

## REQUEST:

Special Use Permit Application by Charlotte-Mecklenburg Board of Education for a Commercial Communication Tower in the Rural District (R): SUP17-03

### **ZONING ORDINANCE CRITERIA AND STAFF FINDINGS**

#### **9.9 Commercial Communication Tower**

**A Commercial Communication tower shall meet the following standards:**

- .1 To encourage future shared use of commercial communication towers, the tower owner must demonstrate that the tower will support a specified number of antennas, and must file a letter of intent with the town to lease the space to other users in good faith. In turn, the owner may charge users a proportionate share of capital, financing, and operating costs, plus the cost of insulating equipment so that the transmissions do not interfere with one another. To encourage co-location of commercial communication antenna and facilities and to reduce the need for new commercial communication towers, co-location of such antennae and facilities shall be permitted on any commercial communication tower or tower for radio communication for business or governmental purposes of which the tower was in existence on July 20, 2009, regardless of when constructed, the underlying zoning district, or any condition of approval for the existing tower other than a condition which was imposed or accepted by the Board of Commissioners. To the extent practical as determined by the Planning Director, all standards of this Section 9.9 shall be applicable.**

Staff Comment/Finding: *The letter submitted by the applicant states that the owner intends to lease space to other carriers in good faith. The plans for the tower submitted shows spaces for 4 total carriers (co-locations) on sheet C4. The letter and tower plans are attached in your packet as reference.*

- .2 No new commercial communication tower may be established if there is a technically suitable space available on an existing communications tower within the geographic area that the proposed tower is to serve.**

Staff Comment/Finding: *The letter submitted by the applicant includes "propagation maps" that staff believes is intended to show the Verizon signal strength in the area before and after the installation of the tower. Staff does not believe the information provided however answers the question on whether or not there are other suitable locations available on existing communication*

*towers. There is an existing cell tower 1.4 miles from the proposed location (north of the location near the corner of Beatties Ford Road and Gilead Road). Could co-location or signal strength improvements be made on that tower rather than installing a new tower? Could accessory co-locations such as on existing street light poles be used to improve service (or on the Richard Barry Park field lighting poles)? In regard to the propagation maps submitted, staff is not sure what is being represented by the colors and numbers shown. What is the condition of the signal strength in the area? Is it only Verizon that has a weaker signal there or is it for all carriers? Staff recommends more factual evidence be submitted showing the need for a new commercial tower at this location and that other options have been exhausted. Please find the letter and propagation maps attached in your agenda packets.*

- .3 The entire facility must be aesthetically compatible with its environment. If not otherwise camouflaged, towers shall be of a coloration that will blend with the surroundings. Example: brown/green/gray.**

Staff Comment/Finding: *The plans submitted previously showed the tower to be painted as a "Morning Fog" gray color on sheet C4. On the latest plan submitted, that information has been removed. From discussions with the applicant's engineer, the fog color was only meant for the antennae's shielding at the top of the tower. Since the shields are no longer proposed, the paint color label has been removed as well. According to the engineer, the color of the tower will be "galvanized gray". It is unclear however if this is a painted color meant to camouflage the tower or if it's the natural metallic color of the tower.*

- .4 Fencing must be provided to secure the communication equipment on site. If chain link or similar fencing material is used on the site, an opaque screen shall be provided on the exterior side of the fence.**

Staff Comment/Finding: *On sheet C2 of the submitted plans, the tower and ground utilities are shown to be surrounded by a chain link fence. On sheet C5 the fence is shown to be 8 feet tall with barbed wire on the top. On sheet C6, evergreen trees are proposed to be planted 8 feet tall at planting, with 10 feet of separation between trees.*

- .5 All obsolete or unused facilities must be removed within 12 months of cessation of operations at the site.**

Staff Comment/Finding: *The submitted letter states and acknowledges that all unused facilities must be removed within 12 months of cessation of operation.*

- .6 No equipment, mobile or immobile, not used in direct support of the transmission or relay facility shall be stored or parked on the site unless repairs to the facility are being made.**

Staff Comment/Finding: *The submitted letter states that no additional equipment will be stored or held at this facility.*

- .7 Towers shall not be artificially lighted except to insure human safety as required by the Federal Aviation Administration (FAA) regulations. To the extent possible, tower lighting shall be located and directed to avoid flashing or shining into the interior spaces of dwellings.**

Staff Comment/Finding: *On sheet C4, a note is placed on the plan that states "towers shall not be artificially lighted except to insure human safety as required by the FAA or FCC regulations".*

- .8 An opaque screen expected to reach minimum 8' height at maturity shall be planted around the perimeter of the area occupied by the tower, security fencing, and auxiliary uses such as parking. In addition, existing onsite trees and other vegetation shall be preserved to the extent possible.**

Staff Comment/Finding: *On sheet C6, evergreen trees are shown to be planted around the perimeter of the tower area planted 10 feet apart and 8 feet tall at planting. The evergreen trees proposed (either Eastern Red Cedar, Japanese Cedar, Green Giant Arborvitae) are large evergreen trees and will sufficiently screen the fencing and utility around the pole. Eleven trees are proposed to be removed as shown on sheet V3. However on sheets C2, C3, and C6 notes are located on the plan stating that the wooded area to the immediate south of the existing chain link fence will not be disturbed.*

- .9 No more than one communication tower shall be constructed on a single tract of land.**

Staff Comment/Finding: *The letter submitted by the applicant states that the proposed tower would be the only tower on the Bradley Middle School property. Staff found no other cell towers on the site.*

- .10 If such a structure is located on a lot adjacent to a lot or lots located in a residential or mixed use district, it must be located at least 200 feet from all property lines adjacent to the residential or mixed use district(s).**

Staff Comment/Finding: Bradley Middle School is currently located on a property that is zoned Rural (R) and is surrounded by Rural residential zoning. On sheet V1 of the submitted plan, the pole is shown to be 333.9 feet from the nearest adjacent property line.

**.11 To be permitted as an incidental accessory use in any zoning district, a tower shall be camouflaged on, with, or in an existing or proposed conforming structure (e.g., inside religious institution steeple, on utility transmission line tower). A detailed site plan and structural elevations must be submitted to the Planning Department for approval. The affirmative decision of the Planning Department shall be based upon a determination that the proposed tower is so camouflaged as to be unnoticeable to the public; or if placed upon a utility transmission line tower, that the additional equipment would not further diminish the quality of the view from surrounding properties and public streets, nor would additional light(s) intrude upon the private interior or exterior living areas of existing dwellings.**

Staff Comment/Finding: *The proposed cell tower is not considered an "incidental accessory use" permitted in any zoning district; therefore this section does not apply. The proposed facility is a stand-alone commercial communication tower.*

**.12 Commercial Communication Towers in addition to meeting criteria 9.9.1-10 may be allowed in the Rural (R) district only if they meet the following criteria and are subject to a Special Use Permit, according to the procedures of Section 11.4.10:**

Staff Comment/Finding: *Bradley Middle School is zoned Rural (R), thus the applicants have submitted the application for a Special Use Permit approval. All the requirements of 9.9.12 below apply to the proposed application.*

- a) The height of the commercial communication tower may not exceed 199 feet above ground level;**

Staff Comment/Finding: *Several sheets of the submitted plan show the tower to be 160 feet in height.*

- b) The commercial communication tower may only be placed on properties in eight and a half (8.5) acres on a tract that existed as an eight and a half (8.5) acre tract or greater on February 6, 2012;**

Staff Comment/Finding: *The submitted plan shows the tower to be placed on the Bradley Middle School property which is 61 acres in size.*

- c) The commercial communication tower must be set back a distance of at least 500 feet from any public right-of-way and 200 feet from any property line;**

Staff Comment/Finding: *On sheet V1 of the submitted plan, the pole is shown to be 333.9 feet from the nearest property line and about 910 feet from the nearest public right of way (Jim Kidd Road).*

- d) The commercial communication tower may only be placed on a property where it will not require artificial illumination;**

Staff Comment/Finding: *On sheet C4, a note is placed on the plan that states "towers shall not be artificially lighted except to insure human safety as required by the FAA or FCC regulations."*

- e) The commercial communication tower must provide technically-suitable space for at least four (4) users;**

Staff Comment/Finding: *Sheet C4 of the submitted plans shows antennas for Verizon and 3 additional "future carriers" in conformance with the requirement.*

- f) The commercial communication tower must be set back a distance of at least the tower's fall zone, as certified by a North Carolina Professional Engineer, from any occupied structure.**

Staff Comment/Finding: *Staff has not found any submitted information from an engineer on establishing the tower's fall zone. The notes on the plan label the fall zone as 160 feet, which coincides with the height of the monopole. However no engineered certification has been submitted. According to sheet V1 of the submitted plan, the proposed tower is 170 feet from an unoccupied storage building near the school track, and approximately 405 feet from the nearest occupied structure/house.*

- g) All commercial communication towers in the Rural district shall be constructed using a monopole design.**

Staff Comment/Finding: *Sheet C-4 of the submitted plan shows the tower consisting of one singular pole with the antennas connected at the top and is labeled as a monopole design.*

**h) A new communication tower cannot be placed within a one mile radius of an existing tower.**

Staff Comment/Finding: *The submitted letter and sheet V1 of the plan state that the closest existing tower is 1.4 miles to the northeast of the subject site (near the intersection of Gilead Road and Beatties Ford Road).*

#### **STAFF RECOMMENDATION:**

Staff cannot recommend approval at this time due to the missing evidence showing conformance to the following ordinance requirements:

1. Evidence stating co-location options have been exhausted per Article 9.9.2.
2. A submitted engineered fall zone certification per Article 9.9.12.F.
3. Camouflaging color verification. The applicant's representative stated the color of the tower will be "galvanized gray". Rather than the metallic color of the tower remaining, staff recommends the tower be painted a neutral earth tone in conformance with the intent of Article 9.9.3.

#### **PLANNING BOARD RECOMMENDATION**

The Planning Board reviewed the application at their August 22, 2017 meeting. Discussion by the Board centered on the current poor condition of cellular service in the Beatties Ford Road area and staff's comments and questions. The applicant committed to getting updates submitted to staff to address the remaining issues. After Board discussion, the Planning Board recommended approval of the application with the condition that the lights on the pole be removed, the appropriate screening of the property be installed, and the engineered statement on the fall zone of the tower be submitted. The recommendation passed unanimously.

After the Planning Board meeting staff received a request to defer the Town Board's review of the application until its second meeting of the month, September 18, 2017. The deferral request letter is included in your agenda packet for review.

#### **TOWN BOARD MEETING**

At the September 5, 2017 Town Board meeting, the Town Board deferred the Special Use Permit hearing per the applicant's request until September 18, 2017.

## **DECISION STATEMENTS**

### **In Favor of the Special Use Permit**

In considering the Special Use Permit SUP17-03, Bradley Middle School Commercial Communication Tower, we, the Planning Board, find that the request meets all required conditions and specifications, is reasonable and does not pose an injurious effect on adjoining properties, and finds that the character of the neighborhood or the health, safety and general welfare of the community will be minimized. This decision is supported by the following findings:

1)

2)

Add additional statements as necessary.

### **Against Special Use Permit**

In considering the Special Use Permit SUP17-03, Bradley Middle School Commercial Communication Tower, we, the Planning Board, find that the request does not meet the required conditions and specifications.

(List which conditions are not being met)

1)

2)

Add additional statements as necessary.

In addition the use poses an injurious effect on adjoining properties and the Town Board finds that the request is not character of the neighborhood and there will be negative effects on the health, safety and general welfare of the surrounding community based on the following findings:

1)

2)

Add additional statements as necessary