



CITY OF SOMERVILLE, MASSACHUSETTS
OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
JOSEPH A. CURTATONE
MAYOR

PLANNING DIVISION

ZONING BOARD OF APPEALS MEMBERS

HERBERT F. FOSTER, JR., *CHAIRMAN*
ORSOLA SUSAN FONTANO, *CLERK*
RICHARD ROSSETTI
T. F. SCOTT DARLING, III, ESQ.
DANIELLE EVANS
ELAINE SEVERINO (ALT.)
JOSH SAFDIE (ALT.)

Case #: ZBA #2010-59
Site: 75 Myrtle Street
Date of Decision: December 1, 2010
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: December 15, 2010

ZBA DECISION

Applicant Name:	T-Mobile Northeast, LLC
Applicant Address:	15 Commerce Way, Suite B, Norton, MA 02776
Property Owner Name:	Somerville Housing Authority
Property Owner Address:	75 Myrtle Street, Somerville, MA 02145
Agent Name:	Jackie Slaga
Agent Address:	95 Indian Trail, Saunderstown, RI 02874

Legal Notice: Applicant T-Mobile Northeast LLC and Owner Somerville Housing Authority seek a special permit with site plan review (SZO §7.11.15.3 and SZO §14) to allow the construction of a wireless communications facility, consisting of two stealth enclosed units with antennae, and a special permit (SZO §4.4.1) to further exceed a non-conforming height. One stealth unit is located on top of the existing penthouse and the other is on the northeast corner of the roof. RC Zone. Ward 1.

<u>Zoning District/Ward:</u>	RC zone. Ward 1
<u>Zoning Approval Sought:</u>	§7.11.15.3, §14 & §4.4.1
<u>Date of Application:</u>	September 17, 2010
<u>Date(s) of Public Hearing:</u>	11/3, 11/17 & 12/1/10
<u>Date of Decision:</u>	December 1, 2010
<u>Vote:</u>	4-0

Appeal #ZBA 2010-59 was opened before the Zoning Board of Appeals at Somerville City Hall on November 3, 2010. Notice of the Public Hearing was given to persons affected and was published and posted, all as required by



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143
(617) 625-6600 EXT. 2500 • TTY: (617) 666-0001 • FAX: (617) 625-0722
www.somervillema.gov



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.

DESCRIPTION:

The applicant filed an initial proposal to install wireless communications equipment, including 12 antennas, in which nine will be located in a new stealth enclosure on top of the existing penthouse. Three more antennas will be located at the northeast corner of the roof and placed in stealth enclosures. This proposal was reviewed by the staff and staff recommended that the applicant relocate the nine antennas to a location that would reduce overall height on the structure. The applicant was also asked to provide more photo simulations.

The applicant returned with an updated design that moved the nine antennas to three different areas of the roof, closer to the edge but lower than the penthouse. This alternative design does not require construction on top of the existing penthouse. This is the plan that was approved.

FINDINGS FOR SPECIAL PERMIT (SZO §7.11.15.3):

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

Guidelines in Article 14 of the SZO state that antennas should not be located more than 10ft above the roofline, should be located at a minimum of 10ft from the roof edge and below a forty-five degree plane beginning at the cornice of the building. The Board finds that the alternative plan submitted by the applicant addresses this issue.

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 set forth in Article 1 of the Zoning Ordinance; and, with those purposes established for the Residence C (RC) district in which the property is located, namely, "To establish and preserve a district for multi-family residential and other compatible uses which are of particular use and convenience to the residents of the district." The Board finds the addition of the antennas and associated equipment, as conditioned, will neither negatively affect the local commercial uses, nor the multi-family character of the residences in the area.

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;*



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143
(617) 625-6600 EXT. 2500 • TTY: (617) 666-0001 • FAX: (617) 625-0722

www.somervillema.gov



- 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. Extensive photo simulations were taken from a variety of locations in the neighborhood. The photo simulations indicate the limited impact of the installation on the surrounding neighborhood.

DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans and Scott Darling with Herbert Foster, Elaine Severino and Josh Safdie absent. 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:



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143
(617) 625-6600 EXT. 2500 • TTY: (617) 666-0001 • FAX: (617) 625-0722

www.somervillema.gov



#	Condition	Timeframe for Compliance	Verified (initial)	Notes								
1	<p>Approval is for the establishment of five (12) wireless antennas with associated cabling and equipment. This approval is based upon the following application materials and the plans submitted by the Applicant and/or contractor:</p> <table><tr><th>Date (OSPCD Stamp)</th><th>Submission</th></tr><tr><td>10/13/2010</td><td>Initial application, submitted to the City Clerk's Office.</td></tr><tr><td>(11/16/10)</td><td>Updated plans and elevations submitted to OSPCD</td></tr><tr><td>(11/4/10)</td><td>Updated photograph renditions submitted to OSPCD</td></tr></table> <p>Any changes to the approved site plan, photograph renditions and/or elevations that are not <i>de minimis</i> must receive ZBA approval.</p>	Date (OSPCD Stamp)	Submission	10/13/2010	Initial application, submitted to the City Clerk's Office.	(11/16/10)	Updated plans and elevations submitted to OSPCD	(11/4/10)	Updated photograph renditions submitted to OSPCD	Building permit	PLNG.	
Date (OSPCD Stamp)	Submission											
10/13/2010	Initial application, submitted to the City Clerk's Office.											
(11/16/10)	Updated plans and elevations submitted to OSPCD											
(11/4/10)	Updated photograph renditions submitted to OSPCD											
2	<p><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.</p>	Continued	ISD									
3	<p><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.</p>	Continued	BOH									



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143
(617) 625-6600 EXT. 2500 • TTY: (617) 666-0001 • FAX: (617) 625-0722

www.somervillema.gov



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 ninety (90) days of notice from the City of Somerville informing the owner of such abandonment.	Continued	ISD	
5	The applicant shall remove any of that carrier's unused or non-operating wireless equipment prior to installation.	Building permit	PLNG.	
6	The applicant shall identify and inform Planning Staff of any non-operating wireless equipment from any carrier prior to installation. The applicant shall remove the TV antenna on the roof. The applicant shall remove any other carrier's operating equipment from the roof prior to installation if that carrier agrees to allow the applicant to do so. The applicant shall cooperate with Planning Staff in addressing the use and permitting status of Verizon's installation on the roof.	Building permit	PLNG.	
7	Stealth enclosure, shall be a t90 degree angles with roof and parallel to roof line.	Building permit	PLNG.	
8	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 signoff	PLNG.	



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143
(617) 625-6600 EXT. 2500 • TTY: (617) 666-0001 • FAX: (617) 625-0722

www.somervillema.gov



Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Acting Chairman*
Richard Rossetti, *Acting Clerk*
T.F. Scott Darling, III, Esq.
Danielle Evans

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 _____



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143
(617) 625-6600 EXT. 2500 • TTY: (617) 666-0001 • FAX: (617) 625-0722

www.somervillema.gov

