

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT**

Date: October 3, 2016

CASE NUMBER

5919/5866

APPLICANT NAME

New Cingular Wireless PCS, LLC

LOCATION

6311 Cottage Hill Road
(220'± South of Cottage Hill Road, 780'± East of Hillcrest Road)

VARIANCE REQUEST

HEIGHT: Height Variance to allow a 150' monopole telecommunications tower in a B-2, Neighborhood Business District.

SETBACK: Setback Variance to allow the tower within 37.5' of the lease parcel line.

RESIDENTIAL BUFFER SEPARATION: Residential Buffer Separation Variance to allow the tower within 42.75' of residentially zoned property.

TREE PLANTING: Tree Planting Variance to allow no tree plantings.

**ZONING ORDINANCE
REQUIREMENT**

HEIGHT: The Zoning Ordinance limits structures to a 45' height in a B-2, Neighborhood Business District.

SETBACK: The Zoning Ordinance requires telecommunications towers to be setback the height of the tower (150') from the lease parcel line.

RESIDENTIAL BUFFER SEPARATION: The Zoning Ordinance requires a residential buffer separation of 200' or 150% of the height of the tower, whichever is greater (225').

TREE PLANTING: The Zoning Ordinance requires one tree per every 30' of lease parcel perimeter.

ZONING

B-2, Neighborhood Business

AREA OF PROPERTY

8414 Square Feet / 0.19± Acre

TRAFFIC ENGINEERING

COMMENTS

No traffic impacts anticipated by these multiple variance requests.

ENGINEERING

COMMENTS

No comments.

URBAN FORESTRY

COMMENTS

No comments.

CITY COUNCIL

DISTRICT

District 6

ANALYSIS

The applicant is requesting Height, Setback, Residential Buffer, and Tree Planting Variances to allow a 150’ monopole telecommunications tower setback 37.5’ from a lease parcel line and 42.75’ from residential property, with no tree planting provided, in a B-2, Neighborhood Business District; the Zoning Ordinance limits structures to a 45’ height, with telecommunications towers to be setback the height of the tower (150’) from a lease parcel line, and with a residential buffer separation of 200’ or 150% of the height of the tower, whichever is greater (225’), and with one tree per every 30’ of lease parcel perimeter, in a B-2, Neighborhood Business District.

The applicant has also submitted a Planning Approval application to allow the proposed tower in a B-2 district, and a two-lot Subdivision application to separate the lease parcel for the tower from the parent lot, scheduled to be heard at the October 2nd Planning Commission meeting. If the variance requests are approved, they should be subject to the approval of those two requests.

The Telecommunications Towers and Facilities Ordinance establishes specific criteria for granting setback and height variances. The Ordinance states that a modification to the setback requirement should be considered in situations where “the only alternative is to locate the tower at another site which poses a greater threat to the public health, safety or welfare or is closer in proximity to a residentially zoned land.”

The Zoning Ordinance states that no variance shall be granted where economics are the basis for the application; and, unless the Board is presented with sufficient evidence to find that the variance will not be contrary to the public interest, and that special conditions exist such that a literal enforcement of the Ordinance will result in an unnecessary hardship. The Ordinance also states that a variance should not be approved unless the spirit and intent of the Ordinance is observed and substantial justice done to the applicant and the surrounding neighborhood.

Variances are not intended to be granted frequently. The applicant must clearly show the Board that the request is due to very unusual characteristics of the property and that it satisfies the variance standards. What constitutes unnecessary hardship and substantial justice is a matter to be determined from the facts and circumstances of each application.

Concerning the Height Variance request, as required by Section 64-4.J.4.4 of the Zoning Ordinance, the applicant has submitted written, technical evidence from an engineer that the proposed Tower or Telecommunications Facilities cannot be installed or collocated on another tower or usable Antennae Support Structure in order to meet the coverage requirements of the applicant's wireless communications system. Propagation maps illustrating the need for the tower in the area have also been submitted. The applicant has submitted propagation maps indicating the in-fill coverage of the proposed tower within the area, and information indicating that the tower will be capable of accommodating three additional cellular carriers. Also submitted was evidence that the tower meets the structural requirements of Section 64-4.J.6 of the Zoning Ordinance.

Specific to the Height Variance request, the applicant states that the radio signal emitting from the tower is a fixed technology dictated by physics, and the signal from each tower must work in tandem with the signal from other nearby towers. It is further stated that, due to these requirements and the hardships caused by topography and terrain, the 150' height is needed to meet the engineering requirements for this site. In light of the technical data submitted and the illustration of a hardship imposed by terrain and topography, the height Variance request would seem reasonable.

With regard to the Setback and Residential Buffer requests, the applicant states that the requirement to meet the Zoning Ordinance provisions for setbacks and residential buffer present a specific unnecessary hardship due to the constraints of the small parcel. It is stated that neither of these hardships is economic in nature or self-imposed by the applicant and it is believed that the proposal to place the proposed tower within a wooded area on the property best serves the need to provide the least visually obtrusive alternative. As the site is limited in area by surrounding properties, a hardship is illustrated in meeting the required lease parcel setbacks and the Setback Variance request would be justified. And as the technical data submitted supports the selection of this location for the proposed tower, and as a hardship in meeting the Residential Buffer Separation requirement is imposed by the site's location, the Residential Buffer Separation Variance would be justified. Although the closest residentially-zoned property is a cemetery approximately 43' North of the proposed tower, a single-family residential subdivision is located approximately 145' South of the proposed tower. Due to the proximity of the residential property to the South, the applicant has proposed a 6' wooden privacy fence around the tower compound. However, the site plan should be revised to indicate an 8' high fence as required by the Chart of Permitted Uses of the Zoning Ordinance.

The site plan submitted indicates a contiguous hedge of evergreen shrubs around the tower compound and eight overstory trees beyond. However, the three trees indicated to the South of the compound are actually indicated to be on the adjacent separate proposed lot to the South. Therefore, only five overstory trees are indicated as actually proposed on the tower site, and the lot perimeter would require twelve overstory trees. The applicant bases the Tree Planting Variance request based on the proposed site mostly being surrounded by existing mature trees. However, some trees would have to be removed to develop the tower site and no hardship has been illustrated to justify the granting of the Tree Planting Variance request, especially in light of the fact that sufficient area would be provided by the clearing for the tower lease parcel to provide the required number of trees.

The applicant has demonstrated that hardships would be imposed by a literal interpretation of the Zoning Ordinance with respect to the height limitations, setback, and residential buffer separation requirements for telecommunications towers. However, the applicant has not demonstrated a hardship would be imposed with respect to the tree planting requirements.

In light of the fact that the associated Planning Approval to allow the tower in the B-2 District and the two-lot Subdivision are scheduled to be heard by the Planning Commission at the October 2nd meeting, and should the Commission deny the Planning Approval request, then the need for the requested variances would become a moot point.

There was much controversy and public opposition surrounding the original requests for these same Variances on the subject site. Given this history related to the project, there is no formal recommendation, other than the Board considers all relevant facts and review the requests based upon their own merits. However, the following conditions are submitted should the Board wish to consider approving the requests.

PROPOSED CONDITIONS FOR APPROVAL OF THE HEIGHT, SETBACK AND RESIDENTIAL BUFFER SEPARATION REQUESTS

- 1) the tower is limited to a monopole design with an over-all height of 150', including the antenna extension and the lightning rod;
- 2) revision of the tower elevation to indicate that no communications equipment or lightning rod extends above the 150' elevation above grade;
- 3) revision of the site plan to indicate an 8' high wooden privacy fence around the tower compound as required by the Chart of Permitted Uses of the Zoning Ordinance;
- 4) provision of further overstory trees within the lot perimeter to be coordinated with the Planning Division of the Urban Development Department;
- 5) subject to the Planning Commission approval of the Planning Approval and two-lot Subdivision applications; and
- 6) full compliance with all municipal codes and ordinances.

Revised for the November 3^d meeting:

This application was heldover from the October meeting to allow the Muir Woods neighborhood to hire a radio frequency engineer to review AT & T's site evaluation findings. The Board noted that any information that is to be provided for their review should be submitted to staff during the week prior to the meeting. As no new information has been submitted to staff, the original decision to not make a recommendation, but to offer proposed conditions for approval of the Height, Setback and Residential Buffer Separation requests would stand.

It should be noted that at its October 2nd meeting, the Planning Commission approved the Planning Approval request to allow the tower in the B-2 District but modified the maximum height of the tower and associated antennae to 140'. The proposed approval conditions have been revised to reflect such.

Revised for the April 6, 2015 meeting:

This application was heldover from the November 3, 2014 meeting at the applicant's request to allow the applicant to pursue another collocation in lieu of this site.

At its March 10, 2015 meeting, the City Council heldover the appeal of the Planning Approval granted by the Planning Commission until September 13, 2016. As such staff recommends that the case before the Board be heldover until the October 2016 meeting.

Revised for the October 3, 2016 meeting:

This application was heldover from the Board's April 6, 2015 meeting due to public opposition to the proposed project and to allow the applicant to seek another collocation in lieu of the subject site. The Board originally heard the requests at its October, 2014 meeting.

Associated Subdivision and Planning Approval applications were approved by the Planning Commission at its October 2, 2014 meeting. The Subdivision plat was never signed and no extension of its approval was ever filed. Therefore, the Subdivision approval expired. However, the Planning Approval to allow the tower in the B-2 District was appealed by neighborhood residents to the City Council. As previously mentioned, that appeal of approval was heldover by the Council to its meeting of September 13, 2016, at which the Council upheld that appeal. Therefore, the requested Variances would be moot as the allowance of the proposed tower in this district has been denied by appeal to the City Council.

RECOMMENDATION: *Staff recommends to the Board the following findings of fact for Denial:*

- 1) Approving the variance will be contrary to the public interest in that the City Council has already upheld the neighborhood's appeal of the approval of the Planning Approval to allow the tower at this site*
- 2) Special conditions do not exist and there are no hardships which exist that make the approval necessary; and*
- 3) The spirit of the chapter shall not be observed and substantial justice shall not be done to the surrounding neighborhood by granting the variance because there was intense neighborhood opposition to the proposed tower and the variance requests are moot now.*

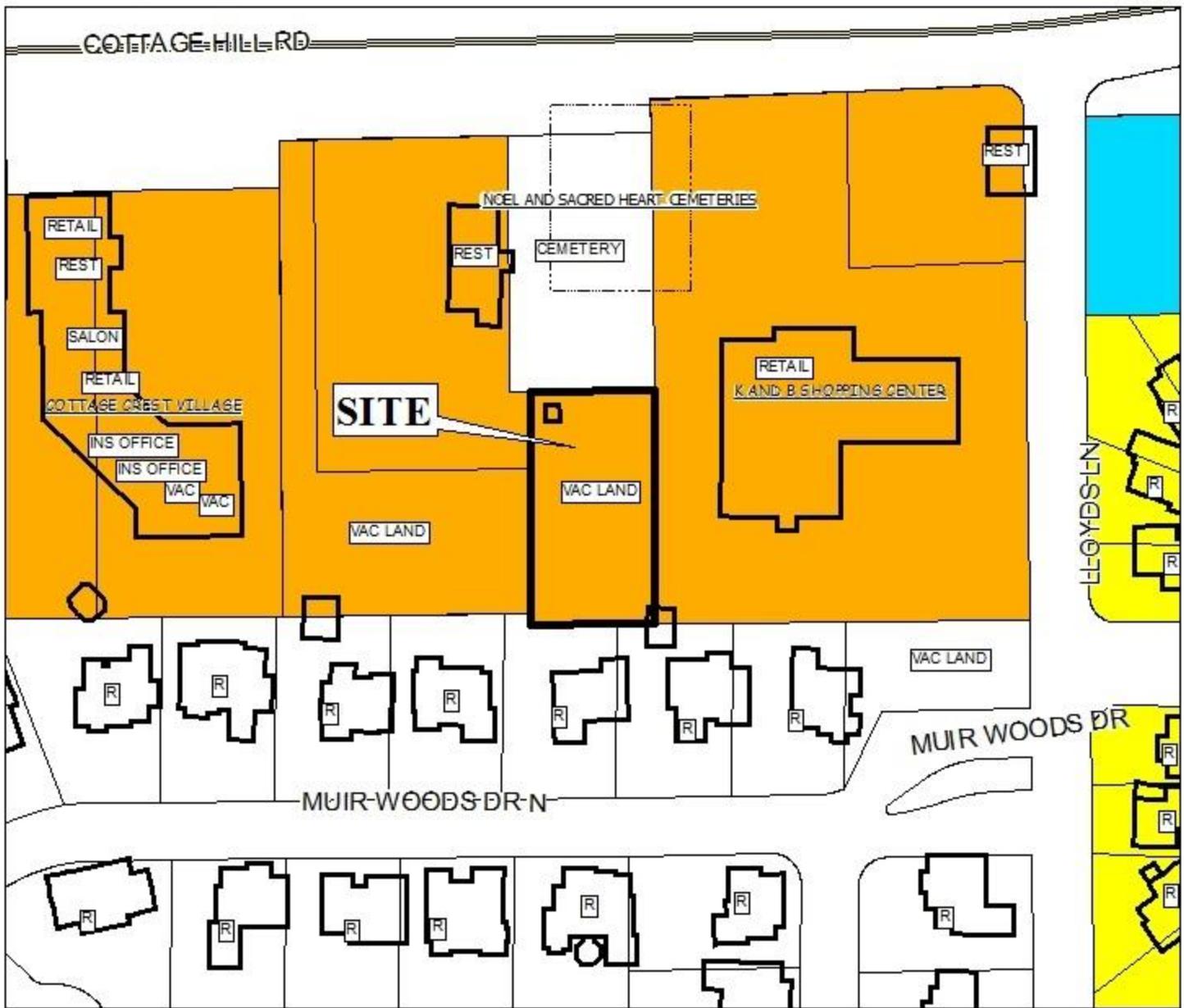
LOCATOR MAP



APPLICATION NUMBER 5919 DATE October 3, 2016
APPLICANT New Cingular Wireless PCS, LLC
REQUEST Height, Setback, Residential Buffer, and Tree Planting Variances



BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by commercial and residential units. A cemetery lies to the north of the site.

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REQUEST Height, Setback, Residential Buffer, and Tree Planting Variances

R-A	R-3	T-B	B-2	B-5	MUN	SD-WH	T5.1
R-1	R-B	B-1	B-3	I-1	OPEN	T3	T5.2
R-2	H-B	LB-2	B-4	I-2	SD	T4	T6



**BOARD OF ADJUSTMENT
VICINITY MAP - EXISTING AERIAL**



The site is surrounded by commercial and residential units. A cemetery lies to the north of the site.

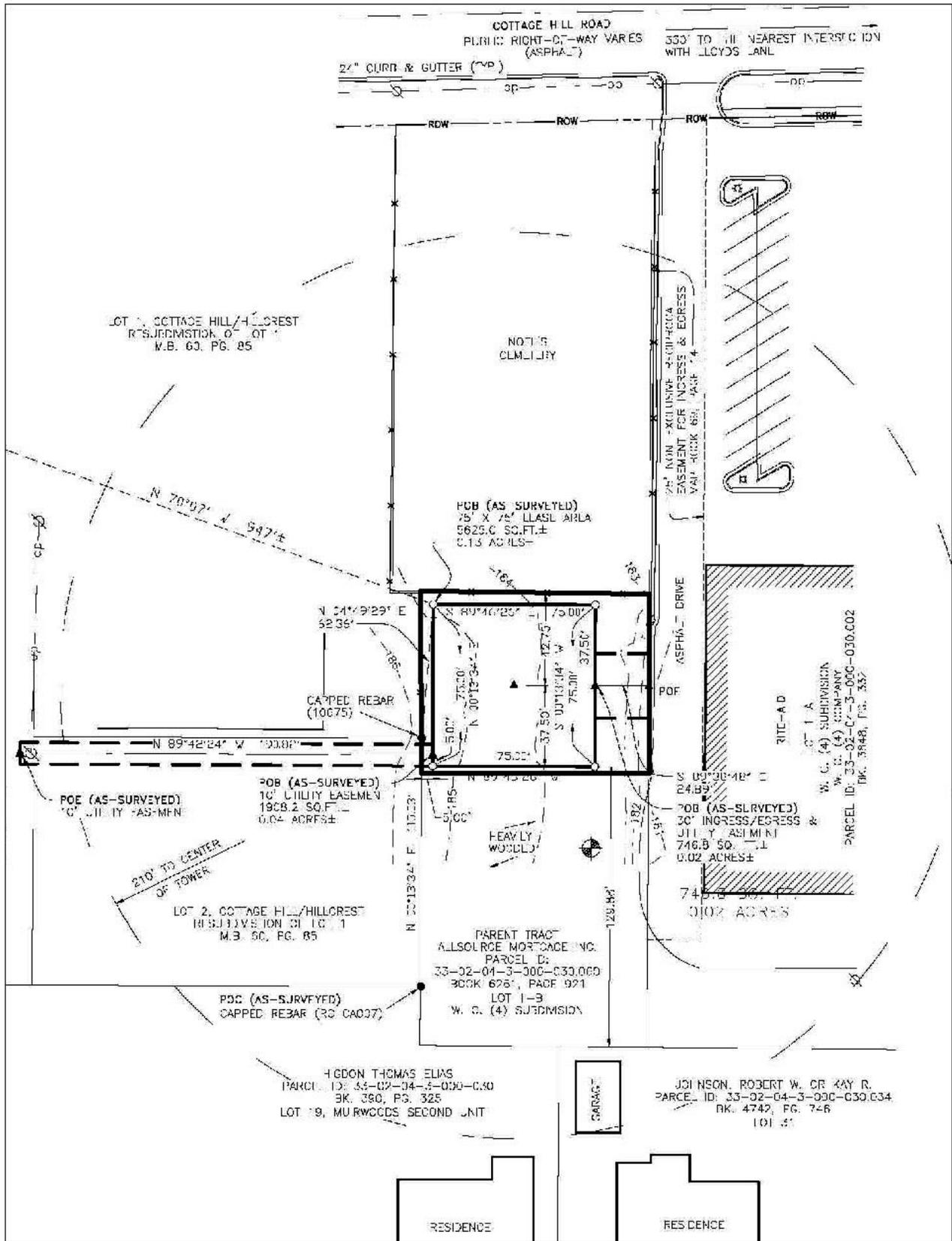
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DETAIL SITE PLAN

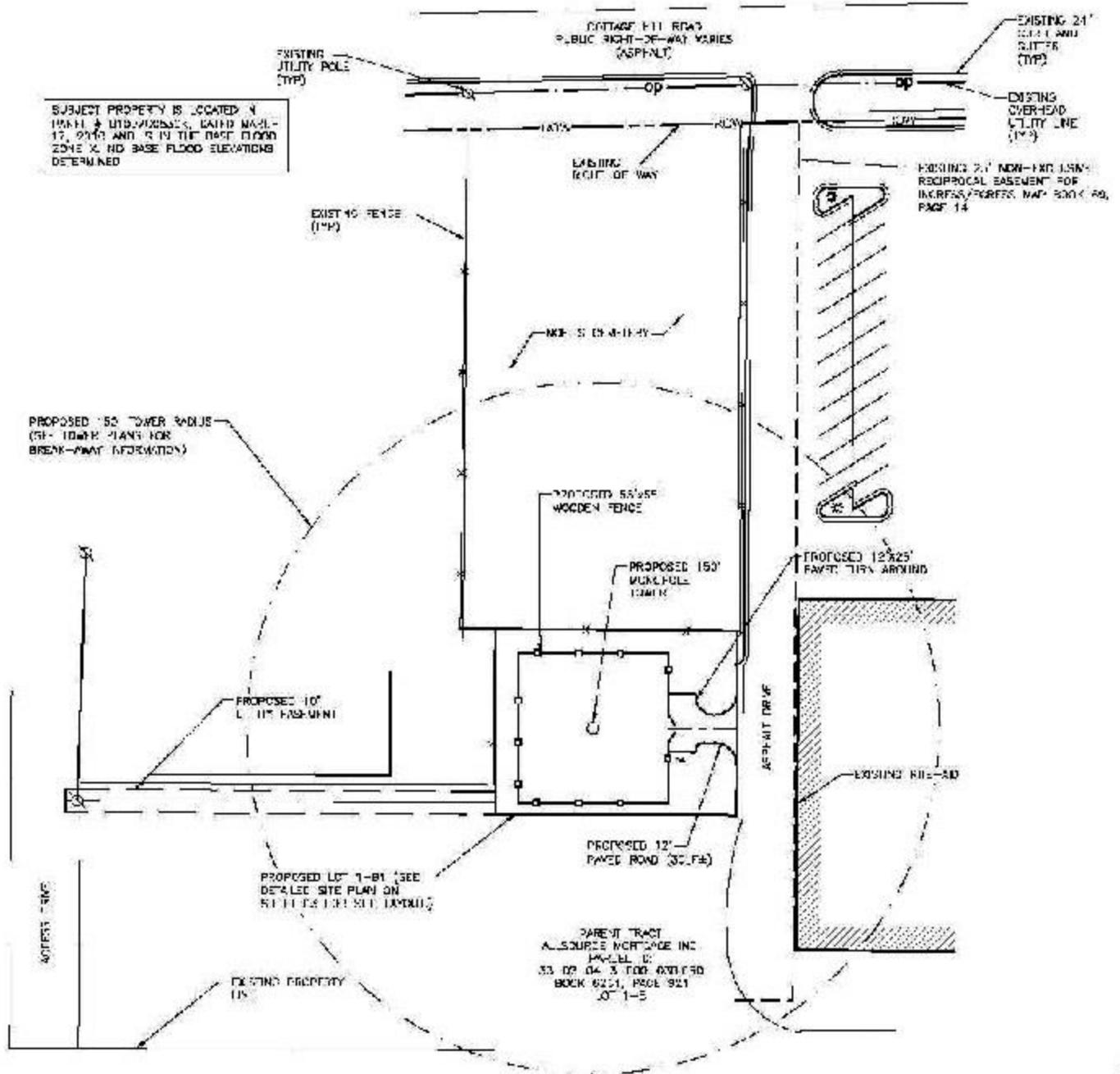


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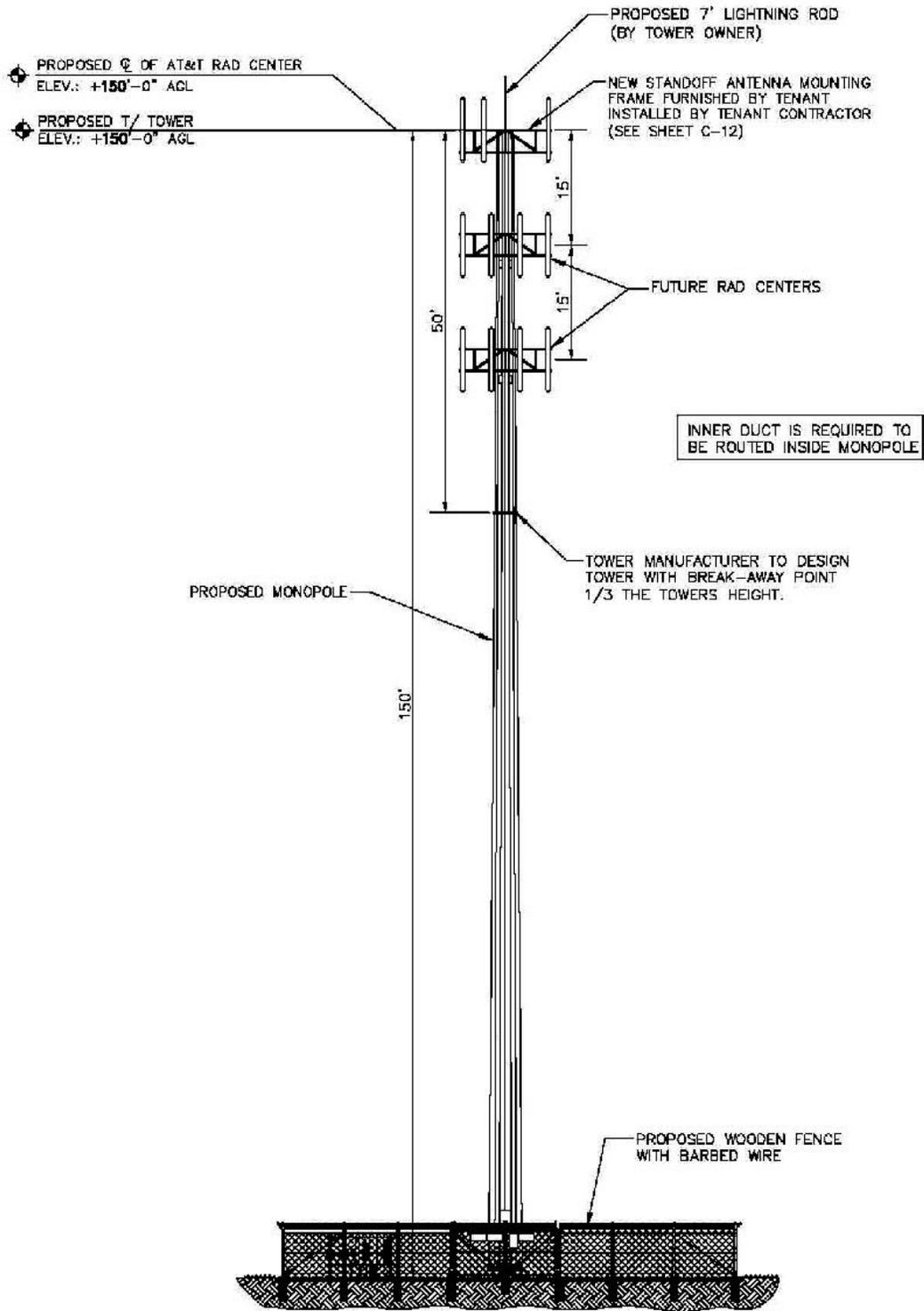
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DETAIL SITE PLAN



1 TOWER ELEVATION
C-4 SCALE: 1" = 20'

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