



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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PLANNING DIVISION

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Case #: ZBA # 2012-75
Site: 94 Beacon Street
Date of Decision: October 17, 2012
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: October 23, 2012

ZBA DECISION

Applicant Name:	Sprint Spectrum
Applicant Address:	9 Crosby Drive, Bedford, MA 01730
Property Owner Name:	Beacon Place Condominium Trust
Property Owner Address:	94 Beacon Street, Somerville, MA 02143
Agent Name:	Adam Brailard, Prince Lobel Tye, LLP
Agent Address:	100 Cambridge Street, Suite 2200, Boston, MA 02114

<u>Legal Notice:</u>	Applicant, Sprint Spectrum, and Owner, Beacon Place Condominium Trust, seek a Special Permit under SZO §7.11.15.3 and SZO §14 for the installation of wireless communications equipment consisting of the replacement of three existing antennas and related equipment and cables including one GPS antenna and two equipment cabinets.
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<u>Zoning District/Ward:</u>	RC zone/Ward 2
<u>Zoning Approval Sought:</u>	§7.11.15.3 & §14
<u>Date of Application:</u>	September 7, 2012
<u>Date(s) of Public Hearing:</u>	October 17, 2012
<u>Date of Decision:</u>	October 17, 2012
<u>Vote:</u>	5-0

Appeal #ZBA 2012-75 was opened before the Zoning Board of Appeals at Somerville City Hall on October 17, 2012. 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.



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143
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DESCRIPTION:

The Applicant proposes to modify the existing wireless communication facility by removing three CDMA antennas and installing three panel antennas and six remote radio heads in their place. The panel antennas will be six feet in length and almost one foot in width. One new antenna and two remote radio heads will be mounted to the exterior of the northern penthouse and face Smith Avenue, near the existing CDMA antenna. Another new antenna and two remote radio heads will be mounted to the southern façade of the central penthouse, near the existing CDMA antenna located on the eastern façade of the central penthouse. The last antenna and two remote radio heads will also be mounted to the central penthouse, but on the western façade. All CDMA antennas will be decommissioned once the panel antennas are on-air. Additionally, two new equipment cabinets will replace two existing cabinets located on the raised equipment platform near the center of the rooftop. The GPS antenna, also located on this platform, will be replaced with a newer model as an additional component of this proposal.

FINDINGS FOR SPECIAL PERMIT (SZO §5.1 & §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 find 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."

In considering 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 communications facilities so as to allow and encourage 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. Sprint Spectrum is a licensed company that is required to comply with all state and federal regulations.

Review Criteria for Telecommunications Facilities:

- a) *Height of proposed facility:* The building is nine stories in height and contains 64 units. This building is the tallest in the immediate area, but there are other buildings along Beacon Street that also have more than four stories, such as the adjacent apartment building.
- b) *Proximity of facility to residential structures and residential zoning districts:* The property is located in a Residence C district and the structure itself is residential. The surrounding neighborhood is predominantly residential; however, Beacon Street has multiple retail and restaurant uses and directly connects Somerville with Cambridge. Although the location of this wireless facility is on a residential building, the facility has existed for a decade and other wireless carriers also have a facility on this rooftop.
- c) *Nature of uses on adjacent and nearby properties:* The subject property is located within a Residence C district. The surrounding neighborhood is predominantly multi-family residential units, though Beacon Street does offer other uses such as restaurant and retail and Cambridge hospital buildings are also nearby. The proposed antenna and equipment cabinet upgrades 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 on the street or sidewalk below. No increased traffic or hindrance to pedestrian movements will result from the proposed installation either. Furthermore, in connection with its FCC license, Sprint is prohibited from interfering with radio or television transmissions.



- d) *Surrounding topography and prominence of proposed facility:* Beacon Street is a residential corridor that extends northwest between Cambridge and Somerville without an incline. As the landscape is flat, the height of the subject building is prominent but there are other buildings in the immediate area that are also more than four stories in height.
- e) *Surrounding tree cover and foliage:* The building is considerably taller than the trees within the immediate neighborhood around the subject property; therefore, the trees will be unaffected by the proposed changes to the cellular equipment.
- 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:* Guidelines of Article 14 of the SZO state that antennas should be situated on a structure in the least obtrusive location feasible, should be located at a minimum of 10 feet from the roof edge, and shall be setback below a forty-five degree plane, beginning at the cornice of the building.

Of the three antennas proposed to be replaced, one antenna is located less than 10 feet from a roof edge; however, this location is consistent with the location of the previous antenna. The proposed antennas and equipment cabinets are of similar size and appearance to the existing. The antennas will not exceed the height of the penthouses to which they are mounted.

- 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 update the antennas on an existing wireless telecommunications facility within a Residence C district. The height of the building at this site makes it an attractive location for wireless installations. The antennas will remain minimally visible from certain vantage points around the building, due to the height of the building, and will not protrude above the roofline of the shelters.
- h) *Proposed ingress and egress:* There is access to the roof through the central penthouse. The ingress and egress to the site will not be impacted by the proposal.
- i) *Distance from existing facilities:* This proposal requests to update an existing wireless facility, not establish a new facility within the neighborhood. There are six Sprint Spectrum wireless communication facilities within the City (see map). The subject property is the southern most facility in the City and the nearest facility to the subject property exists at 114 Highland Avenue, near School Street.
- j) *Availability of suitable existing towers, poles, other structures, or alternative technologies, as discussed in Section 14.5.2., which 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 proposes to replace three antennas currently operates as a wireless telecommunications facility.

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 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 provide for and maintain the uniquely integrated structure of uses in the City; to protect health; to encourage the most appropriate use of land throughout the City; and to preserve and increase the amenities of the municipality."

The proposal is consistent with the purpose of the Residence C district, SZO §6.1.3, which is, "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."



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."

Staff finds the proposal and design of the equipment to be compatible with the surrounding neighborhood and the uses therein. The replacement antennas will not be more visible than they are currently, and each antenna will be painted to match the exterior to which it is mounted. Two replacement equipment cabinets and a GPS antenna will be located in the center of the rooftop and, therefore, will not be visible from the ground below. Photo simulations from four locations within the neighborhood illustrate that the replacement antennas will have a limited impact on the surrounding neighborhood.

5. Adverse 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 the replacement equipment 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 rooftop 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.



DECISION:

Present and sitting were Members Herbert Foster, Orsola Susan Fontano, Richard Rossetti, Danielle Evans and Josh Safdie. 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 a Special Permit under SZO §7.11.15.3 and SZO §14 for the installation and upgrade of and wireless communications equipment consisting of the replacement of three existing antennas and related equipment and cables including one GPS antenna and two equipment cabinets. 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>(September 7, 2012)</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>August 6, 2011 (September 12, 2012)</td> <td>Modified plans submitted to OSPCD (T-1, GN-1, GN-2, C-1, A-1, A-2, A-3, A-4, S-1, E-1, E-2, & E-3)</td> </tr> <tr> <td>(October 11, 2012)</td> <td>Photo simulations submitted to OSPCD (Sheets 1-8)</td> </tr> </tbody> </table> <p>Any changes to the approved site plan or elevations that are not <i>de minimis</i> must receive SPGA approval;</p>	Date (Stamp Date)	Submission	(September 7, 2012)	Initial application submitted to the City Clerk's Office	August 6, 2011 (September 12, 2012)	Modified plans submitted to OSPCD (T-1, GN-1, GN-2, C-1, A-1, A-2, A-3, A-4, S-1, E-1, E-2, & E-3)	(October 11, 2012)	Photo simulations submitted to OSPCD (Sheets 1-8)	BP/CO	ISD/PIng.	
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2	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements;	CO	FP									
3	All antennas and related equipment must be painted, or repainted if necessary, to match, as closely as possible, the surrounding colors and materials of the building;	CO	FP									



4	<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 Division, 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;</p>			
5	<p>Compliance with Federal Communications Commission Guidelines for Human Exposure to Electromagnetic Fields. 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>		Health Dept	
6	<p>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. Failure to remove may result in a fine or penalty;</p>	CONT.	ISD	
7	<p>The applicant shall remove any of that carrier's unused or non-operating wireless equipment prior to installation;</p>	Signoff	Plng.	
8	<p>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.</p>	Final sign off	Plng.	



Attest, by the Zoning Board of Appeals:

Herbert Foster, *Chairman*
Orsola Susan Fontano, *Clerk*
Richard Rossetti
Danielle Evans
Josh Safdie (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 _____

