



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

MICHAEL F. GLAVIN
EXECUTIVE DIRECTOR

PLANNING DIVISION

ZONING BOARD OF APPEALS MEMBERS

HERBERT F. FOSTER, JR., *CHAIRMAN*
ORSOLA SUSAN FONTANO, *CLERK*
RICHARD ROSSETTI
DANIELLE EVANS
ELAINE SEVERINO
JOSH SAFDIE (ALT.)
BRANDY BROOKS (ALT.)

Case #: ZBA 2014-79
Site: 425 Broadway
Date of Decision: October 1, 2014
Decision: Petition Approved with Conditions
Date Filed with City Clerk: October 15, 2014

ZBA DECISION

Applicant Name:	New Cingular Wireless PCS, LLC
Applicant Address:	550 Cochituate Road, Suite #13 & 14, Framingham, MA 01701
Property Owner Name:	Summit, LLC
Property Owner Address:	54 Highland Avenue, Somerville, MA 02143
Agent Name:	Timothy Greene, TerraSearch
Agent Address:	157 Riverside Drive, Norwell, MA 02061

Legal Notice: Applicant, New Cingular Wireless PCS, LLC, and Owner, Summit, LLC, seeks Special Permit Approval (§5.1) under SZO §7.11.15.3 and §14 for the installation of a wireless communications facility consisting of antennas and related equipment and cables, §4.4.1 for the alteration of an existing nonconforming structure to relocate antennas and related equipment.

<u>Zoning District/Ward:</u>	RC zone/Ward 5
<u>Zoning Approval Sought:</u>	§5.1, §7.11.15.3, §14 & §4.4.1
<u>Date of Application:</u>	August 13, 2014
<u>Date(s) of Public Hearing:</u>	October 1, 2014
<u>Date of Decision:</u>	October 1, 2014
<u>Vote:</u>	5-0

Appeal #ZBA 2014-79 was opened before the Zoning Board of Appeals at Somerville City Hall on October 1, 2014. Notice of the Public Hearing was given to persons affected and was published and posted, all as required by M.G.L.



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

c. 40A, sec. 11 and the Somerville Zoning Ordinance. After one hearing of deliberation, the Zoning Board of Appeals took a vote.

DESCRIPTION:

New Cingular Wireless (ie AT&T) is proposing to add 3 additional panel antennas to existing sectors/antenna frames that face southwest, southeast and north on the building. There will be additional fiber, coax conduits, and related equipment. Additional electronic equipment will be located inside the existing equipment room. This installation will allow an increase in "4G" service in the area. The antennas will be visible from the Broadway corridor and the north side of Winter Hill.

FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1, §5.1, §7.11.15.3 and §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."

Per SZO §7.11.15.3 & §14 the installation of new wireless equipment in a Residential C zone requires a Special Permit. A Special Permit is required per SZO §4.4.1 for the alteration of an existing nonconforming structure since the existing antennae frame is within the 45 degree angle setback required for wireless installations.

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 minimal harm would be imposed upon the health, safety and welfare of the surrounding neighborhood. New Cingular Wireless PCS 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 top roof beam is 68' feet and the height to the top of the proposed antennas is approx. 77' feet (Centerline of antennas 74'), the height will match the existing antennas. This building is the tallest in the surrounding area and it sits on an area of high elevation as well making it an ideal site for coverage.
- b) *Proximity of facility to residential structures and residential zoning districts:* The building at 425 Broadway is a residential structure in Residence C district. Other residential structures directly abut this property. The Board finds that several companies currently have wireless communications equipment on this structure, as well as the nearby 391 Broadway. The increase in equipment will not be noticeable. This project would have much greater impact if installed at a location without existing equipment.
- c) *Nature of uses on adjacent and nearby properties:* The site is located in a Residence C district. The surrounding neighborhood is a mix of residential and commercial uses, though primarily residential.



The proposed installation will not generate any objectionable odor, fumes, glare, smoke, or dust nor require additional lighting or signage. Noise from the equipment will be minimal and should not be heard beyond the confines of the property where it will be placed. No increased traffic or hindrance to pedestrian movements will result from the proposed installation either. Furthermore, in connection with its FCC license, New Cingular Wireless PCS is prohibited from interfering with radio or television transmissions.

- d) *Surrounding topography and prominence of proposed facility:* The building is the tallest in the area and it sits on area of high elevation. This is why it is appealing to cellular companies. The proposed rooftop antennas are visible from several vantage points, but locating the antennas on existing frames will minimize the appearance. The antennas will match the existing antennas on the frames.
- e) *Surrounding tree cover and foliage:* The building upon which the proposed antennas will sit is taller than all trees in the surrounding area and therefore no interference is anticipated with regard to 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:* The antennas will be mounted to frames on the rooftop of the building and will be situated at the same height as the existing antennas on similar mounting frames. The antennas can also be painted any color desired to help camouflage them. All cabling will run along the surface of the roof and will not be visible. The electronic equipment will be located inside the existing equipment room. Façade mounting is not possible because there is not sufficient space to façade mount on the penthouse and there are large glass windows and a roof deck along the top story of the building leaving no space for mounting antennas.

The antennas will be located so that they are not more than ten feet above the roofline. One of the existing frames that will be reused is closer than ten feet from the roof edge and does not comply with the requirement for rooftop antennas to be setback below a 45 degree plane. Because this is an existing nonconforming situation, additional antennas can be added. In considering a special permit under §4.4, Staff find that the alterations proposed would not be substantially more detrimental to the neighborhood than the existing structure. The existing equipment on the roof creates limited roof area and the need to have antennas pointing in specific locations around the building dictated the current configuration. The new antennas are visible as shown in the photosimulations; but will not be noticeable to most passing by.

- g) *Location of tower, with particular reference to the existence of more suitable locations, as specified in Section 14.3:* The application is in compliance with this review criterion. The Applicant is proposing to locate the antennas on an existing wireless telecommunications facility at a co-location site. The other carriers at the site are Verizon and Clear Wireless LLC.
- h) *Proposed ingress and egress:* There is existing access to the roof and equipment on the roof via a ladder and hatch in the building. The building is accessible via Broadway.
- i) *Distance from existing facilities:* AT&T Operates at several other facilities in Somerville. The added equipment on an existing facility is better than installing a new base station.
- 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 need:* The site where the Applicant is proposing to install new antennas is currently operating as a wireless telecommunications facility.

3. Purpose of District: *The Applicant has to ensure that the project "is consistent with the intent of the specific zoning district as specified in Article 6".*

The Board finds that the proposal, as conditioned, is consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to promoting "the health, safety, and welfare of the inhabitants of the City of Somerville; to secure safety from fire, panic and other dangers to encourage the most appropriate use of land throughout the City; and to preserve and increase the amenities of the municipality."

The Board also finds that the proposal, as conditioned, is consistent with the purposes established for the Residence C (RC) district in which the property is located, namely, "[t]o 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 not negatively impact the local neighborhood uses in the area.

Furthermore, the Board finds that the proposal, 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 surrounding neighborhood is a mix of residential and commercial uses, though primarily residential. The subject property is approximately 1,200 feet east of Magoun Square.

The Board finds the project and the way the equipment is designed to be compatible with the surrounding area and the appearance of other carriers' antennas on the roof. The antennas will be mounted to existing frames on the rooftop of the building. The antennas, as conditioned, will be painted to match the existing antennas. The electronic equipment will be located inside the interior existing equipment room located on the first floor of the building. Photo simulations were taken from a variety of locations in the neighborhood and they indicate there will be limited impact of the installation on the surrounding neighborhood.



5. 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 proposed installation will not generate any glare, light, smoke, dust, or vibrations nor will it emit any noxious or hazardous materials or substances. Noise from the equipment will be minimal and should not be heard beyond the confines of the property where it will be placed. The proposed installation will be located on an existing building and therefore no pollution of waterways or ground water will occur. Additionally, the proposed installation will not be tied into any public sewer or private wastewater disposal system. In connection with its FCC license, New Cingular Wireless PCS is prohibited from interfering with radio or television transmissions and furthermore, these transmissions function at different frequencies than those licensed to New Cingular Wireless PCS for the proposed telecommunications equipment.

6. Housing Impact: *Will not create adverse impacts on the stock of existing affordable housing.*

There will be no changes to existing affordable housing.

6. SomerVision Plan: *Complies with the applicable goals, policies and actions of the SomerVision plan, including the following, as appropriate: Preserve and enhance the character of Somerville's neighborhoods, transform key opportunity areas, preserve and expand an integrated, balanced mix of safe, affordable and environmentally sound rental and homeownership units for households of all sizes and types from diverse social and economic groups; and, make Somerville a regional employment center with a mix of diverse and high-quality jobs. The areas in the SomerVision map that are designated as enhance and transform should most significantly contribute towards the SomerVision goals that are outlined in the table below. The areas marked as conserve are not expected to greatly increase the figures in the table since these areas are not intended for large scale change.*

This project does not contribute to the goals and policies of SomerVision, however, wireless communication is a 'need' of most at this point in time.



DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Evans and Elaine Severino with Josh Safdie and Brandy Brooks absent. Upon making the above findings, Susan Fontano made a motion to approve the request for a Special Permit. Richard Rossetti 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 a wireless communications facility under SZO §7.11.15.3 and SZO §14 consisting of three panel antennas and related equipment and cables. This approval is based upon the following application materials and the plans submitted by the Applicant:</p> <table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>August 13, 2014</td> <td>Initial application, submitted to the City Clerk’s Office</td> </tr> <tr> <td>May 16, 2014</td> <td>Photo simulations submitted with application</td> </tr> <tr> <td>December 20, 2013</td> <td>Plans (Title Sheet, Gen Notes, Compound & Equipment Pl, Antenna Plan & Elev, Antenna Layout, Details, Mounting Details)</td> </tr> </tbody> </table> <p>Any changes to the approved site plan, photograph simulations, and/or elevations that are not <i>de minimis</i> must receive SPGA approval.</p>	Date (Stamp Date)	Submission	August 13, 2014	Initial application, submitted to the City Clerk’s Office	May 16, 2014	Photo simulations submitted with application	December 20, 2013	Plans (Title Sheet, Gen Notes, Compound & Equipment Pl, Antenna Plan & Elev, Antenna Layout, Details, Mounting Details)	BP	Plng.	
Date (Stamp Date)	Submission											
August 13, 2014	Initial application, submitted to the City Clerk’s Office											
May 16, 2014	Photo simulations submitted with application											
December 20, 2013	Plans (Title Sheet, Gen Notes, Compound & Equipment Pl, Antenna Plan & Elev, Antenna Layout, Details, Mounting Details)											
2	The antennas shall be painted to match the existing antennas on the same antennae frame to which they are 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.	Continued	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)	Continued	BOH									



	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.			
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.	Continued	ISD	
6	The applicant shall remove any of that carrier's unused or non-operating wireless equipment prior to installation.	BP	Plng.	
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	
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
Danielle Evans
Elaine Severino

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 _____

