

Edward D. Pare, Esq.
direct dial: 401-276-2639
epare@brownrudnick.com

10
Memorial
Boulevard
Providence
Rhode Island
02903
tel 401.276.2600
fax 401.276.2601

December 16, 2011

Town of Topsfield
Zoning Board of Appeals
8 West Common Street
Topsfield, MA 01983

RE: Modification/Addition to Wireless Communication Equipment

Applicant: New Cingular Wireless PCS, LLC by AT&T Mobility Corporation, Its Manager (“AT&T” or “Applicant”)

Site: 285 Boston Street, Topsfield, MA (Assessor’s Map 41, Lot 90) (the “Site”)

Property Owner: AT&T Mobility

Facility: Install three (3) new panel antennas (one antenna per sector), together with related amplifiers, cables, fiber and other associated antenna equipment including remote radio heads, surge arrestors and global positioning system antennas, for new network service upgrade with associated electronic equipment within AT&T’s existing equipment shelter (the “Facility”).

Relief Requested: Special permit for the modification of an existing Wireless Communications Facility, pursuant to Article XII, Section 12.04 (C) (3) and (4), and Article V, Section 5.04; a finding pursuant to Article III, Section 3.05; and Site Plan Review pursuant to Article XII, Section 12.02 and Article IX, Section 9.03 of the Zoning Bylaw of the Town of Topsfield (hereinafter, the “Bylaw”).

Dear Honorable Members of the Zoning Board of Appeals:

On behalf of AT&T, we are pleased to submit this memorandum to the Town of Topsfield Zoning Board of Appeals (the “Board”) in support of AT&T’s application (the “Application”) for the modification, installation, operation and maintenance of the Facility on the existing 160’ lattice tower (the “Tower”) located at the Site. The following provides background information regarding the Facility and addresses each applicable section of the Bylaw.



BACKGROUND

AT&T proposes to install three (3) additional panel antennas at the same mount height as its existing wireless facility antennas. The additional antennas will be mounted to AT&T's existing mounting brackets on the Tower. Related wireless communications amplifiers and antenna related equipment including remote radio heads and surge arrestors, fiber, cables and other associated equipment within AT&T's existing equipment shelter. The Facility is shown in detail on the plans (the "Plans") attached hereto and submitted with this Application. There will be no expansion of the footprint of the existing fenced compound area or increase in the height of the Tower.

The Site is located in the Inner Residential and Agricultural IRA zoning district. The Site had previously been granted approvals relating to the existing wireless installation at the Site. The Applicant seeks a special permit for the modification of an existing Wireless Communications Facility, pursuant to Article XII, Section 12.04 (C) (3) and (4), and Article V, Section 5.04; a finding pursuant to Article III, Section 3.05 and; Site Plan Review pursuant to Article XII, Section 12.02 and Article IX, Section 9.03 of the Zoning Bylaw of the Bylaw. Also, to the extent necessary, the Applicant requests such other relief, all rights reserved, pursuant to the Bylaw, Massachusetts General Laws Ch40A, as well as the Telecommunications Act of 1996 (the "TCA") in order to allow the installation, operation and maintenance of the Facility. The Application substantially complies with the terms of above sections of the Bylaw. The Application follows the applicable sections of the Bylaw and sets forth Applicant's response to each of the relevant provisions.

The Applicant leases a portion of the Site from the owner. AT&T operates a nationwide wireless communications system that offers enhanced features such as caller ID, voice mail, e-mail, and superior call clarity. AT&T is in the process of building out a national network as required by AT&T's licenses issued by the Federal Communications Commission (the "FCC"). By filling a significant coverage gap and upgrading technology, the Facility will aid in reaching AT&T's goal of providing adequate and reliable wireless communications services in and around Topsfield and to all of Massachusetts. Through the modifications to the Site, AT&T is seeking to provide enhanced high speed data services. LTE operates in the 700 and 2100 MHz frequencies under license from the FCC. AT&T uses its 700 MHz frequency to provide a coverage footprint because the 700 MHz frequency generally covers a greater geographic area than the footprint provided by higher frequencies. Additionally, AT&T uses its 2100 MHz frequency to add capacity in support of the network because the 2100 MHz frequency generally covers a smaller geographic area than that provided by the 700 MHz frequency. Currently, LTE is designed to enhance AT&T's high speed data services. AT&T is using its best efforts, to the maximum extent possible, to install the enhanced LTE network utilizing AT&T sites and facilities to avoid the need to construct new tower sites.

A reliable communications system depends on a grid of antennae arranged in a geographical pattern, similar to a honeycomb. Each "cell" is created by an antenna and serves as a link between the customer and the telephone system, while that caller is within proximity to the cell site. Each cell can handle a finite number of connections. As the number of customers



increase, more cell sites must be added to handle the increased volume. If this is not accomplished, calls are dropped or customers' calls are blocked and they will get a busy signal. A new antenna installation must be constructed each time a new cell site is created.

Applicant submits and will demonstrate through the Application materials and the written and oral evidence at the public hearing(s) in connection with the Application that the proposed Facility meets with all applicable requirements of the Bylaw, to the extent possible. The Facility will not adversely impact adjacent properties and neighborhoods as AT&T's Facility will not significantly change the appearance of the existing wireless facility. The Facility will not be a threat to public health, safety and welfare. In fact, the Applicant submits that the proposed Facility will aid in public safety by providing and improving wireless communications services to the residents, businesses, commuters, and emergency personnel utilizing wireless communications in the immediate vicinity and along the nearby roads.

Consistent with the Bylaw, the existing wireless installation already functions as a wireless communications services facility within a local, regional, and national communications system. This system operates under license from the FCC and AT&T is mandated and authorized to provide adequate service to the general public. The Facility will not generate any objectionable noise, odor, fumes, glare, smoke, or dust or require additional lighting or signage. The Facility will have no negative impact on property values in the area. No significant increase in traffic or any hindrance to pedestrian movements will result from the Facility. On average, only one round trip visit per month is required to service and maintain the Facility. This is an unmanned Facility and will have no negative effect on the adjoining lots. The Facility does not require police or fire protection because the installation has its own monitoring equipment that can detect malfunction and/or tampering.

RELIEF REQUESTED

AT&T respectfully requests that the Board grant a Special permit for the modification of an existing Wireless Communications Facility, pursuant to Article XII, Section 12.04 (C) (3) and (4), and Article V, Section 5.04; a finding pursuant to Article III, Section 3.05; and Site Plan Review pursuant to Article XII, Section 12.02 and Article IX, Section 9.03 of the Bylaw. Also, to the extent necessary, the Applicant requests such other relief, all rights reserved, pursuant to the Bylaw, Massachusetts General Laws Ch40A, as well as the TCA to allow the installation, operation and maintenance of the Facility as provided in the Plans submitted with the Application. The Board is specifically empowered to grant the requested special permit relief pursuant to Article XII, Section 12.04 (C) (3) and (4); the requested finding pursuant to Article III, Section 3.05; and the requested Site Plan Review pursuant to Article XII, Section 12.02 of the Bylaw. As will be further demonstrated by the Applicant by evidence submitted to the Board at the public hearing(s) in connection herewith, such relief is appropriate as the Facility satisfies all pertinent provisions and standards contained in the Bylaw for the granting of a special permit, to the extent required, all rights reserved, as enumerated below.



COMPLIANCE WITH ARTICLE XII, SECTION 12 OF THE BYLAW

12.02 Use.

- A. Major Wireless Telecommunications Facilities shall be allowed by Special Permit pursuant to Article V and subject to Site Plan Review pursuant to Article IX in those areas within the Town of Topsfield that fall outside the circle of certain geographic area that has a radius equal to 8,000 feet and with a center at the intersection of the south and east boundaries of Pemberton Lane.**
- B. Minor Wireless Telecommunications Facilities shall be allowed by Special Permit pursuant to Article V and subject to Site Plan Review pursuant to Article IX throughout the Town of Topsfield.**

AT&T submits this Application pursuant to Article XII, Section 12.04 (c) (3) and (4) to modify its existing wireless communications services facility on an existing Major Wireless Telecommunication Facility.

12.03 Purpose and Intent.

To preserve the visual landscape of the community, and preserve and protect the interests and the inhabitants of the Town of Topsfield. To that end, collocation of antennas and equipment associated with wireless telecommunications shall be encouraged on existing lawful structures and the construction of new towers is discouraged.

The proposed modifications to the existing wireless facility are in harmony with the purposes of this Bylaw because by modifying an existing wireless facility on an existing Tower in a manner which does not increase the height of the existing wireless facility or expand its foot print, potential visual impacts are minimized. Likewise, by collocating on the existing Tower, AT&T is able to avoid the construction of a new tower in Topsfield. Also, the proposed modifications will not produce any smoke, odors, waste, glare or traffic. The Facility will have no negative impact on property values in the area. The installation of the Facility will not be a threat to public health, safety and welfare. In fact, Applicant submits that the proposed Facility will aid in public safety by providing and improving wireless communications services to the residents, businesses, commuters, and emergency personnel utilizing wireless communications in the immediate vicinity and along the nearby roads. Consistent with the Bylaw, the Facility will function as a wireless communications services facility within a local, regional, and national communications system. This system operates under licenses from the FCC, and AT&T is mandated and authorized to provide adequate service to the general public. The proposed modifications will comply with all applicable regulations, standards and guidelines with respect to radiofrequency emissions.



12.04 Major Wireless Telecommunications Facilities (Major WTF).

A. Design Criteria:

- 1. All Major WTFs shall be sited, screened and finished to blend in with the surroundings in such a manner that aesthetically minimizes the visibility and adverse impact of the Major WTF with the surrounding landscape. Existing on-site vegetation shall be preserved to the maximum extent possible.**

The Facility is a modification of an existing wireless facility upon the existing Tower and does not entail the construction of a new tower. The additional antennas will be similar to those of the Applicant's existing wireless communications services facility and the additional equipment will be located within the Applicant's existing equipment shelter within the existing fenced compound. Therefore, potential visual impacts are minimized and no existing vegetation will be removed as a part of the proposed modification.

- 2. Major WTFs shall in all cases be a monopole design. No lattice towers will be allowed. Monopoles shall be "stealth" in that they shall have antennas that are either interior mounted or exterior flush mounted, with strong preference given for "tree" monopoles.**

The existing Tower is of a lattice construction. The lattice design of the existing Tower is a nonconforming element of the Tower.

- 3. Major WTFs shall be no higher than 100 feet AGL; if however, the applicant has, including itself if the applicant is a FCC licensed carrier, two or more FCC licensed carriers who are coapplicants, or who have expressed written interest in collocating on the proposed Major WTF, then the facility shall be no higher than 120' AGL.**

The existing Tower is 160' above ground level ("AGL"). The existing height is a nonconforming element of the Tower.

- 4. No Major WTF shall be lighted unless required by the FAA.**

No additional exterior lighting will be installed at the Site as a part of the proposed modification.



5. **All Major WTF shall be designed and built to accommodate the maximum number of users technologically practical.**

The Facility is a modification of an existing wireless facility upon the existing Tower and does not entail the construction of a new tower.

6. **A Major WTF shall not be erected nearer to any property line than a distance equal to the vertical height of the Major WTF (inclusive of any appurtenant devices).**

The Facility is a modification of an existing wireless facility upon the existing Tower and does not entail the construction of a new tower. Therefore, the terms of this provision do not apply to this Application.

7. **All network interconnections to the Major WTF shall be by landlines.**

The facility will comply with the terms of this provision.

8. **The tower and all ground equipment associated with the Major WTF shall be surrounded by an 8 foot high security fence and kept locked at all times. If the fence and ground equipment are visible from a public way, the fence shall be constructed of wood and shall be painted or surrounded by plantings to help the facility blend in with the surroundings.**

The existing Tower and associated equipment are surrounded by an existing 8' high chain link fence. The Applicant's additional equipment cabinet will be placed within its existing equipment shelter and will not be visible to the exterior of the shelter or the fence.

9. **There shall be one generator per major WTF for backup emergency power. Such generator shall be fueled by liquid propane and not by diesel fuel.**

The proposed modification does not entail the installation of additional generators on site.

10. **There shall be no signage posted at a Major WTF except those required by the FCC or as otherwise required by law.**

The Facility will comply with the terms of this provision.

11. **Access roads leading to any Major WTF shall be constructed of improved gravel or grass paving blocks.**

Access to the Facility will be via existing ways.



B. Special Submittal/Other Requirements:

- 1. New Major WTFs shall be considered by the ZBA only upon a finding by the ZBA that there is no existing structure that can be used as a Minor WTF or that there is no existing or approved Major WTFs that is available, that can physically accommodate and/or that can provide sufficient radio signal to the area sought to be covered by the proposed Major WTF.**

The Facility is a modification of an existing wireless facility upon the existing Tower and does not entail the construction of a new tower. Therefore, this provision does not apply to this Application.

- 2. A balloon of the color and size customary in the industry shall be flown for four hours each on two successive Saturdays as further directed by the ZBA-to simulate the height at which the Major WTF is proposed. Visual computer simulations of how the Major WTF will look from 360 degree views from all prominent vantage points shall be presented at the public hearing.**

The proposed modification involves an existing Facility on the existing Tower. The Applicant respectfully suggests that the modification is sufficiently described and illustrated by the attached materials and that the balloon or crane test is not necessary given the limited scope of this project as any potential visual impacts of the existing wireless facility have already been established. Therefore, the Applicant respectfully requests that a balloon test is not necessary and requests a waiver from the terms of this provision.

- 3. A removal bond shall be posted by the applicant in an amount sufficient to cover all costs of removal of the Major WTF. A Major WTF that has no FCC licensed carriers transmitting/receiving from the Major WTF for a period of one year, shall be dismantled.**

The Applicant will comply with the terms of this provision.

C. Lawfully Existing Major Telecommunications facilities:

- 1. A lawfully existing Major WTF may be replaced, but such replacement facility shall be by a Special Permit and shall not be any greater in height nor substantially greater in mass than the existing Major WTF.**

The proposed modification will not entail the replacement of the Tower.



2. **Lawfully existing Major WTF may be permitted by a Special Permit a one time increase in height of twenty feet if the applicant sufficiently demonstrates that the height increase will prevent the need for additional Major WTFs from being built and that the need for the height increase is required by a carrier.**

The proposed modification will not entail any increase in the height of the Tower.

3. **Collocation on an existing Major WTF shall be by Special Permit.**

This Application is submitted in compliance with the terms of this provision.

4. **Wireless Communication Facilities lawfully in existence prior to the enactment of this By-Law may be altered, changed, extended or rebuilt subject to a Special Permit by the Zoning Board of Appeals, provided any alteration, change, extension or reconstruction subject to Section 12.0 of this By-Law.**

This Application is submitted in compliance with the terms of this provision.

12.05. Minor Wireless Telecommunications Facilities (Minor WTF)

1. **Minor WTFs shall be preferred over new Major WTFs.**

The Facility is not a Minor Wireless Telecommunications Facility as defined by Article XII, Section 12.01 (G).

2. **All equipment associated with the Minor WTF shall be either [sic?] camouflaged from view from the public way.**

The Facility is not a Minor Wireless Telecommunications Facility as defined by Article XII, Section 12.01 (G).

3. **Subject to the height requirements and exceptions in the Zoning Bylaw, the height of an existing structure used as a Minor WCF may be increased in height by 25' to accommodate said Minor WTF.**

Although the Facility is not a Minor Wireless Telecommunications Facility as defined by Article XII, Section 12.01 (G), there will be no increase in the height of the Tower as a result of the proposed modification.



COMPLIANCE WITH ARTICLE V, SECTION 5.04 (B) OF THE BYLAW

5.04. B. Conditions and Safeguards. The Board of Appeals and the planning Board shall not grant any special permit unless necessary conditions including, but not limited to, the following are met:

- 1. The use requested is listed in the Table of Use Regulations (Article III) as a special permit in the District for which application is made or is so designated elsewhere in this By-Law.**

Article III, Table of Use Regulations, Use 2.13 refers to Article XII for restrictions and regulations. AT&T respectfully requests a Special permit for the modification of an existing Wireless Communications Facility, pursuant to Article XII, Section 12.04 (C) (3) and (4), and Article V, Section 5.04; a finding pursuant to Article III, Section 3.05; and Site Plan Review pursuant to Article XII, Section 12.02 and Article IX, Section 9.03 of the Bylaw.

- 2. The requested use is not detrimental to the public convenience or welfare.**

The Facility will benefit those living and working in, and traveling through the area by providing enhanced wireless telecommunication services. The Facility will not adversely impact adjacent properties and neighborhoods as the Facility will be located on an existing structure with existing wireless telecommunications facilities. The installation of the Facility will not be a threat to public health, safety and welfare. In fact, Applicant submits that the proposed Facility will aid in public safety by providing and improving wireless communications services to the residents, businesses, commuters, and emergency personnel utilizing wireless communications in the immediate vicinity and along the nearby roads. Consistent with the Bylaw, the Facility will function as a wireless communications services facility within a local, regional, and national communications system. This system operates under license from the FCC, and AT&T is mandated and authorized to provide adequate service to the general public. The Facility will not generate any objectionable noise, odor, fumes, glare, smoke, or dust or require additional lighting or signage. The Facility will have no negative impact on property values in the area. This is an unmanned facility and will have minimal negative effect on the adjoining lots.

- 3. The requested use will not create undue traffic congestion or unduly impair pedestrian safety.**

The proposed modifications will not result in any significant increase in the amount of traffic generated by the Facility and will not impact pedestrian safety. There will be no changes to existing flow patterns access ways.



4. **The requested use will not overload any public water, drainage, or sewer system, or any other municipal system to such an extent that the requested use or any developed use in the immediate area or in any other area of the town will be unduly subjected to hazards affecting health, safety or the general welfare.**

The Facility will not result in any increase in impervious surfaces on the Site. The Facility will be unmanned and will not use any water or produce any waste. The Facility will use telephone and standard electrical service so municipal systems will not be unduly burdened. The Facility will comply with all applicable FCC standards and the state building code.

5. **The requested use will not impair the integrity or character of the district or adjoining zones, nor be detrimental to the health, safety or welfare.**

The Facility will not impair the integrity or character of the district or adjoining zones because the proposed modification is a *de minimis* alteration to an existing wireless facility that will not increase the height or expand the footprint of the Tower. The Facility will benefit those living and working in, and traveling through the area by providing enhanced wireless telecommunication services. The Facility will not adversely impact adjacent properties and neighborhoods as the facility is located on an existing structure with existing wireless telecommunications facilities. The installation of the Facility will not be a threat to public health, safety and welfare. In fact, Applicant submits that the proposed Facility will aid in public safety by providing and improving wireless communications services to the residents, businesses, commuters, and emergency personnel utilizing wireless communications in the immediate vicinity and along the nearby roads. Consistent with the Bylaw, the Facility will function as a wireless communications services facility within a local, regional, and national communications system. This system operates under license from the FCC, and AT&T is mandated and authorized to provide adequate service to the general public. The Facility will not generate any objectionable noise, odor, fumes, glare, smoke, or dust or require additional lighting or signage. The Facility will have no negative impact on property values in the area. No increase in traffic or hindrance to pedestrian movements will result from the Facility. This is an unmanned facility and will have minimal negative effect on the adjoining lots.



C. Additional Conditions. The Granting Authority shall also impose in addition to any applicable conditions in this By-law such conditions and safeguards as it finds reasonably appropriate to protect the neighborhood, or otherwise serve the purposes of this By-Law, including but not limited to, the following.

1. Requirement of screening, buffers or planting strips, fences or walls.

The Facility is a modification of an existing wireless facility upon the existing Tower. The proposed modification represents a *de minimis* alteration to the existing wireless facility, involving the addition of three antennas mounted at the same total height above ground level as the Applicant's existing antennas on the existing Tower. There will be no increase in the height of the Tower. The additional equipment will be located within AT&T's existing equipment shelter in the existing fenced compound area. There will be no expansion of either the equipment shelter or the fenced compound as a result of the proposed modification. Given the minimal impact of the proposed modification, the Applicant respectfully asserts that no additional vegetative screening is necessary.

2. Limitations of number or density of occupants, times or nature of operation size, scale, or other characteristics of the use or facility.

The Facility will be unmanned and will have no occupants. The Facility is a passive use which produces no odors, smoke, dust or waste. There will be no increase in existing noise levels at the site as a result of the proposed modification.

3. Regulation of the number, design and location of access drives or circulation facilities.

Access to the Facility will be via existing ways. There will be no change to existing traffic patterns on the Site.

4. Requirements of off-street parking, loading or other features beyond the minimum otherwise required by this By-law.

There will be no change to existing parking or loading areas on the Site as a result of the proposed modification.

5. Requirement of front, side or rear yards greater than the minimum otherwise prescribed by this By-Law.

The additional equipment cabinet will be placed within the existing equipment shelter within the existing fenced compound area. Therefore,



there will be no change to existing setbacks on the Site as a result of the proposed modification.

Compliance with Article III, Section 3.05 of the Bylaw

3.05. Nonconforming Uses

Any lawful building or use of a building or premises or part thereof existing at the time this By-Law or any amendment thereto is adopted, may be continued although such building or use does not conform to the provisions thereof. No conforming use shall be changed, moved, or extended in space and no nonconforming building or structure shall be structurally changed or substantially altered, or enlarged or replaced by a new building unless, upon application to and a finding by the Permit Granting Authority, it can be shown that such change, if carried out, would not be more detrimental or objectionable to the neighborhood. Any such finding by the Permit Granting Authority pursuant to this section shall lapse one (1) year from the date of issuance (excluding the period of any appeal of such finding) if a substantial exercise of the rights permitted by the finding has not sooner commenced. Findings may be extended for successive periods of one year upon application to the Permit Granting Authority prior to the end of each one (1) year period and a showing of good cause. No nonconforming use can be changed, moved or re-established where such use has been discontinued for a period of two (2) years or more.

In no event shall a nonconforming use of a building, structure, or use of land or premises be changed, altered enlarged, extended, or be held to include racing with pari-mutuel betting except to the extent already in use for a period not to exceed six (6) days at the Essex Agricultural Fair, but to no greater extent.

The proposed alteration or change will not be substantially more detrimental to the neighborhood than the existing nonconforming structure because the alteration will not increase the height of the existing Tower and will not expand the footprint of either the existing equipment shelter or the fenced compound. The Facility will not generate any objectionable noise, odor, fumes, glare, smoke, or dust or require additional lighting or signage. The Facility will have no negative impact on property values in the area. No significant increase in traffic or hindrance to pedestrian movements will result from the Facility.

COMPLIANCE WITH ARTICLE IX, SITE PLAN REVIEW

9.01 Purpose.

This section is enacted to protect the health, safety, convenience and general welfare of the inhabitants of the Town and is intended to regulate the development of structures and sites in a manner which considers the following concerns and, where necessary requires modification of development proposals to eliminate or minimize potential problems and nuisances. The principal areas of concern are:



- a) **The balancing of landowner's rights to use their land, with the corresponding rights of abutting and neighboring landowners to live without undue disturbances (e.g. noise, smoke, fumes, dust, odor, glare, storm water runoff, etc);**
- b) **The convenience and safety of vehicular and pedestrian movement within the site, and in relation to adjacent areas or roads;**
- c) **The adequacy of waste disposal methods and protection from pollution of surface and groundwater; and**
- d) **The protection of historic and natural environmental features on the site under review, and in adjacent areas.**

The proposed modifications to the existing wireless facility are in harmony with the purposes of this Bylaw because by modifying an existing wireless facility on an existing Tower in a manner which does not increase the height of the existing wireless facility or expand its foot print, potential visual impacts are minimized and natural environmental features are preserved. Also, the proposed modifications will not produce any smoke, odors, waste, glare or traffic. The Facility will have no negative impact on property values in the area. The installation of the Facility will not be a threat to public health, safety and welfare. In fact, Applicant submits that the proposed Facility will aid in public safety by providing and improving wireless communications services to the residents, businesses, commuters, and emergency personnel utilizing wireless communications in the immediate vicinity and along the nearby roads. Consistent with the Bylaw, the Facility will function as a wireless communications services facility within a local, regional, and national communications system. This system operates under licenses from the FCC, and AT&T is mandated and authorized to provide adequate service to the general public. The proposed modifications will comply with all applicable regulations, standards and guidelines with respect to radiofrequency emissions.

9.02 Granting Authority. As used herein, "Granting Authority" shall mean the Permit Granting Authority if the underlying use requires from the Granting Authority a Special permit, a finding pursuant to Article III, Section 3.05 of these regulations, a variance, or any other relief required to be granted by the permit granting authority and in all other instances shall mean the Special Permit Granting Authority.

This Application is submitted in compliance with the terms of this provision.

9.03 Projects Requiring Site Plan Review

No permit for the construction, exterior alteration, relocation, occupancy, or change in use of any building shall be given and no existing use shall be established



or expanded in floor area except in conformity with a site plan approved by the Granting Authority. Site Plan Review shall also be required for the resumption of any use discontinued or not used for more than two (2) years, or for the expansion of any existing use. "Expansion" shall include a floor space increase of twenty-five (25) percent or more within any ten (10) year period, or the introduction of new materials or processes not previously associated with the existing use. Required approval includes proposals for commercial, industrial, office, multiple dwelling residential developments, municipal, institutional, utility, fraternal or recreational purposes.

This Application is submitted in compliance with the terms of this provision and Article XII, Section 12.02.

9.04 Exemptions from Site Plan Review

Site Plan Review shall not be required for:

- a) The construction or enlargement of any single family or two family dwelling, or building accessory to such use;**
- b) The construction or alteration of any building used exclusively for agriculture, horticulture, or floriculture;**
- c) Construction or alteration providing for not more than five hundred (500) square feet total floor area after construction.**
- d) Customary home occupations as defined in the Zoning By-law.**

Though the proposed modification would be exempt under the terms of Article IX, Section 9.04 (c), Article XII, Section 12.02 requires Site Plan Review for both Major and Minor Wireless Telecommunications Facilities.

9.05 Procedure.

- a. An Applicant for Site Plan Review under this section shall file with the Town Clerk copies of the site plan documents in accordance with Section 4.11 Submittal Distribution Requirements and Formats for a Definitive Plan in the Rules and Regulations Governing the subdivisions of land in the town of Topsfield. The Clerk's copy of the site plan application shall be kept on file by the Town Clerk.**

Please refer to the Plans submitted herewith. The Applicant respectfully suggests that the modification is sufficiently described and illustrated by the attached materials so that the board may render an informed decision. To the extent the materials do not address the specific requirements of this section of the Bylaw, in



light of the minimal impact of the Facility, the Applicant respectfully requests any waivers necessary.

- b. The granting Authority is authorized to retain a registered professional surveyor, engineer, architect, landscape architect, or other professional consultant such as an attorney to advise the granting Authority on any or all aspects of the site plan. The cost of this advice shall be borne by the Applicant. The Applicant shall furnish a deposit to the Granting Authority, within ten days after the execution of an outside consultant agreement in accordance with M.G.L. Chapter 41, Section 53G, sufficient to cover all of the Granting Authority's anticipated expenses connected with the public hearing and review of the plans.**

The Applicant agrees to comply with the terms of this provision as long as the costs of same are reasonable, mutually agreeable, and established in advance of retaining the qualified independent professional consultant. However, in light of the minimal impact of the Facility, AT&T respectfully requests that the Board not retain such experts.

- c. The Boards shall have up to thirty (30) days to submit recommendations in writing to the Granting Authority concerning:**
- i) The adequacy of the data and procedures used by the applicant to determine the impacts of the proposed development;**
 - ii) The effects of the projected impacts of the proposed development; and**
 - iii) The recommended conditions or remedial measures to accommodate or mitigate the expected impacts of the proposed development**

Failure of an agency to report within the allotted time shall be interpreted as non-opposition to the submitted site plan.

This provision does not require an Applicant response.

- d. The Granting Authority shall hold a public hearing and shall take final action within the appropriate time periods as provided in Massachusetts General Laws, Chapter 40A, Sections 9 and 11. The Granting Authority's final action, rendered in writing shall consist of either:**
- i) Approval of the site plan based upon a determination that the proposed plan will constitute a suitable development and is in compliance with the standards set forth in this By-Law;**



- ii) **Disapproval of the site plan based upon a determination that the proposed project does not meet the standards for review set forth in this By-law; or**
- iii) **Approval of the site plan subject to any conditions, modifications and restrictions as required by the Granting Authority which will ensure that the project meets the Standards for Review.**

The Applicant acknowledges the terms of this provision.

9.06 Submission Requirements

The site plan shall include the following data, details and supporting plans. The number of pages submitted will depend on the proposal's size and complexity. All of the requirements must be met in each plan, with notations explaining the reasons for any omissions.

Site plans shall be prepared by a registered professional surveyor, engineer, architect, or landscape architect at a scale of one (1) inch equals twenty (20) feet, on standard 24" x 36" sheet, with continuation on 8 1/2" x 11" sheets as necessary for written information.

The Applicant will comply with the terms of this provision.

Items required for submission include:

1. **Name of the project, boundaries, and locus maps showing site's location in Town, date, north arrow and scale of the plan.**

Please refer to Sheets T01, A01 and A02 of the Plans which contain the information required by this provision.

2. **Name and address of the owner of record, developer, and seal of the surveyor, engineer, architect or landscape architect.**

Please refer to Plans submitted herewith and stamped by a Massachusetts Registered Professional Engineer. The name of the owner of the Site appears on the Application Form submitted herewith.

3. **Names and addresses of all owners of record of abutting parcels and those within three hundred (300) feet of the property line.**

Please refer to the certified abutters list and radius map included within the materials submitted herewith.



4. **All existing lot lines, easements, and rights of way. Include area in acres of square feet, abutting land uses, and the location and use of structures within three hundred (300) feet of the site.**

Please refer to the Plans submitted herewith. The Applicant respectfully suggests that the modification is sufficiently described and illustrated by the attached materials so that the board may render an informed decision. To the extent the materials do not address the specific requirements of this section of the Bylaw, in light of the minimal impact of the Facility, the Applicant respectfully requests any waivers necessary.

5. **The location and use of all existing and proposed buildings and structures within the development. Include all dimensions of height and floor area, and show all exterior entrances, and all anticipated future additions and alterations.**

Please refer to the Plans submitted herewith. The Applicant respectfully suggests that the modification is sufficiently described and illustrated by the attached materials so that the board may render an informed decision. To the extent the materials do not address the specific requirements of this section of the Bylaw, in light of the minimal impact of the Facility, the Applicant respectfully requests any waivers necessary.

6. **The location of all present and proposed public and private ways, parking areas, driveways, sidewalks, ramps, curbs, fences, paths landscaping, walls, and fences. Location, type, and screening details for all waste disposal containers shall also be shown.**

Please refer to the Plans submitted herewith. The Applicant respectfully suggests that the modification is sufficiently described and illustrated by the attached materials so that the board may render an informed decision. To the extent the materials do not address the specific requirements of this section of the Bylaw, in light of the minimal impact of the Facility, the Applicant respectfully requests any waivers necessary.

7. **The location, height, intensity, and bulb type (e.g. fluorescent, sodium incandescent) of all external lighting fixtures. The direction of illumination and methods to eliminate glare onto adjoining properties must also be shown.**

No additional lighting will be added to the Site as a result of the proposed modification.



8. The location, height, size, materials, and design of all proposed signage.

No additional signage will be installed on Site as a result of the proposed modification.

9. The location of all present and proposed utility systems including:

--sewage or septic system;

--water supply system;

--telephone, cable, and electrical systems; and

--storm drainage system including existing and proposed drain lines, culverts, catch basins, headwalls, enwalls, hydrants, manholes and drainage swales.

The Board may also request soil logs, percolation test and storm runoff calculations for large or environmentally-sensitive developments.

The Facility will be unmanned and does not require water or sewer services. Telephone and electrical services are already on Site. No additional impervious ground surfaces will be added to the Site as a result of the proposed modification. Please refer to the Plans submitted herewith. The Applicant respectfully suggests that the modification is sufficiently described and illustrated by the attached materials so that the board may render an informed decision. To the extent the materials do not address the specific requirements of this section of the Bylaw, in light of the minimal impact of the Facility, the Applicant respectfully requests any waivers necessary.

10. Plans to prevent the pollution of surface or groundwater, erosion of soil both during and after construction, excessive run-off, excessive raising or lowering of the water table, and flooding of other properties, as applicable.

The Facility is a *de minimis* alteration of the Applicant's existing wireless communications services facility which entails the placement of additional antennas and equipment on the Site in a manner which does not increase the height of the Tower, expand the footprint of the existing equipment shelter or fenced compound area, nor add any impervious ground surface to the Site.



11. **Existing and proposed topography at a two foot contour interval. All elevations shall refer to the nearest United States Coastal and Geodetic Bench Mark. If any portion of the parcel is within the one hundred (100) year flood plain, the area will be shown, and the base flood elevations given.**

Please refer to the Plans submitted herewith. The Applicant respectfully suggests that the modification is sufficiently described and illustrated by the attached materials so that the board may render an informed decision. To the extent the materials do not address the specific requirements of this section of the Bylaw, in light of the minimal impact of the Facility, the Applicant respectfully requests any waivers necessary.

12. **A landscape plan showing all existing natural land features, trees, forest cover and water sources, and all proposed changes to these features including size and type of plant material. Water sources will include ponds, lakes, brooks, streams, wetlands, floodplains, and drainage areas.**

The modification is a *de minimis* alteration of the Applicant's existing wireless communication services facility on the existing Tower. The Applicant respectfully asserts that no additional landscaping or screening is necessary. The Applicant respectfully suggests that the modification is sufficiently described and illustrated by the attached materials so that the board may render an informed decision. To the extent the materials do not address the specific requirements of this section of the Bylaw, in light of the minimal impact of the Facility, the Applicant respectfully requests any waivers necessary.

13. **Zoning district boundaries within three hundred (300) feet of the site's perimeter shall be drawn and identified on the plan.**

Please refer to the Plans submitted herewith. The Applicant respectfully suggests that the modification is sufficiently described and illustrated by the attached materials so that the board may render an informed decision. To the extent the materials do not address the specific requirements of this section of the Bylaw, in light of the minimal impact of the Facility, the Applicant respectfully requests any waivers necessary.

14. **Traffic flow patterns within the site, entrances and exits, loading and unloading areas, curb cuts on the site and within one hundred (100) feet of the site.**

The Granting Authority may require a detailed traffic study for large developments or for those in heavy traffic areas to include:



- a) **The projected number of motor vehicle trips to enter or leave the site, estimated for daily and peak hour traffic levels;**
- b) **The projected traffic flow pattern including vehicular movements at all major intersections likely to be affected by the proposed use of the site.**
- c) **The impact of this traffic upon existing abutting public and private ways in relation to existing road capacities. Existing and proposed daily and peak hour traffic levels as well as road capacity levels shall also be given.**

No significant increase in traffic will result from the Facility. Trips to and from the Site will be limited to one or two visits per month by maintenance personnel who will access the Facility via existing ways. Please refer to the Plans submitted herewith. The Applicant respectfully suggests that the modification is sufficiently described and illustrated by the attached materials so that the board may render an informed decision. To the extent the materials do not address the specific requirements of this section of the Bylaw, in light of the minimal impact of the Facility, the Applicant respectfully asserts that no traffic study is required and requests any waivers necessary.

15. **For new construction or alterations to any existing building, a table containing the following information must be included:**
- a) **Area of building to be used for a particular use such as retail operation, office, storage, etc;**
 - b) **Maximum number of employees;**
 - c) **Maximum seating capacity, where applicable; and**
 - d) **Number of parking spaces existing and required for the intended use.**

The proposed modification is a *de minimis* alteration of the Applicant's existing wireless communications facility of the existing Tower and does not entail new construction of the alteration of a building. Therefore, this provision does not apply to this Application.

16. **Elevation plans at a scale of 1/4"=1' for all exterior facades of the proposed structure(s) and/or existing facades, plus addition(s)**



showing design features and indicating the type and color of the materials to be used.

Please refer to the Plans submitted herewith. The Applicant respectfully suggests that the modification is sufficiently described and illustrated by the attached materials so that the board may render an informed decision. To the extent the materials do not address the specific requirements of this section of the Bylaw, in light of the minimal impact of the Facility, the Applicant respectfully requests any waivers necessary.

- 17. The Granting Authority shall have the right to waive or modify any of the above requirements upon its own motion or upon the request of the applicant and shall further have the right to request additional or further information or submissions if it determines that such items are necessary or appropriate for the Granting Authority to make its decision consistent with the stated intent and purposes of this Article.**

Please refer to the List of Requested Waivers included within the materials submitted herewith.

9.07 Standards for Review

The Granting Authority shall review the site plan and supporting documents, taking into consideration the reasonable fulfillment of the objectives listed below. Detailed design guidelines and performance standards shall be adopted by the granting Authority to guide decisions with respect to these objectives, and to help ensure consistency in the review of all applications.

- 1. Legal. Conformance with the provisions of the By-Laws of the Town, the General Laws of Massachusetts, and all applicable rules and regulations of State and Federal agencies.**

The Facility will comply with all applicable federal, state and local rules and regulations.

- 2. Traffic. Convenience and safety of both vehicular and pedestrian movement within the site and in relationship to adjoining ways and properties.**

No significant increase in traffic will result from the Facility.



3. Parking. Provisions for the off-street loading and unloading of vehicles incidental to the normal operation of the establishment, adequate parking, and internal traffic control.

There will be no change to existing access ways, parking areas, or loading areas on Site as a result of the proposed modification.

4. Town services. Reasonable demands placed on Town services and infrastructure.

The Facility will be unmanned and will not require water or sewer services. The facility will use standard telephone and electrical service already present on Site.

5. Pollution Control. Adequacy of methods for sewage and refuse disposal, and the protection from pollution of both surface waters and groundwater. This includes minimizing soil erosion both during and after construction.

The Facility will not produce odors, smoke, dust or waste. There will be no increase in impervious ground surface on Site as a result of the Facility.

6. Nuisances. Protection of abutting properties and Town amenities from any undue disturbance caused by excessive or unreasonable noise, smoke, vapors, fumes, dust, odors, glare, storm water runoff, etc.

The Facility will not produce odors, smoke, dust or waste. There will be no increase in impervious ground surface on Site as a result of the Facility. There will be no increase in noise levels on Site as a result of the proposed modification.

7. Existing Vegetation. Minimizing the area over which existing vegetation is to be removed. Where tree removal is required, special attention shall be given to planting of replacement trees.

There will be no removal of existing vegetation on Site as a part of the proposed modification.

8. Amenities. The Applicant's efforts to integrate the proposed development into the existing landscape through design features such as vegetative buffers, roadside plantings, and the retention of open space and agricultural land.

The proposed modification is a *de minimis* alteration of the Applicant's existing wireless communications services facility. The Applicant proposes to add three additional panel antennas to the Tower in a manner which does not exceed the height of the Tower or expand the footprint of the fenced compound area. The



Applicant proposes to place an additional equipment cabinet within the existing equipment shelter so that it will not be visible to the exterior.

9. Town character. The building setbacks, area and location of parking, architectural compatibility, signage, and landscaping of the development, and how these features harmonize with the surrounding townscape and the natural landscape.

The proposed modifications to the existing wireless facility are in harmony with the purposes of this Bylaw because by modifying an existing wireless facility on an existing Tower in a manner which does not increase the height of the existing wireless facility or expand its foot print, potential visual impacts are minimized and natural environmental features are preserved. Collocation upon an existing Tower eliminates the need to build a new tower structure within the immediate vicinity. Also, the proposed modifications will not produce any smoke, odors, waste, glare or traffic. The Facility will have no negative impact on property values in the area. The installation of the Facility will not be a threat to public health, safety and welfare. In fact, Applicant submits that the proposed Facility will aid in public safety by providing and improving wireless communications services to the residents, businesses, commuters, and emergency personnel utilizing wireless communications in the immediate vicinity and along the nearby roads. Consistent with the Bylaw, the Facility will function as a wireless communications services facility within a local, regional, and national communications system. This system operates under licenses from the FCC, and AT&T is mandated and authorized to provide adequate service to the general public. The proposed modifications will comply with all applicable regulations, standards and guidelines with respect to radiofrequency emissions. The Applicant respectfully asserts that the Facility is not substantially more detrimental to the surrounding area than the existing lattice Tower.

CONCLUSION

As evidenced by the materials submitted with the Application and as will be further demonstrated by the Applicant by evidence submitted to the Board at the public hearing(s) in connection herewith, the Facility satisfies the intent and objectives of the Bylaw. The Facility will not have any adverse effect on property values in the area. The Facility will not be dangerous to the public health or safety as it is designed to comply with all applicable FCC requirements relating to radio frequency emissions and will comply with all applicable requirements of the Massachusetts building code. Indeed, the maximum radio frequency output per channel for this Facility will be well below the maximum radio frequency exposure levels established by the FCC. The Facility is a passive use, and will not cause any nuisance such as unreasonable noise, vibration, smoke, odor or dust. Further, the Facility will improve communication coverage to residents, commercial establishments and travelers through the area and improves connections in this area of the Town of Topsfield. Lastly, the installation of the Facility at the Site will assist the Town of Topsfield in complying with its obligations under the TCA.



AT&T respectfully requests that the Board grant all necessary relief, all rights reserved, pursuant to the Bylaw and Massachusetts General Laws Ch40A to install and operate the Facility. For the foregoing reasons, as well as to satisfy the mandate of the Federal Government to facilitate competition in the telecommunications industry as set forth in the TCA, Applicant respectfully requests that the Board grant the foregoing zoning relief. We respectfully submit that the standards for relief as set forth in the Bylaw as well as Massachusetts state law relating to zoning must be interpreted and applied such that the decision issued by the Board is in conformance with the TCA. Accordingly, a denial of the foregoing petition would effectively prohibit AT&T from providing adequate service to the Town of Topsfield, would unreasonably discriminate among providers of functionally equivalent services, and thus would be contrary to the purpose and intent of the TCA.

Sincerely,

BROWN RUDNICK LLP

A handwritten signature in black ink, appearing to read 'E. Pare', with a stylized flourish at the end.

Edward D. Pare, Jr., Esq.

Attachment

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