



Received

JUN 29 2018

County of Albemarle
Board of Supervisor's Office

June 29, 2018

Board of Supervisors
401 McIntire Road
2nd Floor
Charlottesville, VA 22902

RE: SDP201800027 – Verizon – Frys Spring Tier II (5th Street Station)

Dear Supervisors:

This letter notices an appeal of the agent's disapproval of the Application for a Tier II Personal Wireless Service Facility proposed for 100-120 Wegman's Way north of I-64 westbound.

The agent's denial is based on the conclusion that Section 5.1.40(b)(6) of the Wireless Ordinance cannot be met. Section 5.1.40(b)(6) provides that "(t)he site shall provide adequate opportunities for screening and the facility shall be sited to minimize its visibility from adjacent parcels and streets, regardless of their distance from the facility. The facility shall also be sited to minimize its visibility from any entrance corridor overlay district..."

Based on a balloon test conducted on May 10, 2018 with county staff, Supervisor Randolph, and Commissioner Riley present, the proposed PWSF would not be visible from any location on the Entrance Corridor. The agent's conclusion is based on the possibility of changed circumstances in the future -- that trees providing screening from the Entrance Corridor, which are located in VDOT right-of-way, could be removed.

The Architectural Review Board recommended, by vote of 5-0, that the facility will be sited to minimize its visibility if the following assurances are given:

1. That VDOT will not cut the trees in the right-of-way along the full frontage of the property;
2. That VDOT will allow the applicant to replant individual trees that die, and that the applicant will do so, and
3. That the monopole will be removed if the loss of trees results in visibility of the facility that is not minimized.

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As outlined in the email exchange with Adam Moore, Assistant Resident Engineer – Land Use, VDOT, Charlottesville Residency, VDOT cannot provide assurances that the trees in the right-of-way will never be cut. Trees that die are removed, and, if a construction project were commenced, trees would likely be removed. However, widening of the I-64 corridor is not in the Six-Year Plan, so any proposed widening project would likely commence no earlier than 10-15 years from the time of the installation of the PWSF. If trees died, VDOT would permit the applicant to apply for a license to plant trees in the right-of-way, and Mr. Moore sees no obstacle to the granting of such a license.

The Board approved amendments to the Wireless Ordinance to cause applications for Tier II PWSF's to be approved administratively, thus encouraging wireless providers to file Tier II applications. If the site were moved to provide room for tree planting by the applicant, it would be more than twenty-five feet (25') from a reference tree and so would become a Tier III application requiring a special use permit.

The applicant appeals on the basis that the screening requirements as described above are unreasonable because not based on existing conditions and because based on potentialities outside the applicant's control. Va. Code § 15.2-2316.4:2.A provides that, "(i)n its receiving, considering, and processing of a complete application submitted under subsection A of § 15.2-2316.4:1 or for any zoning approval required for a standard process project, a locality shall not ... (i)mpose any unreasonable requirements or obligations regarding the presentation or appearance of a project, including unreasonable requirements relating to ... the arranging, screening, or landscaping of wireless facilities or wireless structures." It is unreasonable to deny an application for a project would not be visible from the Entrance Corridor on the basis that VDOT may one day widen I-64. An interstate widening would make more visible any number of existing structures, but their approval did not hinge on such potentiality or require a condition of removal should trees be removed.

Thank you for your consideration.

Sincerely,



Lori H. Schweller
Attorney for Verizon Wireless

Enclosures:

Application
Agent Denial Letter
ARB Action Letter

cc: Stefanie Lewis, Principal Engineer, Verizon Wireless
Marc Cornell, Project Manager, NB&C
Stephen Waller, AICP, GDNsites