



STAFF REPORT

Board of Adjustment

CASE #AU-1747-19

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|-------------------|--|-----------------|---|---------------|--------------|
| BOA Date: | May 14, 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 to make an existing monopole and telecommunication facility legal and conforming |
| Project Description: | The applicant will be installing a new antenna array on an existing 92-foot non-concealed monopole. The property was part of the Northern Enclave annexation and became legal non-conforming upon 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, legal non-conforming, non-concealed monopole. The facility was approved by the Planning Commission of Adams County in 1997 and has been in continuous operation since then. Adams County required conditional use permits for operation, which were reinstated every five years until 2007. With more than 20 years of operation, the facility is crucial to the existing telecommunication network in the area, and the pursuit of use-by-permit will ensure continued and legal operation.

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 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.

Additionally, since the property was annexed in 2007, the City has not received any complaints regarding the height, location, or appearance of the monopole.

The monopole is considered a nonconforming structure according to Sec. 21-5510 of the Land Development Code due to the overall use of the existing pole. Alterations and expansions of nonconforming structures are permitted provided the alteration complies with the provisions of the Land Development Code, thereby requiring a use-by-permit.

The applicant is proposing to co-locate an array on an existing 92-foot monopole, which triggered review of the proposal. It was determined that the monopole is not operating with an existing use-by-permit, as required per Sec. 21-5602 of the Land Development Code. The new antenna array will require two ground-mounted accessory cabinets that will be installed on a raised steel platform. The ground equipment will be concealed by an 8' privacy fence surrounding the entire site. The existing monopole will be an unmanned facility requiring no vehicle parking or utilities other than fiber interconnect and electrical power. The applicant explains how the existing tower and associated modifications will provide additional and continued coverage in the area by allowing another user to co-locate on the monopole:

“This facility will provide for the co-location of another user (T-Mobile in addition to Sprint) at the site which will utilize the existing pole to minimize the need for an additional facility in the area”

Land Development Code Sec. 21-5603(6) encourages the design of monopoles that will allow for at least two users. T-Mobile will be co-locating with Sprint at this site, which will reduce the need for another facility in the immediate area. This existing monopole is located more than 2000 feet from surrounding freestanding telecommunication facilities as is required per Sec. 21-5603(3b) of the Land Development Code.

Dowell Schlumberger, Inc., owns the property where the facility is located while the facility space is perpetually leased by Crown Castle, USA. The facility will be accessed via Florence Street and the paved lot directly north of the monopole. Bollards and chains will be installed by the applicant to prevent maintenance vehicle access on unimproved surfaces surrounding the site. The site will be unmanned, requiring only monthly visits to perform routine maintenance and service.



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 1700 feet north west of the site.



The proposed modification to the existing monopole will require additional ground-mounted equipment to operate. The applicant is proposing an 8' wooden fence with a 2x6 top cap around the entire perimeter of the ground-mounted equipment that will sufficiently screen the equipment from observers both on and off the site. In addition to the required fencing, Land Development Code Sec. 21-5603(5c) requires landscaping to be installed along the outside of the screening fence. The applicant has agreed to xeriscape the area in front of the fence and adjacent to Florence Street, which aligns with Land Development Code Sec. 21-7511 which states that "xeriscape landscaping is encouraged..." as a means to conserve water. The xeriscaping will consist of a river rock base and boulders, along with shrubs and trees that that will be provided temporary irrigation until the plants are established in accordance with Land Development Code Sec. 21-7512. The landscaping and fencing may be visible from 104th Avenue, though the site is more than 400 feet from the intersection at 104th and Florence. Primary visibility will come from users traversing Florence Street to access the industrial parks to the north.

The existing monopole is 92 feet tall, which is 22 feet taller than the allowed 70-foot height in industrial zone districts. Land Development Code Sec. 21-3220(2a) 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 Land Development Code. This provision applies, and there is no height increase proposed for this project.

The addition of a new provider's antenna array will provide a much-needed service to the residents and businesses of the area. Network providers have received multiple complaints that cellular service in the area is poor. The additional array will improve coverage for the area around E. 104th Ave.

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 proposed addition to the existing facility would fulfil a proven community need for increased network coverage for a variety of users.

The DRT reviewed this case against the telecommunications standards and use-by-permit approval criteria in the Land Development Code. It found that the existing monopole is considered a nonconforming structure according to Sec. 21-5510 of the Land Development Code due to the height and siting of the existing pole. Alterations and expansions of nonconforming structures are permitted provided the alteration complies with the provisions of the Land Development Code, thus requiring a use-by-permit. It was found that existing monopole meets all of the approval criteria for a 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 provide service for two network providers that will help to incentivize infill development of the East 104 th Avenue area between I-76 and Brighton Road by increasing network coverage and access. | |

| Criteria Met? | Sec. 21-3221. Uses-by-Permit | Rationale |
|-------------------------------------|---|--|
| <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. |
| <input checked="" type="checkbox"/> | 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. | 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. |
| <input checked="" type="checkbox"/> | 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. | The monopole has been in continuous operation since 1997 and has provided crucial network services to the surrounding area. The proposal to co-locate another user on site will increase network coverage for a larger variety of users in the vicinity. By granting the use-by-permit for this existing monopole, the facility will continue to fulfill a community need. |

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. Site improvements must be installed within six (6) months from approval date of plans dated 4/18/2019.

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.

Recommended Motion

To recommend approval subject to condition(s):

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

- A. Site improvements must be installed within six (6) months from approval date of plans dated 4/18/2019.

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.

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.