



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

Case #: ZBA # 2010-75
Site: 289 Highland Avenue
Date of Decision: March 16, 2011
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: March 28, 2011

ZBA DECISION

Applicant Name:	T-Mobile Northeast, LLC
Applicant Address:	15 Commerce Way, Suite B, Norton, MA 02776
Property Owner Name:	289 Highland Avenue, Realty, Inc.
Property Owner Address:	1259 Broadway, Somerville, MA 02144
Agent Name:	Jackie Slaga
Agent Address:	95 Indian Trail, Saunderstown, RI 02874

<u>Legal Notice:</u>	Applicant T-Mobile Northeast LLC and Owner 289 Highland Ave Realty Inc. seek a special permit (SZO §7.11.15.3 and SZO §14) to establish a wireless communications facility, consisting of 6 antennas on the roof inside a stealth chimney enclosure and associated equipment in the underground parking garage.
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<u>Zoning District/Ward:</u>	RC zone/Ward 6
<u>Zoning Approval Sought:</u>	§7.11.15.3 & §14
<u>Date of Application:</u>	November 18, 2010
<u>Date(s) of Public Hearing:</u>	March 16, 2011
<u>Date of Decision:</u>	March 16, 2011
<u>Vote:</u>	5-0

Appeal #ZBA 2010-75 was opened before the Zoning Board of Appeals at Somerville City Hall on March 16, 2011. 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:

T-Mobile Northeast LLC is licensed by the FCC to construct and operate PCS networks, which they are seeking to construct across Massachusetts. The purpose of putting antennas at this site is to fill in a coverage gap. The applicant explained that the system requires a grid of radio transmitting and receiving links located approximately 0.5 to 2 miles apart. They submitted coverage area maps and an affidavit from a radio frequency expert stating that the additional antennas are necessary to ensure adequate PCS service in the area.

The original proposal was to install 6 panel antennas on the roof inside 2 stealth chimney enclosures and associated equipment on the northwest corner of the site in the rear yard. The noise data indicated that depending on the level of screening, the equipment may not have been in compliance with the City's Noise Ordinance. Due to staff concern regarding the noise of the equipment near residential properties and the location that the equipment would occupy in the landscaped backyard, the Applicants redesigned the proposal.

The current proposal is for six antennas to be located in one stealth chimney that will be 5 feet by 5 feet by 8.5 feet tall. The equipment cabinets will be located in the subgrade-parking garage in a location that cannot function as a parking space because of support columns for the building. The area is 220 square feet. A cable tray will extend from the equipment up the back of the building and will be painted to match the color of the brick façade.

The Applicant also stated that per Federal Communications Commission (FCC) mandate, enhanced emergency (E911) service is required to meet nationwide standards for wireless communications systems and to comply, the Applicant will install one GPS and one E911 GSM antenna at the site.

After installation the site will only require one or two site visits monthly by maintenance personnel.

FINDINGS FOR SPECIAL PERMIT (SZO §5.1 & §14):

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 uses in the City with minimal harm to the public health, safety and general welfare."

The Board finds that minimal harm would be imposed upon the health, safety and welfare of the surrounding neighborhood. T-Mobile Northeast LLC is a FCC licensed company that is required to comply with all state and federal regulations.

Review Criteria for Telecommunications Facilities:

- a) *Height of proposed facility:* The base of the building to the parapet is fifty feet tall and an existing penthouse is 51 feet 5 inches tall. This building is one of the tallest in the surrounding area and there are no buildings in the immediate area that are taller than it.
- b) *Proximity of facility to residential structures and residential zoning districts:* The property is located in



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- a residential district. The Applicants stated that they tried to find another location in the area; however, this was the location that allowed them to provide reliable coverage.
- c) *Nature of uses on adjacent and nearby properties:* The site is located in a residential area; however, the design of the stealth chimneys and equipment cabinet enclosure should address concerns related to the visual effect of antennas in the area.
 - d) *Surrounding topography and prominence of proposed facility:* The building is the tallest in the area.
 - e) *Surrounding tree cover and foliage:* The trees located near the site are not anticipated to interfere with the projection required for the 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:* Guidelines of Article 14 of the SZO state that antennas should not be located more than 10 feet above the roofline, should be located at a minimum of 10 feet from the roof edge and below a forty-five degree plane beginning at the cornice of the building. The stealth chimneys comply with these guidelines as they will be 5 feet by 5 feet by 8.5 feet tall and a minimum 46 feet from the roof edge. The cable trays will be painted to match the building.
 - g) *Location of tower, with particular reference to the existence of more suitable locations, as specified in Section 14.3:* The guidelines in Article 14 state that service providers should co-locate and/or locate on facilities owned or managed by the City of Somerville, whenever possible. T-Mobile was not able to find a location that satisfied these requirements and meet their coverage area requirements. The antennas will be in stealth chimneys and the cable tray will be painted to match the surrounding colors of the building, which are other recommendations that will be adhered to.
 - h) *Proposed ingress and egress:* An existing internal ladder will be utilized to access the rooftop. The parking garage entrances provide access to the equipment cabinets.
 - i) *Distance from existing facilities:* The accompanying map shows the locations of T-Mobile antennas.
 - j) *Availability of suitable existing towers, poles, other structures, or alternative technologies, as discussed in Section 14.5.2:* Section 14.5.2 states that no new sites for telecommunications facilities shall be permitted unless the Applicant demonstrates that existing sites cannot meet the Applicant's needs. The Applicants submitted coverage area maps and an affidavit from a radio frequency expert stating that the additional antennas are necessary to ensure adequate PCS service in the area. They stated that there are no other locations in the area that are available for lease and would provide for more visual mitigation on the proposed site while at the same time achieving the coverage required by the Applicant's network requirements in the area.

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 of the SZO, specifically "to facilitate the adequate provisions 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:

- a) *Protect residential areas and land uses from potential adverse impacts of towers and antennas;*



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b) Encourage the location of telecommunications facilities in non-residential areas (as noted in finding 2 this is not possible for the coverage requirements for T-Mobile);

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 that the equipment is designed to be compatible with the surrounding area and land uses. The antennas proposed are in a stealth chimney that are located near the middle of the building and the cable trays are located in the back of the building and will be painted to match the building. The redesign of the proposal placed the equipment in the below grade parking area where it will not be visible or heard from neighboring residential properties.

5. Adverse environmental impacts: The proposed use, structure or activity will not constitute an adverse impact on the surrounding area resulting from: 1) excessive noise, level of illumination, glare, dust, smoke, or vibration which are higher than levels now experienced from uses permitted in the surrounding area; 2) emission of noxious or hazardous materials or substances; 3) pollution of water ways or ground water; or 4) transmission of signals that interfere with radio or television reception.

The facility will have to comply with the applicable FCC requirements relating to radio frequency emissions and will comply with all applicable requirements of the building code. The equipment will not generate glare, light smoke, vibrations dust or noxious materials. Standard conditions direct compliance with Noise Control Ordinance and FCC Guidelines for Human Exposure to Electromagnetic Fields, and require regular reporting.



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DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Scott Darling and Josh Safdie with Danielle Evans and Elaine Severino absent. 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 installation of 6 panel antennas on the roof inside a stealth chimney enclosure and associated equipment in the below-grade parking garage. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	Plng.									
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>11/18/10 revised 2/23/11</td><td>Initial application submitted to the City Clerk's Office</td></tr><tr><td>2/18/11</td><td>Revised plans submitted to OSPCD (Z-2: Site Plan and Notes, Z-3: Compound Plan, Elevation & Detail)</td></tr><tr><td>2/23/11</td><td>Photo simulations</td></tr></table>				Date (Stamp Date)	Submission	11/18/10 revised 2/23/11	Initial application submitted to the City Clerk's Office	2/18/11	Revised plans submitted to OSPCD (Z-2: Site Plan and Notes, Z-3: Compound Plan, Elevation & Detail)	2/23/11	Photo simulations
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	2/18/11				Revised plans submitted to OSPCD (Z-2: Site Plan and Notes, Z-3: Compound Plan, Elevation & Detail)							
2/23/11	Photo simulations											
Any changes to the approved plans that are not <i>de minimis</i> must receive SPGA approval.												
2	The cable equipment tray shall be painted with a color that matches the brick color of the exterior façade.	Final Inspection	Plng.									
3	The stealth chimney shall conceal the antennas on the chimney (as indicated on the plan). The paint on the chimney should contain a range of colors close to the colors of the building façade. 'Mortar' should not be white but match the existing mortar and that the width of the 'pointing' shall be appropriate to the location.	Final Inspection	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.	CO and annually	ISD / Plng.	
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.	Annually	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. Failure to remove may result in a fine or penalty.	Perpetual	ISD	
7	The Applicant shall at his expense replace any existing equipment (including, but not limited to street sign poles, signs, traffic signal poles, traffic signal equipment, wheel chair ramps, granite curbing, etc) and the entire sidewalk immediately abutting the subject property if damaged as a result of construction activity. All new sidewalks and driveways must be constructed to DPW standard.	Final inspection	DPW	



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8	All construction materials and equipment must be stored onsite. If occupancy of the street layout is required, such occupancy must be in conformance with the requirements of the Manual on Uniform Traffic Control Devices and the prior approval of the Traffic and Parking Department must be obtained.	During Construction	T&P	
9	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final inspection by Inspectional Services 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.
Josh Safdie (Alt.)

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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