HEARING ADMINISTRATOR’S FINDINGS AND DECISION

P21CU00002
CHRIST LUTHERAN VAIL CHURCH — E. COLOSSAL CAVE ROAD
Type I Conditional Use – Parochial School

Background/Authority

Chapter 18.97, in accordance with Section 18.09.020.A.1g of the Pima County Zoning Code, requires a Type I conditional use permit to operate a parochial school on property zoned GR-1 (Rural Residential). This particular request is to operate the school on an existing church campus; this use would constitute an expansion of that campus.

There is already an existing childcare center in operation at the church. This use was approved by the Hearing Administrator on May 13, 2013 under conditional use permit Case No. P21-13-011. The present request for a parochial school would allow the church to provide an educational alternative for local families that would offer a curriculum through 8th grade.

Public Hearing

In accordance with Pima County Zoning Code Section 18.97.030.F.3, a public hearing was held on this application on April 14, 2021. The hearing was held telephonically due to the prevailing Covid-19 pandemic. The owner/applicant (Pastor David Hook) presented the conditional use permit request and answered the Hearing Administrator’s questions.

Two (2) members of the public spoke at the hearing, both of these being property owners to the immediate south of the church property. Neither was in outright opposition, but both had significant concerns as to traffic impacts, light pollution, views, and the change in solitude and character of the area that would result from the church’s continued expansion.

Staff indicated that it had received two (2) emails on the case, these being from the above individuals who spoke at the hearing. These emails echoed the same concerns expressed above.

After hearing all of the above and after questioning the owner and applicant as to certain operational particulars of the facility, the Hearing Administrator closed the public hearing and took the case under advisement.
**Required Standards and Findings**

Following are the Hearing Administrator’s findings relative to the standards set by Pima County Code Sec. 18.97.030.F.3.c. These Sections stipulate that the following standards be met by the proposed use:

1. **It will not be in serious conflict with the objectives of the general land use plan or the area plan in which situated.**

   The Comprehensive Plan designates the subject as *Low Intensity Urban (LIU)*, the purpose of which is to, “provide areas for low density residential and other compatible uses.”

   The Hearing Administrator finds the proposed use to not be in conflict with the stated goals of the Comprehensive Plan. Churches are allowed by right, per the Pima County Zoning Code, in all zoning designations. A parochial school is seen as a complementary use to the church and, further, it does not overlap the days/times when the church holds its worship services.

2. **It will provide safeguards for the protection of adjacent developed property, or if the adjacent property is undeveloped, for the legal permitted uses of such property.**

   No new or special safeguards are necessary to protect the surrounding neighbors, other than to set an appropriate size of the facility (i.e. number of enrolled student allowed). A special condition has been crafted for this purpose.

3. **It has adequate accessibility to the County road network.**

   The property has direct access to Colossal Cave Road, which is a designated “Major Street” per the Pima County Major Streets & Routes Plan. Access is therefore found to be adequate.

4. **It has sufficient off-street parking and loading facilities, that will be developed in accordance with County engineering standards.**

   The appropriate provision of parking, loading, etc. will be verified by staff during its formal review of the church’s Development Plan for the church expansion.

5. **It will meet County standards in terms of control of noise, smoke, glare or heat, odors, vibrations, fly, ash, dust, fumes, vapors, gasses, and other forms of air pollution, liquids and solid wastes.**

   The proposed use is found to not threaten the surrounding properties in any of the above ways. Standard code requirements shall serve to adequately address these issues.

6. **Hours of operation will not be detrimental to adjoining residents.**

   The hours of operation of the parochial school will be all during daytime hours. A special condition has been crafted to further define hours of operation.

7. **Landscaping will be fully in conformance with zoning code regulations.**

   Landscaping requirements for the project were verified by staff during its recent review of the church’s formal Development Plan.
Hearing Administrator’s Decision

This application for a Type I conditional use permit to operate a parochial school, on property zoned GR-1, is hereby approved by the Hearing Administrator. This approval is subject to the Standard Code Requirements and Special Conditions as outlined below:

Standard Conditions & Code Requirements

Parochial schools in conjunction with an existing church, private school or community service agency shall be a Type I conditional use permitted in all rural and residential zones, and subject to the issuance of a conditional use permit in accordance with the provisions of Chapter 18.97

Special Conditions

1) The parochial school is limited to a total enrollment of five hundred (500) students.
2) Any desire to further increase the total enrollment, or to expand the school’s building and improvements by more than 15% of that shown on the submitted concept plan, shall require a new conditional use permit application, public hearing, etc.
3) Hours of operation for student instruction shall be Monday through Friday from 7:00 AM to 6:00 PM, which shall include student drop-off and pick-up activities.
4) The owner/applicant shall provide a full Traffic Impact Study (TIS) for review and approval by the Pima County Department of Transportation in conjunction with the required Development Plan. Offsite improvements determined necessary as a result of the TIS shall be the responsibility of the property owner/developer.

Appeal Procedures

As is the case with all Type I conditional use applications, this decision is subject to a statutory 30-day protest period from the date of this decision. If a valid protest is received within the 30-day period, an appeal hearing will be scheduled before the Board of Supervisors, who shall then make the final decision on this conditional use permit. The 30-day protest period shall commence from the date of this written decision.

Any party interested in filing an appeal should contact Ms. Elva Pedrego, Senior Planner, at phone number 724.6718. Please be advised that filing fees apply to any appeal, and that these fees are payable by the party filing the appeal request.

Respectfully Submitted:

Jim Portner
Pima County Hearing Administrator

April 18, 2021
HEARING ADMINISTRATOR’S FINDINGS AND DECISION

P21CU00003
UNISOURCE ENERGY – N. CRAYCROFT ROAD
Owner: Unisource Energy Corporation
Applicant: Pinnacle Group on behalf of Verizon Wireless
Type I Conditional Use – Wireless Communications Tower

Authority

Chapter 18.97, in accordance with Section 18.07.030.H of the Pima County Zoning Code, requires a Type I conditional use permit (CUP) for a communications tower on property zoned CR-1. The property in question is located on N. Craycroft Road, just south of its intersection with Calle Barril.

Particulars of the Request

This request is made by Pinnacle Consulting, on behalf of Verizon Wireless and Unisource Energy Corporation. Verizon Wireless proposes to construct a new forty-five foot (45’) tall communications tower just south of the perimeter wall that encloses the TEP sub-station on the property. Verizon’s ultimate intent is to co-locate permanently on an existing mono-palm communications tower that is located within the same TEP compound wall. That existing mono-palm is operated by a competing wireless company; Verizon is currently finalizing negotiations with that provider, as well as with Unisource Energy, toward constructing the desired co-location. The applicant has advised that these negotiations are well underway, but that eighteen [18] months is still an appropriate time limit for the temporary tower.

This conditional use permit application is the second one by this same applicant on the same property. The first application was for a forty-three foot (43’) temporary tower and was approved by the Hearing Administrator in November, 2020 under Case No. P20CU00008. This new application has been made because, in final design, the applicant determined that it was necessary to change the tower’s location due to topographic issues (steep slopes) and attendant grading and construction costs.

Despite the planned temporary nature of this interim tower, it remains the Hearing Administrator’s position (as it was with the prior case) that some form of reasonable visual mitigation is warranted due to the stealth requirements of the Scenic Routes ordinance which applies to Craycroft Road, as well as in consideration of the existing neighbors in the immediate area.
**Public Hearing**

In accordance with Pima County Zoning Code Section 18.97.030.F.3, a public hearing was held on this application on April 14, 2021. The hearing was held telephonically due to the prevailing Covid-19 pandemic. The applicant’s representative presented the conditional use permit request and answered the Hearing Administrator’s various questions. The applicant’s submittal package included narrative information and maps in addition to the proposed development plan for the new tower.

Two (2) members of the public attended the hearing to speak on the matter. One was the property owner to the immediate south of the proposed tower, while the other was the president of the Sunrise Presidio Village homeowners association. The property owner expressed his concerns with the visual impact of the tower, the fact that the existing mono-palm within the compound (site of the proposed co-location) was poorly maintained and not at all reflective of a palm tree, and expressed his desire that any approval stipulate a hard deadline for the temporary tower and that it must be removed after the 18-month timeframe, regardless of whether the new co-location has been finalized. The HOA president echoed this last point, stating that a not-to-exceed deadline is appropriate.

Staff indicated that it had received one (1) email prior to the hearing, this being from the above property owner and stressing the same topics expressed above.

Following the public testimony, the applicant responded to the public testimony and stated that she and Verizon Wireless were working diligently on the co-location and that she was confident all would be completed within the aforementioned 18-month timeframe. As such, she was willing to stipulate to a not-to-exceed 18-month deadline for removal of the temporary tower.

After hearing all of the above, the Hearing Administrator closed the public hearing, thanked all participants for their testimony, and advised those in attendance that he intended to approve the request and incorporate appropriate Special Conditions to reflect the above.

**Modification of Setback Requirement – Hearing Administrator’s Request**

Staff has advised the Hearing Administrator and the applicant that a formal and separate Modification of Setback Requirement (MSR) application is required to effectuate this tower at the proposed location. This is due to the fact that the tower sits slightly more than 39’ from the residential property boundary to the south, whereas normal Zoning Code requirements stipulate a setback equal to or greater than the height of the tower (in this case, 45’). MSR’s involve notice to the surrounding property owners; a single (1) objecting property owner results in denial of the MSR. If this occurs, the applicant must then apply for a variance from the Code, which involves a separate public notice and public hearing before the Board of Adjustment.

The Hearing Administrator has no authority in MSR matters. Nonetheless, given the reasonableness and cooperative spirit that was evidenced at the 14 April public hearing by both the neighbors and the applicant, the Hearing Administrator respectfully hopes and asks that no neighbor protest s filed against the future MSR. Such a state of affairs would only further delay the applicant’s efforts and seriously jeopardize their ability to meet the 18-month deadline to which all in attendance have agreed.

**Required Standards and Findings**

Following are the Hearing Administrator’s findings relative to the standards set by Pima County Code Sec. 18.97.030.F.3.c. These Sections stipulate that the following standards be met by the proposed use:
1. **It will not be in serious conflict with the objectives of the general land use plan or the area plan in which situated.**

The Comprehensive Plan (Pima Prospers) designates the subject site as *Low Intensity Urban 1.2 (LIU)*, the purpose of which is to provide areas for lower density residential uses together with others that are compatible in a primarily residential setting. Many prior communication towers have been approved and successfully located within the same LIU 1.2 district, and a similar temporary tower request was approved by the Hearing Administrator on the same property by the same applicant in November, 2020.

The proposed tower request is simply a slight change in location to that prior November, 2020 approval.

Based upon all of the above, the Hearing Administrator finds the proposed use to not be in conflict with the Comprehensive Plan as long as: 1) suitable measures are taken to provide a reasonable amount of camouflage and visual mitigation in consideration of the surrounding neighbors, and 2) the aforementioned 18-month timeframe is established as a firm deadline for the duration of the tower. Proposed special conditions attached to this approval address these issues.

2. **It will provide safeguards for the protection of adjacent developed property, or if the adjacent property is undeveloped, for the legal permitted uses of such property.**

The Hearing Administrator finds that the proposed tower will not have a significant impact upon any of the surrounding properties in a way that prohibits any of their legal or permitted uses.

3. **It has adequate accessibility to the County road network.**

The property takes its access off of a driveway along N. Craycroft Road (from Calle Barril). Craycroft Road is a designated major street and scenic route on the Pima County Major Streets & Routes Plan (MSRP). Access needs for such wireless facilities is minimal at best. With the above in mind, access is found to be adequate.

4. **It has sufficient off-street parking and loading facilities, that will be developed in accordance with County engineering standards.**

Parking sufficiency and compliance with the Zoning Code in this regard is a matter verified at the time of permitting.

5. **It will meet County standards in terms of control of noise, smoke, glare or heat, odors, vibrations, fly, ash, dust, fumes, vapors, gasses, and other forms of air pollution, liquids and solid wastes.**

The proposed use is found to not threaten the surrounding properties in any of the above ways.

6. **Hours of operation will not be detrimental to adjoining residents.**

This is an unmanned facility; hours of operation do not apply.

7. **Landscaping will be fully in conformance with zoning code regulations.**

Landscaping requirements, if any, are a matter always enforced at the time of permitting.
Hearing Administrator’s Decision

This application for a Type I conditional use permit for a new communication tower, on property zoned CR-1, is hereby approved by the Hearing Administrator, subject to the following Standard & Special Conditions:

Standard Conditions & Code Requirements

The Pima County Zoning Code allows communication towers of the proposed height (45’) within the CR-1 zone, subject to the Type I conditional use permit process.

Special Conditions

1) The height of the new tower structure shall be no more than forty-five feet (45’) to the top of the antennae. It shall be located as shown on the submitted site plan and be considered temporary in nature.
2) The entire tower, cabling, antennae and all appurtenances shall be painted a desert tan or similar earth tone color; 2) an eight foot (8’) tall masonry wall shall surround the on-the-ground equipment (no cyclone fence is permitted) and shall be painted the same color as the tower; and 3) any portion of the on-the-ground equipment complex that extends above the top of the eight foot (8’) wall shall also be painted the same color as the wall and the tower.
3) Eighteen (18) months is hereby established as a firm deadline for the existence of the tower, after which time the temporary tower shall be removed.
4) The above 18-month timeframe shall commence from the date of issuance of the conditional use permit. All parties are advised that Pima County cannot issue the permit to the applicant, nor can construction commence, until such time that the statutorily-required protest period has passed. In that the Hearing Administrator expressed his verbal approval of this request at the April 14, 2021 hearing, the 30-day protest period shall commence from that date, after which time the 18-month temporary period shall begin.

Protest Period and Appeal Procedures

As is the case with all Type I conditional use permit applications, this decision is subject to a statutory 30-day protest period. If a valid protest is received within the 30-day period, an appeal hearing will be scheduled before the Board of Supervisors, who shall then make the final decision on this conditional use permit. In that the Hearing Administrator expressed his verbal approval of this request at the April 14, 2021 public hearing, the 30-day protest period shall commence from the hearing date.

Any party interested in filing an appeal should contact Mr. Elva Pedrego, Senior Planner, at phone number 724.6718. Please be advised that filing fees apply to any appeal, and that these fees are payable by the party filing the appeal request.

Respectfully Submitted:

[Signature]

April 18, 2021

Jim Portner
Pima County Hearing Administrator