

MEMPHIS AND SHELBY COUNTY OFFICE OF PLANNING AND DEVELOPMENT

ADDENDUM

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CASE NUMBER: SUP 11-210 **L.U.C.B. MEETING:** August 11, 2011

LOCATION: West side of Haynes Street; +/-404 feet south of Park Avenue

OWNER OF RECORD/APPLICANT: TV Signal Source Towers, LLC

REPRESENTATIVE: Solomito Land Planning, Brenda Solomito

REQUEST: Cellular Tower

AREA: .08 Acres

EXISTING LAND USE & ZONING: Commercial Mixed Use-2 (CMU-2) District

OFFICE OF PLANNING AND DEVELOPMENT RECOMMENDATION
Approval with Conditions

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CONCLUSIONS

This application involves the development of a Cellular Tower. The current zoning of the site is CMU-2 which allows a cell tower with Special Use Permit approval. The overall parcel is approximately 7.47 acres while the cell tower requires only a small portion of the land area, approximately 3,600 square feet or .08 acres. The case was heard by the LUCB on July 14, 2011, at the meeting there were several community members who expressed opposition. Considering the opposition the Board voted to hold the case for 30 days to allow an opportunity for the applicant and those in opposition to discuss the project and related concerns. Many of the concerns of the community were based on the incompatibility of the proposed 140-150 foot tower to the surrounding single family homes and its proximity to Melrose High School, a focus of pride and a meaningful component of the Historic Orange Mound Community. The applicant forwarded invitations exceeding the 500 ft. required public notification boundary outlining a time and place at which they would present their plan and answer any questions. There were approximately 20-30 people in attendance at the Orange Mound Community Center and the comments and concerns were bifurcated some were in support of the project, citing their personal experiences of less than acceptable cellular telephone services within the area.

There were also some attendees that commented that they were not convinced that there was a true need for services requiring an additional tower and that the current location was unacceptable. They considered the tower too close to single family homes and also considered the plan inconsistent with the character and theme of the residential area. Additionally, there were some concerns in regard to health issues associated with cell tower and cellular communication equipment. These comments were noted and taken under serious consideration; however, identifying credible documentation supporting these claims was difficult. As a result it was not feasible to base our recommendation in regard to the case on these issues.

CONCLUSIONS CONTINUED

The Federal Telecommunications Act of 1996 provides limitations to the discretion local jurisdictions may exercise in their regulation of the construction and placement of wireless facilities. Essentially, a local zoning authority may deny a request for a cell tower, but its decision must be supported by “substantial evidence.” The Act goes further in prohibiting the local zoning authority from regulating cell towers on the basis of any “environmental effects of radio frequency emissions” so long as the cell tower complies with the emissions standards as set out by the Federal Communications Commission (47 U.S.C. Sec. 332 (c)(7)(B)(iii) and (iv)).

The United States Court of Appeals, Sixth Circuit, which has appellate jurisdiction over Tennessee, has stated that “few generalized expressions of concern with aesthetics cannot serve as substantial evidence on which [a local zoning authority] could base the denials” (New Par v. City of Saginaw, 301 F.3d 390, 398 (2002) quoting Cellular Tel. Co. v Town of Oyster Bay, 166 F.3d at 490, 496 (2d Cir. 1999)).

Based on this threshold, staff recommends approval of the request for a Special Use Permit for this wireless facility since no substantial evidence has been presented that would indicate that the requirements for a Special Use Permit, as found in UDC Section 9.6.9 will not be met.”

Initially, the Office of Planning and Development recommended rejection of this case because of the selected location “within” the approximately 7.5 acre site. We felt that we were justified in our conclusion that the cell tower site was too close to residences and imposed a negative effect on the nearby residences by way of its use and character. We also felt that there was the potential that this project could impose undue adverse effects upon the surrounding community primarily due to the original placement of the tower.

Since the meeting of the Board on July 14, 2011 the applicant has agreed to locate the cellular tower in a location that is closer to more compatible structures and uses while being further away from single family homes. The applicant has also agreed to erect a flag pole designed cell tower. Considering both of these adjustments to the original site plan we feel that this case should be approved with conditions.

Site Plan Conditions

1. The site plan shall illustrate details of the cellular tower site enclosure. These details shall specify material type and dimensions.
2. A flagpole design shall be erected at the proposed cellular tower site
3. All landscaping and screening shall be subject to final review and approval by the Office of Planning & Development.
4. All landscaping and screening shall be installed prior to launch and operation of the tower equipment. Required landscaping shall not be placed on or over any sewer or drainage easements or under any utility easement.
5. Site access shall be from Pendleton Street and shall meet the requirements of the City Engineer.

Revised Aerial

