

MEMORANDUM

TO: City Council of the City of Beacon

FROM: Keane & Beane, P.C.

RE: 2 Red Flynn Drive – Small Cell Wireless Facility
Special Use Permit Application

DATE: January 24, 2018

The City received an application for a special use permit from Verizon Wireless (the “Applicant”) for the installation and operation of a small cell facility. The project involves the installation of a small cell antenna and related equipment on an existing utility pole on property located at 2 Red Flynn Drive in the Waterfront Park (WP) Zoning District in the City’s right-of-way (ROW) (the “Property”). The proposed antenna and associated equipment are proposed to be located on a proposed replacement wooden utility pole currently owned by CHG&E. The replacement utility pole will be approximately 36’ 5” tall. The existing utility pole is 27’ 5” tall.

Under the City’s Small Cell Wireless Facilities Local Law, adopted August 7, 2018, as Local Law 13-2018 (the “Small Cell Local Law”), special use permit approval by the City Council is required under Section 223-24.5 for the installation of a utility pole for a small cell facility where equipment is installed on a pole at an elevation less than 15 feet from the ground. The top of the proposed meter will be located six feet from the ground; therefore the application must be approved by the City Council pursuant to Section 223-24.5.

This memorandum reviews the applicable special use permit requirements set forth in Section 223-24.5 for wireless telecommunication facilities and discusses how the Applicant addresses, or fails to address, the applicable provision. Section 223-24.5 of the City Zoning Code is attached for your reference. Please note, the submitted application also requires an LWRP consistency review and site plan approval by the Planning Board, and is a SEQRA Unlisted Action.

Location and Access

Section 223-24.5.D sets forth locational priorities for wireless telecommunication facilities to create the least amount of adverse aesthetic impact and to preserve the scenic values of the City. The City Council must review and evaluate the technological, structural, safety and financial considerations associated with alternative locations. The Applicant has provided information as to how and why the Property was selected as the proposed location for the small cell facility.

Wherever possible, new wireless telecommunication facilities shall be in the form of antennas attached to an existing building or structure and/or shall be in the form of stealth structures. The proposed utility pole replaces the existing utility pole in-kind, albeit nine feet taller. The Applicant is adding the small cell facility to a location that currently exists; the installation of the replacement pole does not create a new location for the purpose of installing a small cell facility. Therefore, it can be argued that the Applicant meets the City's requirement that new wireless telecommunication facilities be attached to existing buildings or structures.

The Applicant submitted a Communications Facility Site Selection Analysis as Exhibit 6 to its October 19, 2017 submission. The Applicant canvassed the Search Area established by the Radio Frequency (RF) Engineer to determine that the only viable candidates for a new small cell facility are poles located at 8 Long Dock Road and 2 Red Flynn Drive. The Applicant alleges that the other poles in the Search Area are not available due to restrictions such as conduits, double primary wires, transformers, issues getting power, or obstructions to radio frequency. The Applicant also explains that it considered several existing structures in the area, but argues that these structures are not viable for either lack of owner interest, roof height and/or construction restrictions determined by the RF Engineer. The Search Area is the target area for locating a site on which to build a new wireless facility to solve the identified network performance problem.

The Applicant submitted a Supplemental Communications Facility Zoning Analysis on November 28, 2018 to illustrate that Verizon Wireless' proposed site at 2 Red Flynn Drive complies with the City's locational priorities hierarchy.

Setbacks

Wireless telecommunication facilities, except those structurally mounted to an existing building or structure, shall be located not less than two times the otherwise applicable setback requirements for principal structures for the district in which the property is located, or not less than the height of the facility plus the otherwise applicable setback requirements for principal structures for the zoning district in which the property is located, whichever shall be greater. City of Beacon Zoning Code § 223-24.5.E.

The proposed small cell facility will be located on an existing utility pole in the public ROW, therefore the setback requirements do not apply.

Height Limitations

The height of the replacement utility pole is 36' 5" feet. The City Zoning Code states that the height of any antennas, or other associated equipment, structurally mounted as part of the wireless telecommunication services facility shall not exceed by more than 15 feet the highest point of the existing structure on which such antennas or equipment is affixed. The proposed antenna and associated equipment will not exceed the height of the replacement pole. The top of the proposed Verizon Wireless antenna will be located 24' 9" above existing grade, the replacement pole will be 36' 5" tall.

Visual Mitigation

Under Section 223.24.5.G, the Applicant must prepare a visual impact assessment of the proposed wireless telecommunication facility based upon appropriate modeling, photographic simulation and other pertinent analytical techniques as required by the City Council. Landscaping and/or other screening and mitigation, including but not limited to architectural treatment, stealth design, use of neutral or compatible coloring and materials, or alternative construction and transmission technologies, shall be required to minimize the visual impact of such facility from public thoroughfares, important viewsheds, vantage points and surrounding properties to the extent practicable, as determined by the City Council.

The Applicant alleges that the proposed antenna will not result in an increase to the height of the existing structure and therefore, will not increase the visibility of the utility pole. However, the Applicant has not submitted a visual impact assessment. The City Council may request the applicant provide a visual impact assessment of the proposed small cell facility.

Materials

Under Section 223-24.5.H, a wireless telecommunication facility shall be of galvanized finish or painted gray or another neutral or compatible color determined to be appropriate for the proposed location of such facility in the reasonable judgment of the City Council. According to Sheet No.GN-1 of Exhibit 4 of the October 19, 2017 submission, General Notes, equipment cabinets, terminal boxes, junction boxes and pull boxes will be galvanized or epoxy-coated sheet steel. All steel materials will be galvanized after fabrication. All bolts, anchors and miscellaneous hardware will also be galvanized.

Lighting

The Applicant advises that no tower marking and/or lighting will be required under the Federal Aviation Administration regulations.

Operational Characteristics

The application includes a report from a Radio Frequency Design Engineer as Exhibit 7 to the October 19, 2017 submission. The Design Engineer concluded that the proposed facility will comply with all applicable exposure limits and guidelines adopted by the FCC governing human exposure to radio frequency electromagnetic fields and thus fully complies with the standards of the IRPA, FCC, IEEE, ANSI and NCRP.

The City Council may require annual certification of conformance with the applicable emission standards. Additionally, copies of certification reports shall be submitted to the City Council whenever they are required to be submitted to the FCC. The City Council may hire a qualified professional of its choosing to review and confirm such initial and subsequent certification report(s), the cost of which shall be reimbursed by the Applicant

in accordance with the escrow account procedures established by the City for the reimbursement of professional review fees for subdivision, site plan and special use permit applications. Any violation of the emissions standards shall require immediate discontinuation and correction of the use responsible for the violation.

Noise

The Applicant advises that operation of the facility will not involve any objectionable noise, fumes vibration or other characteristics.

Utility Service

All electrical lines extended to serve the wireless telecommunication facility will be installed underground.

Safety and Security Provisions

The City Council should ask the Applicant to discuss issues regarding safety and security at the facility.

Section 223-24.5.M requires a wireless telecommunication facility to be designed that in the event of structural failure it will fall within the required setback area and, to the maximum extent possible, away from any adjacent developments.

Section 223-24.5.N requires the Applicant to implement a security program for the site of a wireless telecommunication facility. Such program may include physical features such as fencing, anti-climbing devices or elevating ladders on monopoles and towers, and/or monitoring either by staff or electronic devices to prevent unauthorized access and vandalism.