

COMMONWEALTH OF MASSACHUSETTS



NORFOLK, SS

*20 day Appeal
Aug 27, 2014*

**IN THE MATTER OF: New Cingular Wireless PCA, LLC ("AT&T")
Petitioner**

**Property Owner: NStar Electric Company (Structure and Easement)
Charles John Wesley Truscott, III (Property Fee)
97 Winthrop Street
Medway, MA 02053**

OPINION OF THE BOARD

**REQUEST FOR SPECIAL PERMIT AND VARIANCE
97 Winthrop Street
Medway, MA 02053**

**Hearing: May 28 2014
Decision: August 6, 2014**

**MEMBERS PRESENT: David Cole, Chairman
Anthony Biocchi
Carol Gould
Arlene Doherty
Craig Olsen**

THE WRITTEN OPINION WAS DELIVERED ON August 6, 2014

OPINION OF THE BOARD

This is a proceeding of the Zoning Board of Appeals of the Town of Medway, MA (hereinafter the Board) acting under the Zoning By-Laws of the Town of Medway, MA, 02053 and the Massachusetts General Law Chapter 40A, as amended, request a Special Permit (V.D.4) and (V.S.2(a), and Variance (V.S.3(b) and (V.S.2)e) zoning relief to construct, operate and maintain a wireless Communication Facility within and adjacent to an existing NStar transmission structure located at 97 Winthrop Street, Medway, MA.

Hearing

Notice of the Public Hearing by the Zoning Board of Appeals in this matter was published in the Milford Daily News on May 7th and 14th, 2014. Notice also was sent to all “parties in interest” and posted in the Town Hall as required by Massachusetts General Laws Chapter 40A, Section 11. Due to the Board not having a quorum for the meeting it was postponed to Wednesday, May 28, 2014.

The Public Hearing was held, and the record closed, May 28, 2014. At the hearing, one person spoke in favor of and one in opposition to the application

Hearing Summary

The Applicant, New Cingular Wireless PCA, LLC (“AT&T”), represented by Attorney Adam T. Kurth, Anderson & Kreiger LLP, Karla Hanna, TRM, and Frantz Pierre, Radio Frequency Engineer, came before the board to request a Special Permit under Section V.D.4 and V.S.2(a), and a Variance under Section V.S.3(b) and V.S.2(e) (wireless communication facility property line setback), to permit the installation of a Wireless Communication Facility within and adjacent to an existing NStar transmission structure in the ARI District, located at 97 Winthrop Street, Medway, MA. The applicant specifically stated that relief was requested only if and to the extent necessary, and reserved its rights under the Federal Telecommunications Act of 1996.

The applicant presented a coverage map showing that there is an area of inadequate cellular telephone coverage in northwestern Medway, and that the optimum location for a new facility to remove this area of inadequate coverage is in the area of Winthrop Street. Given the provisions of Section V.S.3 of the Medway Zoning ByLaw, the preferred location for the new facility is the high tension tower adjacent 97 Winthrop Street. The applicant has submitted extensive written documentation showing compliance with all requirements of Section V.S.2 except for that which relief is sought by the proposed variance.

The variances are sought to enable the proposed facility to be located at the preferred location on the existing high tension tower. In the present case, it is not possible for the applicant to comply with both the preferred location under V.S.3.b, and meet the requirements of V.S.2.e and V.S.3.b regarding fall radius and distance from residential property lines. Adding the proposed monopole would add little or nothing to any fall risk from the existing high tension tower, so there are good grounds for granting the proposed variances to enable the monopole to be located in the preferred location.

Henry Lewandowski, 72 Winthrop Street asked about wetlands, noise, and fuel storage safety. Adam Kurth explained that there is a 200 Gal .fuel tank that is double walled and will be kept in the equipment shed and monitored 24 hrs. Adam also explained that the nearest structure from the mono pole is 100 – 150 feet. It will be checked once a week by remote and during day hours.

Findings:

By vote of 5-0

1. The Petitioner demonstrated substantive compliance with the requirements set forth in Section V.S.2 of the Medway Zoning ByLaw with the exception of Section V.S.2.e., from which a variance is sought.
2. The petitioner demonstrated the purposed wireless communication facility is to be constructed within an existing power structure and that locating in this area is necessary to fill in gaps in coverage provided by existing cellular telephone facilities.
3. Because the easement for high tension power structures are necessarily located in straight lines across country, without consideration of underlying lot lines, there is, in many locations, an inherent conflict between the requirements of the first sentence of Section V.S.3.b (specifying that a preferred location for wireless communication facilities is on an existing high-tension power structure) and the requirements of the second sentence of Section V.S.3.b (no addition to a power structure shall be within 200 feet of a residential property line) and of Section V.S.2.e (no facility be erected closer to a property line than the vertical height of the facility). In the present case, since the high tension power structure is less than 200 feet from a residential property line, and the power structure fall line crosses the property line, the addition of the proposed wireless facility would not substantially increase risk to residential abutting properties.
4. The Grant of the requested Special Permit and Variance would not cause substantial detriment to the public good.
5. The application is consistent with the criteria for a Special Permit set forth in section III.J of the Medway Zoning ByLaw.

Relief Granted

By Vote of 5-0

A Special Permit is granted to New Cingular Wireless PCS LLC (“AT&T”) for the construction of a Wireless Communication Facility located at 97 Winthrop Street, Medway, MA 02053 substantially in accordance with the plans submitted, subject to the following terms and conditions.

1. The facility shall not extend more than 10 feet above the existing power structure; and there shall be no signs on the facility except for "No Trespassing" signs, and signs giving company information and contact numbers. There shall be no night lighting of the facility.

Furthermore, variances are granted to New Cingular Wireless PCS LLC from the provisions of Sections V.S.2.e and V.S.3.b of the Zoning ByLaw, to permit the location of the Wireless Communication Facility within the existing transmission structure notwithstanding the facts that the facility will thus be erected less than its own height from a property line and less than 200 feet from a residential property line.

The Board hereby makes a detailed record of its findings and proceedings relative to this petition, sets forth its reasons for its findings and decision, incorporates by reference any plan or diagram received by it, directs that this decision be filed in the office of the Town Clerk and be made a public record and that notice and copies of its decision be made forthwith to all parties or persons interested.

**IN ACCORDANCE WITH MASSACHUSETTS GENERAL
LAW, CHAPTER 40A, SECTION 11 NO VARIANCE, SPECIAL
PERMIT OR CONSTRUCTIVE GRANT OF A VARIANCE TAKES
EFFECT UNTIL RECORDED IN THE REGISTRY OF DEEDS.**



David Cole, Chairman



Anthony Biocchi



Carol Gould

Arlene Doherty

Craig Olsen