



Kent County

Department of Planning Services Division of Planning

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STAFF RECOMMENDATION REPORT April 4, 2019

Application Number	:	CS-19-02
Site Plan Title	:	Cow Marsh Creek Telecommunications Facility
Present Zoning District	:	AR (Agricultural Residential)
Present Use	:	Agricultural/Residential
Proposed Use	:	Same with Telecommunications Tower
Location	:	64.3± acres on the west side of Bayberry Ln. and the south side of Sandtown Rd. (DE Rd. 56), approx. 0.4 miles northwest of Chandlers Rd., west of Felton.

I. STAFF RECOMMENDATION:

The staff recommends **APPROVAL** based on the information submitted as the application demonstrates compliance with the conditions for approval as outlined in §205-360 Tower, broadcasting and telecommunications (conditions attached to this report).

The staff offers additional requirements, as follows:

A. Code Requirements

1. A certification area for a landscape architect to sign the plan will need to be added.
2. The final plan must be approved within 18 months of preliminary plan approval and construction shall commence within 18 months of final plan approval.
3. The NEPA Report shall be provided prior to final plan approval in accordance with §205-360.B(2)(d).

4. The engineer's report must contain all items under §205-360.B(2)(b)[6]. This report does not include items [c], [g], and [h]. However, the staff is comfortable with these items being excluded from the report since they cannot be determined without a physical examination of towers. Further, since the closest tower is over a mile away, they do not appear to affect the coverage area based on the information provided.

B. Recommendations

1. The staff recommends that the tower be lit with a blinking light in accordance with any FAA guidelines.

II. ADEQUATE PUBLIC FACILITIES ORDINANCE:

The Emergency Medical Services, School, and Central Water Service are not applicable to this application because those standards only apply to residential subdivision and land development.

With respect to the Roads element of the Adequate Public Facilities Ordinance, staff has determined that road capacity exists to serve the proposed development.

Given that this use is projected to generate approximately one trip in and one trip out per month, this project will not exceed the projected average daily traffic warrants provided in DelDOT's Rules and Regulations for Subdivision Streets (as amended) nor will the project generate more than 50 peak hour trips. Therefore, no traffic impact study will be required.

III. WAIVER REQUEST:

Section 187-80 states: Where it can be shown that strict compliance with the requirements of this chapter would result in extraordinary hardship to the applicant because of unusual topography or other conditions which are not self-imposed, or that these conditions would result in inhibiting the achievement of the objectives of these regulations, the Commission may modify or waive the requirements so that substantial justice may be done and the public interest secured; provided, however, that such variance, modification or waiver will not have the effect of nullifying the intent and purpose of this chapter or be contrary to the goals and objectives of the Comprehensive Plan for the County.

1. The applicant has submitted a letter requesting a **waiver** from the location requirements for a Telecommunications tower (§205-360.A(1)(a)(4)). This section requires that the subject parcel where a tower is located must be of such size that the tower would be located 1,000 feet from all property lines and 1,500 feet from any dwelling located on an adjoining parcel.

The staff recommends **approval** of this waiver request from location requirements defined in §205-360.A(1)(a)(4) of the Kent County Code. The staff believes there is a legitimate hardship in meeting this requirement. The setbacks cannot be met because the parcel is approx. 2,250 ft. wide and 2,000 ft. deep, so it would be impossible to meet the requirements on a parcel of this size. The applicant stated they were unable to find other viable properties within the search ring that were appropriate for this use. The staff understands that it is difficult to find suitable parcels within the targeted area of coverage. If the applicant can show that they have explored all possible options of code compliant properties in the area, then there is a practical difficulty for the applicant in attempting to provide adequate coverage and also meet the required conditions of the use.

In this particular case, siting and setback requirements, as stated in §205-360.A (2)(b)(2) of the Kent County Code, are fully met by the applicant. The provision requires the place of the tower on a specific area within the subject parcel to be 500 ft. from the nearest dwelling not on the parcel on which the tower is to be placed. This is shown on the plot plans. Therefore, the request from relief from the particular code requirements is null and void.

2. The applicant is also requesting a **waiver** from the provision requiring installation of sidewalks along the roadway frontage of the property, pursuant to §187-60 (A) of the Kent County Subdivision and Land Development Ordinance requiring installation of sidewalks along the roadway frontage of the property.

The Planning Staff recommends **approval** of this waiver request. Because the applicant is not proposing a subdivision and/or land development, this requirement should not be applicable. The applicant proposes the installation of a telecommunications facility resulting in minimal property disturbance and no disturbance to the existing use. The applicant intends to lease a 75 ft. by 75 ft. area, containing a monopole and equipment to accommodate AT&T and future carriers. The leased area will be fenced and feature a 25 ft. landscaping buffer. Therefore the only disturbance outside of this leased area will be the 12 ft. wide gravel access driveway to the facility.

IV. BACKGROUND INFORMATION:

- The Kent County Comprehensive Plan recommends that the subject property be utilized for agricultural purposes. The property is zoned AR (Agricultural Residential). The code provides for a telecommunications tower as a conditional use upon approval by the Levy Court through the Conditional Use/Site Plan process in all zoning districts. If approved, this plan will comply with the Comprehensive Plan and the AR zoning district requirements.

- The 64.3 ± acres subject site is currently improved with manufactured home, a pole building, and a small shed. The character of the surrounding area is mostly agricultural in nature with some limited residential development.
- The applicant met with a member of the Planning Staff in a pre-application meeting to review this land use application. The conditions, which must be met as part of the Conditional Use/Site Plan approval process, were discussed. The plan meets these minimal requirements.
- An engineering report was submitted by the applicant as required by §205-390 (attached). The staff reviewed this report, made comments to the engineer, and a revised plan with the corrections was submitted to planning staff.
- The subject area is a 75ft. by 75.ft fenced compound (5,625 sq. ft.) located on the west side of the property. The compound will be surrounded by a 6 ft. tall chain link fence topped with 1 ft. tall barbed wire anti-climbing device. Within the compound will be a 190 ft. monopole tower, an ice bridge, a 15kW diesel DC generator, a Mesa Telco cabinet on a quazite box, a H-frame with 4-gang meter bank, and a Walk-in-Cabinet (WIC) (6 ft. by 6 ft.) installed on a concrete pad (8.7 ft. by 8.7 ft.) with equipment.
- There will be a 25 ft. landscaping buffer surrounding the compound on all four sides, excluding the 40 ft. on one side for the proposed access gate. Plantings will surround this area, consisting of 48 emerald green arborvitae trees planted six feet apart, surrounded by 17 eastern redbud trees spaced 20 ft. apart, and three inches of settled layers of clean straw will encompass the entire landscaping buff. This combination does appear to meet the visual screening requirements of §205-360.E.
- There have not been any previous land use applications on the subject site. Likewise, there have been no other requests in the surrounding area similar to this request
- This site will be accessed from a 12 ft. wide proposed gravel access drive and a 12 ft. wide access gate, located off of Sandtown Rd.
- The Levy Court may add any necessary conditions to protect the health, safety, and welfare of the citizens of Kent County.
- A letter of objection was submitted by an adjacent property owner, accompanied with a few pictures. Please find the letter and pictures attached to this report.

V. AGENCY COMMENTS:

**A. KENT COUNTY – Department of Public Works, Division of Engineering –
Contact: Brian L. Hall, Engineering Project Manager II**

Requirement & Source:

N/A

Comment:

The Engineering Division grants “Approval with No Objection to Recordation.”

VI. OWNER/DEVELOPER:

The owner/developer shall be aware of and be prepared to comply with all comments regarding this project stated in this report. All comments must be addressed in the final plan prior to final approval. Final approval of the plan must occur within 18 months from the date of preliminary plan approval. Failure to obtain final approval shall nullify the plan. Once the plan receives final approval, construction in accordance with the plan must occur within 18 months of final approval or the plan shall be deemed null and void. Letters of “No Objection to Final Approval” from the following agencies will be required prior to final approval:

1. DeIDOT, Division of Highways
2. Kent Conservation District
3. Office of the State Fire Marshal

This recommendation was made without the benefit of public testimony and is based on the information presented when the application was received by the Department of Planning Services. The Regional Planning Commission shall give considerable weight to public testimony received during public hearing in considering its recommendation to Levy Court in this matter.

ENC: Data Sheet
Exhibit A – Location and Zoning Map
Exhibit B – Plot Plan (Cropped)
Exhibit C – Tower Plan
Preliminary Site Plan
Engineer’s Report dtd. 1/17/19
Addendum “A” discussing Site Plan and Waivers dtd. 2/13/19
Interference Analysis dtd. 1/3/19
Electromagnetic Exposure Analysis dtd. 1/3/19
Lease Agreement for subject site
Letter of Objection for Adjacent Property Owner