



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

MEMBERS

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JOSH SAFDIE (ALT.)

Case #: ZBA 2008-49
Site: 844 McGrath Highway
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:	GTP Acquisition Partners, LLC (BRE/LQ Properties, LLC)
Property Owner Address:	1801 Clint Moore Road, Suite 110, Boca Raton, FL 34387
Agent Name:	Michael Johnson
Agent Address:	202 Broadway, Providence, RI 02309

Legal Notice: Applicant: FiberTower & Owner: GTP Acquisition Partners LLC seek Special Permit Approval under SZO §7.11.15.3 for the installation of a wireless communications facility. ASMD PUD-A zone. Ward 1.

<u>Zoning District/Ward:</u>	ASMD PUD-A zone/Ward 1
<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 2008-49 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 FiberTower Corporation is proposing to install wireless communications equipment, consisting of one (1) pipe mounted antenna approximately 1 foot in diameter, one (1) approximately 21 inch by 15 inch by 25 inch equipment cabinet and associated cabling. The antenna would be mounted on the eastern side of the penthouse 10 feet above the rooftop and approximately 20 feet from the building edge. The equipment cabinet would be mounted on the side

of an existing penthouse approximately 5 feet from the rooftop and approximately 15 feet from the roof edge.
Associated cabling on the roof will connect the antenna with the equipment cabinet.

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 finds that:
	<i>Requirement</i>	<i>Met</i>	<i>Not Met</i>	<i>Change / Mitigation Needed or Other Comments</i>
1. Information Supplied	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.
2. Compliance with Standards	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.
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."	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).
	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>	-	-	
	c) <i>Minimize the total number of towers and antennas throughout the community;</i>	-	-	Staff will confer with the site manager and confirm that there are no unused antennas on the facility. Staff will explain to the property owner that it is their responsibility to remove any abandoned facilities.

7.11.15.3 Special Permit for Wireless Communications Facilities		SPGA finds that the condition is		SPGA finds that:
	<i>Requirement</i>	<i>Met</i>	<i>Not Met</i>	<i>Change / Mitigation Needed or Other Comments</i>
	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.
	e) <i>Encourage users of towers and antennas to locate them in areas where the adverse impact on the community is minimal;</i>	-	-	Facilities are set back 250 feet from the nearest residential sites and are located along a busy State highway.
	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>	-	-	Facilities have been configured on the roof to minimize visual obtrusiveness. In addition, the height of the building gives the facility a great degree of obscurity from the ground level in the surrounding area. A condition of approval will be to paint the antenna and equipment to match the color of the structure.
	g) <i>Enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently;</i>	-	-	
	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.

7.11.15.3 Special Permit for Wireless Communications Facilities		SPGA finds that the condition is		SPGA finds that:
	<i>Requirement</i>	<i>Met</i>	<i>Not Met</i>	<i>Change / Mitigation Needed or Other Comments</i>
4. Site & Area Compatibility	Ensure that project "(i)s designed in a manner that is compatible with the characteristics of the built and unbuilt surrounding area, including land uses."			The proposed antenna is consistent with the current built context in the area, as it is proposed to be situated on the wall of the penthouse and would not alter the roofline of the building. The surrounding area is relatively flat and 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.
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>	-	-	The antenna would be 10 feet above the roof top and set more than 20 feet back from the building edge. The equipment cabinet would be located 5 feet above the rooftop and approximately 15 feet from the building edge. This meets all height and setback requirements under SZO Article 14.
	<i>b. Proximity of facility to residential structures and zoning districts</i>	-	-	This facility would be on a building that is approximately 250 feet from the nearest residential structure. The residential uses in the area are located across Fellsway West and the intersection of several roads which creates a substantial barrier and separation between the areas. The proposed equipment and antenna location would only be slightly visible from the residential area and the change from existing conditions would not be noticeable unless specifically sought out.
	<i>c. Nature of uses on adjacent and nearby properties</i>	-	-	Surrounding properties are predominantly commercial and industrial in nature. Existing antennas on the rooftop of this structure, which have been treated and located in a similar fashion to the proposal, do not have an adverse affect on nearby properties.
	<i>d. Surrounding topography and prominence of proposed facility</i>	-	-	The La Quinta Hotel is a prominent building due its height and location. However, the antenna and equipment box will not be prominent because of their small size and conditioned screening techniques. In addition, the building's height will minimize the visual impact to lower structures and to the street.
	<i>e. Surrounding tree cover and foliage</i>	-	-	Due to the height of the installation, tree cover would not be effective for shielding the facility.

7.11.15.3 Special Permit for Wireless Communications Facilities		SPGA finds that the condition is		SPGA finds that:
	Requirement	Met	Not Met	Change / Mitigation Needed or Other Comments
	<i>f. Design of tower, to reduce or eliminate visual obtrusiveness</i>	-	-	Though the proposed rooftop antenna is visible from several vantage points, the proposal to match them to the color of the building will reduce their prominence from any public way.
	<i>g. Location of tower, considering more suitable locations</i>	-	-	See section 3(d) and 5(j)
	<i>h. Proposed ingress and egress</i>	-	-	Ingress and egress to the site will be at the existing curb cut for the property and use existing parking and circulation patterns.
	<i>i. Distance from existing facilities</i>	-	-	See attached site maps.
	<i>j. Availability of suitable existing towers, poles, other structures, or alternative technologies (demonstration of need)</i>	-	-	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, which provides the opportunity for FiberTower to operate its network.

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	Approval is for the establishment of a single pipe mounted antenna of approximately 1 foot in diameter, an approximately 21 inch by 15 inch by 25 inch equipment cabinet and associated cabling. 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>September 3, 2008</td><td>Initial application, plans, elevations and photograph renditions submitted to the City Clerk's Office.</td></tr></table>				Date	Submission	September 3, 2008	Initial application, plans, elevations and photograph renditions submitted to the City Clerk's Office.
	Date				Submission			
September 3, 2008	Initial application, plans, elevations and photograph renditions submitted to the City Clerk's Office.							
Any changes to the approved site plan, photograph renditions								

#	Condition	Timeframe for Compliance	Verified (initial)	Notes
	and/or elevations that are not <i>de minimis</i> must receive ZBA approval.			
2	The antenna shall be painted to match the color of the penthouse to which it is attached.	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 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	
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, *Acting Chairperson*
Richard Rossetti, *Acting Clerk*
T.F. Scott Darling, III, Esq.
Josh Safdie (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 _____