINO
JOSH SAFDIE
ANNE BROCKELMAN, (ALT.)
POOJA PHALTANKAR, (ALT.)

Case #: ZBA 2016-122
Site: 27 College Avenue
Date of Decision: November 16, 2016
Decision: Petition Approved with Conditions
Date Filed with City Clerk: November 30, 2016

ZBA DECISION

Applicant Name:	New Cingular Wireless PCS, LLC
Applicant Address:	550 Cochituate Road, Suite #13 & #14, Framingham, MA 01701
Property Owner Name:	Somerville Housing Authority
Property Owner Address:	30 Memorial Road, Somerville, MA 02145
Agent Name:	Timothy Greene
Agent Address:	TerraSearch, 157 Riverside Drive, Norwell, MA 02061
<u>Legal Notice:</u>	Applicant, New Cingular Wireless PCS, LLC, and Owner, Somerville Housing Authority, seek a Special Permit (SZO §7.11.15.3 and SZO Article 14) to replace three panel antennas.
<u>Zoning District/Ward:</u>	CBD zone/Ward 6
<u>Zoning Approval Sought:</u>	§7.11.15.3 & §14
<u>Date of Application:</u>	September 28, 2016
<u>Date(s) of Public Hearing:</u>	November 16, 2016
<u>Date of Decision:</u>	November 16, 2016
<u>Vote:</u>	5-0

Appeal #ZBA 2016-122 was opened before the Zoning Board of Appeals at the Visiting Nurse Association on November 16, 2016. Notice of the Public Hearing was given to persons affected and was published and posted, all as required by M.G.L. c. 40A, sec. 11 and the Somerville Zoning Ordinance. After one hearing of deliberation, the Zoning Board of Appeals took a vote.



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143
(617) 625-6600 EXT. 2500 • TTY: (617) 666-0001 • FAX: (617) 625-0722
www.somervillema.gov

DESCRIPTION:

The Applicant proposes to replace three panel antennas located on the elevator penthouse. Associated antenna equipment, new fiber and coax conduits and related wireless communications equipment will also be installed / replaced. The three replacement antennas will be installed at the same height as the existing AT&T antennas and said replacement antennae will be of approximately the same height. The related cellular equipment will be located on the roof of the building and out of the public view. The Applicant leases a portion of the building from the Somerville Housing Authority (SHA), the entity which owns the building.

FINDINGS FOR SPECIAL PERMIT (SZO §5.1 & Article 14):

In order to grant a special permit, the SPGA must make certain findings and determinations as outlined in §5.1.4 of the SZO. This section of the report goes through §5.1.4 in detail.

1. Information Supplied: The Board finds that the information provided by the Applicant conforms to the requirements of §5.1.2 of the SZO and allows for a comprehensive analysis of the project with respect to the required Special Permits.

2. Compliance with Standards: The Applicant must comply "with such criteria or standards as may be set forth in this Ordinance which refer to the granting of the requested special permit."

The Applicant, New Cingular Wireless PCS, LLC d/b/a AT&T Mobility, seeks a Special Permit under §7.11.15.3 of the SZO which requires the Applicant to follow guidelines and procedures set forth in Article 14 for the "regulation of wireless telecommunications facilities so as to allow and discourage uses in the City with minimal harm to the public health, safety and general welfare."

The Board finds that minimal harm would be imposed upon the health, safety and welfare of the surrounding neighborhood. New Cingular Wireless PCS, LLC d/b/a AT&T Mobility is a licensed company that is required to comply with all state and federal regulations.

Review Criteria for Telecommunications Facilities:

- a) **Height of proposed facility:** The existing building is six stories or 55 feet in height while the top of the existing penthouse/equipment shelters is 65 feet. This building is one of the tallest in the surrounding area.
- b) **Proximity of facility to residential structures and residential zoning districts:** The building at 27 College Avenue is a residential structure in a Central Business District (CBD). Other residential structures directly abut this property. New Cingular / AT&T has already established a wireless communications facility on the rooftop of this structure. Therefore, additional equipment would have a limited impact on the surrounding residential structures.
- c) **Nature of uses on adjacent and nearby properties:** The subject property is located near Davis Square in a Central Business District (CBD). The surrounding area has a wide variety of uses including residential of all types, commercial, office and institutional. The proposed installation will not generate any objectionable odor, fumes, glare, smoke, or dust nor require additional lighting or signage. Noise from the equipment will be minimal and should not be heard beyond the confines of the property



where it will be placed. No increased traffic or hindrance to pedestrian movements will result from the proposed installation either.

- d) ***Surrounding topography and prominence of proposed facility:*** The building is the tallest building in the area with the exception of 36 College Avenue across the street. However, this structure has considerably more historic and architectural merit and is not owned by the City.
- e) ***Surrounding tree cover and foliage:*** Ciampa Manor is taller than all trees in the surrounding area; therefore, interference is not anticipated with regard to the proposal to add three dish-style antennae to the rooftop.
- f) ***Design of tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness, as specified in Section 14.3:*** Guidelines of Article 14 of the SZO state that antennae should not be located more than ten feet above the roofline, façade mounted antennae are encouraged and antennae should be painted to match the surrounding materials and colors. All antennae will be façade mounted and no higher than ten feet above the roofline. All antennae will be painted to match the façade to which they are mounted.
- g) ***Location of tower, with particular reference to the existence of more suitable locations, as specified in Section 14.3:*** The guidelines in Article 14 state that service providers, when possible, should co-locate and/or locate on facilities owned or managed by the City of Somerville. This proposal is compliant with the intent of this guideline as New Cingular Wireless PCS, LLC d/b/a AT&T has an existing facility at this site and the Somerville Housing Authority is a nonprofit organization that services senior residents. The Applicant is proposing to locate the antennas on an existing wireless telecommunications facility within a business district. The antennas will be painted to match the penthouse to which they are attached and will not exceed the roofline of the penthouse.
- h) ***Proposed ingress and egress:*** Existing access to the roof and equipment on the roof is through the western penthouse of the building.
- i) ***Distance from existing facilities:*** The site currently operates as a New Cingular Wireless PCS, LLC d/b/a AT&T wireless facility. 15 Weston Avenue is the only other New Cingular Wireless PCS, LLC d/b/a AT&T wireless facility in the City.
- j) ***Availability of suitable existing towers, poles, other structures, or alternative technologies, as discussed in Section 14.5.2: Section 14.5.2 states that no new sites for telecommunications facilities shall be permitted unless the Applicant demonstrates that existing sites cannot meet the Applicant's need:*** The subject property is an existing wireless communications facility. The Applicant has demonstrated that the location and dish antennae technology are most suitable. The proposed dish antennae would enhance communication between existing facilities, which will improve efficiency of the overall network. The dish antennae are located to allow for line-of-site which is necessary for the overall antennae to function properly.

3. **Consistency with Purposes:** The Applicant has to ensure that the project "is consistent with (1) the general purposes of this Ordinance as set forth in Article 1, and (2) the purposes, provisions, and specific objectives applicable to the requested special permit which may be set forth elsewhere in this Ordinance, such as, but not limited to, those purposes at the beginning of the various Articles."

The proposal is consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to, promoting "the health, safety, and welfare of the inhabitants of the City of Somerville; to protect health; to secure safety from fire, panic and other dangers; to facilitate the adequate provision of ...other public requirements; to conserve the value of land and buildings; and to encourage the most appropriate use of land throughout the City."



The proposal is consistent with the purpose of the Central Business District (CBD), §6.1.5, which is, "To preserve and enhance central business areas for retail, business services, housing, and office uses and to promote a strong pedestrian character and scale in those areas. A primary goal for the districts is to provide environments that are safe for and conducive to a high volume of pedestrian traffic, with a strong connection to retail and pedestrian accessible street level uses."

Furthermore, the Board finds that the proposal, as conditioned, is consistent with the purposes set forth in Article 14 of the SZO, to:

- a) *Protect residential areas and land uses from potential adverse impacts of towers and antennas;*
- b) *Encourage the location of telecommunications facilities in non-residential areas;*
- c) *Minimize the total number of towers and antennas throughout the community;*
- d) *Strongly encourage the joint use of new and existing tower sites as a primary option rather than construction of additional single-use towers;*
- e) *Encourage users of towers and antennas to locate them in areas where the adverse impact on the community is minimal;*
- f) *Encourage users of towers and antennas to configure them in ways that minimize the adverse visual impact of the towers and antennas through careful design, siting, landscape screening, and innovative camouflaging techniques;*
- g) *Enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently;*
- h) *Consider the public health and safety of communications facilities; and*
- i) *Avoid potential damage to adjacent properties from tower and antenna failure through sound engineering and careful siting of structures.*

4. **Site and Area Compatibility:** The Applicant has to ensure that the project "(i)s designed in a manner that is compatible with the characteristics of the built and unbuilt surrounding area, including land uses."

The Board finds the proposal to be compatible with the surrounding area and land uses. The proposed location of the replacement antennae on the penthouse façades, as conditioned, would not have a negative affect on the surrounding neighborhood or detract from the appearance of the building as another wireless carrier has also established this building as a wireless facility. The building height, setback of the penthouse façades and paint color matching that of the corresponding façades will also mitigate the affect of these dish style antennae.

5. **Adverse environmental impacts:** The proposed use, structure or activity will not constitute an adverse impact on the surrounding area resulting from: 1) excessive noise, level of illumination, glare, dust, smoke, or vibration which are higher than levels now experienced from uses permitted in the surrounding area; 2) emission of noxious or hazardous materials or substances; 3) pollution of water ways or ground water; or 4) transmission of signals that interfere with radio or television reception.

The facility will have to comply with the applicable FCC requirements relating to radio frequency emissions. The installation will not generate any glare, light, smoke, dust, or vibrations nor will it emit any noxious or hazardous



materials or substances. Noise from the equipment will be minimal and should not be heard beyond the confines of the property on which it will be placed.

DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans, Elaine Severino and Josh Safdie with Anne Brockelman and Pooja Phaltankar absent. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Special Permit. Elaine Severino seconded the motion. Wherefore the Zoning Board of Appeals voted **5-0** to **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes				
1	<p>Approval is for a Special Permit under SZO §7.11.15.3 and Article14 for the replacement of wireless equipment consisting of three antennae and related equipment and cables. This approval is based upon the following application materials and the plans submitted by the Applicant:</p> <table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>September 28, 2016</td><td>Initial application submitted to the City Clerk’s Office</td></tr></table> <p>Any changes to the approved site plan or elevations that are not first deemed as <i>de minimis</i> by Planning Staff must receive ZBA approval.</p>	Date (Stamp Date)	Submission	September 28, 2016	Initial application submitted to the City Clerk’s Office	BP/CO	ISD/Plng.	
Date (Stamp Date)	Submission							
September 28, 2016	Initial application submitted to the City Clerk’s Office							
2	The Applicant or Owner shall meet the Fire Prevention Bureau’s requirements.	CO	FP					
3	Three (3) New Cingular Wireless PCS, LLC d/b/a AT&T panel antennae shall be replaced in their current location on the penthouse of 27 College Avenue.	CO	Plng.					
4	<i>Compliance with Noise Control Ordinance.</i> Prior to the issuance of a Certificate of Use and Occupancy Permit for the installation of the wireless telecommunications facility, the Applicant shall submit to the Inspectional Services Division, with a copy to the Zoning Board of Appeals, a sound level measurement certified as accurate by a professional acoustician and shall perform such sound level measurements six months after issuance of the certificate of occupancy, with subsequent sound level measurements annually on or before the anniversary date of the original six month measurement to document that all of the Applicant’s installed equipment complies and continues to comply with the decibel level standards established by the City of Somerville, Noise Control Ordinance. The Applicant shall provide the results of such measurements and certify that the facility complies with the decibel level standards established by the City of Somerville, Noise Control Ordinance, with a copy to the Zoning Board of Appeals.							



5	Compliance with Federal Communications Commission Guidelines for Human Exposure to Electromagnetic Fields. To ensure compliance with the standards established by the Federal Communications Commission Office of Engineering and Technology ("FCC") in OET Bulletin 65 as adopted by Massachusetts Department of Public Health under 105 CMR 122.021, the Applicant shall perform measurements, within two (2) months of the date that the Applicant's wireless telecommunications facility commences operation and at intervals of twelve (12) months thereafter, to establish that the Applicant's wireless telecommunications facility complies and continues to comply with the FCC guidelines and applicable state regulations for human exposure to radio frequency electromagnetic fields for human exposure to radio frequency electromagnetic fields. The Applicant shall provide the results of such measurements with certification of compliance to the City of Somerville Health Department, with a copy to the Zoning Board of Appeals.		Health Dept	
6	Any antenna that is not operated continuously for a period of twelve (12) months shall be considered abandoned, and the owner of such antenna shall remove the same. Failure to remove may result in a fine or penalty.	CONT.	ISD	
7	The applicant shall remove any of that carrier's unused or non-operating wireless equipment prior to installation.	Signoff	Plng.	
8	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final inspection by Inspectional Services to ensure the proposal was constructed in accordance with the plans and information submitted and the conditions attached to this approval.	Final sign off	Plng.	

Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chairman*
Richard Rossetti, *Clerk*
Danielle Evans
Elaine Severino
Josh Safdie

Attest, by the Administrative Assistant:

Dawn M. Pereira

Copies of this decision are filed in the Somerville City Clerk's office.
Copies of all plans referred to in this decision and a detailed record of the
SPGA proceedings are filed in the Somerville Planning Dept.

CLERK'S CERTIFICATE

Any appeal of this decision must be filed within twenty days after the date this notice is filed in the Office of the City Clerk, and must be filed in accordance with M.G.L. c. 40A, sec. 17 and SZO sec. 3.2.10.

In accordance with M.G.L. c. 40 A, sec. 11, no variance shall take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

Also in accordance with M.G.L. c. 40 A, sec. 11, a special permit shall not take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and either that no appeal has been filed or the appeal has been filed within such time, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed Special Permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.

The owner or applicant shall pay the fee for recording or registering. Furthermore, a permit from the Division of Inspectional Services shall be required in order to proceed with any project favorably decided upon by this decision, and upon request, the Applicant shall present evidence to the Building Official that this decision is properly recorded.

This is a true and correct copy of the decision filed on _____ in the Office of the City Clerk, and twenty days have elapsed, and

FOR VARIANCE(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ any appeals that were filed have been finally dismissed or denied.

FOR SPECIAL PERMIT(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ there has been an appeal filed.

Signed _____ City Clerk Date _____

