



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 2009-66
Site: 119 College Avenue
Date of Decision: May 5, 2010
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: May 12, 2010

ZBA DECISION

Applicant Name:	Clearwire
Applicant Address:	5808 Lake Washington Blvd, Kirkland, WA 98033
Property Owner Name:	Powder House Realty
Property Owner Address:	119 College Avenue, Somerville, MA 02145
Agent Name:	Chris Swiniarski
Agent Address:	Centerline Communications, 960 Turnpike, #28, Canton, MA 02021

Legal Notice: Applicant, Clearwire and Owner, Powder House Realty, seeks a Special Permit under SZO §7.11.15.3 in order to install wireless communications equipment. RB zone. Ward 6.

<u>Zoning District/Ward:</u>	RB zone/Ward 6
<u>Zoning Approval Sought:</u>	§7.11.15.3
<u>Date of Application:</u>	December 21, 2009
<u>Date(s) of Public Hearing:</u>	2/3, 2/17, 3/3, 3/17, 3/31, 4/14 & 5/5/10
<u>Date of Decision:</u>	May 5, 2010
<u>Vote:</u>	5-0

Appeal #ZBA 2009-66 was opened before the Zoning Board of Appeals at Somerville City Hall on February 3, 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 one hearing 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) antennas (three panel antennas, 42 in high by 12 in wide, two backhaul circular antennas that range in size from 1 ft to 2 ft in diameter, and one (1) 2 ft high GPS antenna), and associated cabling. Cabinets and other equipment would be located in the basement equipment room. This equipment would provide wireless broadband communication services using WiMAX technology.

Two of the panel antennas and the two circular antennas would be located within two 12 ft high, 30 in by 30 in false chimneys. The remaining panel antenna would be mounted on the side of the existing chimney on the rear of the structure. The GPS antenna would be located on the roof top but would not be visible due to the parapet.

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."

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. These guidelines have been adhered to as the antennas would be either screened within false chimneys or side mounted on existing structure. The combined effect would be a significant reduction in the potential visual impacts of the antennas.

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, as conditioned, 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 in which the property is located, namely, "To establish and preserve medium density neighborhoods of one-, two- and three-family homes, free from other uses except those which are both compatible with and convenient to the residents of such districts." 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;



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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 antennas proposed would be located within false chimneys that extend 8 ft above parapet or side mounted on the rear chimney, camouflaged and screened by large, mature trees. The proposed screening 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 47 ft high roof top and a 51 ft high roof line. The maximum height of any equipment would be 59 ft and is either set back 10 ft from the roof edge or is proposed to be side mounted. The height of the proposed facility meets all SZO guidelines.
- b) *Proximity of facility to residential structures and residential zoning districts:* The building at 119 College Avenue is a residential structure in Residence B 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 this or on the surrounding residential structures. However, there have been some concerns from residents of the building that one of the antennas would directly radiate into one of the top floor apartments. The Board has placed a condition that the applicant submits an affidavit from an R.F. Engineer stating that the antenna would not directly radiate into any of the units (*The affidavit was submitted to Planning Staff on April 16, 2010 and states that all equipment would be "installed, erected, maintained and used in compliance with all applicable Federal, State and local regulations).*
- 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.



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- 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 mount them within false chimneys 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 front entrance, there are no existing curb cuts for the property or parking spaces.
- i) *Distance from existing facilities:* There are only two other existing Clearwire antennas currently established in Somerville, one at 94 Beacon Street and the other at 23 Cummings Street near McGrath Highway. This site is a significant distance away from the existing facilities.
- j) *Availability of suitable existing towers, poles, other structures, or alternative technologies, as discussed in Section 14.5.2:* This site provides an optimal location for Clearwire technologies

DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Evans and Scott Darling. 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 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:	Building permit	PLNG.							
	<table><tr><th>Date (OSPCD Stamp)</th><th>Submission</th></tr><tr><td>12/21/09</td><td>Initial application, submitted to the City Clerk's Office.</td></tr><tr><td>(1/19/10)</td><td>Plans, elevations and photograph renditions submitted to OSPCD. (T1, G1, C1, A1-4, E1-2, S1)</td></tr></table>				Date (OSPCD Stamp)	Submission	12/21/09	Initial application, submitted to the City Clerk's Office.	(1/19/10)	Plans, elevations and photograph renditions submitted to OSPCD. (T1, G1, C1, A1-4, E1-2, S1)
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(1/19/10)	Plans, elevations and photograph renditions submitted to OSPCD. (T1, G1, C1, A1-4, E1-2, S1)									
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. 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.	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 camouflage and/or screen the antennas and equipment cabinet to be approved by Staff	Final signoff	PLNG.	
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.	



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Attest, by the Zoning Board of Appeals:

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

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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