



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.)

Case #: ZBA 2003-07-R-0208
Site: 49 Davis Square
Date of Decision: April 2, 2008
Decision: *Revision Approved with Conditions*
Date Filed with City Clerk: April 16, 2008

ZBA DECISION

Applicant Name:	Sprint Wireless Broadband Company, LLC, affiliate of Sprint Spectrum
Applicant Address:	9 Crosby Drive, Bedford, MA 01730
Property Owner Name:	(DBA) BF Properties
Property Owner Address:	P.O. Box 38026, Cambridge, MA 02238
Agent Name:	Ricardo Sousa, Esq.
Agent Address:	Prince, Lobel, Glovsky & Tye, LLP 100 Cambridge Street, Suite 2200 Boston, MA 02114
<u>Legal Notice:</u>	Applicant Sprint Wireless Broadband Company, LLC, and Owner DBA BF Properties are requesting a revision to the Special Permit # ZBA 2003-07 to modify existing wireless facility.
<u>Zoning District/Ward:</u>	CBD zone. Ward 6.
<u>Zoning Approval Sought:</u>	Revision to Special Permit #2003-07
<u>Date of Application:</u>	February 19, 2008
<u>Date(s) of Public Hearing:</u>	3/5, 3/19 & 4/2/08
<u>Date of Decision:</u>	April 2, 2008
<u>Vote:</u>	5-0

Appeal #ZBA 2003-07-R-0208 was opened before the Zoning Board of Appeals at Somerville City Hall on March 5, 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 original special permit allowed the application to install three roof-mounted antennas concealed within “stealth” canisters, two interior equipment cabinets, and one GPS antenna.

The proposed revisions are shown on the plans stamped in to OSPCD on March 28, 2008. Notices have been mailed to abutters and the case advertised in the newspaper.

The present application seeks to:

1. Add three WiMAXX antennas, each concealed with a stealth canister;
2. Add six lines of coax that will be routed and concealed inside an existing cable tray;
3. Add one GPS antenna;
4. Add two supporting equipment cabinets to be located in the existing equipment room;
5. Add one Backhaul Dish.

The Applicant has stated that the “...WiMAXX technology will allow Sprint-Nextel subscribers wireless data delivery and reception capabilities at speeds currently seen with DSL and T-1 connectivity. This installation will benefit the City of Somerville residents by offering a wireless option and increased competition to high speed data consumers.”

The site is a local landmark – the historic Somerville Theatre. The original permit was reviewed in consultation with the Historic Preservation Commission in order to design a facility that would minimize impacts to the structure; the present proposal would include the same type of canister sheathing, which resembles a metal vent pipe. Additional equipment would be located out of public view in the existing interior equipment room.

While individually the canisters are fairly innocuous, Staff have had concerns about their profusion on the roof, and asked the Applicant to house the new antennas in the existing canisters; the Applicant states this cannot be done but has pushed them further back from the roof’s edge as required by the Ordinance. The new antennas will be paired with the existing antennas in three “sectors”: the Alpha sector at the front-right corner of the roof; the Beta sector in the center; and the Gamma sector at the back-left corner.

The central Beta sector is not visible and the additional structure would not be expected to be visible. The new antenna in the Gamma sector would be immediately adjacent to and further set back from the existing antenna, which is only visible from limited locations, and is a less prominent building approach and therefore is not expected to add any significant visual impact. The Alpha sector, located toward the front of the building, is the area that would require the most attention, as it is visible from two approaches to the Square (Highland Avenue and Holland Street) and may be visible from the College Avenue T station exit. Reviews of plans while considering view moving along these streets, it appears that the additional Alpha sector canister/antenna will only be visible from a limited number of vantages (on Holland Street between Winter Street and the T Station, and on Highland Avenue between Grove Street and the first traffic light); nevertheless it appears that there are sufficient other visual distractions in these locations to minimize its effect.

In response to a staff request, the Applicant is proposing a lower installation of the (approximately two cubic-foot) backhaul dish, which would be mounted on a higher portion on wall that projects from the roof (in which the equipment room is also located) and painted to match.

Finally, a four-foot-tall GPS antenna is proposed to be located adjacent to another existing one, mounted in to the cable tray. The antenna, which is less than three inches in diameter, is shown as 12 feet from the rear edge of the roof, and 28 feet from the left edge, in both cases shielded by a parapet wall. It would not be visible from street level.

FINDINGS FOR SPECIAL PERMIT REVISION:

While what is proposed is expected to have a nominal effect on the appearance on the building from most points of view, there will be some visual effect. Such an iconic structure in the City should not be expected to bear much more visual clutter than what is now proposed. Any future equipment that would be visible from any street-level location in the Square subject to scrutiny by an expert consulting advising the Board (pursuant to M.G.L. Ch. 44 Section 53G) prior to granting approval. Furthermore, a Certificate of Appropriateness will be required, in addition to this approval, prior to the granting of a Building Permit.

DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Scott Darling and Danielle Fillis. 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. The original conditions attached to the Special Permit would still apply and are repeated here, modified to reflect the current plans, and with additional conditions relating to review of future addition of facilities, Historic Preservation Commission review of the current proposal, noise ordinance and Federal Communications Commission Guidelines for Human Exposure to electromagnetic fields.

#	Condition	Timeframe for Compliance	Verified (initial)	Notes
1.	Approval is for a wireless communication facility and based on plans 02-21-08 stamped into O.S.P.C.D. on March 28, 2008. Any alterations to these plans must be submitted to the Zoning Board of Appeals for review and approval;	BP/CO	ISD/PLNG	
2.	All stealth vent pipes and equipment cabinets must be painted to match, as closely as possible, the surrounding colors and materials of the building;	BP/CO	ISD/PLNG	
3.	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;	CO	FP	
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	CONT.	ISD	

#	Condition	Timeframe for Compliance	Verified (initial)	Notes
	ninety (90) days of notice from the City of Somerville informing the owner of such abandonment.			
5.	No further equipment, which is visible from street level from anywhere in the Square, shall be installed without review, at the Applicant's expense, of alternative or hidden sitting and a determination that there is insufficient need for that unique site.	CONT.	ISD	
6.	A Certificate of Appropriateness is required from the Historic Preservation Commission (HPC). Final design details request by the HPC will not require a revision to the special permit.	BP	HPC	
7.	Compliance with Noise Control Ordinance. 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 Planning Board, 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.	CO	Police Dept.	
8.	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 CMR122.021, 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	CO	Health Dept.	

#	Condition	Timeframe for Compliance	Verified (initial)	Notes
	Appeals.			
9.	The Applicant is responsible for notifying the Planning Staff at least five (5) working days in advance of a request for a final sign-off on a building permit from the Division of Inspectional Services. Issuance of a building permit shall be contingent upon a satisfactory inspection of site work by the Planning Staff to ensure consistency with the submitted proposal and compliance with all the conditions of this special permit.	CO	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
Elaine Severino, (Alt.)

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 _____