

PROJECT NARRATIVE
CONDITIONAL USE PERMIT APPLICATION
RELOCATION OF GROUND EQUIPMENT FOR EXISTING WIRELESS FACILITY
T-MOBILE SE01458B W Bakerview II

Applicant: T-Mobile West LLC (“T-Mobile”)
19807 North Creek Pkwy
Bothell, WA 98011
408-314-1398 *
matt.russo4@t-mobile.com *

*Contact representative below for all correspondence

Representative: Technology Associates EC INC.
1455 NW Leary Way, Suite 400
Seattle, WA 98107
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Property Owner: Jill Schlosser
4822 103RD PL SW
Mukilteo, WA 98275

Project Address: 4822 103RD PL SW
Mukilteo, WA 98275

Parcel Number: 00650500005500

Zoning Classification: RD 7.2 Single-Family Residential

To Whom It May Concern,

Technology Associates EC, Inc. submits this enclosed application on behalf of T-Mobile West LLC for the relocation of ground equipment serving an existing wireless communications facility attached to an existing SnoPUD utility pole in the right of way. This relocation involves moving the ground equipment from one parcel to another parcel nearby and thus requires a new CUP for the establishment of the utility use on the new property location. There are no changes proposed to the utility pole mounted wireless facility in the right of way other than cabling to the new ground equipment location in underground conduit.

As directed by the City of Mukilteo Planning Department, the applicant is submitting an application for a Conditional Use Permit to establish the utility use for the equipment at 4822 103RD PL SW. The utility pole attached wireless facility located in the right of way remains as approved under CUP-2006-05 and subsequent modification approvals.

Please find enclosed Conditional Use Permit Application Package:

- Attachment 1 — Project Narrative (this document)
- Attachment 2 — Statement of Code Compliance
- Attachment 3 — Wireless Communication Facility Submittal Checklist
- Attachment 4 — Conditional Use Permit Submittal Checklist
- Attachment 5 — Land Use Application
- Attachment 6 — Site Plan
- Attachment 7 — Construction drawings – Plan Set
- Attachment 8 — Photographic simulations
- Attachment 9 — Landscaping and Tree Protection Plans
- Attachment 10 — Arborist Report
- Attachment 11— Noise Study

Project Description:

T-Mobile is being required to relocate the ground based base station equipment currently located at 10309 50th PL W, a single family residential use property, 2 parcels to the east, to 4822 103RD PL SW, another single family residential use property. This ground based base station equipment supports an existing wireless facility mounted to an existing Snohomish PUD utility pole located in the adjacent right of way of Harbour Pointe Blvd.

The right of way utility pole wireless facility, and the existing ground equipment located at the existing location, was approved under CUP-2006-05. This project will involve the complete removal of all ground equipment supporting the existing wireless facility that is located at 10309 50th PL W and the relocation and installation of ground based base station equipment to a new equipment shed located at 4822 103RD PL SW.

The new equipment garden style shed will be 10'-0" X 12'-0" (120 square feet) and 12'-7" at the roof peak and will be architecturally designed as a potting shed/garden shed and painted to match existing structures on site and blend into the character of the residential lot as a natural structure associated with the residence and other shed structures on site. The shed will have 10 foot of blended new type III ornamental landscaping and existing vegetation as depicted in the provided landscaping plan.

The existing antennas and ancillary radio equipment on the right of way utility pole mounted facility are not being changed in this proposal and remain as approved under CUP-2006-05. Cabling will be run from the pole mounted facility to the new ground equipment location in underground conduits.

Justification for move:

The property owner where the existing ground equipment is based notified T-Mobile that they were not renewing the lease. T-Mobile attempted to work with the property owner to find a reasonable path forward to renew the lease and keep the ground equipment in its current location, however, there was no reasonable solution that could be agreed upon. In order to continue to provide the existing wireless, internet, and e911 coverage to customers in this area, the ground based base station equipment must be relocated to a new location near the right of way utility pole based facility to continue to operate.

T-Mobile has entered into an agreement with the property owner at the new location, 4822 103RD PL SW, to locate this ground equipment in a new garden shed style equipment shelter.

Facility alternative siting, co-location, and RF justification not required:

The portion of the facility, the antennas and ancillary remote radio equipment that is currently providing wireless service to the area, is existing and will remain as is. The RF coverage is already being provided from an existing utility pole attached wireless facility as approved under CUP-2006-05 and does not need to be justified again.

RF Emissions/EME/NIER:

The antennas and remote radio equipment at the utility pole that generate the actual RF signal will remain unchanged in this proposal. There is no change to frequencies and power outputs proposed and will remain as previously approved and will continue to operate within FCC guidelines. No additional RF emissions studies are needed as the ground equipment change has not impact on the emissions.

SEPA/Environmental impact:

The proposed work location for the 120 square foot shed is an existing developed/graded lawn covered yard area on an existing developed residential parcel. The associated trenching is on said developed area, and within a developed street right of way area. There is no previously undisturbed ground being disturbed in this proposal. We are requesting SEPA exemption given the low impact of this proposal.

Applicable Laws:

Local Codes

As directed by the city of Mukilteo Planning Department, the relocation of ground equipment to a new parcel requires a Conditional Use Permit and demonstration of compliance with Mukilteo Municipal Code Chapters 17.17 and 17.64. See Attachment 2—Statement of Code Compliance for Applicants' demonstration of compliance with the applicable code.

State Law

The applicant is requesting exemption from SEPA requirements at this time given the insignificant

impact of the project. There are no other state laws known to the applicant with which compliance needs to be demonstrated.

Federal Law

Federal law, primarily found in the Telecommunications Act of 1996 (“Telecom Act”), acknowledges a local jurisdiction’s zoning authority over proposed wireless facilities but limits the exercise of that authority in several important ways.

Local jurisdictions may not materially limit or inhibit. The Telecom Act prohibits a local jurisdiction from taking any action on a wireless siting permit that “prohibit[s] or [has] the effect of prohibiting the provision of personal wireless services.” 47 U.S.C. § 332(c)(7)(B)(i)(II). According to the Federal Communications Commission (“FCC”) Order adopted in September 2018,¹ a local jurisdiction’s action has the effect of prohibiting the provision of wireless services when it “materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.”²

Environmental and health effects prohibited from consideration.

Also under the Telecom Act, a jurisdiction is prohibited from considering the environmental effects of RF emissions (including health effects) of the proposed site if the site will operate in compliance with federal regulations. 47 U.S.C. § 332(c)(7)(B)(iv). In this instance, there are no changes proposed to the existing approved RF emissions which operate within FCC guidelines. Accordingly, this issue is preempted under federal law and any testimony or documents introduced relating to the environmental or health effects of the proposed facility should be disregarded in this proceeding.

No discrimination amongst providers. Local jurisdiction also may not discriminate amongst providers of functionally equivalent services. 47 U.S.C. § 332(c)(7)(B)(i)(I). A jurisdiction must be able to provide plausible reasons for disparate treatment of different providers’ applications for similarly situated facilities.

Shot Clock. Finally, the Telecom Act requires local jurisdictions to act upon applications for wireless communications sites within a “reasonable” period of time. 47 U.S.C. § 332(c)(7)(B)(ii). The FCC has issued a “Shot Clock” rule to establish a deadline for the issuance of land use permits for wireless facilities. 47 C.F.R. § 1.6001, *et seq.* According to the Shot Clock rule for “macro” wireless facilities, a reasonable period of time for local government to act on all relevant applications is 90 days for a collocation, with “collocation”³ defined to include an attachment to any existing structure regardless of whether it already supports wireless, and 150 days for a new structure.

¹ *Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, WT Docket No. 17-79, WC Docket No. 17-84, FCC 18-133 (rel. Sept. 27, 2018); 83 Fed. Reg. 51867 (Oct. 15, 2018), *affirmed in part and vacated in part*, *City of Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020), *cert. denied*, 594 U.S. ___, 141 S.Ct. 2855 (June 28, 2021)(No. 20-1354) (“FCC Order”).

² *Id.* at ¶ 35.

³ 47 C.F.R. § 1.6002(g).

The Shot Clock applies to all authorizations required for siting a wireless facility, including the building permit, and all application notice and administrative appeal periods.

Pursuant to federal law, the reasonable time period for review of this application is 150 days.

**STATEMENT OF CODE COMPLIANCE
CONDITIONAL USE PERMIT APPLICATION
RELOCATION OF GROUND EQUIPMENT FOR EXISTING WIRELESS FACILITY
T-MOBILE SE01458B W Bakerview II**

Applicants' proposal complies with all requirements of the City of Mukilteo's code sections 17.17 and 17.64, which are addressed in this Statement of Code compliance in the following order:

Wireless Facilities Requirements

- Chapter 17.17 Wireless Communications Facilities (WCF) attached and detached

General Requirements

- Chapter 17.64 Conditional Uses and variances

PLEASE NOTE: Applicants' responses to the above referenced criteria are indicated below each applicable provision in ***bold italicized blue text***.

Wireless Facilities Requirements

City of Mukilteo Municipal Code

Chapter 17.17 Wireless Communications Facilities (WCF) attached and detached

17.17.010 Purpose.

In order to implement the purposes and policy set forth in the city's comprehensive plan, this chapter provides design and review procedures for wireless communications facilities. These provisions are intended to provide objective design criteria to assist in minimizing the visually obtrusive impacts which can be associated with wireless communications facilities and to encourage creative approaches in the location and construction of wireless communications facilities. The city shall make every reasonable effort, consistent with any applicable provisions of state or federal law, and the preservation of the city's health, safety and aesthetic environment, to comply with the federal presumptively reasonable time periods for review of facilities for the deployment of small wireless facilities to the fullest extent possible. (Ord. 1426 § 4 (Exh. A) (part), 2019: Ord. 1403 § 6 (Exh. C) (part), 2017)

17.17.020 Overall performance standards.

A. Wireless Communication Facilities (WCF) (Attached and Detached). Attached and detached wireless communications facilities other than small cell facilities permitted pursuant to Chapter [5.45](#) or eligible facilities requests shall meet the following performance standards:

1. Light Industrial (LI) Zoning. Detached WCFs located within four hundred feet of the Mukilteo Speedway/SR525 in the light industrial (LI) district shall require a conditional use permit.

Applicant Response: The wireless facility is existing and not within the above defined parameters.

2. Separation Distance. In all single-family residential and commercial districts, detached WCFs except for small cell facilities shall be separated by a distance equal to or greater than one thousand three hundred twenty linear feet. WCFs that are colocated upon a single support structure shall count as a single WCF for the purposes of this subsection.

Applicant Response: The wireless facility is existing and approved under CUP-2006-05. The CUP application is to move the ground based base station equipment from the original approved parcel, to a new parcel thus requiring a CUP. However, the support structure and colocation of antennas and remote radios is attached to a utility pole in the right of way and is existing and not being modified by this proposal.

3. Setbacks. Attached and detached WCFs reviewed under this section shall not be located within any required setback areas; provided, however, the setback requirement for underground facilities shall be a minimum of five feet from any property line, except where:

a. Structures which exceed forty-five feet in height shall be set back from any lot line five feet more than that specified in the individual zone for every ten feet, or fraction thereof, over forty-five feet of height.

Applicant Response: Not applicable. Support structure is an existing utility pole located in the right of way and the attached portion of the wireless facility is approved and not being modified by this proposal.

b. The required setback, as listed above, may be reduced by the planning director, if the applicant can demonstrate to the planning director's satisfaction that the reduced setback would result in a greater natural vegetative screening of the WCF than would have been provided by meeting the WCF development regulations.

Applicant Response: Not applicable. Support structure is an existing utility pole located in the right of way and the attached portion of the wireless facility is approved and not being modified by this proposal.

c. All equipment shelters, cabinets, or other on-the-ground ancillary equipment shall meet the setback requirements of the zone in which located, except that the rear setback requirement may be reduced to five feet if the structure meets all other standards.

Applicant Response: The parcel is in an RD 7.2 zone adjacent to the side and rear property lines. The interior and ready setbacks for the RD 7.2 zone is 5 feet. The proposed shed exceeds this with a setback of 10 feet from the side and rear property lines.

4. Height. In single-family, multifamily residential and public zones the maximum combined height limit shall be sixty feet. In commercial and industrial zones the combined height of the WCF and any support structure shall not exceed eighty-five feet, except when collocation is specifically provided for, the combined height shall not exceed one hundred feet. The applicant shall demonstrate a justification for the proposed height of the structures and an evaluation of alternative designs, which might result in lower heights. Utility poles, streetlights and traffic signals may be exempted from the height limitation at the discretion of the planning director. If additional height over that allowed in the zone is justified, it may be allowed through the conditional use permit process. Due to the proximity of Paine Field Airport to the city, all WCFs shall be approved by the Federal Aviation Administration (FAA) and the Snohomish County Airport at Paine Field to ensure that the facilities are not located within the airport's restricted airspace.

Applicant Response: Not applicable. Support structure is an existing utility pole located in the right of way and the attached portion of the wireless facility is approved and not being modified by this proposal.

5. Landscaping. Equipment shelters and cabinets and other on-the-ground ancillary equipment shall be screened using Type I and ten feet of Type III landscaping around the enclosure in accordance with the requirements contained in Chapter [17.58](#), Landscaping, of the Mukilteo Municipal Code. Support structures shall be landscaped using Type I screening around the compound's perimeter. Trees with significant height and fullness upon maturity shall also be used to visually screen the tower from adjacent properties.

Applicant Response: The ground equipment is located within and screened by a new equipment shelter that will be architecturally designed as a garden shed. Additionally, the garden shed will have a 10 foot buffer of type III landscaping on the sides facing the exterior property lines and public right of way, and further screened by the existing 6

foot high wood fence. This was discussed as sufficient with the planning department previous correspondence.

6. Lighting. Except as specifically requested by the Federal Aviation Administration (FAA), the Federal Communications Commission (FCC), and/or the Snohomish County Airport at Paine Field, transmission structures shall not be illuminated, except transmitter equipment shelters may use lighting for security reasons as long as the light is shielded downward to remain within the boundaries of the site.

Applicant Response: *There is no FAA lighting proposed. Furthermore, the shelter is not lit other than a small porch light, that is pointed down, and that will only be on when maintenance is being performed on site by a technician and not light will be on during normal operation.*

7. Concealment Technology. All WCFs shall employ concealment technology in their design, construction, and maintenance and reduce the WCFs' aesthetic impacts to the maximum extent possible. Such concealment technology shall include, at a minimum, the following:

Applicant Response: *Not applicable. Support structure is an existing utility pole located in the right of way and the attached portion of the wireless facility is approved and not being modified by this proposal.*

a. All antenna support structures and antennas shall be painted a nonreflective color, approved by the planning director, which blends into the nearby surroundings of the WCF so as to minimize the visual impact of the support structure or antennas.

Applicant Response: *Not applicable. Support structure is an existing utility pole located in the right of way and the attached portion of the wireless facility is approved and not being modified by this proposal.*

b. New antenna support structures shall be located in such a manner that existing trees on the site are used to screen the WCF from view from roadways, residences, and other properties; provided, however, that all WCFs shall be designed in a manner which minimizes the need for removal of existing trees.

Applicant Response: *Not applicable. Support structure is an existing utility pole located in the right of way and the attached portion of the wireless facility is approved and not being modified by this proposal.*

c. To the maximum extent possible, WCFs shall be designed to resemble an object other than a WCF which is already present in the local environment, such as a tree, a streetlight or a traffic signal. It may include the use of colors or materials to blend into the building

materials from which a structure is constructed. Examples of concealment technology include, but are not limited to, the use of innovative site design techniques, existing or new vegetation and landscaping, paint and other surface treatments, alternative antenna configuration and/or selection, utilization of antenna support structures designed to resemble trees, and any other practice which screens the WCF from observation from roadways, residences, and other properties or otherwise has the effect of reducing the aesthetic impacts associated with the WCF.

Applicant Response: Not applicable. Support structure is an existing utility pole located in the right of way and the attached portion of the wireless facility is existing and approved and not being modified by this proposal.

8. Noise. No equipment shall be operated at a WCF (attached or detached) so as to produce noise in excess of the applicable noise standards under Chapter [8.18](#), except for in emergency situations requiring the use of a backup generator, where the noise standards may be exceeded on a temporary basis. Air conditioning and ventilation equipment associated with the ancillary equipment of the WCF shall be designed and configured in a manner so that noise impacts on adjacent properties with residential uses are minimized to the maximum extent practicable through the use of baffling and/or other noise attenuation techniques and that the noise levels generated by the ancillary equipment otherwise comply with applicable noise regulations adopted by the city. In descending order, preference shall be given to the following configurations of air conditioning and ventilation equipment: (a) orientation toward properties with nonresidential uses; (b) orientation toward streets; and (c) orientation toward the furthest residential use.

Applicant Response: Please see provided noise report for demonstration of compliance with noise ordinances in regards to equipment.

9. Collocation. It is the policy of the city to minimize the number of detached WCFs and to encourage the collocation of more than one WCF on a single support tower. No new detached WCFs may be constructed unless it can be demonstrated to the satisfaction of the permit authority that existing support towers are not available for collocation of an additional WCF, or that their specific locations do not satisfy the operational requirements of the applicant. In addition, all detached WCFs shall be designed to promote facility and site sharing. All facilities shall make available unused space for collocation of other telecommunication facilities, including space for those entities providing similar, competing services. Collocation is not required if the host facility can demonstrate that the addition of the new service or facilities would impair existing service or cause the host to go offline for a period of time. Nothing in this section shall prohibit the owner of an existing

facility from charging a reasonable fee for collocation of other telecommunications facilities.

Applicant Response: Demonstration of attempts at colocation are not required. The portion of the facility, the antennas and ancillary remote radio equipment that is currently providing wireless service to the area, is existing and will remain as is. The RF coverage is already being provided from an existing utility pole attached wireless facility as approved under CUP-2006-05 and does not need to be justified.

10. Abandonment and Obsolescence. A WCF shall be removed by the facility owner within six months of the date it ceases to be operational or if the facility falls into disrepair.

Applicant Response: The applicant acknowledges this section.

11. Maintenance. All WCFs shall be maintained in good and safe condition and in a manner that complies with all applicable federal, state and local requirements.

Applicant Response: The applicant acknowledges this section.

12. Electromagnetic Emissions. All applicants shall demonstrate compliance with all applicable FCC regulations regarding the radio-frequency emissions of WCFs. If at any time radio-frequency emissions exceed any of the standards established by the FCC, the applicant shall immediately discontinue use of the WCF and notify the city. Use of the WCF may not resume until the applicant demonstrates that corrections have been completed which reduce the radio-frequency emissions to levels permitted by the FCC.

Applicant Response: The antennas and remote radio equipment at the utility pole that generate the actual RF signal will remain unchanged in this proposal. There is no change to frequencies and power outputs proposed and will remain as previously approved and will continue to operate within FCC guidelines.

13. Special Exceptions. When adherence to the development standards would result in a significant gap in coverage for a WCF or prevent an applicant from addressing a significant capacity need, a special exception may be granted by the approval authority if the permit authority determines that the proposal utilizes the least intrusive means of closing the gap in coverage or addressing the capacity need, as applicable. The applicant has the burden of proof of establishing the gap or need and that the proposal is the least intrusive means of so doing.

Applicant Response: The existing attached portion of the wireless facilities is existing and remains unchanged by this proposal. The facility is currently providing coverage, and will continue to be able to provide coverage if a new location for the ground base station equipment is approved. However, if the new ground base station equipment

location is not approved in a timely manner, then the facility may cease to operate and will create a new significant gap in coverage.

14. Use of City Right-of-Way. Any telecommunications carrier who desires to construct, install, operate, maintain, or otherwise locate telecommunication facilities in, under, over, or across any public right-of-way of the city for the purpose of providing telecommunications services shall obtain permission from the city, and enter into a right-of-way franchise agreement authorizing use of the city right-of-way. Small cells attached to utility poles, streetlights and traffic signals are exempted from the setback requirements.

***Applicant Response:** The portion of the existing wireless facility in the right of way is approved by the city. The applicant will apply for a right of way permit for trenching the new cabling in the right of way and attaching the new cabling to the existing radios.*

15. Conditional Use Permit Criteria. In addition to the performance standards listed in Section [17.64.020](#), a conditional use permit for a detached WCF other than a small cell in the public right-of-way shall only be approved if the wireless provider can demonstrate that no other attached WCF alternative(s) are available that can provide the same level of service coverage to the targeted area.

***Applicant Response:** Demonstration of attempts at colocation are not required. The portion of the facility, the antennas and ancillary remote radio equipment that is currently providing wireless service to the area, is existing and will remain as is. The RF coverage is already being provided from an existing utility pole attached wireless facility as approved under CUP-2006-05 and does not need to be justified.*

16. Regulatory Compliance. Applicant must comply with all local, state, and federal laws and regulations, including, but not limited to, those governed by the FCC, FAA, and other regulatory bodies. Such agencies may require regulatory authorizations before the applicant is allowed to install and provide the service(s) or utilize the technologies sought to be installed. (Ord. 1426 § 4 (Exh. A) (part), 2019: Ord. 1403 § 6 (Exh. C) (part), 2017)

***Applicant Response:** The applicant acknowledges that all required regulatory compliance will be confirmed and completed.*

17.17.030 Application review time frame.

A. Eligible Facilities Request.

1. Application. The director shall prepare and make publicly available an application form which shall be limited to the information necessary for the city to consider whether an application is an eligible facilities request. The application may not require the applicant to demonstrate a need or business case for the proposed modification.

2. **Type of Review.** Upon receipt of an application for an eligible facilities request pursuant to this chapter, the director shall review such application to determine whether the application qualifies as an eligible facilities request.
3. **Time Frame for Review.** Within sixty days of the date on which an applicant submits an application seeking approval under this chapter, the director shall approve the application unless it determines that the application is not covered by this section.
4. **Tolling of the Time Frame for Review.** The sixty-day review period begins to run when the application is filed, and may be tolled only by mutual agreement by the director and the applicant or in cases where the director determines that the application is incomplete. The time frame for review of an eligible facilities request is not tolled by a moratorium on the review of applications.
 - a. To toll the time frame for incompleteness, the director shall provide written notice to the applicant within thirty days of receipt of the application, clearly and specifically delineating all missing documents or information required in the application.
 - b. The time frame for review begins running again when the applicant makes supplemental submission in response to the director's notice of incompleteness.
 - c. Following a supplemental submission, the director will notify the applicant within ten days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The time frame is tolled in the case of second or subsequent notices pursuant to the procedures identified in this subsection. Second or subsequent notice of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.
5. **Determination That Application Is Not an Eligible Facilities Request.** If the director determines that the applicant's request does not qualify as an eligible facilities request, the director shall deny the application. In the alternative, to the extent additional information is necessary, the director may request such information from the applicant to evaluate the application under other provisions of this chapter and applicable law.
6. **Failure to Act.** In the event the director fails to approve or deny a request for an eligible facilities request within the time frame for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the director in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.
7. **Remedies.** Both the applicant and the city may bring claims related to Section 6409(a) of the Spectrum Act to any court of competent jurisdiction.

Applicant Response: The proposal is not an eligible facility request.

B. New Wireless Communication Facility Review. All wireless communications facilities authorizations and permits are subject to the federal review timelines (“shot clocks”) as described in [47](#) C.F.R. §1.6001, et seq. (Ord. 1426 § 4 (Exh. A) (part), 2019: Ord. 1403 § 6 (Exh. C) (part), 2017)

17.17.040 Additional review procedures.

Wireless communication facilities in design zones, shoreline management environments, undergrounderd areas or critical areas are subject to review as provided in this chapter; Chapter [17.25A](#), Design Standards for the DB District; Chapter [17.25B](#), Mixed-Use Design Standards for the WMU District; Chapter [17.52](#), Critical Areas Regulations; Chapter [17.52A](#), Geologic Sensitive Area Regulations; Chapter [17.52B](#), Wetland Regulations; Chapter [17.52C](#), Fish and Wildlife Habitat Conservation Areas (Outside Shoreline Jurisdiction); and Chapter [17.52E](#), Shoreline Regulations. See also Chapter [17.84](#) regarding SEPA. (Ord. 1426 § 4 (Exh. A) (part), 2019: Ord. 1403 § 6 (Exh. C) (part), 2017)

General Requirements

City of Mukilteo Municipal Code

Chapter 17.64 Conditional Uses and variances

Chapter 17.64

CONDITIONAL USES AND VARIANCES

Sections:

17.64.010 Permitted conditional uses.

17.64.020 Performance regulations.

17.64.030 Compliance.

17.64.040 Variances.

17.64.050 Applications for permit.

17.64.060 Granting effective when.

17.64.010 Permitted conditional uses.

Conditional use permits shall be granted or denied by the city after due consideration has been given to the performance standards set forth in this title and after the applicant has shown that the conditional use would not impinge on the health, safety, welfare, and rights of the residents of the city. (Ord. 1088 § 15 (part), 2003: Ord. 908 § 13 (part), 1997: Ord. 888 § 1, 1996: Ord. 699 § 3, 1991; Ord. 597 § 1, 1987; Ord. 559 § 1, 1986; Ord. 552 § 3, 1986; Ord. 519 § 1 (part), 1985: Ord. 458 § 1 (part), 1984; Ord. 442 § 1 (part), 1984; Ord. 387 (part), 1982)

17.64.020 Performance regulations.

The uses set out in the Permitted Use Matrix contained in Section 17.16.040 shall comply with the following standards and regulations in order to qualify for a conditional use permit:

A. All conditional uses must be in accordance with the goals and objectives of the comprehensive plan and they must not violate the purpose of the district in which they will locate.

Applicant Response: The proposal will be consistent with the goals and objectives or the comprehensive plan.

The proposed project will allow the existing wireless facility in the right of way to continue to provide coverage to the area. This will maintain reliable wireless coverage to continue connectivity for commercial businesses remote workers in the area. This will allow the current and future economic activities reliant on wireless and internet coverage in the area. Additionally, keeping the existing wireless coverage in place will

continue to provide the vital safety role of wireless connectivity and e911 services to the surrounding area helping to continue to contribute to community safety.

B. It must be demonstrated that all conditional uses if located as proposed would not be injurious or detrimental to the character of the zone or to its abutting or adjoining neighbors.

Applicant Response: The proposed utility equipment will be located in a new garden shed type equipment shed that will be design to match other garden sheds and the residence and will also provide decorative landscaping to further blend into the character of the residential neighborhood. This proposal will not have an injurious impact on the residential character of the neighborhood.

C. The conditional use must employ reasonable measures of fencing, buffering, traffic restraints, sign and light controls, and any other appropriate measures to protect the surrounding properties and adjoining districts.

Applicant Response: The proposed relocated equipment will be located within a secured equipment shed in a fenced locked area separated from the public.

D. All conditional uses must have adequate site area to accommodate the use. The minimum site area for a conditional use is no less than that permitted in the underlying district.

Applicant Response: The proposed shed is only 120 square foot and is located in an existing yard with sufficient space to accommodate the proposal.

E. All conditional uses must conform to the dimensional regulations in the individual districts, except that additional restrictions may be imposed to ensure the uses are compatible within the district.

Applicant Response: The proposed 10'x 12' shed is setback 10' or more from all property lines and meets the dimensional requirements of the zone. See attachment 7 – Construction drawings – Plan Set A-2 and A-2.1 for dimensions of the structure.

F. All conditional uses having a site area in excess of one acre must provide a buffer of trees and shrubs around the perimeter of lots abutting a residential zone.

Applicant Response: Not applicable. This conditional use is only 120 square feet.

G. All applications for conditional uses must be accompanied by layout and development plans drawn to an appropriate scale which show at least the following:

Applicant Response: Provided in submittal. See attachment 7 – Construction drawings – Plan Set A-2 and A-2.1 for dimensions of the structure.

1. Site plans showing landscaping, paving, parking, access, relationship of building to site, outdoor lighting, proposed fencing and topography;

Applicant Response: See provided site plan A-1.2 for final site plan for area and access and A-2 and A-2.1 for building details. Landscaping is depicted in provided landscaping plan.

2. Sections and elevations of proposed structure;

Applicant Response: See provided plan set sheet A-2.1 for elevations.

3. Vicinity map showing property, zoning and access;

Applicant Response: See provided plan set final site plan A-1.1.

4. Provision for sewage disposal, storm drainage and surface runoff.

Applicant Response: Not applicable. Facility is unmanned and does not require sewage disposal. Proposed impervious surface is only 120 square feet and not impactful to drainage or surface run-off.

- H. All conditional uses must comply with the parking regulations in Chapter 17.56.

Applicant Response: Not applicable. Facility is unmanned and does not require on-site parking.

- I. In the course of reviewing the conditional use permit application, the city staff may request a recommendation by the planning commission on matters under its permit authority related to the conditional use permit. The matters may include but are not limited to the comprehensive plan or the nature and intent of the zone in which the conditional use permit is requested. (Ord. 1088 § 15 (part), 2003: Ord. 908 § 13 (part), 1997; Ord. 559 § 2, 1986; Ord. 552 § 4, 1986; Ord. 519 § 1 (part), 1985; Ord. 387 (part), 1982)

Applicant Response: Acknowledged.

17.64.030 Compliance.

- A. A conditional use permit shall be declared void if there is a failure to comply with the approved plans or any special condition imposed on a conditional use permit.

B. Modification of plans submitted and approved as part of the original application may be approved by the planning director or his/her designee provided the modification does not violate the original intent of the plan, the conditions of approval, or the public health, safety or general welfare. (Ord. 1088 § 15 (part), 2003: Ord. 387 (part), 1982)

Applicant Response: Acknowledged.

17.64.040 Variances.

A. A variance may be granted only if all of the following criteria are met:

1. The variance shall not constitute a grant of special privilege inconsistent with the rules and regulations governing the uses of other properties in the vicinity or zoning district in which the property for which the variance is requested is located; and
2. The variance must be necessary, because of special circumstances relating to the size, shape, topography, location, or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity that are located in the same zoning district in which the subject property is located; and
3. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity or zone in which the subject property is situated;
4. Hardships of a financial nature, hardships which are self-created, and hardships which are personal to the owner and not to the property, shall not be grounds for a variance;
5. Variances shall not be granted if the granting of the variance would allow a use not permitted outright or by conditional use permit, or any use prohibited outright or by implications in the zoning district involved.

B. Upon meeting the variance criteria listed in subsection A of this section, administrative variances may be granted from the following development standards. Persons aggrieved by the decision on the variance may appeal such decision in accordance with Chapter 17.13, Project Permit Review Procedures.

1. A decrease of not more than thirty percent of the required width of front, side, or rear setback.
2. A decrease of not more than twenty percent in the number of required parking spaces if the reduction would allow the preservation of trees or unique topographical features.
3. A twenty percent increase in the amount of compact parking stalls allowed on a site.

4. A decrease of not more than thirty percent of the minimum lot dimensions requirements. No administrative variance may be granted from the minimum lot size requirements.

C. All applications for variances shall be accompanied by layout and development plans drawn to an appropriate scale as specified elsewhere in this title and other supportive documentation necessary to describe the proposal. Maps, plans, descriptions of property, estimates of cost, and other information may be requested as necessary to make a decision on the application.

D. In making a decision on any variance application, the permit authority may approve the variance as presented, deny the variance, or approve the variance with such conditions, regulations, or safeguards as necessary to ensure that the variance meets the above criteria and that the purpose and intent of the regulations adopted in this title are not violated. The permit authority shall also have the power to reconsider any such decision at a public meeting.

E. The city shall have the power and authority to revoke or declare void any variance which was procured by any material misrepresentation, or where there is a failure to comply with any condition of approval. Such power shall be exercised only after a notice of intent to revoke or declare void has been given to the owner of record as of the date of the notice and after holding a public hearing on the revocation or declaration. (Ord. 1088 § 15 (part), 2003: Ord. 910 § 1, 1997: Ord. 387 (part), 1982)

Applicant Response: The applicant does not believe that a variance should be necessary.

17.64.050 Applications for permit.

Applications for conditional use permits or variances shall be submitted and processed in accordance with Chapter 17.13, Project Permit Review Procedures. (Ord. 1088 § 15 (part), 2003: Ord. 387 (part), 1982)

17.64.060 Granting effective when.

- A. If a building permit and/or occupancy permit as permitted by the granting of a conditional use or variance is not obtained within two years from the effective date of the notice of decision, the conditional use or variance shall automatically be null and void.

Applicant Response: Acknowledged.

- B. The recipient of a conditional use permit or variance shall file a land use permit binder with the city planner on a form provided by the planning department. The conditional use

permit or variance shall not be effective until such binder has been filed with the Snohomish County auditor. The applicant shall pay applicable recording fees at the time of filing the binder with the city planner, who shall be responsible for filing the binder with the auditor promptly after the passage of applicable appeal periods if no appeals are filed. The binder shall serve both as an acknowledgment of, and agreement to abide by the terms and conditions of the conditional use or variance, and as a notice to prospective purchasers of the existence of the permit or variance.

C. A permit or variance may be vacated by the current property owner upon approval of the city of Mukilteo. No permit or variance shall be vacated if the use authorized by such approval exists or is actively being pursued, or in which a violation of the terms and conditions exists. Vacation of a conditional use permit or variance shall be effective upon the filing of a notice of land use permit vacation with the Snohomish County auditor. (Ord. 1088 § 15 (part), 2003: Ord. 545 § 1, 1986; Ord. 519 § 1 (part), 1985; Ord. 387 (part), 1982)

Applicant Response: Acknowledged.