

CITY OF SHELBYVILLE

Adam M. Rude
Director



Allan Henderson
Deputy Director

BOARD OF ZONING APPEALS

MEETING DATE: 5/12/2020

Case #:	BZA 2020-08: Kennedy Park Telecommunication Tower			
Petitioner's Name:	AT&T Mobility			
Owner's Name:	City of Shelbyville, IN			
Petitioner's Representative:	Matthew M. Price, Dentons Bingham Greenbaum LLP			
Address of Property:	745 E. Franklin Street			
Subject Property Zoning Classification:	PK – Parks and Open Space			
Comprehensive Future Land use:	Parks and Recreation			
	North	East	South	West
Surrounding Properties' Zoning Classifications:	R1 – Single Family Residential	R1 – Single Family Residential	PK – Parks and Open Space	PK – Parks and Open Space
Surrounding Properties' Future Land Use	Single Family Residential	Parks and Recreation	Single Family Residential	Single Family Residential
History:	This land was purchased by Fred Kennedy and donated to the City in 1929 for the purpose of a new city park. Since that time, nearly a century ago, the park has seen many changes as the community around it has grown, including the addition of a baseball diamond, building a shelter house, installing new playground equipment, and most recently, constructing the Blue River Trail which runs through the park.			
Vicinity Map:				
Action Requested:	Approval of one special exception use to allow for a new telecommunication tower located within Kennedy Park.			

1. AT&T has found that there is a gap in their cell phone coverage in and around the “Walkerville” area and have spent some time researching where and how they can locate their facilities to fill this gap. The proposed location will allow them to fill the gap.
2. AT&T and the Shelbyville Park’s Board have finalized an agreement to locate the tower within Kennedy Park.
3. The tower would replace one of the existing lighting towers located in the outfield of the baseball diamond in the park. The lighting would be reinstalled at the existing elevation, and the cell phone antennas would be located near the top of the tower.
4. The base of the tower would be enclosed with a fence to protect the radio equipment. The tower and equipment shed would be accessible for maintenance through a new asphalt drive connecting to Poe Street.

Special Exception Use Findings of Fact, for “Telecommunication Facility”

Pursuant to UDO 5.67-C, the following criteria shall be used in the approval of the siting of new towers:

1. ***Co-Location:*** Evidence that the applicant has investigated the possibilities for locating the proposed facilities on an existing tower, the use of stealth technology or location in another district where the tower would be permitted as an administratively approved use where a minimal level of coverage can be provided.

The applicant must give notice to all existing towers within a one (1) mile radius and allow 30-days for those tower owners to respond. The applicant has started this process but must wait for the 30-days to expire before submitting this documentation to our office. The planning staff recommends a condition on the approval of this tower that the applicant meet this requirement proving that co-location is not possible before the issuance of an improvement location permit for this tower.

Co-Location: Applicant will meet this requirement before the issuance of an Improvement Location Permit

2. ***Buffering:*** In order to provide spatial separation and create visual block from adjacent properties and streets, a buffer shall be installed around the outside of all improvements on the site, including the tower and guy anchors, any ground buildings or equipment, and security fencing. Ground buildings located in a residential district may be located outside the buffered area if they are constructed so the exterior appearance of the building has the appearance of a residential dwelling, including pitched roof and frame or brick veneer construction. The tower’s guy anchors may be screened or fenced separately in order to comply with the requirements of this division.

The plans that have been submitted by the applicant do not currently show landscaping or other screening measures to meet this requirement. The applicant will need to revise and resubmit plans that show how screening measures will be utilized on the north, east, and south side of the tower’s base to screen the security fence and equipment from public view.

Buffering: Applicant will meet this requirement before the issuance of an Improvement Location Permit

3. **Fencing and Walls:** The base of the tower and each guy anchor shall be surrounded by a security fence or wall at least eight (8) feet in height unless the tower and all guy anchors are mounted entirely on a building over eight (8) feet in height. The tower's guy anchors may be screened separately in order to comply with the requirements of this division.

The submitted plans have a security fence that is at least 8 feet in height surrounding the entire base of the tower.

Fencing and Walls: Applicant has met this requirement with the plans that have been submitted

4. **Lot Size:** The minimum lot size requirements shall be in accordance with the zoning district where the tower is proposed to be located or the setback requirements of *Section 5.71(C)(12): Setbacks*, whichever is greater.

The subject property is over 9.5 acres in size, and the minimum lot size is only 2 acres, so this requirement is being satisfied for this proposed project.

Lot Size: Applicant has met this requirement with the plans that have been submitted

5. **Setbacks:** *Setback of the base tower from all adjacent property lines shall be one (1) foot for each foot in height. To encourage the shared use of facilities, applications for towers which will operate with more than one (1) user immediately upon completion may have a ten percent (10%) reduction in the required setbacks, but in no case shall the setback be less than those required for the underlying zoning district. Also, to encourage the construction of monopole structures, monopole towers may have a twenty percent (20%) reduction in the required setbacks. To encourage location of towers in forested areas with a minimum depth of sixty-five (65) feet, the tower may have a twenty percent (20%) reduction in the required setbacks. In no case shall the setback be less than those required for the underlying zoning district. The setback reductions shall only be allowed upon a professional engineering certification which states that the structure's construction will cause the tower to crumble inward so that in the event of a collapse no damage to structures on adjacent zoning lots will result.*

The proposed tower is 190 feet in height, and is a monopole tower, so it permitted to have a 20% reduction in the required setbacks from the surrounding property lines, which results in a minimum setback of 152 feet. This tower is located approximately 156 feet from the property towards the east, 256 feet to the north, 196 feet to the south, and over 700 feet to the west.

Setbacks: Applicant has met this requirement with the plans that have been submitted

General Welfare: Explain why granting the request for a special exception will not be harmful to the public health, safety and general welfare of the City of Shelbyville.

Applicant provided the following response to Finding of Fact #1 "The telecommunications facility will not create smoke, dust, noise, odor, significant traffic, significant lighting, or demands on the public infrastructure. The facility will not impair visibility for motorists or pedestrians, and will not result in additional traffic along the adjacent roadways. Petitioner must provide reliable wireless communications services. The site is uniquely situated geographically relative to Petitioner's existing network installations and presents a uniquely suited property, meeting Petitioner's requirements for providing adequate wireless communications coverage based upon geographical, engineering and other technical attributes of the site."

The planning staff has determined that the requested special exception use should not be harmful to the public health, safety, or general welfare of the community due to the fact that the proposed tower is replacing an existing light pole in the park and will meet all of the development standards prescribed for telecommunication towers.

Finding #1 has been satisfied by the petitioner

Compatibility and Impact: Explain why the special exception will be in harmony with the adjacent uses and will not substantially have an adverse impact on the adjacent properties and property values.

Applicant provided the following response to Finding of Fact #2" The telecommunications facility will not create smoke, dust, noise, odor, significant traffic, or significant lighting. The overall park property contains approximately 10 acres and provides for a wide variety of activities and recreational facilities which draw people to the park from near and far, including a shelter, restrooms, lighted softball field, a parking lot, basketball court, two tennis courts, pickleball courts, a playground, a walking bridge over Little Blue River, grills, a fishing site, and other similar publicly accessible grounds and facilities."

The planning staff has determined that the requested special exception use should be in harmony with the adjacent uses and the petitioner has taken steps to minimize any substantially adverse impact on the adjacent areas. The petitioner has worked to balance the needs of the cell phone provider to locate near populated areas, and the desires of the community to minimize the number of cell phone towers in residential areas, by locating the tower within Kennedy Park. This places the tower close enough to the residential areas that are currently underserved, while also positioning the tower far enough into the park to minimize any potential adverse impact to the neighborhood.

Finding #2 has been satisfied by the petitioner if staff recommended conditions are met

Character: Explain why the special exception will not adversely alter the character of the zoning district.

Applicant provided the following response to Finding of Fact #3 "The telecommunications facility will not create smoke, dust, noise, odor, significant traffic, or significant lighting. The overall park property contains approximately 10 acres and provides for a wide variety of activities and recreational facilities which draw people to the park from near and far, including a shelter, restrooms, lighted softball field, a parking lot, basketball court, two tennis courts, pickleball courts, a playground, a walking bridge over Little Blue River, grills, a fishing site, and other similar publicly accessible grounds and facilities. The property is zoned for a park and will continue to be used for park purposes. The telecommunications facility will not impact the park or park facilities or use."

The planning staff has determined that the requested special exception use will not adversely alter the character of the zoning district. The proposed tower would be replacing an existing light pole that is used to light the baseball diamond at Kennedy Park. This effort to maintain the existing character will help to minimize any adverse impacts on the character of the district.

Finding #3 has been satisfied by the petitioner

Comprehensive Plan: Explain why the special exception is consistent with the intent of the zoning district and the goals of the comprehensive plan. Use statements and Future Land Use map from the Comprehensive Plan and Article 2 of the Unified Development Ordinance.

Applicant provided the following response to Finding of Fact #4 "The Comprehensive Plan recommends the site for Parks and Recreation use and identifies the vicinity for Conservation. Wireless communications facilities are often found to be both consistent with, and compatible with many different types of special uses such as public parks. Additionally, Article 2 of the Unified Development Ordinance specifically provides for "Utility uses" as permissible in the PK district, subject to a Special Exception"

The planning staff has determined that the requested special exception use is consistent with the goals of the Comprehensive Plan and Article 2 of the Unified Development Ordinance. The City of Shelbyville's Comprehensive Plan specifically states that "A reliable and fast communications network is essential to remain competitive in the 21st Century." (Page 72, Shelbyville Comprehensive Plan, 2019) The proposed telecommunication tower is a further step in improving the reliability and expanding the capacity of our existing telecommunication network. As stated by the petitioner, the proposed tower would fall under the "Utility Uses", and therefore subject to the special exception use process.

Finding #4 has been satisfied by the petitioner

Finding of Fact #5 – Impact to Adjacent Area: The use and property value of the area adjacent to the subject property seeking a Special Exception will not be affected in a substantially adverse manner.

Applicant provided the following response to Finding of Fact #5 “The telecommunications facility will not create smoke, dust, noise, odor, significant traffic, or significant lighting. The overall park property contains approximately 10 acres and provides for a wide variety of activities and recreational facilities which draw people to the park from near and far, including a shelter, restrooms, lighted softball field, a parking lot, basketball court, two tennis courts, pickleball courts, a playground, a walking bridge over Little Blue River, grills, a fishing site, and other similar publicly accessible grounds and facilities. The proposed site is the best and least objectionable choice available to Petitioner in the geographical area as required for quality wireless communications service in the area. The special exception will allow the Petitioner to use this location, uniquely situated within Petitioner’s existing network configuration, to provide improved telecommunications services. If Petitioner is unable to quickly erect and place in service the facility where proposed, petitioner, telecommunications providers and their customers will be materially damaged, constituting an unnecessary and negative impact upon the Petitioner, telecommunications providers, their customers, and within the context of this petition, the property in question.

The planning staff has determined that the requested special exception use is a complimentary use to the adjacent properties and should not have a substantially adverse impact to the use or value of the adjacent areas. The proposed tower is being located where an existing baseball diamond light pole is located, and the tower will not generate any additional vehicular or pedestrian traffic in the area once it is operational.

Finding #5 has been satisfied by the petitioner

BZA 2019-14 Staff Recommendation: Approval W/ Conditions

1. The petitioner shall complete the *Co-Location Notification* required in UDO 5.71(C)(1) and submit to the planning staff before issuance of an improvement location permit for this project
2. Revised plans shall be submitted to and approved by the planning staff that show that the *Buffering* standards prescribed in UDO 5.71(C)(3) are being satisfied before the issuance of an improvement location permit for this project

SPECIAL EXCEPTION: BZA 2020-08: Kennedy Park Telecommunication Tower

FINDINGS OF FACT BY THE SHELBYVILLE BOARD OF ZONING APPEALS

Staff Prepared

Motion: (I) would like to make a motion to approve the requested special exception use to construct a new monopole cell tower, including the conditions recommended in the staff report, pursuant to the findings of fact presented in the planning staff's report.

- 1. The proposed Special Exception Use **will not** be injurious to the public health, safety morals and general welfare of the community, pursuant to the planning staff's report.
 The proposed Special Exception **will** be injurious to the public health, safety morals, and general welfare of the community, pursuant to the planning staff's report.
- 2. The proposed Special Exception Use **is** in harmony with adjacent land use, pursuant to the planning staff's report.
 The proposed Special Exception Use **is not** in harmony with adjacent land use, pursuant to the planning staff's report.
- 3. The proposed Special Exception Use **will not** adversely alter the character of the zoning district, pursuant to the planning staff's report.
 The proposed special Exception Use **will** adversely alter the character of the district, pursuant to the planning staff's report.
- 4. The proposed Special Exception Use **is consistent** with the intent of the zoning district and goals objectives within the comprehensive plan, pursuant to the planning staff's report.
 The special exception **is not consistent** with the intent of the zoning district and goals objectives within the comprehensive plan, pursuant to the planning staff's report.
- 5. The use and property value of the area adjacent to the subject property seeking a Special Exception Use **will not** be affected in a substantially adverse manner, pursuant to the planning staff's report.
 The Use and property value of the area adjacent to the subject property seeking a special exception **will** be affected in a substantially adverse manner, pursuant to the planning staff's report.

Additional conditions imposed by the Board of Zoning Appeals:

- 1.
- 2.
- 3.

Shelbyville Board of Zoning Appeals

By: _____

Chairperson / Presiding Officer

Attest: _____

Adam M. Rude, Secretary



SPECIAL EXCEPTION USE APPLICATION

Shelbyville Planning & Building Department
44 West Washington Street
Shelbyville, IN 46176
P: 317.392.5102

For Office Use Only:

Case #: BZA _____ - _____
Hearing Date: _____
Fees Paid: \$ _____
Final Decision:
Approved _____ Denied _____

1.

Applicant

Name: AT&T Mobility
Address: 240 N. Meridian Street
Indianapolis, IN 46204
Phone Number: _____
Fax Number: _____
Email: _____

Property Owners Information (if different than Applicant)

Name: _____ City of Shelbyville -- Kennedy Park _____
Address: _____ 44 W. Washington Street _____
Shelbyville, IN 46176
Phone Number: _____ Contact: Jenny Meltzer - City Attorney _____
317-364-4982
Fax Number: _____ jmeltzer@cityofshelbyvillein.com _____
Email: _____

2.

Applicant's Attorney/Representative

Name: _____ Matthew M. Price, Attorney _____
Address: _____ Dentons Bingham Greenebaum LLP _____
_____ 10 W. Market St., Suite 2700 _____
Indianapolis, IN 46204
Phone Number: _____ 317-686-5225 _____
Fax Number: _____ matt.price@dentons.com _____
Email: _____

Project Engineer

Name: _____
Address: _____
Phone Number: _____
Fax Number: _____
Email: _____

3. Project Information:

General Location of Property (and address is applicable): Kennedy Park -- 745 E. Franklin Street

Current Zoning: PK
Proposed Zoning: _____

Existing Use of Property: Kennedy Park (10-acre public park)
Proposed Use: Telecommunications facility (including a 180-foot monopole tower & 10-foot lightening rod)

4. Attachments

- Affidavit and Consent of Property Owner (if applicable)
- Proof of Ownership (copy of deed)
- Letter of Intent
- Vicinity Map
- Application Fee
- Findings of Fact

The undersigned states the above information is true and correct as s/he is informed and believes.

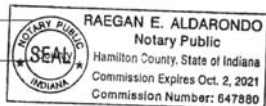
Applicant: Matthew M. Price Date: April 28, 2020

State of Indiana
County of Marion SS:

Subscribed and sworn to before me this 28th day of April, 2020.

Raegan Aldarondo
Notary Public

Raegan E. Aldarondo
Printed



Residing in Hamilton County.

My Commission Expires: 10/2/21
Commission No. 647880



SPECIAL EXCEPTION USE

FINDINGS OF FACT

Petitioner's Name: AT&T Mobility, by Matthew M. Price

Location: 745 E. Franklin Street – Kennedy Park

Special Exception for: Telecommunications Facility in a PK (Park) District

The Shelbyville Board of Zoning Appeals must determine that the following criteria have been met in order to approve an application for a Special Exception Use. Using the lines provided, please explain how your request meets each of these criteria.

1. General Welfare. Explain why granting the request for a special exception use will not be harmful to the public health, safety, and general welfare of the City of Shelbyville.

The telecommunications facility will not create smoke, dust, noise, odor, significant traffic, significant lighting, or demands on the public infrastructure. The facility will not impair visibility for motorists or pedestrians, and will not result in additional traffic along the adjacent roadways. Petitioner must provide reliable wireless communications services. The site is uniquely situated geographically relative to Petitioner's existing network installations and presents a uniquely suited property, meeting Petitioner's requirements for providing adequate wireless communications coverage based upon geographical, engineering and other technical attributes of the site.

2. Compatibility and Impact. Explain why the special exception will be in harmony with the adjacent uses and will not substantially have an adverse impact on the adjacent properties and property values.

The telecommunications facility will not create smoke, dust, noise, odor, significant traffic, or significant lighting. The overall park property contains approximately 10 acres and provides for a wide variety of activities and recreational facilities which draw people to the park from near and far, including a shelter, restrooms, lighted softball field, a parking lot, basketball court, two tennis courts, pickleball courts, a playground, a walking bridge over Little Blue River, grills, a fishing site, and other similar publicly accessible grounds and facilities.

3. Character. Explain why the special exception will not adversely alter the character of the zoning district.

The telecommunications facility will not create smoke, dust, noise, odor, significant traffic, or significant lighting. The overall park property contains approximately 10 acres and provides for a wide variety of activities and recreational facilities which draw people to the park from near and far, including a shelter, restrooms, lighted softball field, a parking lot, basketball court, two tennis courts, pickleball courts, a playground, a walking bridge over Little Blue River, grills, a fishing site, and other similar publicly accessible grounds and facilities. The property is zoned for a park and will continue to be used for park purposes. The telecommunications facility will not impact the park or park facilities or use.

4. Comprehensive Plan. Explain why the special exception is consistent with the intent of the zoning district and the goals of the Comprehensive Plan. Use statements and future land use map from the Comprehensive Plan and Article 2 of the Unified Development Ordinance.

The Comprehensive Plan recommends the site for Parks and Recreation use and identifies the vicinity for Conservation. Wireless communications facilities are often found to be both consistent with, and compatible with many different types of special uses such as public parks. Additionally, Article 2 of the Unified Development Ordinance specifically provides for "Utility uses" as permissible in the PK district, subject to a Special Exception.

5. Impact to Adjacent Area. The use and property value of the area adjacent to the subject property seeking a Special Exception will not be affected in a substantially adverse manner.

The telecommunications facility will not create smoke, dust, noise, odor, significant traffic, or significant lighting. The overall park property contains approximately 10 acres and provides for a wide variety of activities and recreational facilities which draw people to the park from near and far, including a shelter, restrooms, lighted softball field, a parking lot, basketball court, two tennis courts, pickleball courts, a playground, a walking bridge over Little Blue River, grills, a fishing site, and other similar publicly accessible grounds and facilities. The proposed site is the best and least objectionable choice available to Petitioner in the geographical area as required for quality wireless communications service in the area. The special exception will allow the Petitioner to use this location, uniquely situated within Petitioner's existing network configuration, to provide improved telecommunications services. If Petitioner is unable to quickly erect and place in service the facility where proposed, petitioner, telecommunications providers and their customers will be materially damaged, constituting an unnecessary and negative impact upon the Petitioner, telecommunications providers, their customers, and within the context of this petition, the property in question and the telecommunications users in the adjacent area.

DECISION

IT IS THEREFORE the decision of this body that this SPECIAL EXCEPTION USE petition is APPROVED.

Adopted this ____ day of _____, 2020.



AT&T Mobility
220 North Meridian Street
Suite 795
Indianapolis, IN, 46204

May 4th, 2020

Dear Sir or Madam,

I am an RF Engineer with AT&T with over 25 years of experience in the field. I have been requested to write a letter which addresses the need for the current location we have proposed for our site INL00181. This tower is needed to improve capacity as well as in-building coverage and services in Shelbyville, IN. The current proposed location provides far better improved capacity and coverage over the other existing towers within a 2-mile radius. I have reviewed all the other towers in the area and have determined the following: 1) The American Tower structure will not work as we are already on it for our site INL00132. 2) The Horvath Tower will not work as this structure is too close to our existing site INL00132. 3) The 2 Crown Castle towers will not work as we are already on one of them for our site INL00201 and both of their towers are right next to each other. 4) The Drake Electric tower will not work as it is too far south to adequately provide enough coverage and capacity we are looking for.

Regards,

A handwritten signature in blue ink, appearing to read "Hamed Zia", with a long horizontal stroke extending to the right.

Hamed Zia
Professional RAN Engineer