

ORIGINAL

ORDINANCE NO. 336

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON APPROVING A SPECIAL USE PERMIT AND VARIANCE PERMIT FOR THE PURPOSE OF CONSTRUCTING A WIRELESS TELECOMMUNICATIONS FACILITY LOCATED IN THE SEATTLE CITY LIGHT RIGHT-OF-WAY NEAR 153rd AND AURORA AVENUE NORTH.

WHEREAS, certain property, located in the Seattle City Light R-O-W, is designated on the Zoning Map as Unclassified Right-of-Way, and on the Comprehensive Plan Map as Unclassified Right-of-Way; and

WHEREAS, certain property, located in the Seattle City Light R-O-W, is identified in the 1998 Comprehensive Plan as Public Facilities; and

WHEREAS, the uses of certain property, located in the Seattle City Light R-O-W, is for uncamouflaged, wireless telecommunications facility requires approval of a Special Use Permit and Variance Permit; and

WHEREAS, applicants, on property located in the Seattle City Light R-O-W have filed an application for Special Use Permit and Variance Permit for the construction of a wireless telecommunications facility; and

WHEREAS, on July 17, 2003, a public hearing on the application for Special Use Permit and Variance Permit was held before the Planning Commission for the City of Shoreline pursuant to notice as required by law; and

WHEREAS, on July 17, 2003, the Planning Commission recommended approval of the Special Use Permit and Variance Permit and entered findings of fact and a conclusion based thereon in support of that recommendation; and

WHEREAS, upon consideration of the application the City Council has determined that the Special Use Permit and Variance Permit application for the property located in the Seattle City Light R-O-W is consistent with the Comprehensive Plan, Shoreline Municipal Code, and appropriate for this site;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE DO ORDAIN AS FOLLOWS:

Section 1. Findings. The Planning Commission Findings and Recommendation on File No. 201222, as set forth by the record and as attached hereto as Exhibit 1, are hereby adopted, with the additional condition that applicant shall comply with City right-of-way procedures (SMC 20.70.240 - .330) before accessing the site for maintenance or repair.

Section 2. Severability. If any provision of this ordinance or the application of a provision to any person or circumstance, is declared invalid, then the remainder of this Agreement, or the application of such provision to other persons or circumstances, shall not be affected.

1-14810

Section 3. Effective Date. This ordinance shall go into effect five days after passage, and publication of the title as a summary of this ordinance.

PASSED BY THE CITY COUNCIL ON September 8, 2003.



Mayor Scott Jepsen

ATTEST:



Sharon Mattioli, CMC
City Clerk

APPROVED AS TO FORM:



Ian Sievers
City Attorney

Date of Publication: September 11, 2003
Effective Date: September 16, 2003

MANAGER/REGISTRAR

MANAGER/REGISTRAR

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Finding and Determination Of the City of Shoreline Planning Commission

T-Mobile WTF, File #201222

Ordinance 336

Summary-

After reviewing and discussing the SUP/Variance application on July 17, 2003 the Shoreline Planning Commission did find and determine that the application to locate a wireless telecommunication facility in the Seattle City Light Right-of-Way was in compliance with City codes and not detrimental to the health safety and welfare of the City of Shoreline, and therefore recommended:

APPROVAL OF THE SPECIAL USE AND VARIANCE APPLICATION AS RECOMMENDED BY STAFF FOR 153RD AND AURORA AVENUE NORTH ON SEATTLE CITY LIGHT RIGHT-OF-WAY WITH THE CONDITION THAT THE APPLICANT MAKE A GOOD FAITH EFFORT TO MOVE THE MECHANICAL BUILDING TO THE NORTH.

I. Findings of Fact

1. Project Description

Action: This Special Use Permit (SUP), a Quasi Judicial or "Type C Action", before the Planning Commission is a request to replace an existing 40-foot utility pole with an uncamouflaged, 80-foot pole with 3 vector panel antennas in the Seattle City Light Right-of-Way. The location is approximately parallel with 153rd and Aurora Ave North. In addition, the proposal includes ground-mounted equipment located at the base of the pole. A SUP is required whenever a wireless telecommunications facility (WTF) monopole is proposed without camouflage or co-location. In addition, a Zoning Variance is required because the proposed WTF pole does not meet the 30-foot setback requirement from commercial zones. The pole is 25 feet and the ground equipment is 6 feet from commercial zoned property to the east. See Planning Commission Staff Report Attachment A for the applicant's more detailed proposal.

Type C action (SUP) is reviewed by the Planning Commission, where an Open Record Public Hearing is held and a recommendation for approval, approval with modifications or denial is developed. This recommendation is forwarded to the City Council, the final decision making authority. The Variance is a Type B or administrative decision, however the variance review has been consolidated with the SUP, which elevates the entire process to a quasi-judicial decision.

The subject site is located in the Seattle City Light R-o-W parallel to approximately 153rd and Aurora Ave North. Currently, the R-o-W is used for two lines of transmission poles. In the near future, the R-o-W will be used for the Interurban Trail. The project site is located in the Westminster Triangle Neighborhood. This portion of the R-o-W runs along the east side of the Westminster Triangle Neighborhood and the back side of commercial property along Aurora Ave North. This section of the Seattle City Light R-o-W is designated as "unclassified right-of-way" by the City's Development Code.

2. Procedural History

2.1 Neighborhood Meeting Date: April 9, 2003

2.2 Application Date: April 22, 2003

2.3 Complete Application Date: May 16, 2003

2.4 Notice of Application and Public Hearing Date: June 19, 2003

2.5 Public Hearing July 17, 2003

2.6 Planning Commission Recommendation, July 17, 20063

2.7 Move for Reconsideration Failed (lack of a quorum).

3. Public Comment

3.1 No neighbors attended the neighborhood meeting.

3.2 The City did not receive any public comment letters regarding this proposed wireless telecommunications facility.

3.3 At the Public Hearing Soon Kim testified in opposition in Korean (see August 7, 2003 Planning Commission Staff Report Attachment C) with translation by Cindy Ryu (see Draft Planning Commission Minutes of July 17, 2003, pp17-18). Ms. Kim presented a letter written in Korean that was translated by the City of Shoreline into English and provided to the Planning Commission at their meeting August 7, 2003 (see August 7, 2003 Staff Report Attachment D).

3.4 At the Public Hearing Cindy Ryu testified in opposition (see July 7, 2003 Draft Planning Commission Minutes p 18) and provided a written comment (July 7, 2003 Draft Minutes, Attachment B)

4. SEPA - SEPA review is required for this application under the City's substantial authority established in SMC 20.30.490. The SEPA Determination of Non-Significance was issued on June 19, 2003. No appeals of the SEPA determination were made.

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5. Consistency -The application has been evaluated and found to be consistent with the nine Special Use criteria listed in the Shoreline Municipal Code Section 20.30.330. and was consistent with the 11 Variance criteria listed in the Shoreline Municipal Code 20.30.310.

ANALYSIS OF SPECIAL USE CRITERIA

Section 20.30.330.B of the Shoreline Municipal Code outlines the criteria by which Special Use Permit applications are reviewed. The decision criteria are listed below, followed by the City's analysis of the applicant's compliance with each criterion. The City shall grant a Special Use Permit, only if the applicant demonstrates that it meets each of the following criteria. See Attachment G for the applicant's response to criteria.

Criterion 1: The use will provide a public benefit or satisfy a public need of the neighborhood, district or City.

The WTF is designed to provide better cell phone coverage for Shoreline residents. T-Mobile USA is not a public utility. See Planning Commission Staff Report July 17, 2003 Attachment H for applicant's coverage needs.

The special use meets criterion 1.

Criterion 2: The characteristics of the special use will be compatible with the types of uses permitted in surrounding areas.

A WTF monopole is comparable to a utility pole, which is permitted without height limit or design standards. The Seattle City Light R-o-W and Aurora Ave North commercial district have various utility poles greater than 100 feet in height. See Planning Commission Staff Report July 17, 2003 Attachment B - Photo Survey.

The special use meets criterion 2.

Criterion 3: The special use will not materially endanger the health, safety and welfare of the community.

The Food and Drug Administration (FDA) and the Federal Communication Commission (FCC) report that, based on current health studies, the amount of power to be used and the antenna distance from people that there are no health risks associated with transmission antennas of this scope. The Telecommunications Act of 1996, Section 704 states that, "No state or local government...may regulate the placement, construction and modification of wireless facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facility comply with the Commission's regulations concerning such emissions."

If approved, the City will require a building permit to construct the WTF. The City will review the monopole for and equipment for structural safety.

The special use meets criterion 3

Criterion 4: The proposed location shall not result in either the detrimental over-concentration of a particular use within the City or within the immediate area of the proposed use, unless the proposed use is deemed a public necessity.

It is unclear whether the WTF is a public necessity much like the telephone companies. The proposed location does not appear to create an over-concentration of wireless telecommunication facilities (WTF). The City has not defined over-concentration.

The special use meets criterion 4.

Criterion 5: The special use is such that pedestrian and vehicular traffic associated with the use will not be hazardous or conflict with existing and anticipated traffic in the neighborhood.

The special use will not cause any increased pedestrian or vehicular traffic in the neighborhood except the infrequent service vehicle after construction.

The special use meets criterion 5.

Criterion 6: The special use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding area or conditions can be established to mitigate adverse impacts.

The need for public facilities is not increased; adequate infrastructure exists for the site.

The special use meets criterion 6.

Criterion 7: The location, size and height of buildings, structures, walls and fences, and screening vegetation for the special use shall not hinder or discourage the appropriate development or use of neighboring properties.

The proposed antenna monopole will be in a R-o-W with other utility poles. Utility poles and WTFs are common in the neighboring commercial property. The proposed pole replaces an existing pole with the same distance from the neighboring residential area and will not discourage or hinder development or use in the Westminster Triangle Neighborhood. All other nearby property is currently fully developed.

The special use meets criterion 7.

Criterion 8: The special use is not in conflict with the policies of the Comprehensive Plan or the basic purposes of this title.

U4- Support the timely expansion, maintenance and replacement of utility infrastructure at designated service levels in order to match and meet expected demand for service.

U9- Encourage the design, siting construction operation and relocation or closure of all utility systems in a manner which: ...minimize and mitigate impacts on adjacent land uses, is environmentally sensitive, and is appropriate to the location and need.

U28 – Explore strategies which minimize or reduce the impacts of the telecommunication facilities and towers on the community.

The Comprehensive Plan both encourages the growth and delivery of utility systems and networks and minimizes impacts of these facilities on the community. The location of monopoles to meet demands and provide coverage and to be aesthetically compatible can be difficult considering the amount of residential neighborhoods in Shoreline. It is appropriate when these WTFs can locate in existing utility corridors with similar structures.

The special use meets criterion 8.

Criterion 9: The special use is not in conflict with the standards of the critical areas overlay.

The site of the proposed wireless monopole and ground-mounted equipment is not in any known critical area.

The special use meets criterion 9.

ANALYSIS OF VARIANCE CRITERIA

The Shoreline Municipal Code specifies the decision for a Variance Permit in section 20.30.310. The decision criteria are listed below, followed by the City's analysis of the applicant's compliance with each criterion. See Attachment I for the applicant's response to criteria.

Criterion 1: The variance is necessary because of the unique size, shape, topography, or location of the subject property;

By Shoreline Municipal Code, the facility must be 30 feet from any commercially zoned property. The property is 100 feet wide, which might accommodate the required setbacks. However, the future Interurban Trail alignment has forced the WTF proposal to not meet setbacks on any alternative location in the R-o-W. The replacement of the existing pole allows the new pole to carry power lines and is closer to the commercial area but further from the residential area.

The variance meets criterion #1.

Criterion 2: The strict enforcement of the provisions of this title creates an unnecessary hardship to the property owner;

The strict enforcement of setback provisions creates an unnecessary hardship to the property owner to locate other utility facilities because of the R-o-W dimension and location of the Interurban Trail.

The variance meets criterion #2.

Criterion 3: The subject property is deprived, by provisions of this title, of rights and privileges enjoyed by other properties in the vicinity and under an identical zone;

The subject property has no zoning therefore it cannot be compared to other properties in the vicinity.

The variance meets criterion #3.

Criterion 4: The need for the variance is not the result of deliberate actions of the applicant or property owner, including any past owner of the same property;

The need for the variance is not the result of deliberate actions of a past property owner but because of the City's use of the R-o-W for the Interurban Trail.

The variance meets criterion #4.

Criterion 5: The variance is compatible with the Comprehensive Plan;

U4- Support the timely expansion, maintenance and replacement of utility infrastructure at designated service levels in order to match and meet expected demand for service.

U9- Encourage the design, siting construction operation and relocation or closure of all utility systems in a manner which: ...minimize and mitigate impacts on adjacent land uses, is environmentally sensitive, and is appropriate to the location and need.

U28 -- Explore strategies which minimize or reduce the impacts of the telecommunication facilities and towers on the community.

The Comprehensive Plan both encourages the growth and delivery of utility systems and networks and minimizes impacts of these facilities on the community. On balance, the location of the proposed monopole in a utility corridor without zoning and adequately setback from residences is consistent with the different Comprehensive Plan policies.

The variance meets criterion #5.

Criterion 6: The variance does not create a health and safety hazard;

The City researched health and safety bulletins and a guide to transmitting antenna emission safety from the Food and Drug Administration (FDA) and the Federal Communication Commission (FCC). These agencies concluded, based on current health studies, the amount of power to be used, and the antenna distance from people that there are no health risks associated with transmission antennas of this scope. Further, in the Telecommunications Act of 1996, Section 704 states that, "No state or local government... may regulate the placement, construction and modification of wireless facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facility comply with the Commission's regulations concerning such emissions".

The variance meets criterion #6.

Criterion 7: The granting of the variance will not be materially detrimental to the public welfare or injurious to:

a. the property or improvements in the vicinity, or

The development will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity because the WTF is within a utility corridor and apart from the Interurban Trail.

b. the zone in which the subject property is located;

The site and property is "unclassified right-of-way" and the proposed use is consistent with uses in the right-of-way.

The variance meets criterion #7.

Criterion 8: The variance does not relieve an applicant from:

a. any of the procedural or administrative provisions of this title, or

The proposed variance does not relieve the applicant from procedural or administrative provisions of this title because the variance procedure has consolidated the SUP procedure.

b. any standard or provision that specifically states that no variance from such standard or provision is permitted, or

Setback standards may be varied through the zoning variance process (SMC 20.30.310).

c. use or building restrictions, or

The use can be approved through a SUP and must meet uniform building code requirements through a required building permit.

d. any provisions of Critical Areas Overlay District requirements, except for the required buffer widths;

No critical areas are located on the subject property.

The variance meets criterion #8.

Criterion 9: The variance from setback or height requirements does not infringe upon or interfere with easement or covenant rights or responsibilities;

No easements or covenants are recorded for this site adjacent to or regarding setbacks.

The variance meets criterion #9.

Criterion 10: The variance does not allow the establishment of a use that is not otherwise permitted in the zone in which the proposal is located; and

An uncamouflaged WTF is not permitted outright in the City but may be allowed through the SUP process.

The variance meets criterion #10.

Criterion 11: The variance is the minimum necessary to grant relief to the applicant.

The variance request is the minimum dimension needed to provide a site for the ground equipment and antenna pole because of the other setbacks needed from a commercial development.

The variance meets criterion #11.

II. Conclusions

The applicant has proposed a WTF that meets their needs and the criteria for both the SUP and Variance. They could improve the proposal by locating the mechanical building to the north. Because of Seattle City Light's R-o-W narrowness, they need a variance wherever the WTF is sited. The placement closer to the commercial zone is appropriate.

III. Recommendation

Based on the Findings, the Planning Commission recommends:

APPROVAL OF THE SPECIAL USE AND VARIANCE APPLICATION AS RECOMMENDED BY STAFF FOR 153RD AND AURORA AVENUE NORTH ON SEATTLE CITY LIGHT RIGHT-OF-WAY, WITH THE CONDITION THAT THE APPLICANT MAKE A GOOD FAITH EFFORT TO MOVE THE MECHANICAL BUILDING TO THE NORTH.

City of Shoreline Planning Commission

Brian F. Deemeluit

Chairperson

8/19/03

Date