



City of Seattle

Gregory J. Nickels, Mayor

Department of Planning and Development

Diane M. Sugimura, Director

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

Application Number: 3009155
Applicant Name: Todd Walton for Clearwire
Address of Proposal: 4747 16th Avenue NE (Barclay Apartments)

SUMMARY OF PROPOSED ACTION

Land Use Application to install a new minor communication utility (Clearwire LLC) consisting of three panel antennas and three dish antennas (total of six) on the rooftop of an existing apartment building. Wall mounted equipment cabinet will be located in parking garage.

The following approvals are required:

Administrative Conditional Use Review - to allow a minor communication utility to exceed the height limit in a Multi-Family Residential Lowrise 3 (L-3) zone pursuant to SMC 23.57.011B 4.

SEPA - Environmental Determination pursuant to SMC 25.05.

SEPA DETERMINATION: Exempt DNS MDNS EIS
 DNS with conditions
 DNS involving non-exempt grading or demolition involving another agency with jurisdiction.

**Early Notice DNS published July 31, 2008.

BACKGROUND DATA

Site and Vicinity Description

The subject property, which is developed with a three-story apartment building and partially below grade parking garage, is located on 16th Avenue Northeast, one lot south of NE 50th Street in the University District.

Zoning for the site is Multi-Family Residential Lowrise 3 (L-3) which continues on the blocks to the west, south and east. The zoning to the north, across 50th, changes to Single Family 5000 (SF 5000).

Proposal Description

The applicant is proposing a rooftop installation of three panel antennas and three dish antennas (total of six) screened inside faux chimneys painted to match the building. Accessory equipment (mechanical equipment cabinets) will be located in an extra parking stall in the basement level garage. The coaxial cable will run along the outside of the apartment building, screened by a chase that will match the siding and color of the existing building.

The height limit for the L-3 zone is thirty (30) feet above grade, with an exception for minor communication utilities and accessory communication devices permitted to extend beyond that if the requested height is demonstrated to be the minimum necessary for the effective functioning of the utility¹. An Administrative Conditional Use (ACU) permit is required to exceed the zone height.

The existing apartment building height is 37 feet 3 inches to the roof deck with low pitched roofs above that level. The existing rooftop elevator penthouses, as well as the tops of the proposed “chimneys” are at 47 feet 3 feet. The proposed antennas and dishes will be mounted at the above heights in order to provide adequate service coverage to the surrounding area while avoiding building roof edge interference.

Public Comment

The public comment period for this project ended August 13, 2008. One comment letter was received expressing concern that the television reception would be adversely affected by the proposed antennas.

ADMINISTRATIVE CONDITIONAL USE

Seattle Municipal Code (SMC) 23.57.011B provides that a minor communication utility, as regulated pursuant to SMC 23.57.002, may be permitted in a Lowrise zone as an Administrative Conditional Use when it meets the development standards of SMC 23.57.011C and the following criteria, as applicable.



¹Refer to SMC 23.57.011B.4.

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 proposed Minor Communication Utility (MCU) will be installed on the roof penthouse of an existing three story apartment building in an L-3 zone. The applicant has submitted maps of current and proposed service demonstrating the need for the proposed antennas at the proposed heights at this location to provide service.

The site is located mid-block on the west side of 16th Avenue Northeast, just south of NE 50th Street in a neighborhood that consists of structures either built for or converted to multi-family use. The proposed design, size, and heights of the antenna screening, in conjunction with their visibility from the surrounding properties and structures, will render the proposed MCU visually un-obtrusive. The screening structure will fully screen the proposed antennas, match the building's existing exterior and color, and be capped with a trim painted to match the building's existing painted cornice. These structures, because of their size and materials, will appear to be a part of the existing structure and therefore will be compatible with the allowed uses in the zone. To the casual observer there appears to be no visible clues to suggest a MCU is present at the subject site.

There will be no noise impacts from the proposed antennas. There will be minimal noise impacts from the associated electrical equipment. The equipment will be located in a basement garage within the existing building; one excess parking space will be removed.

There will be limited traffic impacts to the proposed MCU with a monthly scheduled maintenance visit to service the utility. There will be no displacement of residential units.

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 fully screened from view and be inconspicuous due to the proposed screening structures while remaining functionally effective for service coverage. The mature street trees along 16th will limit the visibility of the faux chimney structures from the east. The area of greatest visibility would be to the west from 15th Avenue NE across the surface parking lot, though an observer on the eastern sidewalk would be over 160' away from the building. Therefore, the proposal complies with this criterion.

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 criterion 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 existing building is 37'3" in height on the highest western elevation to the roof deck. The top of the existing elevator penthouse is 47'3" or 10' higher than the roof. The top of the faux chimney structures providing antenna screening are also 47'3". Documentation within the MUP file provided by the applicant and discussed in *Proposal Description* above, demonstrates the requested antenna heights is the minimum necessary for the effective functioning of the minor communication utility. Placement of the antennas must on the rooftop must obtain an elevation height to clear the buildings edges and to provide adequate signal strength to cover a defined area. The proposed screening height is the minimum necessary to adequately screen the antennas while allowing for proper attachment of the screening to the existing penthouse structure. This proposal, therefore, complies with this criterion.

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 will not be a new freestanding transmission tower. Therefore, this criterion does not apply to the subject proposal.

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

The Conditional Use application is **CONDITIONALLY APPROVED** as noted below.

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 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.

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant and dated May 19, 2008. 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.

Short-term Impacts

Construction activities including construction worker commutes, truck trips, the operation of construction equipment and machinery, and the manufacture of the construction materials themselves result in increases in carbon dioxide and other greenhouse gas emissions which adversely impact air quality and contribute to climate change and global warming. While these impacts are adverse, they are not expected to be significant.

Construction and Noise Impacts

Codes and development regulations applicable to this proposal will provide sufficient mitigation for most impacts. The initial installation of the antennas and the equipment may include loud equipment and activities. This construction activity may have an adverse impact on nearby residences. Due to the close proximity of nearby residences, the Department finds that the limitations of the Noise Ordinance are inadequate to appropriately mitigate the adverse noise impacts associated with the proposal. The SEPA Construction Impacts policies, (SMC 25.05.675.B) allow the Director to limit the hours of construction to mitigate adverse noise and other construction-related impacts. Therefore, the proposal is conditioned to limit construction activity to non-holiday weekday hours between 7:00 a.m. and 6:00 p.m.

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.

The City is not aware of interference complaints from the operation of other installations from persons operating electronic equipment, including sensitive medical devices (e.g. - pacemakers). The Land Use Code (SMC 23.57.012C2) requires that warning signs be posted at every point of access to the antennas noting the presence of electromagnetic radiation. In the event that any interference was to result from this proposal in nearby homes and businesses or in clinical medical applications, the FCC has authority to require the facility to cease operation until the issue is resolved.

The information discussed above, review of literature regarding these facilities, and the experience of the Departments of Planning and Development and Public Health with the review of similar projects form the basis for this analysis and decision. The Department concludes that no mitigation for electromagnetic radiation emission impacts pursuant to SEPA policies is warranted.

The associated equipment will generate some noise; however it will be contained within the basement of the building adjacent to the existing equipment enclosure. Due to the location of the equipment no adverse noise impacts during operation are expected and the Noise Ordinance will adequately regulate any noise impacts associated with the proposal.

The long term visual impact of the change is expected to be very minor as discussed in the ACU section above. Provided that the proposal is constructed according to approved plans, no further mitigation pursuant to SEPA is warranted.

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

This decision was made after review of a completed environmental checklist and other information on file with the responsible department and by the responsible official on behalf of the lead agency. 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).

[] 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(2)C).

ADMINISTRATIVE CONDITIONAL USE CONDITION

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

Prior to MUP Issuance

1. Document within plan set integrated screening with the architectural design, materials, shapes and colors that are consistent with the current exterior of the building as shown in the photo simulations in the MUP file. The screening shall be accompanied by a cornice trim as shown in the submitted photo simulations. The trim shall be painted to match the existing building cornice color. All screening shall extend down to the roof surface to assure full screening from surrounding existing and future uphill structures. Any material changes shall be approved by the project planner.

Prior to Building Final Approval

2. Compliance with the approved design features and elements, including exterior materials, parapets, facade colors, shall be verified by the DPD Planner assigned to this project. Inspection appointments with the Planner must be made at least three (3) working days in advance of the inspection.

SEPA CONDITION

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 each street right-of-way and the alley. 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.

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

3. All construction activities are subject to the limitations of the Noise Ordinance. Construction activities (including but not limited to demolition, deliveries, framing, roofing, and painting) shall be limited to non-holiday weekdays from 7am to 6pm. Non-noisy activities, such as site security, monitoring, weather protection shall not be limited by this condition.
4. Construction activities outside the above-stated restrictions may be authorized by the Land Use Planner when necessitated by unforeseen construction, safety, or street-use related situations. Requests for extended construction hours or weekend days must be submitted to the Land Use Planner at least three (3) days in advance of the requested dates in order to allow DPD to evaluate the request.

Signature: _____ (signature on file) Date: September 11, 2008
Bradley Wilburn, Land Use Planner
Department of Planning and Development

BW:lc