



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
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JOSH SAFDIE (ALT.)

Case #: ZBA #2010-26
Site: 425 Broadway
Date of Decision: October 6, 2010
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: October 18, 2010

ZBA DECISION

Applicant Name:	Clear Wireless, LLC
Applicant Address:	c/o C. Davis Associates, 66E Concord Street, Wilmington, MA 01887
Property Owner Name:	The Summit, LLC
Property Owner Address:	c/o BF Realty, P.O. Box 296, Somerville, MA 02145
Agent Name:	Chris Swiniarski
Agent Address:	C. Davis Assoc., Inc., 66E Concord Street, Wilmington, MA 01887

Legal Notice: Applicant Clear Wireless, LLC & Owner The Summit, LLC seek a Special Permit under SZO §7.11.15.3 in order to replace, relocate and install wireless communications equipment.

<u>Zoning District/Ward:</u>	RC zone. Ward 5.
<u>Zoning Approval Sought:</u>	§7.11.15.3
<u>Date of Application:</u>	May 6, 2010
<u>Date(s) of Public Hearing:</u>	9/1, 9/15 & 10/6/10
<u>Date of Decision:</u>	October 6, 2010
<u>Vote:</u>	5-0

Appeal #ZBA 2010-26 was opened before the Zoning Board of Appeals at Somerville City Hall on September 1, 2010. 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.

DESCRIPTION:



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The applicant is proposing to install wireless communications equipment, including three dish antennae to the existing arrays. They will be connected to appurtenant radio equipment located inside the building with coaxial cables that will run adjacent to existing cables. The proposed installation is lower than the highest installation on the existing roof and is not a significant addition to the existing rooftop equipment.

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 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 Clearwire installation at its top height is 11.5 feet above the higher roof line on which the equipment is mounted. There is other equipment on the roof that is mounted much higher than this, so the new installation is no higher than any existing installation on the roof. The applicant is also removing an abandoned TV antenna on the roof. All other equipment on the roof is operated by other carriers.

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 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." 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;*
- 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;*



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- 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 Zoning Board of Appeals finds the project to be compatible with the surrounding area and land uses. The antennas proposed would be co-located within other equipment on this roof. The applicant and OSPCD staff reviewed options for equipment screening and shielding and found that there is no adequate method for shielding the existing antennae on the rooftop. The equipment is generally not visible from the ground in the immediate vicinity, but due to the tall building and prominent site, the equipment is very visible from a number of other places in the community. Nonetheless, this additional installation is smaller than the current installations on the roof. The applicant has offered to remove the large dish on the roof should Verizon indicate that they are no longer using it.

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 70 ft high lower roof and a 77 foot high upper roof, with an 87 foot high penthouse. Equipment is mounted on the top of the 77 foot roof and the side of the penthouse, with a height exceeding the penthouse. The maximum height of new equipment would be 86.5 feet, and this would be lower than existing equipment. The height of the proposed facility meets all SZO guidelines.
- b) *Proximity of facility to residential structures and residential zoning districts:* The building at 425 Broadway is a residential structure in Residence C district. Other residential structures directly abut this property. The Zoning Board of Appeals finds that several companies currently have wireless communications equipment on this structure, as well as the nearby 391 Broadway. Additional equipment would have limited impact on the surrounding residential structures. This project would have much greater impact if installed at a location without existing equipment. The applicant has indicated that, without this installation, it would be necessary to install equipment on 4 to 6 additional rooftops or towers to provide full service in and around Winter Hill. Therefore, this installation has far less impact than alternative strategies.
- 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 hilly, and this is the tallest building on a high point in the City. This is why it is appealing to cellular companies. The proposed rooftop antennas are visible from several vantage points, but no more so than the existing array already on the building.



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- 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 front entrance, there is one existing curbcut to access the parking area.
- i) *Distance from existing facilities:* There are three other existing Clearwire antennas currently established in Somerville, one at 94 Beacon Street, one at 23 Cummings Street near McGrath Highway and one at 119 College Avenue near Davis Square. This site is a significant distance away from the existing facilities. Installing equipment at this location will ensure that the applicant does not need 4 to 6 additional installations to provide service around Winter Hill.
- 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 Clearwire 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



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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 establishment of five (5) wireless antennas and one (1) GPS antenna with associated cabling and 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>5/6/2010</td><td>Initial application, submitted to the City Clerk's Office.</td></tr><tr><td>(7/29/10)</td><td>Plans, elevations and photograph renditions submitted to OSPCD. (A1, A2, A3, S1, E1, T1, G1)</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	5/6/2010	Initial application, submitted to the City Clerk's Office.	(7/29/10)	Plans, elevations and photograph renditions submitted to OSPCD. (A1, A2, A3, S1, E1, T1, G1)	Building permit	PLNG.	
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2	<p><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.</p>	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. The applicant shall remove the TV antenna on the roof. The applicant shall remove any other carrier's operating equipment from the roof prior to installation if that carrier agrees to allow the applicant to do so. The applicant shall cooperate with Planning Staff in addressing the use and permitting status of Verizon's installation on the roof.	Building permit	PLNG.	
7	No logos shall be placed or any dish antennae.	Continued	ISD	
8	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.	



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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