

..TITLE

A Wireless Telecommunication Permit request by American Tower Corporation and AT&T Mobility for a portion of Parcel No. 10519, known as the Gum Springs Site, located off of White Smith Rd., near Henderson Tanyard Rd., for a 300' self-supported telecommunications tower on a lease area of approximately 0.45 acres of the 43.72 acre tract and is within the Hadley Township. The application includes a waiver request to exceed 199' in height pursuant to Section 2-4 of the Wireless Telecommunication Facilities Ordinance.

..ABSTRACT

Action Requested:

A Wireless Telecommunication Permit request by American Tower Corporation and AT&T Mobility for a portion of Parcel No. 10519, known as the Gum Springs Site, located off of White Smith Rd., near Henderson Tanyard Rd., for a 300' self-supported telecommunications tower on a lease area of approximately 0.45 acres of the 43.72 acre tract and is within the Hadley Township. The application includes a waiver request to exceed 199' in height pursuant to Section 2-4 of the Wireless Telecommunication Facilities Ordinance.

Introduction & Background:

A quasi-judicial public hearing was held on this request May 19th, 2014. Planning staff presented the request. The applicant's attorney, Nick Robinson presented the application. The applicant's attorney covered the application, required findings of fact, and answered questions from the Board and staff (see in bold below). Several public comments were received. Of the public comments received, many were in support of the tower, citing a need for wireless coverage in the area. However, many were concerned with the potential "ground-scatter" of the red, pulsing light at night and sought clarification from the applicant as to the exact impact of the lighting.

Site

The subject parcel is 43.72 acres within the unzoned portion of the county and is located in the WS-IVPA watershed district and the Jordan Lake watershed, which allows non-residential development, provided it does not exceed 36% built upon area. The proposed wireless tower site is well under this threshold with a total site disturbance of 19,602 sq. ft. The applicant has provided a map indicating the tower site is not within a Major Wildlife Area and is not within 1.5 miles of an existing tower. Both maps are included in the sufficiency review response dated May 1st, 2014.

Access to the tower site is from White Smith Road and the applicant will obtain a driveway permit from NCDOT as required. The proposed access drive is 30' in easement width, with a 12' graveled access drive. The Fire Marshal has indicated this access road width, in addition to the vehicle turnaround depicted, is acceptable for emergency services.

The tower is proposed to be a 300 foot self-supported lattice tower with a 15' lighting rod. The tower will include an AT&T antenna and space for three other wireless providers both on the tower and within the fenced compound, consistent with the minimum collocation accommodation requirements of Section 2-4. (Tab 2, pg. 10 of application). The 8' tall fence with three strands of barbed wire exceeds the minimum required 6' tall fencing around the tower compound.

Height and Setbacks

As mentioned, the tower has a proposed height of 300' with a 15' lighting rod. Per the Wireless Telecommunications Facilities Ordinance ("Wireless Ordinance") a tower may exceed 199' in height with the granting of a waiver by the Board of Commissioners with the required technical justification. The applicant has provided such justification in Tab 2, pg. 12 of the application.

Per the Wireless Ordinance, towers greater than 100' are subject to a setback of 50% of the Wireless Support Structure tower height or the engineered fall zone, whichever is greater. The engineered fall zone of the proposed tower is 250', which exceeds 50% of the tower height. The proposed location of the tower is compliant with the setbacks as stated in Tab 2, pg. 11 of the application.

The Wireless Ordinance also requires a line of sight diagram showing the proposed tower from at least four different directions within the surrounding area. The applicant has provided this diagram, along with a balloon test illustrating the height, under tab 17 of the application.

During the public hearing, the applicant answered questions about the height of the tower, as the project includes a waiver to exceed 199' in height. The Ordinance requires technical information or other justification to document the need for the additional height request. The following information was submitted into the record, in addition to the project application, for the waiver justification:

- When asked what the coverage distance for a 300' tower, the applicant's attorney responded 4-5 miles. The applicant's attorney did not enter into the record the coverage distance for a 199' tower. The applicant's attorney later clarified that 300' towers are generally spaced five miles apart and 195' towers are generally spaced three miles apart.
- The applicant provided radio frequency maps (Tab 7 of the application) to illustrate the proposed coverage of the 300' tower.

Please note that pursuant to NCGS § 153A-349.52 (c), A county may not require information that concerns the specific need for the wireless support structure, including

if the service to be provided from the wireless support structure is to add additional wireless coverage or additional wireless capacity.

Aesthetics

The proposed tower will comply with the FCC's lighting requirements and will be constructed of galvanized steel, gray in color, consistent with the Wireless Ordinance.

The proposed tower is located on western portion of the parcel that is heavily wooded. The tower will be located within the wooded portion of the lot (Tab 12 of application) and proposes a continuous all-season perimeter landscaping (p. L-1 of site plan) compliant with the landscape requirements of the Wireless Ordinance.

The applicant's attorney stated that the tower will be required to have a flashing white light during that day and a red light pulse at night. Information was provided by the attorney regarding the effect of light "ground-scatter" at night and stated that the neighborhood residents should "detect little, if any, light from the tower". Staff also inquired as to the feasibility of adding a bottom shield to the light fixture to reduce downward projecting light from the tower, to which the attorney stated the lighting technology used for the towers prevents the "scattering" of light, lighting shields are not necessary for the towers. The applicant's attorney has since provided the following information regarding the lighting required for the tower: a dual lighting system of red lights (L-864) for nighttime and medium intensity flashing white lights (L-865) for daytime and twilight use.

Regarding the proposed color of the tower, the applicant's attorney entered into the record that the Federal Aviation Administration (FAA) "American Towers is rarely required by the FAA to paint a 300' tower and is only required to do so when in close proximity to an airport. American Tower believes it extremely unlikely that the tower will have to be painted". The Chatham County Wireless Ordinance section 2-4 8 (a) (ii) states that the desired color is gray and Towers with alternating patterns are not permitted unless required by the Federal Communications Commission (FCC) or FAA. The applicant has since clarified that the FCC will not require the tower to be painted and the applicant is willing to enter into a condition requiring the tower to remain galvanized steel and gray in color.

Community Meeting

As required by ordinance, the applicant held a community meeting April 1st, 2014. The applicant notified adjoining property owners by mail of the meeting and a total of three citizens attended the meeting. The community meeting report is provided in the application under tab 10.

Technical Review Committee (TRC)

An interdepartmental staff review of the application was completed during the April 16th TRC meeting. Comments received included the requirement that the site receive an E911 address prior to building permit, per the E911 Addressing Office. Additionally, a blue line stream and isolated wetland were apparent on the subject property and per Environmental Quality staff, a revised site plan was requested to show the proposed tower in relation to these features. A revised site plan was received May 1st, 2014 with the stream feature and associated 50' buffer and isolated wetland not within proximity of the proposed tower (pg. C-1, revised site plan).

Supplemental Information

The applicant also provided the following supplemental information that is not required of the Wireless Telecommunications Facilities Ordinance: RF Map (tab 6), RF Letter of Justification (tab 7), RF Engineers FCC Compliance Assessment (tab 9), Property Impact Assessment (tab 18), Impact on Emergency Services (tab 21), Construction Schedule (tab 22) and an FAA Determination of No Hazard (proof of filing) and Lighting Report (tab 24). Please note this information is supplemental in nature and was not required by ordinance.

The Planning Board met and reviewed the request at the regularly scheduled meeting on July 1st, 2014. The applicant's attorney stated to the this site is considered critical to AT&T's network development and AT&T has received numerous phone calls from motorists and residents regarding the poor cellular coverage.

Discussion & Analysis:

A Wireless Telecommunication Permit application must meet the required five findings as required by the Conditional Use Permit standards of Section 17 of the Chatham County Zoning Ordinance. Those findings are addressed as follows and are found on page 23, behind Tab 2 of the application packet:

FINDING #1 – The use requested is among those listed as an eligible conditional use in the district in which the subject property is located or is to be located. The proposed tower is located on a parcel within the unzoned portion of the county. However, telecommunication towers are regulated by the Wireless Telecommunications Facilities Ordinance, which requires a Wireless Telecommunication Permit approval processed in accordance with the standards for granting Conditional Use Permit set forth in the Chatham County Zoning Ordinance. Therefore the use requested is listed as an eligible conditional use in the district the subject property is located.

FINDING #2 – The requested conditional use permit is either essential or desirable for the public convenience or welfare. It is Planning Staff’s opinion that this finding can be supported. The applicant states the proposed tower will provide convenience, safety, efficiency, as well as connectedness for the community. Presently, there is little if any wireless service in the subject area and a publicly communicated need for additional wireless coverage.

FINDING #3 – The requested permit will not impair the integrity or character of the surrounding or adjoining districts, and will not be detrimental to the health, safety, or welfare of the community. It is Planning Staff’s opinion that this finding can be met due to the galvanized steel, gray color of the tower, the minimized lighting impact on the landscape and additional support for emergency communications needs for the community.

FINDING #4 – The requested permit will be consistent with the objectives of the Land Use Plan. This request meets the recommendations of the Land Conservation and Development Plan Policy Objective #7: *Preserve both the form and function of rural character- the landscape.* The proposed tower is at such a height, that fewer of these towers will be required across the landscape, therefore preserving the rural character of Chatham County.

This request is also consistent with Policy Objective #12: *Provide infrastructure in ways that support the land use, economic development and environmental objectives:* this proposed utility will support rural home-based businesses and encourage economic development.

Recommendation:

Planning staff has found the application complete and the proposed tower to be consistent with the Land Use and Development Plan. Staff also recommends approval of the waiver request, as required by Section 2-4 (6) to exceed 199’ in height based on the technical justification provided by the applicant and the Public Hearing Record. If the Board is of the opinion that the above required findings can be made to approve the project, staff recommends the site be subject to the conditions listed below. **The Planning Board unanimously recommended approval of the Gum Springs Wireless Telecommunication Permit, recommends approval of the waiver request to exceed 199’ in height and adoption of a resolution approving a conditional use permit for the Gum Springs tower.**

Site Specific Conditions

1. The tower shall be gray in color, constructed of galvanized steel.

2. Approval from NCDOT on the relocated commercial driveway must be obtained and a copy presented to the Planning Department before the issuance of the first building permit for the new structures.
3. At least one wireless tenant that intends to locate on the proposed tower must be identified at the time of building application. If a wireless tenant is not identified, then the building permit shall not be issued.

Standard Site Conditions

4. 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. These include but are not limited to landscaping, lighting, signage, parking, building construction, wireless facility abandonment and removal, etc.
5. 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.
6. A building permit must be obtained and remain valid at all times within 2 years from the date of this approval or this permit shall become null and void.

Standard Administrative Conditions:

7. 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 inspections.
8. Continued Validity - The continued validity and effectiveness of this approval was expressly conditioned upon the continued compliance with the plans and conditions listed above.
9. Non-Severability - If any of the above conditions is held to be invalid, this approval in its entirety shall be void.
10. 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.