



TOWN OF YARMOUTH
BOARD OF APPEALS
DECISION

FILED WITH TOWN CLERK: December 20, 2012

PETITION NO: #’s: 4423; 4424; 4425

HEARING DATE: December 13, 2012

**PETITIONER: New Cingular Wireless, PCS, LLC
d/b/a AT&T**

**PROPERTY: 480 Buck Island Road, West Yarmouth
Map & Parcel: 0046.2; Zoning District: R-40**

**327 White’s Path, South Yarmouth
Map & Lot: 0109.93.1; Zoning District: B3**

**82 Shaker House Road, YarmouthPort
Map & Lot: 0115.44; Zoning District: R-40**

**MEMBERS PRESENT AND VOTING: Steven DeYoung, Chairman, Joseph Sarnosky,
Sean Igoe, Bryant Palmer and Robert Howard.**

Notice of the hearing has been given by sending notice thereof to the Petitioner and all those owners of property as required by law, and to the public by posting notice of the hearing and publishing in *The Register*, the hearing opened and held on the date stated above.

The Petitioner in each Petition, #4423, 4424 and 4425 is New Cingular Wireless, PCS, LLC. Each Petition seeks substantially similar relief in connection with the Petitioner’s effort to upgrade service to their customers. The three Petitions are necessary due to the differing site locations. However, for Board economy, the three decisions will be set-forth within the body of one document.

Consistent with each Petition, there was some discussion as to whether or not regulation by the Town has been removed by act of congress in the regulation of wireless communication. Not resolving this issue directly, the Board did note its appreciation that the Petitioner continued to seek Town review and, by doing so, was acting as a good, responsible “neighbor” within the Community.

Each Petition seeks relief under Zoning By-law §408.4 with #4423 seeking allowance for the installation of 3 antennas and associated wireless equipment at the existing wireless facility at 480 Buck Island Road, property in the R-40 Zoning District; #4424 seeking allowance for the installation of 3 antennas and associated equipment at the existing wireless facility at 327 Whites Path, property in the B-3 Zoning District; and #4425 seeking allowance for the replacement of 3 antennas and addition

of associated wireless equipment at the existing wireless facility at 82 Shaker House Road, property in the R-40 Zoning District.

Mr. Tim Greene appeared on behalf of the Petitioner and explained the need for the systems upgrade to allow it to advance to the so-called "4G" network. These advances in technology require varying equipment installations and upgrades. In each instance, it appeared that there was little by way of practical, observable change to the equipment.

Regarding Petition #'s 4423 and #4424 no one spoke in favor or in opposition of either Petition. Finding in each that the grant of Special Permit would result in no undue nuisance, hazard or congestion nor would there be any substantial harm to the established or future character of the neighborhoods or Town, on Petition #4423 Motion was made by Mr. Igoe and seconded by Mr. Howard and on Petition #4424 Motion was made by Mr. Palmer, seconded by Mr. Howard, both Motions to grant the requested relief prayed for by the Petition. Each Motion was favorably approved by unanimous vote and without condition.

Regarding Petition #4425, Ms. Vita Morris did appear as a party of interest to express her concerns as to the compliance by Petitioner of the original Special Permit of 1998 (#3511). Ms. Morris also pointed out that she had concerns as to the fencing surrounding the ground facility and expressed her feelings that the conditions imposed in Decision #3511 had not been implemented. As such, she spoke in opposition of the Petition.

The Board, though sympathetic to her concerns, found that the requested relief could be granted while assuring that no undue nuisance, hazard or congestion will be created and that there will be no substantial harm to the established or future character of the neighborhood or Town. The Board, however, also accepted Ms. Morris' concerns over the requirements set-forth in Decision #3511, condition #1, i.e. that the equipment pad at the site be enclosed with an 8 foot stockade fence, screened from view by both then-existing natural vegetation and with additional plantings, as required. Accordingly, Mr. Igoe proceeded to make a Motion, with condition below stated, which Motion was seconded by Mr. Palmer and voted on unanimously by the Board. The Motion to grant the relief, as prayed for in the Petition, was approved on the condition that the fencing and vegetative screening set-forth as condition #1 of Decision #3511 be brought into compliance and hereafter appropriately maintained.

No permit shall issue until 20 days from the filing of this decision with the Town Clerk. This decision must be recorded at the Registry of Deeds and a copy forwarded to the Board of Appeals. Appeals from this decision shall be made pursuant to MGL c40A section 17 and must be filed within 20 days after filing of this notice/decision with the Town Clerk. Unless otherwise provided herein, the Special Permit shall lapse if a substantial use thereof has not begun within 24 months. (See bylaw, MGL c40A §9)

Steven DeYoung, Chairman