



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

PLANNING DIVISION

ZONING BOARD OF APPEALS MEMBERS

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DANIELLE EVANS
ELAINE SEVERINO (ALT.)
JOSH SAFDIE (ALT.)

Case #: ZBA # 2012-61
Site: 422 Mystic Avenue
Date of Decision: August 15, 2012
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: August 28, 2012

ZBA DECISION

Applicant Name:	T-Mobile Northeast, LLC
Applicant Address:	15 Commerce Way, Suite B, Norton, MA 02766
Property Owner Name:	422 Mystic Avenue Realty, LLC
Property Owner Address:	59 Union Square, Somerville, MA 02143
Agent Name:	Jackie Slaga
Agent Address:	95 Indian Trail, Saunderstown, RI 02874

<u>Legal Notice:</u>	Applicant, T-Mobile Northeast, LLC, and Owner, 422 Mystic Avenue Realty, LLC, seek a Special Permit under SZO §7.11.15.3 and SZO §14 for the installation of wireless communications equipment consisting of the replacement of four existing antennas and one equipment cabinet, and the addition of two more antennas as well as related equipment and cables.
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<u>Zoning District/Ward:</u>	BB zone/Ward 4
<u>Zoning Approval Sought:</u>	§7.11.15.3 & §14
<u>Date of Application:</u>	July 12, 2012
<u>Date(s) of Public Hearing:</u>	August 15, 2012
<u>Date of Decision:</u>	August 15, 2012
<u>Vote:</u>	5-0

Appeal #ZBA 2012-61 was opened before the Zoning Board of Appeals at Somerville City Hall on August 15, 2012. 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.



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DESCRIPTION:

The Applicant proposes to replace the four existing façade-mounted panel antennas with façade-mounted air panel antennas and add two more air panel antennas as well as replace one equipment cabinet located at the base of the building within the equipment compound. Currently, there are two panel antennas mounted to the right side façade that is perpendicular to Mystic Avenue, while one panel antenna is façade-mounted to the left side of the penthouse and another is façade-mounted to the rear elevation and parallel to Mystic Avenue. One additional antenna is to be located next to the existing panel antenna, mounted to the façade of the penthouse, while another new antenna is to be mounted to the rear façade that is parallel to Mystic Avenue and adjacent to the existing panel antenna. All antennas will be painted to match the brick color of the building. The replacement equipment cabinet will have a smaller footprint and will be located within the existing fenced equipment compound. The facility will continue to be unmanned and will generate 1-2 monthly vehicular trips. The upgrade to this facility will provide enhanced wireless services to the residents and businesses in this area of the City.

FINDINGS FOR SPECIAL PERMIT (SZO §5.1 & §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 seeks a Special Permit under §7.11.15.3 of the SZO, which requires the Applicant to follow guidelines and procedures as set forth in Article 14 for the "regulation of wireless telecommunications facilities so as to allow and encourage such 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. T-Mobile Northeast, LLC is an FCC licensed company that is required to comply with all FCC rules governing construction requirements, technical standards, interference protection, power and height limitations, and radio frequency standards.

Review Criteria for Telecommunications Facilities SZO §14.5.1:

- a. *Height of proposed facility:* The masonry building is 70 feet in height with up to five stories and a penthouse that extends above the center of the roof. Four of the proposed replacement antennas as well as the two new antennas will be located below the roofline of the penthouse or building façade to which they are mounted. To minimize visibility, all antennas will be painted to match the corresponding building or penthouse façade. This building is the tallest in this area.
- b. *Proximity of facility to residential structures and residential zoning districts:* Mystic Towers, 422 Mystic Avenue, is a 50-unit residential building in a BB district. While other residential buildings do surround the subject parcel, replacing the existing equipment with upgraded technology and adding two antennas will have less of an impact than installing all new equipment on a different structure.
- c. *Nature of uses on adjacent and nearby properties:* The site is located in a BB district and while the surrounding properties are predominantly residential in nature, multiple buildings are mixed use and St. Polycarp's Church is also nearby. In upgrading the equipment and adding two antennas that would be adjacent to existing antennas, there will be a minimal adverse effect on the residential nature of the surrounding area.



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- d. *Surrounding topography and prominence of proposed facility:* Mystic Towers is located on the northwest side of the City and, due to the height and massing, it is a prominent structure along Mystic Avenue. The antennas are less than five feet in height and as their coloring will reflect the façade to which each is mounted, the visibility of the antennas will not increase, but there will be two additional antennas mounted, one for Sector A and another for Sector B. Additionally, the height of the building will minimize the visual impact of the antennas to lower structures and people at street level.
- e. *Surrounding tree cover and foliage:* Mystic Towers is at most five stories in height and rises above all trees in the surrounding area. Tree cover would not be an effective method for shielding this wireless facility; however, there is also no anticipated interference with regard to foliage.
- 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:* The proposal is designed to be compatible with the surrounding area. Though the proposed façade and penthouse mounted antennas are visible from several vantage points, the proposal includes painting each antenna to match the appropriate façade of the building, which will reduce their visibility from the public. The two antennas being added, to the rear and penthouse façades, will also be visible; however, they will be adjacent to existing antennas that are proposed to be upgraded as part of this proposal.
- g. *Location of tower, considering more suitable locations:* T-Mobile has an existing wireless facility at this location and Mystic Towers is the tallest building in this immediate area.
- h. *Proposed ingress and egress:* Ingress and egress to the site will continue to be through three existing curb cuts. One is located along Mystic Avenue, another is on Taylor Street, and the third is on Temple Street. The rooftop is accessible from the penthouse.
- i. *Distance from existing facilities:* There are no T-Mobile wireless facilities in the immediate area, which is illustrated by the accompanying map.
- j. *Availability of suitable existing towers, poles, other structures, or alternative technologies, as discussed in Section 14.5.2:* T-Mobile currently has equipment on this building and the four replacement antennas and equipment cabinet, along with two new air panel antennas, will serve to reduce the overall carbon footprint of this wireless facility.

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 Board finds that the proposal, as conditioned, 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 provide for and maintain the uniquely integrated structure of uses in the City; to protect health; to secure safety from fire, panic and other dangers; to conserve the value of land and buildings; to encourage the most appropriate use of land throughout the City; and to preserve and increase the amenities of the municipality.

The proposal, as conditioned, is also consistent with the purpose of the Commercial Residential District, SZO §6.1.7 BB, which is, "[t]o establish and preserve general commercial and high density residential areas consisting of multi-family developments, shopping centers, commercial strips and automobile related establishments where customers reach individual businesses primarily by automobile."

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



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- 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;*
- 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 project and the way the equipment is designed to be compatible with the surrounding area and land uses. The antennas will be mounted in the same location and the two additional antennas will be located adjacent to the existing antennas in Sectors A and B. All antennas will be painted to match their corresponding façade. The equipment cabinet will replace an existing cabinet, located within the existing equipment compound, and the new cabinet will have a smaller footprint. Photo simulations, taken from a variety of locations within the immediate neighborhood, all indicate a limited impact of the installation on the surrounding neighborhood.

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.



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DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans, Scott Darling and Elaine Severino with Herbert Foster absent. Upon making the above findings, Richard Rossetti made a motion to approve the request for a special permit. Scott Darling 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	Approval is for a Special Permit for the installation of wireless communications equipment consisting of the replacement of four existing antennas and one equipment cabinet, and the addition of two more antennas as well as related equipment and cables. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD/PIng.									
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>(July 12, 2012)</td><td>Initial application submitted to the City Clerk's Office</td></tr><tr><td>June 28, 2012 (August 9, 2012)</td><td>4BS0365B Plan Set (T-1, P-1, A-1, A-2, A-3, S-1, S-2, S-3, E-1, and GN-1)</td></tr><tr><td>June 29, 2012 (August 9, 2012)</td><td>Photograph simulations submitted to OSPCD (Cover, Aerial View, Location 1 Existing and Proposed, Location 2 Existing and Proposed, and Location 3 Existing and Proposed)</td></tr></table>				Date (Stamp Date)	Submission	(July 12, 2012)	Initial application submitted to the City Clerk's Office	June 28, 2012 (August 9, 2012)	4BS0365B Plan Set (T-1, P-1, A-1, A-2, A-3, S-1, S-2, S-3, E-1, and GN-1)	June 29, 2012 (August 9, 2012)	Photograph simulations submitted to OSPCD (Cover, Aerial View, Location 1 Existing and Proposed, Location 2 Existing and Proposed, and Location 3 Existing and Proposed)
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Any changes to the approved plans, photo simulations, and/or elevations that are not <i>de minimis</i> must receive SPGA approval.												
2	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP									



3	<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.	Continuous	ISD	
4	<i>Compliance with Federal Communications Commission Guidelines for Human Exposure to Electromagnetic Fields.</i> 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.	Continuous	Health Dept.	
5	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 within ninety (90) days of notice from the City of Somerville informing the owner of such abandonment.	Continuous	ISD	
6	The Applicant shall remove any of that carrier's unused or non-operating wireless equipment prior to installation.	BP	Plng.	
7	The Applicant shall at his/her expense replace any existing equipment (including, but not limited to street sign poles, signs, traffic signal poles, traffic signal equipment, wheel chair ramps, granite curbing, etc) and the entire sidewalk immediately abutting the subject property if damaged as a result of construction activity. All new sidewalks and driveways must be constructed to DPW standard.	Final Inspection	DPW	



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8	All construction materials and equipment must be stored onsite. If occupancy of the street layout is required, such occupancy must be in conformance with the requirements of the Manual on Uniform Traffic Control Devices and the prior approval of the Traffic and Parking Department must be obtained.	During Construction	T&P	
9	The Applicant shall camouflage the antennas, RRHs, equipment cabinets, mounting hardware, and other related equipment and fixtures by painting these items to match color of the façade to which they are affixed.	Final Sign Off	Plng.	
10	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, *Acting Chairman*
Richard Rossetti, *Acting Clerk*
T.F. Scott Darling, III, Esq.
Danielle Evans
Elaine Severino (Alt.)

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 _____



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