

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT**

Date: May 2, 2011

<u>CASE NUMBER</u>	5673
<u>APPLICANT NAME</u>	New Cingular Wireless, LLC
<u>LOCATION</u>	42 South Hamilton Street (Southwest corner of South Hamilton Street and Conti Street)
<u>VARIANCE REQUEST</u>	SETBACK: Allow a 67-foot high mobile “cell on wheels” communications facility within 15 feet of a side property line and 59 feet of a rear property line.
<u>ZONING ORDINANCE REQUIREMENT</u>	SETBACK: A setback equal to the height of the tower (67 feet) is required along all property lines.
<u>ZONING</u>	B-4, General Business District
<u>AREA OF PROPERTY</u>	0.4 Acre ±
<u>TRAFFIC ENGINEERING COMMENTS</u>	None received
<u>CITY COUNCIL DISTRICT</u>	District 2

ANALYSIS The applicant is requesting Side and Rear Setback Variances to allow a 67-foot high cell on wheels (COW) mobile telecommunications facility for special events to be located 15 feet from a side property line and 59 feet from a rear property line in a B-4, General Business District; the Zoning Ordinance requires the property line setback for telecommunications facilities be at least equal to the height of the facility (67’) from all property lines in a B-4, General Business District.

The applicant wishes to place a mobile telecommunications facility at this location during special events, specifically Mardi Gras and Bayfest, when the large volume of people in the Downtown area severely stresses the existing mobile communities network and interferes with service. The tower mast is 67 feet in height.

The Zoning Ordinance states that no variance shall be granted where economics are the basis for the application; and, unless the Board is presented with sufficient evidence to find that the variance will not be contrary to the public interest, and that special conditions exist such that a literal enforcement of the Ordinance will result in an unnecessary hardship. The Ordinance also states that a variance should not be approved unless the spirit and intent of the Ordinance is observed and substantial justice done to the applicant and the surrounding neighborhood.

Variances are not intended to be granted frequently. The applicant must clearly show the Board that the request is due to very unusual characteristics of the property and that it satisfies the variance standards. What constitutes unnecessary hardship and substantial justice is a matter to be determined from the facts and circumstances of each application.

The actual need for the tower has not been specifically outlined in the application. However, there is some anecdotal evidence of a need for service capacity in Downtown Mobile during special events. The applicant's lease allows the tower to be placed at this location for a two-week period surrounding the Bayfest date and a five-week period surrounding the Mardi Gras date. Obviously, given the variability of the event dates, exact days will be determined from year to year.

The more precise issue is safety, not only of the equipment, but of surrounding structures, but of the public also. The narrative only indicates that the site will be fenced as "shown in the... photographs". The site plan and elevation drawing indicate that equipment on site will be surrounded by a chain link fence with barbed wire; however, the height of the fence is not indicated. Barbed wire is not permissible in B-4 zoning districts, and thus should be removed from the site plan and elevation. Additionally, the fence height should be at least 8 feet. If the Board approves the setback variance, plans should be required, and stamped by a qualified engineer, indicating the tie down and stabilizing mechanisms for the mobile tower, and indicating that the tower and equipment can withstand 130 mile per hour winds, the wind-load requirement in the City of Mobile. As previously stated, the equipment should be surrounded by temporary chain link fencing of at least 8 feet high, without barbed wire. This type of fencing is common in the Downtown area during both Bayfest and Mardi Gras.

Finally, if this request is approved, each time the tower and equipment are placed on the site, the applicant should obtain a building permit and a zoning inspection to ensure compliance with the setback requirements of this variance and any other condition that the Board may place on the approval. Any building permit will be temporary in nature and the tower and equipment will need to be removed by the end date on the permit, coinciding with the time frames specified previously.

RECOMMENDATION

Based upon the preceding, the Side and Rear Yard Setback Variances are recommended for approval subject to the following conditions:

- 1) the tower only be placed on the site during the two-week period surrounding Bayfest and the five-week period surrounding Mardi Gras, the exact dates to be determined based on the actual date of the event;
- 2) submittal of plans, stamped by a qualified engineer, indicating the tie down and stabilizing mechanisms for the mobile tower, and indicating that the tower and equipment can withstand 130 mile per hour winds;
- 3) construction of a temporary, 8-foot high chain link fence (without barbed wire) around the tower and equipment while the tower and equipment are on site; and
- 4) the applicant or operator obtain a building permit and zoning inspection each time the tower and equipment are placed on the site

LOCATOR MAP



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REQUEST Side and Rear Setback Variances



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by commercial land use.

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LEGEND															NTS	
	R-1	R-2	R-3	R-A	R-B	H-B	T-B	B-1	LB-2	B-2	B-3	B-4	B-5	I-1	I-2	



**PLANNING COMMISSION
VICINITY MAP - EXISTING ZONING**



The site is surrounded by commercial land use.

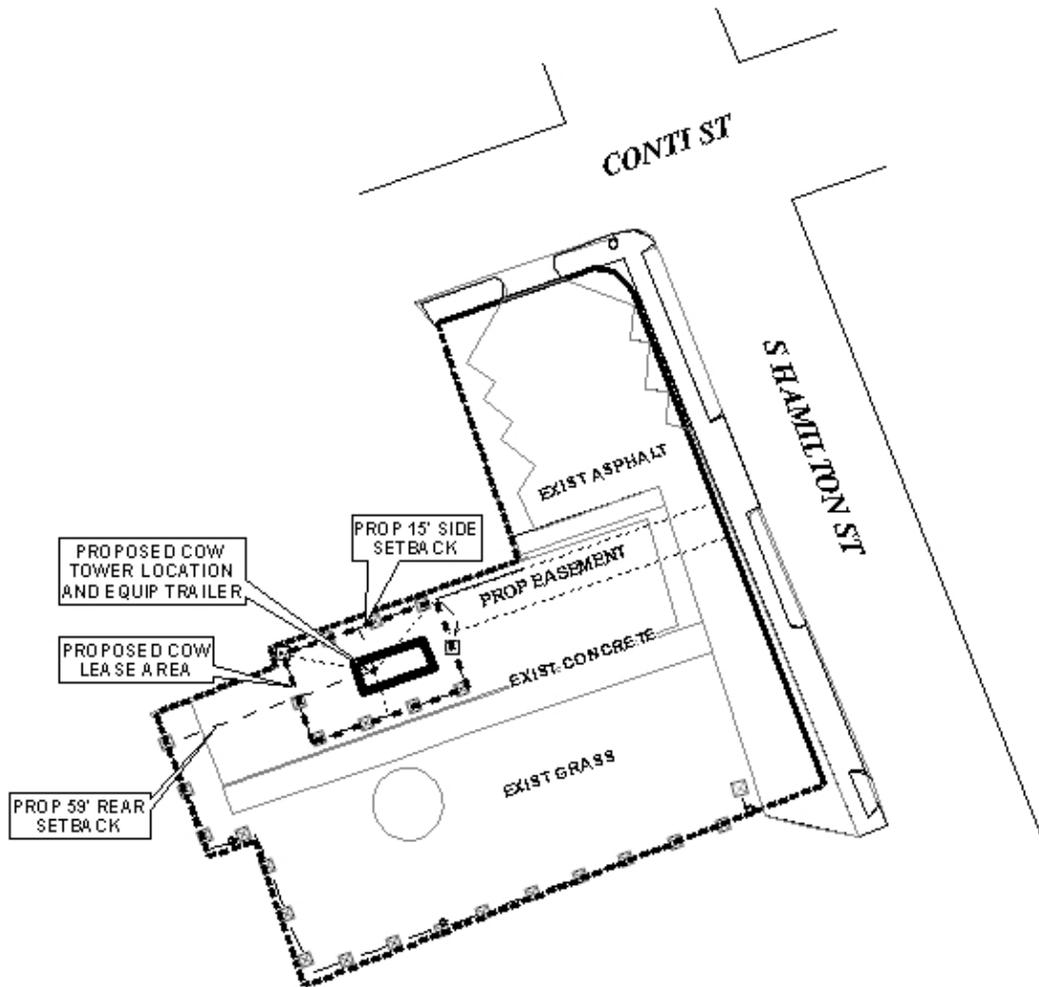
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SITE PLAN



The site plan illustrates the proposed COW tower location, lease area, and easement.

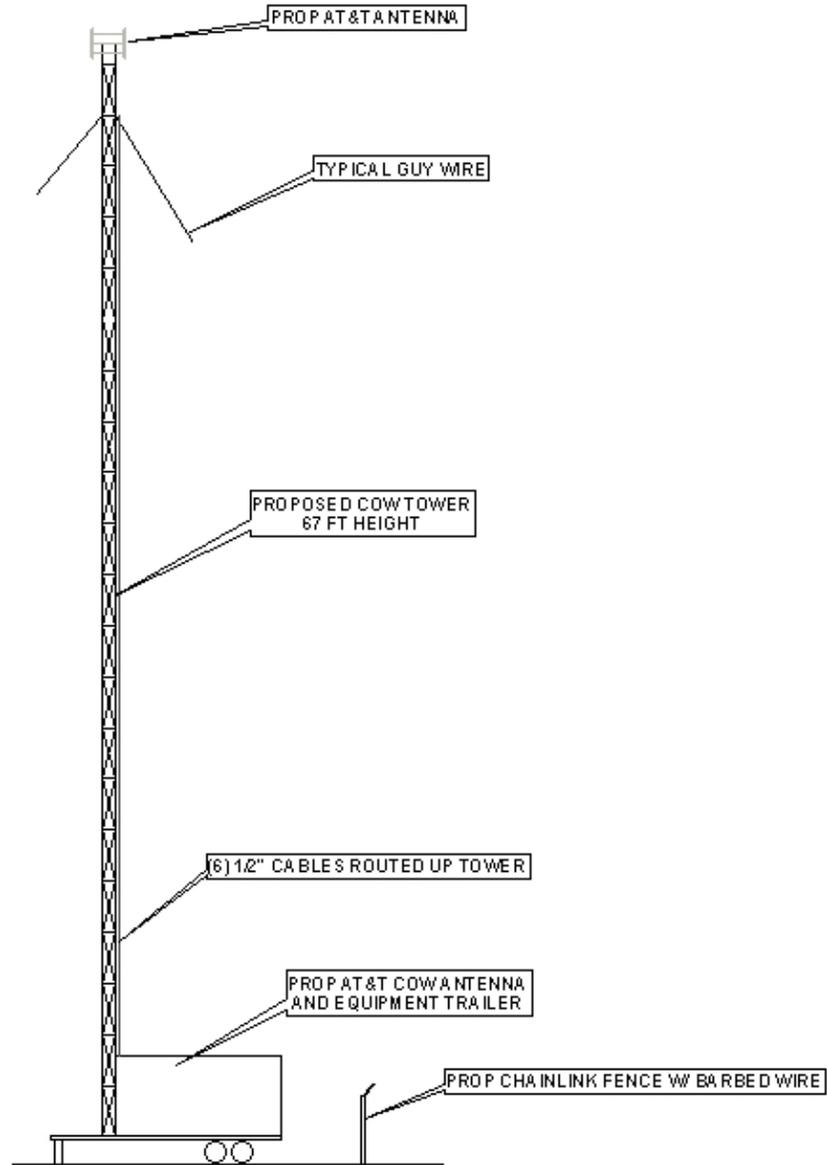
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DETAIL SITE PLAN



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