



IN CITY COUNCIL

NOVEMBER 7, 2011

Marlborough, Mass., _____

ORDERED:

DECISION FOR SPECIAL PERMIT IN CITY COUNCIL

Special Permit Application of:
AT & T Mobility Corporation
New Cingular Wireless PCS, LLC
550 Cochituate Rd., Suite 13 & 14
Framingham, MA 01701
Order No. 11-1002975D

Locus:
4 Mt. Royal Ave.
Assessors Map 79, Parcel 94

DECISION ON A SPECIAL PERMIT CITY COUNCIL ORDER NO. 11-1002975D (X97-6059B)

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

Decision date: **November 22, 2011**

The Decision of the City Council was filed in the Office of the City Clerk of the City of Marlborough on the **22nd** day of **November, 2011**.

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 13th day of December 2011.

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

A TRUE COPY
ATTEST

A handwritten signature in black ink, appearing to read "Lisa M. [unclear]".

City Clerk



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ORDERED:

**DECISION ON AN APPLICATION TO MODIFY
SPECIAL PERMIT NO. 97-6059B**

**NEW CINGULAR WIRELESS PCS, LLC
BY AT&T MOBILITY CORPORATION, ITS MANAGER**

CITY COUNCIL ORDER NO. 11-1002975D

Re: 4 Mount Royal Avenue

The City Council of the City of Marlborough hereby GRANTS the application to modify Special Permit No. 97-6059B to New Cingular Wireless PCS, LLC, by AT&T Mobility Corporation, Its Manager, having a usual place of business at 550 Cochituate Road, Suite 13 and 14, Framingham, MA 01701, as provided in the Decision and subject to the following Findings of Fact and Conditions.

EVIDENCE

1. The Applicant is New Cingular Wireless PCS, LLC, by AT&T Mobility Corporation, Its Manager, which has a business address of 550 Cochituate Road, Suite 13 and 14, Framingham, MA 01701 (hereinafter "Applicant").
2. On July 14, 1997, the City Council granted to AT&T Wireless Services a Special Permit to attach a set of antennas to the existing building located at 4 Mount Royal Avenue, Marlborough, MA (hereinafter, "the Original Special Permit"). The site is more particularly identified on the Assessor's Map of the City of Marlborough as Map 79, Lot 94 (hereinafter "Site"). The owner of record for the Site is Mount Royal Associates, a Massachusetts limited partnership, c/o Haynes Management Inc.



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3. Through its Application for a Special Permit to Modify an Existing Wireless Communication Facility (hereinafter "Application"), the Applicant seeks permission to allow co-location of three (3) LTE panel antennas onto an existing wireless communication facility rooftop; (6) remote radio heads onto an existing wireless communication facility rooftop; one (1) LTE GPS pipe mounted; two (2) 23" LTE equipment cabinets on the existing elevated frame on the rooftop; as well as the placement of one (1) 3" flex conduit connecting the antennae to the existing equipment (hereinafter "Proposed WCF Project"), all substantially as depicted on a set of plans entitled "Mount Royal Avenue (MA-3297), 4 Mount Royal Avenue, Marlborough, MA 01752" by Pro Terra Design Group, LLC and dated 6/27/11, a copy of which were provided as Exhibit 11 to the Special Permit Application (hereinafter "Plans").
4. The Applicant is a lessee of the Site's owner for purposes of the Application.
5. The proposed WCF is located in the Business B Zoning District. Wireless communication devices are allowed by grant of Special Permit in Business B Zoning Districts.
6. The modification of the Original Special Permit is being sought pursuant to Article VI, Section 650-25 and Article VIII, Section 650-59 of the Zoning Code of the City of Marlborough.
7. 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.
8. The Applicant has complied with all of the applicable rules of the Rules and Regulations.
9. The City of Marlborough City Council held a public hearing on the Proposed WCF Project on August 29, 2011, for which proper notice had been published and for which proper notice had been given to all parties entitled to notice under the law.
10. The Applicant presented oral testimony and demonstrative evidence at the public hearing, demonstrating that the Proposed WCF Project meets all the applicable Special Permit criteria of Article VI, Section 650-25 and Article VIII, Section 650-59.



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ORDERED:

11. 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.
12. 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 Proposed WCF Project to minimize adverse impact on the abutting neighborhood and on nearby residential properties.

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 Original Special Permit (hereinafter, "Modified Special Permit"), **SUBJECT TO THE FOLLOWING CONDITIONS NUMBERED 1 THROUGH 10:**

- 1) Except as modified below, all conditions in the Original Special Permit shall apply to the Modified Special Permit.



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ORDERED:

- 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.
- 3) All plans, site evaluations, briefs and other documentation provided by the Applicant as part of the Application are herein incorporated into and become a part of this Modified Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council.
- 4) All terms, conditions, requirements, approvals, plans and drawings required hereunder are hereby made a part of and incorporated herein as a condition to the issuance of this Modified Special Permit.
- 5) Applicant shall minimize the visual impacts of the Proposed WCF Project by screening and/or color coordination as may be depicted on the Plans and other demonstrative evidence submitted as part of the Application.
- 6) Applicant shall pay to the City of Marlborough Open Space Account #100-2410-44515, as mitigation for the alleged impacts caused by the subject of this Modified Special Permit, the annual sum of One Thousand Five Hundred (\$1,500.00) dollars, the first payment due and payable at the time of the issuance of the building permit hereunder, or within one year of the approval of the Modified Special Permit, whichever is earlier, and the subsequent payments to be due and payable on January 2, or the first business day thereafter, of each calendar year in which the WCF referenced in this Modified Special Permit is still in operation. Failure to make the payment in a timely manner shall constitute a violation of the Modified Special Permit, and 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.



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ORDERED:

- 7) 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.
- 8) No operation of the Proposed WCF Project shall commence until the Applicant has received written approval from the Building Inspector that all the conditions herein have been satisfied.



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ORDERED:

- 9) As soon as practicable but in any event within one (1) month after the date when a certificate of use and occupancy has been issued to the Applicant by the City of Marlborough's Building Inspector for the Proposed WCF Project, Applicant shall submit a written report to the City Council; provided, however, that if the Proposed WCF Project has not yet become operational within the one-month period after said issuance date, then the Applicant must immediately provide the City Council with written notification as to the date when the Proposed WCF Project does become operational and, further, must submit said written report within one (1) month after said operational date. The written report to the City Council shall i) provide measurements as to the actual output of radio frequency energy emitted by the Proposed WCF Project; ii) shall include a professional opinion by a qualified third party certifying that the Proposed WCF Project fully complies with all applicable health and safety standards; and iii) shall provide measurements of the actual output of the total radio frequency energy being emitted by all Wireless Communications Facilities (as defined in Section 650-25 of the Marlborough Zoning Ordinance) then located at the Site. The Applicant agrees to operate its Proposed WCF Project in compliance with all applicable health and safety standards. In the event that there are any changes in or upgrades to the Proposed WCF Project that may increase the actual output of radio frequency energy emitted by the Proposed WCF Project, the Applicant shall submit a letter to the City Council as soon as practicable but in any event within one (1) month after the date of completion of those changes or upgrades. The letter shall i) state what the changes or upgrades are; ii) shall provide measurements specifying how the actual output of radio frequency energy emitted by the Proposed WCF Project has been increased; iii) shall provide measurements of the actual output of all radio frequency energy being emitted by all hereinbefore-defined Wireless Communications Facilities then located at the Site; and iv) shall include a professional opinion by a qualified third party certifying that the Applicant's changes or upgrades have not caused the total radio frequency energy being emitted by all hereinbefore-defined Wireless Communications Facilities then located at the Site to exceed any applicable health and safety standards.



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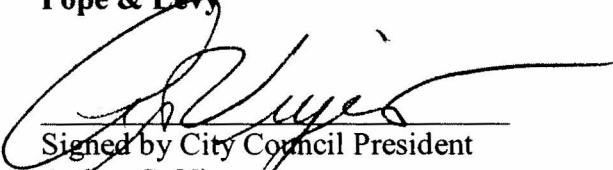
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ORDERED:

- 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 City Council's office and to the City Solicitor's office.

Yea: 11- Nay: 0

Yea: Delano, Ferro, Elder, Tunnera, Seymour, Clancy, Landers, Ossing, Vigeant, Pope & Levy


Signed by City Council President
Arthur G. Vigeant

ADOPTED
In City Council
Order No. 11-1002975D