

PLANNING COMMISSION

Meeting Agenda

Monday, September 9, 2019

7:00 PM

City Council Chambers – 222 NE 2nd Avenue

Commissioner John Savory (Chair)

Commissioner Larry Boatright (Vice Chair)

Commissioner Derrick Mottern

Commissioner Derrick Mottern

Commissioner Ryan Adams

Commissioner Andrey Chernishov

Commissioner Jennifer Trundy

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1. **CALL TO ORDER**
 - a. Invocation and Pledge of Allegiance

 2. **CITIZEN INPUT ON NON-AGENDA ITEMS**

(This is an opportunity for audience members to address the Planning Commission on items not on the agenda. Each person will be given 3 minutes to speak. You are first required to fill out a testimony/comment card prior to speaking and hand it to the Recording Secretary. These forms are available by the sign-in podium. Staff and the Planning Commission will make every effort to respond to questions raised during citizen input before tonight's meeting ends or as quickly as possible thereafter.)

 3. **MINUTES**
 - a. Approval of Planning Commission Minutes for August 26, 2019.

 4. **NEW BUSINESS – None**

 5. **PUBLIC HEARING – None**

 6. **FINAL DECISIONS -**

(Note: These are final, written versions of previous oral decisions. No public testimony.)

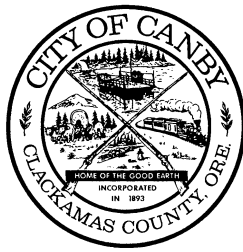
 - a. **City File# DR 19-01/CUP 19-01/VAR 19-02 Monopole Cell Tower**

 7. **ITEMS OF INTEREST/REPORT FROM PLANNING STAFF**
 - a. Next regularly scheduled Planning Commission meeting – Monday, September 23, 2019 to be cancelled because there are no land use items to review.

 8. **ITEMS OF INTEREST/GUIDANCE FROM PLANNING COMMISSION**

 9. **ADJOURNMENT**

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for person with disabilities should be made at least 48 hours before the meeting at 503-266-7001. A copy of this agenda can be found on the City's web page at www.canbyoregon.gov. City Council and Planning Commission Meetings are broadcast live and can be viewed on OCTS Channel 5. For a schedule of the playback times, please call 503-263-6287.



**BEFORE THE PLANNING COMMISSION
OF THE CITY OF CANBY**

A REQUEST FOR SITE AND DESIGN REVIEW, CONDITIONAL USE PERMIT, & MAJOR VARIANCE AT&T WIRELESS COMMUNICATIONS FACILITY)	FINDINGS, CONCLUSION & FINAL ORDER DR 19-01/CUP 19-01/VAR 19-02 NEW CINGULAR WIRELESS PCS, LLC (AT&T)
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NATURE OF THE APPLICATION

The Applicant has sought approval for Site and Design Review (**DR 19-01**), Conditional Use Permit (**CUP 19-01**), and Major Variance (**VAR 19-02**) applications to construct a 130-foot-tall stealth “monopole” telecommunications tower with antennas that would provide wireless telephone and data service to the general vicinity. The facility would be designed to resemble a fir tree. The subject property is located at 640 SW 2nd Avenue and is described as Tax Map/Lot 31E33CC06500, Clackamas County, Oregon. The property is zoned Heavy Commercial Manufacturing (C-M) under the Canby Municipal Code (CMC).

HEARINGS

The Planning Commission considered applications **DR 19-01**, **CUP 19-01**, and **VAR 19-02** at the duly noticed hearing on August 26, 2019 during which the Planning Commission denied by a 5-2 vote **AT&T Wireless Communications Facility (DR 19-01/CUP 19-01/VAR 19-02)**. These Findings are entered to document the denial.

CRITERIA AND STANDARDS

In judging whether or not the aforementioned applications shall be approved, the Planning Commission determines whether criteria from the City of Canby Land Development and Planning Ordinance are met, or can be met by observance of conditions. Applicable code criteria and standards were reviewed in the Staff Report dated August 16, 2019 and presented at the August 26, 2019 meeting of the Canby Planning Commission.

Conditional Use Permit

In judging whether or not a Conditional Use Permit application shall be approved, the Planning Commission determines whether criteria from the Canby Municipal Code are met, or can be met by observance of conditions, in accordance with Chapter 16.50 of the Code which states the applicable review criteria when reviewing a Conditional Use Permit to include the following:

In judging whether or not a conditional use permit shall be approved or denied, the Planning Commission shall weigh the proposal's positive and negative features that would result from

authorizing the particular development at the location proposed and to approve such use, shall find that the following criteria are either met, can be met by observance of conditions, or are not applicable.

1. The proposal will be consistent with the policies of the Comprehensive Plan and the requirements of this title and other applicable policies of the city.
2. The characteristics of the site are suitable for the proposed use considering size, shape, design, location, topography, existence of improvements and natural features.
3. All required public facilities and services exist to adequately meet the needs of the proposed development.
4. The proposed use will not alter the character of the surrounding areas in a manner which substantially limits, or precludes the use of surrounding properties for the uses listed as permitted in the zone.

Siting of Wireless Telecommunications Systems Facilities

In judging whether or not a wireless telecommunications systems (WTS) facility shall be approved, the Planning Commission determines whether standards from the Canby Municipal Code are met in accordance with Section 16.08.120 of the Code which states the applicable standards to include the following:

1. Site and Design Review standards and criteria (section 16.49.040) shall apply to all WTS facilities requiring Site and Design approval.
2. Conditional Use Permit standards and criteria (section 16.50.010) shall apply to all WTS facilities requiring Conditional Use Permit approval.
3. All WTS facilities shall observe minimum lot size, lot coverage, building height and building setback requirements of the underlying zoning district unless specifically exempted or otherwise regulated by this section. Underground facilities may encroach upon required yards or may be placed in appropriate easements.
4. All detached WTS facilities shall be landscaped at the base of the towers/poles, and completely around the equipment shelters. The landscaping shall conform to the ODOT standards for plant size and spacing.
5. Lighting for all WTS facilities shall be as required by the FAA or recommended by ODOT Aeronautics Division. All other lighting must be deflected away from adjoining property.
6. All detached WTS facilities shall be screened from the public right-of-way and abutting property by a security fence or wall at least 6 feet in height consisting of chain link fencing with vinyl slats, solid wood fencing, concrete masonry unit block, or brick.
7. Attached WTS facilities shall be painted to match the color of the mechanical screen wall or building to which it is attached.
8. Equipment shelters, buildings and cabinets housing radio electronics equipment shall be concealed, camouflaged or placed underground.
9. Any WTS facility sited on or designed with any of the following attributes shall first receive

FCC approval, as specified in FCC Rules 1.1301 - 1.1319, as a condition of city approval prior to construction; Wilderness Area; Wildlife Preserve; Endangered Species; Historical Site; Indian Religious Site; Flood Plain; Wetlands; High Intensity White lights in residential neighborhoods; Excessive radio frequency radiation exposure.

Major Variance

In judging whether or not a Major Variance application shall be approved, the Planning Commission determines whether standards from the Canby Municipal Code are met in accordance with Chapter 16.53 of the Code which states the applicable standards to include the following:

The commission may authorize variances from the requirements of this title, other than Division VII, where it can be shown that, owing to special and unusual circumstances related to a specific piece of property, the literal interpretation of the regulations would cause an undue or unnecessary hardship, except that no variance shall be granted to allow the use of property for purposes not authorized within the district in which the proposed use would be located. In granting a variance, the commission may attach conditions which it finds necessary to protect the best interests of the surrounding property or neighborhood and to otherwise achieve the purpose of this title.

A variance may be granted only upon determination that all of the following conditions are present:

1. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the city and within the same zone. These exceptional or extraordinary circumstances result from tract size or shape, topography or other circumstances over which the owners of the property have no control. Actions of previous owners do not constitute other exceptional or extraordinary circumstances.
2. The variance is necessary to assure that the applicant maintains substantially the same property rights as are possessed by the owners of other property in the city and within the same zone.
3. Granting of this variance will not be materially detrimental to the intent or purposes of the city's Comprehensive Plan or the Land Development and Planning Ordinance.
4. Granting of this variance will not be materially detrimental to other property within the same vicinity.
5. The variance requested is the minimum variance which will alleviate the hardship.
6. The exceptional or unique conditions of the property which necessitate the issuance of a variance were not caused by the applicant, or the applicant's employees or relatives.

FINDINGS AND REASONS

The Staff Report was presented and written and oral testimony was received at the public hearing. Staff recommended approval of the Site and Design Review, Conditional Use Permit, and Major Variance applications and applied Conditions of Approval in order to ensure that the proposed project will meet all required City of Canby Land Development and Planning Ordinance approval criteria.

After holding said public hearing and considering the Staff Report dated August 16, 2019 and acceptance of written and oral testimony, the Planning Commission closed the public hearing, deliberated, and **made the following additional findings beyond those contained in the staff report to arrive at and support their decision to deny the three applications before them, as indicated below:**

1. The Planning Commission found that approval of a Major Variance would be detrimental to existing land uses on the subject property (i.e., highly flammable fuel pumps less than 50 feet away from the proposed monopole) and surrounding properties by creating a safety hazard in the event that the proposed facility fell or collapsed. The commission concluded that the required 1-1 setback (i.e., a 130-foot setback for a 130-foot facility) was intended, in part, to prevent safety hazards and that a setback of 13.5 feet from the nearest property line was an unreasonably excessive variance from the required 130 feet of setback, which was established specifically for a facility of this type in this zone. The commission concluded that, despite the collapsible, “break point” design proposed for the facility, structural failure in this location could present a danger to the community due to its fall radius and nearby storage of flammable fuels.
2. The Planning Commission also concluded that the applicant had not adequately performed a study of—or provided sufficient documentation of—potential alternative sites, which resulted in a proposed variance from setbacks that was more than the minimum variance required to alleviate the hardship of locating the facility within Verizon’s targeted service area. The commission concluded that other nearby similarly-zoned sites would not require such a large variance and therefore the unique conditions dictated by the chosen site (i.e., close proximity to property lines and adjacent land uses) were self-imposed.
3. Lastly, the Planning Commission received oral and written testimony from members of the public expressing concerns related to the potential health effects of wireless technologies. While the commission acknowledged that the applicant had supplied an engineer’s statement regarding human exposure to radio frequencies generated by the proposed facility (Non-Ionizing Electromagnetic Exposure Analysis & Engineering Certification)—and that this statement indicated conformance with Federal Communications Commission (FCC) guidelines—the Planning Commission also expressed concern that the facility is too close to a sensitive population (i.e., children at Canby High School approximately 250 feet to the southwest). For this reason, the commission concluded that the proposed facility was inconsistent with the City of Canby Comprehensive Plan, which promotes grouping of compatible land uses in the interest of public health and safety (e.g., Policy 1, and related implementation measures in the Comprehensive Plan Land Use Element).

CONCLUSION

Therefore, IT IS ORDERED BY THE PLANNING COMMISSION of the City of Canby that applications **DR 19-01, CUP 19-01, and VAR 19-02** be denied.

ORDER

I certify that a motion to approve **DR 19-01/CUP 19-01/VAR 19/02 130-FOOT-TALL STEALTH MONOPOLE CELL TOWER** failed, **THEREFORE** this request was **DENIED** by the Planning Commission of the City of Canby. **DATED** this 26th day of August, 2019.

John Savory
Planning Commission Chair

Bryan Brown
Planning Director

Laney Fouse, Attest
Recording Secretary

ORAL DECISION: August 26, 2019

<i>Name</i>	<i>Aye</i>	<i>No</i>	<i>Abstain</i>	<i>Absent</i>
<i>John Savory</i>				
<i>Larry Boatright</i>				
<i>Derrick Mottern</i>				
<i>Andrey Chernishov</i>				
<i>J. Ryan Adams</i>				
<i>Jeff Mills</i>				
<i>Jennifer Trundy</i>				

WRITTEN DECISION: September 9, 2019

<i>Name</i>	<i>Aye</i>	<i>No</i>	<i>Abstain</i>	<i>Absent</i>
<i>John Savory</i>				
<i>Larry Boatright</i>				
<i>Derrick Mottern</i>				
<i>Andrey Chernishov</i>				
<i>J. Ryan Adams</i>				
<i>Jeff Mills</i>				
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