



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

PLANNING DIVISION

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JOSH SAFDIE (ALT.)

Case #: ZBA 2009-46
Site: 94 Beacon Street
Date of Decision: November 18, 2009
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: November 24, 2009

ZBA DECISION

Applicant Name:	Sprint
Applicant Address:	Sprint/Nextel Property Svcs, Mail Stop KSOPHT0101-Z2650 6391 Sprint Parkway Overland, KS 66251-2651
Property Owner Name:	Beacon Place Condominium Trust
Property Owner Address:	94 Beacon Street, Somerville, MA 02143
Agent Name:	C. Davis Associates, LLC
Agent Address:	66E Concord Street, Wilmington, MA 01887

Legal Notice: Applicant Clearwire & Owner Beacon Place Condominium Trust seek a Special Permit under SZO §7.11.15.3 in order to replace, relocate and install wireless communications equipment. RC zone. Ward 2.

<u>Zoning District/Ward:</u>	RC zone/Ward 2
<u>Zoning Approval Sought:</u>	§7.11.15.3
<u>Date of Application:</u>	August 31, 2009
<u>Date(s) of Public Hearing:</u>	10/21, 11/4 & 11/18/09
<u>Date of Decision:</u>	November 18, 2009
<u>Vote:</u>	5-0

Appeal #ZBA 2009-46 was opened before the Zoning Board of Appeals at Somerville City Hall on October 21, 2009. 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 two hearings of deliberation, the Zoning Board of Appeals took a vote.



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DESCRIPTION:

The applicant is proposing to install wireless communications equipment, including six (6) façade-mounted backhaul circular antennas that range in size from 1ft to 2ft in diameter, one (1) GPS antenna, one (1) roof top mounted equipment cabinet measuring 5ft 6in high by 4ft 3in wide, and associated cabling and equipment. This equipment would provide wireless broadband communication services using WiMAX technology.

The rooftop equipment is proposed to extend at a maximum 18ft above the roof line. A proposed steel platform expansion is proposed to support the additional cabinet.

Four (4) of the circular antennas, the GPS antenna, and the cabinet are proposed to be located on or near the elevator penthouse located in the center of the building's roof. The nearest building edge is approximately 20ft away. This is where the proposed antennas are at their maximum height of 18 ft above the roofline.

The remaining two (2) antennas would be located on the access penthouse facing north. These antennas reach a maximum height of 9ft above the roofline and are located approximately 6 ft from the building edge. In addition, a Sprint antenna would be relocated from the left side to the center of the access penthouse.

FINDINGS FOR SPECIAL PERMIT (SZO §7.11.15.3):

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 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."

Radio Frequency Engineer, Muhammad Kaleem Khan, stated in a letter that the proposed facility complies with all applicable Federal, State and local standards, including those regarding radio-frequency emissions. The Board finds that minimal harm would be imposed upon the health, safety and welfare of the surrounding neighborhood.

Guidelines in Article 14 of the SZO state that antennas should not be located more than 10ft above the roofline, should be located at a minimum of 10ft from the roof edge and below a forty-five degree plane beginning at the cornice of the building. While these guidelines have not been strictly adhered to, The Board finds that the unusual height of the structure, the existence of other antennas in the areas where these new antennas are proposed, the placement of the antennas on existing penthouse structures, and conditions placed on the proposal in this report would limit the visual impact of the proposal that the guidelines are meant to preserve. Conditions imposed by this report include the screening of the proposed cabinet and painting of the antennas above the roofline.

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."



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The Board finds that the proposal, as conditioned, is consistent with the purposes set forth in Article 1 of the Zoning Ordinance; and, with those purposes established for the Residence C (RC) district in which the property is located, namely, "To establish and preserve a district for multi-family residential and other compatible uses which are of particular use and convenience to the residents of the district." The Board finds the addition of the antennas and associated equipment, as conditioned, will neither negatively affect the local commercial uses, nor the medium density character of the residences in the area.

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:

- 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 project to be compatible with the surrounding area and land uses. The antennas proposed are 1ft to 2ft in diameter to be placed on a rooftop that is approximately 95ft above street level. A condition that the cabinets are screened with a material visually similar to the building and that the antennas be camouflaged will reduce any impacts on the site and surrounding area.

5. Review Criteria for Telecommunications Facilities: In addition to those standards outlined in Section 5.1 for the granting of special permits, the SPGA shall consider the following factors in determining whether to issue a special permit for a telecommunications facility:

- a) *Height of proposed facility:* The existing building has an approximately 95ft high roof top and roof line. The RF engineering affidavit states that the optimal height for the proposed antennas to alleviate the gap in Clearwire's coverage plans would be approximately 110ft (15ft above the roofline). The existing elevator penthouse is 17ft in height and the access penthouse is approximately 9ft in height. None of the proposed circular antennas would extend more than a foot above the penthouse rooftops. The single GPS antenna is proposed to extend 2ft above the 17ft high penthouse.



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- b) *Proximity of facility to residential structures and residential zoning districts:* The building at 94 Beacon Street is a residential structure in Residence C district. Other residential structures directly abut this property. The Board finds that several companies currently have wireless communications equipment on this structure and additional equipment would have limited impact on the surrounding residential structures.
- c) *Nature of uses on adjacent and nearby properties:* Surrounding properties are mixed use in nature and, The Board finds, compatible with the proposed use.
- d) *Surrounding topography and prominence of proposed facility:* The surrounding area is relatively flat and there are no other buildings of comparable height or prominence in the surrounding area. Though the proposed rooftop antennas are visible from several vantage points, the proposal to match them to the color of the building, and the condition to raise them above the roof line, would reduce their prominence from any public way.
- e) *Surrounding tree cover and foliage:* The surrounding area features several street trees that are significantly lower in height than the proposed antennas and will be unaffected by this proposal.
- 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:* Not applicable.
- g) *Location of tower, with particular reference to the existence of more suitable locations, as specified in Section 14.3:* Not applicable.
- h) *Proposed ingress and egress:* Ingress and egress to the site will be at the existing curb cut for the property and use existing parking and circulation patterns.
- i) *Distance from existing facilities:* There are no existing Clearwire antennas currently established in Somerville. The accompanying map shows the proposed future locations of Clearwire antennas. According to the RF Engineer, without this site there would be a service gap in Somerville.
- j) *Availability of suitable existing towers, poles, other structures, or alternative technologies, as discussed in Section 14.5.2:* The attached report prepared by the applicant's professional radio frequency engineer indicates that this location was chosen for the location and overall height of the property, which provides the opportunity for service coverage in this area of Somerville.

DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Danielle Fillis, Scott Darling and Elaine Severino with Richard Rossetti and Josh Safdie absent. Upon making the above findings, Susan Fontano 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 the establishment of six (6) wireless antennas, one (1) GPS antenna, one (1) rooftop mounted equipment cabinet on a steel platform and associated cabling and equipment. This approval is based upon the following application materials and the plans submitted by the Applicant and/or contractor:	Building permit	PLNG.	



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	Date (OSPCD Stamp)	Submission			
	8/31/09	Initial application, submitted to the City Clerk's Office.			
	11/5/09 (11/13/09)	Plans, elevations and photograph renditions submitted to OSPCD. (A1-6, T1, G-1, C-1, S-1, E1-2, U-1)			
	Any changes to the approved site plan, photograph renditions and/or elevations that are not <i>de minimis</i> must receive ZBA approval.				
2	<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 Department, 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.		Continued	ISD	
3	<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. 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.		Continued	BOH	
4	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.		Continued	ISD	
5	The applicant shall remove any unused or non-operating wireless equipment prior to installation.		Final signoff	PLNG.	
6	The applicant shall camouflage and/or screen the antennas and equipment cabinet to be approved by Staff		Final signoff	PLNG.	
7	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final sign-off on the building		Final signoff	PLNG.	



	permit to ensure the proposal was constructed in accordance with the plans and information submitted and the conditions attached to this approval.			
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Attest, by the Zoning Board of Appeals:

Herbert Foster, *Chairman*
Orsola Susan Fontano, *Clerk*
T.F. Scott Darling, III, Esq.
Danielle Fillis
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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