



IN CITY COUNCIL

APRIL 22, 2013

Marlborough, Mass., _____

ORDERED:

DECISION FOR SPECIAL PERMIT IN CITY COUNCIL

NOTICE OF DECISION GRANT OF SPECIAL PERMIT

Special Permit Application of:
AT & T Mobility LLC
550 Cochituate Rd.
Framingham, MA 01701
Order No. 12/13-1005342C

Locus:
75 Donald Lynch Blvd.
Assessors Map 13, Parcel 2

DECISION

The City Council of the City of Marlborough hereby GRANTS the application of AT & T Mobility LLC, as provided in the DECISION and subject to Procedural Findings and Findings of Facts and Conditions.

Decision date: May 2, 2013

The Decision of the City Council was filed in the Office of the City Clerk of the City of Marlborough on the 2nd day of May, 2013

This is to certify that twenty (20) days have passed since the filing of the within decision and no appeal has been filed with this office.

Given at Marlborough this 23rd day of May, 2013

Given under Chapter 40A Section 11 of the General Laws.

A TRUE COPY
ATTEST


City Clerk



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ORDERED:

DECISION ON AN APPLICATION TO MODIFY SPECIAL PERMIT

**AT&T Mobility LLC, successor to AT&T Wireless Services (“ATT”),
by its contractor and agent Tower 16, Inc. (“Tower 16” and collectively with ATT, the
“Applicant”)**

CITY COUNCIL ORDER NO. 13-1005342C

Re: 75 Donald Lynch Blvd, Marlborough, Massachusetts (the “Site”)

The City Council of the City of Marlborough (the “City Council”) hereby GRANTS the application to modify Special Permit No. 97-6754F, as previously modified by City Council Order No. 11-1002955 (collectively, the “Existing Special Permit”), submitted by Applicant, having a usual place of business at 550 Cochituate Road, Framingham, MA 01701, as provided in this Decision and subject to the following findings of fact and conditions.

EVIDENCE

1. On April 29, 1997, by Order No. 97-6754F, the City Council granted Applicant a special permit to construct a 130.5 foot monopole wireless communication facility at the Site (the “Existing WCF Tower”). The 1997 Special Permit is recorded at the Middlesex County South District Registry of Deeds (“MSDRD”) in Book 27316, Page 532, and was later modified in 2011 and recorded at the MSDRD in Book 57756, Page 356. The Site is more particularly identified on the Assessor’s Map of the City of Marlborough as Map 13, Parcel 2. The current owner of record for the Site is Albert D. Bombard.



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2. Through its Application for Modification of Special Permit for a Wireless Communication Facility submitted to the City Council on February 21, 2013 ("the Application"), the Applicant seeks permission to perform general maintenance to the Existing WCF Tower consisting of (i) reinforcing the Existing WCF Tower by installing 1.25 inch thick steel plating to the surface of the Existing WCF Tower up to a height of 87.5 feet, and (ii) reinforcing and reconfiguring the subgrade foundation and concrete pads at the base of the Existing WCF Tower (the "Proposed WCF Project"), all as substantially depicted on those certain plans entitled "Marlborough 290/495, USID #: 3083, 130.5' FWT Monopole," prepared by GPD Group, 520 South Main Street, Suite 2531, Akron, OH 44311, and issued as of November 2, 2012 (the "Plans").
3. The Applicant holds a leasehold interest in the Site for purposes of the Application.
4. The Site is located in the Limited Industrial zoning district. Wireless communication facilities are allowed in the Limited Industrial zoning district by special permit of the City Council.
5. Applicant seeks modification of the Existing Special Permit pursuant to Article VI, Section 650-25 et seq. the Zoning Code of the City of Marlborough.
6. Pursuant to the Rules and Regulations of Application for Special Permit ("Rules and Regulations"), the Building Inspector, on behalf of the City Planner, certified that the Special Permit application materials are complete and conform to said Rules and Regulations and that the Plans conform in all respects to the City Code.
7. The Applicant has complied with all of the applicable Rules of the Rules and Regulations.
8. The City of Marlborough City Council held a public hearing on the Proposed WCF Project on March 25, 2013, for which proper notice had been published and for which proper notice had been given to all parties entitled to notice under the law.



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ORDERED:

9. The Applicant presented oral testimony and demonstrative evidence at the public hearing, demonstrating that the Proposed WCF Project continues to meet all the applicable Special Permit criteria of Article VI, Section 650-25 et seq.
10. The Applicant provided further oral testimony and demonstrative evidence to the City Council's Wireless Communications Committee regarding the Proposed WCF Project's compliance with the applicable Special Permit criteria.
11. The Council, in reviewing the Application, considered the Review Standards and Development Requirements, as enumerated in Article VI, Section 650-25 and Article VIII, Section 650-59 of the City of Marlborough Zoning Ordinance, applicable to the Proposed WCF Project.

**BASED UPON THE ABOVE, THE MARLBOROUGH CITY
COUNCIL MAKES THE FOLLOWING FINDINGS OF FACT
AND TAKES THE FOLLOWING ACTIONS**

- A) The Applicant has complied with all the Rules and Regulations promulgated by the Marlborough City Council pertaining to the said Application for a Special Permit.
- B) The Site is an appropriate location for the Proposed WCF Project and the Proposed WCF Project is in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough when subject to the appropriate terms and conditions of this approval.
- C) The Applicant has complied with the applicable Review Standards and Development Requirements pertaining to Wireless Communications Devices, enumerated in Article VI, Section 650-25 and Article VIII, Section 650-59 of the City of Marlborough Zoning Ordinance, by siting, designing and screening its Existing WCF Tower to minimize adverse impact on the abutting neighborhood and on nearby residential properties. The Proposed WCF Project will not change the visual appearance of the Existing WCF Tower.
- D) The Council, pursuant to its authority under M.G.L. Chapter 40A and the City of Marlborough Zoning Ordinances, **GRANTS** the Applicant a modification of the Existing Special Permit (hereinafter, "Modified Special Permit"), **SUBJECT TO THE FOLLOWING CONDITIONS NUMBERED 1 THROUGH 10:**



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ORDERED:

1. Applicant agrees to comply with all rules, regulations, ordinances and statutes of the City of Marlborough, the Commonwealth of Massachusetts, and the federal government as they may apply to the construction, maintenance and operation of Applicant's Proposed WCF Project.
2. The Proposed WCF Project shall be constructed, maintained and operated according to the specifications, terms and conditions of the Application, as amended during the application/hearing process, and in compliance with the conditions of the grant of this Modified Special Permit as well as with the conditions set forth in Chapter 650-25F of the Marlborough Zoning Ordinance. All plans, photo renderings, site evaluations, briefs and other documentation provided by the Applicant as part of the Application, as amended, are herein incorporated and become conditions and requirements of this Modified Special Permit unless otherwise altered by the City Council.
3. The issuance of this Modified Special Permit is further subject to Site Plan Review, in accordance with the City of Marlborough's ordinance, prior to the issuance of the actual building permit. Any additional changes, alterations, modifications or amendments as required by Site Plan Review shall be further conditions attached to this Modified Special Permit and no occupancy permit shall be issued until the Applicant complies with all such further conditions, if any.
4. All conditions set forth in the Existing Special Permit are applicable to this Modified Special Permit.
5. Since the Existing Special Permit requires Applicant to pay in a timely manner the annual sum of One Thousand Five Hundred (\$1,500.00) dollars to the City of Marlborough Open Space Account #100-2410-44515 (the "Open Space Payment"), failure to make the Open Space Payment shall constitute a violation of this Modified Special Permit, and pursuant to the terms of the Existing Special Permit the Applicant shall pay an additional sum of \$500 per quarter or portion thereof after the payment due date that the Applicant has failed to make payment. No additional Open Space Payment above that which is required pursuant to the Existing Special Permit is imposed or required in connection with the Proposed WCF Project or the issuance of this Modified Special Permit.



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ORDERED:

6. Applicant shall provide landscaping around the equipment cabinets owned by Applicant at the Site to adequately shield them from view, if required by Site Plan Review.
7. Applicant shall maintain and keep the Site in good repair, neat, clean and free from all debris.
8. Applicant shall not utilize a permanent electrical generator, of any type, in connection with the operation of the Proposed WCF Project. Applicant shall be permitted to use a temporary electrical generator in connection with the operation of the Proposed WCF Project only in cases of power outages to the Proposed WCF Project and for purposes of routine testing and maintenance. The temporary generator shall be operated in a safe manner and the noise produced by the temporary generator shall conform to the City's noise ordinance set forth in Chapter 431 of the City Code. Batteries used in operation of the facility shall be disposed of off-site at the expense of the Applicant. If any liquid or hazardous material is used by Applicant in conjunction with the temporary generator, Applicant must employ a secondary containment system for such hazardous materials.
9. The Applicant agrees to operate its Proposed WCF Project in compliance with all applicable health and safety standards.
10. In accordance with the provisions of M.G.L. c. 40A, § 11, the Applicant at its expense shall record this Modified Special Permit in the Middlesex South District Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Modified Special Permit has elapsed with no appeal having been filed, and before the Applicant has applied to the Building Inspector for a building permit concerning the Proposed WCF Project. Applicant shall provide a copy of the recorded Modified Special Permit to the Building Inspector's office when the Applicant applies for the building permit, as well as a copy to the City Council's office and to the City Solicitor's office.



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ORDERED:

Yea: 10 - Nay: 0 - Absent: 1

Yea: Delano, Jenkins, Elder, Tunnera, Seymour, Landers, Ossing, Pope, Oram & Robey

Absent: Clancy



Signed by City Council President
Patricia A. Pope

ADOPTED
In City Council
Order No. 12/13-1005342C