



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 #1998-38-R0408**

**Site: 114 Highland Avenue**

**Date of Decision: July 23, 2008**

**Decision: *Revision Approved with Conditions***

**Date Filed with City Clerk: August 1, 2008**

---

**ZBA DECISION**

---

<b>Applicant Name:</b>	Sprint Wireless Broadband Company, LLC
<b>Applicant Address:</b>	9 Crosby Drive, Bedford, MA 01730
<b>Property Owner Name:</b>	Somerville Housing Authority
<b>Property Owner Address:</b>	30 Memorial Road, Somerville, MA 02145
<b>Agent Name:</b>	Ricardo M. Sousa, Esq.
<b>Agent Address:</b>	Prince, Lobel, Glovsky & Tye, LLP 100 Cambridge Street, Suite 2200 Boston, MA 02114

<b><u>Legal Notice:</u></b>	Applicant Sprint Wireless Broadband Company, LLC, and Owner Somerville Housing Authority are requesting a revision to the Special Permit # ZBA 1998-38 to modify an existing wireless facility. RC zone. Ward 3.
-----------------------------	--

<b><u>Zoning District/Ward:</u></b>	RC zone/Ward 3
<b><u>Zoning Approval Sought:</u></b>	Revision to Special Permit ZBA #1998-38
<b><u>Date of Application:</u></b>	April 16, 2008
<b><u>Date(s) of Public Hearing:</u></b>	5/21, 6/18, 7/9 & 7/23/08
<b><u>Date of Decision:</u></b>	July 23, 2008
<b><u>Vote:</u></b>	5-0

---

Appeal #ZBA 1998-38-R0408 was opened before the Zoning Board of Appeals at Somerville City Hall on May 21, 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 install three façade mounted WiMAX antennas, one façade mounted one-foot wireless backhaul dish antenna, one GPS antenna, and two supporting equipment cabinets on the existing equipment platform on the rooftop. The antennas would be painted to match the existing antennas. The equipment cabinets would be similar in size and appearance to the existing cabinets. 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 REVISION TO SPECIAL PERMIT ZBA 1998-38-R0408:**

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."

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. Staff finds that the visible impact of the additional antennas and the proposed equipment would be acceptable under the conditions imposed by this report.

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 C (RC) district. The Board finds the addition of the antennas and associated equipment cabinets will not negatively affect the surrounding neighborhood.

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;*

- 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 proposed location of the antennas on the building façade would have a minimal affect on the appearance of the building. The rooftop equipment cabinets are twelve feet from the edge of the building's eastern edge and are screened from the southern edge by an existing penthouse.

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 about 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 mixed of uses and the Board finds that they are compatible with the proposed use.
- d) *Surrounding topography and prominence of proposed facility:* The building is located on a hill and there are no other buildings of comparable height or prominence in the surrounding area. Though the proposed rooftop antennas are visible from a few vantage points, the proposal to match them to the color of the building will reduce their prominence from any public way.

- e) *Surrounding tree cover and foliage:* The surrounding trees are significantly lower in height than the proposed antennas.
- 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 existing curb cut for the property and use existing parking and circulation patterns.
- 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 was chosen due to the company's existing use of the property for wireless communications, the city's preference for use of city-owned properties for wireless communications sites, and the location and overall height of the property.

### **DECISION:**

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Fillis, Scott Darling and Elaine Severino. 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 **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 installation of three façade mounted WiMAX antennas, one façade mounted one-foot wireless backhaul dish antenna, one GPS antenna, and two supporting equipment cabinets on the existing equipment platform on the rooftop. This approval is based upon the following application materials and the plans submitted by the Applicant and/or contractor:	BP/CO	PLNG.							
	<table><tr><th>Date</th><th>Submission</th></tr><tr><td>April 16, 2008</td><td>Initial application, submitted to the City Clerk's Office.</td></tr><tr><td>July 17, 2008</td><td>Plans, elevations and photograph renditions submitted to OSPCD</td></tr></table>	Date	Submission	April 16, 2008	Initial application, submitted to the City Clerk's Office.	July 17, 2008	Plans, elevations and photograph renditions submitted to OSPCD			
Date	Submission									
April 16, 2008	Initial application, submitted to the City Clerk's Office.									
July 17, 2008	Plans, elevations and photograph renditions submitted to OSPCD									
	Any changes to the approved site plan, photograph									

	renditions and/or elevations must receive ZBA approval.			
2	All antennas painted to match, as closely as possible, the surrounding colors and materials of the building.	BP/CO	ISD/PL NG	
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	<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	
5	<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.	CONT.	BOH	
6	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	
7	The Applicant shall contact Planning Staff at least five	FINAL	PLNG.	

	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.	SIGN OFF		
8	The Applicant shall work with the Planning Staff to reposition proposed antenna to not block the window.	BP	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 \_\_\_\_\_