



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

PLANNING DIVISION

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JOSH SAFDIE (ALT.)

Case #: ZBA 2009-52
Site: 15 Weston Avenue
Date of Decision: May 19, 2010
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: May 26, 2010

ZBA DECISION

Applicant Name:	Clearwire (c/o Chris Swiniarski)
Applicant Address:	5808 Lake Washington Blvd, Suite 300, Kirkland, WA 98033
Property Owner Name:	Somerville Housing Authority
Property Owner Address:	30 Memorial Road, Somerville, MA 02145
Agent Name:	Chris Swiniarski
Agent Address:	C. Davis Associates, 66 E. Concord Street, Wilmington, MA 01887-2179

Legal Notice: Applicant, Clearwire and Owner, Somerville Housing Authority, seeks a Special Permit under SZO §7.11.15.3 in order to replace, relocate and install wireless communications equipment. RB/NB zone. Ward 7.

<u>Zoning District/Ward:</u>	RB/NB zone/Ward 7
<u>Zoning Approval Sought:</u>	§7.11.15.3
<u>Date of Application:</u>	October 29, 2009
<u>Date(s) of Public Hearing:</u>	2/3, 2/17, 3/3, 3/17, 3/24, 4/14, 5/5 & 5/19/10
<u>Date of Decision:</u>	May 19, 2010
<u>Vote:</u>	5-0

Appeal #ZBA 2009-52 was opened before the Zoning Board of Appeals at Somerville City Hall on February 3, 2010. 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:

The applicant, Clearwire, is proposing to install wireless communications equipment, including three (3) 42in by 12in façade-mounted panel-style antennas, four (4) 12in diameter back haul antennas, one (1) GPS antenna, one (1) roof top mounted equipment cabinet and associated cabling and equipment. The panel-style antennas would replace existing Sprint antennas currently installed on the building.

The rooftop antennas would all be side mounted on the penthouses existing on the rooftop, with four of the antennas located on the centrally situated penthouse and three located on the side penthouses (two of these three would be Sprint replacements). The highest of the antennas would be situated on the central penthouse at 85 ft, which would not extend above the penthouse roofline.

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."

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. The Board finds that the visible impact of the additional antennas and the proposed equipment would be acceptable under the conditions imposed by this report, which includes the painting of the proposed cabinets and antennas to match the facades to which they are attached. Electrical Engineer and Radio Frequency Specialist, Muhammad Kaleem Khan, stated in a letter to the ZBA that the proposed facility would comply with all applicable Federal and State standards, including those regarding radio-frequency emissions.

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 Neighborhood Business (NB) and Residence B (RB) district in which the property is located, namely, "(t)o establish and preserve areas for small-scale retail stores, services and offices which are located in close proximity to residential areas and which do not have undesirable impacts on the surrounding neighborhoods" (NB). And, "(t)o establish and preserve medium density neighborhoods of one-, two- and three-family homes, free from other uses except those which are both compatible with and convenient to the residents of such districts" (RB). The Board finds the addition of the antennas and associated equipment, as conditioned, will neither negatively affect the local commercial uses, nor the medium density character of the residences in the area.



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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 penthouse façades as conditioned would not have a negative affect on the surrounding neighborhood or detract from the appearance of the building due to the height of the building and the setback of the central penthouse and the proposed cabinet which at minimum are 15 ft from the building edge and typically not seen from the street. On the side penthouses, two of the antennas that would be visible from the street are replacing existing antennas and any difference in appearance would be minimal. The third antenna has been relocated by the applicant after discussions with staff to a location below the penthouse roofline and off the northern façade to reduce any visual effect.

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 has a 70' high roof top with a 3' parapet, which creates an 73' high roofline. The central penthouse extends 16 ft above the roof, 13 ft above the roofline of the building. Plans show antennas at a height of 85 ft, 2 ft above the 10 ft guideline in the SZO. After discussions with Staff the applicant submitted a letter from the RF Engineer that stated that the antennas could be at a height of 83 ft which would comply with height guidelines.
- b) *Proximity of facility to residential structures and residential zoning districts:* The building at 15 Weston Avenue is a residential structure in both Neighborhood Business and Residence B districts. Other residential structures directly abut this property. The Board finds that several



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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 use in nature and, the Board finds, compatible with the proposed use.
- d) *Surrounding topography and prominence of proposed facility:* The surrounding area is relatively flat and there are no other buildings of comparable height or prominence in the surrounding area. Though the proposed rooftop antennas are visible from several vantage points, the proposal to match them to the color of the building, and the condition to raise them above the roof line, will reduce their prominence from any public way.
- e) *Surrounding tree cover and foliage:* The surrounding area includes a park and has several street trees that are significantly lower in height than the proposed antennas and will be unaffected by this proposal.
- 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:* (See figures B and C)
- j) *Availability of suitable existing towers, poles, other structures, or alternative technologies, as discussed in Section 14.5.2:* This site was chosen due to the existing use of the property for wireless communications use, the city's preference for use of city-owned properties for wireless communications sites, and the location and overall height of the property, which provides the opportunity for reasonable service coverage in this area of Somerville.



DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans, Scott Darling and Elaine Severino with Herbert Foster recused. 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	<p>Approval is for the installation of three (3) 42in by 12in façade-mounted panel-style antennas, four (4) 12in diameter back haul antennas, one (1) GPS antenna, one (1) roof top mounted equipment cabinet and 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>10/29/2009</td><td>Initial application, submitted to the City Clerk's Office.</td></tr><tr><td>12/2009 (5/4/2010)</td><td>photograph simulations</td></tr><tr><td>4/14/2010 (5/4/2010)</td><td>Plans and elevations submitted to OSPCD. (T1, G1, C1, A1-5, E1, S1)</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	10/29/2009	Initial application, submitted to the City Clerk's Office.	12/2009 (5/4/2010)	photograph simulations	4/14/2010 (5/4/2010)	Plans and elevations submitted to OSPCD. (T1, G1, C1, A1-5, E1, S1)	Building permit	PLNG.	
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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</p>	Continued	BOH									



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	wireless telecommunications facility complies and continues to comply with the FCC guidelines and applicable state regulations 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.			
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.	Building permit	PLNG.	
7	The applicant shall camouflage and/or screen the antennas and equipment cabinet to be approved by Staff	Final signoff	PLNG.	
8	In accordance with the R.F. Engineer affidavit from 2/9/2010 no antennas shall be placed more than 10 ft above the roofline (at 83 ft on the elevation plans).	Final signoff	ISD	
9	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.	



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Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Acting Chairperson*
Richard Rossetti, *Acting Clerk*
T.F. Scott Darling, III, Esq.
Danielle Evans
Elaine Severino (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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