

MEMPHIS AND SHELBY COUNTY OFFICE OF PLANNING AND DEVELOPMENT
STAFF REPORT # 20

CASE NUMBER: SUP 13-217 **L.U.C.B. MEETING:** September 12, 2013

LOCATION: 677 Phelan Ave; southwest corner of Phelan Avenue and E.H

COUNCIL DISTRICT: 6

SUPER DISTRICT: 8

OWNER OF RECORD/APPLICANT: Loewenburg Properties, LLC / Tower Ventures, LLC

REPRESENTATIVE: Michael J. Fahy

REQUEST: 183 foot CMCS Tower (Cell tower)

AREA: 2.81 Acres

EXISTING LAND USE & ZONING: EMP (Employment)

OFFICE OF PLANNING AND DEVELOPMENT RECOMMENDATION

Approval with conditions

Staff Writer: Gregory Love

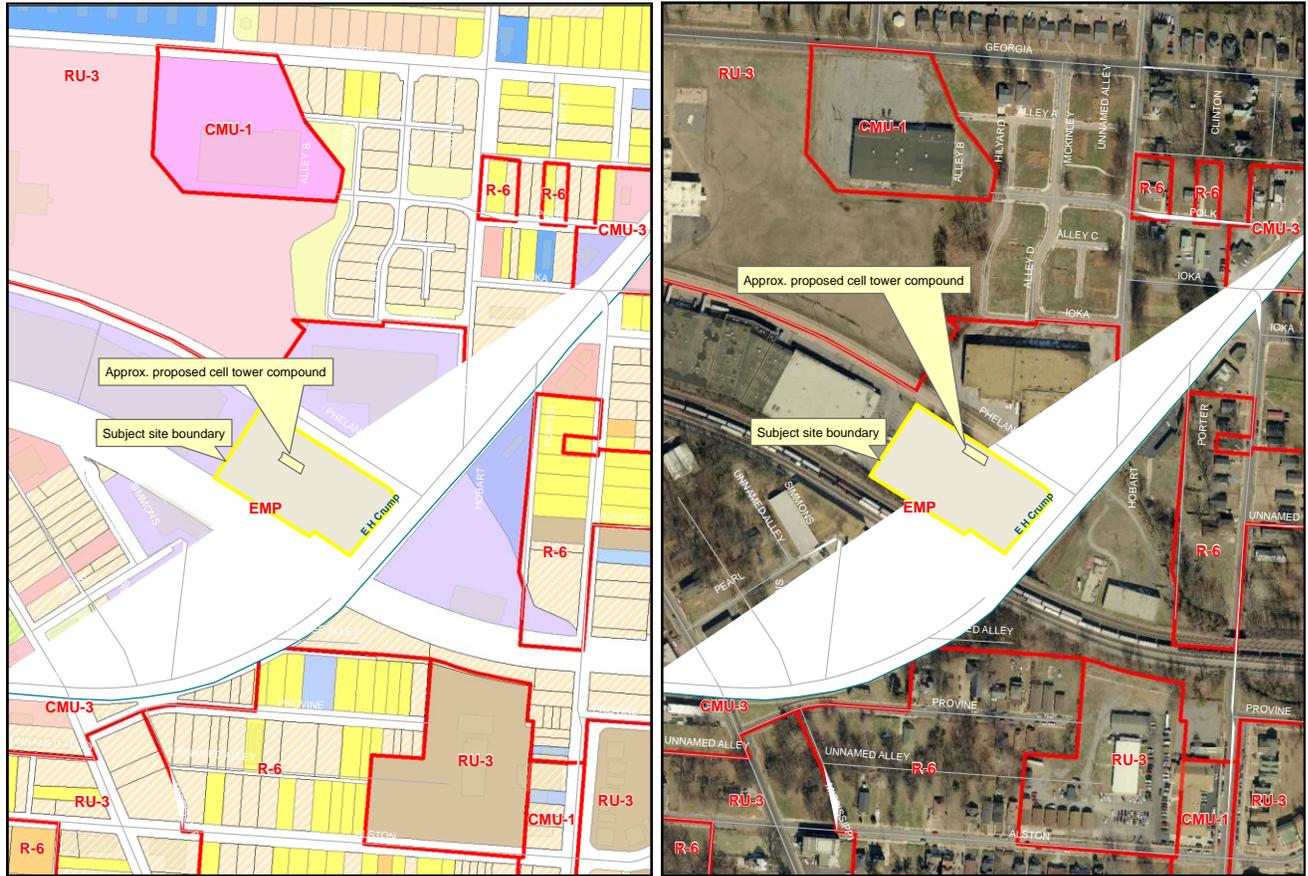
Email: Gregory.love@memphistn.gov

CONCLUSIONS

The subject site is a 2.81 acre parcel situated along the west side of Phelan Avenue just west of Crump Boulevard. The site is currently occupied by an industrial land use which will continue as the primary land use for the foreseeable future. The applicant requests to construct a 183 foot cell tower at the most northern boundary of the site abutting Phelan Avenue.

The proposed tower and compound will consume an area with dimensions of 40X80' for a total of approximately 3,200 sqft. This site is currently zoned EMP (Employment) and permits cell towers by right; however, this request requires special use permit approval as it is with 500 feet of a residential district or land use (UDC, Item, 2.6.2 I(4)(a)).

LAND USE AND ZONING MAP



SURROUNDING LAND USES AND ZONING:

- North:** Phelan Avenue and neighboring industrial use within the EMP (Employment) District
- East:** Crump Boulevard and neighboring commercial/industrial use within the EMP (Employment) District
- South:** CSX Rail Road within the EMP (Employment) District
- West:** Neighboring commercial/industrial use within the EMP (Employment) District

Subject Site (677
Phelan Ave.)



Approx. location
for proposed cell
tower



Crump Blvd.



Phelan Ave.

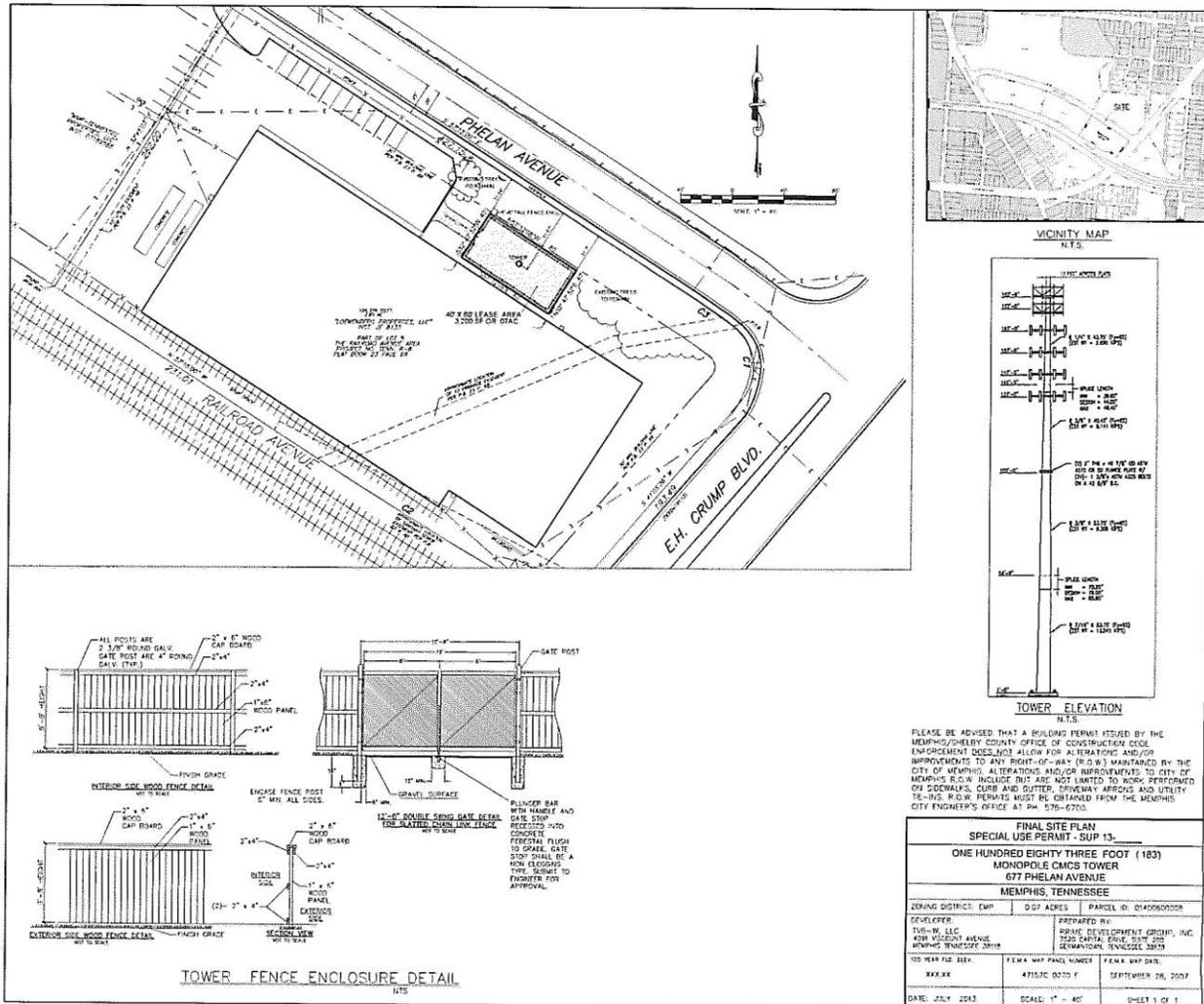


Crump Blvd.



Relative view of cell tower
site from Crump Blvd.





STAFF ANALYSIS

Site Characteristics

The site is located within the Downtown-Medical District area; this location is just south of downtown but somewhat west of the Medical District.

The subject site is currently zoned EMP (Employment), CMSC (cell) Towers are allowed “by right” within the Employment District; however, Paragraph 2.6.2I(4) requires that all proposed cell tower locations within the EMP (Employment, WD (Warehouse District) and I-H (Heavy Industrial) districts not be closer than 500 feet of property zoned R (Residential), RU (Residential Urban) or property used generally for residential purposes, in such case

administrative review is required. The total site comprises approximately 2.81 acres and is currently occupied by a seemingly industrial land use with a one-story structure and an accessory parking lot. The existing industrial land use will remain with the proposed location for the cell tower at the most northern quadrant of the lot.

Request

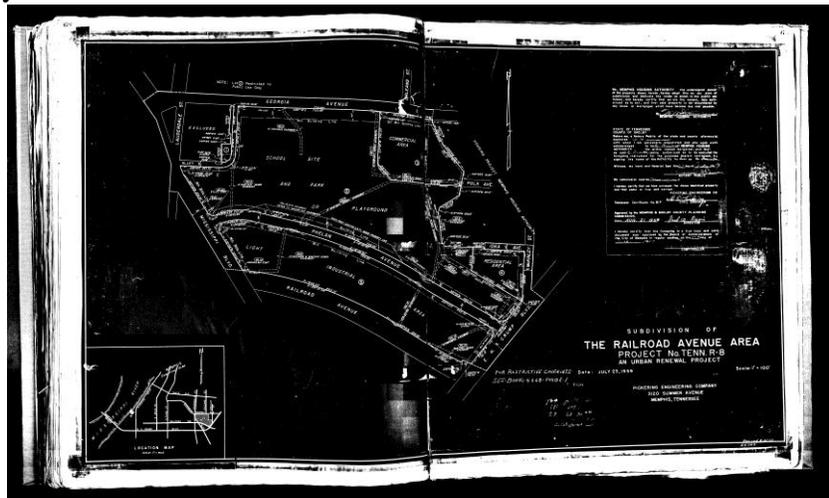
183 foot CMCS (Cell) Tower

Conclusion

This application proposes to locate a 183 foot cell tower at the most northeastern quadrant of the subject lot. The tower and its compound will consume approximately 3,200 square feet or an area of 40'x 80'.

The subject lot was initiated by the Railroad Avenue Subdivision in 1959. The subdivision established the subject tract, as being within Area 5 and was initially planned for Industrial land uses.

This site and its compound will include design features that will assist in achieving a reasonable buffer. The site's frontage along Phelan Avenue shall be buffered by landscape elements installed at the base of the compound, there is also some visual relief offered as the site is considerably elevated from Crump Boulevard.



The site will be screened by a site-proof compound composed of wood and other landscaping elements.

The elements referenced above shall provide ample screening for the proposed land use; these efforts shall prevent any onerous or severely deleterious effects to the immediate and surrounding area.

Finally, a monopole design with flush-mount antenna should assist in allowing the cell tower to integrate into the area.

Cellular communication service is a common amenity and adds additional opportunities for

safety and emergency response. In cases where additional services are justified tools and equipment to provide an acceptable level of service is warranted.

The Federal Telecommunications Act of 1996 provides limitations to the discretion local jurisdictions may exercise in their regulation of the construction and placement of wireless facilities. Essentially, a local zoning authority may deny a request for a cell tower, but its decision must be supported by “substantial evidence.” The Act goes further in prohibiting the local zoning authority from regulating cell towers on the basis of any “environmental effects of radio frequency emissions” so long as the cell tower complies with the emissions standards as set out by the Federal Communications Commission (47 U.S.C. Sec. 332 (c)(7)(B)(iii) and (iv)).

The United States Court of Appeals, Sixth Circuit, which has appellate jurisdiction over Tennessee, has stated that “few generalized expressions of concern with aesthetics cannot serve as substantial evidence on which [a local zoning authority] could base the denials” (New Par v. City of Saginaw, 301 F.3d 390, 398 (2002) quoting Cellular Tel. To construct a one hundred seventy foot (170') CMCS tower at 3298 Old Allen Road Co. v Town of Oyster Bay, 166 F.3d at 490, 496 (2d Cir. 1999)).

Based on this threshold, staff recommends approval of this request for a Special Use Permit allowing the construction of a CMCS (cell) tower with the attached conditions.

RECOMMENDATION

Approval with Conditions

SITE PLAN CONDITIONS

A Special Use Permit (SUP13-217) is hereby authorized to Tower Ventures to allow construction of a one hundred Eight-three foot (183') CMCS tower on the property located at 677 Phelan Avenue; in accordance with the approved site plan and the following supplemental conditions:

1. Crepe Myrtles 20 on center shall be installed around the base of the compound, particularly along its most northern and eastern boundary. All landscaping and screening shall be subject to final review and approval by the Office of Planning & Development.
2. All landscaping and screening shall be installed prior to launch and operation of the tower equipment. Required landscaping shall not be placed on or over any sewer or drainage easements or under any utility easement.
3. The property owner shall grant ingress/egress easement from an existing drive access through the parking lot to this site. Access easement shall be recorded with the SCRO or on the attendant site plan for this project.
4. The tower compound, the guy wires and the guy anchors shall be completely enclosed with a six foot (6') sight-proof wooden fence around the perimeters of these features.
5. The maximum tower height shall be one hundred eighty-three (183) feet and designed as a monopole with flush-mount antenna.
6. The tower and the compound at the base of the tower shall be designed and constructed to accommodate at least six (6) antenna co-locations.
7. The tower and related equipment shall be removed within one-hundred eighty (180) days of ceasing operations.
8. The tower shall be constructed within two (2) years of approval by the Memphis City Council. The Land Use Control Board may grant a time extension through the applicant filing a correspondence item application with public notice sent to all property owners within five hundred feet (500') feet of the property.
9. No signage relating to the cell tower shall be permitted on this site.
10. Any interference with Memphis-Shelby County emergency communications by a station using this tower shall be the responsibility of the station and tower owner to remedy.

GENERAL INFORMATION

Street Frontage: approximately 183' along Crump Boulevard and 427' along Phelan Avenue.

Planning District: Downtown-Medical Center

Census Tract: 45

Zoning Atlas Page: 2030

Parcel ID: 014006 00008

Zoning History: RU

DEPARTMENTAL COMMENTS

The following comments were provided by agencies to which this application was referred:

City Engineer:

The property owner shall grant ingress/egress easement from an existing drive access through the parking lot to this site. Access easement shall be recorded with the SCRO or on the attendant site plan for this project.

City Fire Division:	No Comment
City Real Estate:	No comments received.
City/County Health Department- Pollution Control:	<i>No comments by the Water Quality Branch & Septic Tank Program.</i>
Environmental Sanitation:	No comments received.
City Board of Education:	No comments received.
Construction Code Enforcement:	No comments received.
Memphis Light, Gas and Water:	

MLGW has reviewed the referenced application, and has no objection, subject to the following conditions:

- **It is the responsibility of the owner/applicant** to identify any utility easements, whether dedicated or prescriptive (electric, gas, water, CATV, telephone, sewer, drainage, etc.), which may encumber the subject property, including underground and overhead facilities. No permanent structures will be allowed within any utility easements.
- **It is the responsibility of the owner/applicant** to contact **TN-1-CALL @ 1.800.351.1111**, before digging, and to determine the location of any underground utilities including electric, gas, water, CATV, telephone, etc.
- **It is the responsibility of the owner/applicant** to pay the cost of any work performed by MLGW to install, remove or relocate any facilities to accommodate the proposed development.
- **It is the responsibility of the owner/applicant** to comply with the **National Electric Safety Code (NESC)** and maintain minimum horizontal/vertical clearances between existing overhead electric facilities and any proposed structures.
- **Landscaping is prohibited** within any MLGW easement or dedicated utility easement without prior MLGW approval.

- **It is the responsibility of the owner/applicant** to submit a detailed plan to MLGW Engineering for the purposes of determining the availability and capacity of existing utility services to serve any proposed or future development(s). Application for utility service is necessary before plats can be recorded.
 - All residential developers must contact MLGW's Residential Engineer at Builder Services: (901) 729-8675 to initiate the utility application process.
 - All commercial developers must contact MLGW's Builder Services line at 729-8630 (select option 2) to initiate the utility application process.
- **It is the responsibility of the owner/applicant** to pay the cost of any utility system improvements necessary to serve the proposed development with electric, gas or water utilities.

Bell South: No comments

Memphis Area Transit Authority (MATA): No comments received.

OPD-Regional Services: No comments received.

ComprehensivePlanning: No comments



Memphis and Shelby County
Office of Planning and Development
CITY HALL 125 NORTH MAIN STREET-SUITE 468 MEMPHIS, TENNESSEE 38103-2084 (901) 576-6619

**APPLICATION FOR SPECIAL USE PERMIT
APPROVAL/AMENDMENT**

Date: July 9, 2013

Case #: _____

PLEASE TYPE OR PRINT

Property Owner of Record: Loewenburg Properties, LLC Phone #: _____
Mailing Address: P.O. Box 6 City/State: Memphis, TN Zip 38101
Property Owner E-Mail Address: _____
Applicant: Tower Ventures LLC Phone # 901-794-9494
Mailing Address: 4091 Viscount Avenue City/State: Memphis, TN Zip 38118
Applicant E-Mail Address: royal@towerventures.com
Representative: Michael J. Fahy Phone #: 901-753-6840
Mailing Address: 7520 Capital Drive, Ste. 200 City/State: Germantown, TN Zip 38138
Representative E-Mail Address: mfahy@pdg-m.com
Engineer/Surveyor: Harris and Associates Phone # 901-753-6840
Mailing Address: 7520 Capital Drive, Ste. 200 City/State: Memphis, TN Zip 38138
Engineer/Surveyor E-Mail Address: bharris@harrisassociateslandsurveyors.com
Street Address Location: 677 Phelan Avenue
Distance to nearest intersecting street: _____
Property located at the Southwest corner of Phelan Avenue and E.H. Crump Boulevard

	Parcel 1	Parcel 2	Parcel 3
Area in Acres:	<u>2.81 Acres</u>	_____	_____
Existing Zoning:	<u>EMP</u>	_____	_____
Existing Use of Property	<u>Warehouse</u>	_____	_____
Requested Use of Property	<u>CMCS Tower</u>	_____	_____

Is the applicant applying for (please check):

Amendment(s): Any revision to an approved Special Use Permit that does not meet the provisions for Major or Minor Modifications shall be proposed as an amendment. Time extensions (see Subsection 9.6.14B) to and requests to exceed 24-month limitation on discontinuance (see Subsection 9.6.14C) of approved special use permits shall be processed as major modifications, subject to the provisions of Chapter 9.16.
Yes No _____

Pre-Application Conference held on: July 9, 2013 with Josh Whitehead

Neighborhood Meeting Requirement Met: Yes No _____
(If yes, documentation must be included with application materials)

I (we) hereby make application for the Special Use Permit described above and on the accompanying materials. I (we) accept responsibility for any errors or omissions which may

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LOEWENBERG

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result in the postponement of the application being reviewed by the Memphis & Shelby County Land Use Control Board at the next available hearing date. I (We), owner(s) of the above described property hereby authorize the filing of this application and the above named persons to act on my behalf.

X Wm Loewenberg 7/17/13 [Signature] 7/12/13
Property Owner of Record Date Applicant Date

REQUIREMENTS PRIOR TO APPLICATION SUBMISSION

PRE-APPLICATION CONFERENCE - Not more than six (6) months nor less than five (5) working days prior to filing an application, the applicant shall arrange for a mandatory pre-application conference with OPD. After consultation with an OPD staff member and obtaining his/her signature on the application a full application may be submitted.

NEIGHBORHOOD MEETING - At least ten (10) days, but not more than 120 days, prior to a hearing before the Land Use Control Board, the applicant shall provide an opportunity to discuss the proposal with representatives from neighborhoods adjacent to the development site (Section 9.3.2).

The following documentation shall be provided to OPD to verify compliance with this requirement: A copy of the letter sent to neighborhood associations and abutting property owners and a copy of the mailing list used to send notice.

9.6 Special Use Permit

Special uses within each zoning district are uses that may be appropriate in a particular zoning district, but because of the increased potential for incompatibility with adjacent uses, require individual review by the governing bodies (9.6.1A).

A special use permit is required for all special uses as set forth in Chapter 2.5, Permitted Use Table, unless a waiver is obtained under the terms of Section 9.6.6 (9.6.1B).

A special use permit is also required for all planned developments (9.6.1C).

9.6.9 Special Use Permit Approval Criteria

No special use permit or planned development shall be approved unless the following findings are made concerning the application:

Please address each sub-section below (Provide additional information on a separate sheet of paper if needed).

- The project will not have a substantial or undue adverse effect upon adjacent property, the character of the neighborhood, traffic conditions, parking, utility facilities and other matters affecting the public health, safety, and general welfare (UDC sub-section 9.6.9A).

- The project will be constructed, arranged and operated so as to be compatible with the immediate vicinity and not interfere with the development and use of adjacent property in accordance with the applicable district regulations (UDC sub-section 9.6.9B).

- The project will be served adequately by essential public facilities and services such as streets, parking, drainage, refuse disposal, fire protection and emergency services, water and sewers; or that the applicant will provide adequately for such services (UDC sub-section 9.6.9C).

The existing public services can provide the required services for the proposed CMCS Tower.

- The project will not result in the destruction, loss or damage of any feature determined by the governing bodies to be of significant natural, scenic or historic importance (UDC sub-section 9.6.9D).

There will be no loss or damage to any feature determined to be of significant natural, scenic or historic value.

- The project complies with all additional standards imposed on it by any particular provisions authorizing such use (UDC sub-section 9.6.9E).

The project complies with said standards.

- The request will not adversely affect any plans to be considered (see UDC Chapter 1.9) or violate the character of existing standards for development of the adjacent properties (UDC sub-section 9.6.9F).

The request will not adversely affect any plans or violate the existing standards for development of the adjacent properties.



July 23, 2013

Mr. Josh Whitehead
Chief Planner
Memphis & Shelby County
Office of Planning & Development
125 North Main Street, Suite 468
Memphis TN 38103

RE: Special Use Permit Application for Loewenburg
Properties being located at 677 Phelan

Dear Josh:

On behalf of Tower Ventures LLC, we are pleased to submit this Special Use Permit Application, to request approval of a 183 foot Monopole CMCS Tower. The proposed tower location and design meets and/or exceed the Special Use Criteria as noted in Section 9.6.9 of the UDC. The proposed CMCS Tower does not require any additional public improvements as they already exist.

We look forward to continuing to work with you and the Planning on this project.

Sincerely,

Prime Development Group, Inc.

A handwritten signature in black ink, appearing to read "M. J. Fahy".

Michael J. Fahy
President

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