



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

MEMBERS

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

Case #: ZBA 2008-51
Site: 27 College Avenue
Date of Decision: October 15 2008
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: October 29, 2008

ZBA DECISION

Applicant Name:	Fiber Tower Corporation
Applicant Address:	202 Broadway, Providence, RI 02903
Property Owner Name:	Somerville Housing Authority
Property Owner Address:	30 Memorial Road, Somerville, MA 02145
Agent Name:	Michael Johnson
Agent Address:	202 Broadway, Providence, RI 02903

Legal Notice: Applicant: FiberTower & Owner: Somerville Housing Authority seeks Special Permit Approval under SZO §7.11.15.3 for the installation of a wireless communications facility. CBD zone. Ward 6.

<u>Zoning District/Ward:</u>	CBD zone/Ward 6
<u>Zoning Approval Sought:</u>	§7.11.15.3
<u>Date of Application:</u>	September 19, 2008
<u>Date(s) of Public Hearing:</u>	October 15, 2008
<u>Date of Decision:</u>	October 15, 2008
<u>Vote:</u>	4-0

Appeal #ZBA 2008-51 was opened before the Zoning Board of Appeals at Somerville City Hall on October 15, 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 proposal is for one pipe-mounted antenna that would be one-foot in diameter. The base of the pipe would be mounted to an existing elevator penthouse and the antenna would be ten feet above the building's roof top. Cables would run from the antenna through a coax run down the penthouse to an equipment cabinet (approximately 2' x 3' x 4') at the base of the penthouse wall.

The Applicants were asked to locate the antenna on the façade of an existing equipment cabinet to minimize its presence. The Applicant was not able to do this for the following reason. The SHA owns one equipment cabinet and AT&T owns another. AT&T would not allow another company to install equipment on their cabinet. The side of the equipment cabinet that the SHA owns has air conditioning units attached to it. The Applicant stated that the antenna could not be located on this structure because the vibration from the air conditioners would be too great on the side necessary to get a signal. The Applicant stated that the only feasible location would be on the elevator penthouse projecting up to the height of the equipment cabinets.

FINDINGS FOR SPECIAL PERMIT (SZO §7.11.15.3):

7.11.15.3 Special Permit for Wireless Communications Facilities		SPGA finds that the condition is		SPGA further finds that:
	<i>Requirement</i>	<i>Met</i>	<i>Not Met</i>	<i>Change / Mitigation Needed or Other Comments</i>
<i>1. Information Supplied</i>	As required by 5.1.2. of SZO	X		The information provided by the Applicant allows for a comprehensive analysis of the project with respect to the required Special Permits.
<i>2. Compliance with Standards</i>	As required by §7.11.15.3 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."	X		See Section 5 below.
<i>3. Consistency with Purposes</i>	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."	X		As conditioned, the proposal would not be more detrimental to the area than the existing structure. This proposal is consistent with the purposes of the SZO, specifically to "to facilitate the adequate provision of ...other public requirements; to ...increase the amenities of the municipality" (SZO §1.2), and with the specific purposes of Article 14 as noted below (not all purposes are applicable to the application).

7.11.15.3 Special Permit for Wireless Communications Facilities		SPGA finds that the condition is		SPGA further finds that:
	Requirement	Met	Not Met	Change / Mitigation Needed or Other Comments
	a) <i>Protect residential areas and land uses from potential adverse impacts of towers and antennas;</i>	-	-	The applicant has stated that this facility complies with all Federal and State regulations and the FiberTower Corp. is registered with the FCC.
	b) <i>Encourage the location of telecommunications facilities in non-residential areas</i>	-	-	27 College Avenue is in a CBD district.
	c) <i>Minimize the total number of towers and antennas throughout the community;</i>	-	-	Staff have visited the site/conferred with the site manager and confirmed that there are no unused antennas on the facility. Staff have explained to the property owner that it is their responsibility to remove any abandoned facilities.
	d) <i>Strongly encourage the joint use of new and existing tower sites as a primary option rather than construction of additional single-use towers;</i>	-	-	This site is a collocation facility used by other service providers. FiberTower utilizes a "point-to-point" form of technology as opposed to a broadcast coverage area. The applicant has stated that FiberTower is proposing to co-locate on an existing telecommunications site that will satisfy the desired line of sight coverage for their network. The site is appropriate due to the existing use of the property for wireless communications use and the location and overall height of the property.

7.11.15.3 Special Permit for Wireless Communications Facilities		SPGA finds that the condition is		SPGA further finds that:
	<i>Requirement</i>	<i>Met</i>	<i>Not Met</i>	<i>Change / Mitigation Needed or Other Comments</i>
	e) <i>Encourage users of towers and antennas to locate them in areas where the adverse impact on the community is minimal;</i>	-	-	The antenna would be visible as shown in the photo simulations from Morrison Avenue, Winter Street, and the intersection of Winslow and Grove Street. The proposed equipment cabinet is not expected to be visible. The Applicants were asked to locate the antenna on the façade of an existing equipment cabinet to minimize its presence. The Applicant was not able to do this for the following reason. The SHA owns one equipment cabinet and AT&T owns another. AT&T would not allow another company to install equipment on their cabinet. The side of the equipment cabinet that the SHA owns has air conditioning units attached to it. The Applicant stated that the antenna could not be located on this structure because the vibration from the air conditioners would be too great on the side necessary to get a signal. The Applicant stated that the only feasible location would be on the elevator penthouse projecting up to the height of the equipment cabinets.

7.11.15.3 Special Permit for Wireless Communications Facilities		SPGA finds that the condition is		SPGA further finds that:
	Requirement	Met	Not Met	Change / Mitigation Needed or Other Comments
	f) <i>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</i>	-	-	The antenna would be painted to match the penthouse to blend in with it from some views of the building. The utility cabinet would be hidden from view.
	g) <i>Enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently;</i>	-	-	The Applicant stated that the technology would enhance the wireless carrier's (AT&T) network and make their service more efficient and reliable.
	h) <i>Consider the public health and safety of communications facilities; and</i>	-	-	Standard conditions direct compliance with Noise Control Ordinance and FCC Guidelines for Human Exposure to Electromagnetic Fields, and require regular reporting.
	i) <i>Avoid potential damage to adjacent properties from tower and antenna failure through sound engineering and careful siting of structures.</i>	-	-	Structural drawings have been provided and will be subject to building code review.
4. Site & 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."	X		The proposed antenna would not alter the roofline of the building. The conditions would require the rooftop antenna components to be painted to match the building. Several antennas placed by other companies exist on the rooftop; the addition of a single antenna and equipment cabinet will have limited visual impact.

7.11.15.3 Special Permit for Wireless Communications Facilities		SPGA finds that the condition is		SPGA further finds that:
	<i>Requirement</i>	<i>Met</i>	<i>Not Met</i>	<i>Change / Mitigation Needed or Other Comments</i>
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:			
	<i>a. Height of proposed facility</i>	-	-	Under SZO §14.3.2.b the antenna shall not exceed ten (10) feet above the roofline of the structure. The existing building has a 52' high roof top with a 1' parapet, which creates a 53' high roofline. The elevator penthouse is 4' tall above the parapet and the antenna would be 9' 6" above the parapet. The existing 2 rooftop shelters are 10' tall.
	<i>b. Proximity of facility to residential structures and residential zoning districts</i>	-	-	The building at 27 College Avenue is a residential structure in a Central Business District. The property is directly adjacent to a Residence A zoning district to the rear and within 145' of a Residence B zoning district across College Avenue. A two-family residential structure is located directly behind this property. Although the building is in close proximity to residential structures and districts, it is an existing wireless communications facility that meets other criteria.
	<i>c. Nature of uses on adjacent and nearby properties</i>	-	-	Surrounding properties are mixed use in nature and compatible with the proposed use.

7.11.15.3 Special Permit for Wireless Communications Facilities		SPGA finds that the condition is		SPGA further finds that:
	<i>Requirement</i>	<i>Met</i>	<i>Not Met</i>	<i>Change / Mitigation Needed or Other Comments</i>
	<i>d. Surrounding topography and prominence of proposed facility</i>	-	-	The surrounding area is relatively flat and there is another building of comparable height less than 100' away, across College Avenue, which works to limit the prominence of the facility.
	<i>e. Surrounding tree cover and foliage</i>	-	-	The surrounding area has several street trees that are significantly lower in height than the proposed antennas and will not be affected by this proposal.
	<i>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</i>	-	-	See 3 (e) and 3 (f).
	<i>g. Location of tower, with particular reference to the existence of more suitable locations, as specified in Section 14.3</i>	-	-	As described in 3(d) above, the site is a collocation facility, minimizing the impact of the individual facilities proposed, and of tower facilities around the City in general.
	<i>h. Proposed ingress and egress</i>	-	-	There are stairs to a hatch door to access the roof.
	<i>i. Distance from existing facilities</i>	-	-	See map of 4 proposed locations.
	<i>j. Availability of suitable existing towers, poles, other structures, or alternative technologies, as discussed in Section 14.5.2</i>	-	-	The Applicant stated that the FiberTower utilizes a "point-to-point" form of technology as opposed to a broadcast coverage area. The applicant has stated that FiberTower is proposing to co-locate on 4 existing telecommunications sites that will cover the City.

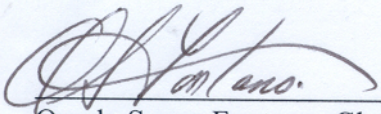
DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Scott Darling and Josh Safdie. 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 **4-0** to **APPROVE** the request. In addition the following conditions were attached:

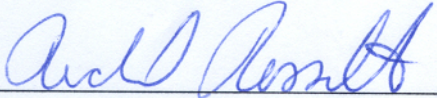
#	Condition	Timeframe for Compliance	Verified (initial)	Notes				
1	<p>Approval is for the establishment of a single pipe mounted antenna of approximately 1 foot in diameter, an equipment cabinet (approx 2' x 3' x 4') at the base of the penthouse wall and associated cables. This approval is based upon the following application materials and the plans submitted by the Applicant:</p> <table><tr><th>Date</th><th>Submission</th></tr><tr><td>September 19, 2008</td><td>Initial application, plans, elevations and photograph renditions submitted to the City Clerk's Office.</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	Submission	September 19, 2008	Initial application, plans, elevations and photograph renditions submitted to the City Clerk's Office.	BP/CO	PLNG.	
Date	Submission							
September 19, 2008	Initial application, plans, elevations and photograph renditions submitted to the City Clerk's Office.							
2	Paint or other materials used to reduce visibility of equipment shall be subject to Planning Staff approval.	CO	PLNG.					
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 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. 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					
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	CONT.	BOH					

#	Condition	Timeframe for Compliance	Verified (initial)	Notes
	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.			
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.	CONT.	ISD	
6	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.	

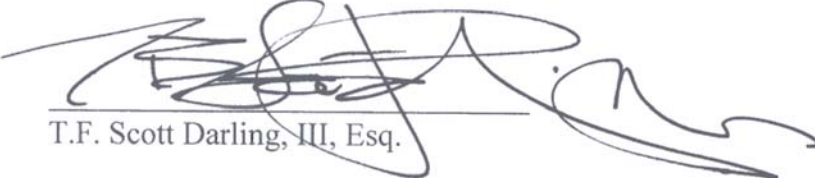
Attest, by the Zoning Board of Appeals:



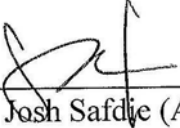
Orsola Susan Fontano, Clerk



Richard Rossetti



T.F. Scott Darling, III, Esq.



Josh Safdie (Alt.)

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 _____