

TOWN OF WELLESLEY



MASSACHUSETTS

ZONING BOARD OF APPEALS

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ZBA 2001-13
Petition of Sprint Spectrum LP
80 Oak Street (Italo-American Club)

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, March 29, 2001 at 7:30 p.m. in the Great Hall at the Town Hall, 525 Washington Street, Wellesley on the petition of SPRINT SPECTRUM LP requesting a Special Permit pursuant to the provisions of Section XXII-C and Section XXV of the Zoning Bylaw to allow the installation of an 80 foot flagpole with a subsurface foundation, containing antennas to provide digital telephone service, which will exceed the allowed height of 45 feet, on the premises at 80 OAK STREET (ITALO-AMERICAN CLUB), in a Single Residence District. Seven equipment cabinets and associated landscaping and fencing will be provided.

On March 12, 2001, the petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

Public Hearing – March 29, 2001

Sprint Presentation

Presenting the case at the hearing was William O'Brien, counsel for Sprint Spectrum, who said that Sprint is proposing to construct an 80 foot monopole, a personal wireless communications facility, at 80 Oak Street, at the rear of the parking lot area. Mr. O'Brien introduced Timothy Greene from TerraSearch, which provides real estate zoning construction management services for Sprint, to describe the project. Mr. Shabali, a Radio Frequency Engineer, and Dr. William McCarthy, a Health Physicist from MIT, were also present. Mr. O'Brien stated that under Federal law, the Board may not consider health effects.

Mr. Greene said that the flagpole with halyard will be located at the back corner of the premises outside of the fenced area. Within the fenced area, there will be seven equipment cabinets. Each cabinet will have a height of 60 inches, a width of 30 inches and a depth of 30 inches. Surrounding the fenced area will be plantings such as arborvitae to shield it from view. The equipment will not be visible from the Club.

The flagpole is 80 feet tall. Inside the pole, there will be 3 sets of antenna arrays. Two sets will be for Sprint use and one will be left for a co-locator. The pole will be 18 inches at the top; about 29 inches at the bottom and set into a concrete foundation.

The equipment will provide personal communication services for Sprint. Using a site map of Route 9, Mr. Greene said that at present, Sprint has no coverage along Route 9. They have a site at Mass Bay

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ZBA 2001-13
Petition of Sprint Spectrum LP
80 Oak Street (Italo-American Club)

Community College at 87 feet. The Oak Street site would provide coverage from Mass Bay to the Wellesley/Natick line. At 80 feet, which is the minimum height that is usable, they would be able to link up to the Mass Bay site.

The Board asked if Sprint had looked at any other sites on which to locate other than the Oak Street site. Mr. Greene said there are no other structures in the area which would provide the needed coverage. They had looked at a field and a school nearby, but both sites were eliminated. They had not approached any other land owners in this particular area.

The Board requested a map showing the approximate area in which Sprint would have to locate a tower in order to achieve its objectives.

The Board asked if this was a high gain directional antenna. Mr. Shabili said it was a directional antenna with two antennae pointing east and west on Route 9, and the third antenna pointing south.

The Board asked what the effective radiating power in watts was for each antenna, and what the designed total transmitting power was for the entire installation, as well as the radio frequency plane wave power density. None of this information had been included in the submission.

The Board asked about the contents of the cabinets, and if they contained fans. Mr. Greene said the cabinets would contain transmitter equipment; electronic gear that is backed up by a battery in one of the cabinets. There are no generators. There are 6 small fans for ventilation which run continuously at a level of 45 decibels at 5 feet. He had a sound study performed at the site, which measured sound levels at the property line at 21 decibels. The Board asked him to submit this study, noting that according to State regulations the noise level could not exceed 43 decibels at the property boundary.

The Board noted that the submission contains a vague statement regarding assistance to health and medical personnel, and questioned its meaning. Mr. Greene said that ambulance companies and hospice nurses use the Sprint PCS service, but there is no special installation to service them.

The Board questioned the meaning of a statement that "failure to complete the build-out by a predetermined date will result in sanctions issued by the FCC". Mr. O'Brien said that under FCC guidelines, Sprint would have to reach one-third penetration of the Boston Metropolitan area market within 5 years of the grant of its license, which was issued in 1996. He was unaware of the present percentage, but was sure it was below 33%. Furthermore, he stated that the FCC mandates that seamless and ubiquitous coverage must occur.

The Board asked if Sprint had considered co-location opportunities prior to selecting the Oak Street site; and if other providers have covered the Route 9 Sprint gap. Mr. O'Brien said there were no co-location sites, and he was not aware of the coverage situations of other providers.

The Board asked if Mr. Greene had pictures of similar installations, or had done a visual impact study of the proposed installation. Mr. Greene said they had a visual impact study, which was not available at the time of submission, a noise impact study and a real estate report. He then submitted copies of the visual impact study and said the other two reports will be submitted at a later date. For the "Viewshed Analysis", he explained they flew a red 13 foot blimp at a height of 80 feet at the location of the proposed

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ZBA 2001-13
Petition of Sprint Spectrum LP
80 Oak Street (Italo-American Club)

flagpole on February 2, 2001 when the wind was 5-6 miles per hour. All photos were taken from eye level 5 feet above the ground. No pictures were taken from the Sprague School site or from the fields. The Board requested that these pictures be taken and submitted, as well as photographs of similar poles in other locations.

The Board asked what type of power Sprint would bring to the site. Mr. Greene said they were adding 400 amp service. The power to the site will come from the club building. The service will be upgraded from a 3 phase 400 amp service to 800 amp 3 phase service. Sprint will remove the existing underground lines connected to Utility Pole 6 and replace them with lines capable of handling 800 amps.

Mr. Gavoni, construction engineer from TerraSearch, explained how the noise study was done. The tester used a sound level meter to measure background noise at the site. They then calculated what the additional equipment noise would be. The proposed fence and shrubbery were not considered in the calculations. Without the fence or shrubbery, the decibel level was 21 at the boundary lines.

The Board asked how large were the cells mentioned in the submittal. Mr. Greene said the coverage is about a mile radius.

The Board said the submission stated that commercial properties within the surrounding designated area had been investigated, and asked what they were. Mr. Greene said they had conducted an investigation for any commercial properties in the area, and concluded there were none in which they wanted to place the monopole. They investigated the Wellness Center on Route 9 and as far west as the Mobil Station. The Board requested that Sprint submit a comprehensive assessment of the properties investigated in the area.

The Board commented that one submitted plan showed the pole in the parking lot, while another showed the pole at the other end of the property. The plans have no dimensions; one drawing has no seal; the entire fence has not been shown; and there is no information regarding the structural viability of the subsurface foundation. The Board cannot approve a project for which adequate and correct information has not been submitted. The Board also requested pictures of similar fenced installations.

The Board noted that Sprint has stated that the equipment cabinets could not be seen from the second floor of the Italo-American Club. Mr. Greene said the cabinets may be able to be seen from that location. The Board asked if the neighbors would see them. Mr. Greene said he didn't think so. The Board requested a topographical plan for the site and the surrounding area.

After discussion, the Board was of the opinion that the flagpole and the "dog house" attachment should be within the fenced area. Mr. Gavoni said that would not be a problem.

In response to questions regarding the equipment, Mr. Gavoni said the cabinets are placed on 14 inch piers so that they will be higher than a snowfall. The power cabinet will contain all 6 fans, each of which has a 2.5 inch diameter. There will be two sets of flood lights at a height of 15 feet, which will be set on motion detectors and will point in towards the compound.

The Board asked where the photographs were taken because the flagpole appears to be in a different location than the one on the revised plan. Mr. Greene said they were taken from the parking lot location, not the amended location. The Board requested pictures taken from the revised location, the Sprague

ZBA 2001-13
Petition of Sprint Spectrum LP
80 Oak Street (Italo-American Club)

Building and the fields, as well as pictures of actual sites including the flagpole and equipment cabinets. Dimensions of the poles should be included.

The Board asked Sprint to submit a copy of its FCC license. The Board expressed its opinion that the petitioner needs more time to supply the information the Board has requested.

Citizen Comment

Paul Cremonini, School Street, said the neighborhood has reviewed the submission and has a presentation for the Board, but would appreciate the additional time to improve the presentation.

Larry Kaplan, 8 High Meadow Circle, asked the Board to consider the health issues related to the facility. The Board explained that Federal law preempts discussion on health issues. As part of the licensing process, the FCC reviews the health issues according to its standards. However, the Board does have a right to information regarding the power levels.

Diana Warren, Chairman of the Wayland Planning Board's Wireless Bylaw Committee, said the Board had sufficient information before it to deny the petition. She added that Mr. O'Brien was incorrect in stating that seamless coverage is mandated by the FCC and requested that he furnish a citation in support of his statement.

Phil Barodecki, 36 Summit Road, asked if the Board would request Sprint to provide documentation regarding the selection of the site. The Board stated that is part of the petitioner's burden pursuant to the Zoning Bylaw. Information is also lacking in the submission in regard to the seven Special Permit Standards contained in Section XXV-D.

Laurie Whitely, School Committee Chairman, asked if Sprint was aware that an elementary school with 300-400 students will be located across the street from the proposed monopole, and asked if Sprint had any current monopoles close to public school sites.

Katherine Woodward, 89 Oak Street, requested that counsel provide citations regarding the "sanctions" he mentioned. She also questioned how other carriers are providing more than adequate service for cell phone users without the need for additional towers.

The Board voted unanimously to continue the Public Hearing to May 10, 2001 at 7:30 p.m.

On April 9, 2001, the Board requested Sprint to submit information and/or plans on 17 items. On April 26 and 27, 2001, responses to 14 of the 17 items were received. Although the first submission included information addressing Section XXII-D. Special Use Permit Standards in the Wellesley Zoning Bylaw, further amplification was requested but not received.

On May 9, 2001, the sitting members of the Board of Appeals met with Mr. Greene to do a site visit to the Sprint 65 foot monopole installation adjacent to the Wellesley College Water Tower.

ZBA 2001-13
Petition of Sprint Spectrum LP
80 Oak Street (Italo-American Club)

Public Hearing – May 10, 2001

Pursuant to due notice given by mailing and publication on April 26, 2001, the Chairman opened the continued hearing on May 10, 2001 at 7:30 p.m. in the Great Hall at the Town Hall and outlined the format of the hearing.

The Board outlined the regulations governing the Board's decision, including the Federal Telecommunications Act, the Mass. Zoning Enabling Act, and the Wellesley Zoning Bylaw, Sections XXII-C and XXV.

Neighborhood Presentation

Paul Cremonini, 396 School Street: Mr. Cremonini said that he is an Italo Club member, but opposes the petition. The Club directors signed a 25 year lease with Sprint, subject to grant of the Special Permit by the Board of Appeals, but without the general consent of the membership.

The Sprint application is not in keeping with the Wellesley Comprehensive Plan of 1994. Section II. Land Use, Goal 5 states that Wellesley is a primarily residential town, and that it is the Town's responsibility to safeguard residential neighborhoods from encroachment by incompatible uses and other potentially damaging environmental influences. The grant of a Special Permit to Sprint would violate the vision of the Town.

Kathleen Woodward, 98 Oak Street: Ms. Woodward addressed the application of the Wellesley Zoning Bylaw to the Sprint petition. The Federal Telecommunications Act explicitly states that it "Preserves Local Zoning Authority. Specifically, the Act provides that, with narrow exceptions,

"nothing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction and modification of personal wireless service facilities."

Thus, the Wellesley Zoning Bylaw remains the primary controlling law with respect to the proposed cell tower. Section XXV-A of the Zoning Bylaw provides that "Special Permits may be granted only for uses which are in harmony with the general purpose and intent of this Zoning Bylaw..."

With respect of Section II. Single Residence Districts, the by-right uses are, with limited exceptions, noncommercial in use. The general purpose and intent of the Zoning Bylaw is to conserve the value of land and buildings..., and to encourage the most appropriate use of land throughout the Town.

The cell tower with a fenced electrical installation across from an elementary school is not a use in harmony with a residential neighborhood as the site would pose safety concerns, would be aesthetically in conflict with the surroundings, and is not compatible with the existing natural and man-made features of the site and with the characteristics as required under Special Use Permit Standard 4 of the Zoning Bylaw.

Furthermore, according to Section XXII-C. Antennas in the Zoning Bylaw, the applicant has failed to show that the tower is essential at that location and that no alternative is workable. Sprint has also failed to show that the tower will not adversely impact property materially, as Sprint's own real estate study

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ZBA 2001-13
Petition of Sprint Spectrum LP
80 Oak Street (Italo-American Club)

showed that houses in a neighborhood with a cell tower sold for 7.5% less on the average than houses in a similar neighborhood with no tower.

Sean Milano, 98 Oak Street: Mr. Milano addressed the relationship of Sprint's petition to the Telecommunications Act (TCA) of 1996. Under the TCA, the Board of Appeals has the power to consider the appropriateness of the location of a proposed tower based upon traditional zoning considerations including land use, aesthetics and safety.

Under the TCA, local regulation may not unreasonably discriminate among providers of functionally equivalent wireless services. Wellesley has not discriminated against Sprint, as Sprint currently has three antenna facilities in the town. Furthermore, the Board may make a distinction between residential and nonresidential zoning when considering applications for telecommunications antennas.

Under the TCA, local regulation may not prohibit or have the effect of prohibiting the provision of personal wireless services. There are at least 15 telecommunications antennas in Wellesley of which three are owned by Sprint. Sprint has not produced evidence that there is a significant gap in coverage in Wellesley that cannot be closed using less intrusive means than siting an 80 foot antenna in the middle of a residential neighborhood and across the street from a school.

Robert Murphy, 11 Lilac Circle: Mr. Murphy addressed the impact of towers on real estate values using the report done for Sprint by Shepherd Associates Real Estate Appraisal and Consulting Services as a data base.

In the Wellesley analysis, Shepherd concluded that there was no meaningful difference between the sales of homes with a tower view and those with no view. Shepherd chose 5 sites that could see the "tower", which is actually the 1,000 foot WHDH/WBZ radio tower adjacent to Route 128 in Needham. The sites are in a tight cluster about .2 mile from the tower. The 6 sites that cannot see the tower are located between 2.5 and 3.75 miles from the tower. All 11 sites are raised ranches and were sold between 1996-7. Since that time, the 5 homes able to see the tower have values that increased by 63%. The values of the group that cannot see the tower have increased by 99%, which is a significant difference.

In the Ashland section of the Shepherd study, there is an error in the computations. The "Average Value" for the properties from which the tower is visible is substantially lower than listed in the report. It is \$119 per square foot, not \$132 per square foot. The value for the buildings that cannot see the tower is listed at \$128 per square foot. The report indicates there is some sort of increased value in being able to see the tower, when there is actually a 10.49% swing between tower and non-tower sites.

Brokers will have to disclose the presence of the tower to prospective buyers, which, as demonstrated, will result in a reduction of real estate values.

Chris Terry, 35 Crown Ridge Road: Mr. Terry addressed the coverage of other telecommunications providers in Wellesley in comparison to Sprint's coverage. Using cell phones as if to make a call, he took readings on the signal strength at 24 intersections within a described area along and to the south of Route 9 of Cingular, Verizon, Voicestream (formerly Omnipoint), AT&T and Sprint on a range from 0 (no service) to 4 (maximum service).

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ZBA 2001-13
Petition of Sprint Spectrum LP
80 Oak Street (Italo-American Club)

Using bar charts depicting the gathered information, Mr. Terry showed that Cingular had adequate coverage over the entire area. Cingular co-locates and is able to provide adequate coverage in town without owning or operating its own cell tower. Verizon and AT&T also have adequate coverage in the area. Voicestream had adequate coverage except at Route 9/Oak and Ivy/Pleasant, where the signal strength was marginal.

Sprint has more than adequate coverage throughout the whole area with the exception of Oak/Route 9 and Ivy Road, an area that extends for .2 mile and does not represent a significant weakness in their signal. Sprint is stating that the only solution is to place an 80 foot tower in the middle of a residential district.

Mr. Terry exhibited a map depicting the locations of the 3 Sprint sites at 36 Washington Street, Mass Bay Community College and Wellesley College, and said that the only reason Sprint has given for erecting the tower is to meet its coverage objectives for the Town of Wellesley and to enhance existing service. Sprint is not saying it does not have coverage in this area, as there is not a significant coverage gap. Under the Telecommunications Act, no provider has a right to "seamless" coverage in a town, which is Sprint's goal. Furthermore, if Sprint is successful in this residential neighborhood, other residential sites will be at risk, as the Board would find it difficult to deny other carriers what it has granted to Sprint.

There are less obtrusive ways to cover this insignificant .2 mile weakness in the Sprint signal by co-location or use of repeater technology. Sprint wants to create another tower to be able to expand the two acre site. The Italo Club will not be there forever, and if and when it is gone, Sprint will have a lien on the property through its 25 year lease, and will be able to further develop the site. All other carriers have managed to produce coverage in this area. Why does Sprint have this problem?

Sue Bell, 23 Ivy Road: Mrs. Bell summarized the neighborhood presentation, stating that the tower generates serious concerns and there is near unanimity in opposition which extends beyond the neighborhood. Over 350 Wellesley citizens have signed a petition requesting the Board to deny the petition.

Every other carrier has achieved coverage in the .2 mile Route 9 area without an 80 foot tower in a residential district. The tower would create a visual blight, and would be an attractive nuisance to the children attending the Sprague School across the street. Sprint's own real estate impact study indicates that cell towers have a material negative impact on adjacent property.

Public Comment

Hugh Kelly, 15 Sunset Road, said he is a licensed residential real estate appraiser, and took issue with the Shepherd report. The sales at 3 of the 5 the Wellesley tower locations took place in June, 1997, while the sales of the non-tower locations took place in 1996. According to Banker & Tradesman, there was a 9% increase in Wellesley property values between June, 1996 and June, 1997, which is not reflected in the report. It is odd that Shepherd took sales which were 4-5 years old for a report dated 2001.

Alan Lyman, owner of Century 21/Westward Homes, stated that the cell tower at 80 feet, to be disguised as a flagpole, would have to be disclosed to prospective buyers. This disclosure would impact values of adjacent properties.

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ZBA 2001-13
Petition of Sprint Spectrum LP
80 Oak Street (Italo-American Club)

Laurie Whitely, School Committee Chairman, said that in the design of the renovation and addition to the Sprague School, the town was careful to be respectful of the character of the neighborhood. The cell tower does not respect this character.

Kara Sullivan, 80 Prospect Street, said she will look right at the cell tower, and hoped the Board would not allow that to happen.

Larry Kaplan, 8 High Meadow Circle, said that families with children who are planning to move to Wellesley will not only avoid buying homes in the Italo Club area, they will avoid buying homes in the Sprague School district.

Larry Shind, Chairman of the Board of Selectmen, said that in discussing cell tower locations with his colleagues in other towns, the consensus was that cell towers were successful in industrial and commercial areas, as well as parkland areas where they could be disguised as trees, but not in residential areas, and urged the Board to deny the petition.

Sprint Presentation

Mr. O'Brien, Sprint counsel, introduced Timothy Greene and Steve Gavoni from TerraSearch, and Said Hussein and Dinesh Dasani, Radio Frequency Engineers.

The Board questioned the assessment of the electricity supply. Mr. Greene explained the plan to utilize the existing underground conduit systems from Pole 16 on Pleasant Street.

The Board questioned the inconsistency of the figures for Effective Radiated Power, as in the submission it was listed in one section as 1,171.88 watts/sector; in another as 783.6 watts/sector; and in the submission to the State Department of Public Health, as 200 watts/sector. Mr. Hussein said that originally Sprint used two antennas per sector, and now uses 4 antennas per sector. The first value is the correct one. There are 3 antennas at 76 feet and 3 at 70 feet with room for 3 more at 60 feet.

The Board stated that the Department of Public Health requires information as to the radio frequency power density at the nearest property boundary and the property boundary that would be most affected. Sprint was also asked to indicate the distance to the nearest location regularly occupied outside the property boundary. Sprint indicated that the nearest location was an "office", the Italo Club, which is within the property boundary. All buildings surrounding the property are residences. The submitted information is incorrect.

The Board stated that there are several typos in the calculations submitted. It appears that the radio frequency has been underestimated.

The Board was of the opinion that, as also presented by the neighborhood, there is an error in the Ashland sales data, where the average value of \$132.87 was actually the maximum value rather than the average value, and the real average value should be \$119.23, which significantly changes the conclusions.

Mr. Greene said they do not know what the true coverage of their competitors is in Wellesley, or what their coverage objectives are. At 20 feet, the Mobil site would not provide adequate coverage for Sprint.

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ZBA 2001-13
Petition of Sprint Spectrum LP
80 Oak Street (Italo-American Club)

The Board asked about the other sites Sprint investigated. Their report states that the Mobil Station on Route 9 was investigated, but would require installation of an 85 foot antenna. Since there are other carriers on the station roof at present, why would Sprint require an 85 foot pole.

The Board asked if Sprint had considered the Wellesley Motor Inn site. Mr. Gavoni said they are in negotiations with the owners. However, this would not provide the same coverage as the Italo Club site.

The Board commented that there appears to be a great overlap in Sprint's existing coverage, and that 60% of the area to be covered by the proposed flagpole is already covered. Mr. Gavoni agreed. The Board asked if they had considered 888 Worcester Street. Mr. Gavoni said they had not. The Board asked if Sprint had any statistics on the dropped calls on the Route 9 corridor. Mr. Greene said they did not. He added Sprint is also in negotiations with the Wellesley Office Park and have had discussions with St. James Church.

The Board asked how other carriers are able to close the gap that Sprint is attempting to close. Mr. Greene said they cannot comment on other carriers' coverage.

The Board asked if Sprint constructed the 80 foot tower, would the height be reduced without provision for a co-locator. Mr. Greene said it would not. The Board questioned why, if a co-locator had to come in at 60 feet, that height would not be sufficient for Sprint. Mr. Greene said it would not be adequate.

The Board asked if a co-locator would require another equipment area. Mr. Greene said it would be necessary. The area within the fencing was designed to provide space for another carrier. Some carriers use buildings and some use cabinets.

The Board stated that the proposed site of the pole and the circle for the fall zone are located on the plans by longitude and latitude rather than by feet and inches, which are the normal dimensional measurements used to locate structures on a site.

The Board commented that in studying the Viewshed analysis, supplemented by pictures taken by neighbors, the impacts from the Sprague fields were significant. This is an important viewshed for the Town. The pole would clearly dominate everything above the tree line and is quite visually prominent.

The Board stated that the submitted noise analysis did not provide sound data for the proposed installation. Additional information about sound emitted had been requested by the Board and was provided by Sprint before the hearing. The Mass Department of Environmental Protection has two guidelines: 1. If the sound exceeds the background noise level at either the property line or the nearest occupied residence by 10 decibels or more, that is considered a significant impact and could cause DEP to deny a permit. 2. The sound of one octave band cannot exceed the one next to it by 3 dB, which is a measure of how tonal the noise is.

Using the information Sprint submitted, and assuming 7 cabinets, which may be an under estimate due to cabinets and/or buildings required by a co-locator, the sound at the property boundary could be 49.9 dBA, and the sound at the nearest residence could be 46.6 dBA. The background noise found by Sprint was 33 dBA. Therefore, the 49.9 dBA exceeds that level by almost 17, and at the nearest residence by almost 13, which is significant, as the equipment would be audible at the nearest residence and could be annoying. It

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ZBA 2001-13
Petition of Sprint Spectrum LP
80 Oak Street (Italo-American Club)

certainly would be noticeable as the 13 dBA increment is greater than 5 decibels, which is usually the level at which sound is noticeable.

No person present spoke in favor of the petition.

The Chairman then closed the Public Hearing by a unanimous vote of the Board. The Board then reviewed the criteria to be addressed in its decision contained in Section XXII C. 3. and Section XXV D. of the Zoning Bylaw.

Statement of Facts

Sprint Spectrum currently has three antenna installations in Wellesley: a 65 foot monopole allowed by Special Permit (ZBA 97-40) adjacent to the water tower on the Wellesley College campus, and by-right installations at Mass Bay Community College and 36 Washington Street.

The subject premises for the location of the proposed 80 foot monopole is 80 Oak Street (the Italo-American Club), in a Single Residence District. The petitioner is requesting a Special Permit to allow the proposed monopole to exceed the allowed height of 45 feet, as the 80 foot height is the lowest height at which the petitioner states that the antenna can operate effectively. The premises are bounded by single family residences and across the street from the Sprague School, a new elementary school under construction, which will house 350 students with abutting playing fields.

The proposed monopole should have a fall zone of 85 feet from the nearest property boundary. The application states that this requirement has been met. However, as the submitted plan shows the monopole and the fall zone located by longitude and latitude rather than by feet and inches, there is no dimensional verification of this fact. The seven equipment cabinets, each cabinet to be 5 feet high, 2.5 feet wide and 2.5 feet deep, and the monopole, installed in a subsurface foundation, will be enclosed within 8 foot white PVC slat fencing. The proposed monopole will contain 3 antenna arrays at heights of 76 and 70 feet and a third at 60 feet will be available to a co-locator.

The original submission contained the following material: Application; Support Statements for Special Permit; Recommendation of Wellesley Design Review Board; PCS Agreement Between Italo-American Club and Sprint Spectrum and Sprint Spectrum Filing Under the National Environmental Policy Act.

The following plans were submitted: Site Plan (Z-1); Enlarged Site Plan and Elevation (Z-2); and Details (Z-3), all dated 3/01/01 and stamped by Edward W. Brown, Registered Professional Engineer. An unstamped Foundation Plan (F-1) dated 3/01/01, was also submitted.

Following the Board's request for supplementary material and plans on April 9, 2001, the following materials were submitted: Project Summary, Coverage Maps and RF Input, Real Estate Impact Study, Alternate Sites, Schools and Wireless Facilities/Wellesley, FCC License, Viewshed Analysis; Other Flagpoles; Pictures of Equipment and Fence; Technical Information on Equipment; DPH Filing; NEPA Supporting Documentation; Letter From Municipal Light Plant.

The following plans were also submitted: Plans Z-1 through Z-3 revised 4/05/01; and unstamped Foundation Plan (F-1) dated 4/05/01.

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2001 JUN -5 A 8:19

ZBA 2001-13
Petition of Sprint Spectrum LP
80 Oak Street (Italo-American Club)

Sixty-one letters and a petition signed by 350 Wellesley residents in opposition to the petition were received and are on file in the office of the Board of Appeals. Copies of materials used in the Neighborhood Presentation at the May 10, 2001 Public Hearing were also submitted.

On January 11, 2001, the Design Review Board reviewed the Sprint Spectrum proposal pursuant to the guideline enumerated in Section XXIIC-D-1 of the Zoning Bylaw, and recommended approval subject to the following recommendations:

1. The applicant shall plant 17 balsam firs no less than 9 feet high to suitably screen the base facility.
2. The applicant shall clean up unkempt areas around the facility and commit to further maintenance of the site.
3. The applicant will designate one off-street parking space for service vehicles.
4. The total sign area shall not exceed 4 square feet.
5. Electronic and telephone wiring to and from the facility shall be placed in the ground.
6. The applicant shall confirm that the satellite dish on the roof of the building has received required approval and permitting from the Town.
7. The applicant will demonstrate that the noise generated by the fans will not be injurious to public health, or disturbing to the residential abutters.

On March 20, 2001, the Planning Board reviewed the petition and had no objection to the request, but supported the recommendations of the Design Review Board. Furthermore, it was recommended that all wires be relocated underground; that, if possible, the overall height of the pole be reduced; and that all fencing be maintained in good repair as long as the facility is in place.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the two Public Hearings. The subject 80 foot monopole will exceed the allowed height limitation of 45 feet pursuant to Section XXIIC of the Zoning Bylaw, and thus requires a Special Permit for installation.

Section XXIIC. Antennas Part 3. Special Permit Provisions of the Zoning Bylaw allows the Special Permit Granting Authority to issue a Special Permit under the provisions of Section XXV. Special Permit Granting Authority for a free-standing device provided this Authority finds:

- “1. That the requested installation is essential to the proper functioning of the telecommunications services to be provided by the device at that location and that an alternative installation meeting the By-Right limitations of Part D. 2. is not workable; and
2. that the requested installation will not adversely impact adjacent property materially; and
3. in the case of a free-standing device, that the center point of the base of the monopole shall be set back from the property lines of the lot on which such device is located by a distance equal to the overall vertical height of the monopole and mounted device plus five feet...
4. that the report of the Design Review Board has been received and the installation and the special permit are consistent with that report under the guidelines established in Part D.1.”

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5. that the overall height does not exceed 45 feet unless the applicant demonstrates that a greater height is essential to the proper functioning of the telecommunications services to be provided by the device at that location and that an alternative installation meeting the requirements of this Section any less invasive is not workable; and

In regard to the aforesaid standards, the Special Permit Granting Authority (SPGA) makes the following findings:

1. Sprint has failed to prove that the requested installation of an 80 foot monopole is essential to the proper functioning of the telecommunications services to be provided by the device at that location, and that an alternative By-Right installation is not workable. The area Sprint is seeking to cover is a narrow corridor on Route 9, which is covered by other carriers without a monopole installation in a residential district. The Telecommunications Act does not mandate that a wireless service is entitled to "seamless and ubiquitous coverage".

Sprint has stated that a co-location at 60 feet on the proposed monopole would not provide adequate coverage for Sprint, although it might for other carriers, but Sprint has submitted no evidence as to why the height of the monopole must exceed the allowed 45 feet, nor has it submitted any evidence that viable by-right alternatives such as a roof top antenna on the Italo-American Club, or the use of repeater transformers would not supply adequate coverage.

Sprint currently has three antenna locations in Wellesley and is in negotiation with Wellesley Office Park, Wellesley Travel Inn and St. James Church, the latter two located in the Route 9 corridor.

2. The requested installation will adversely impact adjacent property materially.
 - a. The visual impact of the 80 foot monopole will be substantially detrimental to adjacent residential properties as it is taller and larger than any adjacent structure and aesthetically inconsistent with its surroundings. No house in Wellesley can exceed a height of 36 feet from average finished grade, which means that the monopole will be more than double the height of any structure in the neighborhood. There are several homes in the neighborhood which would have sight lines to both the monopole and the equipment yard, which will look like a small electrical substation, and which could expand should another carrier co-locate on the pole. At least 12 homes in the neighborhood will have direct view of the monopole. Furthermore, there is a negative visual impact from the Sprague School and its playing fields, which are an important public viewshed.

The Special Permit Granting Authority may make the distinction between residential and non-residential zoning when considering applications for telecommunications antennas. In the March 2000, Massachusetts Appeals Court decision, Building Commission of Franklin vs. Dispatch Communications (Nextel), the Court stated that the TCA "explicitly contemplates some discrimination among providers of functionally equivalent services is allowed. Any discrimination need only be reasonable. Local governments may reasonably take the location

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of the telecommunications tower into consideration in deciding whether...to approve an application for construction of wireless telecommunications facilities, even though this may result in discrimination between providers of functionally equivalent services. It is within the prerogatives of a local government to determine that a tower...is too imposing for a particular neighborhood.”

- b. The proposed monopole is in conflict with the following goals enumerated in the 1994 Wellesley Comprehensive Plan:
- II.2 Goal: Protect and enhance the aspects of Wellesley’s existing image and character...
 - II.3 Goal: Keep Wellesley a family-oriented town and a safe and attractive place to raise a family.
 - II.4 Goal: Retain the excellent qualities that the town now has while enhancing and improving its overall image and character.
 - II.5 Goal: Since Wellesley is primarily a residential town, safeguard residential neighborhoods from encroachment by incompatible uses and other potentially damaging environmental influences.
- c. The fenced area containing the monopole and 7 equipment cabinets will provide an attractive nuisance to the children attending the Sprague School across the street, many of whom will walk by the installation on their way to and from school.
- d. The noise impact on abutting residences will be adverse based on Mass. Department of Environmental guidelines, Policy No. 90-001, as outlined at the May 10, 2001 Public Hearing.
- e. There will be an adverse material impact on the real estates values of the homes within site of the monopole, which could extend to the entire area districted for attendance at the Sprague School.

Although the Shepherd report submitted by Sprint attempts to prove that there is no economic impact on homes within view of telecommunications installations, the report actually proves the opposite due to errors in calculations and out-of-date valuations. In Ashland, the difference in the selling price between comparable tower view homes and non-tower view homes was a negative 7.5%. In Wellesley, the current value of tower view homes is approximately 30% less than the non-tower view homes used in Shepherd’s report.

- f. Although the monopole will have a flagpole configuration, a real estate broker would have to disclose the actual use of the flagpole as a telecommunications facility. The common public perception that there is a possible danger in living or attending a school within a proximate distance of a telecommunications facility was supported by the neighborhood speakers at the hearings. This perception contributes to the negative material impact on real estate values within a single residence neighborhood in which a monopole is located.
3. Although Sprint claims that the center point of the base of the monopole is the required 85 feet from all property lines, neither the original nor revised site plans submitted show this measurement in feet and inches from the nearest property boundary.

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ZBA 2001-13
Petition of Sprint Spectrum LP
80 Oak Street (Italo-American Club)

4. Sprint has not demonstrated that an alternative installation meeting the requirements of this Section any less invasive is not workable.
- a. In Sprint's original submission, the statement was made that "TerraSearch investigated commercial properties within and immediately surrounding the designated area. This included properties on Linden Street as well as the Sprague School. Elevation, property setbacks, constructability, and overall blending with the surroundings made the Italo-American Club the desired location."

Sprint demonstrated no genuine effort or investigation regarding placement of its monopole in a less intrusive location with a less intrusive facility. Location on the properties on Linden Street would result in overlap with the existing 65 foot monopole at Wellesley College. Location on the Sprague School property would never be seriously entertained by the School Committee as evidenced by the Chairman's comments at the Public Hearing. There is no mention of investigation of potential sites or co-location possibilities in the commercially zoned areas along the Route 9 corridor, where the minimal coverage gap occurs.

In the second submission, Sprint lists the following sites as having been seriously investigated: the Mobil Station on Route 9, Newton Wellesley Alzheimer Clinic, and Diehl Lumber on Linden Street. Although there is currently at least one by-right antenna located on the roof of the Mobil Station, Sprint claims that it would require an 85 foot monopole to provide adequate coverage at this location, but does not give reasons why a by-right roof-top antenna would not suffice. The Alzheimer Clinic expressed no interest in Sprint's proposal, and the location at Diehl's, which Sprint claims would require an 115 foot monopole, is already covered by its Wellesley College monopole.

In its revised submission, Sprint makes no mention of negotiations being conducted with the Wellesley Office Park, St. James Church on Route 9 or the Wellesley Travel Inn on Route 9 with which they have a contract ready to be signed. This information was obtained at the May 10, 2001 Public Hearing through questions from the Board.

5. The report of the Design Review Board has been received and its recommendations included in the foregoing Statement of Facts.

Section XXV D. of the Zoning Bylaw states that

"The Special Permit Granting Authority may grant a special permit in accordance with this Section only if it finds that, in addition to all other conditions which may be required under this Zoning Bylaw, all of the following conditions are met: 1. Vehicular Circulation; 2. Driveways; Vehicle Queuing Lanes; 4. Compatibility with Surroundings; 5. Pedestrian Safety; 6. Noxious Uses; 7. Intensity of Use."

In regard to the Special Permit Standards, the Special Permit Granting Authority makes the following findings:

1. Vehicular Circulation – There will be no conditions that add to the traffic congestion or accident potential on the site, as there generally will be not more than one service vehicle per month entering the site.

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ZBA 2001-13
Petition of Sprint Spectrum LP
80 Oak Street (Italo-American Club)

2. Driveways – There are no new driveways involved with this petition; and the one vehicle per month will not create additional traffic congestion or accident potential on the site.
3. Vehicle Queuing Lanes – There will be no vehicle queuing lanes as a result of this project.
4. Compatibility with Surroundings – Although the Sprint submission states that “the installation of the facilities is particularly well suited, as it will be of stealth design and very unobtrusive to the public”, this Authority finds that the 80 foot flagpole for telecommunication purposes is not compatible with the existing natural and man-made features of the site or with the characteristics of the surrounding area. In an area of 36 foot high single family homes and a new elementary school for 350 children, an 80 foot flagpole and 7 equipment cabinets each measuring 5 feet by 2.5 feet by 2.5 feet within an eight foot white fenced area will be intrusive and incompatible with the characteristics of the neighborhood. The presence of a commercial installation of this nature is not compatible and cannot be made to be compatible with the characteristics of the surrounding area.
5. Pedestrian Safety – Pedestrian safety will not be compromised by the installation of a flagpole facility.
6. Noxious Uses – One of the noxious uses listed in Section XVI. Restrictions Affecting All Districts is “the causing of noise or vibrations”. Although the Sprint submission states that “there are no noxious uses”, noise calculations performed by the Board indicate that a significant noise impact could occur. Massachusetts Department of Environmental Protection Policy No. 90-001, dated February 1, 1990, states that a source will be considered to be violating the Department’s noise regulation (310 CMR 7.10) if the source:
 1. Increase the broadband sound level by more than 10 dBA above ambient, or
 2. Produces a “pure tone” condition – when any octave band center frequency sound pressure level exceeds the two adjacent center frequency sound pressure levels by 3 decibels or more.

These criteria are measured at the property line and at the nearest inhabited residence. Ambient is defined as the background A-weighted sound level that is exceeded 90% of the time measured during equipment operating hours. Sprint provided information showing that the lowest nighttime background sound level at the site is 33 dBA, and that each of the seven equipment cabinets is specified to emit no more than 75 dBA at a distance of five feet. Modeling performed by the Board, and in the record for this Decision, shows that resulting sound levels would be 49.9 dBA at the nearest property boundary and 46.6 dBA at the nearest inhabited residence. This would exceed Criterion No. 1, above, and be considered in violation of the State noise regulation.

7. Intensity of Use – The intensity of use relating to the number of vehicle trips, employees or visitors, parking spaces, amount of energy used or volume of liquid or solid waste produced is negligible.

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ZBA 2001-13
Petition of Sprint Spectrum LP
80 Oak Street (Italo-American Club)

The Telecommunications Act of 1996 expressly preserves local zoning authority over the placement, construction and modification of telecommunications antennas and towers. The Board has the power to consider the appropriateness of the location of a proposed tower or antenna based upon traditional zoning considerations including use, aesthetics and safety. The Zoning Bylaws remain the primary controlling law in regulating location of such towers. The Federal statute merely subjects the exercise of local zoning authority to the following limitations:

1. Local Regulation May Not Unreasonably Discriminate Among Providers.

It is the finding of this Board that Wellesley has not discriminated against the petitioner, Sprint Spectrum. Sprint Spectrum already has three antennas in Wellesley, and owns more antennas than Verizon and only one less than AT&T and Omnipoint, who each have three individual antennas and one shared antenna. Clearly, Wellesley has not discriminated against Sprint, and would not be doing so by denying its petition for a Special Permit.

2. Local Regulation May Not Prohibit or Have the Effect of Prohibiting the Provision of Personal Wireless Services.

It is the finding of this Board that Sprint has produced no evidence that there is a significant gap in coverage in Wellesley that cannot be closed by a less intrusive means than siting an 80 foot monopole in the middle of a residential neighborhood and across the street from an elementary school. In its submissions, Sprint did not demonstrate a serious effort attempt to find other locations for less intrusive devices, and, in fact, did not disclose until questioned at the May 10, 2001 Public Hearing, that it was in negotiations with the owners of three other sites.

3. Local Regulators Must Act Within a Reasonable Period of Time

It is the finding of this Board that it has acted expeditiously in scheduling the initial hearing, and agreed to Sprint's request for a continuance in order to submit additional material and revised plans.

4. All Decisions Denying a Request Must Be Supported by Substantial Evidence

It is the finding of this Board that this written decision contains the requisite substantial evidence contained in the written record, most of which is also included in this document. The United States Circuit Court of Appeals for the First Circuit, in the case Southwestern Bell Mobile Systems, Inc. v. Zoning Board of Appeals of Leicester, Massachusetts defined "substantial evidence" as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

Due to the failure of Sprint to meet four out of five of the standards pursuant to Section XXII C and the only two of the seven standards of Section XXV D. of the Zoning Bylaw which are relevant, for the reasons listed above, the Special Permit Granting Authority unanimously voted at the Public Hearing held on May 10, 2001 to deny the Special Permit requested by Sprint Spectrum LP. Therefore, this Special Permit is denied and the petition hereby dismissed.

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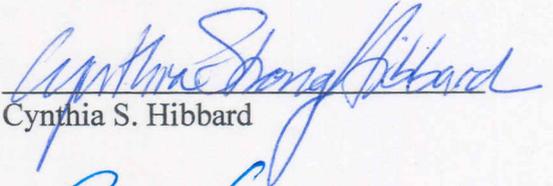
ZBA 2001-13
Petition of Sprint Spectrum LP
80 Oak Street (Italo-American Club)

APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN
THE OFFICE OF THE TOWN CLERK.

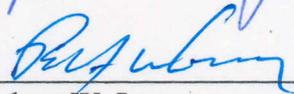
Cc: Planning Board
Inspector of Buildings
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Kendall P. Bates, Chairman



Cynthia S. Hibbard



Robert W. Levy

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