

SPECIAL USE EXCEPTION REVIEW REPORT

Petition Number: SUE 11-05 (2)

Petitioner: Melanie Parrott for AT&T
30150 Telegraph Rd. Suite 355
Bingham Farms, MI 48205
913-458-6778

Agent/Engineer: None

Project Name: New Ballwin Park Cell Tower

Filing Date: 9/27/11

Review Report Date: 10/4/11, 11/21/11

Submission Compliance Certification Date: 10/4/11, 11/21/11

Requested Action: Special Use Exception Site Plan Amendment

Purpose: Communications Tower Antenna Replacement

Code Section Article XIV Sec. 1 (15)
Article XVI, Sec. 4 (B)
Chapter 7.6, Sec. 7.6 - 3 & 4

Location: 315 New Ballwin Rd. in New Ballwin Park

Existing Zoning/Land Use: PA / Public Park

Surrounding Zoning/Land Uses: North – R-2 / Single Family
South – R-3 / Single Family
East – R-3 / Single Family
West – R-3 / Single Family

Plan Designation: Active Recreation

Project Description:

Melanie Parrott of Black and Veatch, an engineering firm that is working as AT&T's agent, has submitted an amendment to the original petition submitted on 9/27/11. The original petition proposed to amend the provisions of Ordinance 2660, which granted AT&T a special use exception to erect a 50' tall cellular utility tower in New Ballwin Park in 1997. The

tower is a stealth monopole design disguised as a flagpole. The pole has interior mounted antennas and equipment mounted inside a structure that was built as an addition to the restroom facility near the base of the tower. The original petition proposed to amend the design of the tower by replacing the top 18' with a redesigned antenna enclosure that will accommodate new antennas, but will substantially change the outward appearance of the tower. Presently this top part of the tower is 18" in diameter. The proposed new top portion of the tower was to be 32" in diameter to accommodate the larger antennas. The tower was not to be made taller and the new equipment required to operate the new antennas will be installed within the existing equipment building. **The amended petition proposes to expand the entire tower to 32" in diameter from the base to the top.** No change to the ground lease will be necessary to accommodate this change. The language of the lease and the applicable Ballwin regulations appear to allow AT&T to replace and upgrade equipment and antennas within the leasehold area without zoning approval. However, the special use exception that authorized the erection of a utility and a structure taller than is otherwise allowed by the PA zoning specified the tower's design and silhouette, so an amendment to the SUE is needed to allow the redesign of the tower.

Planning and Plan Review Considerations:

The existing site development plan was approved per Ordinance 2660 and is still applicable and being utilized at this site. Communications tower approvals in city-owned parks involve issues and regulations in the PA Public Activity zoning district, the Height and Area regulations of the zoning ordinance and Chapter 7.6 Communications Facilities of the Ballwin Code of Ordinances. All of these regulations were considered and utilized as was appropriate during the review of the original plan. Since the proposed amendment to the site development plan could potentially touch on provisions of all of these regulations, they must again be reviewed for applicability as a part of the consideration of this proposed change to the approved site development plan for this communications facility in New Ballwin Park.

Zoning Ordinance Requirements / PA District (Article VIII A):

1. **Section 1. Generally:** This section is not applicable to this review.
2. **Section 2. (1 - 4) Use Regulations:** These subsections are not applicable to this review.
3. **Section 2. (5) Use Regulations:** Public utilities and services including easements are allowed by special use exception in the PA district "provided that the exterior appearance of any building so permitted shall be in keeping with the character of the neighborhood in which it is located". Since no changes to the ground-mounted equipment or buildings are proposed, this section only appears to apply to the tower itself under this petition.

This petition proposes to sheath the 50' tall tower with an outer skin that creates a wider diameter. The present tower is 18" in diameter. The proposed replacement will be 32" in diameter. The photograph submitted with the petition shows the impact of the change, but I believe the submitted drawings give a superior representation of the change in the look of the tower. The submittal shows that the structure will continue to be used a flagpole. It was a nontraditional flagpole when approved in 1997. It will be a very nontraditional flagpole if modified as proposed in this petition.

The original petition acknowledged that flagpoles are common structures in municipal parks and that the structure that was approved was much larger in diameter than a conventional flagpole of equivalent height would commonly be, but it also accepted that the design of that structure was sufficiently similar to a conventional flagpole to be considered as being in keeping with the character of the neighborhood and the concept of stealth design. The design of the structure proposed in this petition is an extension of that original concept. This proposal is to expand the diameter of the entire 50' tall pole. The question raised in the initial petition review report is still appropriate. Can this much larger structure still be considered a flagpole, to have stealth design and to be in keeping with the character of the surrounding neighborhood?

My perspective regarding the first alternative tower design was that it could not reasonably be considered a flagpole. It was too far removed in form and silhouette from a conventional flagpole to be considered one. In my view the proposed structure was little more than an odd looking cell tower with a flag attached to it. Cell towers that are larger at the top and bottom than they are in the middle are rare structures in this area.

In the original report I suggested that perhaps it would be more appropriate, from a neighborhood character perspective, to replace the existing tower with a new unit that is more uniform in diameter and more traditional in silhouette and appearance than what was being proposed. I anticipated that such a tower would still be a "fat" flagpole, (probably much fatter than the one that was presently on the site), but I also anticipated that it would be taller than the present facility with proportions, more akin to that of a traditional flagpole. It was my belief that such an alternative design would be more in keeping with the flagpole approved as a part of the original petition (1997) than what had been proposed in the first amending petition. The revised petition proposes a structure that is 32" in diameter throughout its entire height, but it is no taller than the existing structure. This creates a structure that hardly resembles a flagpole. Its proportions are distinctly different than a typical flagpole or the flagpole approved per ordinance 2660 in 1997.

4. Section 3. Height Regulations: No change to the height of the tower is proposed per this petition, so the provisions of this section do not apply. The 35' structure height limitation of this subsection was amended to allow the original 50' tower height of the 1997

petition. The proposed tower is in compliance with that petition.

5. **Section 4. Area Regulations:** The footprint and locations of the proposed facilities will not change, so the provisions of this section do not apply to this petition. **It will be necessary to amend the SUE per this section because the proposed structure is significantly different than the flagpole approved in ordinance 2660.**

Zoning Ordinance Requirements / SUE Regulations (Article XIV):

1. **Section 2 (1)** Yard Requirements: All minimum yard requirements of the PA District appear to have been met with this petition.

2. **Section 2 (2)** Site Illumination: No change to the site illumination is proposed so the provisions of this section do not apply.

3. **Section 2 (3)** Landscaping: No change to the landscaping is proposed so the provisions of this section do not apply to this petition.

4. **Section 2 (4)** Fencing: There is no fencing involved with the facility and that status is not proposed to be changed with this petition.

5. **Section 2 (5)** Parking: No dedicated parking spaces are in place for this facility and none are proposed.

6. **Section 2 (6)** Paving: No changes to the existing paving on this site are proposed as a part of this petition.

7. **Section 2 (7)** Sewers: Sewers are not an issue for the existing or proposed facilities.

8. **Section 2 (8)** Loading Facilities: No loading facilities are required or proposed for a facility of this nature.

9. **Section 2 (9)** Ingress/Egress: No changes to the existing ingress/egress facilities are proposed as a part of this petition.

10. **Section 2 (10)** Required area for the intended use: Given the nominal impact of the proposed facilities on the land, and the relatively small amount of land needed for the proposed improvements, I do not foresee issues supporting an argument that there is inadequate land for the intended use.

11. **Section 2 (11)** Dead storage of automobiles: There has been no history of this as an issue on this site, and no reason is foreseen to expect this new installation to create such

a problem.

12. **Section 2 (12)** Trash containers: Insofar as this site operates without personnel most of the time, there is no need for permanent trash containers in conjunction with this proposed facility.

13. **Section 4 (7)** This subsection discusses the eight findings that the Board of Aldermen have to make in order for a special use exception to be approved. The following three of these eight findings seem to be particularly applicable to this petition.

a. Not directly applicable to this petition

b. Will (the proposed special use exception) adversely affect the character of the neighborhood? **The park in which this tower is located is in a residential neighborhood and surrounded on three of its four sides by single family residential uses. The proposed tower is located in the highest part of the park and near the heavily traveled New Ballwin Rd. This location makes the tower particularly visible to the surrounding residences and the driving public. This location also makes this an ideal location for a cellular tower. In Ballwin, single family residential neighborhoods are characterized by one and two story structures that are rarely taller than 30'. Most utilities are installed underground. The tallest features in such neighborhoods are typically mature trees. The 50' tall tower that was originally approved in the park was a substantial departure from the height and bulk of structures and features in this Ballwin residential neighborhood. The City chose to allow the tower as proposed because federal laws make it virtually impossible for Ballwin to deny the tower; the petitioner demonstrated that this was a logical and necessary location for a tower from the perspective of its system and the petitioner attempted to blend the tower into the character of the neighborhood by disguising it as a flagpole and holding it away from close proximity to residential properties.**

The tower proposed in this amended petition is dramatically different in character from the original tower approved in ordinance 2660 in 1997. It is still 50' tall, and will have a flag attached, but it really does not resemble a flagpole very much. It more closely resembles a standpipe type water tower with a flag on it. These types of water towers are not common in the Ballwin area, but are frequently seen in lower volume water districts or districts that cover a large area and need pressure boosts in certain areas. The question seems to be whether this style of tower blends better with the character of this neighborhood than does the previously submitted design (SUE11-05).

Is it possible that the structure has now grown to the point that it would be better to accept that it is a cellular tower and not stealth tower disguised as a flagpole? Perhaps the flag should be removed and the tower simply utilized as feature in its own right. A similarly configured (although thinner in profile) tower has been in

place in Ellisville for many years behind the Bradford Hills plaza adjacent to St. John Church at the southeast corner of Manchester and Clarkson roads.

c - e. Not directly applicable to this petition

f. Is (the proposed special use exception) consistent with good planning practice? **The approval of the original tower in 1997 establishes that allowing stealth cellular towers disguised as “fat” flagpoles in single family residential neighborhoods is considered good planning practice. The question that is raised with this amended petition is related to whether the structure’s substantially altered design would still be considered good planning practice. There are no similarly configured structures that have been permitted in this area that could serve as a model.**

g. Not directly applicable to this petition.

h. Can (the proposed special use exception) be developed and operated in a manner that is visually compatible with the permitted uses in the surrounding area? **The issues in this subsection are similar to those of subsections “b” and “f” above. In this situation neighborhood character, visual compatibility and good planning are very closely related. As proposed, this second alternative is less atypical than the previous proposal, but is still dramatically different from the tower approved via ordinance 2026 in 1997.**

I am unaware of any cellular tower in the Ballwin area that is similarly configured. Due to the exceptional height and location of this structure, its visibility from the surrounding neighborhood and its proposed form, I believe that a reasonable individual might conclude that the proposed tower is so different from what is commonly seen in the Ballwin area that it cannot be characterized as visually compatible with the permitted uses (single family) in the surrounding area. On the other hand, one might also conclude that the proposed tower is not so different from what had originally been approved that the difference is outside of the scope of reasonable given all of the tangent issues discussed in this report. There are certainly elements supporting both sides of this debate and the matter is fairly debatable.

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

1. **Section 1 -3 and 5 – 30:** These sections are not applicable to this petition.
2. **Section 4 (A) (1-6):** These subsections deal with locating and erecting satellite earth stations and are not applicable to this review.
3. **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. The original petition was submitted and approved in its current form in accordance with these requirements. The proposed change does not appear to deviate from the original petition as it relates to the requirements of this subsection.

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 petition 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 7.6-2 Definitions

The original petition considered the tower structure a “disguised support structure” (DSS) as defined in this section. The definition requires a DSS to be “...camouflaged or concealed as an architectural or natural feature. Such structures may include but are not limited to clock towers, campaniles, observation towers, pylon signs, water towers, light standards, flag poles and artificial trees”.

The original structure was considered a disguised support structure (flagpole) under the provisions of Ordinance 2660. That structure had a base that was approximately 28” in diameter. It tapered to 18” in diameter at the 32’ height level. From that point to the 50’ height level it was a vertical 18” diameter cylinder. As discussed earlier in this report, the petition proposes to modify the entire structure by increasing its diameter to 32” throughout the entire 50’ of its height. The new structure will be a 50’ tall cylinder that is 32” in diameter. The modifications will result in a structure that is dramatically larger in diameter and therefore much more visible than a conventional flagpole and a significant departure from the flagpole approved by

ordinance 2026 in 1997.

Although not as unusual in silhouette as the originally proposed structure, one still has to question whether this remodeled structure even superficially resembles a flagpole and can still be considered a disguised support structure as it was in ordinance 2660. The change in design may change the classification of this structure from “disguised support structure” to “tower” and make it subject to ordinance requirements that only apply to towers.

Section 7.6-3 General Requirements

All antennas and support structures of all kinds 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 PA District are non-residential.
- (b). *Building Code and Safety Standards:* Compliance with all locally applicable construction code requirements will be required and reviewed as a part of the building permit review procedure.
- (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 any required state and federal permits is required prior to the issuance of any construction permits by Ballwin.
- (d). *Security:* Site security should not change as a result of the proposed modifications to this structure.
- (e). *Lighting:* No change to the illumination is proposed pursuant to the modifications to the structure.
- (f). *Advertising:* No advertising is proposed for this facility.
- (g). *Design:*
 - (1 - 3) *Color:* These three subsections address the issue of color. No change to the color of the structure is proposed.
 - (4) *Landscaping:* No changes to the landscaping are proposed.
 - (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. No change to the height of the tower or the setback from nearby residential properties is proposed.

(6) *Ground anchors*: This section does not apply to this petition.

(7) *Vehicle storage*: This subsection prohibits vehicle storage and outdoor storage in conjunction with a structure. No such storage is proposed with this petition.

(8) *Parking*: No change to the maintenance parking is proposed pursuant to this petition.

(h). *Shared Use*:

(1) This subsection deals with alterations and modifications to facilities existing on the date of adoption or ordinance 2590 in 1997. The subject of this petition is not old enough to be covered by the provisions of this subsection.

(2) This subsection stipulates that prior to the issuance of any permit to install, build or modify any tower, the tower owner shall furnish an inventory of all towers in or within ½ mile of Ballwin and an agreement, if applicable, to the shared use of such facilities. **As outlined in the discussion of subsection 7.6-2 this proposed change to this structure changes its classification from disguised support structure to tower. That change subsequently triggers this provision of the ordinance. No such study has been provided. There is a question as to whether such a study is salient to this petition given the very local impact of the tower's design and service radius.**

(3) This subsection deals with towers in excess of 100 feet and is not applicable to this petition.

(4) This subsection deals with new tower petitions and is not applicable to this petition.

7.6-4 Permitted Use: This subsection states that upon receipt of the appropriate building permit the following are allowed:

1. **(A)** This subsection addresses the attachment of antennas to any tower existing on the effective day of the adoption of this section (4/97). The tower involved in this petition was erected after that date, so the subsection does not apply.

2. **(B)** This subsection addresses the attachment of antennas to buildings and structures such as water towers provided that the antennas are allowed. This subsection does not apply to this petition because the new antennas are being mounted to a tower on public property and that situation is addressed in subsection (C) below.

3. **(C)** This subsection appears to allow the attachment of antennas to existing towers on land owned by the city following the approval of a lease agreement without the need for a public comment process. **Although this section may allow the issuance of a building permit for the new antennas without the necessity of a public hearing, it does not allow amendments to the structure. Additionally, Article XIV of the zoning ordinance required a special use exception for the tower due to its height and Article VIII A**

required a special use exception for the public utility use in the PA district. This petition is an amendment to the site development plan approved per these zoning ordinance sections and must follow the SUE procedure. The public hearing waiver that appears to be granted by section only applies to Section 7.6-6 of Chapter 7.6, of the Ballwin Code of Ordinances and does not apply to the requirements of the zoning ordinance.

4. **(D)** This subsection only applies to facilities erected on state or federally owned land and does not apply to this petition.

7.6-5 (A-G) Administrative Permit Required:

This part of chapter 7.6 establishes criteria and a process for the issuance of administrative permits for communications towers. The administrative permit review process assures that the criteria for tower construction and operation outlined in Section 7.6-3 is addressed if the facilities can be erected pursuant to Section 7.6-4.

All of the subsections A -G deal with specific sets of circumstances that are outside the parameters of this petition, and therefore **this section does not apply to this petition.**

7.6-6 Special Use Exception Required:

The zoning ordinance required a special use exception for this use when the tower was originally erected. This petition is for an amendment to the site plan approved pursuant to that petition. This tower did not originally require an SUE pursuant to this subsection and **this amending petition does not require review or approval per this section.**

Thomas H. Aiken, AICP
Assistant City Administrator / City Planner