



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: 3004689
Contact Person: Norris Bacho
Service Provider: ClearWire
Address of Proposal: 1501 1st Avenue North



SUMMARY OF PROPOSED ACTION

Land Use Application to install a new minor communication utility (Clearwire LLC) consisting of three panel antennas and two microwave antennas on the roof of an existing apartment building. The equipment cabinets will be located in the basement.

The following approvals are required:

Administrative Conditional Use - to allow a minor communication utility on an existing apartment building in a Multi-family zone.

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

SEPA DETERMINATION

EXEMPT DNS MDNS EIS

DNS with conditions

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

BACKGROUND DATA

Site Description

The subject site is located within a Lowrise 1 (L-1) zone, slopes downward from east to west and developed with an apartment building. The site is a corner lot with Galer Street abutting to the south. 1st Avenue North abutting to the east and an alley abuts to the west. The site is located on top of Queen Anne Hill and is situated on a higher geographical elevation point than the properties to the south.

Proposal Description

Land use application to install a new minor communication utility (Clearwire LLC) consisting of three panel antennas and two microwave antennas on the roof of an existing apartment building. The equipment cabinet will be located in the basement. The antennas and dishes will be located on two mounting tripod located on the westerly and southeasterly areas of the rooftop. A camouflaging shroud is proposed around both mounting tripods and will completely conceal the proposed antennas and dishes.

Surrounding Area Description

The surrounding areas to the southeast are zoned L-1 and primarily developed with multi-family structures. The areas generally to the north and northeast are zoned Single-Family 5000 and developed with single-family homes. The properties to the west abutting Queen Anne Avenue North are zoned Neighborhood Commercial 2 (NC-2/40) with a 40-foot height limit and developed with a mix of residential and commercial uses.

Public Comment

The application was deemed to be complete on March 31, 2006 and a revised notice of application was sent on May 4, 2006. The public comment period ended on May 31, 2006. Several public comments were received during the public notice process. The primary issues were related to public health impacts and interference due to radiofrequency (RF) electromagnetic exposure, adverse effect on surrounding property values and a commercial intrusion in a residential area.

ANALYSIS AND CRITERIA - ADMINISTRATIVE CONDITIONAL USE

Section 23.57.011 of the Seattle Municipal Code (SMC) provides that a minor communication utility may be permitted to exceed the height limit in a Lowrise zone with the approval of an administrative conditional use permit. All supporting documentation referenced within this decision can be found in MUP file no. 3004689.

1. The proposal 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.

Director's Rule 8- 2004 clarifies terms and provisions regarding minor communication facilities in all zones which are directly applicable in this instance. The terms "least intrusive location", "least intrusive facility" and "effectively providing service" are defined as the following:

"Effectively providing service" means the level of service preferred by the applicant. The preferred level of service will not be evaluated by the Director, but will instead be used as a comparison in the evaluation of potential alternate locations for the proposed minor communication utility.

“Least intrusive location” means that, except deviations as allowed by the Director, the location of the proposed minor communication utility must comply with the following order of preference. Industrial zones are the least intrusive location, and Single Family and Residential Small Lot zones (non-arterial) are the most intrusive locations:

- a. Industrial zones*
- b. Downtown zones*
- c. Commercial zones*
- d. Neighborhood Commercial zones*
- e. Multifamily zones (arterial)*
- f. Multifamily zones (non-arterial)*
- g. Single Family and Residential Small Lot zones (arterial)*
- h. Single Family and Residential Small Lot zones (non-arterial)*

The Director may allow a deviation from the order of preference, provided that the Director finds that such a deviation would result in a less intrusive location than would otherwise be provided under strict adherence to the order of preference.

“Least intrusive facility” means that the proposed minor communication utility and its associated equipment, including but not limited to additions to existing structures, new structures, poles, wireless antennae and conduit, must be designed and placed in a manner that will result in the least amount of visual and neighborhood character impacts. Potential impacts may include but will not be limited to aesthetics, height and bulk impacts, and commercial intrusion. Except deviations as allowed by the Director, the proposed minor communication utility must comply the following order of preference:

- a. City Light transmission tower*
- b. Water tower*
- c. Rooftop or facade of a nonresidential structure*
- d. Rooftop or facade of a residential structure*
- e. Monopole on a nonresidential lot*
- f. Utility pole*

The Director may allow a deviation from the order of preference, including the allowance of other placement locations not contained in the order of preference, provided that the Director finds that such a deviation would result in a less intrusive facility than would otherwise be provided under strict adherence to the order of preference.

The proposal is located within a Lowrise 1 (L-1) zone on a non-arterial street and the minor telecommunication equipment will be located on an apartment building. The applicant must consider a site which is the “least intrusive location” located on the “least intrusive facility” while also being able to “effectively provide telecommunication services”. The applicant has provided analysis on the least intrusive location and facility and indicates no structures were available within the neighborhood commercial or multi-family zones to locate on within the target area to effectively provide telecommunication services. The applicant also indicates the selected residential structure within the L-1 zone was the first option available from the list of “least intrusive facilities”. The apartment building was not the preferred site of the applicant;

however, a lease agreement could not be obtained for the Fisher Communications Tower at 154 Galer Street, KIRO TV Tower at 1518 Queen Anne Avenue North and the King TV Tower at 1412 3rd Avenue North. Based on the applicant's analysis on the least intrusive location and facility, the L-1 zone is the least intrusive location and the residential structure is the least intrusive facility in this instance.

The antennas and dishes will be completely wrapped by a shroud. The shroud is designed to be architecturally compatible with the brick building. The noise associated with the one equipment cabinet located in the basement will be de minimis. Traffic impact is not anticipated other than one service visit per month. The proposal would be compatible with uses allowed in the zone, and since no housing or structure will be removed, the proposal will not result in displacement of residential dwelling units.

As proposed, the minor communications utility will not constitute a commercial intrusion that will be substantially detrimental to the residential character of the surrounding neighborhood.

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

The applicant has designed the size, shape and materials of the proposed utility to minimize negative visual impacts on adjacent or nearby residential areas. The antennas and dishes will be completely wrapped by a shroud and the equipment cabinet will be located in the basement. As proposed, the visual impacts related to the minor communications utility have been mitigated to the greatest extent practicable.

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 four hundred feet (400') 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; therefore, this provision is not applicable.

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 antennas and dishes are proposed to be located on the roof of on an approximate 41-foot high apartment building, located within an L-1 zone with a height limit of 25 feet. The top of the antennas and the shroud will be located 52-feet above grade. The applicant claims the proposed height of the antennas is the minimum necessary to effectively provide service to the proposal area. The applicant supported this claim by providing a letter from an engineer stating the proposed height is the minimum necessary to provide service and by providing a propagation map displaying the coverage area with and without the subject site in the current network configuration and indicates the height proposed still does not provide the desired coverage area.

The additional height above the zone development standard is the minimum necessary for the effective functioning of the minor communication utility.

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 to be a new freestanding transmission tower. Therefore, this provision does not apply.

6. *If the proposed minor communication utility is for a personal wireless facility and it would be the third separate utility on the same lot, the applicant shall demonstrate that it meets the criteria contained in subsection 23.57.009 A. except for minor communication utilities located on freestanding water tower or similar facility.*

The proposed minor communication utility is the first personal wireless facility on the site; therefore, this provision does not apply.

DECISION - ADMINISTRATIVE CONDITIONAL USE PERMIT

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

ANALYSIS - SEPA

The initial disclosure of the potential impacts from this project was made in the environmental checklist prepared by the applicant on March 29, 2006, and supplemental information in the project file submitted by the applicant. The information in the checklist, supplemental information, 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) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, and 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 or circumstances (SMC 25.05.665 D), mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate. Short-term and long-term adverse impacts are anticipated from the proposal.

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.

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 “Applicant’s Statement of Federal Communication Commission (FCC) Compliance” to demonstrate the proposed antennas facilities and the site as a whole comply with FCC’s limits for human exposure to RF electromagnetic fields and an accompanying “Evaluation of Compliance With Guidelines for Human Exposure to Radio Frequency Radiation” for this proposed facility giving the calculations of radio frequency power density 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. Warning signs at every point of access to the transmitting antenna shall be posted with information of the existence of radiofrequency radiation.

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 requirements of the State Environmental Policy Act (RCW 43.21C), including the requirement to inform the public agency decisions pursuant to SEPA.

- [X] Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21C.030 2C.
- [] Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030 2C.

CONDITIONS - ADMINISTRATIVE CONDITIONAL USE

For the Life of the Project

1. The owner(s) and/or responsible party(s) shall ensure the proposed shroud around the antennas and dishes will be architecturally compatible with the existing structure.
2. The owner(s) and/or responsible party(s) shall ensure the proposed shroud will visually screen the antennas and dishes for the life of the project.

CONDITION - SEPA

During Construction

3. The following conditions to be enforced during construction shall be posted at the site in a location visible and accessible to the public and to construction personnel from the street right-of-way. The condition shall be printed legibly on placards available from DPD, shall be laminated with clear plastic or other weatherproofing material, and shall remain in place for the duration of the construction.

