

**MEMPHIS AND SHELBY COUNTY OFFICE OF PLANNING AND DEVELOPMENT**  
**STAFF REPORT #13**

**CASE NUMBER:** SUP 13-202      **L.U.C.B. MEETING:** March 14, 2013

**LOCATION:** 6415 US HWY 70; Northeast corner of Highway 70 and Elmore Road

**COUNCIL DISTRICT:** 1  
**SUPER DISTRICT:** 9

**OWNER OF RECORD/APPLICANT:** Tower Ventures V, LLC/TV-6, LLC

**REPRESENTATIVE:** Lou Katzerman

**REQUEST:** Construct a one hundred eighty foot (180') CMCS tower

**AREA:** 1.92 Acres

**EXISTING LAND USE & ZONING:** Commercial Mixed-Use (CMU-3)

**OFFICE OF PLANNING AND DEVELOPMENT RECOMMENDATION**

Approval with conditions

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**CONCLUSIONS**

The subject site is a 1.92 acre parcel situated along the east side of US Highway 70, more specifically at the southeastern corner of Highway 70 and Elmore Road. The site is improved with a commercial strip center fronting on HWY 70; this application proposes to construct a 180 foot cell tower at southeastern region of the site which is currently unoccupied land.

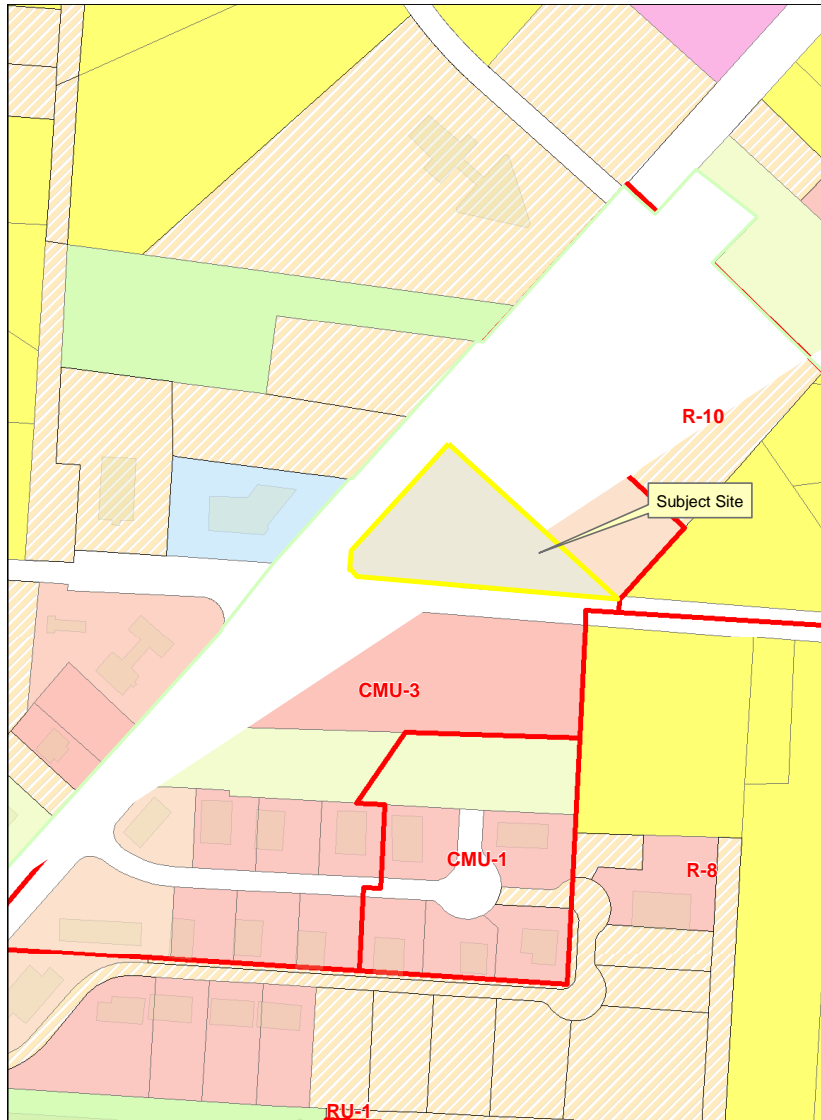
The subject site is within the Germantown Parkway Study area and is designated as a Mixed Use Center. The general and surrounding area is developed with stand-alone commercial uses as well as some small commercial strip centers.

The propose location for the CMCS tower is just behind an existing commercial strip center; the subject parcel includes the strip center and undeveloped land just behind the center at the eastern quadrant of the parcel.

This site is suitable for the development of the proposed CMCS tower as the area is primarily commercial along HWY 70 and there is an existing stand of mature trees that will serve as a buffer between the tower and the less intense and residential uses east of the site and Highway 70.

The proposed CMCS tower will be appropriately screened and does not suggest that it will impose any immediate or extreme negative impacts upon the community. This added service adheres to the general intent of the Germantown Parkway Study to provide appropriate infrastructure and services for the area.

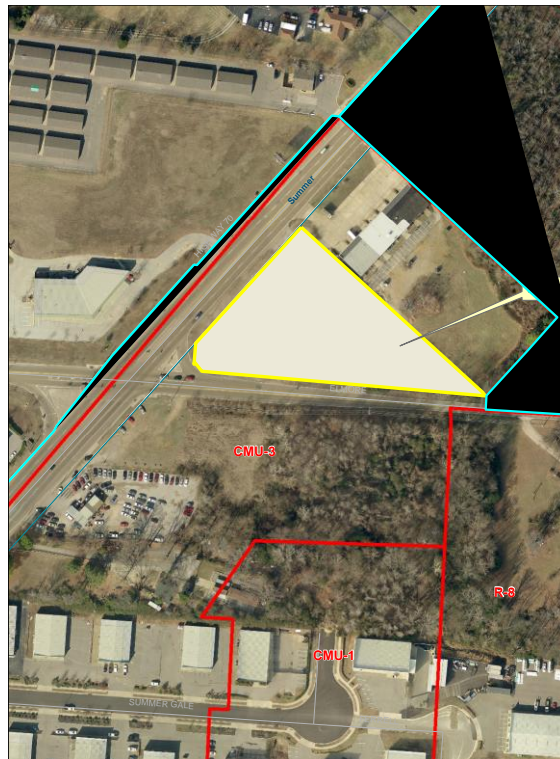
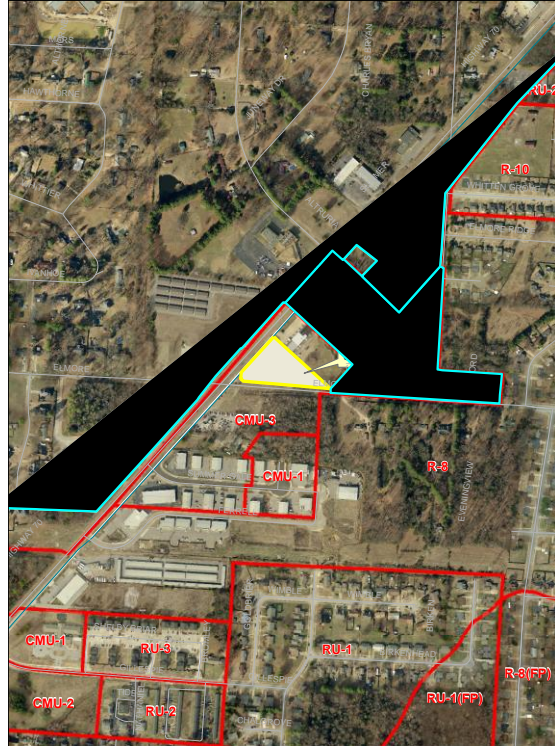
### LAND USE AND ZONING MAP



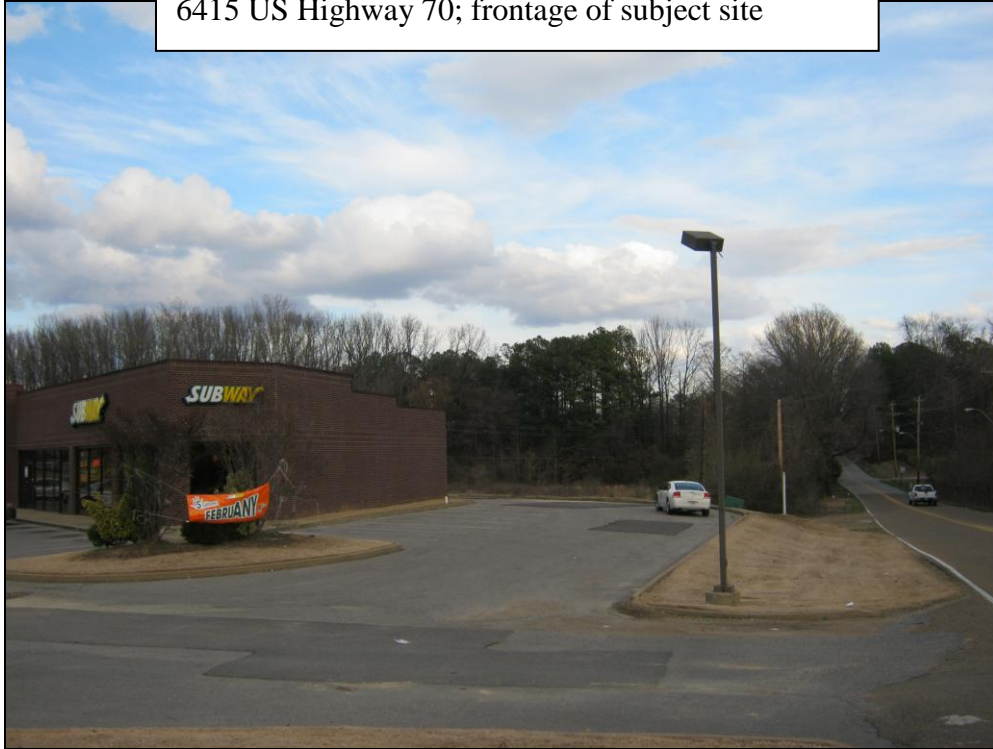
#### SURROUNDING LAND USES AND ZONING:

##### North, East, South, West:

A combination of commercial, office and residential land uses within the CMU-3 (Commercial Mixed Use) District.



6415 US Highway 70; frontage of subject site



Facing east along Elmore Road



Approx. proposed  
location for cell tower





## **STAFF ANALYSIS**

### Site Characteristics

The subject site comprises a total of 1.92 acres; the site is occupied by a commercial strip center that fronts along the east side of US Highway 70. There is a similar commercial strip building that abuts the subject site to the east with similar construction and building features.

The site is zoned CMU-3 (Commercial Mixed Use); there are several intense commercial uses that surround the site to include auto sales, and retail sales that front along HWY 70.

The proposed location of the cell tower is the most southeastern region of this almost 2 acre lot. The cell tower will be situated at the rear of the site behind the existing strip center and will be utilizing access from Elmore Road. The site is screened by a stand of mature trees at the rear or southeastern region of the lot.

### Request

Construction of a one hundred eighty foot (180') CMCS tower

### Conclusion

As mentioned earlier in this report the subject area is located at the eastern corner of the intersection of HWY 70 and Elmore Road. The subject area is also located within the Germantown Parkway Study area; the plan designates this area as a Mixed Use Center, more specifically the Summer Avenue Corridor Mixed-Use Center. This area, as its title suggests, was envisioned to accommodate a mixture of commercial uses by way of free-standing commercial establishments such as gas stations, restaurants, automotive repair shops etc. and small strip centers along HWY 70.

Residential land use for the area begin just east of the site; there is a stand of mature trees at the most eastern fringe of the site that will offer some screening between the propose tower and the residential land use to the east.

The subject site is also located within the Fletcher Creek Overlay District (FC). The major objective of this overlay is to monitor development in this sensitive drainage basin so that development occurs in a manner that appropriately manages potential flooding. This development proposal would introduce very little, new impervious surface and should not add to water run-off or flooding issues.

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.

A monopole design with flush-mount antenna should assist in allowing the cell tower to integrate into the area. The existing mature trees just east of the site will also offer some relief from land use contrasts.

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 to allow construction of a one hundred eighty foot (180') CMCS tower on the property located at the northeast corner of Highway 70 and Elmore 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. A five (5) foot wide landscape screen to include Leyland Cypress spaced five (5) feet on center shall be installed and maintained around the entire base of the tower compound.
3. 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.
4. 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.
5. The maximum tower height shall be one hundred eighty (180) feet and designed as a monopole with flush-mount antenna.
6. 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.
7. The tower and related equipment shall be removed within one-hundred eighty (180) days of ceasing operations.
8. 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.
9. No signage relating to the cell tower shall be permitted on this site.
10. 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:** Approx. 142 feet (CMCS compound specifically)

**Planning District:** Shelby Farms-Germantown

**Census Tract:** 211.11

**Zoning Atlas Page:** 1850

**Parcel ID:** 089024 00006

**Zoning History:** CMU-3

## **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.
2. The City Engineer shall approve the design, number and location of curb cuts.
3. 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.
4. The width of all existing off-street sewer easements shall be widened to meet current city standards.
5. Required landscaping shall not be placed on sewer or drainage easements

**City Fire Division:** No Comment

**City Real Estate:** No comments received.

<b>City/County Health Department-</b>	No Comments
<b>Pollution Control:</b>	No comments received.
<b>Environmental Sanitation:</b>	No comments received.
<b>City Board of Education:</b>	No comments received.
<b>Construction Code Enforcement:</b>	No comments received.
<b>Memphis Light, Gas and Water:</b>	No comments
<b>Bell South:</b>	No comments
<b>Memphis Area Transit Authority (MATA):</b>	No comments received.
<b>OPD-Regional Services:</b>	No comments received.
<b>Comprehensive Planning:</b>	No comments