



STAFF REPORT

Board of Adjustment

CASE #AU-1747-19

BOA Date:	June 11, 2019	Planner:	Matt Post	Phone:	303-227-8861
Location:	9975 East 104 th Avenue Henderson, CO 80640				
Applicant:	Crown Castle, USA on behalf of T-Mobile	Owner:	Dowell Schlumberger, Inc.		
Address:	116 Inverness Drive East, Ste. 280, Englewood, CO 80112	Address:	919 Congress Avenue, Ste. 1450, Austin, TX 78701		

Case Summary

Request:	The applicant is requesting a Use-by-Permit for an existing, non-concealed monopole and associated telecommunication facility.
Project Description:	Requested approval of a Use-by-Permit. The property was annexed as part of the 2007 Northern Enclave annexation and became non-conforming as a result of the annexation.
Issues/Concerns:	<ul style="list-style-type: none">• Visual impact from adjacent properties• Visual impact from E. 104th Ave. and Florence St.• Upgrades to wireless network in the area utilizing existing infrastructure• The monopole is existing with functioning arrays. The site was annexed into Commerce City in 2007 as part of the Northern Enclave annexation (AN-220-07)
Key Approval Criteria:	<ul style="list-style-type: none">• The use will not result in a substantial or undue adverse effect on adjacent property, or the character of the neighborhood• There is a proven community need for the use at the existing location
Staff Recommendation:	Approval with Conditions
Current Zone District:	I-3 (Heavy-Intensity Industrial District)
Comp Plan Designation:	General Industrial

Attachments for Review: *Checked if applicable to case.*

- | | |
|---|--|
| <input checked="" type="checkbox"/> Applicant's Narrative Summary | <input checked="" type="checkbox"/> Vicinity Map |
| <input checked="" type="checkbox"/> Applicant's Supplemental Exhibits | |
| <input checked="" type="checkbox"/> Site Plan | |

Background Information

Site Information

Site Size:	21.37 Acres
Current Conditions:	Developed with four warehouse buildings, existing monopole
Existing Right-of-Way:	Florence Street to the east
Neighborhood:	Di Giorgio
Existing Buildings:	Yes – none related to telecommunication use
Buildings to Remain?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Site in Floodplain?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Surrounding Properties

Existing Land Use		Occupant	Zoning
North	Industrial	BASF Construction Chemicals	I-3
South	Industrial	Groendyke Transport	PUD
	Industrial	ACT Underground LLC	I-3
East	Public	South Adams County Fire	Public
	Industrial	Recycling Connections	I-3
West	Industrial	Union Pacific Railroad	I-1

Case History

The property was annexed into Commerce City in 2007 as part of the Northern Enclave Annexation.

<u>Case</u>	<u>Date</u>	<u>Action</u>
AN-220-07	2007	Approved
Z-876-08	2008	Rezone

Case AN-220-07 annexed approximately 940.5 acres into the City of Commerce City as part of the Northern Enclave Annexation, which included the property where the subject monopole is located. Case Z-876-08 rezoned the property to I-3 with no conditions.

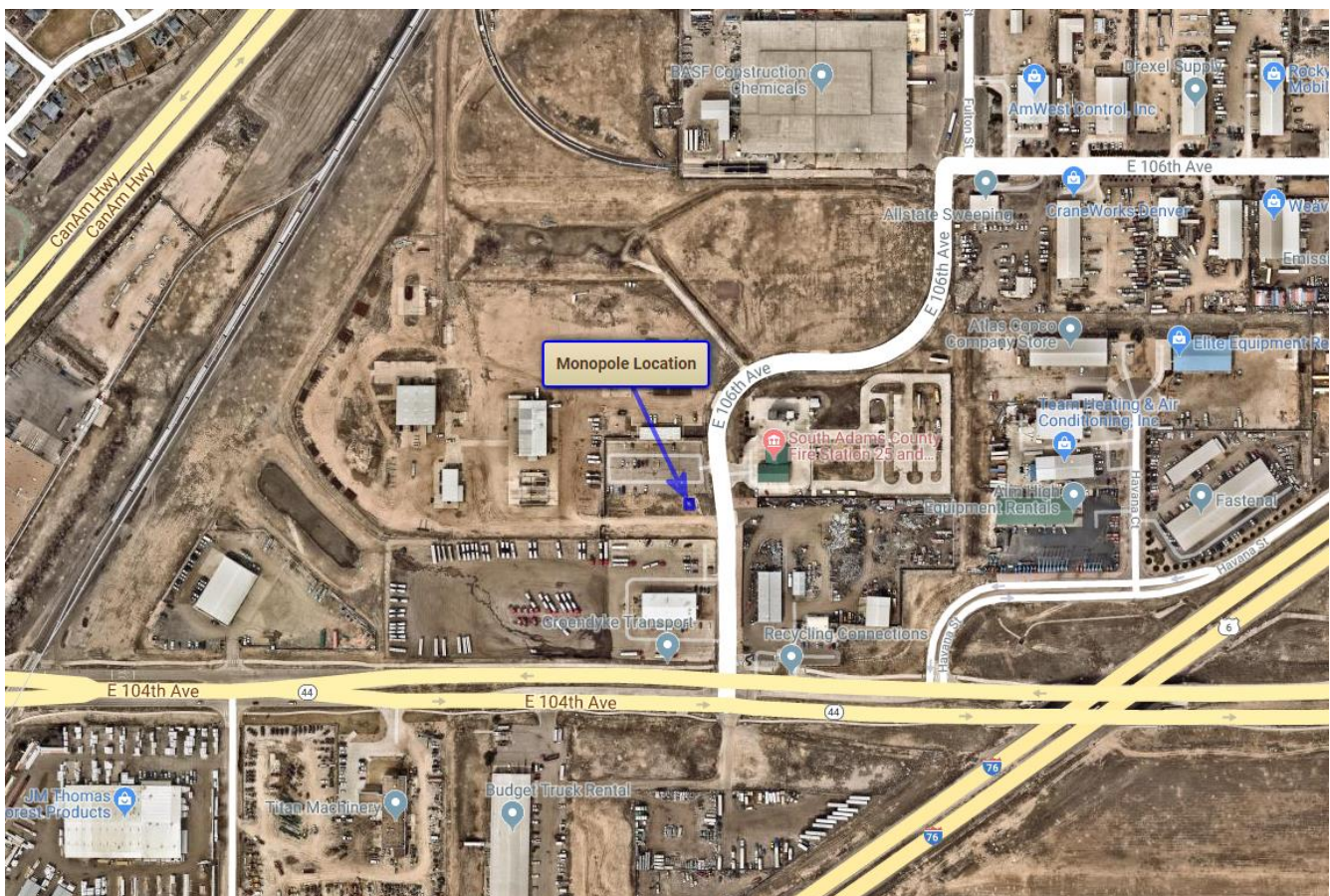
Applicant's Request

The applicant is requesting the approval of a Use-by-Permit for an existing, non-concealed monopole. The facility was approved by the Planning Commission of Adams County in 1997 and has been in continuous operation since. Adams County required Conditional Use Permits for legal operation, which were reinstated every five years until 2007 when the property and associated structure were annexed into the City of Commerce City. The operator of the facility did not pursue a Use-by-Permit as required by the LDC, and the facility in turn has been operating without one since annexation. The applicant represents that with more than 20 years of continuous operation, the facility is crucial to the existing telecommunication network in the area. The pursuit of a Use-by-Permit will ensure that the use of the structure remains in conformance with Sec. 21-5602 (Telecommunication Facility Location Requirements), which requires all non-concealed monopoles in industrial zone districts to obtain a Use-by-Permit.

Development Review Team Analysis

The Land Development Code (LDC) allows for non-concealed monopoles on properties with an industrial land use with the approval of a Use-by-Permit. Concealed facilities and facilities mounted on existing buildings or structures are allowed by-right. The site on which the non-concealed monopole is located was annexed into Commerce City in 2007 as part of the Northern Enclave annexation. Prior to annexation, the facility had operated legally in Adams County under a series of approved conditional use permits. It should be noted that since the property was annexed in 2007, to the knowledge of current staff, the City has not received any complaints regarding the height, location, or appearance of the monopole.

In March of 2019, the applicant was denied a permit to modify the existing facility when it was determined that the monopole was not operating with an existing Use-by-Permit as required per Sec. 21-5602 of the LDC.

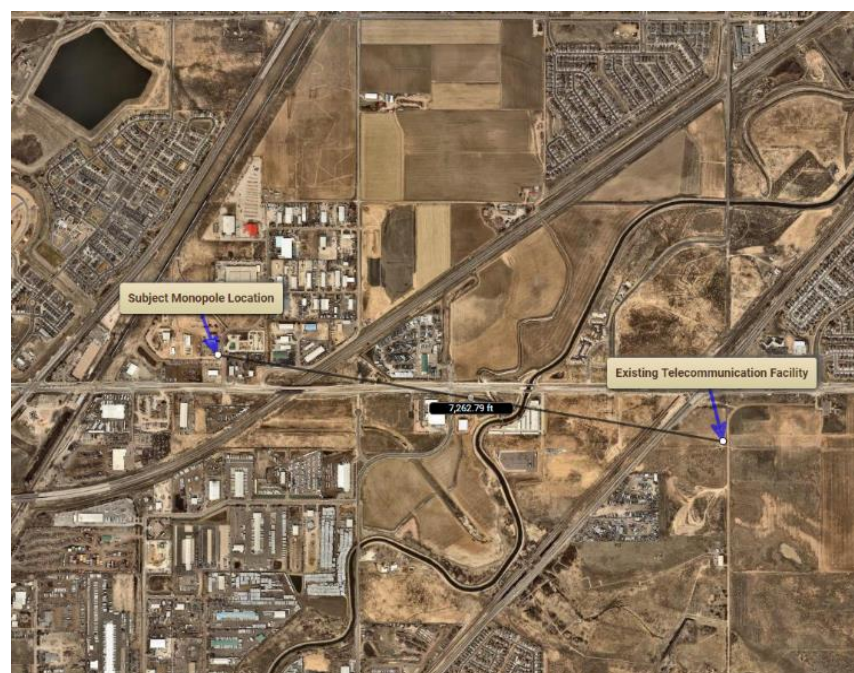


Florence Street, the right-of-way directly east of the site, was constructed in 2014. In 1997, when the subject monopole was erected, the road did not exist, and access to the site was granted via an unimproved private drive.

The monopole is 92 feet tall, which is 22 feet taller than the allowed 70-foot height in industrial zone districts. Section 21-3220 (Height Exceptions) of the LDC states that a structure shall not be considered non-conforming due to its height only as long as the structure existed on the effective date of the LDC. This provision applies, and as such, the height of the monopole does not render the structure nonconforming.

The existing monopole is an unmanned facility requiring no vehicle parking or utilities other than fiber interconnect and electrical power. The facility will require monthly maintenance and routine service visits. The base of the monopole and associated ground-mounted equipment are currently screened by an 8-foot privacy fence in accordance with Sec. 21-5603(5)(a) of the LDC, though there exists no landscaping as required per Sec. 21-5603(5)(c) of the LDC.

Sec. 21-5603(6) of the LDC encourages the design of monopoles that will allow for at least two users. The current design of the monopole will allow for future co-location, in accordance with all applicable provisions of the LDC, which may reduce the need for additional telecommunication facilities in the immediate vicinity. Additionally, the existing monopole is located more than 2,000 feet from surrounding freestanding telecommunication facilities as required per Sec. 21-5603(3)(b) of the LDC.



The primary character of the adjacent area consists of heavy industrial uses, and the majority of buildings are large warehouses with outdoor storage. The subject monopole has been in place and operating continuously at this site since 1997. Due to the height and location of the monopole, it is visible from both East 104th avenue and Florence Street, the latter of which was completed in 2014 and serves multiple industrial uses to the north. The nearest residential area is the Belle Creek PUD, which is more than 1,700 feet north west of the site.



Dowell Schlumberger, Inc., owns the property where the facility is located while the facility space is perpetually leased by Crown Castle, USA. The facility is accessed via Florence Street and the paved lot directly north of the monopole.

The Development Review Team (DRT) believes that the continued operation of this non-concealed monopole is appropriate given the context of the neighborhood and the immediate surroundings of the subject property, and that the existing facility would fulfil a proven community need for continued network coverage for a variety of users.

The DRT reviewed this case against the telecommunications standards and Use-by-Permit approval criteria in the LDC. It was found that the existing monopole meets all of the approval criteria for a Use-by-Permit. The applicant has agreed to install landscaping around the screen fence along Florence Street in accordance with Sec. 21-5603(5)(c). As a condition of approval, a landscape plan must be submitted, approved, and implemented within six (6) months of the date of approval of the Use-by-Permit.

Comprehensive Planning Documents

The DRT recommendation for this case is supported by the following Comprehensive Planning Goals:

<u>Section</u>	<u>Goal</u>	<u>Description</u>
Land Use & Growth	LU 1.1	<i>Growth and Future Land Use Plan Consistency:</i> Use the Future Land Use Plan (FLUP) to guide development patterns and mix of uses and amendments to the Land Development Code.
<u>Analysis:</u>	The land use of the subject property is industrial, and all adjacent properties have been used for warehousing, distribution, and manufacturing for some time. The existing facility is indicated as support service for existing uses that comply with the current land use and future land use for the site (and character of the surrounding area in general).	
<u>Section</u>	<u>Goal</u>	<u>Description</u>
Public Facilities & Infrastructure	PF 1.10	<i>Telecommunication</i> Work with telecommunication providers to ensure that all residents and businesses have access to telecommunication services, encouraging marketplace competition.
<u>Analysis:</u>	The existing facility supports this goal by continuing to provide increased cellular capacity to an area of the city that is currently requires it. The facility will provide access to both residents & businesses in the area.	
<u>Section</u>	<u>Goal</u>	<u>Description</u>
Redevelopment and Reinvestment	RR 2.6	<i>East 104th Avenue Site in Irondale Infill/Redevelopment</i> Establish the East 104 th Avenue (I-76 to Brighton Road) as a longer-term future infill site for commercial and employment uses.
<u>Analysis:</u>	The existing telecommunication facility will continue to provide network service that will help to ensure competitive infill development of the East 104 th Avenue area between I-76 and Brighton Road by retaining network coverage and access.	

<u>Criteria Met?</u>	<u>Sec. 21-3221. Uses-by-Permit</u>	<u>Rationale</u>
<input checked="" type="checkbox"/>	The use at the proposed location will not result in a substantial or undue adverse effect on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvements, either as they presently exist or as they may exist in the future as a result of the implementation of provisions and policies of the comprehensive plan, this land development code, or any other plan, program, or ordinance adopted by the city. Such compatibility may be expressed in appearance, architectural scale and features, site design, and the control of any adverse impacts, including noise, dust, odor, lighting, traffic, safety, and impact on property values of the surrounding area;	The existing facility does not result in undue hardship to any adjacent properties. It is set back 54' 6" from the east property line, and 94' from the property to the south. The use is unmanned and will not generate any traffic impacts, any significant noise or waste material, and will not alter the character of the neighborhood. The existing location, topography of the surrounding area, and industrial nature of the area all contribute to the existing monopole's harmony with its surroundings.
<input checked="" type="checkbox"/>	The characteristics of the site are suitable for the use considering size, shape, location, topography, existence of improvements and natural features; and	The existing monopole is constructed on a 21.37 acre industrial site with relatively flat topography. All surrounding sites contain industrial uses that suit the location of the monopole appropriately.

Criteria Met?	Sec. 21-3221. Uses-by-Permit	Rationale
<input checked="" type="checkbox"/>	<p>The use at the proposed location will be adequately served by and will not impose an undue burden on any of the improvements, facilities, and services of the city special districts, or its residents. Where any such improvements, facilities, utilities or services are not available or adequate to service the use in the proposed location, the applicant shall, as a part of the application and as a condition of approval of the use-by-permit, be responsible for establishing an ability, a willingness, and a binding commitment to provide such improvements, facilities, utilities and services in sufficient time to serve the proposed use.</p>	<p>The facility is an unmanned tower, which has minimal impact to city services and special districts. The applicant has stated that the existing facility will only require power to continue operating.</p>
<input checked="" type="checkbox"/>	<p>There is a proven community need for the use at the proposed location, given existing and proposed uses of a similar nature in the area and of the need to provide or maintain a proper mix of uses both within the city and the immediate area of the proposed use.</p>	<p>The monopole has been in continuous operation since 1997 and has provided network services to the surrounding area. By granting the use-by-permit for this existing monopole, the facility will continue to fulfill a community need.</p>

Development Review Team Recommendation

Based upon the analysis above, the Development Review Team believes that the application meets the criteria for a Use-by-Permit set forth in the Land Development Code and recommends that the Board of Adjustment approve the request, subject to the following condition:

CONDITION:

- A. A landscape plan must be submitted, approved, and implemented within six (6) months of the date of approval of the Use-by-Permit.

ADVISORIES:

- A. Prior to the city issuing any building permits to construct the facility, the applicant will need to submit either a bond, letter of credit, or cash deposit in order to cover the cost of removal of the facility if abandoned, or deemed abandoned, pursuant to the terms of the Land Development Code.
- B. All future proposed alterations and expansions shall obtain all requisite City approvals and display conformance with applicable provisions of the Commerce City Land Development Code.

Recommended Motion

To recommend approval subject to condition(s):

I move that the Board of Adjustment find that upon satisfying the following conditions:

- A. A landscape plan must be submitted, approved, and implemented within six (6) months of the date of approval of the Use-by-Permit.

The requested Use-By-Permit for the property located at **9975 E. 104th Avenue** contained in case **AU-1747-19** meets the criteria of the Land Development Code and, based upon such finding, approve the Use-By-Permit.

The applicant should also be aware of the following advisory:

- A. Prior to the city issuing any building permits to construct the facility, the applicant will need to submit either a bond, letter of credit, or cash deposit in order to cover the cost of removal of the facility if abandoned, or deemed abandoned, pursuant to the terms of the Land Development Code.
- B. All future proposed alterations and expansions shall obtain all requisite City approvals and display conformance with applicable provisions of the Commerce City Land Development Code.

Alternative Motions

To recommend approval:

I move that the Board of Adjustment find that the requested Use-By-Permit for the property located at **9975 E. 104th Avenue** contained in case **AU-1747-19** meets the criteria of the Land Development Code and, based upon such finding, approve the Use-By-Permit

To recommend denial:

I move that the Board of Adjustment deny the requested Use-By-Permit for the property located at **9975 E. 104th Avenue** contained in case **AU-1747-19** because it fails to meet the following criteria of the Land Development Code:

List the criteria not met

To continue the case:

I move that the Board of Adjustment continue the requested Use-By-Permit for the property located at **9975 E. 104th Avenue** contained in case AU-1747-19.