



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

MEMBERS

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JOSH SAFDIE (ALT.)

Case #: ZBA 2008-50
Site: 252 Medford Street
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:	Somerville Housing Authority
Property Owner Address:	30 Memorial Road, Somerville, MA 02145
Agent Name:	Michael Johnson
Agent Address:	202 Broadway, Providence, RI 02903

Legal Notice: Applicant: FiberTower & Owner: Somerville Housing Authority seeks Special Permit Approval under SZO §7.11.15.3 for the installation of a wireless communications facility. RB zone. Ward 3.

<u>Zoning District/Ward:</u>	RB zone/Ward 3
<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 2008-50 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 applicant, FiberTower Corporation, is proposing to install wireless communications equipment, consisting of one (1) pipe mounted antenna and associated cabling. The antenna will be approximately one foot in diameter and would be mounted on the western side of the penthouse 13 foot 6 inch above the rooftop and 10 feet from the building edge. Associated cabling on the roof will connect with equipment to be located in the basement.

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	<p>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."</p> <p>The purposes of the Article 14 in particular are listed below:</p>	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>	-	-	This property is located in a commercially zoned area
	c) <i>Minimize the total number of towers and antennas throughout the community;</i>	-	-	Staff have visited the site/conferred with the site manager and confirmed that there are no unused antennas on the facility. Staff have explained 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:
	Requirement	Met	Not Met	Change / Mitigation Needed or Other Comments
	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>	-	-	The antennas would be located on the side of the rooftop penthouse and are conditioned to be painted to match the building, which combined with the height of the building, would reduce the adverse visual impact on the immediate community.
	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>	-	-	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. <i>Site and Area Compatibility</i>	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."	X		The Staff finds the project to be compatible with the surrounding area and land uses. The proposed antenna keeps with the current built context in the area as it is proposed to be situated on the wall of the penthouse and not alter the roofline of the building. Several antennas placed by other companies exist on the rooftop; the addition of a single antenna will have limited visual impact.
5. <i>Review Criteria for Telecom Facilities</i>	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>	-	-	Under SZO§14.3.2.b the antenna shall not exceed ten (10) feet above the roofline of a structure. The antenna would be located on the penthouse wall below the roofline, 13' 6" above the roof.
	<i>b) Proximity of facility to residential structures and residential zoning districts</i>	-	-	The building at 252 Medford Street is a residential structure in a commercial residential BB district. The property is directly adjacent to a Residence A (RA) zoning district to the rear and within 250 feet of a Residence B (RB) zoning district across McGrath Highway. Low density single- and two-family residential structures are located directly behind this property. The proposed equipment and antenna location would 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 residential in nature. The structure itself where the antenna is to be located is a residential building. For the same reasons listed in section 5b above, The Board finds that there would not be an adverse affect on the residential nature of the surrounding area.

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
	d) Surrounding topography and prominence of proposed facility	-	-	-	The Brady Towers development is located on the east side of prospect hill. Due to the height of the building it is a prominent structure in that area. However, the antenna would not be prominent because of its small size and conditioned screening techniques. In addition, the building's height will minimize the visual impact to lower structures and to the street.
	e) Surrounding tree cover and foliage	-	-	-	Due to the height of the installation, tree cover would not be effective for shielding the facility.
	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	-	-	-	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.
	g) Location of tower, considering more suitable locations	-	-	-	See section 3(d) and 5 (j)
	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	-	-	-	See attached site maps.
	j) Availability of suitable existing towers, poles, other structures, or alternative technologies, as discussed in Section 14.5.2	-	-	-	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, the city's preference of city-owned properties for wireless communications sites, 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 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 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	CONT.	BOH					

#	Condition	Timeframe for Compliance	Verifie d (initial)	Note s
	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.			
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 _____