



City of Seattle

Gregory J. Nickels, Mayor
Department of Planning and Development
D. M. Sugimura, Director

**CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR OF
THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

Application Number: 3003906
Applicant Name: Todd Walton for Clearwire
Address of Proposal: 1000 East Boston Street

SUMMARY OF PROPOSED ACTION

Land Use Application to allow expansion of a minor communication utility (Clearwire, LLC)* consisting of two tripod antenna poles (one consisting of two panel antennas and one microwave dish, and the other consisting on one panel and one microwave dish) on the roof of an existing apartment building. The project includes locating an accessory equipment cabinet on a concrete slab at grade in the rear. An existing minor communication utility will remain at development site.

The following approvals are required:

Administrative Conditional Use Review - To allow a minor communication utility to exceed the height in a Multifamily Lowrise Two zone. Section 23.57.011.B, Seattle Municipal Code

SEPA - Environmental Determination - *Chapter 25.05*, Seattle Municipal Code**

SEPA DETERMINATION: [] EXEMPT [X] DNS [] EIS

[X] DNS with conditions

[] DNS involving non-exempt grading or demolition
involving another agency with jurisdiction

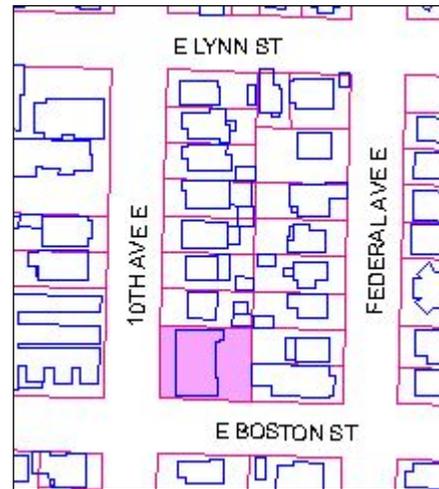
* The project was originally noticed incorrectly as Cingular Wireless, all submitted paperwork correctly identified Clearwire, LLC as the applicant.

**Early Notice DNS published January 19, 2006

BACKGROUND DATA

Site Location and Description

The development site, nearly square in shape (100 feet X 80 feet), occupies a total land area of approximately 8,000 square feet, near the north edge in the Capitol Hill neighborhood. The subject site is a corner lot with street frontages on two rights-of-ways; East Boston Street to the south, and 10th Avenue East to the west in a Multifamily Lowrise Two (L2) zone, with a minimum lot area requirement of one unit per 1,200 square feet. The site is currently developed with a residential (apartment) use, owned and operated by Bostonian Apartments, LLC. The three (3)-story building was constructed in 1958, and nonconforming to current land use L-2 height and setback development standards, if not allowed by code. And as such, any new development activity shall not increase the extent of the existing nonconformity.



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The site is fully developed with an existing building occupying a significant portion of the development site, with landscaping and surface parking filling out the remaining area. An existing minor communications utility (T-Mobile) is already located on the roof top. The rectangular shaped building is one of a limited number of buildings in the area with significant presence in this part of the neighborhood. The surrounding structures are smaller in scale and design with façade treatments more in keeping with the Capitol Hill wood siding vernacular. Primary pedestrian access to the apartment building is along the west façade. Vehicle access is obtained off East Boston Street to a surface parking lot with stalls abutting the rear property line. The subject lot slopes down modestly from southeast to northwest, approximately 8 feet over a distance of 140 feet. Both street frontages are fully improved with concrete sidewalks, curbs, and gutters.

The subject site is located within a narrow L-2 zoning band, around this stretch of 10th Avenue East, north of the centerline of East Boston Street. There is a wide assortment of residential uses, from single family to multifamily apartment complexes in this area. A private school (Bertschi School) is located nearby on 10th Avenue East. Commercial uses are found further north along 10th Avenue East. This area has sustained robust pedestrian and vehicle activity throughout the day and evening, owing in part to its connection between Capitol Hill business center and the University District. Outside this Multifamily zoning area to the west, east, and south is a less dense Single Family 5,000 (SF 5000) residential zone. This area contains a mix of modest and grand scaled single family structures. This single family area is expansive and truly reflects urban residential living – other development in this area includes churches and schools.

Proposal Description

A Master Use Permit Application proposes to establish use, which represents an expansion of use at the development site, for installation of a minor communication utility (Clearwire) on the roof of an existing apartment building. The project includes installation of three antennas and two microwave dishes. Two roof top antennas (2-Sector) and one microwave dish will be mounted to a pole, located near the southeast corner of the building encased within a faux shroud

compatible with the existing building. One roof top antenna (1-Sector) and one microwave dish similarly designed and shrouded will be located on the north half of the roof top. The accessory equipment cabinet will be located within a secured screening fence at grade, in the rear adjacent to the surface parking area.

The highest portion of the proposed minor communication utility and screening is proposed to be 46.1 feet above existing average elevation grade. The height limit for the L2 zone is 25 feet above grade, and may extend higher under strict application of Code exceptions. Approval through an Administrative Conditional Use Permit is required for locating a minor communication utility in a Multifamily Lowrise zone and for constructing minor communication utilities that exceed the height limit of the zone.

Public Comment

Date of Notice of Application: January 19, 2006
Date End of Comment Period: February 1, 2006

Letters 3

Issues: Two of the three comment letters received by DPD, during comment period addressed public health risks associated with the installation of antennas. The Federal Government has taken jurisdiction to evaluate public health concerns associated with these utilities, which supersedes our authority to evaluate health related issues (for additional comments see SEPA section). Other comments included lessening visual impacts of the proposed rooftop antennas behind some-kind of screening device. One letter suggested the equipment cabinet located behind the building should also be screened to maintain the residential integrity of the neighborhood. Additionally, where possible, landscaping should be encouraged help mitigate adverse commercial intrusion on surrounding residential properties.

ANALYSIS AND CRITERIA - ADMINISTRATIVE CONDITIONAL USE

The establishment or expansion of a minor communication utility is regulated pursuant to Section 23.57.002. Section 23.57.011.B of the Seattle Municipal Code (SMC) provides that a minor communication utility may be permitted in a Multifamily Lowrise zone when establishing or expanding communication utility and accessory communication devices as modified by subsection 23.57.011.C with the approval of an administrative conditional use permit. Approval shall be regulated pursuant to the requirements of this section enumerated below:

- 1. The project shall not be substantially detrimental to the residential character of nearby residentially zoned areas, and the facility and the location proposed shall be the least intrusive facility at the least intrusive location consistent with effectively providing service. In considering detrimental impacts and the degree of intrusiveness, the impacts considered shall include but not be limited to visual, noise, compatibility with uses allowed in the zone, traffic, and the displacement of residential dwelling units.*

The applicant's plans depict a thoughtful integration of the telecommunication facility into the architectural design on the roof top of the existing building. By proposing a screening technique

that employs a faux chimney surface that is compatible to the existing architectural treatment throughout the building's exterior, the applicant has succeeded in designing a cohesive relationship to the existing architectural integrity of the existing building. Architecturally, this screening technique effectively harmonizes with the building's existing façade treatment. The three antenna with two microwave dishes are proposed to be located in two locations on the roof top no closer than 13 feet to the building's edges and 17 feet to the property's boundary line. The antennas encased within the antenna shroud will extend no more than fifteen feet above roof elevation, approximately forty-six feet above grade. The accessory equipment cabinet will be placed on a concrete pad at grade near the northwest corner of the development site, in the rear setback, enclosed within a screening fence.

The two proposed shroud assemblies will be more in keeping with the architectural character of the existing host building than what currently exists in the three antenna shrouds from another provider. The existing shrouds were designed to mimic the look of tubular metal chimneys which has not achieved the attended goal of architectural integration. As viewed from abutting properties the proposed screening casings (faux brick chimney) housing the panel antennas, on face appearance will look and appear to function like chimneys and will achieve a better architectural integration. The views from neighboring residential and commercial structures would not be substantially altered by the presence of the facility. The applicant has provided photographic evidence suggesting that the visual intrusion would be minor.

The proposed minor communication utility is not likely to result in significant change in the pedestrian or residential character of the area. Neighbors and tenants of the host building will not likely be impacted by the utility, in terms of its land use, streetscape, and visual intrusion once it is constructed cell phone coverage in the area will be improved which will likely be beneficial to many residents and visitors to the neighborhood.

The host residential development site occupies the least intrusive facility in a residential area that includes Single family 5000 (SF 5000), Lowrise One and Two (L1 & L2) zones. The applicant has co-located the facility on an existing building in the denser Multifamily L2 zone. With the addition of the proposed antennas the applicant has demonstrated build-out of service coverage area in a lease intrusive location.

Traffic will not be affected by the presence of the constructed facility. The antennas will not emit noise, and any noise associated with the equipment cabinet will be shielded by the walls of the screening wall in which it is to be located. No dwelling units will be displaced in conjunction with this application. Thus, the proposal will not be substantially detrimental to the residential character of nearby residentially zoned areas

2. *The visual impacts that are addressed in section 23.57.016 shall be mitigated to the greatest extent practicable.*

According to the plans submitted, the proposed antennas will be entirely screened from view and will be inconspicuous, within the parameters of the SMC, while remaining functionally effective. The two chimney shrouds mounted to the roof top on tripods, will provide screening for three panel antennas and two microwave dishes, will be located as follows; the faux chimney located on the north half of the roof top will be approximately 17 feet from the north, 40 feet from the west, and 56 feet from the east property lines; the south chimney shroud is proposed to be 27 feet

from the west, 26 feet from the south, and 69 feet from the east property lines. Therefore, the proposal complies with this criterion.

23.57.016 Visual Impacts and Design Standards:

- A. *Telecommunication facilities shall be integrated with the design of the building to provide an appearance as compatible as possible with the structure. Telecommunication facilities, or methods to screen or conceal facilities, shall result in a cohesive relationship with the key architectural elements of the building.*

The applicant's plans depict integration of a screening facility into the architectural design of the existing building by proposing screening techniques picking up on the brick façade treatments of the existing structure that generally match the color and pattern of the host building. The screening device will be sympathetic in materials and design to that of a typical chimneys designed for residential buildings. Therefore, the proposal complies with this criterion (See applicant's declarations and submitted plans).

- B. *Not Applicable.*

- C. *If mounted on a flat roof, screening shall extend to the top of communication facilities except that whip antennas may extend above the screen as long as mounting structures are screened. Said screening shall be integrated with architectural design, material, shape and color. Facilities in a separate screened enclosure shall be located near the center of the roof, if technically feasible. Facilities not in a separate screened enclosure shall be mounted flat against existing stair and elevator penthouses or mechanical equipment enclosures shall be no taller than such structures.*

The applicant's plans depict screening that extends to the top of the proposed facilities. Integration of the screening facility into the architectural design of the existing building is proposed via screen shapes similar to that of brick chimneys and by using screening colors and patterns that generally blend with the texture of the host building.

- D. *Not Applicable.*

- E. *Not Applicable.*

- F. *New antennas shall be consolidated with existing antennas and mechanical equipment unless the new antennas can be better obscured or integrated with the design of other parts of the building.*

The existing antenna shrouds were designed to mimic the look of tubular metal chimneys, which did not achieve the level of integration anticipated, as evidenced during site visits and photo simulations provided by the applicant. The new proposal depicts a more evolved integration of the screening facility into the architectural design of the existing building by strengthening the connection between surface façade materials and colors. The faux brick chimney shroud will generally match the color, pattern, and texture of the

host building. The screening of antennas will be sympathetic in material and design to that of similarly designed residential chimneys in similarly designed structures. Therefore, the proposal complies with this criterion.

G. *Not Applicable.*

H. *Not Applicable.*

I. *Not Applicable.*

J. *Not Applicable.*

K. *Not Applicable.*

3. *Within a Major Institution Overlay District, a Major Institution may locate a minor communication utility or an accessory communication device, either of which may be larger than permitted by the underlying zone, when:*

a.) *the antenna is at least one hundred feet (100') from a MIO boundary, and*

b.) *the antenna is substantially screened from the surrounding neighborhood's view.*

The proposed site is not located within a Major Institution Overlay District. Therefore, this requirement does not apply to the subject proposal.

4. *If the minor communication utility is proposed to exceed the zone height limit, the applicant shall demonstrate that the requested height is the minimum necessary for the effective functioning of the minor communication utility.*

The applicant's RF engineer has provided evidence (Letter from David J. Pinion, (RF) Engineer, and dated December 12, 2005) that the proposed antenna height, 24.25 feet above the top of roof, is the minimum height necessary to ensure the effective functioning of the utility in the most inconspicuous manner possible. Therefore, the proposal complies with this criterion.

The proposed antennas will be located on the rooftop of the existing building. The proposed minor communication facility extending approximately 15 feet above the roof top would be taller than the base height limit for Multifamily Lowrise Two zones. However, the additional height may be granted through an administrative conditional use permit.

Due to the operational characteristics of the proposed facility, a clear line of site from the antennas in the system throughout the intended coverage area is necessary to ensure the quality of the transmission of the Clearwire system. The strict application of the height limit would preclude the applicant from providing wireless services for the intended coverage area, which extends north towards East Roanoke Street, west to Eastlake Avenue East, south to East Blaine Street, and east towards 15th Avenue East. The site was chosen because of its elevation, height of the existing building, and location which is uniquely suited to serve an expansive residential area. No commercial properties were identified with sufficient elevation height to provide the

coverage needed to meet the service objectives in the L2 zone. Locations around the intersections of 10th Avenue East and East Boston Street were also considered. However, these sites were deemed inadequate or inaccessible to meet optimum service level parameters. The applicant chose to co-locate on the host building that is providing minor communication service for another provider. The additional height above the underlying zone height development standard is the minimum required to obtain sufficient coverage. The additional increase in bulk, view blockage and shadow impacts are not anticipated from the extra 15 feet extension of the proposed antennas within the two chimney shrouds.

According to the applicant, the literal interpretation and strict application of the Land Use Code would be that Clearwire could not meet its federal mandate of its FCC license to provide high speed wireless internet access throughout the Seattle metropolitan area. This proposal site at this elevation is a vital link in the planned network for the Seattle Metropolitan area. Given these alternatives, the height limit extension is a minimal impact. Thus, this criterion is satisfied.

5. *If the proposed minor communication utility is proposed to be a new freestanding transmission tower, the applicant shall demonstrate that it is not technically feasible for the proposed facility to be on another existing transmission tower or on an existing building in a manner that meets the applicable development standards. The location of a facility on a building on an alternative site or sites, including construction of a network that consists of a greater number of smaller less obtrusive utilities, shall be considered.*

The proposed minor communication utility is not proposed for a new freestanding transmission tower. Therefore, this provision does not apply.

SUMMARY

The proposed project is consistent with the administrative conditional use criteria of the City of Seattle Municipal Code as it applies to wireless communication utilities. The facility is minor in nature and will not be detrimental to the surrounding area while providing needed and beneficial wireless communications service to the area.

The proposed project will not require the expansion of public facilities and services for its construction, operation and maintenance. The site will be unmanned and therefore will not require waste treatments, water or management of hazardous materials. Once installation of the facility has been completed, approximately one visit per month would occur for routine maintenance. No other traffic would be associated with the project.

DECISION - ADMINISTRATIVE CONDITIONAL USE PERMIT

This application to install a minor communication utility in a Multifamily Lowrise zone, which is above the height limit of the underlying zone, is **CONDITIONALLY APPROVED**.

SEPA ANALYSIS

Environmental review resulting in a Threshold Determination is required pursuant to the State Environmental Policy Act (SEPA), WAC 197-11, and the Seattle SEPA Ordinance (Seattle Municipal Code Chapter 25.05).

The initial disclosure of the potential impacts from this project was made in the environmental checklist prepared by Peter James dated December 5, 2005. The information in the checklist, public comment, and the experience of the lead agency with review of similar projects forms the basis for this analysis and decision.

The SEPA Overview Policy (SMC 25.05.665 D) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, certain neighborhood plans, and other policies explicitly referenced may serve as the basis for exercising substantive SEPA authority.

The Overview Policy states, in part: *"Where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation,"* subject to some limitations. Under such limitations/circumstances (SMC 225.05.665 D1-7) mitigation can be considered.

Short-Term Impacts

The following temporary construction-related impacts are expected: 1) decreased air quality due to increased dust and other suspended particulates from building activities; 2) increased noise and vibration from construction operations and equipment; 3) increased traffic and parking demand from construction personnel; 4) blockage of streets by construction vehicles/activities; 5) conflict with normal pedestrian movement adjacent to the site; and 6) consumption of renewable and non-renewable resources. Although not significant, the impacts are adverse and certain mitigation measures are appropriate as specified below.

City codes and/or ordinances apply to the proposal and will provide mitigation for some of the identified impacts. Specifically, these are: 1) Street Use Ordinance (watering streets to suppress dust, obstruction of the pedestrian right-of-way during construction, construction along the street right-of-way, and sidewalk repair); and 2) Building Code (construction measures in general). Compliance with these applicable codes and ordinances will be adequate to achieve sufficient mitigation and further mitigation by imposing specific conditions is not necessary for these impacts. The proposal is located within residential receptors that would be adversely impacted by construction noise. Therefore, additional discussion of noise impacts is warranted.

Construction Noise

The limitations of the Noise Ordinance (construction noise) are considered inadequate to mitigate the potential noise impacts associated with construction activities. The SEPA Policies at SMC 25.05.675 B allow the Director to limit the hours of construction to mitigate adverse noise impacts. Pursuant to this policy and because of the proximity of neighboring residential uses, the applicant will be required to limit excavation, foundation, and external construction work for this project to non-holiday weekdays between 7:30 a.m. and 6:00 p.m. It is also recognized that there are quiet non-construction activities that can be done at any time such as, but not limited to, site security, surveillance, monitoring for weather protection, checking tarps, surveying, and walking on and around the site and structure. These types of activities are not considered construction and will not be limited by the conditions imposed on this Master Use Permit.

The other short-term impacts not noted here as mitigated by codes, ordinances or conditions (e.g., increased traffic during construction, additional parking demand generated by construction personnel and equipment, increased use of energy and natural resources) are not sufficiently adverse to warrant further mitigation or discussion.

Long-term Impacts

Long-term or use-related impacts are also anticipated, as a result of approval of this proposal including: increased traffic in the area and increased demand for parking due to maintenance of the facility; and increased demand for public services and utilities. These impacts are minor in scope and do not warrant additional conditioning pursuant to SEPA policies.

Environmental Health

The Federal Communications Commission (FCC) has pre-empted state and local governments from regulating personal wireless service facilities on the basis of environmental effects of radio frequency emissions. As such, no mitigation measures are warranted pursuant to the SEPA Overview Policy (SMC 25.05.665).

The applicant has submitted a “Statement of Federal Communication Commission Compliance for Personal Wireless Service Facility” and an accompanying “Affidavit of Qualification and Certification” for this proposed facility giving the calculations of radiofrequency power density at roof and ground levels expected from this proposal and attesting to the qualifications of the Professional Engineer who made this assessment. This complies with the Seattle Municipal Code Section 25.10.300 that contains Electromagnetic Radiation standards with which the proposal must conform. The City of Seattle, in conjunction with Seattle King County Department of Public Health, has determined that Personal Communication Systems (PCS) operate at frequencies far below the Maximum Permissible Exposure standards established by the Federal Communications Commission (FCC) and therefore, does not warrant any conditioning to mitigate for adverse impacts.

Summary

In conclusion, several effects on the environment would result from the proposed development. The conditions imposed at the end of this report are intended to mitigate specific impacts identified in the foregoing analysis, to control impacts not adequately regulated by codes or ordinances, per adopted City policies.

DECISION - SEPA

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirement of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

[X] Determination of Non-Significance. This proposal has been determined not to have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21.030(2) (c).

ADMINISTRATIVE CONDITIONAL USE CONDITIONS

The owner(s) and/or responsible party(s) shall:

1. Revise plans to document exterior color palette for proposed shroud screening of the antennas, cables, and related equipment to blend with the color of the building. This shall be to the satisfaction of the Land Use Planner.
2. Revise plans to detail chimney shroud extending flush to penthouse roof top surface. This shall be to the satisfaction of the Land Use Planner.
3. Revise plans to locate and dimension a five foot separation between the north property line and equipment cabinet. This shall be to the satisfaction of the Land Use Planner.

Land Use Code Requirement (Non - Appealable) Prior to Issuance of Master Use Permit

4. The owner(s) and/or responsible party(s) shall provide access and signage in accord with Section 23.57.012C2 which restrict access to minor communications utilities to authorized personnel. This shall be to the satisfaction of the Land Use Planner.

SEPA CONDITIONS

During Construction:

The following condition to be enforced during construction shall be posted at the site in a location on the property line that is visible and accessible to the public and to construction personnel from the street right-of-way. If more than one street abuts the site, conditions shall be posted at each street. The conditions will be affixed to placards prepared by DPD. The placards will be issued along with the building permit set of plans. The placards shall be laminated with clear plastic or other waterproofing material and shall remain posted on-site for the duration of the construction.

5. In order to further mitigate the noise impacts during construction, the hours of construction activity shall be limited to non-holiday weekdays between the hours of 7:30 a.m. and 6:00 p.m. This condition may be modified by DPD to allow work of an emergency nature or allow low noise interior work. This condition may also be modified to permit low noise exterior work after approval from the Land Use Planner.

Signature: _____ (signature on file) Date: September 4, 2006
Bradley Wilburn, Land Use Planner
Department of Planning and Development

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