

STAFF REPORT
December 4, 2008

No. 08SR042 - SDCL 11-6-19 Review to allow the construction of a cellular tower **ITEM 39**

GENERAL INFORMATION:

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|----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| APPLICANT | Bethany Wilson for WWC License LLC, d/b/a Alltel |
| AGENT | Ralph Wyngarden for Faulk & Foster |
| PROPERTY OWNER | Barbara Forbes |
| REQUEST | No. 08SR042 - SDCL 11-6-19 Review to allow the construction of a cellular tower |
| EXISTING LEGAL DESCRIPTION | Lots 1 thru 5 and Lots 19 and 20 in Block 15 of Schnasse Addition, Section 31, T2N, R8E, BHM, Rapid City, Pennington County, South Dakota |
| PARCEL ACREAGE | Approximately 0.94 acres |
| LOCATION | 115 East North Street |
| EXISTING ZONING | General Commercial District |
| SURROUNDING ZONING | |
| North: | General Commercial District |
| South: | Low Density Residential District |
| East: | General Commercial District |
| West: | General Commercial District |
| PUBLIC UTILITIES | City Water/Sewer |
| DATE OF APPLICATION | 5/9/2008 |
| REVIEWED BY | Jared Ball / Karley Halsted |

RECOMMENDATION:

Staff will recommend that the SDCL 11-6-19 Review to allow the construction of a cellular tower be **denied without prejudice**.

GENERAL COMMENTS: (Updated, November 25, 2008. All revised and/or added text is shown in bold print.) This item was continued at the November 20, 2008 Planning Commission meeting to allow the City Attorney's staff to review the legal issues associated with the Telecommunications Act of 1996. Mike Schad, Assistant City Attorney is providing information that will be attached to the Planning Commission agenda with the Discussion Items. He has indicated to the Growth Management Staff that requiring the existing zoning violation to be corrected prior to authorizing the

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expansion of the use of the property including the installation of a cellular facility does not violate the Telecommunications Act of 1996.

(Update, November 7, 2008. All revised and/or added text is shown in bold print.) This item was to be heard at the November 6, 2008 Planning Commission Meeting. However, due to inclement weather, the Planning Commission was unable to meet.

(Update: October 31, 2008. All revised and/or added text is shown in bold.) This item was continued at the October 23, 2008 Planning Commission meeting to allow the applicant to submit additional information documenting compliance with the adopted Comprehensive Plan and related regulations.

On October 23, 2008 staff met with the applicant and discussed the lack of compliance with the previously approved building permit and the minimum requirements of the Zoning Ordinance. In particular, the location and extent of the existing and proposed development is not in compliance with the adopted Comprehensive Plan and adopted regulations.

On October 30, 2008 the applicant notified staff that they do not intend to address the existing zoning violations on the property.

Based on the lack of compliance with the adopted Comprehensive Plan and adopted regulations, staff recommends denial of the request.

The property is located at 115 East North Street which is south of East North Street, north of east Denver Street and west of North Maple Street. The property is currently zoned General Commercial. One structure is located on the property and is currently being used as a pawn shop. The applicant is proposing to construct a communication facility within the existing building and attach an antenna on the roof of the building. The proposed antenna will be covered with brick façade that resembles an existing chimney on the roof.

STAFF REVIEW: Staff has reviewed the proposed SDCL 11-6-19 Review request as it relates to the applicable provisions of the Rapid City Municipal Code and has noted the following considerations:

Parking: A complete parking plan has not been submitted for review and approval. Prior to Planning Commission approval, the applicant must submit a complete parking plan including the number of required parking spaces for the existing and proposed uses for the building for review and approval.

(Updated October 17, 2008) As of this writing, a complete parking plan has not been submitted for review and approval. As such, staff recommends that the SDCL 11-6-19 review to allow the construction of a cellular tower be continued to the November 6, 2008 Planning Commission meeting.

(Updated October 31, 2008) On October 21, 2008 the applicant submitted a complete

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parking plan for review and approval. The parking plan identifies the required 32 parking stalls. The area located to the east of the existing building includes poorly paved or gravel areas that are not in compliance with the adopted off-street parking requirements.

(Updated November 7, 2008) As of this writing, the applicant has not submitted a revised parking plan showing that the poorly paved and/or graveled areas located east of the existing building is in compliance with the adopted off-street parking requirements. As such, staff is recommending that the SDCL 11-6-19 Review be denied.

(Updated November 25, 2008) As of this writing, a revised parking plan demonstrating compliance with the off-street parking requirements of the Rapid City Municipal Code has not been submitted. In particular, an unpaved area on the east side of the building must be paved. In addition, the parking spaces must be striped. A revised site plan must be submitted identifying the area that will be paved and the spaces that will be striped. Surety must be submitted guaranteeing that the improvements will be installed by June 30, 2009. As such, staff recommends that the SDCL 11-6-19 Review be denied without prejudice to allow the applicant to submit the application when a revised site plan can be submitted showing the additional landscaping or parking that will be installed to bring the site into compliance with the parking regulations.

Landscaping: The plan that was submitted for this project did not include a landscaping plan. Prior to Planning Commission approval the applicant must submit a complete landscaping plan that includes the size of the building, the size of the lot, and the number and species of plants that will be provided for review and approval. In addition, all landscaping shall be continually maintained in a live vegetative state and replaced as necessary.

(Updated October 17, 2008) As of this writing, a complete landscaping plan has not been submitted. Subsequently, the applicant has written a letter requesting not to submit a landscaping plan for this project. However, staff can not support this request. As such, staff recommends that the SDCL 11-6-19 review to allow the construction of a cellular tower be continued to the November 6, 2008 Planning Commission meeting.

(Updated October 31, 2008) As previously indicated, staff met with the applicant on October 23, 2008 and discussed the existing zoning violation(s) on the property. In particular, the landscape plan that was approved with the building permit in 1992 identified 28,585 landscape points. The approved landscape plan identified a row of shrubs along the north lot line of the property to serve as a screening buffer along East North Street. This area is currently covered with loose gravel and deteriorating concrete. The approved plan also identified landscaping features on the east side of the property. A staff site inspection has identified that the existing landscaping does not comply with the approved 1992 landscape plan or the minimum requirements of the Zoning Ordinance. Staff has notified the applicant that the existing violations must be addressed prior to approval of the proposed expansion on the property.

On October 30, 2008 the applicant submitted a written statement indicating that they do not

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intend to address the existing violations on the property. Since the location and extent of the existing development is not in compliance with the adopted Comprehensive Plan and the adopted regulations, this request can not be approved. As such, staff recommends that the SDCL 11-6-19 Review to allow the construction of a cellular tower be denied.

(Updated November 7, 2008) As of this writing, the applicant has not submitted a landscaping plan showing that it will be brought into compliance with the previously approved plan or the minimum requirements of the Zoning Ordinance. As such, staff recommends that the SDCL 11-6-19 Review be denied.

(Updated November 7, 2008) As of this writing, the applicant has not submitted a landscaping plan showing that it will be brought into compliance with the previously approved plan or the minimum requirements of the Zoning Ordinance. As such, staff recommends that the SDCL 11-6-19 Review be denied without prejudice to allow the applicant to submit the application when a revised site plan can be submitted showing the additional landscaping that will be installed to bring the site into compliance with the landscaping requirements and a bond for the installation of that landscaping has been posted.

Elevations: The plan that was submitted included elevations for the existing building, but the elevations were not submitted in a scalable format. Prior to Planning Commission approval the applicant must submit building elevations that are to scale and include building materials and colors for review and approval by Growth Management staff.

Updated October 17, 2008) As of this writing, complete elevations for this project have not been submitted. As such, staff recommends that the SDCL 11-6-19 review to allow the construction of a cellular tower be continued to the November 6, 2008 Planning Commission meeting.

(Updated October 27, 2008) On October 21, 2008, the applicant submitted complete elevations of the existing building for this project as required.

(Updated November 7, 2008) On October 21, 2008, the applicant submitted complete elevations of the existing building for this project as required.

Equipment Shelter: The applicant should be aware that the equipment shelter associated with the microcell wireless site may not exceed 100 square feet in floor area.

(Updated October 31, 2008) The plans that have been submitted for this project identify an equipment shelter that has a floor area of 192 square feet. Section 17.50.400 of the Rapid City Code states that an equipment shelter associated with a microcell wireless site may not exceed 100 square feet in floor area. As the proposed use is not in compliance with the adopted Comprehensive Plan and the related ordinance, staff recommends denial of the request.

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(Updated November 7, 2008) The plans that have been submitted for this project identify an equipment shelter that has a floor area of 192 square feet. Section 17.50.400 of the Rapid City Code states that an equipment shelter associated with a microcell wireless site may not exceed 100 square feet in floor area. As the proposed use is not in compliance with the adopted Comprehensive Plan and the related ordinance, staff recommends denial of the request.

(Updated November 25, 2008) The plans that have been submitted for this project identify an equipment shelter that has a floor area of 192 square feet. Section 17.50.400 of the Rapid City Municipal Code states that an equipment shelter associated with a microcell wireless site may not exceed 100 square feet in floor area. If a site plan demonstrating that outstanding parking lot paving and landscaping violations are corrected and surety is posted to insure that those improvements are installed by June 30, 2009, staff will support the granting of the exception to allow the increase in the floor area of the equipment room to 192 square feet as proposed.

Rooftop: Prior to the issuance of a building permit, a structural engineer must analyze the rooftop to insure that the building can support the addition weight of cell equipment as well as the two 3-ton HVAC units. This information must be submitted for review and approval as part of the building permit application.

Permits: Prior to any construction, a Building Permit must be obtained and a Certificate of Occupancy must be obtained prior to occupancy of the addition.

Staff recommends that the SDCL-11-6-19 Review to allow the construction of a cellular tower be denied since the location and extent of the existing and proposed development is not in compliance with the adopted Comprehensive Plan and the adopted regulations.

(Updated November 25, 2008) As previously discussed with the Planning Commission, staff is supportive of the proposed cellular facility. As noted above, if a plan demonstrating that the outstanding zoning violations are corrected and surety is posted, staff will recommend approval of the request. The time extension waiver that has been signed for this application will expire December 18, 2008. However, until the outstanding violations are corrected, staff must recommend denial of the request without prejudice.