

..TITLE

A request by American Tower Corporation and AT&T Mobility to rezone a portion of Parcel No. 85601, known as the Meacham Site, from R-2, Residential, to CD-IL, Light Industrial, to construct a new cell tower, located off Poythress Rd. The lease area will be approximately 0.29 acres of the 81 acre tract and is within the Baldwin Township.

..ABSTRACT

Action Requested:

A request by American Tower Corporation and AT&T Mobility to rezone a portion of Parcel No. 85601, known as the Meacham Site, from R-2, Residential, to CD-IL, Light Industrial, to construct a new cell tower, located off Poythress Rd. The lease area will be approximately 0.29 acres of the 81 acre tract and is within the Baldwin Township.

Introduction & Background:

A legislative public hearing was held on this request September 16, 2013. Planning staff presented the application and reviewed the supporting documentation submitted. There were nine (9) people present who spoke in support of the cell tower as described in the application. Comments included desire for more cell phone coverage with many mentioning current concerns about not being able to place a call during an emergency. Some stated the site was ideal due to the heavy tree coverage to block the view of the cell tower. There was one (1) person who spoke in opposition of the cell tower. Concerns included real estate impact, aesthetics, emissions, and location/alignment of the access driveway. Staff received one faxed comment from an adjoining property owner in favor of the proposed tower and two (2) emails from residents in proximity of the site, one in support and one opposed to the tower. Staff also received one phone call from a resident in proximity to the project whose concerns included aesthetics and driveway location, and watershed concerns.

Gray Styers, of Styers, Kemerait & Mitchell, PLLC, representing the applicant was present to answer questions. At the hearing Mr. Styers handed out the report of the balloon test, a visual representation of the proposed tower height, to the Commissioners. Mr. Styers stated that the tower was not visible from six (6) of the eleven (11) total roadway sites chosen for the test and the visibility from the other five (5) locations was indicated in the pictures in the report. Mr. David Smith, MAI SRA, spoke on behalf of the applicant as well and provided the Commissioners with a property impact analysis of the proposed tower. Mr. Smith concluded in the summary report that the proposed tower will not adversely affect property values in the general vicinity of the tower. Mr. Dave LaCava, RF engineer, was also present on behalf of the applicant, but did not speak.

During the 2013 Search Ring Map, approved from the Board of Commissioners, areas were identified as needing additional cell service. This particular area was one noted as needing an expansion of telecommunication services and was identified as Search Ring #368-545. Once the search rings are approved, current regulations require a specific

site location per cell tower to be submitted within 12 months from the date of approval of the search ring area.

Communications towers are required by the Chatham County Zoning Ordinance to be located in either a light industrial or heavy industrial zoning district. An entire parcel/tract of land is not required to be rezoned to accommodate the cell tower location. There must be enough area included to encompass the access road, setbacks from any property lines, area for fencing, area for equipment buildings/sheds, and any fall zone that may be required. Towers constructed must be compliant with all local, state and federal regulations such as lighting. The proposed conditional zoning for this 0.29 acre site is CD/IL, or Conditional District-Light Industrial.

(Planning Board Information is noted in BOLD below)

Planning Director Jason Sullivan presented the project to the Planning Board. The applicant's representative, Mr. Gray Styers, was available for comment. One member of the public, Mr. John Hausmann, commented on the project. He expressed concerns about the exposure of the access driveway from view of the public right-of-way, landscaping and the height of the proposed tower. Mr. Styers addressed the citizen's concern by offering to plant additional evergreens along the tree line of either side of the entry driveway. Mr. Styers also stated if the property was timbered in the future, the applicant would landscape around the cell tower area in compliance with county regulations. These two landscaping items have been added as conditions number 2 and 3 under "Standard Site Conditions".

Mr. Styers expressed concern about the language of the Condition #1 relating to fees under the "Standards Administrative Conditions". He requested that the phrase "from time to time" be eliminated from the condition as he believed it may result in the county being able to charge additional fees after the original approval and construction of the tower had been completed. After some discussion, the Board agreed to remove this language from that specific condition. The condition has been modified to reflect the Board's recommendation.

Discussion & Analysis:

Conditional Zoning districts are zoning districts in which the development and use of the property is subject to predetermined ordinance standards and the rules, regulations, and conditions imposed as part of a legislative decision creating the district and applying it to the particular property. Some land uses are of such a nature or scale that they have significant impacts on both the immediate surrounding area and on the entire community, which cannot be predetermined and controlled by general district standards. The review process established in this Ordinance provides for accommodation of such uses by a reclassification of property into a conditional zoning district, subject to specific conditions, which ensure compatibility of the use with neighboring properties. A

conditional zoning district is not intended for securing early zoning for a proposal, except when that proposal is consistent with an approved land use plan or the proposal can demonstrate that public infrastructure needed to serve the development will be made available within a reasonable time period.

Proposed Tower Specifications

The proposed site is set back on a 100' by 100' leased parcel (10,000 sf) on an approximately 81-acre tract of land that is currently zoned R-2, residential. The site will be accessed by a 30' wide access and utility easement and a 12' wide gravel access road from Poythress Rd. The pole will be designed to accommodate at least five (5) other wireless service providers. The fencing proposed for the site is an 8' tall chain link fence and the site is located within a heavily wooded area. The applicant states that the proposed tower will comply with all FAA regulations and applicable regulations of Chatham County.

Community Meeting Pre-Submittal Requirement

The applicant held the community meeting, which is now required prior to submittal of an application to the Planning Department, on August 1, 2013. Issues raised by attendees to the meeting included concerns about visibility, aesthetics, information about the generator, health effects of antennas, construction process and schedule for construction of the tower.

Technical Review Committee (TRC)

The project was reviewed by Chatham County staff at the August 21, 2013 TRC meeting. Planning staff presented the project and received limited comment. The Chatham County Fire Marshal inquired about the diesel capacity of the generator. The applicant provided the information about the generator, stating that the 80KW generator holds 300 gallons of fuel.

Zoning Requirements

There are four items listed in the Zoning Ordinance that must be addressed by an applicant when submitting a rezoning application. The applicant has addressed those items in the application materials and they are also discussed below.

Item #1: The alleged error in this Ordinance, if any, which would be remedied by the proposed amendment with a detailed description of such error in the Ordinance and detailed reasons how the proposed amendment will correct the same.

The absence of any currently zoned LI or HI property within the search ring that was available for the construction of this communication facility. For more details and further explanation, see attached Project Narrative located behind Tab 2.

Item #2: The changed or changing conditions, if any, of the area or in the County generally, which make the proposed amendment reasonably necessary to the promotion of the public health, safety and general welfare.

Advancing technology and increasing consumer demand for wireless communications services. For more details and further explanation, see attached Project Narrative located behind Tab 2.

Item #3: The manner in which the proposed amendment will carry out the intent and purpose of any adopted plans or parts thereof.

The search ring for this facility has been approved in the adopted Tower Location Plan for Chatham County in 2013, and the proposed facility is in full compliance with the Article III Ordinance Regulating Communications Towers in Chatham County. For more details and further explanation, see attached Project Narrative located behind Tab 2.

Item #4: All other circumstances, factors, and reasons which the applicant offers in support of the proposed amendment.

See attached Project Narrative located behind Tab 2.

Recommendation:

Adoption of a Resolution Adopting a Consistency Statement for the Approval of Conditional Zoning Light Industrial District and An Ordinance Amending the Zoning Ordinance of Chatham County for Rezoning to Conditional Zoning Light Industrial District. **It is the Planning Board's opinion (vote of 8-0, with one abstention) that the request is consistent with the Land Conservation and Development Plan. This determination was made at the November 5, 2013 meeting of the Board. The Planning Board (by unanimous vote 9-0) and Planning staff recommend that this request be approved with the conditions as modified below.**

Site Specific Conditions

1. The cell tower shall be a monopole with a maximum height of no more than 199'.
2. The applicant shall install additional evergreen plantings, not to exceed eight (8), along the entrance driveway to the site, in order to assist in the screening of the cell tower site from the view from public right-of-way. These plantings are to be installed prior to issuance of a Certificate of Compliance (CO).

3. In the event the surrounding property is clear cut for timbering purposes, the applicant will be responsible for landscaping around the area in compliance with county regulations regarding cell tower screening and landscaping.

Standard Site Conditions

1. The application, standards and adopted regulations of the applicable ordinances and policies, and the approved recommendations as provided for and/or conditioned, are considered to be the standards as set forth and shall comply as stated. Changes or variations must be approved through the Planning Department or other approving board before any such changes can take place.
2. All required local, state, or federal permits (i.e. NCDOT commercial driveway permits, NCDWQ, Chatham County Erosion & Sedimentation Control, Environmental Health Division, Stormwater Management, Building Inspections, Fire Marshal, etc.) shall be obtained, if required, and copies submitted to the Planning Department prior to the initiation of the operation/business.
3. A Certificate of Occupancy shall be obtained within two years of the date of this approval unless other approval/s has been given for an extension, or the conditional use permit becomes null and void.

Standard Administrative Conditions:

1. Fees - Applicant and/or landowner shall pay to the County all required fees and charges attributable to the development of its project in a timely manner, including, but not limited to, utility, subdivision, zoning, and building inspection.
2. Continued Validity - The continued validity and effectiveness of this approval was expressly conditioned upon the continued compliance with the plans and conditions listed above.
3. Non-Severability - If any of the above conditions is held to be invalid, this approval in its entirety shall be void.
4. Non-Waiver - Nothing contained herein shall be deemed to waive any discretion on the part of the County as to further development of the applicant's property and this permit shall not give the applicant any vested right to develop its property in any other manner than as set forth herein.