



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.14.

12/5/2023

Subject:

Resolution setting forth the findings and conclusions of the Board of County Commissioners re: the denial of a request for a CUP on property owned by Hope Episcopal Church, Inc.

Fiscal Impact:

N/A

Dept/Office:

County Attorney's Office

Requested Action:

Approve the proposed resolution setting forth the findings of fact and conclusions of the Board pertaining to the denial of a request for a Conditional Use Permit (CUP) for Wireless Telecommunications Facilities and Broadcast Towers in a Planned Unit Development (PUD) zoning classification on property owned by Hope Episcopal Church, Inc.

Summary Explanation and Background:

On November 2, 2023, the Board of County Commissioners held a public hearing and considered a request for a CUP for Wireless Telecommunications Facilities and Broadcast Towers in a Planned Unit Development (PUD) zoning classification on property owned by Hope Episcopal Church, Inc., application number 23Z00055. The Board of County Commissioners denied the request and directed the County Attorney's Office to return to the Board with findings of fact. The requested Resolution setting forth proposed findings of fact, conclusions of law, and the action taken is attached.

Pursuant to BCC-51, when the Board directs the County Attorney to develop a resolution setting forth proposed findings of fact, the resolution is to be scheduled for approval as a consent agenda item at a subsequent regular meeting of the Board. If the Board removes the resolution and findings of fact from the consent agenda for discussion at a regular meeting, the discussion shall not constitute a reopening of the public hearing, nor shall the Board hear any new evidence from the public. However, nothing in this section shall be construed to prevent the Board from continuing a public hearing to a time-certain and reopening the public hearing at that time. In the event the Board wishes to reopen the public hearing, the item shall be readvertised.

Please note the record was sent electronically to each Board member and a paper copy of the full record will be available in the Clerk's files at the meeting.

Clerk to the Board Instructions:

Return a signed copy of the resolution to the County Attorney's Office.



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

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December 6, 2023

MEMORANDUM

TO: Morris Richardson, County Attorney

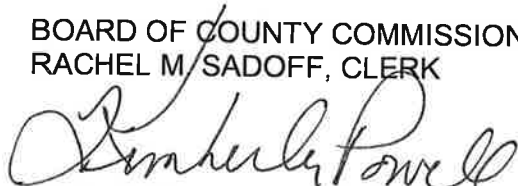
RE: Item F.14., Resolution Setting Forth the Findings and Conclusions of the Board of County Commissioners for the Denial of a Request for Conditional Use Permit (CUP) on Property Owned by Hope Episcopal Church, Inc.

The Board of County Commissioners, in regular session on December 5, 2023, adopted Resolution No. 23-144, setting forth the findings of fact and conclusions of the Board pertaining to the denial of a request for a CUP for Wireless Telecommunications Facilities and Broadcast Towers in a Planned Unit Development (PUD) zoning classification on property owned by Hope Episcopal Church, Inc. Enclosed is the fully executed Resolution.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK



Kimberly Powell, Clerk to the Board

/ds

Encl. (1)

RESOLUTION NO. 23- 144

A RESOLUTION SETTING FORTH THE FINDINGS OF FACT AND CONCLUSIONS OF THE BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS PERTAINING TO THE DENIAL OF THE REQUEST FOR A CONDITIONAL USE PERMIT FOR A 120-FOOT MONOPOLE WIRELESS TELECOMMUNICATIONS FACILITY IN A PLANNED UNIT DEVELOPMENT ZONING CLASSIFICATION ON PROPERTY OWNED BY HOPE EPISCOPAL CHURCH, INC.

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, as follows:

STATEMENT OF THE CASE AND FACTS

This item came before the Planning & Zoning Board on October 16, 2023. The Planning and Zoning Board recommended approval in a 5-4 vote. The item came before the Board of County Commissioners of Brevard County, Florida, on November 2, 2023. On November 2, 2023, the Board of County Commissioners unanimously denied the request after a public hearing.

The record is attached as Exhibit "A." It consists of documents maintained by the Planning and Development Department as part of the official application file and provided to the Planning and Zoning Board and the Board of County Commissioners, relevant sections of the Brevard County Code of Ordinances, Comprehensive Plan provisions, and minutes from the public hearings. The pages will be referred to as R-

_____.

Description	Page Numbers
Application for Zoning Action	R-001
GIS Maps	R-113
Staff Comments	R-135
Consultant's Report	R-149
Minutes of Planning and Zoning Board, October 16, 2023	R-161
Public Comment	R-165
Agenda Report, Board of County Commissioners November 2, 2023	R-196
Administrative Policies of the Future Land Use Element	R-198
Transcript of Hearing, Board of County Commissioners November 2, 2023	R-206

Sheet C-1 Overall Site Plan Overlaid on Aerial	R-220
Sheet C-3 Tower Elevation Drawing	R-221
T-Mobile 4G Before Propagation Map	R-222

The applicant, Hope Episcopal Church, Inc., has owned the subject property since 2000. (R-19 – 20). The property is a total of 8.27 acres (R-002) and has had a church built on the property since 1997. (R-009). The Future Land Use (FLU) designation for the property is neighborhood commercial, or NC. (R-115). The subject property’s existing zoning is Planned Unit Development, or PUD. (R-114). The PUD zoning classification can be considered consistent with the NC Future Land Use designation. (R-137).

The applicant requested a conditional use permit to construct a 120’ concealed monopole tower to be used as a wireless telecommunications facility on a 0.139-acre leased portion of the property. (R-147). The Brevard County Code of Ordinances has in place zoning regulations that specifically control and apply to the construction of new wireless telecommunication facilities. The applicant requested a Level III Permit to construct the new wireless telecommunications facility. (R-149). As a result, Section 62-2420(c), Brevard County Code, which establishes permit levels and general development standards for wireless telecommunications facilities, requires that a conditional use permit be obtained and that the procedures outlined in Sections 62-1901 and 62-1953, Brevard County Code, be followed. As part of the conditional use permit process, the applicant needed to appear before the Planning and Zoning Board and the Board of County Commissioners in its capacity as the Brevard County Zoning Board.

Section 62-1901(b), Brevard County Code, provides, in pertinent part, that “[a]n application for a specific conditional use within the applicable zoning classification shall be submitted and considered in the same manner and according to the same procedure as an amendment to the official zoning map as specified in [Section 62-1151, Brevard County Code.] . . .” Section 62-1151(d), Brevard County Code, requires the Board of County Commissioners to consider the following factors enumerated in Section 62-1151(c):

- (1) The character of the land use of the property surrounding the property being considered.
- (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use.
- (3) The impact of the proposed zoning classification or conditional use on available and projected traffic patterns, water and sewer systems, other

public facilities and utilities and the established character of the surrounding property.

(4) The compatibility of the proposed zoning classification or conditional use with existing land use plans for the affected area.

(5) The appropriateness of the proposed zoning classification or conditional use based upon a consideration of the applicable provisions and conditions contained in this article and other applicable laws, ordinances and regulations relating to zoning and land use regulations and based upon a consideration of the public health, safety and welfare.

Furthermore, Section 62-1901(c), Brevard County Code, identifies additional standards for the Board to consider, such as whether:

(1) “[t]he proposed use will be compatible with the character of adjacent and nearby properties with regard to use, function, operation, hours of operation, type and amount of traffic generated, building size and setback, and parking availability” (Section 62-1901(c)(1)b., Brevard County Code);

(2) “[t]he height of the proposed use [is] compatible with the character of the area . . .” (Section 62-1901(c)(2)i., Brevard County Code); and

(3) “[t]he proposed conditional use [has] existing or proposed screening or buffering, with reference to type, dimensions and character to eliminate or reduce substantial, adverse nuisance, sight, or noise impacts on adjacent and nearby properties containing less intensive uses.” (Section 62-1901(c)(1)f., Brevard County Code).

Wireless telecommunication facilities can be permitted as a conditional use if the requirements outlined in the Code are satisfied. This includes Section 62-1901(c) (explained above), Section 62-1953, and Chapter 62, Article VI, Division 7. Section 62-1953, Brevard County Code, which directs the Board of County Commissioners to consider the aesthetic effects of the proposed tower on surrounding areas as well as mitigating factors concerning aesthetics. *Section 62-1953(1)a., Brevard County Code.* The Board “may reject an application on the grounds that the proposed tower’s aesthetic effects are incompatible with the surrounding area.” *Section 62-1953(1)b., Brevard County Code.*

Under Chapter 62, Article VI, Division 7, Brevard County Code, additional guidance on the construction of a wireless telecommunications facility is provided. Some of the goals of this Division are to: (1) “[m]inimize the impacts of communication facilities on surrounding land uses by establishing standards for location, structural integrity, and compatibility”; and (3) “[p]reserve the scenic and visual character of the geographic area

by encouraging the location, design and architectural treatment of wireless treatment facilities to avoid the disruption of the natural and built environment, and to ensure harmony and compatibility with surrounding land use patterns.” *Section 62-2402, Brevard County Code*. The Code also points out that the intent of the Division is to, at least in part, “promote the health, safety, and general welfare of the public from . . . [p]otential aesthetic harm to residential communities . . .” *Section 62-2401(4), Brevard County Code*.

The applicant is seeking a Level III Permit, which triggers the requirements of Chapter 62, Article VI, Division 7, Subdivision V, Brevard County Code. (R-149). Section 62-2451, Brevard County Code, establishes the application requirements and review process for new wireless telecommunication facilities. Visual impacts and aesthetics are a factor that must be considered when determining whether a conditional use permit can be issued and “the applicant must demonstrate that the proposed tower does not create a significant adverse visual aesthetic impact on the surrounding landscape and adjacent properties. . .” *Section 62-2451(a)(3), Brevard County Code*. The criteria for the analysis is outlined in Section 62-2446(q), Brevard County Code, and include: overall height; configuration; physical location; mass and scale; materials and color; illumination; and architectural design.

At the Planning and Zoning Board meeting on October 16, 2023, the P&Z Board considered the applicant’s request, public comment, and the documents and evidence that made up the record. The P&Z Board voted to approve the CUP for the proposed wireless telecommunication facility with the following conditions:

- 1.) Applicant should provide final Construction Documents and Site Plans for review;
- 2.) Applicant should obtain, and provide proof of, NEPA and SHPO approvals for the new structure, prior to Building permit approval;
- 3.) Applicant should provide a Structural Analysis based on the final construction parameters with the monopole elevation at 120 feet, signed and sealed by a Florida Registered Professional Engineer prior to Building Permits; and
- 4.) All antennas and equipment shall be mounted internally, with installation of aviation obstruction lights on the tower, dual-red lights at the mid-point and at the top of the tower.

The motion carried 5:4 in favor of approval. (R-164).

On November 2, 2023, the Board of County Commissioners considered the applicant’s request during a public hearing. As part of the information presented to the Board,

Brevard County Planning and Development staff provided staff comments on the CUP application request for the Board to consider. (R-135). The staff report referenced applicable provisions under the Brevard County Code and administrative policies located in the Future Land Use Element (Chapter XI) of the County's Comprehensive Plan. The ultimate decision-making authority as it pertains to reviewing and applying these regulations to the CUP application rests with the Board.

Staff provided a general description of the surrounding properties as follows:

To the north is a 3-acre parcel developed as a FPL sub-station and a 2.36-acre parcel developed as a business park. Both parcels retain PUD zoning.

To the south is 4.72-acre parcel developed as a stormwater pond adjacent to Crystal Lakes subdivision within the Suntree PUD.

To the east, across Interlachen Road, is 9.74-acre parcel with PUD zoning developed as a shopping center.

To the west is a 0.96-acre undeveloped parcel adjacent to a business park with BU-1 zoning.

(R-136).

The staff report also identified Administrative Land Use Policies of the Brevard County Comprehensive Plan, particularly Administrative Policy #4.

Analysis of Administrative Policy #4 – Character of a neighborhood or area. *There is an existing pattern of commercial uses on parcels to the north, east and west of the subject property. The closest residential development is located approximately 600 feet to the south of the proposed site. The PUD zoning classification allows for a variety of commercial uses.*

(R-138).

The staff report identified special considerations for conditional use permits as required by the Code, including Sections 62-1151(c) and 62-1901, Brevard County Code.

Special Considerations for CUP (Conditional Use Permit)

The Board should consider the compatibility of the proposed CUP pursuant to Section 62-1151(c) and to Section 62-1901, as outlined below.

Section 62-1151(c) directs the Board to consider the character of the land use of the property and its surroundings; changes in the conditions of the

land use being considered; impact upon infrastructure; compatibility with land use plans for the area; and appropriateness of the CUP based upon consideration of applicable regulations relating to zoning and land use within the context of public health, safety and welfare.

Section 62-1901 provides that the approval of a conditional use shall authorize an additional use for the affected parcel of real property in addition to those permitted in the applicable zoning classification. **The initial burden is on the applicant to demonstrate that all applicable standards and criteria are met. Applications which do not satisfy this burden cannot be approved.** The applicant's responses and staff observations, if any, are indicated below.

...

This request should be evaluated in the context of **Section 62-1953** which outlines conditions for wireless telecommunication facilities which states:

Wireless telecommunication facilities and broadcast towers may be permitted as a conditional use subject to the applicable requirements of article VI, division 7, section 62-1901(c) and this section.

(1) In addition to the general review criteria in section 62-1901(c), the board shall consider the following:

a. The aesthetic effects of the proposed tower on surrounding areas as well as mitigating factors concerning aesthetics.

Staff analysis: this request is for a 120-foot concealed monopole with up to four carriers, which means that all future antennas, radios and cables installed on the tower will be placed behind a fiberglass radio frequency transparent shroud making them hidden from view.

b. The Board may disapprove an application on the grounds that the proposed tower's aesthetic effects are incompatible, or may condition approval on changes in tower height, design, style, buffers, or other features of the wireless communications facility or its surrounding area. Such changes in non-broadcast installations need not result in performance identical to that of the original application.

Staff analysis: The Board may wish to consider if the request for the proposed CUP is consistent and compatible with the surrounding area. The Board may wish to consider additional conditions beyond those

cited in section 62-1901 in order to mitigate potential impacts to abutting properties. The proposed request states there is a 25'5" radius circle around the monopole, designated as the Engineered Fall Zone Radius. Site plan review and building permit review will confirm this proposed Engineered Fall Zone Radius.

c. Factors relevant to aesthetic effects include: the protection of the view in sensitive or scenic areas and areas specially designated in adopted plans such as unique natural features, scenic roadways and historic sites; the concentration of towers in the proposed area; and whether the height, design, placement or other characteristics of the proposed tower could be modified to have a less intrusive visual impact.

Staff analysis: The applicant has provided proposed views, included in the application packet, of the tower from the surrounding parcels and how the proposed tower will aesthetically look as a concealed monopole tower.

d. If the Board determines that the proposed additional service of non-broadcast facilities, coverage, or capacity to be achieved by the location of the proposed facility can be achieved by use of one or more alternative existing wireless communications facilities addressed in this section, which better serve the stated goals set forth in section 62-2402, it may deny the proposed antenna support facility application.

Staff analysis: The Brevard County's Wireless Communications Master Plan identifies two County-owned sites within one mile of the proposed site. However, these sites are not existing wireless communication facilities. Per 62-2441, co-location is only required on existing wireless communication facilities:

- Approximately 0.7 miles to the Northwest of the proposed location, along the west side of Murrell Road. The recommendation for the county-owned site is in an Urban Area – for concealed and non-concealed facilities with a maximum height limitation of 120 feet.**
- Approximately 0.8 miles to the Northeast of the proposed location along the east side of Candlewick Drive. The recommendation for the county-owned site is in an Urban Area – for**

concealed and non-concealed facilities with a maximum height limitation of 120 feet.

(R-139 – 141).

During the hearing, concerns were raised regarding the impact of the wireless telecommunications facility on the aesthetics of the area. For example, Robin Steiner stated, in part, that local communities have been moving their utility lines underground to improve aesthetics and approving the requested CUP would undermine that effort.

. . . This was a safety move to improve connectivity and the biggest overall improvement was to the aesthetics of the community which increased the value of their biggest asset and investment, their homes. Sound familiar? Sounds like Suntree, no more unsightly poles and wires, but we'll now have a cell phone tower booming over us. But now we'll have this 5G tower at the tip of our community. Nice welcome sign don't you think? . . .

(R-209).

John Lapak also spoke out against the request stating, in part, as follows:

. . . We have a neighborhood that from the south, the southeast, the southwest is all surrounded by two of the most beautiful, uh development communities, both Baytree and Suntree, and they contain well over a thousand homes and there's nothing more than a one or two-story, um, on all this property. And it's been there for 20 or 30 years, and by the way, the church, you know, has been there for like 26 years on their property as a church and in the same zoning type. So, here we are faced with a...in one of the most beautiful areas, and we have, uh, now we're going to be faced with this tower. If we were applying for a permit to put a taller tower, probably the limit, according to the code, would be somewhere around 50-60 feet, so actually, if it was a...we're now 90 feet higher in the air, highly visible from all of these beautiful neighborhoods. . . .

(R-210).

As it pertains to comments by the Board, aesthetics were a key consideration when the CUP was denied.

Commissioner Feltner: I don't think this is a good fit. Um, Administrative Policy 4 says that we can consider the aesthetic. And just to be clear, I think when we're talking about 120 feet, might not sound so bad, but it's 12 stories. It's a 12-story structure in Suntree and everyone is going to see

that, um, for, from a long distance. So, um, I would make a motion to deny this based on...

Commissioner Goodson: Second it.

Commissioner Feltner: Okay.

Chair Pritchett: Okay, Commissioner Tobia were you getting ready to hit (applause in the audience) Commissioner Tobia were you getting ready to hit your mic?

Commissioner Tobia: No, Madam Chair.

Chair Pritchett: Okay, um, I'm going to just weigh-in here real quick. Um, I, we typically give more weight to the Commissioner of the district because he's the one that lives there. Again, I, I probably have concerns about the impacts, but we're not allowed to consider that. It has to totally be as far as how it's going to affect on the area and the residential areas. And, so, I'm going to leave that into the hands of the Commissioner of that district, that he feels like it's, it's not a good fit. So, I will be supporting the Commissioner with that vote due to the physical location could be a hindrance to the appearance of the entrance in the residential area. So, we have a motion and a second. All in favor say Aye.

(all Commissioners say Aye)

Chair Pritchett: Opposed? Passes 4-0.

(R-218).

FINDINGS

The Board of County Commissioners finds:

1. The subject property was purchased by the applicant in 2000 per the Special Warranty Deed recorded in Brevard County Official Records at Book 4160, Page 325.
2. The subject property totals 8.27 acres with a request to construct a 120' monopole wireless telecommunications facility on a 0.139-acre portion of the property.
3. The subject property is zoned Planned Unit Development (PUD).

4. The surrounding area is characterized as a mix of both commercial and residential, with residences being located within 500 feet of the subject property.
5. Applicable provisions of the Brevard County Code require certain factors be considered by the Board when determining the appropriateness of a conditional use permit for wireless telecommunications facilities, including, but not limited to, Section 62-1151, Section 62-1901, Section 62-1953, and Chapter 62, Article VI, Division 7.
6. Section 62-1151(c), Brevard County Code, identifies the following relevant factors to be considered by the Board when determining whether a CUP should be approved:
 - (1) The character of the land use of the property surrounding the property being considered;
 - (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use; and
 - (3) The impact of the proposed zoning classification or conditional use on available and projected traffic patterns, water and sewer systems, other public facilities and utilities and the established character of the surrounding property. . . .
7. Section 62-1901(c), Brevard County Code, provides that the Board shall base a denial or approval of the CUP application on the factors outlined in Section 62-1151(c), Brevard County Code, as well as the following general standards:
 - (1) “[t]he proposed use will be compatible with the character of adjacent and nearby properties with regard to use, function, operation, hours of operation, type and amount of traffic generated, building size and setback, and parking availability” (Section 62-1901(c)(1)b., Brevard County Code);
 - (2) “[t]he height of the proposed use shall be compatible with the character of the area” (Section 62-1901(c)(2)i., Brevard County Code); and
 - (3) “[t]he proposed conditional use [has] existing or proposed screening or buffering, with reference to type, dimensions and character to eliminate or reduce substantial, adverse nuisance, sight, or noise impacts on adjacent and nearby properties

containing less intensive uses.” (Section 62-1901(c)(2)f., Brevard County Code).

8. Section 62-1953, Brevard County Code, directs the Board of County Commissioners to consider the aesthetic effects of the proposed tower on surrounding areas as well as mitigating factors concerning aesthetics. *Section 62-1953(1)a., Brevard County Code.* The Board “may disapprove an application on the grounds that the proposed tower’s aesthetic effects are incompatible with the surrounding area.” *Section 62-1953(1)b., Brevard County Code.*
9. Two of the goals identified in Chapter 62, Article VI, Division 7, Brevard County Code, entitled “Communication Facilities”, are to: (1) “[m]inimize the impacts of communication facilities on surrounding land uses by establishing standards for location, structural integrity, and compatibility”; and (2) “[p]reserve the scenic and visual character of the geographic area by encouraging the location, design and architectural treatment of wireless treatment facilities to avoid the disruption of the natural and built environment, and to ensure harmony and compatibility with surrounding land use patterns.” *Section 62-2402, Brevard County Code.*
10. The Code also points out that the intent of the Division is to, at least in part, “promote the health, safety, and general welfare of the public from . . . [p]otential aesthetic harm to residential communities . . .” *Section 62-2401(4), Brevard County Code.*
11. A Level III Permit triggers the requirements of Chapter 62, Article VI, Division 7, Subdivision V, Brevard County Code. Section 62-2451, Brevard County Code, establishes the application requirements and review process for new wireless telecommunication facilities. Visual impacts and aesthetics are a factor that must be considered when determining whether a conditional use permit can be issued and “the applicant must demonstrate that the proposed tower does not create a significant adverse visual aesthetic impact on the surrounding landscape and adjacent properties. . . .” *Section 62-2451(a)(3), Brevard County Code.* The criteria for the analysis are outlined in Section 62-2446(q), Brevard County Code, and include the following factors: overall height; configuration; physical location; mass and scale; materials and color; illumination; and architectural design.
12. The Board must consider aesthetics and the overall visual impacts of a wireless telecommunications facility on the surrounding area when determining whether such a CUP shall be approved or denied.

13. The scenic and visual character of the relevant geographic area consists of neighborhoods with one- and two-story structures. Notably, efforts to underground utility services have improved area aesthetics and reduced visual clutter in the form of poles and utility lines.
14. The requested tower would create a significant adverse aesthetic impact on the surrounding landscape and adjacent properties, would negatively impact the scenic and visual character of the geographic area, and the aesthetic effects of the tower are incompatible with the surrounding area.

CONCLUSION

Based on the foregoing, the Board of County Commissioners hereby finds the request for a conditional use permit to allow a 120' monopole wireless telecommunications facility is incompatible with the character of the properties surrounding the subject property and creates a negative aesthetic impact as requested. Accordingly, the requested conditional use permit is denied.

DONE AND RESOLVED this 5th day of December, 2023.

ATTEST:



Rachel Sadoff, Clerk

BOARD OF COUNTY
COMMISSIONERS OF BREVARD
COUNTY, FLORIDA



Jason Steele, Chair

As approved by the Board on: DEC 05 2023