



TOWN OF MILLIS

OFFICE OF THE PLANNING BOARD

900 Main Street • Millis, MA 02054
Phone: 508-376-7045
<https://www.millisma.gov/planning-board>

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SPECIAL PERMIT APPLICATION FOR/WITH SITE PLAN APPROVAL PERSONAL WIRELESS COMMUNICATIONS FACILITIES

To the Millis Planning Board:

The undersigned hereby petitions the Planning Board for a Special Permit and Site Plan Approval under Section XIII.C and N. of the Town of Millis Zoning By-Law.

Applicant's Name: Wireless EDGE Towers II, LLC

Address c/o Michael R. Dolan, Esq., Brown Rudnick, LLP, One Financial Center

Town Boston State/Zip MA/02111 Phone 617-856-8548 Email: mdolan@brownrudnick.com

Property Location 121 Norfolk Road

Assessors' Map 39 Parcel 43

Zoning District(s) Residential Suburban

Owner's Name Town of Millis

Address 900 Main Street

Town Millis State/Zip MA/02054 Phone (508) 376-7040

Summary of Work to be Done: Construct a 150' above ground level monopole style communications tower (the "Tower") with space for the antennas of The Town of Millis on the top plus at six (6) different lower elevations space for the antennas of wireless telecommunications companies together with their related amplifiers, cables, fiber and other associated antenna equipment, including remote radio heads, surge arrestors, and global positioning system antennas, plus the installation of a 4,200 sq ft compound enclosed by an 8' high chain linked fence for the location of electronic equipment, cabinets and other appurtenances, and the installation of an access drive, parking turnaround, steel bollards, pressure treated wood edging, as well as a transformer, meter bank, and underground conduit and utilities, with all proposed improvements as more particularly shown and described in the plans included with this application.

Signature of Applicant Michael R. Dolan (Srn) Date 12/13/2023

Signature of Land Owner [Signature] Date 12-20-23

DEC 15 2023

For TOWN of MILLIS

[Signature]
Director Town Clerk

DEC 15 2023

Kathleen E. Smith
Deputy Town Clerk

Checklist for Personal Wireless Application for Site Plan Approval
Submission

Completed

- _____ 1. Completed Application (signed by Town Clerk)
- _____ 2. Certified Abutters List from the Assessor's Office (within 300')
- _____ 3. Application Fee of \$350.00
*Consultant Review Fee: \$2,500.00
Make checks payable: "Town of Millis"
- _____ 4. 7 copies of the site plan as specified in Section XIII.C of the
Town of Millis Zoning By-Law (1 Full-sized; 6 - 11"x 17";
and an electronic copy)
- _____ 5. Send one copy of all submittal requirements to the Board's
independent engineer (to include 1 full-sized set of plans):
GCG Associates
84 Main Street
Wilmington, MA 01877
Office: (978) 657-9714 Ext. 211
Attn: Michael Carter, PE
www.gcgassociates.net

*Consultant Review Fees: Initial submittal of \$2,500.00 is to accompany application. Please note that once the submittal is received by GCG Associates, the Board's consulting engineers, a Scope & Fee will be prepared. The applicant is responsible for all consultant review fees in excess of the initial deposit of \$2,500.00.

A complete copy of the filing/plans, etc. must be emailed electronically to the Planning Board. The Planning Board public hearing will be scheduled upon receipt of completed application which includes all documentation, plans and fees.

December 13, 2023

Town of Millis
Planning Board
c/o Camille Standley,
Administrative Assistant
900 Main Street
Millis, MA 02054

RE: Supplement to Special Permit and Site Plan Approval Application for a Personal Wireless Communications Facility (the "Application")

Applicant: Wireless EDGE Towers II, LLC ("Wireless Edge" or the "Applicant")
c/o Michael R. Dolan, Brown Rudnick LLP, One Financial Center,
Boston, MA 02111

Site: 121 Norfolk Road, Millis, MA (Assessor's Parcel Map 39 Lot 43) (the "Site")

Owner: Town of Millis

Facility: Construct a 150' above ground level monopole style communications tower (the "Tower") with space for the antennas of The Town of Millis on the top plus at six (6) different lower elevations space for the antennas of multiple wireless telecommunications companies together with their related amplifiers, cables, fiber and other associated antenna equipment, including remote radio heads, surge arrestors, and global positioning system antennas, plus the installation of a 4,200 sq ft compound enclosed by an 8' high chain linked fence for the location of electronic equipment, cabinets and other appurtenances, and the installation of an access drive, parking turnaround, steel bollards, pressure treated wood edging, as well as a transformer, meter bank, and underground conduit and utilities; all proposed improvements as more particularly shown and described in the plans included with the Application (the foregoing collectively hereinafter referred to as the "Facility")

Relief Requested: Special Permit and Site Plan Approval pursuant to Section XIII C. and N. and Section XII Q. of the Town of Millis Zoning By-law (hereinafter, the "By-law"), Massachusetts General Laws chapter 40A, and the federal Telecommunications Act of 1996 (the "TCA") for the construction, operation, and maintenance of a Personal Wireless Communications Facility, and such other relief as deemed necessary, all rights reserved.



Dear Honorable Members of the Millis Planning Board (the "Board"):

We represent Wireless Edge in connection with the Application before the Board. The Site is owned by the Town of Millis (the "Owner"). Wireless Edge respectfully requests the Board's approval to construct the above-referenced Facility pursuant to the By-law. The Facility is shown on the plans attached hereto and incorporated herein by reference (the "Plans"). Additionally, Wireless Edge has agreed to allow the Town of Millis to install communications antennas and equipment on and adjacent to the Tower, free of charge.

BACKGROUND

Wireless Edge owns and manages wireless communication infrastructure in the United States. Wireless Edge leases space to FCC licensed wireless communications services providers (each a "Carrier" and together the "Carriers") and other users of wireless technology. Wireless Edge strives to be a good neighbor to the communities within which it has communication sites.

Wireless Edge has entered into a lease agreement with the Town of Millis pursuant to a request for proposals. Carriers will lease space on the Tower and within the fenced compound from Wireless Edge and will be subtenants at the Site.

The Applicant submits that the Site is well suited for a wireless communications facility and that the Site satisfies the intent and purposes of the By-law and the TCA, to the extent possible. As will be demonstrated through the Application materials and the written and oral evidence at the public hearing(s) in connection with the Application, the proposed Facility meets all applicable requirements of the By-law to the extent possible. The Facility will not significantly impact adjacent properties and neighborhoods as the Facility will in part be screened from view by sight lines blocked by existing tree cover and many of the surrounding properties are undeveloped. The location of the Facility will protect, to the extent practicable, the aesthetic qualities of the Town of Millis by utilizing a parcel of land that is especially suited to the proposed use due to the existing municipal use of the Site. The installation of the Facility will not be a threat to public health, safety and welfare. In fact, Applicant submits that the Facility will aid in public safety by providing much needed improved wireless communications services to the residents, businesses, commuters, and emergency personnel utilizing wireless communications in the immediate vicinity and along the nearby roads. Likewise, improved public safety communications will be available from the Tower. These services further the public interest of health and safety as they will aid with wireless 911 services to the community and communication 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. Today, wireless infrastructure is required to assist with public safety needs.

The Facility will not generate objectionable noise, odor, fumes, glare, smoke, or dust. The Facility will have no negative impact on property values in the area. No significant increase in traffic or hindrance to pedestrian movements will result from the Facility. On average, only one or two round trip visits per month per Carrier are required to service and maintain the Facility. The only utilities required to operate this Facility are standard electrical power as well as communication service. The Facility will comply with all applicable local, state and federal



safety codes. This Facility does not require police or fire protection because the installation has its own monitoring equipment that can detect malfunction and/or tampering.

RELIEF REQUESTED

Wireless Edge respectfully requests that the Board grant a Special Permit and Site Plan Approval pursuant to Section XIII C. and N. and Section XII Q. of the By-law, Chapter 40A of the Massachusetts General Laws, and the TCA, for the construction, operation, and maintenance of a Personal Wireless Communications Facility, and such other relief as deemed necessary, all rights reserved. As will be further demonstrated by the Applicant by evidence submitted to the Board at the public hearing(s) in connection herewith, such relief is appropriate as the facility satisfies all pertinent provisions and standards contained in the By-law for the requested relief.

Without the requested approvals, FCC licensed wireless communications carriers would be unable to fill their existing significant gaps in coverage in this area of Millis, thereby creating a hardship recognized by the state and federal courts interpreting the TCA. The Site is located within the limited geographic area where radio frequency experts have determined that a wireless telecommunications facility is required. The Town of Millis issued a request for proposals seeking to lease the Site for a wireless telecommunications facility to help improve wireless communication coverage in this area of Millis.

COMPLIANCE WITH SECTION XII Q. (SPECIAL PERMITS) OF THE BY-LAW

1. **Before granting an application for a special permit, the Special Permit Granting Authority, with due regard to the nature and condition of all adjacent structures and uses, and the district within which the same is located, shall find all of the following general conditions to be fulfilled.**
 - a. **Special permits shall only be issued following public hearings held within 65 days after filing of an application with the Special Permit Granting Authority, a copy of which shall be given forthwith to the Town Clerk by the applicant.**

AT&T's application will be subject to a public hearing.

- b. **The use requested is listed in the Table 1 Use Regulations as a special permit in the district for which application is made or is so designated elsewhere in this By-Law.**

Pursuant to the Table 1 Use Regulations, the Applicant's proposed use of the Site is designated in Accessory Uses # 18 "Personal Wireless Communications Facilities" and is permitted pursuant to the issuance of a Special Permit by the Planning Board.



c. The requested use is essential or desirable to the public convenience or welfare.

Applicant submits that the Facility will aid in public safety by helping to provide and improve wireless communication services to the residents, businesses, commuters, and emergency personnel utilizing wireless communications in the immediate vicinity and along the nearby roads. These services further the public interest of health and safety as it enables wireless 911 services to be better available to the community and communication 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. The Applicant submits that the proposed Facility will improve regular and emergency communications for police and fire personnel 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. Additionally, published reports have highlighted the fact that during and after adverse major weather events, including ice storms, wireless telecommunications has been the only form of reliable communication. Lastly, the installation of the Facility at the Site will assist the Town of Millis in complying with its obligations under the TCA. Consistent with the By-law, the Facility will allow wireless communications providers to function within a local, regional, and national communications system.

d. The requested use will not create undue traffic congestion, or unduly impair pedestrian safety.

The Facility will not generate significant amounts of traffic. Trips to the Facility will average one or two per month per carrier by maintenance personnel who will park in the front proposed parking/turnaround shown on the plans. The Facility is not open to the public and thus pedestrian safety concerns are minimized.

e. The requested use will not overload any public water, drainage, or sewer system or any other municipal service to such an extent that the requested use or any developed use in the immediate area or in any other area of the town will be unduly subjected to hazards affecting health, safety, or the general welfare.



The Facility will be unmanned and will not require water or sewer facilities. The Facility will use standard electric and telephone services which will be brought to the Facility via underground conduit from an existing utility pole already on Site. The Facility will not add significant amounts of impervious surfaces to the Site as the drive and compound will be lined with crushed stone or gravel and there will be no changes to existing drainage systems as a result of the proposed Facility. The Facility will be constructed in accordance with all applicable local, state and federal rules, laws and regulations.

- f. Any special regulations, for the use set forth in Section XI, are fulfilled.**

The property is not located in a Special Flood Hazard District.

- g. The requested use will not impair the integrity or character of the district or adjoining zones, nor be detrimental to the health, morals, or welfare.**

The proposed Facility will be located upon a 2 acre parcel of land which is partially screened by existing tree and vegetative growth and is surrounded by many undeveloped parcels such that potential visual impacts are minimized and the aesthetic qualities of the Town of Millis are preserved. The Site is a municipally owned property upon which the location of a personal wireless communications facility could be expected. The proposed Facility will be a passive use and will not cause any nuisance such as unreasonable noise, vibration, smoke, odors, waste, glare or significant traffic and will not adversely impact upon natural or historic resources. The Facility will be constructed in conformance with all applicable state and local building standards.

- h. A special permit granted under this By-Law shall lapse within one year, and including such time required to pursue or await the determination of an appeal, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.**

The Applicant acknowledges this requirement and no response is required.



COMPLIANCE WITH SITE PLAN APPROVAL REQUIREMENTS IN SECTION XII C. FOR A SPECIAL PERMIT

- 5. In considering a special permit application under this section, the Planning Board shall evaluate the technical quality of the site plan to assure the advisability of approval after considering the following matters:**

- (a) Protection of adjoining premises against detrimental uses by provision for surface water drainage, sound and sight buffers and preservation of views, light and air;**

The Facility will not add significant amounts of impervious surfaces to the Site as the drive and compound will be lined with crushed stone or gravel and there will be no changes to existing drainage systems as a result of the proposed Facility. The proposed Facility will be located upon a 2 acre parcel of land which is partially screened by existing vegetative growth and is surrounded by many undeveloped parcels such that potential visual impacts are minimized and the aesthetic qualities of the Town of Millis are preserved. The Site is a municipally owned property upon which the location of a personal wireless communications facility could be expected. The Facility will be designed to support multiple wireless communications facilities upon a single structure and thus minimize the overall number of towers needed within the area. The proposed Facility will be a passive use and will not cause any nuisance such as unreasonable noise, vibration, smoke, odors, waste, glare or significant traffic and will not adversely impact upon natural or historic resources.

- (b) Convenience and safety of vehicular and pedestrian movement within the site, the location of driveway openings in relation to traffic or to adjacent streets and, when necessary, compliance with other regulations for the handicapped, minors and the elderly;**

The Facility will not generate significant amounts of traffic. Trips to the Facility will average one or two per month per Carrier by maintenance personnel who will park in the front proposed parking/turnaround shown on the plans. The Facility will not be accessible to the public but will of course comply with all applicable federal, state and local regulations regarding the handicapped, minors and the elderly to the extent applicable.



(c) Protection and enhancement of existing site features;

The Facility was located on the Site so as to protect and enhance site features to the maximum extent practicable. During construction, the Applicant will use good faith efforts to minimize the amount trees removed at the Site.

(d) Adequacy of the arrangement for parking and loading spaces in relation to the proposed uses of the premises;

The Facility will not generate significant amounts of traffic. Trips to the Facility will average one or two per month per carrier by maintenance personnel who will park in the front proposed parking/turnaround shown on the plans.

(e) Adequacy of the methods of disposal of refuse and other wastes resulting from the uses permitted on the site;

The Facility will not generate any waste and there will be no need for the disposal of refuse or other wastes.

(f) Relationship of structures and open spaces to the natural landscape, existing buildings and other community assets in the area and compliance with other requirements of this By-Law.

The proposed Facility will be located upon a 2 acre parcel of land which is partially screened by existing vegetative growth and is surrounded by many undeveloped parcels such that potential visual impacts are minimized and the aesthetic qualities of the Town of Millis are preserved. The Site is a municipally owned property upon which the location of a personal wireless communications facility could be expected.

(g) Protection of environmental features, particularly groundwater resources, on the site and in adjacent areas, adequate protection to prevent pollution of surface and groundwater, soil erosion, increased runoff, changes in groundwater recharge or elevation and flooding.

The Facility will not add significant amounts of impervious surfaces to Site as the drive and compound will be lined with crushed stone and there will be no changes to existing drainage systems as a result of the



proposed Facility. The Facility has been designed to minimize the impact on environmental features to the maximum extent practicable.

TOWER REMOVAL

The Applicant has a Lease with the Town for the use of the Site and upon the termination of the Lease, the Town may require the Applicant to remove the Tower and all other installations. Pursuant to the Lease, commencing upon the commencement of the construction of the Tower, the Applicant will provide the Town with a Tower Removal Bond for the faithful removal of the Tower upon the termination of the Lease in the amount of \$50,000. The surety on such Bond will be a duly authorized surety company licensed to do business in the Commonwealth of Massachusetts.

THE TELECOMMUNICATIONS ACT OF 1996 - THE TCA

Without the relief requested, the Applicant and the Carriers would be unable to provide adequate coverage by filling existing significant gaps in coverage, thereby creating a hardship recognized by federal and state courts interpreting the TCA. The Site is located within the limited geographic area whereby the Carriers radio frequency engineers have determined that a wireless facility is required. Federal courts interpreting the TCA have held that where an applicant for the installation of wireless communications facilities to provide communications services seeks zoning relief as required by the municipal zoning ordinance, federal law imposes substantial restrictions affecting the standard for granting the requested relief. The TCA provides that: no laws or actions by any local government or planning or zoning board may prohibit, or have the effect of prohibiting, the placement, construction, or modification of communications towers, antennas, or other wireless facilities in any particular geographic area, see 47 U.S.C. §332(c)(7)(B)(i); local government or planning or zoning boards may not unreasonably discriminate among providers of functionally equivalent services, see 47 U.S.C. §332(c)(7)(B)(i); health concerns may not be considered so long as the emissions comply with the applicable standards of the FCC, see 47 U.S.C. §332(c)(7)(B)(iv); and, decisions must be rendered within a reasonable period of time, see 47 U.S.C. §332(c)(7)(B)(ii) and the FCC's Declaratory Ruling commonly referred to as the "shot clock".

In Omnipoint Holdings, Inc. v. City of Cranston, 586 F.3d 38 (1st Cir. 2009), the First Circuit Court of Appeals held that an effective prohibition occurs if a carrier demonstrates a significant gap in coverage and has investigated other viable alternatives. The factors the Court considered in judging the feasibility an alternative solution include whether the alternative solution is: technically efficient or at least technically adequate; economically feasible; and preferred by local authorities. Likewise, the court considers the level of willingness to cooperate. In Nextel Communications of the Mid-Atlantic v. Wayland, 231 F.Supp.2d 396 (D. Mass. 2002) and Omnipoint Communications MB Operations, LLC v. Town of Lincoln, 107 F. Supp. 2d 108 (D. Mass. 2000), the courts held that a municipality must approve a wireless facility if denying the petition would result in a "significant gap" in wireless services within a municipality because such denial would amount to an effective prohibition of wireless services. See 47 U.S.C. §332 (c) (7) (B) (i) (II). The court recognized that "an effective prohibition can



exist even where a town allows for the erection of [wireless communications facilities] but subject to criteria which would result in incomplete wireless services within the town, i.e., significant gaps in coverage within the town.” Town of Lincoln, 107 F. Supp. 2d at 117. Therefore, if an applicant establishes that the proposed facility would fill a significant gap in its wireless service coverage and is the least intrusive, feasible and only means reasonably available to accomplish that end, then the municipality must approve the requested zoning relief.

Of significance to the Board, courts have ordered the municipality to issue the necessary permits to allow the construction of the tower as described in the petition for zoning relief, foregoing an opportunity for the municipality to impose reasonable conditions on the wireless communications installation. Further, the Wayland court held that the need for closing a significant gap in coverage, to avoid an effective prohibition of wireless services, constitutes another unique circumstance when a zoning variance is required. We note that in the case of Sprint Spectrum L.P. v. Town of Swansea, Civil Action No. 07-12110-PBS, June 26, 2008, the federal District Court for Massachusetts held that notwithstanding the town zoning bylaw or Massachusetts state law, towns have the authority and obligation to grant use variances to avoid violating the TCA. In a growing number of cases, the federal courts have found that variance denials violate the TCA, even if such denials would be valid under state law. For example, in Omnipoint Communications v. Town of Lincoln 107 F. Supp. 2d 108 (D. Mass. 2000), the court found that denial of a variance for a location outside of the town’s wireless overlay district violated the TCA and ordered the variance to issue despite a by-law provision prohibiting use variances. Additionally, in Nextel Communications of the Mid-Atlantic, Inc. v. Town of Wayland, 231 F. Supp. 2d 396 (D. Mass. 2002), the court reached the same result. In that case, the court stated: “Although the Board’s statement [regarding its lack of authority to issue a use variance] may be a correct statement in Massachusetts regarding variances, it is not controlling in the special case of wireless communications facilities...under the Telecommunication Act, the Board cannot deny the variance if in so doing it would have the effect of prohibiting wireless services.”

CONCLUSION

As evidenced by the materials submitted with this Application and as will be further demonstrated by the Applicant through evidence submitted to the Board at the public hearing(s) in connection herewith, in light of the TCA the Facility satisfies the intent and objectives of the By-law. The Tower is designed and sited to maximize collocation while minimizing, to the extent possible, adverse impacts to the surrounding neighborhood and the Town of Millis as a whole. The Facility will not have any adverse effect on property values in the area. The Facility will not be dangerous to the public health or safety as it is designed to comply with all applicable requirements of the Massachusetts building code. The Facility is a passive use, and will not cause any nuisance such as unreasonable noise, vibration, smoke, odor or dust. Further, the Facility will improve communication coverage to residents, commercial establishments and visitors to and through the area and improves call connections in this area of the Town of Millis. This Facility will greatly improve emergency communications for public safety personnel 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. The Facility will provide a rental revenue stream to the Town and assist with critical municipal communications antenna



infrastructure at no cost to the residents to the Town of Millis. Lastly, the installation of the Facility at the Property will assist the Town of Millis in complying with its obligations under the TCA.

Wireless Edge respectfully requests that the Board grant a Special Permit and Site Plan Approval to install, operate and maintain the Facility. We respectfully submit that the standards for a Special Permit and Site Plan Approval as set forth in the By-law as well as Massachusetts law must be interpreted and applied such that the decision issued by the Board is in conformance with the TCA. Accordingly, a denial of the foregoing petition would effectively prohibit Carriers from providing adequate service to the Town of Millis and thus would be contrary to the purpose and intent of the TCA and the By-law.

Respectfully submitted,

BROWN RUDNICK LLP

By: Michael R. Dolan (SMA)
Michael R. Dolan