

SPECIAL USE EXCEPTION REVIEW REPORT

Petition Number:	SUE 20-04
Petitioner:	Matt Schlichter 5055 Hwy N, Ste. 200 St. Charles, MO 63304 636-922-3400
Agent/Engineer:	None
Project Name:	Clayton Rd Cell Tower
Requested Action:	Special Use Exception
Purpose:	Communications Tower Erection
Code Section:	Article XIV Sec. 1 (15) Article XVI, Sec. 4 (B) Chapter 7.6, Sec. 7.6-3 & 4
Location:	15407 Clayton Rd
Existing Zoning/Land Use:	C-1 Commercial
Surrounding Zoning/Land Uses:	North – Commercial/C-1 South – Commercial/C-1 East – Residential/R-1 West – Commercial/C-1
Plan Designation:	Commercial

Project Description:

Matt Schlichter of Network Real Estate is requesting the granting of a special use exception to erect a communications tower at 15407 Clayton Rd. The tower is of a monopole design with interior mounted antennas and ground mounted equipment in an enclosed compound. The tower will be 100' tall. It is proposed to be located approximately 28 feet from the east property line/right-of-way.

The tower will be leased by AT&T Mobility for the operation of its cellular communications network in the West St. Louis County Region following an analysis of available collocation opportunities on existing wireless towers failing to procure any suitable opportunities to meet their needs.

Zoning Ordinance Requirements / C-1 District (Article IX):

1. Article IX, Section 1 is a general introductory statement and imposes no design or plan requirements so it is not germane to this review.
2. Art. IX, Sec. 2 establishes uses allowed by right in the C-1 district. While communication towers are not immediately considered a permitted use, this is superseded by Chapter 7.6, Sec. 7.6-6, wherein it lists wireless facilities as permitted as an incidental use in existing multi-family, institutional, or non-residential uses under a Special Use Exception if they do not meet the regulations set forth by Secs. 7.6-4 or 7.6-5, which provide, respectively, the outright ability to permit the use or allow for administrative review should the telecommunications towers fall within certain requirements.
3. Art. IX, Sec. 3 establishes height regulations: The height regulation of the C-1 district is 45'. This special use exception petition is also submitted pursuant to Article XVI Section 4 to allow a deviation from this regulation.
4. Art. IX, Sec. 4. (1-3) Area Regulations: The proposed facilities appear to meet all minimum setback regulations of the C-1 District. Front setback is set as 40', side setback is set as 10', and rear setback is 25'.
5. Art. IX, Sec. 4 (4) refers to improvement of a C-1-zoned parcel with single-family dwellings, and is not pertinent to this evaluation.
6. Art. IX, Sec. 5 (1) refers to off street parking and loading spaces, this structure is unmanned and not for human habitation, and is not required to meet handicap access requirements.
7. Art. IX, Sec. 5 (2) refers to parking for shopping centers, plazas and office complexes with two or more tenants, and is not pertinent to this evaluation.
8. Art. IX, Sec. 6 is not applicable to this petition as no roadway under the jurisdiction of the Missouri Department of Transportation (MoDOT) is being affected.
9. Art. IX, Sec. 7 is not applicable to this petition as the proposed construction will not result in any curb cuts, is not regulated by ADA compliance, and is not expected to create any negative traffic impact.

Zoning Ordinance Requirements/SUE Regulations

Appendix A, Article XIV

1. **(1) Yard Requirements:** All minimum yard requirements of the C-1 District appear to have been met with this petition.
2. **(2) Site Illumination:** No site illumination is proposed in association with this petition.
3. **(3) Landscaping/ (4) Fencing:** The petitioner proposes Simtek fencing around the proposed compound. There are some existing trees along Kehrs Mill Rd. that provide additional screening from the roadway.
4. **(5) Parking:** No dedicated parking spaces are required for the proposed facilities. The existing parking lot is adequate to accommodate the occasional service vehicle.
5. **(6) Paving:** Site access is proposed across the existing paved park driveway and parking lot. No change to these facilities is foreseen as being necessary to accommodate the proposed tower and enclosure. Please note the comment under engineering concerns below relative to the impact on the pavement.
6. **(7) Sewers:** These proposed improvements do not require sanitary sewer or storm water facilities. The proposed construction would have no impact on storm water runoff or sanitary sewer needs.
7. **(8) Loading Facilities:** No loading facilities are required for a facility of this nature.
8. **(9) Ingress/Egress:** Access to the facility from Clayton Rd. is proposed to be accomplished via a 20' wide access easement (#1) from Clayton Rd into Claymont Center, continuing into a 12' to 20' wide access easement (#2) along the southern edge of 15407 Clayton Rd, leading to a 10' wide walking path easement leading into the equipment compound.
9. **(10) Required area for the intended use:** Given the nominal impact of the proposed facilities, I do not foresee any issues with there being inadequate area for the intended use.
10. **(11) Dead storage of automobiles:** there has been no history of this as an issue on these kinds of sites, and I foresee no reason to expect this installation to create such a problem. There are other regulations in place that can be used to address this issue if it occurs.
11. **(12) Trash containers:** Insofar as this site operates without personnel most of the time there is no need for permanent trash containers to be placed on site.

Zoning Ordinance Requirements/Height and Area Regulations (Article XVI)

1. **Section 4 (A) (1-6):** These subsections deal with locating and erecting satellite earth stations and are not applicable to this review.
2. **Section 4 (B):** This subsection addresses tall structures such as church spires, towers, chimneys, etc, and allows such structures to be erected in excess of the height limitations of the zoning district by special use exception. This petition was partially submitted in accordance with this requirement, but this section contains no special design or operational requirements or limitations pursuant to the issuance of a SUE for such structures.

Communications Facilities Ordinance Requirements (Chapter 7.6)

Section 7.6-1. Purpose

This section explains that the purpose of this chapter of the Ballwin Code of Ordinances is to:

1. Provide for appropriate locations and development of communications facilities serving the city.
2. Minimize adverse visual impacts of facility installations through careful siting, design, screening and camouflaging techniques.
3. Maximize the use of existing support structures to minimize the need for additional facilities.
4. Maximize the use of disguised support structures to insure architectural integrity of the area and scenic quality of protected natural habitats.

The reviewer should use these purposes as a basis and filter for the review of the issues associated with this petition for a communications tower.

Section 7.6-3 General Requirements

All support structures and antenna are required to comply with all provisions of this section.

- (a). *Principal or Incidental Use:* Per this subsection, a support structure is an incidental use because the principal uses in the C-1 District are non-residential.
- (b). *Building Code and Safety Standards:* Compliance with all locally applicable construction code requirements will be reviewed as a part of the building permit review.
- (c). *Regulatory Compliance:* The facility is required to meet all applicable FCC, FAA and other federal and state regulations. As a matter of standard practice, proof of the issuance of all required state and federal permits is required prior to the issuance of any construction permits by Ballwin.
- (e). *Lighting:* Other than illumination for purposes of servicing the equipment, no lighting of the tower or compound is proposed.
- (f). *Advertising:* No advertising is proposed for this facility.
- (g). *Design:*
 - (1 - 3): *Finishing:* These subsections deal with the exterior finishing proposed on the telecommunication tower. The structure is proposed as a galvanized steel monopole-style structure.
 - (4) *Landscaping:* This subsection requires that there shall be a landscaped area outside of the security enclosure of no less than 10' in width planted with materials that will provide a visual barrier to a minimum height of 6'. As discussed in the special use exception regulations, no landscaping is proposed in the submitted plan.

This section allows the Board of Aldermen the alternative of accepting a decorative wall in lieu of the landscaping screen. A Simtek wall has been proposed as a security enclosure for the equipment compound. No detail, however, has been provided as to how the wall will match the area architecture. I recommend the use of the Simtek wall as aesthetically and functionally superior to a chain link fence.

- (5) *Residential Separation*: The code requires that all towers be separated from any off-site single family or multifamily residential structure a distance equal to the height of the tower plus ten (10) feet. The existing tower appears to meet this requirement.
- (6) *Ground anchors*: This structure does not require a guyed support structure, as such, this subsection is not applicable.
- (7) *Vehicle or Outdoor Storage*: Any vehicle or outdoor storage at this site will be prohibited.
- (8) *On-site Parking*: Currently, this parcel has extremely minimal parking available and no current tenant, as Froesel Oil Co. was recently bought out. It is the prerogative of the Board of Aldermen to designate necessity of on-site parking in the case of a special use exception for wireless facilities and support structures.
- (9) *Underground Wiring*: All wiring to or from wireless facilities located more than five feet from the nearest building wall shall be underground.

7.6-6 Special Use Exception Required:

“The applicant shall provide an analysis to demonstrate that no existing towers, structures or buildings within the necessary geographic area for the applicant's tower meet the applicant's necessary engineering requirements considering: (1) height; (2) structural strength; (3) resulting signal interference; (4) feasibility of retrofitting; (5) feasibility of redesigning the applicant's tower network; or (6) other limiting conditions that render existing towers, structures or buildings within the applicant's required geographic area unsuitable.”

Following the requirement of the aforementioned analysis, I reached out to Mr. Schlichter to request such an analysis. His response, in which he claimed that we could not request such an analysis, referenced the Missouri Senate Bill 650, the summary of which states:

SS/SCS/SB 650 - This act modifies the Uniform Wireless Communications Infrastructure Deployment Act. This act adds broadcast and radio based communications to the Uniform Wireless Communications Infrastructure Deployment Act. This act also modifies the definitions of collocation and substantial modification.

Currently, an authority is not allowed to take certain actions against a wireless communications service provider as set forth in this act. This act requires that for collocation to any certified historic structure, there shall be a 30 day time period before approval of the application, during which public hearing shall be conducted. This act also adds that an authority shall not establish or enforce regulations or procedures for environmental safety inconsistent with a certain bulletin.

Currently, parties aggrieved by the final action of an authority either by application denial or inaction for a new wireless structure, substantial modification of a wireless structure, or collocation may bring an action for review in any court of competent jurisdiction. This act requires that the court be in this state. Further, this act currently requires that an authority perform certain actions relating to an application for substantial modification of a wireless support structure within 90 days. This act extends this to 120 days.

Currently, if a wireless infrastructure provider and an authority disagree on the rental, license, or other fee for locating a wireless support structure on the authority's property, the market rate shall be determined by a panel of three appraisers. This act instead requires that the market rate be determined by a state-certified general real estate appraiser mutually agreed upon by the party's at the applicant's cost. If either party is dissatisfied with the market value determined by the appraiser, such party may bring an action for review in any court of competent jurisdiction, at which the court shall rule on in an expedited manner.

Following the discussion between myself and Mr. Schlichter, I reached out to City Attorney Robert E. Jones and he concurred that given the vocabulary in SB 650, we do not have grounds to request any such analysis for evaluation. Given that the last amendment to the Chapter in question was prior to SB 650's effective date, it may behoove the City of Ballwin to take into consideration altering the language in this subsection in the future.

Shawn Edghill
Planning Technician