



MEMORANDUM

DATE: DECEMBER 16, 2024
TO: ZONING ADMINISTRATOR
FROM: ROB FITZSIMMONS, PLANNER II
SUBJECT: RESPONSE TO APPLICANT'S OBJECTIONS TO RECOMMENDED CONDITIONS OF APPROVAL FOR AP_2025-0032

On December 12, 2025, Paul B. Albritton submitted comment on behalf of the applicant, requesting revisions to the recommended Conditions of Approval for AP_2025-0032. Staff has reviewed these comments and has prepared this memo in response, recommending the modification or removal of several of the previously recommended conditions.

Staff wish to highlight that the applicant's arguments hinge on the understanding that the project in total qualifies as an Eligible Facilities Request. As discussed in the Staff Report, the materials provided by the applicant do not demonstrate this. The temporary ground equipment proposed may exceed *"the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets... [or] are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure."* However, as the potential Conditions discussed below do not directly relate to that component, and the remainder of the project, including all permanent components, fall within the bounds of an Eligible Facilities Request, Staff accept the Eligible Facilities Request framework for evaluating conditions for the purpose of this memo.

The Conditions of Approval Staff recommend removing or modifying as follows:

- 1. Exterior surfaces of structures and equipment shall have subdued colors and non-reflective materials selected to blend with their surroundings. Color(s) shall be reviewed by the Department of Planning and Building Services for approval prior to issuance of a building permit.***

Prior to issuance of a building permit, the applicant shall provide samples of colors to be used to the Department of Planning and Building Services for approval along with a statement that exterior surface of structure and equipment will be made of non-reflective materials. Department of Planning and Building Services planning staff will verify compliance with this condition prior to final of any building permit.

- 4. An evaluation of the facility's stealth capability shall be submitted for review and approval by the Department of Planning and Building Services within one year of issuance of this Administrative Permit. The report shall assess surrounding vegetation growth, including height and density in the vicinity, and a color assessment to assess fading of material. Replacement or remediation of the wireless facility shall be performed by the applicant if required by the Department of Planning and Building Services.***

The applicant shall submit an evaluation of the facility as described above. Department of Planning and Building Services planning staff shall notify the applicant if any replacement or remediation of the wireless facility is necessary. The applicant should anticipate the Department's expectation to complete identified work within 90 days of being notified by the Department. Failure to complete work may be grounds for revocation of this permit.

These Conditions were brought forward from the underlying Use Permit for the facility, U_2015-0016 (with a modification to the compliance timeline, in the case of Condition 4). These Conditions were required in order to limit the potential aesthetic

impacts of the facility, but it appears they were never complied with. Failure to comply with the Conditions of Approval of a Use Permit renders it subject to revocation. Action on the requested Administrative Permit would not affect this, but Staff do note that Code Enforcement has not received a complaint regarding this site.

The applicant has asserted that imposing these conditions on this Administrative Permit is unlawful, as they are *“unrelated to current health or safety codes are preempted by FCC regulations, and cannot apply to Verizon Wireless’s eligible facilities requests.”* This is a reference to the FCC’s 2014 Infrastructure Order, FCC 14-153, which states in part *“that States and localities may continue to enforce and condition approval on compliance with generally applicable building, structural, electrical, and safety codes and with other laws codifying objective standards reasonably related to health and safety.”* Staff does not accept the supposition that these are the *only* bases upon which approval of Eligible Facilities Requests may be conditioned by the local jurisdiction. One of the determinants of whether a project qualifies as an Eligible Facilities Request is that it does not *defeat the concealment elements of the eligible support structure* (47 CFR § 1.6100(b)(7)(v)). Given this, it is reasonable to assume that any conditions necessary to maintain concealment elements of the support structure may be made conditions of approval for an Eligible Facilities Request, regardless of whether they are tied to a specific Health or Safety code.

In this case, Staff accepts that the current support structure lacks any concealment elements within the meaning of 47 CFR § 1.6100. However, it appears this is not because the County never required such elements, but rather because the property owner and the applicant of U_2015-0016 never fully complied with the conditions imposed under that permit.

Given the applicant’s objection and the fact that no complaint has yet been received on the site, Staff do not object to removing the above Conditions from the recommended resolution approving this Administrative Permit, with the understanding that in doing so the County has not waived its ability to pursue Code Enforcement action on noncompliance issues with the underlying Use Permit U_2015-0016.

12. The facility shall provide if requested, space for any public emergency service provider to locate communication equipment on the tower, provided no interference to function will result at a minimum or no fee.

Condition 12 was brought forward from U_2015-0016. It is not immediately clear that this is tied to *“generally applicable building, structural, electrical, and safety codes and with other laws codifying objective standards reasonably related to health and safety.”* Without a clear connection to such a regulation, Staff recommend removing this condition.

23. This permit is issued without a legal determination having been made upon the number, size or shape of parcels encompassed within the permit boundaries. Should, at any time, a legal determination be made that the number, size or shape of parcels within the permit boundaries are different than that which is legally required by this permit, this permit shall become null and void.

Condition 23 is a standard condition that is generally included on any discretionary permit issued by the County. Given the applicant’s opposition and the limits of Conditions of Approval on Eligible Facilities Requests, Staff have no objection to removing the second sentence. Staff understands that even without this language, this permit would still be subject to revocation if the boundaries shown on the materials submitted are incorrect. Approval of this permit does not authorize trespass onto property owned by parties not listed on the application materials.

24. U_2015-0016 was issued for a period of ten years, and shall expire on January 21, 2026. AP_2025-0032 does not constitute a renewal of U_2015-0016. The applicant has the sole responsibility for renewing U_2015-0016 before the expiration date. The renewal of U_2015-0016 must incorporate the modifications of AP_2025-0032 and thus supersede AP_2025-0032.

Condition 24 was included in the recommended resolution simply as an explanatory measure to clarify the limits of the requested Administrative Permit. Removal of this condition does not change the expiration deadline of the underlying Use Permit U_2015-0016. Therefore, if the applicant would be more comfortable with this language being removed from the Conditions of Approval for AP+2025-0032, Staff have no objection.

26. Future modifications shall be considered cumulatively with the modifications approved under AP_2025-0032 to determine if request constitutes a “substantial change” to the facility under applicable federal law, unless Federal regulations impose an alternative method of determining a substantial change.

Condition 26 was an attempt to provide an informational condition emphasizing that modifications to the tower increasing the height and width are considered cumulatively in determining whether projects constitute Eligible Facilities Requests under the Federal statute and guidance. As these standards are ultimately deferred to the Federal government anyway, Staff have no objection to removing this condition.