



TOWN OF HINGHAM

Board of Appeals

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NOTICE OF DECISION VARIANCE APPLICATION

IN THE MATTER OF:

Applicant: New Cingular Wireless, PCS LLC d/b/a AT&T Mobility
208 S Akard Street
Dallas, TX 75202

Property Owner: Town of Hingham
Hingham Select Board
210 Central Street
Hingham, MA 02043

Property: Utility pole within the public right of way near 44 Fort Hill Street

Title Reference: Not Applicable

Project Plans and Document

References: Project Drawings Prepared by Centerline Engineering Services, PA - Dated September 15, 2023 (4 Pages);
AT&T Coverage Maps (7 pages)
Itemization of Wireless Facilities
Reports of Radiation Safety Specialist Donald L. Haes, Jr., CHP, dated November 28, 2023 and January 17, 2023
AT&T Small Cell Noise Analysis, dated 12/15/2017
Radio Frequency Report, Proposed AT&T Small Cells – Hingham, MA, dated Dec. 15, 2023
Structural Analysis Report for CRAN_RCTB_00016_1009, Final version, dated October 26, 2022

SUMMARY OF PROCEEDINGS:

This matter came before the Board of Appeals (the "Board") on the application of New Cingular Wireless, PCS LLC d/b/a (the "Applicant") for a Variance from §V-E of the Zoning By-Law (the "By-Law"), and all other relief as necessary to install a small cell wireless facility on an existing utility pole in the public right of way, consisting of one top mounted antenna and associated electronic equipment, in the public right of way near 44 Fort Hill Street, located in Residence District A.

The Board opened a duly noticed public hearing on this application at a meeting held remotely on February 13, 2024, where the hearing was opened and continued to February 27, 2024. The hearing was held via Zoom as an alternate means of public access pursuant to Chapter 2 of the Acts of 2023 and all other applicable laws temporarily amending certain provisions of the Open Meeting Law. The Board panel consisted of regular members Robyn S. Maguire, Chair, Paul Healey, and Jed Ruccio. The Applicant was represented by Edward D. Pare, Jr., Counselor at Law of Brown Rudnick LLP.

At the conclusion of the hearing, the Board voted unanimously to grant the requested Variance from §V-E of the By-Law subject to the condition set forth below.

Throughout its deliberations, the Board was mindful of the statements of the Applicant and the comments of the general public, all as made or received at the public hearing.

BACKGROUND:

The applicant, New Cingular Wireless, PCS LLC d/b/a AT&T Mobility, and its Counsel, Edward D. Pare, Jr., Counselor of Law, have been working with the Town on these small cell installations over the past year. The utility pole location was approved under a Master License Agreement between the applicant and the Hingham Municipal Lighting Plant.

In its review of this application the Board took note of the requirements of the Telecommunications Act of 1996, the regulations promulgated thereunder, applicable orders of the Federal Communications Commission, and federal case law governing local review of wireless facilities. The Board's findings in the grant of this variance were informed by and modified in accordance with applicable federal law.

FINDINGS:

Based on the information submitted and presented during the review, and the deliberations and discussion of the Board during the meeting, the Board made the following findings as required under the Telecommunications Act of 1996 and MGL Chapter 40A, Section 10:

- 1. Findings regarding compliance with the Telecommunications Act of 1996.** The applicant has submitted satisfactory plans, reports and specifications which demonstrate the compliance of the proposed small wireless facilities with the six conditions set forth in 47 CFR 1.6002(f). The applicant has further provided a Report from its Radio Frequency Engineer along with depictions of coverage areas before and after installation of the proposed facilities to evidence the applicant's need to introduce new or enhanced coverage and capacity in the proposed location.

2. Findings pursuant to MGL Chapter 40A, Section 10 in a manner consistent with the Telecommunications Act of 1996, the regulations promulgated thereunder, and applicable federal court decisions.

(a) **The following circumstances relating to the soil conditions, shape, or topography especially effect the land or structure(s) in question, but do not affect generally the zoning district in which the land or structure(s) are located:** Although the location of the pole on which the facility is proposed does not specifically relate to the soil conditions, shape or topography of the land or structure, pursuant to applicable federal law, the Board is obligated to consider whether the denial of a variance would violate the Telecommunications Act by effectively prohibiting wireless services. As demonstrated by the applicant, the location of the utility pole relative to AT&T's gaps in coverage and capacity needs in network coverage renders the site uniquely suited for the small cell wireless facilities. The site can satisfy AT&T's coverage and capacity needs while minimizing impacts on the Town of Hingham. Such poles are the only existing structures with adequate height within the public rights-of-way which can resolve AT&T network needs in accordance with FCC Order 18-133. Radio frequency coverage maps and the Report of Radio Frequency Engineer provided by AT&T confirm that the small cell wireless facilities at this site are required to remedy the capacity needs in AT&T's network coverage in the area.

(b) **Owing to circumstances described above, a literal enforcement of the provision of the Zoning By-Law would involve substantial hardship, financial or otherwise, to the applicant:** The hardship would be ongoing significant gaps in coverage and capacity in AT&T's network. The proposed site is a unique candidate to address AT&T's significant gaps in coverage. FCC Order 18-133 redefined "effective prohibition" to mean that state and local governments cannot impose requirements that materially limit or inhibit a provider's ability to introduce new or enhanced coverage, capacity or service capabilities or impose regulations that cause a financial burden or competitive disparity, as such can be an effective prohibition.

(c) **Relief may be granted without substantial detriment to the public good for the following reasons:** AT&T is effectively using existing utility poles within public rights-of-way to provide much needed wireless service and capacity. As evidenced by the plans, photographs, and photo-simulations, there is little negative visual impact on the public rights-of-way in areas near the site. AT&T proposes one small canister antenna on the top of the utility poles with equipment located on the side of the utility poles; the equipment satisfies the FCC definition of a small cell facility as provided in the Order. In fact, AT&T's small cell wireless facility equipment is smaller than transformers and other equipment typically attached to utility poles.

(d) Relief may be granted without nullifying or substantially derogating from the intent or purpose of the Zoning By-Law for the following reasons: AT&T's small cell wireless facilities are consistent with the intent and purpose of Section V-E of the Zoning By-law which are to allow adequate personal wireless services in a manner complies with applicable federal law while simultaneously preserving the character and appearance of the Town.

VOTE:

Upon a motion made by Paul K. Healey and seconded by Jed Ruccio, to approve the application of New Cingular Wireless, PCS LLC d/b/a AT&T Mobility, for a variance under Section V-E of the Zoning By-Law to install a small cell wireless facility on a utility pole located within the public right of way near 44 Fort Hill Street as shown on the Project Plans, subject to the following condition:

1. The work shall be completed in accordance with the approved Project Plans and other reports and submissions of the applicant, the applicable provisions of Section V-E, and the representations made to the Board during the public hearing.

For the Board of Appeals,



Robyn S. Maguire, Chair

March 11, 2024

This decision shall not take effect until a copy of the decision, bearing the certification of the Town Clerk that twenty (20) days have elapsed since the decision has been filed in the office of the Town Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied.