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98-15 - Wireless Communication Facility Special Permit - Amendment 1
AT&T Wireless Service
August 20, 2019



Planning Board

TOWN OF ACTON
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**AMENDMENT #1
OF DECISION
98-15**

AT&T Wireless Services
Wireless Communication Facility Special Permit
August 20, 2019

This is an amendment by the Planning Board (hereinafter the Board) of its decision issued to AT&T Wireless Services (AT&TWS) (hereinafter the Applicant), dated November 9, 1998 (hereinafter the Original Decision). It is in response to an "Eligible Facilities Request" by AT&T to the Town of Acton Planning Board pursuant to section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (the "Spectrum Act").

At its regular meeting of August 20, 2019, the Board determined that the requested modification is minor in nature and as such does not require a public hearing. The minutes of the meeting and submissions, on which this decision is based upon, may be referred to in the Office of the Town Clerk or in the Acton Planning Division.

1 EXHIBITS

Submitted for the Board's deliberation were the following exhibits:

1.1 Items and documentation:

- Request for Administrative Review of an Eligible Facilities Request to Modify a Tower Located at 533 Main Street, Acton, MA, dated, August 15, 2019;
- Plan prepared for AT&T, last revised 06/14/19, and entitled Site Number: MA3371; Site Name: Acton Main Street; Project: LTE 3C-4C-5C Upgrade.

1.2 Other

- The original decision;
- Google Aerial View of the Telecommunication Tower;
- Extenet Systems, Inc. v. Village of Pelham;
- Subpart CC – State and Local Review of Applications for Wireless Service Facility Modification;
- Holbrook Special Town Meeting of November 13, 2017 excerpt;
- Wireless Telecommunications Bureau Offers Guidance on Interpretation of Section 6409(A) of the Middle Class Tax Relief and Job Creation Act of 2012.

1.3 Interdepartmental Communication received from:

- Planning Division Memo, dated August 16, 2019;

Exhibits in 1.1 are referred to herein as the Amended Plan.

2 FINDINGS AND CONCLUSIONS

- 2.1 In 1998 the Planning Board granted a special permit for a 150' tall tower. Two special permit conditions seem to be relevant here. One required the applicant to build the tower so that it could be extendable to 175 feet, which is the highest allowed by the Acton zoning bylaw. The other required that any such height extension must come before the Board for approval.
- 2.2 A building permit application for a 12'8" height extension was submitted on June 24, 2019. The applicant invoked Federal Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 in seeking administrative approval of the height extension despite the specific condition of the 1998 special permit that a height extension requires a new special permit.
- 2.3 Section 6409, as further clarified by Federal Communication Commission (FCC) Rules and guidance provides, in summary, that state and local governments may not deny and must approve certain "Eligible Facilities Request" for modifications of existing wireless towers or base stations that do not substantially change the physical dimensions of such tower or base station. FCC promulgated criteria for what constitutes an Eligible Facilities Request and that such request must be approved administratively, i.e. without the discretion of a special permit. The Eligible Facilities Request before the Board falls into this category.
- 2.4 As an added consideration, the Federal Communications Commission has instituted a 60-day shot clock for administrative approvals of eligible wireless facilities modifications. The shot clock in this case started with the date of the building permit application and runs out on Friday, August 23, 2019.
- 2.5 The requested height extension is minor in nature, and as such the Board determines that it does not require a new special permit or a public hearing.

3 BOARD ACTION

Therefore, the Board voted to **APPROVE** the proposed Eligible Facilities Request and the Plan to modify the height of the subject Telecommunication Tower subject to the following conditions below. Furthermore, this Amendment Decision clarifies that Condition 3.2.2 of the Original Decision that the requested 12'8" height extension is approved without a new special permit, pursuant to of the, is hereby amended to expressly clarify.

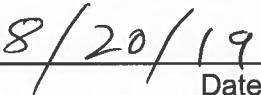
3.1 CONDITIONS

- 3.1.1 This Decision Amendment shall be recorded at the Middlesex South District Registry of Deeds or the Land Court by the Applicant together with the appropriate margin references to the Original Decision.
- 3.1.2 Except as modified herein, the Original Decision, and the plan amendments approved thereunder, shall remain in effect.

Signed on behalf of the Acton Planning Board



Roland Bartl, AICP, Planning Director



Date

Copies to:

Applicant
Engineering Department
Police Department

Land Use Department
Town Clerk

Fire Department
Town Manager