

**Planning and Development Department
Director's Administrative Code Interpretation**

File No. MIS12-0004

Date Issued: March 30, 2012

Subject: Interpretation of the wireless communication facilities (WCF) code in relation to existing non-conforming wireless communication facilities and the ability to add additional antennas and up to a 50 percent expansion of ground equipment based on the WCF being originally designed and constructed to accommodate additional antennas.

Code References: Zoning Code Sections
ACC 18.04.914 (definition of wireless communication facilities' related definitions and categorization)
ACC 18.31.100 (Wireless communications facilities siting standards)

Zoning Designation(s): The site which is the subject of this request, is located at 12301 SE 312th ST, Auburn WA 98092. The site is identified as parcel 0821059106 and is located within the southwest quarter of Section 9, Township 21 North, Range 5 East, W.M.

Applicant: Josh Hawes, Ryka Consulting
918 South Horton St, Suite 1002
Seattle, WA 98134

On behalf of New Cingular Wireless, PCS LLC/AT&T Mobility (the carrier)
(Attn: Peter Gonzales)
16221 NE 72nd Way (RTC #3)
Redmond WA 98052.

The existing wireless communication facility is owned by T-Mobile (Attn: Lisa Boyer, Co-location Manager)
12920 SE 38th Street
Bellevue, WA 98008.

The property owner is Puget Sound Energy
(Attn: Timothy Gasser, Project Manager Wireless Co-location)
P.O. Box 97034
Bellevue, WA 98009

Background

The request relates to the proposal to add three antennas and new equipment cabinet to an existing wireless communication facility (WCF). The WCF is located at located at 12301 SE 312th ST, Auburn WA 98092 on a 0.61-acre site that contains a Puget Sound Energy electrical substation. The site is identified as Parcel # 0821059106 and is located within the southwest quarter of

Section 9, Township 21 North, Range 5 East, W.M. The site is zoned C1, Light Commercial in the City of Auburn. The property was annexed to Auburn in 2008 (end of 2007 by Ordinance # 6121). It appears from King County records accessible on-line that the tower was originally permitted in 1998. This original permit identifies a 94-foot tower (Permit # B98C0056). Modifications were subsequently permitted by King County twice in 2002 and once in 2005. However, it is not clear from the permit records, if the subsequent approvals included increased tower height. The tower is presently 135 feet according to building permit plans submitted to the City (File # ADD 11-0055) on December 29, 2011.

Specifically, the request seeks to relocate three existing antennas on an existing steel monopole and on an existing mount (existing T-arm style mounts) and add three (3) new antennas to the vacated positions. The project also includes associated installation of a new equipment cabinet to the existing concrete pad within the existing fenced enclosure and adding power and fiber cable between the cabinet and antennas. The existing configuration of the WCF is as a 135-foot monopole containing four levels of antenna positions (The other height positions on the pole are assumed to be other wireless carriers). The current permit application is related to modification of the lowest level antenna position at 80 feet above grade. At this lowest level, there are three horizontal T-arm mounts (or antenna arrays); radiating from the sides of the pole and each T-arm has four antenna positions. According to building permit plans, currently only three of the available four positions on each T-arm are occupied by an antenna.

Discussion/Analysis

The additional of antennas to an existing WCF that does not increase the height of the structure is categorized as a Type 2A WCF under City regulations. Specifically, ACC 18.04.914 provides the following definition of WCF and antennas:

"ACC 18.04.912 Wireless communications.

"Wireless communications" means the provision of any personal wireless service, as defined in the Telecommunications Act of 1996, and for the purposes of this title includes the following terms:

A. "Antenna" means a device used in wireless communications which transmits and/or receives radio signals. Antennas include the following types:

1. Accessory: Antennas including, but not limited to, test mobile antennas and Global Positioning System (GPS) antennas which are less than 12 inches in height or width and do not directly provide personal wireless communication.
2. Directional or panel: An antenna or array of antennas designed to transmit a radio signal in a particular direction typically encompassing an arc of 120 degrees. Panel antennas, also called directional antennas, are typically flat, rectangular devices approximately six square feet in size.
3. Dish or parabolic: A bowl-shaped device for the reception and/or transmission of radio frequency communications signals in a specific directional pattern.

4. Whip, rod or omni-directional antenna: An antenna, tubular in shape, that transmits and receives signals throughout a 360-degree range.
5. Other: All other transmitting or receiving equipment not specifically described herein shall be regulated in conformity with the type of antenna defined herein which most closely resembles such equipment.

This same code section also provides the following categorization of the type of WCF:

"TYPE 2. Type 2 are new antennas erected on existing (primary) support structures that have previous city approvals. There are two separate Type 2 categories described as follows:
 2-A. Must meet height requirements of previous approval and is limited to 50 percent total (cumulative) expansion of equipment area.
 2-B. Has greater height requirements than previous approval and allows for more than a 50 percent expansion of the equipment area."

The proposal seeks the addition of three panel antennas measuring approximately 12 inches by 96 inches each. The proposal includes the installation of a new cabinet measuring approximately 25 inches in width, 44 inches in height (inclusive of the 14 inch plinth), and 20 inches in depth. The proposed cabinet addition does not equal or exceed a 50 percent expansion of the existing equipment cabinet ground area; there are at least three other cabinets shown on the building plans (Sheet A-2). The proposed addition of antennas to an existing WCF when the cabinet expansion is less than 50 percent is categorized as a Type 2A WCF.

The C1, Light Commercial zoning district does not allow Type 2A WCF. Specifically, ACC 18.31.100.K provides as follows:

"ACC 18.31.100.K Zones in Which WCF Are Permitted.
 The following table illustrates which zones the types of facilities as defined by ACC 18.04.912(J) are allowed in and which permits are required. Microcells, as defined by ACC 18.04.912(G), are allowed only in residential zones and shall be permitted outright pursuant to the provisions of ACC 18.04.912(G).

Zone	Type of Permit Required		
	Permitted Outright	Administrative Use Permit	Conditional Use Permit
All Zones	1-D	1-D1	1-D2
RO-H	1-A	1-B	1-C
C-N	1-A	1-B	1-C
C-1	1-A	1-B	1-C
C-2, DUC	1-A	1-B	1-C
C-3	1-B, 2-A	1-C, 2-B, 3-A	3-B
M-1, EP	1-B, 2-A	1-C, 2-B, 3-A	3-B
M-2	1-B, 2-A	1-C, 2-B, 3-A	3-B
P-1	1-B, 2-A	1-C, 2-B	3-A3
I	1-A	1-B	1-C
LF	1-A	1-B	1-C

Both, new primary support structures as well as antenna and equipment cabinet additions to existing primary support structures are not listed in the table as allowed in C1, Light Commercial zoning district and thus are not allowed. As a result, the existing facility is non-conforming the current regulations.

ACC 18.04.650 provides the following definition of a non-conforming use:

"ACC 18.04.650 Nonconforming use.

"Nonconforming use" means a use which when commenced, complied with use regulations applicable at the time when such use was commenced, and which does not conform to the existing use regulations of the zone where the use is now being conducted or carried on. The term "nonconforming use" shall be applicable to uses of buildings, structures, and land. This definition does not include those uses existing in the zone, prior to the adoption of this title, which would now require an administrative or conditional use permit to operate in the zone. Any expansion of the space, volume or area of the use would then require an administrative or conditional use permit as this title may require."

Findings/Interpretation:

The plans for the building permit application (Permit # ADD 11-0055) show that the currently installed T-arms (antenna arrays) have four antenna mounting positions. Each T-arm has a bracket on which an antenna can be installed. The plans demonstrate that the original design, construction and permitting were intended to have four antennas mounted on each T-arm and to ultimately have a total of twelve antennas on the three T-arms at this height. Further, the applicant indicates in their request for an interpretation: "Our records also indicate these antennas location (on the T-arms) were utilized within the past several years but were taken down at one point because they weren't being used." Related to this, the City's code at ACC 18.31.100.H states that any WCF that is not in use for a period of nine months is considered "abandoned" and abandoned WCF must be removed within 90 day of city notification. While the code provides a preference for removal of unused WCF, there are no records of any city notification of the antennas at the site being considered abandoned by the City.

The applicant also indicates: "As shown on the drawings and mentioned, these T-arm style mounts were designed to hold these additional antennas and as such would create negligible aesthetic impacts. Additionally, these antenna mounts/T-arms had additional antennas on them in the past several years so we could have consistent use to the existing and previous use in terms of # of antennas." The applicant was not able to provide historic documentation of antenna installation, in response to the City's request.

The applicant also indicates: "Regarding the ground space, AT&T proposes to add a single cabinet and associated components to an existing concrete pad with similar equipment cabinets adjacent. No expansion of the existing fenced area or concrete plan (sic) is proposed. Additionally, the site has mature trees and shrubs making this equipment well screened from the nearby street."

At ACC 18.31.200.B the City's regulations promote and encourage the co-location of WCF on the same primary support structure and thereby avoiding multiple WCF structures and corresponding additional impacts. The proposal is consistent with encouraging co-location since the request seeks to add facilities of one carrier to another carrier's existing WCF.

Decision

On the basis cited above, the Director interprets the zoning code regarding wireless communication facilities and specifically, allows the ability to add additional antennas to an existing nonconforming wireless communication facility that was specifically designed and constructed to accommodate additional antennas and with a corresponding equipment ground area increase of up to 50 percent.

Condition(s)

The applicant shall secure issuance of the building permit for the construction within 120 days of this interpretation decision and the construction implemented shall be substantially in conformance with the submitted permit application submitted December 29, 2011 (File # ADD11-0055).

Appeals

Any person aggrieved of this decision may file an appeal with the Planning and Development Director within fourteen (14) days of mailing of the City's written code interpretation. This decision was mailed on March 30, 2012. The appeal must be filed at the Planning and Development Department at second floor, 1 East Main Street, Auburn, WA 98001 prior to 5:00 PM on or before April 13, 2012. The appeal must be accompanied with justification for the appeal required per ACC 18.70.050.E and include the required filing fee payable to the City of Auburn. Once filed, a hearing on the appeal is scheduled with the Hearing Examiner as prescribed in ACC 18.70.050.B.

Other Code References

ACC 18.02.060 Rules for administrative interpretations.

- A. The planning director shall be authorized to interpret the meaning of words, phrases and sentences which relate to the determining of uses permitted in the various zones, approval or disapproval of development plans, or other related zoning actions. Any interpretations regarding implementation of this title shall be made in accordance with the intent or purpose statement of the specific regulation and the comprehensive plan. Life, safety and public health regulations are assumed to prevail over all other regulations.
- B. The planning director may authorize uses in a zone other than those which are listed, if the planning director determines the use is consistent with the intent of the zone and is of the same general character of the uses permitted within the zone. Further guidance on administrative interpretations of land uses can be found in ACC 18.02.120.
- C. Administrative interpretations may be appealed to the hearing examiner as prescribed in Chapter 18.70 ACC.
- D. Administrative interpretations made by the planning director shall be documented, made available for public review, and docketed for inclusion to this title, when consistent with the title format and level of detail required. The city shall incorporate administrative interpretations upon approval of the legislative authority. (Ord. 6245 § 2, 2009; Ord. 5026 § 1, 1997; Ord. 4229 § 2, 1987. Formerly 18.02.040.)

