

MEMPHIS AND SHELBY COUNTY OFFICE OF PLANNING AND DEVELOPMENT
STAFF REPORT # 9

CASE NUMBER: SUP 12-221 **L.U.C.B. MEETING:** November 8, 2012

LOCATION: East side of Old Allen Road; +/- 754 feet northeast of New Allen Road

COUNCIL DISTRICT: 7
SUPER DISTRICT: 9

OWNER OF RECORD/APPLICANT: Tower Ventures V, LLC/TV6-W, LLC

REPRESENTATIVE: Lou Katzerman

REQUEST: To construct a one hundred seventy foot (170') CMCS tower at 3298 Old Allen Road

AREA: .49 Acres

EXISTING LAND USE & ZONING: Residential Single Family (R-10)

OFFICE OF PLANNING AND DEVELOPMENT RECOMMENDATION

Approval with conditions

Staff Writer: Gregory Love

Email: Gregory.love@memphistn.gov

CONCLUSIONS

The subject site is a .49 acre parcel situated along the east side of Old Allen Road. The site is currently vacant and is surrounded by vacant land and single family homes.

The applicant is requesting to utilize this site to construct a 170 (one hundred seventy) foot monopole Cellular Tower within the R-10 (Residential Single Family) District.

The subject site is just east of the Frayser community and within proximity to the Raleigh Bartlett area. This area has varying topography and is appreciated for its pleasant scenery and vistas. In fact, the Frayser Futures Plan, a comprehensive plan for development and growth of the area, suggests that these features are unique and should be protected and built upon. With that, it is understandable that the demand for cellular phone service requires cell towers however utilizing a design that will help to deter any potential negative impact onto the immediate area is beneficial to all.

The requirements of a Special Use Permit as illustrated in the Unified Development Code Section 9.6.9 states that no such permit shall be issued unless the project will have no undue or adverse effect upon the surrounding property, The requirements go further to require that any approved permit and its proposed development be constructed in a way as to be compatible with the immediate vicinity and not interfere with the development of adjacent property.

The applicant currently proposes a monopole design cell tower. It is recommended that a canister-style design would be more appropriate and compatible with the existing rural character of the area and the proximity of the proposed site to single family homes.

LAND USE AND ZONING MAP



SURROUNDING LAND USES AND ZONING:

North, East, South, West:

Primarily single family residences within the R-10 (Residential Single Family) District

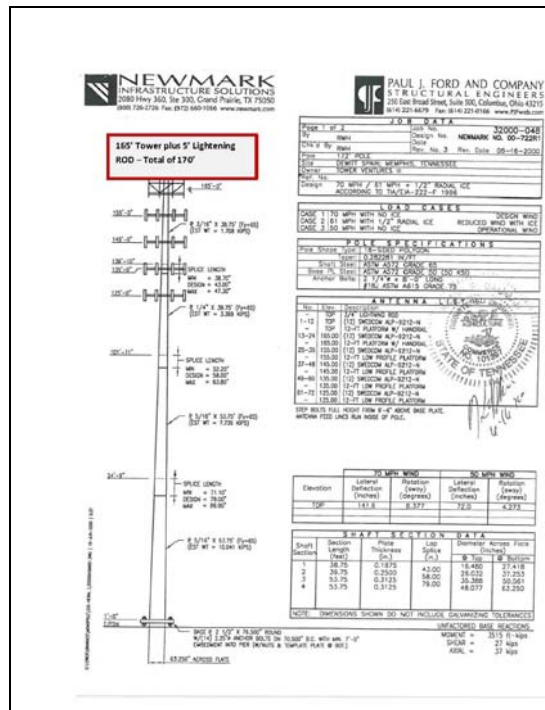
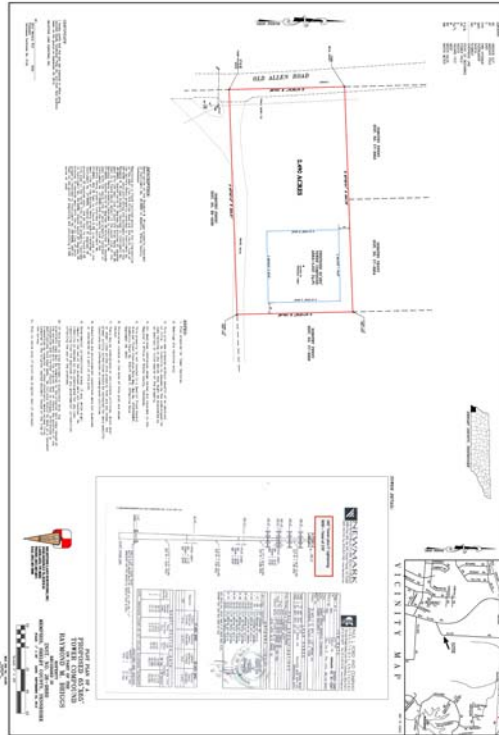


Old Allen Road facing south



East of New Allen Road





STAFF ANALYSIS

Site Characteristics

The subject site is a .49 acre parcel situated in the Frayser community. The proposed site is located along the eastern side of Old Allen Road within the R-10 (Residential Single-family-10 District). This parcel is currently vacant and is surrounded by other vacant parcels as well as single family homes.

Request

To construct a one hundred seventy foot (170) CMCS tower

Conclusion

As mentioned earlier in this report the subject area is located in the northern quadrant of Memphis. More specifically, this area is just east of the Frayser community and abuts the general Raleigh Bartlett area. The northern portions of Shelby County are the highest points of the county topographically; this area has more varying terrain and arguably some of the best vistas in the county. In fact, the Frayser Futures Plan, a comprehensive plan focused on the development of this North Memphis community, suggests that the varying topography, mature trees, and vistas for this area are valuable assets and should be preserved.

The subject area has a healthy amount of mature trees and currently offers a rural like setting. Introducing a cellular communication tower to this area, as submitted, would detract from the current landscape. Furthermore, a cell tower with the design as submitted may hinder any future development of the immediate area because of its stark difference in character and design as compared to the current setting.

Cellular communication service is a common amenity and adds additional opportunities for safety and emergency response. In cases where additional services are justified tools and equipment to provide an acceptable level of service is warranted; however, there are opportunities to pursue equipment design that achieve a less onerous affect while meeting the function of a cell tower and achieving acceptable levels of cellular service.

A canister-type monopole without antenna arm extensions would help to allow the cell tower to integrate into the area by taking advantage of the existing mature trees that are in close proximity to the site.

While a tower disguised as a tree would be another alternative, the existing tree cover should supplement any screening or compatibility concerns in using a canister-style monopole.

The Federal Telecommunications Act of 1996 provides limitations to the discretion local jurisdictions may exercise in their regulation of the construction and placement of wireless facilities. Essentially, a local zoning authority may deny a request for a cell tower, but its decision must be supported by “substantial evidence.” The Act goes further in prohibiting the local zoning authority from regulating cell towers on the basis of any “environmental effects of radio frequency emissions” so long as the cell tower complies with the emissions standards as set out by the Federal Communications Commission (47 U.S.C. Sec. 332 (c)(7)(B)(iii) and (iv)).

The United States Court of Appeals, Sixth Circuit, which has appellate jurisdiction over Tennessee, has stated that “few generalized expressions of concern with aesthetics cannot serve as substantial evidence on which [a local zoning authority] could base the denials” (New Par v. City of Saginaw, 301 F.3d 390, 398 (2002) quoting Cellular Tel. To construct a one hundred seventy foot (170') CMCS tower at 3298 Old Allen Road Co. v Town of Oyster Bay, 166 F.3d at 490, 496 (2d Cir. 1999)).

Based on this threshold, staff recommends approval of this request for a Special Use Permit allowing the construction of a CMCS (cell) tower with the attached conditions.

RECOMMENDATION:

Approval with conditions

SITE PLAN CONDITIONS

A Special Use Permit is hereby authorized to Tower Ventures V, LLC/TV6-W, LLC to construct a 170 (One Hundred and Seventy) foot CMCS Tower on the property located East side of Old Allen Road; +/- 754 feet northeast of New Allen Road in accordance with the approved site plan and the following supplemental conditions:

1. All landscaping and screening shall be subject to final review and approval by the Office of Planning & Development.
2. All landscaping and screening shall be installed prior to launch and operation of the tower equipment. Required landscaping shall not be placed on or over any sewer or drainage easements or under any utility easement.
3. The maximum tower height shall be one hundred seventy feet (170) and designed as canister-style monopole .
4. The tower and the compound at the base of the tower shall be designed and constructed to accommodate at least six (6) antenna co-locations.
5. The tower and related equipment shall be removed within one-hundred eighty (180) days of ceasing operations.
6. The tower shall be constructed within two (2) years of approval by the Memphis City Council. The Land Use Control Board may grant a time extension through the applicant filing a correspondence item application with public notice sent to all property owners within five hundred feet (500') feet of the property.
7. No signage relating to the cell tower shall be permitted on this site.
8. The tower compound, the guy wires and the guy anchors shall be completely enclosed with a six-foot (6') sight-proof wooden fence around the perimeters of these features.
9. Any interference with Memphis-Shelby County emergency communications by a station using this tower shall be the responsibility of the station and tower owner to remedy.

GENERAL INFORMATION

Street Frontage: 104 feet
Planning District: Frayser
Census Tract: 205.12
Zoning Atlas Page: 1740
Parcel ID: 084010 00291
Zoning History: R-10

DEPARTMENTAL COMMENTS

The following comments were provided by agencies to which this application was referred:

City Engineer:

1. Standard Subdivision Contract as required in Section 5.5.5 of the Unified Development Code.

Sewers:

2. City sanitary sewers are available at developer's expense.

Roads:

3. The Developer shall be responsible for the repair and/or replacement of all existing curb and gutter along the frontage of this site as necessary.
4. All existing sidewalks and curb openings along the frontage of this site shall be inspected for ADA compliance. The developer shall be responsible for any reconstruction or repair necessary to meet City standards,

Curb Cuts/Access:

5. The City Engineer shall approve the design, number and location of curb cuts.

6. Any existing nonconforming curb cuts shall be modified to meet current City Standards or closed with curb, gutter and sidewalk.

Drainage:

7. Drainage improvements, including possible on-site detention, shall be provided under a Standard Subdivision contract in accordance with Unified Development Code and the City of Memphis Drainage Design Manual.
8. Drainage data for assessment of on-site detention requirements shall be submitted to the City Engineer.

Site Plan Notes:

9. Provide internal circulation between adjacent phases, lots, and sections. Common ingress/egress easements shall be shown on the final plats.
10. Prior to recording, the following note shall be placed on the plat:

No permit for construction shall be granted for this property except for the installation of a communications tower. Any other use of this property will require re-recording of the plat, the payment of sewer development fees and the installation of the sewer connection to this property.

11. The width of all existing off-street sewer easements shall be widened to meet current city standards.
12. Required landscaping shall not be placed on sewer or drainage easements

City Fire Division:	No Comment
City Real Estate:	No comments received.
City/County Health Department-	No Comments
Pollution Control:	No comments received.
Environmental Sanitation:	No comments received.
City Board of Education:	No comments received.

Construction Code Enforcement:

No comments received.

Memphis Light, Gas and Water:

MLGW has reviewed the referenced application, and has no objection, subject to the following conditions:

- **It is the responsibility of the owner/applicant** to identify any utility easements, whether dedicated or prescriptive (electric, gas, water, CATV, telephone, sewer, drainage, etc.), which may encumber the subject property, including underground and overhead facilities. No permanent structures will be allowed within any utility easements.
- **It is the responsibility of the owner/applicant** to contact **TN-1-CALL @ 1.800.351.1111**, before digging, and to determine the location of any underground utilities including electric, gas, water, CATV, telephone, etc.
- **It is the responsibility of the owner/applicant** to pay the cost of any work performed by MLGW to install, remove or relocate any facilities to accommodate the proposed development.
- **It is the responsibility of the owner/applicant** to comply with the **National Electric Safety Code (NESC)** and maintain minimum horizontal/vertical clearances between existing overhead electric facilities and any proposed structures.
- **Landscaping is prohibited** within any MLGW easement or dedicated utility easement without prior MLGW approval.

- **It is the responsibility of the owner/applicant** to submit a detailed plan to MLGW Engineering for the purposes of determining the availability and capacity of existing utility services to serve any proposed or future development(s). Application for utility service is necessary before plats can be recorded.
 - All residential developers must contact MLGW's Residential Engineer at Builder Services: (901) 729-8675 to initiate the utility application process.
 - All commercial developers must contact MLGW's Builder Services line at 729-8630 (select option 2) to initiate the utility application process.
- **It is the responsibility of the owner/applicant** to pay the cost of any utility system improvements necessary to serve the proposed development with electric, gas or water utilities.

Respectfully Submitted,
MEMPHIS LIGHT, GAS and WATER DIVISION

Bell South:

No comments

Memphis Area Transit Authority (MATA):

No comments received.

OPD-Regional Services:

No comments received.

Comprehensive Planning:

No comments