



CITY OF SOMERVILLE, MASSACHUSETTS
ZONING BOARD OF APPEALS
JOSEPH A. CURTATONE, MAYOR

MEMBERS

HERBERT F. FOSTER, JR., *CHAIRMAN*
ORSOLA SUSAN FONTANO, *CLERK*
RICHARD ROSSETTI
T. F. SCOTT DARLING, III, ESQ.
DANIELLE FILLIS
ELAINE SEVERINO (ALT.)
JOSH SAFDIE (ALT.)

Case #: **ZBA 2000-02-R0808**
Site: **119 College Avenue**
Date of Decision: **September 17, 2008**
Decision: *Revision Approved with Conditions*
Date Filed with City Clerk: **September 25, 2008**

ZBA DECISION

Applicant Name:	Nextel Communications of the Mid-Atlantic and its affiliate Sprint Wireless Broadband Company, LLC
Applicant Address:	c/o Ricardo M. Sousa, Esq. Prince, Lobel, Glovsky & Tye, LLP 100 Cambridge Street, Suite 2200 Boston, MA 02114
Property Owner Name:	Powder House Realty Corporation
Property Owner Address:	c/o HH Gilbert Management Corporation 85 Tower Office Park Woburn, MA 01801
Agent Name:	Ricardo M. Sousa, Esq.
Agent Address:	Prince, Lobel, Glovsky & Tye, LLP 100 Cambridge Street, Suite 2200 Boston, MA 02114
<u>Legal Notice:</u>	Applicant: Nextel Communications of the Mid-Atlantic and its affiliate Sprint Wireless Broadband Company, LLC & Owner: Powder House Realty Corporation seek a revision to the Special Permit # ZBA 2000-02 to modify an existing wireless facility.
<u>Zoning District/Ward:</u>	RB zone/Ward 6
<u>Zoning Approval Sought:</u>	Revision to Special Permit # ZBA 2000-02
<u>Date of Application:</u>	August 26, 2008
<u>Date(s) of Public Hearing:</u>	September 17, 2008
<u>Date of Decision:</u>	September 17, 2008
<u>Vote:</u>	5-0

Appeal #ZBA 2000-02-R0808 was opened before the Zoning Board of Appeals at Somerville City Hall on September 17, 2008. 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 (1) hearing(s) of deliberation, the Zoning Board of Appeals took a vote.

DESCRIPTION:

The Applicant is proposing to modify the existing wireless communications facility by adding a one-foot wireless backhaul dish antenna to be façade mounted on the rooftop penthouse, and painted to match the building. The Applicant stated that the WiMAX antennas are necessary to set up a 4G broadband network that permits the transmission of large quantities of data over long distances at fast speeds.

FINDINGS FOR SPECIAL PERMIT REVISION (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 and §14.4 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 Board finds that the proposal as conditioned is consistent with the guidelines 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.

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 is consistent with the purposes set forth in Article 1 of the Zoning Ordinance; and, with those purposes established for the Residence B (RB) district. The Board finds the additional antenna will not negatively affect the surrounding neighborhood.

Section 7.11.15.3 of the SZO 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."

The Board finds that the proposal would not be substantially more detrimental to the area than the existing structure and minimal harm would be imposed upon the health, safety and welfare of the surrounding neighborhood. The Board finds that the visible impact of the additional antennas and the proposed equipment would be acceptable under the conditions imposed by this report.

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 proposed location of the antenna is ideal in that it would not be visible from the surrounding streets.

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 is the tallest building in the area.
- b) *Proximity of facility to residential structures and residential zoning districts:* The building is a residential structure and other residential structures directly abut this property. The Board finds that 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 a mixed of uses and the Board finds that they are compatible with the proposed use.
- d) *Surrounding topography and prominence of proposed facility:* There are no other buildings of comparable height or prominence in the surrounding area. The proposed antenna would be located on the opposite side of the building so it would not be visible from the elevated area of the Nathan Tufts/Powder House Park.
- e) *Surrounding tree cover and foliage:* The surrounding trees are not located on the side of the building as the proposed antenna.
- 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 proposed antenna would have minimal visual impacts. It would be painted to match the building and would not be visible from most locations surrounding the site.
- g) *Location of tower, with particular reference to the existence of more suitable locations, as specified in Section 14.3:* The proposed antenna would be located on the existing penthouse three feet above the top of the roof and approximately twenty-four feet from the front of the building.
- h) *Proposed ingress and egress:* The ingress and egress would not change from the existing wireless communication setup.

- i) *Distance from existing facilities:* Not provided.
- j) *Availability of suitable existing towers, poles, other structures, or alternative technologies, as discussed in Section 14.5.2:* This location is an existing wireless communication facility for this company and the new technology is explained in the application materials.

DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Fillis and Scott Darling. 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	Approval is for a wireless communications facility. This approval is based upon the following application materials and the plans submitted by the Applicant and/or Agent:	BP/CO	Plng.					
	<table><tr><th>Date</th><th>Submission</th></tr><tr><td>August 26, 2008</td><td>Initial application submitted to the City Clerk's Office (plans: Z-1, Z-2 & photosimulations)</td></tr></table>	Date	Submission	August 26, 2008	Initial application submitted to the City Clerk's Office (plans: Z-1, Z-2 & photosimulations)			
Date	Submission							
August 26, 2008	Initial application submitted to the City Clerk's Office (plans: Z-1, Z-2 & photosimulations)							
	Any changes to the approved use that are not <i>de minimis</i> must receive ZBA approval.							
2	Prior to a request for final sign-off on a building permit, the Applicant must obtain an updated Certificate of Compliance from the Fire Prevention Bureau.	BP/CO	FP					
3	To reduce the visibility of the antenna arrays from the street, the Applicant shall to paint the antennas to match the building. Final paint color is subject to planning staff review and approval and shall be subject to change if it does not adequately match the building.	BP/CO	ISD/ 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.	CONT.	ISD	
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.	CONT.	BOH	
6	Any antenna that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of the property on which such antenna is located shall remove it within 90 days of receipt of notice from the City of Somerville.	CONT.	ISD	
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 sign off	Plng.	

Attest, by the Zoning Board of Appeals:

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

Attest, by the Zoning Board of Appeals 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 _____