



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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JOSH SAFDIE (ALT.)

Case #: ZBA #2010-32
Site: 175 Beacon Street
Date of Decision: October 6, 2010
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: October 20, 2010

ZBA DECISION

Applicant Name:	New Cingular Wireless PCS, LLC
Applicant Address:	550 Cochituate Road, Suites 13 & 14, Framingham, MA 01701
Property Owner Name:	Beacon Associates, Inc.
Property Owner Address:	c/o Jet Realty, 380 Broadway, P.O. Box 45014, Somerville, MA 02145
Agent Name:	Michael R. Dolan, Esq.
Agent Address:	Brown Rudnick, LLP, One Financial Center, Boston, MA 02111

Legal Notice: Applicant, New Cingular Wireless PCS LLC, by and through its Manager, AT&T Mobility Corp. and Owner, Beacon Associates, Inc. seek a Special Permit under SZO §7.11.15.3 and Article 14 to install wireless communications equipment on roof of building and a Special Permit under SZO §4.4.1 to expand a non-conforming structure, by placing new equipment and decorative chimneys to conceal rooftop wireless equipment on the roof of the structure.

<u>Zoning District/Ward:</u>	NB zone/Ward 2
<u>Zoning Approval Sought:</u>	§7.11.15.3 & §4.4.1
<u>Date of Application:</u>	6/22/10 updated on 9/14/10
<u>Date(s) of Public Hearing:</u>	October 6, 2010
<u>Date of Decision:</u>	October 6, 2010
<u>Vote:</u>	5-0

Appeal #ZBA 2010-32 was opened before the Zoning Board of Appeals at Somerville City Hall on October 6, 2010. Notice of the Public Hearing was given to persons affected and was published and posted, all as required by M.G.L.



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c. 40A, sec. 11 and the Somerville Zoning Ordinance. After one hearing of deliberation, the Zoning Board of Appeals took a vote.

DESCRIPTION:

The applicant is proposing to install wireless telecommunications facility, in three (3) stealth chimneys and base station equipment, on rooftop of multi-story apartment building. Installation of the equipment would increase the height of the building by 10 feet.

FINDINGS FOR SPECIAL PERMIT (SZO §7.11.5.3 & §4.4.1):

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 Staff 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."

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. The proposed new antennae are all below a forty-five degree plane beginning at the cornice, and are all located more than 10 ft from the roof edge. The installation at its top height is 10 feet above the higher roof line on which the equipment is mounted.

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 Zoning Board of Appeals 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 Neighborhood Business (NB) district in which the property is located, namely, "To establish and preserve areas for small-scale retail stores, services and offices which are located in close proximity to residential areas and which do not have undesirable impacts on the surrounding neighborhoods." Staff finds the addition of the antennas and associated equipment, as conditioned, will neither negatively affect the local commercial uses, nor the multi-family character of the residences in the area.

The Zoning Board of Appeals 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;*



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- 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 visual impact of the antennas will be minimized through the use of stealth chimneys. These structures, as proposed, would result in an addition that would appear to be apart of the existing structure. No trees, vegetation, or other landscape features would be cut or removed in connection with the installation of the antennas.

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 48 ft roof, with an approximately 10 foot high penthouse. Equipment is mounted on the top of the 48 foot roof. The maximum height of new equipment would be 58 feet.
- b) *Proximity of facility to residential structures and residential zoning districts:* The building at 175 Beacon Street is an apartment building in Neighborhood Business (NB) district. It is surrounded on three sides by parcels in zone RB, Residence B. Other, smaller residential structures directly about this property.
- c) *Nature of uses on adjacent and nearby properties:* Surrounding properties are mixed use in nature and, compatible with the proposed use.
- d) *Surrounding topography and prominence of proposed facility:* The surrounding area is fairly flat. This is the tallest building in this immediate vicinity. The addition of these structures will be minimally visible as proposed.
- 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.



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- 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 visibility of antennas will be mitigated through the use of three stealth chimneys that will appear to be part of the structure.
- 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 front entrance, there is one existing curbcut to access the parking area.
- i) *Distance from existing facilities:* There are five other existing AT&T antennas currently established in Somerville; 230 Highland Ave, 252 Medford St, 27 College Ave, 425 Broadway, and 25 Webster Ave. This site is a significant distance away from the existing facilities, and will enhance the coverage in this area.
- j) *Availability of suitable existing towers, poles, other structures, or alternative technologies, as discussed in Section 14.5.2:* This site provides the optimal location for AT&T technologies.

DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Evans and Elaine Severino with Scott Darling absent. Upon making the above findings, Susan Fontano made a motion to approve the request for a special permit. Richard Rossetti 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 the installation of three ballast mounted antenna arrays concealed within stealth chimneys containing a total of six antenna panels, cables and related equipment. This approval is based upon the following application materials and the plans submitted by the Applicant and/or contractor:</p> <table><tr><th>Date (OSPCD Stamp)</th><th>Submission</th></tr><tr><td>6/22/10 (6/22/10)</td><td>Initial application, submitted to the City Clerk's Office.</td></tr><tr><td>9/14/10 (9/14/10)</td><td>Updated application to OSPCD</td></tr><tr><td>(8/13/10) revised</td><td>Plans, elevations and photograph renditions submitted to OSPCD.</td></tr></table> <p>Any changes to the approved site plan, photograph renditions and/or elevations that are not <i>de minimis</i> must receive ZBA approval.</p>	Date (OSPCD Stamp)	Submission	6/22/10 (6/22/10)	Initial application, submitted to the City Clerk's Office.	9/14/10 (9/14/10)	Updated application to OSPCD	(8/13/10) revised	Plans, elevations and photograph renditions submitted to OSPCD.	Building permit	PLNG.	
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(8/13/10) revised	Plans, elevations and photograph renditions submitted to OSPCD.											



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 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 of that carrier's unused or non-operating wireless equipment prior to installation.	Building permit	PLNG.	
6	The applicant shall identify and inform Planning Staff of any non-operating wireless equipment from any carrier prior to installation.	Building permit	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 permit to ensure the proposal was constructed in accordance with the plans and information submitted and the conditions attached to this approval.	Final signoff	PLNG.	
8	The Applicant shall to the best of their ability match the existing color of brick and mortar on the building with the stealth chimneys.	CO	PLNG.	
9	The Applicant shall monitor the condition of the stealth chimneys and maintain their appearance to match the building.	Cont.	PLNG.	



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Attest, by the Zoning Board of Appeals:

Herbert Foster, *Chairman*
Orsola Susan Fontano, *Clerk*
Richard Rossetti
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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