

**TOWN OF WEYMOUTH
BOARD OF ZONING APPEALS APPLICATION**

TO BE COMPLETED BY STAFF

Town Clerk Stamp

Case Number: _____

Submittal Accepted: _____ Date _____
Signature of Planning Dept. Staff for minimal requirements

Determined to be complete and may now be filed with Town Clerk: _____
Signature of Principal Planner or Director

PROPERTY INFORMATION - TO BE COMPLETED BY APPLICANT

PROJECT / PROPERTY STREET ADDRESS: 87 Wharf Street, Weymouth, MA

Assessor's Map Sheet, Block, & Lot: Map 19, Block 172, Lot 2

Zoning District: Planned Industrial Park (PIP) Overlay District: _____

OWNER OF RECORD (S) (print & sign): Town of Weymouth - See Authorization from Town
(The owner of record is the person or entity who owns title to the property as of today's date)

Address of owner of record: 75 Middle Street, Weymouth, MA 02189

Norfolk County Registry of Deeds Book and Page No. Book 3792, Page 397

Or registered in Land Registration Office under Certificate No. _____

NAME OF APPLICANT (S) (print & sign): New Cingular Wireless PCS LLC ("AT&T")

Applicant's Address: 550 Cochituate Road, Framingham, MA 01701

Contact Information: Email epare@brownrudnick.com Phone 401-276-2639

Check if you are an: owner(s) ☐ lessee(s) ☒ optionee (s) ☐

NAME & AFFILIATION OF REPRESENTATIVE: _____


Address: Edward D. Pare, Jr., Esq., Brown Rudnick LLP, 10 Memorial Boulevard, Providence, RI 02903

Contact Information: Email epare@brownrudnick.com Phone 401-276-2639

NAME OF ENGINEER AND / OR ARCHITECT: Daniel P. Hamm, PE and Daniel F. Stasz, PLS (Hudson Design Group LLC)

Prior to submitting your application you must review this entire package and the Board Rules and Regulations outlining the Board's policies and procedures. Your signature signifies that you have read the required material and you will be expected to adhere to them.

I (we) hereby certify that I (we) have read the Board of Zoning Appeals Rules and Regulations and that the statements within my (our) application are true and accurate to the best of my (our) knowledge.

 June 3, 2011 Edward D. Pare, Jr., Esq., Brown Rudnick LLP, for the Applicant
Applicant / Petitioner - Date (sign & print)

NATURE OF REQUEST

Application is for: ☒ Special Permit ☐ Variance Other: _____

Applicable Section of Zoning Ordinance (specify Section (s) of the Zoning Ordinance from which relief is sought):

Sections 120-40 and 120-122(D) as well as Massachusetts General Laws chapter 40A

The above relief and Ordinance sections will be further reviewed after a complete package is submitted. This may be amended by the Planning or Building staff during the application review process after having the benefit of plan to accurately advertise the application before the Board.

PETITIONER'S DESCRIPTION AND NARRATIVE:

To be completed by all Board of Appeals Applicants. Attach additional sheets as necessary.

1. Describe what is presently located on the property (use as much detail as possible including all uses and square footage of each use):

Currently there are two buildings on the Site. One building has an attached 160' above ground level ("AGL") smokestack (the "Smokestack") upon which is located wireless communications services facility antennas.

2. The applicant seeks to (describe what you want to do on the property in as much detail as possible):

Install a 120' AGL temporary and removable monopole style ballasted tower with 6 panel antennas mounted at the 116' AGL antenna centerline height, together with related amplifiers, coaxial cables, fiber and other associated antenna equipment including remote radio heads, surge arrestor, cable trays, a small GPS antenna and conduits and associated electronic equipment to be located within a Cell on Wheels shelter within a temporary fenced compound area.

3. Such a use is permitted by the Town of Weymouth Zoning Ordinance under Article (insert Article, Section of the Zoning Ordinance which permits the proposed use of the property).

Article XIII, Sections 120-40 and 120-122(D)

4. Are you aware if this property has been previously granted approvals from any Town Board or Commission? If so, please list (provide dates of previous approvals, book and page numbers or any recorded decisions and copies of past decisions).

No.

5. Any other additional information as relevant to the Variance or Special Permit:

Please refer to the supporting statements, Plans and materials submitted herewith and incorporated herein by reference.

ZONING COMPUTATION WORKSHEET

(To be attached with all Board of Zoning Appeals Applications)

The Zoning Computation Worksheet must be completed by the Applicant / Petitioner. All information should be measured and calculated in accordance with the Weymouth Zoning Ordinance (Section 120-51 Table 1 "Schedule District Regulations" and other applicable sections of the Zoning Ordinance). The information should be based on engineer/surveyor/architectural prepared plans and or calculations. Further guidance can also be provided by the Board's step-by-step application instructions and by contacting the Planning or Building Department while completing this section.

Data	Required	Existing	Proposed
Use		Municipal and wireless communications	temporary wireless communications
Lot Area / Size (Sq. Ft.)	43,560	389,949.12	No change
Dwelling Units		None	No Change
Frontage (ft.)			No change
Lot Width (ft.)			No change
Front Yard Setback (ft.)			83'
Front Yard Setback (ft.) – corner lots			
Side Yard Setback (ft.)			45'
Side Yard Setback (ft.)			896'
Rear Yard Setback (ft.)			71'
Height (ft.) & # of Stories		160'	120'
Lot Coverage			
Off-Street Parking Spaces			None proposed
Off-Street Loading Spaces			None proposed
Parking Setback			N/A
Accessory Structure Setback			
Landscaping			None proposed
Floor Area Ratio			N/A
Signage			
Other:			

SPECIAL PERMIT APPLICATION

To be completed for Special Permit Applications only.

SPECIAL PERMIT FINDINGS OF FACT

In the spaces below explain how the adverse effects of the proposal will not outweigh its beneficial impacts to the Town with respect to each of the following considerations per Article XXV, Section 120-122 of the Zoning Ordinance. The Special Permit Granting Authority may approve any such application for a special permit **only** if it finds that, in its judgment, all of the following conditions are met. (Attach additional supporting documentation as necessary).

1. Is the specific site an appropriate location for such a use? Please explain.

The Site continues to be an appropriate location for the use because the proposed Facility will be a temporary installation on a ballasted Monopole with equipment located upon a temporary COW at ground level. The temporary Monopole will be 120' AGL, 40' lower than the existing 160' AGL Smokestack. The Site is a large parcel with vegetation along its boundary to partially screen the Monopole from view. The Facility will not cause any nuisance such as unreasonable noise, vibration, smoke, odor or dust. The Facility will comply with all applicable laws and regulations including the FCC requirements relating to radio frequency emissions and the Massachusetts State building Code. Further, the Facility will continue to provide communication coverage and connections in this area of the Town of Weymouth. The Facility will continue to improve emergency communications for police and fire by reducing the number and frequency of dropped and incomplete calls due to weak signals and adding an additional layer of communication to traditional land lines. In fact, published reports have highlighted the fact that during and after adverse major weather events, including ice storms, wireless communications have been the only form of reliable communication. These services further the public interest of health and safety as they will maintain wireless 911 services to the community and communications services for the public. According to the FCC, more than 240 million 911 calls, or nearly two-thirds of all calls received by the 911 centers nationwide, are made annually from mobile handheld devices in the United States. See FCC Press Release, entitled FCC takes Action to Improve Wireless 9-1-1 Services, dated September 23, 2010. Today, wireless infrastructure is required to assist with public safety needs. According to published reports, many homes no longer contain traditional land line phone service. Lastly, the installation of the temporary Facility at the Site will assist the Town of Weymouth in complying with its obligations under the TCA.

2. Will the proposed use / structure be detrimental or adversely affect the character of the neighborhood or town? Please explain.

The proposed temporary Facility will not be detrimental to the established or future character of the neighborhood or Town because the use is passive in nature and will not generate excessive noise, odors, waste, smoke, or glare. As noted, this is a temporary installation to maintain vital wireless communication services while a permanent site for the wireless facility is installed.

3. Is there potential for nuisance or serious hazard to vehicles or pedestrians? Please explain.

Once constructed, visits to the Facility will average one or two trips per month by maintenance personnel who will park their SUV by the gate of the fenced compound area and not on the street.

4. Will adequate and appropriate facilities, utilities and other public services be provided for the proper operation of the proposed use? Please explain.

The proposed temporary facility will function with standard electric and telephone service, available on Site.

5. Will the public convenience and welfare be substantially serviced with this proposal? Please explain.

The Facility will continue to provide enhanced wireless communications services to the residents, businesses and travelers in the Town of Weymouth. The Facility will continue to provide emergency communications for police and fire by reducing the number and frequency of dropped and incomplete calls due to weak signals and adding an additional layer of communication to traditional land lines.

SUPPLEMENTARY QUESTIONS - SECTION 120-40 SPECIAL PERMITS

Extension, Alteration or Change of a Privileged Pre-existing, Nonconforming Structure or Use (Article XIII "Nonconforming Uses" Section 120-40 "Extension or Change")

To be completed by Applicants applying for a Special Permit under Section 120-40 Only.

EXTENSION OR CHANGE FINDINGS OF FACT:

Any lawful structure or use in existences at the time the Zoning Ordinance was adopted or amended may be extended or altered, provided that no such extension or alteration shall be permitted unless there is a finding by the Board of Zoning Appeals that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use or structure to the neighborhood.

1. Describe what is currently nonconforming about this structure (list specific dimensional nonconformities):

Within the PIP zoning district, the maximum height of a structure is 35' AGL or 80' AGL by special permit from the Planning Board. The smokestack is 160' AGL and such height would be not permissible in this zoning district today. Also, wireless communications facilities are permissible in the PIP zoning district with the grant of a special permit, but towers are limited to a maximum height of 120' AGL.

2. Indicate how long the nonconforming aspects of the structure have been in existence:

The building and smokestack were constructed in 1965.

3. At the time the nonconformity was created (the structure or use initiated) was it compliant with the current zoning requirements? Past zoning ordinances are available for research at the Town Clerk's office and Planning Department. Past zoning maps are available at the Planning Department.

The smokestack was constructed in 1965 as part of an incinerator which was ordered closed by the EPA in 1976. Section 120-106.2 of the Bylaw was added in 1997. Prior to that time, there was no specific category for wireless communications equipment.

4. Explain how the extension, alteration, or change itself complies with the current Zoning Ordinance requirements:

Section 120-39 of the Bylaw states that any building or structure or any use of a building or structure or premises or part thereof lawfully existing at the time this bylaw or any amendment thereto is adopted may be continued although such building or structure or use does not conform to the provisions thereof. The proposed alteration will not increase the nonconforming aspect of the existing use or structure. The proposed use will actually reduce the nonconformity because the Smokestack will be removed. The allowable height for towers in the Town is 120'.

5. Indicate the number of off-street parking spaces currently provided and to be provided for the proposed structure as extended, altered or changed:

There are 6 existing parking spaces on Site with an additional 6 spaces on the adjoining town-owned parcel. AT&T does not propose any additional parking spaces as part of the temporary Facility.

6. Explain how the use or structure as extended, altered or changed will not be substantially more detrimental to the neighborhood than the existing structure:

AT&T's proposed temporary Facility will not be substantially more detrimental than the existing antennas mounted on the existing smokestack because the Monopole will be temporary, and the antennas mounted in a manner which will not exceed the height of the Monopole. The height of the antennas and structure will be significantly lower, 120' AGL from 160' AGL. The temporary facility will allow the continuation of wireless communication services in the area, including emergency communications. As the Board may be aware, the Smokestack is scheduled for demolition and the temporary continuation of the use will allow AT&T to locate and install a permanent wireless facility elsewhere. The use will continue to be passive in nature and not produce excessive noise, smoke, odors, glare, waste, dust, or excessive amounts of traffic. Once constructed, visits to the Facility will average one or two per month by maintenance personnel who will park their SUV on the Site and not along the street.

VARIANCE APPLICATION

To be completed for Variance applications only.

VARIANCE FINDINGS OF FACT:

Criteria for approval. The Board may approve any such application for a Variance **only** if it finds that, in its judgment, all of the following conditions are met.

Complete the following questions. Your responses should provide justifications as to why the requested Variance(s) should be granted. Attach additional documentation as necessary.

1. Describe how a literal enforcement of the provision of the Town of Weymouth Zoning Ordinance would involve a substantial hardship, financial or otherwise, to the petitioner.

N/A

2. Describe how the hardship is owing to circumstances relating to the soil conditions, shape, and/or topography of the land or structures and how the hardship especially affects said land or structures, but does not affect generally the zoning district in which it is located.

N/A

3. Describe how desirable relief may be granted without detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Town of Weymouth Zoning Ordinance.

N/A

4. Describe how the dimensional variance as it relates to floor space, bulk, number of occupants or other relevant measures, if granted, shall be no greater than the minimum necessary to provide relief from the statutory hardship.

N/A

NOTE THAT THE LAW DOES NOT PERMIT THE BOARD TO GRANT A VARIANCE UNLESS ALL OF THE REQUIREMENTS SET FORTH IN CHAPTER 40A SECTION 10 OF THE GENERAL LAWS AND IN ARTICLE XXIV SECTION 120-119 OF THE WEYMOUTH ZONING ORDINANCE ARE SATISFIED. EACH OF THE ABOVE FINDINGS MUST BE ANSWERED IN DETAIL. ATTACH ADDITIONAL SHEETS IF NECESSARY.