

**BOARD OF ZONING ADJUSTMENT  
STAFF REPORT****Date: September 12, 2011****CASE NUMBER**

5705 / 5673

**APPLICANT NAME**

New Cingular Wireless, LLC

**LOCATION**42 South Hamilton Street  
(Southwest corner of South Hamilton Street and Conti Street)**VARIANCE REQUEST****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.**ZONING ORDINANCE  
REQUIREMENT****SETBACK:** A setback equal to the height of the tower (67 feet) is required along all property lines.**ZONING**

B-4, General Business District

**AREA OF PROPERTY**

0.4 Acre ±

**TRAFFIC ENGINEERING  
COMMENTS**

None received

**CITY COUNCIL  
DISTRICT**

District 2

**ANALYSIS**

The applicant is requesting a modification to the conditions imposed with the Board’s granting of variance on May 2, 2011. The variance request is for a 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 remove the condition which required “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.”

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.

As the variance was previously approved by the Board, and the original staff recommendation was for approval, the merits of the variance request itself can be considered a moot point. The purpose of this application, as previously stated, is simply to remove a condition of approval that the Board placed on the approval based on the staff recommendation.

The applicant states in the revised request that “[a]fter significant research in trying to locate tie down and stabilizing mechanisms to fulfill this condition, we are unable to meet this requirement.” The applicant did not provide any evidence to support this claim, such as a letter from a licensed engineer with the engineer’s stamp on it. As the applicant did not provide any documentation to back up their claim that they unable to meet the condition, the application should be heldover until the applicant can provide sufficient documentation that the condition, indeed, cannot be complied with. Additionally, this site is located in a flood zone, and, as per the City’s Floodplain Manager, a flood evacuation plan must also be submitted whenever the mobile tower is set up. As such, the evacuation plan should also be provided with the engineering documentation.

### **RECOMMENDATION**

Based upon the preceding, the application is recommended for Holdover until the October 3, 2011, meeting, with documentation due to the Planning Section by Wednesday, September 21, 2011, to address the following:

- 1) submittal of evidence, such as a letter from a licensed engineer (including the engineer’s stamp), stating that compliance with condition “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” is not possible and why it is not possible; and
- 2) submittal of a flood evacuation plan acceptable to the City of Mobile Floodplain Manager.

## LOCATOR MAP



APPLICATION NUMBER 5705/5673 DATE September 12, 2011

APPLICANT New Cingular Wireless, LLC

REQUEST Side and Rear Setback Variances

N  
NTS

# BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by commercial land use.

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REQUEST Side and Rear Setback Variances

LEGEND NTS



**PLANNING COMMISSION  
VICINITY MAP - EXISTING ZONING**



The site is surrounded by commercial land use.

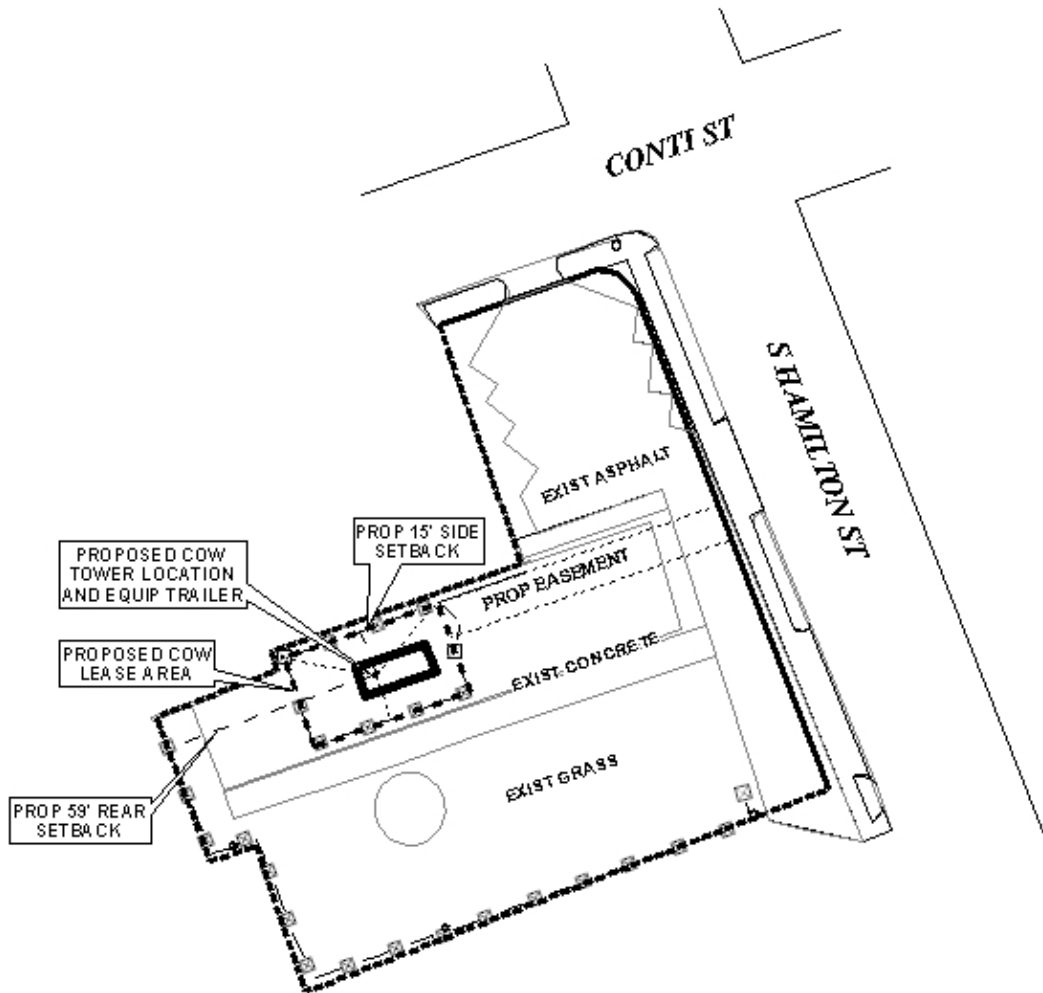
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APPLICANT New Cingular Wireless, LLC

REQUEST Side and Rear Setback Variances



## SITE PLAN



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

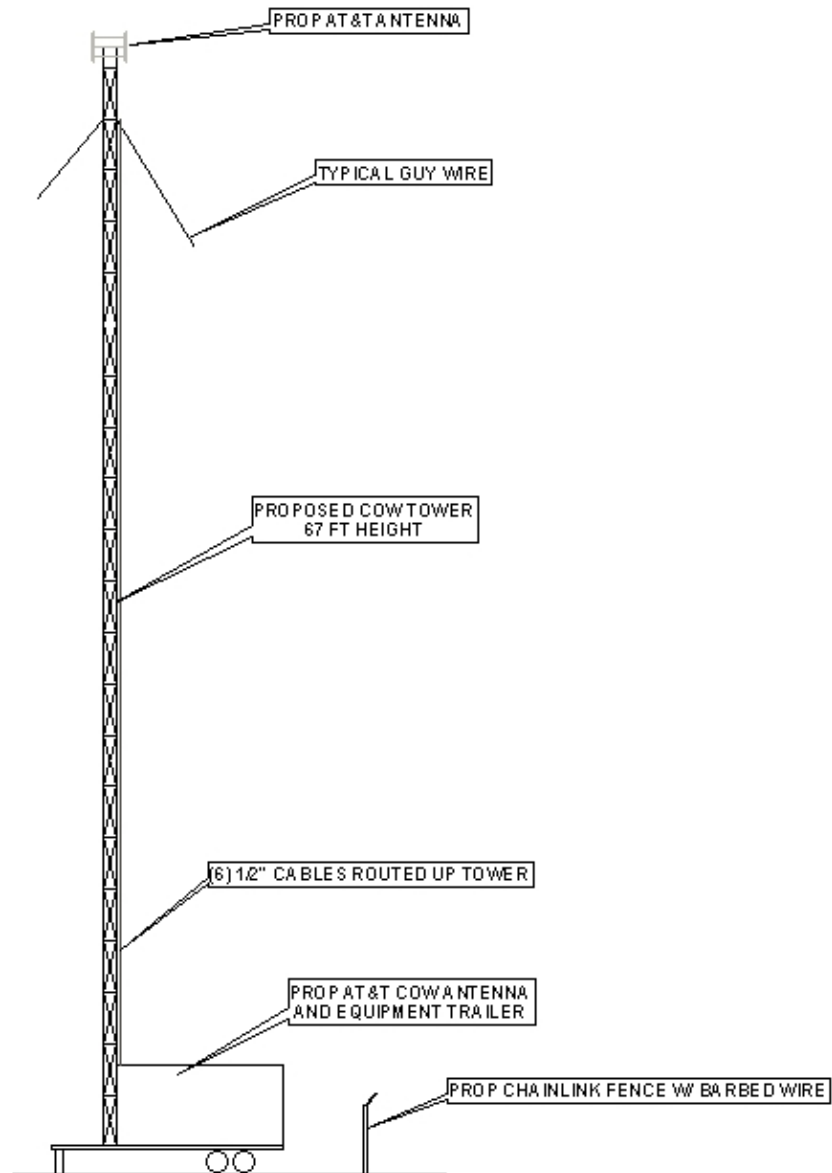
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## DETAIL SITE PLAN



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