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VIA E-MAIL (gloria.sitton@alexandriava.gov)

May 10, 2021

Mayor and City Council of the
City of Alexandria, Virginia
301 King Street, Room 2300
Alexandria, VA 22314
Attn: Gloria Sitton, City Clerk & Clerk of Council

Re: BAR Appeal - BAR Case #2020-00553

Ladies and Gentlemen:

This firm represents Cellco Partnership dba Verizon Wireless ("Verizon") in connection with the above-referenced appeal from the Board of Architectural Review's ("BAR") February 17, 2021 decision disapproving Verizon's Application for Certificate of Appropriateness for the purpose of installing small cell antennas and associated equipment on a wood utility pole owned by Dominion Power and located in the public right of way. We are submitting this letter in support of Verizon's appeal and to urge the City Council to reverse the BAR's decision and approve Verizon's Application.

I. Background

On November 2, 2020, Verizon filed the Application seeking a Certificate of Appropriateness to permit the installation of small cell wireless antennas on a taller and stronger replacement wood utility pole owned by Dominion Power, to be installed immediately adjacent to an existing wood utility pole owned by Dominion Power located in the public right of way on the east side of North Patrick Street adjacent to 215 North Patrick Street, a vacant lot. The existing wood utility pole will be removed by Dominion Power once the new installation is completed. The Application included all necessary and appropriate information and was initially scheduled for hearing before the BAR on January 21, 2021, at which time it was deferred for restudy to check the possibility of another pole for the small cell facility or a freestanding pole instead. At a subsequent hearing on February 17, 2021, the BAR heard from BAR Staff, which recommended approval of the Application, Joshua Schakola on behalf of Verizon, who answered questions in support of the Application, and various neighbors who expressed concerns about or objections to the Application. Following the hearing the BAR disapproved the Application by a vote of 4-3. Verizon timely filed its appeal from the BAR's decision on March 3, 2021, and although the hearing on this appeal was initially scheduled for the City Council's public hearing

on April 17, 2021, at the request of undersigned counsel the hearing was continued to May 15, 2021.

II. Argument

A. The BAR Exceeded its Authority in Disapproving Verizon's Application

1. The Nature and Extent of the BAR's Authority Under the Alexandria Zoning Ordinance

The BAR is established by Section 10-401 of the Zoning Ordinance of the City of Alexandria (the "Ordinance"). Among other powers and duties, the BAR has the following authority under the Ordinance:

- (2) Develop, adopt and publish criteria and guidelines, within the standards developed by city council under sections 10-105 and 10-205, to be considered in granting or denying certificates of appropriateness and permits to move, remove, cap or demolish in whole or in part, provided that such criteria and guidelines shall be consistent with the provisions of this Article X and with such standards, rules, regulations, and procedures as city council may establish pursuant to section 9.09(j) of the city charter.

The BAR's authority is constrained by Section 7-1200 of the Ordinance regarding Utilities, and in particular by Sections 7-1206(A)(3), 7-1206(A)(4), 7-1206(A)(6) 7-1206(A)(8), and 7-1206(A)(10); Section 7-1209(F); Section 7-1211(A); and Section 7-1212(D).

Pursuant to Section 7-1212(D) the City of Alexandria published Interim Wireless Facility Aesthetic Guidelines on April 12, 2019 (the "Guidelines"), a copy of which is attached. Under the Guidelines, the BAR should approve an application for certificate of appropriateness that contemplates installation of a small cell wireless facility provided it is consistent with the Guidelines. The Guidelines provide specific guidance for the replacement of existing utility and streetlight poles (defined as "a structure owned, operated, or owned and operated by a public utility, the City, or the Commonwealth of Virginia that is designed specifically" either "to support a street light, that lights the public right of way" or "for and used to carry lines, cables, or wires for communications, cable television, or electricity."¹

In addition to the Zoning Ordinance and the Guidelines the BAR's authority to disapprove Verizon's Application is constrained by the July 17, 2020 *Memorandum to Industry 20-03* issued by the Acting Deputy Director, DROW on behalf of the City, and clarifying the pole replacement height policy for utility poles in the public right of way for the purpose of small

¹ The existing Dominion utility pole that Verizon proposes to replace is a "utility pole" with a streetlight attached, since it includes a streetlight and utility wires. See Staff Report at p. 28.

cell facilities installation (the “DROW Memorandum”), a copy of which is also attached. Pursuant to the DROW Memorandum, “[e]xisting structures (poles) on which Small Cell Facilities are to be mounted, cannot extend to a height, including any antennas, of 50 feet or by more than 10 percent of existing height of the structure, whichever is greater.”

2. Federal and State Policy Favors Removal of Municipal Barriers to Installation of Small Cell Facilities

In an effort to accelerate the development of nationwide wireless broadband the United States Congress made the determination that State or local governments “may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.” 47 U.S.C. § 1455(a)(1). An “eligible facilities request” includes “any request for modification of an existing wireless tower or base station that involves—(a) collocation of new transmission equipment.” 47 U.S.C. § 1455(a)(2). The Federal Communications Commission (“FCC”) on September 26, 2018, adopted Final Rules for Streamlining State and Local Review of Wireless Facility Siting Applications to implement this Congressional mandate. *See In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, 33 FCC Rcd. 9088 (F.C.C. Sept. 26, 2018); *see also* 47 C.F.R. Ch. I, Subch. A, Pt. 1, Subpt. U. (2021). The FCC’s regulations specifically define “collocation” as “[m]odifying a structure for the purpose of mounting or installing an antenna facility on that structure.” 47 C.F.R. § 1.6002(g)(2). The FCC’s Declaratory Ruling accompanying its regulations included explicit discussion and guidance of aesthetic requirements that may properly be imposed by States and localities in considering applications for small wireless facilities deployments. Among other things, the FCC concluded “that aesthetics requirements [imposed by States and localities] are not preempted if they are (1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and published in advance.” 33 FCC Rcd. at 9132. As an example of a requirement that would be preempted, the FCC pointed to “a minimum spacing requirement that has the effect of materially inhibiting wireless service.” *Id.*

The FCC’s regulations also define “eligible facilities request” in a manner consistent with the Congressional mandate, as “[a]ny request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) Collocation of new transmission equipment; (ii) Removal of transmission equipment; or (iii) Replacement of transmission equipment.” 47 C.F.R. § 1.6100(b)(3).

The Commonwealth of Virginia has enacted similar statutes to implement the federal mandate. Va. Code § 56-484.26 defines “co-locate” to mean “to install, mount, maintain, modify, operate, or replace a wireless facility on, under, within, *or adjacent to* a base station, building, existing structure, *utility pole*, or wireless support structure.” (emphasis added). Va. Code §§ 56-484.27, 56-484.29, and 15.2-2316.4 provide for restrictions and guidance on a

locality's ability to prevent the installation or co-location of wireless facilities within the Commonwealth.

The Ordinance explicitly adopts the FCC's definition of "eligible facilities request" at Section 7-1211(A), and the Ordinance, the Guidelines, and the DROW Memorandum are sensible manifestations of the City of Alexandria's efforts to comply with federal and state mandates regarding the installation of small cell facilities. Unfortunately, the BAR deviated from the Ordinance, the DROW Memorandum, and the Guidelines and exceeded its authority in disapproving Verizon's application.

3. Verizon's Application Complies with the Ordinance, the Guidelines and the DROW Memorandum and Should be Approved

The Staff Report submitted to the BAR in connection with its February 17, 2021 hearing on Verizon's Application summarizes the Application and recommends approval based on Verizon's compliance with all of the factors in the Guidelines. Specifically, the Staff found: (i) that the height of the proposed new installation (including the small cell wireless facility) would be 46'9", well within the 50' limit in the Guidelines and the DROW Memorandum; (ii) that the pole would be in the same general location as the existing pole²; (iii) that no existing trees would be removed or impacted by Dominion Power in connection with the proposed installation; (iv) that the proposed pole would meet ADA requirements and not hinder pedestrian or vehicular traffic; and (v) that the installation would be shrouded to match the wooden pole and, therefore, comply with the Guidelines' aesthetic requirements. See Staff Report at 6-7. Significantly, the Staff found that a standalone pole at this location would not be feasible based on a study submitted with the Application showing that the east side of North Patrick Street has poles with overhead wires the entire length of the block which would be obstructed by a standalone pole and not recommended by engineers, while the west side of North Patrick Street has too many trees, most mature, that would both obstruct the wireless signal and could be negatively impacted by the replacement pole, contrary to the Guidelines. Finally, the Staff found that the existence of gas lines and drainage systems underground prevented the installation of a new standalone pole.

The BAR Staff's findings and conclusions were supported by the presentation made by Joshua Schakola at the BAR hearing on February 17, 2021, and not contradicted by the presentations made by the six residents who appeared at the hearing. For the most part, these residents were concerned about the notice given regarding the Verizon Application, the visual aesthetics of the proposed replacement pole, and their overall concern that the proposed small cell wireless installation was not appropriate for the Parker-Gray District. **Significantly, none of**

² The Application shows a general location for the replacement structure immediately adjacent to the existing pole. Since Dominion Power owns the existing utility pole and will own the replacement pole, it will obtain a permit from the Department of Transportation and Environmental Services to complete the new pole installation, which will determine the ultimate location of the new pole. Dominion Power will also be responsible for removal of the existing pole once the installation has been completed.

the residents who made presentations offered evidence that the Verizon Application did not comply with the Ordinance, the Guidelines, or the DROW Memorandum.

The BAR exceeded its authority and erred in disapproving the Verizon Application when it considered issues that were not properly before it, including the possibility that a structure could at some point be built on the currently vacant property at 215 North Patrick Street, that the proposed pole could “possibly end up in front of a historically significant property (211 North Patrick Street),” and that the application was not clear and raised issues about notice. *See* Draft Minutes of BAR Hearing February 17, 2021, at 4. Contrary to the BAR majority’s concerns, there is no historically significant structure or property located at 215 North Patrick Street – it is a vacant lot currently used for parking – and the “historically significant property” identified by the BAR majority as located at 211 North Patrick Street is not on the City’s list of 100 year old buildings or registered historic properties. In addition, the ultimate location of the replacement pole will be determined by the Department of Transportation and Environmental Services acting on Dominion Power’s permit application and is not within the authority of the BAR to determine.

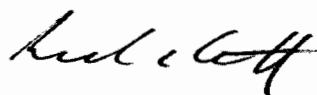
Finally, there is no support for the conclusion that there was insufficient notice of what Verizon was proposing in its application. The Verizon Application is supported by detailed information explaining what Verizon is proposing to install, where it proposes to install it, what the installation will look like, and why it cannot practically be located elsewhere. There was simply no basis for the BAR to conclude that lack of notice compelled the disapproval of the Verizon Application.

III. Conclusion

For all of these reasons, and others that may be advanced by Verizon at the City Council’s hearing on May 15, 2021, Verizon respectfully requests that the City Council reverse the BAR’s decision and approve Verizon’s Application.

I look forward to answering any questions the members of the Council may have.

Very truly yours,

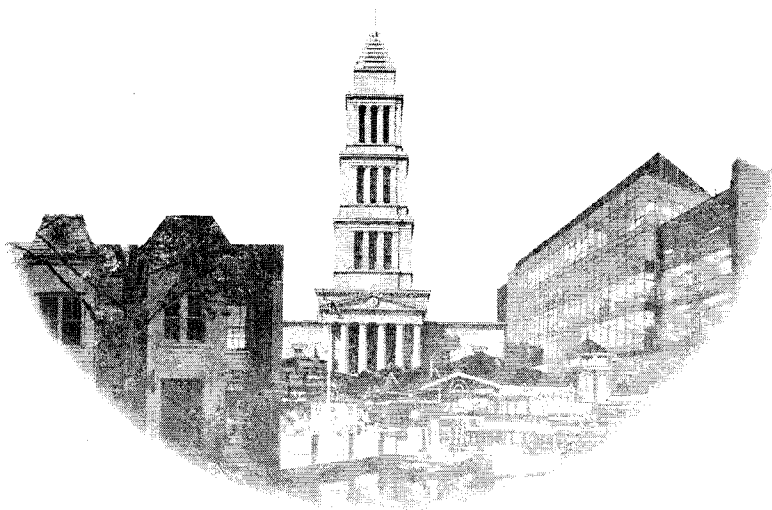


Richard E. Hagerty

Attachments

cc: Joanna Anderson, City Attorney
301 King Street, Room 1300
Alexandria, VA 22314

INTERIM WIRELESS FACILITY AESTHETIC GUIDELINES



INTERIM WIRELESS FACILITY AESTHETIC GUIDELINES

PURPOSE

These Interim Wireless Facility Aesthetic Guidelines establish requirements for the placement and general design of wireless infrastructure and associated facilities within the City of Alexandria to address safety, streetscape, and potential engineering concerns.

These goals include:

- Mitigating visual and physical impact within the streetscape across the City;
- Minimizing the impact on the character of public spaces, specifically historic districts; and
- Avoiding impacts to important view sheds, vistas, and landmarks.

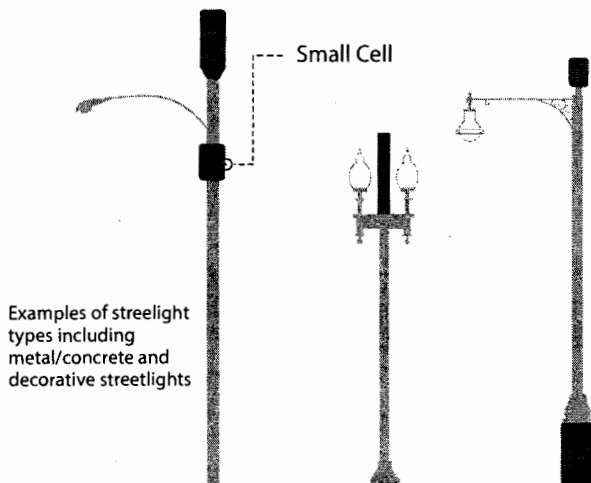
These are interim guidelines are being put in place to address state and federal requirements for prompt action; the City is working on permanent guidelines; and permanent guidelines will allow the City to address concerns over the appearance and placement of wireless infrastructure, while also accommodating the needs of carriers, new state and federal policy, and desire of the public for access to service.

DEFINITIONS

Small Cell Wireless Facilities are low-powered antennas that provide wireless service coverage to a limited geographic area (often with ranges of a few hundred feet), and are used to supplement and expand the coverage provided by the traditional, larger-scale network

Streetlight pole means a structure owned, operated, or owned and operated by a public utility, the City, or the Commonwealth of Virginia that is designed specifically to support a street light, that lights the public right of way.

Utility pole means a structure owned, operated, or owned and operated by a public utility, the City, or the Commonwealth of Virginia that is designed specifically for and used to carry lines, cables, or wires for communications, cable television, or electricity.



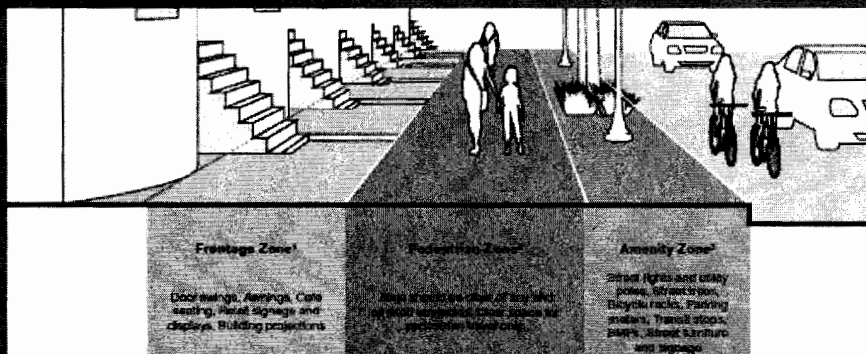
Note: Intended for illustrative purposes only.

DEFINITIONS

CONTEXT

Within the City of Alexandria, sidewalks are not a singular space but consist of distinct usage zones. Sidewalks are typically located in the public right of way, which extend from the curb line to a private property line behind it. Sidewalks can be broken up into three primary zones performing unique functions in the overall operation of the street, and interface with adjacent private property uses. These zones are identified as the Frontage Zone, Pedestrian Zone, and Amenity Zone. Although boundaries between zones may blur and blend, the overall function of each zone generally remains consistent. City of Alexandria, Complete Street Guidelines pg. 3-3

Across the City, most of the existing infrastructure that can be used to accommodate wireless facilities (streetlight poles, utility distribution poles, traffic signal poles, etc.) are located within the amenity zone. Deployment of wireless facilities, to the greatest extent possible, should not impede the pedestrian and frontage zones within the sidewalk.



Amenity Zone lies between the curb and the Pedestrian Zone. This area is occupied by a number of street fixtures and utilities such as street lights, utility poles, street trees, bicycle racks, parking meters, signposts, signal boxes, benches, trash and recycling receptacles, and other amenities. In commercial areas, it is typical for this zone to be hardscape pavement, pavers, or tree grates. In residential, or lower intensity areas, it is commonly a planted strip.

Frontage Zone is the area of sidewalk that immediately abuts buildings along the street. In residential areas, the Frontage Zone may be occupied by front porches, stoops, lawns, or other landscape elements that extend from the front door to the sidewalk edge. The Frontage Zone of commercial properties may include architectural features or projections, outdoor retailing displays, café seating, awnings, signage, and other intrusions into or use of the public right-of-way. Frontage Zones may vary widely in width from just a few feet to several yards.

Pedestrian Zone, also known as the "walking zone," is the portion of the sidewalk space used for active travel. For it to function, it must be kept clear of any obstacles and be wide enough to comfortably accommodate expected pedestrian volumes including those using mobility assistance devices, pushing strollers, or pulling carts.

- City of Alexandria, Complete Street Guidelines

GENERAL AESTHETIC STANDARDS & GUIDELINES

The following standards for wireless facilities apply to all areas in the City unless otherwise specified in areas such as historic districts.

- Wireless facilities and associated infrastructure shall be located within the Amenity Zone of the sidewalks or a comparable location in the public right of way.
- Wireless facilities should avoid areas of environmental sensitivity such as floodplains, wetlands, and resource protection areas (RPAs).

Guidelines for Wireless Facilities Subject to Article X of the City's Zoning Ordinance for Historic Districts

Wireless facilities within Historic Districts are subject to Article X of the City's Zoning Ordinance and shall require approval under those provisions.

Guidelines for Attachments to Existing Utility and Streetlight Poles

The following are applicable when locating wireless cell facilities on existing utility and streetlight poles within the public right of way:

- All wireless facilities and associated equipment located within the public right of way shall be located such that it meets ADA requirements and does not hinder, obstruct, impede usual pedestrian and vehicular travel.
- Wireless facilities must be shrouded, enclosing wires and equipment. No separate ground mounted equipment, including backup power supply, shall be allowed within the public right of way. Wireless facilities shall not negatively impact the decorative elements of the existing pole.
- Wireless facility attachments and hardware shall be colored to match the existing pole or colored to match similar infrastructure along the block face. If located on a wooden pole, attachments shall be colored to match the color of the pole or a similar earth tone color.
- Any signs on poles must comply with Article IX of the City's Zoning Ordinance.

If an existing utility or streetlight pole upon which wireless facility equipment is proposed to be installed requires replacement, see Guidelines for Replacement of Existing Poles.

Guidelines for Replacement of Existing Utility and Streetlight Poles

The following are applicable when locating wireless facilities on replacement utility and streetlight poles within the public right of way:

- Increases in pole height needed to meet utility safety requirements, are not to exceed 10' greater than the existing pole to be replaced. Increases in pole height should be minimized to the greatest extent possible. No pole shall exceed 50' in height without a special use permit.
- Replacement poles must be in the same general location of the existing pole and within the Amenity zone consistent with the Complete Streets Guidelines and Standards and Title 5, Chapter, Section 5-3-1 of the City Code or a comparable location in the public right of way.
- Replacement poles shall not be located in a manner that requires the removal of an existing tree or impacts to the critical root zone or canopy of existing trees within the public right of way.
- Replacement poles shall be located such that they meet ADA requirements and do not obstruct, impede, or hinder usual pedestrian or vehicular travel.
- Any signs on poles must comply with Article IX of the City's Zoning Ordinance.
- Wireless facilities must be shrouded, enclosing wires and equipment. No separate ground mounted equipment, including backup power supply, shall be allowed within the public right of way.
- Wireless facilities shall be colored to match similar infrastructure along the block face. If located on a wooden pole, wireless facilities shall be colored to match the color of the pole or a similar earth tone color.

Guidelines for New Standalone Structures

The guidelines provided are for single or multi-carrier installations of new standalone structures. The following are applicable when locating wireless facilities on new standalone structures:

- New standalone structures shall be located such that it meets ADA requirements and does not hinder, obstruct, impede usual pedestrian and vehicular travel.
- New standalone structures must be located within the Amenity zone (where applicable) consistent with the Complete Streets Guidelines and Standards and Title 5, Chapter, Section 5-3-1 of the City Code or comparable location in the public right of way.
- New standalone structures shall not be located in a manner that requires the removal of an existing tree or impacts to the critical root zone or canopy of existing trees.
- New standalone structures, to the greatest extent possible, shall be in alignment with existing trees, utility poles, and streetlights.
- All wireless facilities shall be internally contained to the pole and or concealed by an exterior shroud. No separate ground mounted equipment, including backup power supply, shall be allowed within the public right of way.
- New standalone structures shall be cylindrical, straight, and colored to match similar infrastructure along the block face.
- No new standalone pole shall exceed 50' in height without a special use permit.

Wireless Facilities Outside the Public Right of Way

The following are applicable when locating wireless facilities outside of the public right of way:

- Wireless facilities should avoid the creation of clutter and be placed to blend with existing structures.
- Building rooftop wireless facilities should be either flush mounted to surface walls, camouflaged, screened or placed to not be visible from the surrounding area unless the antenna has a minimal visual impact if installed above the roofline.
- New standalone structures must comply with setback requirements of the City's Zoning Ordinance.
- New standalone structures shall be located such that it meets ADA requirements and does not hinder, obstruct, impede usual pedestrian and vehicular travel.
- New standalone structures shall not be located in a manner that requires the removal of an existing tree or impacts to the critical root zone or canopy of existing trees.
- New standalone structures, to the greatest extent possible, shall be in alignment with existing trees, utility poles, and streetlights.
- All standalone structures shall be internally contained within the structure and/or concealed by an exterior shroud. No separate ground mounted equipment, including backup power supply, shall be allowed.
- New standalone structures shall be cylindrical, straight, and colored to match its surroundings.
- No standalone structure shall exceed 50' in height without a special use permit.

City of Alexandria, Virginia

MEMORANDUM TO INDUSTRY 20-03

DATE: JULY 17, 2020

TO: UTILITIES, DEVELOPERS, ARCHITECTS, ENGINEERS & SURVEYORS

FROM: LALIT SHARMA, P.E., ACTING DEPUTY DIRECTOR, DROW

SUBJECT: POLE REPLACEMENT HEIGHT POLICY FOR UTILITY POLES IN PUBLIC RIGHTS-OF-WAY FOR THE PURPOSE OF SMALL CELL FACILITIES INSTALLATION

The City of Alexandria Transportation and Environmental Services (T&ES) Department, in recognition with need for technology and wireless communication services, is clarifying the parameters of when increased pole heights may be permitted. The guidance herein is consistent with State and Local Code regarding small cell antenna installation on an existing structure, or on an in-kind "like for like" pole replacement for utility poles in public rights of way. This memo supersedes memo dated June 30, 2019 on the same issue.

Existing structures (poles) on which Small Cell Facilities are to be mounted, cannot extend to a height, including any antennas, of 50 feet or by more than 10 percent of existing height of the structure, whichever is greater.

Utility provider's maintenance and service needs will be evaluated on a case by case basis. Notwithstanding the above parameters, all applicants requesting increases in pole heights shall comply with all applicable federal, state and local laws and regulations. All applications shall be consistent with the City of Alexandria's Interim Wireless Facility Aesthetic Guidelines and Small Cells Wireless Facilities program. All reviews and considerations will be subject to the approval of the Director of T&ES.

Cc: Yon Lambert, Director, T&ES
Karl Moritz, Director, P&Z
Emilio Pundavela, Division Chief, Permits and Inspection, T&ES
Andre' Williams, Permits Manager, T&ES
Anthony LaColla, Division Chief, P&Z

