

**Albemarle County Planning Commission
FINAL Minutes Regular Meeting
November 22, 2022**

The Albemarle County Planning Commission held a public hearing on Tuesday, November 22, 2022, at 6:00 p.m.

Members attending were: Karen Firehock, Chair; Corey Clayborne, Vice-Chair; Julian Bivins; Fred Missel; Luis Carrazana; and Lonnie Murray.

Members absent: none

Other officials present were Charles Rapp, Director of Planning; Andy Herrick, County Attorney's Office; Scott Clark; Kevin McCollum; Andy Reitelbach; Kevin McDermott; and Carolyn Shaffer, Clerk to the Planning Commission (via Zoom).

Call to Order and Establish Quorum

Ms. Shaffer called the roll.

Ms. Firehock established a quorum.

Moment of Silence

Ms. Firehock led the Commission in a moment of silence.

Other Matters Not Listed on the Agenda from the Public

There were none.

Consent Agenda

There were no items pulled or amended from the Consent Agenda.

Mr. Missel moved that the Commission approve the Consent Agenda, which was seconded by Mr. Murray.

Mr. Clayborne stated that he would abstain because he had not been present for the meetings.

The motion carried unanimously (5-0). Mr. Clayborne abstained

PUBLIC HEARINGS

SP202200022 & SE202200047 Verizon – Walnut Creek Park Tier III PWSF

Mr. Kevin McCollum, Senior Planner, stated that the application was for a personal wireless service facility (PWSF), commonly known as a tower. He said that the proposal was for a 195-foot tower on the County-owned Walnut Creek Park property.

Mr. McCollum stated that the park was located south of the City off Old Lynchburg Road. He said that the proposed tower site was near the entrance to the park off an existing driveway leading to a park maintenance building.

Mr. McCollum explained that there were three different types of applications in terms of cellular towers. He explained that Tier 1 towers were antennae located within or attached to an existing building or structure, Tier 2 towers were called tree-top towers which were no more than 10 feet taller than the closest tree within 25 feet, and Tier 3 towers were any tower that was not classifiable as a Tier 1 or Tier 2 tower.

Mr. McCollum stated that Tier 3 towers were typically the largest towers or were within an avoidance area which included a historic district or entrance corridor. He said that Tier 3 towers followed the legislative review process requiring a special use permit which was approvable by the Board.

He stated that the application proposed a 195-foot-tall monopole tower. He stated that the applicant had submitted a special exception request to allow the antenna to be mounted 18 inches from the tower face instead of 12 inches.

Mr. McCollum stated that the ordinance allowed the top part of the antenna to be mounted 18 inches from the tower and the bottom part 12 inches from the tower giving a downward tilt to the antenna. He said that the applicant requested a special exception to mount the antenna parallel to the tower at a distance of 18 inches from the tower.

Mr. McCollum stated that the applicant conducted a balloon test. He explained that a balloon test included flying a balloon at the height and location of the proposed tower. He said that while the balloon was flying, staff walked and drove around the area to gain an understanding of where the tower would be visible.

Mr. McCollum said that because the balloon was the approximate width and height of the tower, they assumed that if the balloon was visible, then the tower would be visible. He stated that staff took photographs from as many public locations where the balloon could be seen as possible.

Mr. McCollum stated that after the balloon test, photographs that were taken were provided by staff to the applicant. He said that the applicant create photo simulations to show what the proposed tower would look like from the different viewpoints documented by staff.

Mr. McCollum said that photos 1 through 6 were from within park property, and photos 7 and 8 were from openings along Old Lynchburg Road. He said that a majority of the surrounding areas were wooded, and the balloon was not visible, or they were on private property where staff was unable to investigate the visibility

Mr. McCollum provided examples of photo simulations of the proposed tower. He noted that viewpoints were shown from the park's main drive looking west, from the boat landing and parking area more than 0.5 miles from the proposed tower, and from along Old Lynchburg Road. He said that trees and existing vegetation along Old Lynchburg Road generally blocked the view of the tower, but there were sections without vegetation where the tower was visible.

Mr. McCollum said that staff had reviewed the application under all applicable sections of the zoning ordinance, the Comprehensive Plan, and state and federal regulations. He stated that

staff believed that the proposed location was well-sited for a tower of the proposed size. He noted that a majority of the surrounding area was wooded, reducing visibility. He stated that all trees within 200 feet of the tower were on the park's property and were protected by ordinance regulations.

Mr. McCollum said that a majority of the area from which the tower would be visible was located within the Walnut Creek Park property, and staff believed this to be an unfavorable factor. He said that however, the County was the owner of the park and had provided the applicant permission to submit the application. He said that the only additional visibility observed by staff was along small sections of Old Lynchburg Road, however, the views were minimized by trees and vegetation along the roadside.

Mr. McCollum stated that based on the tower viewshed analysis, some portions of the property that were to the west appeared to have some visibility. He continued that the potential visibility was greatly reduced by the distance from the tower and the vegetation that existed between the tower and the properties. He said that given the information and the full analysis that was in the staff report, staff recommended approval of the special use permit and special exception.

Mr. McCollum stated that staff recommended approval of the special use permit with conditions. He noted that staff recommended a condition to limit the height to 175 feet because FCC regulations permitted the applicant to administratively apply for a one-time increase in height by 20 feet. He said that if the tower were approved at 175 feet, it can be built up to 195 feet. He explained that if the tower were approved at the 195-foot height as shown in the application, it could then be constructed to 215 feet.

Mr. McCollum stated that staff recommended approval of the special exception with conditions. He said that FCC regulations allowed the applicant to administratively apply for a one-time increase in the size of the standoff of up to 20 feet. He explained that since staff believed it was a concealment element, they recommended a condition to limit the standoff to the proposed 18 inches.

Mr. McCollum stated that potential motions for the special use permit were available. He explained that the Commission was not required to make a recommendation in regard to the special exception, but if the Commission chose to make one, a draft motion was provided.

Mr. Murray asked whether master naturalists or other people had gone to survey the site of the proposed tower. He asked whether trees and other vegetation would be cleared where the tower would be located.

Mr. McCollum responded that some trees would be removed, and those were identified on the plans.

Mr. Murray asked if the County had done a survey to determine that rare species and habitats would not be affected by the location of the tower.

Mr. McCollum responded that a tree conservation plan would be required prior to the issuance of the building permit. He said that trees were identified on the plan to be removed, and the plans had been removed.

Ms. Firehock clarified that the tower was proposed close to the edge of the wooded area, and it was not located deep within the woods.

Mr. Murray said that there was an existing access way to the park maintenance building, and it was located off of the existing drive.

Ms. Firehock said the site may already have some disturbance. She stated that the applicant may present.

Ms. Laurie Schweller, Williams Mullen, said she represented the applicant, Verizon Wireless. She stated that Nate Holland, GDN Sites, was also present. She stated that Mr. McCollum had covered the proposal adequately with his presentation, so she did not feel the need to present further. She said that she was available for any questions and that the applicant was amenable to the conditions listed in the staff report.

Mr. Missel asked if the applicant had considered alternative locations and why they chose the particular site.

Ms. Schweller responded that the site was the tallest point in the park and that the rest of the park lowered in elevation toward the lake by 40 to 50 feet. She stated that the height and the location were needed to get coverage throughout the park. She said that it was a safety issue because there was no coverage in the park.

Ms. Schweller stated that the site was a good site for construction. She explained that there was a clear driveway, and the County preferred the location because it was out of the way of the park and there was existing infrastructure for access. She noted that the maintenance building was near the site.

Mr. Missel asked if the range of the tower extended beyond the park.

Ms. Schweller said that it did, and that was one of the benefits of locating the tower at the top of the hill. She said the tower was necessary to provide coverage to the south and the west of Old Lynchburg Road.

Mr. Missel clarified that the park was the main reason for the tower, but there were added benefits in coverage.

Ms. Schweller responded that it was both.

Mr. Missel asked if the height of the monopole could be lowered if coverage were targeted to just the park.

Ms. Schweller said that she did not believe so. She said that she was unable to answer the question. She said that the height was necessary for the proposed coverage.

Mr. Murray noted that the height could be extended without another hearing. He asked if the additional extension would be needed at some point or if it could be foregone.

Ms. Schweller said the applicant was seeking a height of 195 feet with a 4-foot lightning rod. She said that because of the applicant's stated need, the County recommended approval of a

175-foot limit where the applicant could apply for a 20-foot extension per federal law. She explained that the extension could be accomplished with an administrative application. She said that the County recommendation aligned with the applicant's request, it was just a two-part process so the applicant could not extend the height above 195 feet.

Mr. Carrazana asked how much more coverage was gained from the additional height as opposed to a Tier 2 or Tier 1 tower.

Ms. Schweller said that they did not have an RF engineer present.

Mr. Carrazana said that the towers seemed to get taller and taller. He said that he wanted to know the cost-benefit of the additional coverage area from a taller tower.

Ms. Schweller said that it depended on the topography of the landscape and the tree coverage in the area. She explained that they requested the height that Verizon's RF engineers determined was needed in a particular location. She said that a tower of such a proposed height could extend coverage for two to three miles, but in some areas, it could extend five miles if there were no obstructions. She said that they aimed to provide coverage to the lake and the boat launch.

Mr. Carrazana said it would be helpful to provide a better understanding of the coverage. He suggested providing options for multiple towers.

Ms. Firehock opened the hearing for public comment. She stated the rules for public comment.

Ms. Jessica Atkinson said she lived across the street from the proposed site. She said that she had a few concerns. She stated that if the goal was to increase service in the area, then the proposed site was not the highest location in the area though it was the highest in the park. She stated that she did not read any research demonstrating what and where the need was in the community nor confirmation as to how much service would be improved. She asked where specifically service would be improved and how much it would be improved.

Ms. Atkinson said she questioned the precedent set by the proposal. She said she appreciated the diligence of the Commission to ensure the height, distance, and color. She questioned whether more towers would be constructed in parks. She said that the intention of the park, as evidenced by the vision and mission statements, was to provide the opportunity to be in nature and enjoy the provided recreation while being a steward of the land. She said that a cellular tower seemed inconsistent with the vision and mission statements.

Ms. Atkinson said that if the County was considering using the park as a revenue generator, she had only spent about \$6 for use of the park in the past three years despite using the park almost every day. She said that traffic had increased exponentially since the pandemic, but gate fees were only charged during a narrow time frame throughout the year. She suggested that it be evaluated as a more appropriate source of revenue for the park.

Ms. Atkinson noted that she did not see a lot of transparency as to how much the County would profit from the lease and how the profits would be utilized to the benefit of the park and its patrons. She stated that as a property owner, she was not notified of the information meeting held in September and did not attend. She said that the staff report was misleading by stating that there was no community opposition.

Ms. Atkinson clarified that the viewpoint simulations of the tower did not take into consideration the perspectives of the two home sites listed as being most impacted. She stated that the visibility impact was substantial. She noted the need for increased service, but she did not want a cellular tower visible from her house.

Mr. Tim Collins said that he was the husband of Ms. Eckenson. He stated that he had attended parks with kiosks. He said that he assumed the intent of the tower was to generate revenue. He said the tower was large and was not appropriate for the park. He said that the western view of the park at sunset was a view that should be protected, and the tower would disturb the view. He said that a kiosk could be installed to charge admission to the park which would generate revenue.

Mr. Collins said that it was well-documented that cellular towers depreciated property values. He noted that the tower was sited 1,000 feet from their house, but they were never notified. He noted that the balloon test was performed during the summer while the trees were fully covered in leaves. He stated that a balloon test would yield different results if performed at this time.

Mr. Adam Doyle, participating remotely, stated that he owned a property to the east of the proposed tower site. He said that this was the first open discussion he had heard regarding the proposal, and he was not notified about the initial research period over the summer. He said that he was not opposed to better cellular coverage, but he was concerned about light pollution. He said that Mr. McCollum had responded previously to his questions and informed him that there would be no lighting.

Mr. Doyle said there were ways to make the tower less visually intrusive, such as disguising it as a tree. He said that the County should consider alternatives, and if coverage was the ultimate goal, then there were other more appropriate locations.

Ms. Firehock stated that the applicant would have the chance for rebuttal.

Ms. Schweller explained that Mr. McCollum provided the applicant with a list of all of the abutting property owners, and Nate Holland had sent letters to each of the abutting property owners. She said she could not explain why the property owners did not receive notice. She stated that about seven people were present at the community meeting.

Ms. Schweller confirmed that there would be no lights at the site, and because it was under 200 feet, lighting was not required. She said that in terms of the siting and structure, Verizon worked with the County as to the siting and the height, and they determined what was optimal for the location.

Ms. Schweller explained that under state legislation adopted in 2020, localities could no longer require applicants to submit information regarding coverage, such as propagation maps, or customer and service information. She stated that the information was considered proprietary information and was not acceptable for a zoning case. She said the applicant was not attempting to conceal information.

Ms. Schweller stated that a balloon test worked by driving around the neighboring roadways at the time of the test. She said if property owners were present at the time and wanted to invite the testers onto their property, then they would conduct view tests from the property, but they

did not enter onto private property during balloon tests except in special circumstances. She said that they would not know whether a structure was visible from a front porch. She stated that the County took the photographs from public roadways and provided them to Verizon.

Ms. Firehock closed the public hearing and brought the matter back before the Commission.

Ms. Firehock noted that the applicant did not have to provide information regarding coverage. She asked counsel whether the Commission was allowed to consider their opinions on coverage during their own deliberations.

Mr. Andy Herrick, Deputy County Attorney, explained that the issue was outlined in the staff report which cited the new Virginia Code section. He stated that the Code section provided that localities shall not disapprove an application on the basis of an applicant's business decision with respect to its designed service, customer demand for service, or quality of its service to or from a particular site. He said that a locality could not disapprove a proposal based on business considerations, propagation, customer base, or other such considerations.

Mr. Herrick said that because a locality could not disapprove a proposal on such bases, it was unlikely to serve as a suitable topic of discussion for the Commission and would be irrelevant to the Commission's deliberations.

Ms. Firehock noted that a previous application had been approved along I-64 because it would help with coverage during traffic accidents.

Mr. Herrick clarified that the law provided that coverage shall not be the basis for disapproval.

Ms. Firehock asked if that were the same as how many the tower would serve or not serve.

Mr. Herrick said that was correct.

Mr. Clayborne asked if the residents could request service information from the applicant.

Mr. Herrick said that residents could request the information, but it would not be relevant to the Commission's consideration.

Mr. Clayborne noted that it would not be relevant to the Commission but asked if there was a community meeting whether residents be able to request the information.

Mr. Herrick responded that community members could request whatever they wanted, but the applicant was not required to provide the information because it was not relevant to the consideration of the decision-makers.

Mr. Carrazana said that they could discuss the height and the visibility.

Ms. Firehock noted that they could consider the impacts to the viewshed.

Mr. Carrazana said that they had no way of knowing how much more a 200-foot tower covered versus a tree-top tower. He noted that a tree-top tower would limit visibility significantly.

Ms. Firehock stated that the County had prioritized limiting visibility in the Comprehensive Plan and in its guidance.

Mr. Carrazana said that he did not see how the proposal limited visibility.

Ms. Firehock said that the tower would be more visible if it were painted brown because it was taller than the trees and would contrast against a blue or white sky. She said that her suggestions so far were to not paint the tower and remove the requirement from Item 2D. She said that the other solution was to not approve the proposal at all.

Mr. Missel said that safety was an issue, but they did not know whether a Tier 2 monopole would be able to cover a substantial portion of Walnut Creek Park.

Ms. Firehock said that three smaller towers could possibly cover the same area.

Mr. Missel said that the higher elevation of the tower was benefiting an area larger than the park. He said that the focus was on the visual appropriateness. He said that based on the visual appropriateness and the balloon tests, he could not approve the tower at the proposed height.

Ms. Firehock said that while it was true the applicant was not required to provide its business plan, the applicant was not prevented from stating why three smaller towers could be more intrusive and require more habitat disturbance than a single taller tower. She stated that the County policy created the need for more towers because they could not be as tall and visible.

Mr. Carrazana questioned at what point a tower would be too tall. He said that the County had to have a regulation.

Ms. Firehock noted that they had express guidance.

Mr. Carrazana said they had to determine at what point a tower became too tall.

Ms. Firehock said that it was an aesthetic-based and value-based judgment. She noted that the tower appeared to be two to three times the height of the tree line. She said that the artificial tree method of concealment was not effective.

Mr. Murray said that the comment about precedent was important. He said there were several other parks that were undeveloped that were mountainous. He said that the proposal could set a precedent for the other parks. He asked if the County would consider the matter by different standards if it were a private property with the same site proposal.

Ms. Firehock said that they did not know what the revenue would be from the tower, and it was not part of the deliberations. She stated that there was a higher aesthetic standard for a county park that was used to enjoy nature. She noted that the park had beach trails, frisbee golf, and natural areas.

Mr. Missel stated that future applications should make attempts to minimize visibility or provide a statement as to why it was not possible. He said that the importance of the aesthetic impact had precedence in the County.

Ms. Firehock said that the County Attorney had informed them that they were not setting a precedent because each site was unique. She stated that a tower was allowed at a high school because there was already tall stadium lighting. She stated that the context of the site was germane to the deliberations.

Mr. Bivins said that he was concerned about the function of the tower. He noted that the property decreased in elevation from the tower to the lake and that the terrain of the pedestrian paths was rugged. He said that it was important for the tower to be at a height where it could function. He said that the towers served a dual function. He said that the rural parks had fewer and fewer staff over the years. He noted that the ranger cabins were rarely staffed. He said that having a communication channel in rural parks to emergency services or in case of other emergencies was important.

Mr. Bivins said that it was about a 10-minute drive from the beaches at Walnut Creek Park to Old Lynchburg Road. He noted that if there were a fire tower at the park, it would likely have to be at a similar height to survey the forest and surrounding hills. He said that he considered the County's budget in regard to staffing the parks and that the parks were fully utilized from the spring through late fall. He stated that there was a cycle at the park that warranted the tower.

Mr. Bivins said that he hoped the County was evaluating all of the rural parks for some sort of communication structure. He said that it was difficult to get service at several of the rural parks, and the only park he was able to get decent service at was Charlotte Humphries Park—the only park in the development area. He said that in an emergency and alone, it would be difficult to seek help at any of the rural parks.

Mr. Bivins said that given the current staffing trends with rural parks and the increase in park utilization, the County had an obligation to create communication networks valuing safety over form. He said that the proposed tower would have a smaller impact on the land than three smaller towers, but it would have a larger visual impact.

Ms. Firehock clarified that Mr. Bivins emphasized safety as the primary concern.

Mr. Bivins said that it was not just safety, it was also the fact that there was utilization of the parks beyond what was anticipated. He said that there was a different staffing structure than before, and even if the parks were staffed, they would need communication networks. He said that people were traveling and operating in ways where it would be helpful to have communication connections.

Mr. Clayborne said that they could not discuss the coverage aspect, so they did not know if a Tier 1 or Tier 2 tower could achieve the same coverage. He said that the only judgment they could make was in regard to the aesthetic.

Ms. Firehock noted that the applicant was not prevented from informing the Commission that they evaluated three shorter towers.

Mr. Carrazana said that the applicant did not have to provide business details, but they could inform the Commission as to what had been evaluated and considered. He said that he did not know what sized tower would work best and whether a Tier 2 tower would provide the same safety. He said there were other ways to address the coverage and ensure there was coverage.

He noted that the Commission did not know what options were discussed, so he had a hard time supporting a 200-foot tower.

Mr. Bivins responded that the tower was 195 feet tall.

Mr. Carrazana said that the tower was 199 feet tall with the lightning rod.

Mr. Bivins said that the FCC required towers above 200 feet to have lights, and the proposed tower was not 200 feet tall, so it would not have lights. He clarified that it was five feet below the FCC regulation for a tower. He said that the viewshed was an indicator of how the signal would be distributed because there would be a clear path.

Mr. Bivins stated that the area would never be a 5G area because there were not enough locations where there was a point of sight to the tower, and 5G was dependent on sight lines. He said that the rural parts of the County did not have enough flat land to utilize 5G without tall towers. He said that they were trying to determine the balance of form and function. He noted there was an aesthetic piece, but he was looking to shorten the amount of time to receive a response.

Ms. Firehock allowed the applicant to make a clarifying comment.

Ms. Schweller said that the site required a 195-foot-tall tower. She said that if a Tier 2 tower were possible, then Verizon would have offered the option to the County. She said that there was no advantage to the applicant to offer a taller tower because they were not in the tower building business. She said the request was for the infrastructure which was needed in the proposed location to provide coverage to the park and surrounding areas.

Ms. Firehock moved that the Commission recommend denial of SP202200022 Verizon – Walnut Creek Park Tier III PWSF because the proposal did not keep with the County's aesthetic desires for cellular tower concealment.

Mr. Herrick clarified that in the staff report, there were two other items that should be included in a recommended denial. He said that one of the items was that if the County were aware of any modifications to the project that would permit the locality to approve the proposed project, the locality should identify them in a written statement provided under Subdivision 1.

Mr. Herrick explained that if the Commission were aware of any modifications that may make the proposal approvable, it should state them. He said that any motion recommending denial should also clarify that the recommendation was not based on Virginia Code § 15.2-2316.4:2(A), but that it was rather based on § 15.2-2316.4:2(B)(1), which was to say that denial was based on permissible rather than impermissible grounds.

Mr. Herrick asked Ms. Firehock if, as part of her motion, there were any grounds or modifications the Commission could stipulate that would allow the proposal to be approved.

Ms. Firehock said that the only condition which would allow for her to consider approval was if the tower were a tree-top tower which would guarantee near complete concealment in the park.

Mr. Herrick also asked Ms. Firehock to confirm that under her motion, the Commission's recommendation would not be based on Virginia Code § 15.2-2316.4:2(A), but rather on § 15.2-2316.4:2(B)(1).

Ms. Firehock responded yes. She said that was her motion.

Mr. Carrazana seconded the motion.

Mr. Bivins suggested that they review the cellular tower ordinance in a way to facilitate discussions that they frequently had. He noted that the decisions were based on an ordinance drafted almost 22 years ago.

Ms. Firehock said that she agreed. She said the same could be done for the lighting ordinance, and there were several codes for which technology had outpaced the law.

Mr. Rapp said that there was a cellular tower ordinance review on the books. He said that there was a proposal that was submitted and that the Board had directed staff to move forward with it. He said that it would be coming before the Commission within the next six months.

Ms. Firehock said that she was excited.

Mr. Murray suggested that if the proposal were to come back before the Commission that there may be nearby landowners who may appreciate a balloon test from their house, and such a demonstration would be helpful for the Commission to review.

Ms. Shaffer called the roll.

The motion carried 5 to 1. Mr. Bivins voted against.

Ms. Firehock stated that the Commission recommended denial of the proposal and that it would then go to the Board for final consideration.

Adjournment

At 9:05 p.m., the Commission adjourned to November 29, 2022, Albemarle County Planning Commission meeting, 6:00 p.m.



Charles Rapp, Director of Planning

(Recorded by Carolyn S. Shaffer, Clerk to Planning Commission & Planning Boards; transcribed by Golden Transcription Services)

Approved by Planning Commission
Date: 01/10/2023
Initials: CSS