



AGENDA
PLANNING COMMISSION
CITY OF PORT ORANGE

Meeting Date: Thursday, August 24, 2023

Time: 5:30 PM

Location: Council Chambers, City Hall
1000 City Center Circle
Port Orange

A. CALL TO ORDER

1. Pledge of Allegiance
2. Roll Call

B. DISCUSSION/ACTION

3. Consideration of Minutes - July 27, 2023
4. APPLICATION: Variance/4500 Eastport Parkway - Communication Tower Setback - LDC, Chapter 16, Section 9(c)(8)
CASE NO.: VARC-23-0006
APPLICANT: Harolds Timmons, Tower Engineering Professionals
STAFF CONTACT: Gwen Perney, Planner (386) 506-5673/gperney@port-orange.org

A request for a variance from the Land Development Code to reduce the required 165-foot building setbacks for a 150-foot communication tower. The applicant is proposing the following setbacks for the communication tower: 1) north side from 165 feet to 55 feet, 2) east side from 165 feet to 118 feet, and 3) west side from 165 feet to 59 feet.

5. APPLICATION: 4th Amendment to the MDA and CDP for The Pavilion at Port Orange PCD
CASE NO.: PRZA-23-005
APPLICANT: Steven Schlossberg, Dunlawton Investments, LLC
STAFF CONTACT: Penelope Cruz, Planning Manager (386) 506-5671/pcruz@port-orange.org

A request to amend the Master Development Agreement (MDA) and Conceptual Development Plan (CDP) for The Pavilion at Port Orange Planned Commercial Development (PCD). The amendment adds an automated car wash as an allowed use on either Lots 1A or 1B and modifies the CDP to remove the requirement for a cross-access driveway to be built along the front of Lots 1A and 1B.

C. OTHER BUSINESS

6. Commissioner Comments

7. Staff Comments

D. PUBLIC COMMENTS

E. ADJOURNMENT

NOTICES – PURSUANT TO SECTION 286.0105 OF THE FLORIDA STATUTES, IF ANY PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE PLANNING COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT THIS PUBLIC MEETING OR HEARING, SUCH PERSON WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT, FOR SUCH PURPOSE, SUCH PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THE CITY DOES NOT PREPARE OR PROVIDE SUCH A RECORD.



FOR SPECIAL ACCOMMODATIONS, PLEASE NOTIFY THE CITY CLERK'S OFFICE (PHONE: 386-506-5563) AS FAR IN ADVANCE AS POSSIBLE, BUT PREFERABLY WITHIN 2 WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE OR 5 DAYS PRIOR TO THE MEETING OR HEARING DATE.



HELP FOR THE HEARING IMPAIRED IS AVAILABLE THROUGH THE ASSISTIVE LISTENING SYSTEM RECEIVERS CAN BE OBTAINED FROM THE CITY CLERKS' OFFICE.

IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT (ADA), IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS AN ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE CITY CLERK FOR THE CITY OF PORT ORANGE, 1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129, TELEPHONE NUMBER 386-506-5563, CITYCLERK@PORT-ORANGE.ORG, AS FAR IN ADVANCE AS POSSIBLE, BUT PREFERABLY WITHIN 2 WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE OR 5 DAYS PRIOR TO THE MEETING OR HEARING DATE. IF YOU ARE HEARING OR VOICE IMPAIRED, CONTACT THE RELAY OPERATOR AT 7-1-1 or 1-800-955-8771.

UPON REQUEST BY A QUALIFIED INDIVIDUAL WITH A DISABILITY, THIS DOCUMENT WILL BE MADE AVAILABLE IN AN ALTERNATE FORMAT. IF YOU NEED TO REQUEST THIS DOCUMENT IN AN ALTERNATE FORMAT, PLEASE CONTACT THE CITY CLERK WHOSE CONTACT INFORMATION IS PROVIDED ABOVE.

REGULAR PLANNING COMMISSION MEETING MINUTES
COUNCIL CHAMBERS – CITY HALL
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA
JULY 27, 2023

THE REGULAR PLANNING COMMISSION MEETING of the City of Port Orange was called to order by Chairman Lance Green at 5:30 p.m.

Pledge of Allegiance

Roll Call

Present: Stan Schmidt
Newton White
John Junco
Bo Bofamy
Thomas Jordan
Lance Green, Chairman

Absent: Maria Mills-Benat (excused)

Also Present: Shannon Balmer, Assistant City Attorney
Tracee Cody, Deputy City Clerk

DISCUSSION/ACTION

3. Consideration of Minutes - June 22, 2023

Motion to approve the meeting minutes of June 22, 2023 as presented was made by Commissioner Thomas Jordan and seconded by Commissioner Stan Schmidt. Motion carried unanimously by roll call vote.

4. APPLICATION: Riveryard Master Development Agreement and Conceptual Development Plan
CASE NO.: PRZA-23-0004
APPLICANT: Bristol Port Orange Partners, LLC
STAFF CONTACT: Tim Burman, Community Development Director (386) 506-5675/tburman@port-orange.org

A request by the applicant for approval of the Riveryard Master Development Agreement and Conceptual Development Plan.

Motion to approve Case No. PRZA-23-0004 was made by Commissioner Thomas Jordan and seconded by Commissioner John Junco.

Regular Planning Commission Meeting

July 27, 2023

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Tim Burman, Community Development Director, provided a recap of Bristol's timeline and details of the proposed Master Development Agreement (MDA) and Conceptual Development Plan (CDP). The MDA and CDA outlined the general site layout, phasing, parking, permitted uses, infrastructure, and policy considerations.

Charles Carlisle, Bristol Development Group, provided further in-depth details and answered questions from the Commissioners.

Randy Hudak, Engineer with Zev Cohen & Associates, answered questions regarding water retention and Mark Watts, Cobb Cole Law, spoke on behalf of the applicant regarding parking and zoning.

Robert Reinhausen, resident, expressed his concerns about flooding and the underground vaults.

Brendan Galbreath, neighbor to the south, is all in favor of the project.

Motion to amend the motion to add the approval of the policy considerations was made by Commissioner Thomas Jordan and seconded by Commissioner Bo Bofamy. Motion carried unanimously by voice vote.

Motion to approve Case No. PRZA-23-0004 including approval of policy considerations was made by Commissioner Thomas Jordan and seconded by Commissioner Stan Schmidt. Motion carried unanimously by roll call vote.

OTHER BUSINESS

5. Commissioner Comments

Chairman Green and all Commissioners commented that they are eager for the project to get underway.

6. Staff Comments

There were none.

PUBLIC COMMENTS

There were none.

ADJOURNMENT – 6:44 p.m.

Chairman Lance Green



STAFF REPORT

**VARIANCE / COMMUNICATION TOWER SETBACK
CHAPTER 16, SECTION 9(c)(8), LAND
DEVELOPMENT CODE
CASE NO. VARC-23-0006**

REQUEST:	Variance from the Land Development Code (LDC) to reduce the width setback of a communications tower.
LOCATION:	4500 Eastport Parkway
PROPERTY OWNER:	US Glass Holdings LLC
APPLICANT:	Harolds Timmons, Tower Engineering Professionals
STAFF RECOMMENDATION:	Approval
STAFF CONTACT:	Gwen Perney, Planner (386) 506-5673
PLANNING COMMISSION DATE:	August 24, 2023
CITY COUNCIL DATE:	September 19, 2023

DISCUSSION:

The applicant, Harold Timmons of Tower Engineering Professionals, on behalf of Verizon, is proposing to develop a 150-foot-tall camouflage monopine communications tower and equipment compound within a 10,000 square-foot lease area at the northwest corner of a +/- 1.1-acre parent parcel, located at 4500 Eastport Parkway. According to the applicant, the tower is needed to resolve coverage and capacity gaps in the area (Exhibit A – Applicant's Letter of Request). The parent parcel is currently zoned Light Industrial (LI) and is a wooded vacant parcel located on the west side of Eastport Parkway, north of Commonwealth Boulevard, west of the FEC railroad tracks (Figure 1. Location Map on Page 2). A camouflage monopine communications tower is a permitted use within the LI zoning district.

According to the applicant, the proposed tower is necessary to provide adequate coverage and capacity for Verizon customers in this area of Port Orange. The tower will serve both residential and non-residential customers and will provide space for future additional carriers on the tower. According to the applicant, more customers are relying on cellular service for both calls and the internet on their mobile devices, creating an additional need for coverage and capacity. Additionally, according to the National Emergency Number Association, approximately 80% of 911 emergency calls are made from mobile devices.

Figure 1. Location Map and Example of Monopine Communications Tower

According to the Land Development Code (LDC), a communications tower is to be setback from all property lines of the parent parcel a minimum distance of 110 percent of the fall radius of the tower. The fall radius is defined as the height of a communications tower, or the calculated distance measured from the center of the base of a communication tower which defines the maximum circular area into which the tower and any further distance in which any part of a tower may fall in case of structural failure or collapse. The intent of the communications tower setback in the LDC is to satisfy structural safety and aesthetic concerns for owners of adjacent properties, residents, and users of nearby public rights-of-way. The proposed 150-foot communication tower is required a 165-foot ($150\text{-foot} \times 1.1 = 165\text{-foot}$) setback from all property lines of the parent tract.

According to the applicant, the proposed tower cannot be located within the lease area and comply with the required 165-foot setback from the boundary of the parent parcel according to the Land Development Code (LDC), and the current setback requirement will have the effect of prohibiting wireless service to be established within a needed coverage area (Exhibit A). The applicant is requesting to reduce the tower setbacks on the north, east, and west boundaries of the parent parcel, as shown in Table 1. The required tower setback along the south boundary of the parent parcel exceeds the required 165-foot setback.

Table 1. Required and Proposed Setbacks

Boundary Direction	Current Use	Current Zoning	Required Setback per the LDC	Proposed Setback
North	Vacant (Eastport common area)	LI	165'	55'
East	Vacant (Future light industrial development)	LI	165'	118'
South	Buschman Park	LI	165'	204'
West	Vacant (Eastport common area)	LI	165'	59'

According to the applicant, the proposed tower will have a break point at 100 feet and the top 50-foot section of the tower would fall or remain connected and hang from the remaining 100-foot section in the event that the tower fails. The tower is also proposed to be designed to allow future carriers to co-locate.

Based on the preliminary review of the conceptual site plan provided by the applicant with this variance request, the separation requirements from existing communication towers, setback from a right-of-way, and habitable residential structures or residentially zoned vacant land are in compliance with the LDC, and the variance is only necessary for the tower setbacks along the north, south, and east boundaries of the parent parcel. In addition to the tower, a compound for the associated equipment will be required to be enclosed with an opaque fence and will be surrounded by a ten (10) foot landscape buffer as well as existing vegetation. The intent of the communication tower setback in the LDC is to satisfy structural safety and aesthetic concerns for owners of adjacent properties, residents, and users of nearby public rights-of-way.

To minimize the potential impacts of the proposed tower upon nearby residential and non-residential areas and Eastport Parkway, the proposed tower was positioned at the northwest corner of the parent tract to allow area on the parent tract for future development, use the existing trees and vegetation to minimize its visual impact from Eastport Parkway and from the adjacent mobile home development to the east of the tower. If development occurs on the parent parcel, the leased area will be required to maintain the opaque fence and landscaping buffer. To the north and west of the tower is a vacant, wooded tract of land that is encumbered with a St. Johns Water Management District conservation easement. On the west side of the St. John's conservation area and on the south side of the tower is Buschman Park. To the east of the tower is vacant land zoned LI, FEC Railroad tracks, and Tanglewood Mobile Home Park.

Figure 2. Location map showing general location of the proposed tower

As part of the variance request, the applicant provided data supporting the location of a tower on the subject property. The applicant conducted a search of properties within the facilities' search zone radius based on the hierarchy of site rankings provided in the LDC. After attempting to locate antennas on an existing tower that is at the edge of the search ring for this area or on municipal property, the applicant chose the subject property as a camouflaged tower on LI-zoned property as next on the communication tower siting hierarchy in the LDC. According to the applicant, the municipal properties within the search radius would be difficult to establish a communications tower on as they are within close proximity to existing residential areas or not directly accessible by a service vehicle. The LDC requires a minimum separation from residential uses of two times the tower's height for a camouflaged tower as the minimum buffer. The proposed tower is ± 450 feet from the nearest residential use, and 300 feet is required (two times the 150-foot tower height). The proposed tower is ± 0.9 miles from the closest tower and the LDC requires a minimum of 0.5 miles between communications towers.

The LDC allows an applicant to seek a variance for a setback if the applicant maintains that the requirement will prohibit or would have the effect of prohibiting the ability of a service provider to provide wireless services in violation of federal law. According to the applicant, the requested setbacks for the proposed communication tower will meet the intent of the City's setback requirement. As indicated by the applicant, in the unlikely event of a tower failure, the proposed tower is designed to collapse at a pre-engineered breakpoint and would fall within the leased area. The design engineer for the proposed

communication tower states that in the event of a failure due to extreme wind, the tower would buckle at the 100-foot elevation mark and only a 50-foot section would fall or remain connected and hang from the 150-foot standing tower section. The applicant states that through the engineering of the communication tower, the tower design, along with the requested setbacks, satisfies the city's intent to ensure structural safety for adjacent properties. As with any structure, a building permit along with engineered plans will be required for review to ensure compliance with the Florida Building Code, and if the variance is approved, the tower is designed to have a pre-engineered break point.

The City's regulations for the siting of cellular towers and associated facilities are consistent with applicable federal and state laws, including, but not limited to, the Telecommunications Act of 1996, which as set forth in 47 U.S.C. § 332(c)(7)(B)(iv), expressly preempts, state and local government regulation of the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the FCC's regulations concerning such emissions, and F.S. § 365.172(13).

REVIEW OF VARIANCE CRITERIA:

LDC Chapter 16, Section 9(d)(10)(b) lists variance criteria for siting of communication towers. These criteria, accompanied by staff analysis, are as follows:

- a) A detailed explanation, with supporting engineering information by a licensed engineer or other data as applicable, as to why a variance from the requirements of this chapter 16, section 9 is required, including a detailed explanation addressing the relevant engineering criteria;

According to the applicant, their first preference is to co-locate antennas and equipment on an existing tower if possible as the process is less costly and faster to complete; however, to expand capacity and coverage to Verizon customers, a new tower is required to fill the coverage gaps as there are no existing towers within the 1-mile search radius that would support co-location of additional antennas and equipment.

As indicated by the applicant, in the unlikely event of a tower failure, the proposed tower is designed to collapse at a pre-engineered breakpoint and would fall within the leased area. The design engineer for the proposed communication tower states that in the event of a failure due to extreme wind, the tower would buckle at the 100-foot elevation mark and only a 50-foot section would fall or remain connected and hang from the 100-foot standing tower section. The applicant states that through its engineering of the communication tower, the tower design, along with the requested 55-foot minimum setback, satisfies the city's intent to ensure structural safety for adjacent properties. As with any structure, a building permit along with engineered plans will be required for review to ensure compliance with the Florida Building Code, and if the variance is approved, that the tower is designed to have a pre-engineered break point (Exhibit A).

- b) What special conditions exist that create an unreasonable hardship or practical difficulty with complying with the specific requirements for which a variance is requested;

According to the applicant, it would be difficult to comply with the city's setback requirements for a communication tower on the subject property. For the proposed 150-foot communication tower, the City's LDC requires a 165-foot setback from all boundaries of the parent tract which would require, at a minimum, a parcel to be at least 330 feet x 330 feet, or 2.5 acres, and for the tower to be located in the center of the parcel. The applicant states that properties this large are difficult to find and even more difficult to find a landlord willing to allow a tower in the center of their parcel, given the impact on the use of their land for other development uses.

- c) Nature and characteristics of the surrounding neighborhood;

The subject property for the proposed tower is located within an industrial business park and, according to the applicant, will be buffered from adjacent properties by the vacant, wooded property to the north, west, and south. The proposed tower will be located approximately 500 feet from the nearest residential structure to the east. Based on the preliminary review of the conceptual site plan, the proposed separation requirements from existing habitable residential structures or residentially zoned vacant land are in compliance with the LDC, and the variance is only necessary for the tower setbacks along the north, east, and west boundaries of the parent parcel.

- d) The impact the variance would have on the surrounding neighborhood, including photo simulations if applicable;

According to the applicant, to minimize the potential impacts of the proposed tower upon the nearby residential and non-residential areas, the proposed tower has been designed as a monopine to conceal proposed antennas and match surrounding trees in the area. The tower is located within an industrial area and meets the distance separation requirements from residential areas.

Based on the preliminary review of the proposed site plan at the time of preparing this report, the proposed separation requirements from existing communication towers, habitable residential structures, or residentially zoned vacant land are in compliance with the LDC, and the variance is only necessary for the tower setback along the north, west and east boundaries of the parent parcel (see Figure 3 on Page 7).

Figure 3. View from Tanglewood Mobile Home Park



- e) Whether the variance requested arises from a condition that is unique and peculiar to the land involved and is not created by the actions of the property owner or applicant;

According to the applicant, it would be practically difficult to comply with the city's setback requirements for a communication tower. For the proposed 150-foot communication tower, the City's LDC requires a 165-foot setback from all boundaries of the parent tract which would require, at a minimum, a parcel to be at least 330 feet x 330 feet, or 2.5 acres, and for the tower to be located in the center of the parcel. The applicant states that properties this large are difficult to find and even more difficult to find a landlord willing to allow a tower in the center of their parcel, given the impact on the use of their land for other development uses. The applicant reached out to multiple landowners within the 1-mile search radius but only received approval from one property owner to make an application for the proposed tower.

- f) If applicable, topography, tree coverage and foliage in the immediate surrounding area of the proposed wireless communications facility or within the surrounding neighborhood;

The subject property is a vacant, wooded parcel that is zoned for light industrial development. The parent tract may be developed in the future with a use permitted by the LI zoning district. Staff is not reviewing a site plan for the development of the parent tract at this time. The parent tract is currently surrounded to the west and north by existing vegetation in a conservation easement, Buschman Park along the south, and Eastport Parkway, vacant LI-zoned property, and a mobile home park on the east that is buffered by existing vegetation.

- g) Design of the proposed wireless communications facility with particular reference to achieving compatibility with the surrounding neighborhood and eliminating adverse visual impacts;

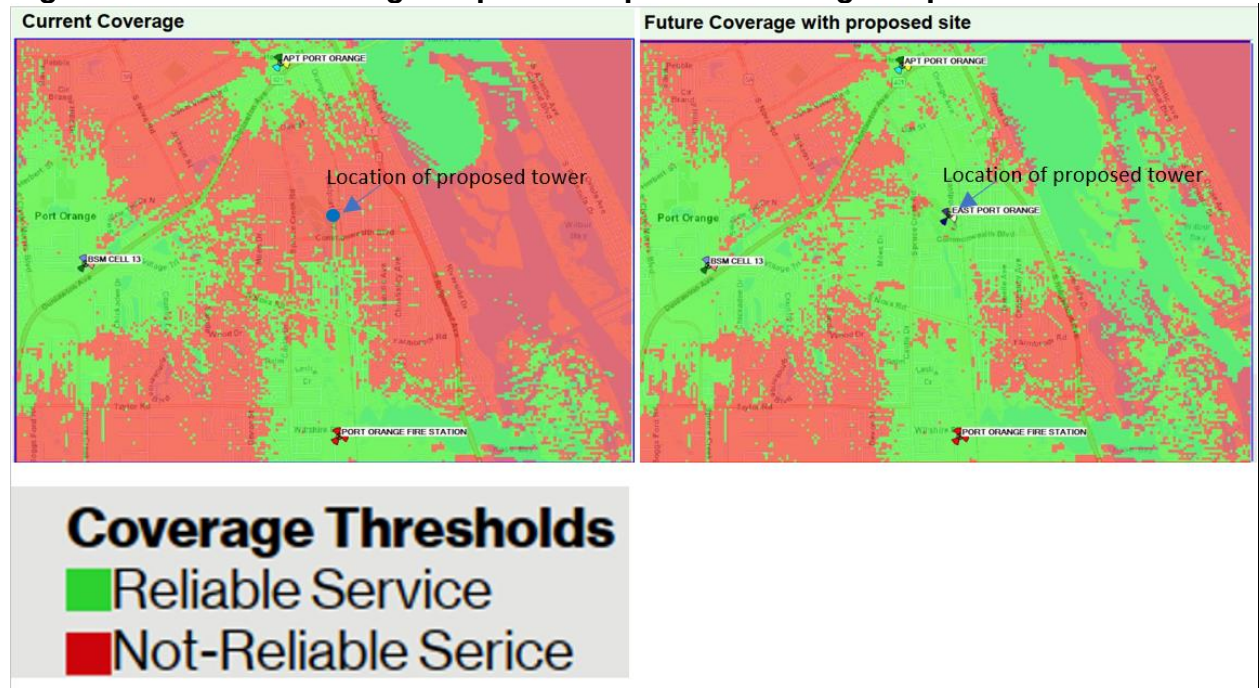
The applicant is proposing a 150-foot tall monopine communications tower. The proposed design of the tower with concealed antennas and equipment compound will be located within an 10,000-square-foot lease area at the northwest corner of a currently vacant +/- 1.1-acre parent parcel within an industrially-zoned area. According to the applicant, the design of the tower as a monopine is intended to be compatible with the existing trees in the area to reduce visual impact on the surrounding area.

Figure 4. Example of a monopine communications tower



- h) Whether there is an alternative location or wireless communications facility that would not require a variance or would have less impact than the requested variance;

The applicant states that the majority of the sites in their search area would require some type of variance from the City's setback or separation requirements from residential because of the existing development pattern within this area of Port Orange. According to the applicant, co-location on the tower nearest the applicant's search ring would not provide the coverage and capacity to best serve customers in the applicant's underserved area. The applicant reached out to several property owners within the Eastport area and the subject property was the only option available.

Figure 5. Current Coverage Map and Proposed Coverage Map

- i) Any other information the city may reasonably require to process the request for variance.

The applicant previously provided a conceptual site plan for staff to review for compliance with the City's wireless communication facilities siting criteria in the LDC as well as additional site improvements required by the LDC, such as access, utilities, grading, drainage, and landscaping. Based on the conceptual design review, the proposed separation requirements from existing communication towers, habitable residential structures or residentially zone vacant land are in compliance with the LDC, and the variance is only necessary for the tower setbacks along the north, west and east boundaries of the parent parcel.

Chapter 19, Section 1, LDC, lists the review criteria that are used to determine whether a variance request should be granted. These criteria, accompanied by staff analysis, are as follows:

- a) *Special conditions and circumstances exist which are peculiar to the land, structure, or building involved, and which do not apply to other lands, structures, or buildings in the same zoning district.*

It is the city's intention that the city's requirements not prohibit or have the effect of prohibiting the provision of personal wireless services in violation of federal law. The applicant has indicated that the application of the communication tower setback would be in violation of Federal law since the communication tower setback would preclude the tower from being built when sufficient modifications to address the intent of a code requirement have been made. To

support the requested variance, the applicant submitted an affidavit from a licensed engineer to demonstrate how the reduced setback will not create safety concerns to the adjacent properties due to the engineered design of the tower.

According to the applicant, it would be practically difficult to comply with the city's setback requirements for a communication tower on the subject property. For the proposed 150-foot communication tower, the City's LDC requires a 165-foot setback from all boundaries of the parent tract which would require, at a minimum, a parcel to be at least 330 feet x 330 feet or 2.5 acres and for the tower to be located in the center of the parcel. The applicant states that properties this large are difficult to find and even more difficult to find a landlord willing to allow a tower in the center of their parcel, given the impact on the use of their land for other development uses.

- b) *The special conditions and circumstances are not a result of the actions of the applicant.*

According to the applicant, the special conditions and circumstances are not the result of actions of the property owners or applicant.

- c) *Literal interpretation and enforcement of the development code regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the development code and would work an unnecessary and undue hardship on the applicant.*

When a new communication tower is proposed to be built on a parent parcel with an industrial zoning category, it must comply with the current development requirements of the LDC. The intent of the communication tower setback requirement to establish setbacks to satisfy structural safety or aesthetic concerns, minimize the impact on adjoining properties, and provide room on the subject property for maintenance and necessary repairs to the structure. The surrounding parcels within the calculated 110% fall radius of the tower are nonresidential uses.

According to the applicant, the requested setbacks for the proposed communication tower will meet the intent of the City's setback requirement because the tower is designed in the unlikely scenario that the tower collapses or is damaged that the tower would not fall outside of the 10,000-square-foot lease compound. The design engineer of the proposed communication tower states that in the event of a failure due to extreme wind, the tower would buckle at the 100-foot elevation; therefore, a 50-foot section would fall but would most likely remain connected and hang from the 100-foot standing tower section. The applicant states that through the engineering of the communication tower, the tower satisfies the city's intent to ensure structural safety for adjacent properties to a communications tower.

- d) *The variance, if granted, is the minimum variance necessary to make possible the reasonable use of the land, building, or structure.*

According to the applicant, the dimensions/area of the subject parent parcel is not large enough to meet the setbacks from all property lines and the requested setback for the north, west, and east boundary is the minimum variance for development. The applicant also states that the proposed setbacks from the boundary line of the parent parcel provides sufficient separation between the proposed tower and adjacent properties in the unlikely event of tower failure as the tower is designed to collapse within the lease area on the parent tract.

A communication tower could be constructed on the parent tract to comply with the setback requirements of the LDC; however, this would require the height of the proposed tower to be reduced and placement of the proposed tower in the center of the parent tract. The applicant has stated that to address the communication needs in this area, a tower needs to be at least 150-feet tall and a reduction in the tower height is not an option.

- e) *Granting the variance request will not confer on the applicant any special privilege that is denied by the development code to other lands, buildings, or structures in the same zoning district.*

Based on the parcel size, zoning, and proximity to a habitable residential structure or vacant land residentially zoned, there are a small number of parcels available that can comply with all requirements in the LDC for siting of a communication tower within the one-mile radius of the proposed communication tower site.

According to the applicant, properties as large as the parent parcel and away from residential areas is difficult to find, and when located, it is even more difficult to find a landlord willing to allow a communication tower of their parcel, given the impact on the future use of their land for development for other uses. The applicant also states that the majority of the sites in their search area would require some type of variance from the City's setback or separation requirements from residential.

- f) *The granting of the variance will be in harmony with the general intent and purpose of this code and will not be injurious to the surrounding properties or detrimental to the public welfare.*

According to the applicant, the proposed tower will be located on an industrial zoned parcel and the requested setbacks would not be detrimental to meeting the structural safety or aesthetic requirements in the LDC. The applicant states that the proposed tower will be engineered to have a fall radius within the lease area on the parent tract and the requested setback from the boundary of the parent tract is sufficient to ensure structural safety.

The tower design engineer states in the unlikely event of a tower failure, the the proposed tower would not collapse at the base but rather at a pre-engineered breakpoint, along the upper portion of the tower. Therefore, the breakpoint for the proposed tower is predetermined in its design, so in an unlikely tower failure event, the fall radius for the proposed tower would be within the 10,000-square-foot leased area on the parent tract and/or proposed setback area.

According to the applicant, the use of a camouflage design with concealed antennas is to minimize visual impacts compared to a monopole with exterior antennas. As for the placement of the proposed tower at the northwest corner of the parent parcel, the intent is to use the existing trees and vegetation to minimize appearance.

- g) *The variance represents a reasonable disposition of a claim brought under the Bert J. Harris Private Property Rights Protection Act, chapter 95-181, Laws of Florida, that a development order of the city has unreasonably burdened the applicant's property, based upon the recommendations of the special master appointed in accordance with the act, or the order of a court as described in the act.*

The variance requested is not based on a claim brought under the Bert J. Harris Private Property Rights Protection Act.

RECOMMENDATION:

Based on the criteria listed in Chapters 16 and 19 of the Land Development Code and the request as outlined in this report, staff recommends approval of the variance to allow a 55-foot setback on the north, 118-foot setback on the east and 59-foot setback on the west boundaries; subject to the communication tower being constructed with a 50-foot fall radius as described in the letter provided by the applicant.

ATTACHMENT:

1. Exhibit A. Letter from applicant with exhibits



EXHIBIT A

JAMES F. JOHNSTON
PARTNER, BOARD CERTIFIED IN CITY,
COUNTY & LOCAL GOVERNMENT LAW
Shutts & Bowen LLP
300 South Orange Avenue
Suite 1600
Orlando, FL 32801
DIRECT (407) 835-6795
EMAIL JJohnston@shutts.com

August 15, 2023

VIA E-MAIL

Gwen Perney
Principal Planner
City of Port Orange Community Development
1000 City Center Circle
Port Orange, FL 32129

Re: Variance for East Port Orange Communication Tower - 4500 Eastport Park Way
(Parcel ID# 6815577)(Application #VARC-23-0006)

Dear Ms. Perney:

Verizon Wireless ("Verizon") is proposing to install a 150' monopine communication tower on property in the City of Port Orange ("City") located at 4500 Eastport Park Way and identified by Parcel ID#631030000060 (the "Property"). The Property is owned by US Glass Holdings LLC and is currently vacant. The Property is approximately 1.09 acres, but the communication tower and accessory equipment will be located within a fenced compound on a 100' x 100' lease area of the Property. The Property has the Warehouse/Industrial future land use and is zoned Light Industrial. Verizon is proposing to locate the communication tower on the Property in order to fill an existing coverage and capacity gap in its service in the area, as discussed and depicted in the Verizon RF Engineering's April 21, 2023 report (the "Report") included with this application. As indicated in the June 8, 2023 letter from Tower Engineering Professionals (the "Letter") included with this application, there are no available communication towers or structures in Verizon's search ring area on which its antennas could be located to properly resolve the existing coverage and capacity gap. Additionally, the proposed 150' communication tower height is the minimum height necessary in order for Verizon to be able to properly locate its antennas and resolve the coverage and capacity gap.

Pursuant to Chapter 16, Section 9 of the City's Land Development Code ("Code"), camouflaged communication towers are permitted on Light Industrial zoned property subject to meeting the other applicable site development criteria. Code Section 9(c)(8)a. requires a communication tower to be setback from all property lines of the parent parcel a minimum distance of 110 percent of the fall radius of the tower or the minimum zoning district setback, whichever is greater. Additionally, the Code defines "fall radius" as the "greater of the height of a

communication tower or the calculated distance measured from the center of the base of a communication tower which defines the maximum circular area into which the tower and any further distance in which part of a tower may fall in case of structural failure or collapse.” Therefore, based on the Code setback provisions, the proposed 150’ communication tower must be setback 165’ from all of the parent parcel property lines. Based on the Property configuration, the proposed communication tower does not meet the 165’ setback requirement from the parent parcel property lines to the north, east, west. Chapter 16, Section 9(d)(10) of the Code permits an applicant to file an application for a variance to the setback requirements, and Chapter 19, Section 1(g)(5) of the Code further states that “variances may be granted to any person applying for a permit for personal wireless communications-related development from any requirement of this code which, as applied to such person, would have the ‘effect of prohibiting the provision of wireless communication services,’ as that phrase is used in Section 704 of the Telecommunications Act of 1996.”

As requested, below please find our responses to the Chapter 19, Section 1(g)(2) variance review requirements for variance cases other than those relating to building and fire codes:

a) Special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are not applicable to other lands, structures or buildings in the same zoning district.

Response: As depicted on the Report maps, the proposed 150’ monopine communication tower is required by Verizon in this location and at this height in order to resolve an existing coverage and capacity gap in the immediate area. Verizon’s closest facilities to the proposed tower are over one mile away, as shown on the Report exhibits. Without the new facilities, the neighboring sites will reach their capacity limits, which will impact the ability of Verizon’s customers to make and receive calls and to use data services. The new facilities will also provide additional coverage and capacity resources to the residential developments in the surrounding neighborhoods.

Additionally, as discussed in the Letter, there are no other towers or structures in the relevant Verizon search ring area on which the needed facilities can be collocated at the required height and there is no available municipal use property in the search ring area on which the communication tower can be located. Therefore, a new communication tower on private property is required. The proposed monopine communication tower, which is a recognized camouflage tower type, is being located on Light Industrial zoned private property, which is the highest priority ranking available for the proposed facility. As evidenced by the information provided, Verizon made extensive efforts during the site acquisition process to find a willing landowner in the search ring area with a parcel of sufficient size to avoid the need for any variances. However, the special conditions and circumstances outlined above, which did not result from the actions of Verizon, necessitate the variance requests. Moreover, not granting the variance would have the effect of prohibiting Verizon’s provision of wireless communication services in this area.

b) The special conditions and circumstances are not the result of actions of the applicant.

Response: As outlined in the Letter, during the site acquisition process extensive efforts were made, without success, to find a collocation site or a willing landowner in the search ring area with a parcel of a higher priority and of sufficient size to avoid the need for any variances. However, a suitable existing tower or structure for collocation or property for a new communication tower not requiring a variance were not available. Therefore, the special conditions and circumstances outlined in more detail above, which did not result from the actions of Verizon, necessitate the variance requests.

c) Literal interpretation and enforcement of the development code regulations would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the development code, and would work unnecessary and undue hardship on the applicant.

Response: Verizon has provided RF evidence of (i) its existing coverage and capacity gap in the vicinity of the Property and (ii) that a new communication tower at the proposed height is required to be located in the limited search ring area in order to resolve the coverage and capacity gap. The proposed communication facility is being located on the highest priority ranked site that is available. Additionally, the site is Light Industrial zoned and surrounded by other Light Industrial zoned property. The closest residential structure to the east is over 500 feet away, and the closest residential structure to the south is over 900 feet away. However, the parent parcel that is available for the location of the communication tower is not of a size that will allow the setback requirements to be met from the north, west, and east property lines. The size of the parent parcel and the size and availability of other parcels in the Light Industrial zoned area makes it impossible for the communication tower of the size required by Verizon to meet the 110 percent of full radius setback requirement from all of the parent parcel property lines.

As shown on the Report and the Letter, (i) the search ring for the proposed tower to fill Verizon's existing coverage and capacity gap limits its potential location to the surrounding area, and (ii) the proposed 150' height of the communication tower and antennas is the minimum height needed in order to fill Verizon's existing coverage and capacity gap. These special conditions create the need for Verizon to obtain the variances from the setback requirements. Otherwise, a literal interpretation of the setback requirements would result in Verizon not being able to locate a communication tower at the required height in the limited search ring area and act as an effective prohibition on Verizon's ability to provide wireless services to its customers in this geographic area of the City. This would create an undue hardship on Verizon and its customers by preventing the resolution of the coverage and capacity gap in the area.

d) The variance, if granted, is the minimum variance necessary to make possible the reasonable use of the land, building or structure.

Response: As indicated in the Report, the proposed 150' height of the communication tower is the minimum height that will allow Verizon to install its antennas at a location that will resolve the area's existing coverage and capacity gap.

e) Granting of the variance request will not confer on the applicant any special privilege that is denied by the development code to other lands, buildings or structures in the same zoning district.

Response: Granting the variance will not confer a special privilege on Verizon. Instead, it will allow Verizon to fulfill its mandate to provide reliable wireless coverage to its existing and future customers in the surrounding area.

f) The granting of the variance will be in harmony with the general intent and purpose of this code, and will not be injurious to the surrounding properties or detrimental to the public welfare.

Response: Granting Verizon's variance request will be in harmony with the intent and purpose of the Code, will not be injurious to the surrounding properties, and will not be detrimental to the public welfare. Instead, approving the variance to permit the proposed communication tower will benefit the neighborhood by providing reliable coverage and capacity to Verizon's wireless customers in the area. Additionally, since approximately 80% of all 911 calls are now made from wireless devices, resolving the coverage and capacity gap in the area and providing reliable wireless services improves the health, safety, and welfare of the residents in the neighborhood.

The communication tower is proposed to be located on the Property within the Eastport Business Park, which has Light Industrial zoning and is developed with warehouse uses. All of the surrounding property is zoned Light Industrial, and the abutting property to the west and south includes property owned by the Eastport Business Park Owners Association, Inc. and the St. Johns River Water Management District that is heavily wooded with a mature tree canopy. Additionally, the balance of the Property to the east of the communication tower site is heavily wooded with a mature tree canopy, and the property to the north of the communication tower site is developed with a stormwater pond and a warehouse building. Light Industrial zoned property is a higher priority zoning for locating a communication tower, and such a use is permitted on the Property. Finally, the closest residential property, which is over 500 feet to the east, is further buffered from the Property by Eastport Park Way, undeveloped Light Industrial zoned property within the Eastport Business Park, and a railroad corridor.

As depicted on the Verizon photo-sims included with this application, the proposed communication tower will have a limited impact on the closest residential neighborhoods based on distance and buffers on the intervening properties. The surrounding neighborhood is the exact type of neighborhood where a communication tower should be located since it

provides additional buffers from the closest residential neighborhoods while also allowing those residents to be served by Verizon and any other provider that collocates on the communication tower. The compatibility of putting a communication tower on the Property is further recognized by the Code, which permits the use on the Property and ranks Light Industrial zoned property as one of the highest priority locations for new communication towers. Additionally, the proposed communication tower will be camouflaged as a monopine based on the surrounding mature tree canopy, which will further mitigate any visual impacts from the proposed communication tower.

g) The variance represents a reasonable disposition of a claim brought under the Bert J. Harris Private Property Rights Protection Act, chapter 95-181, Laws of Florida, that a development order of the city has unreasonably burdened the applicant's property, based upon the recommendations of the special magistrate appointed in accordance with the act, or the order of a court as described in the act.

Response: N/A

Please let me know if you have any questions or need any more information related to this variance request. I appreciate all of your time and attention to this matter.

Sincerely,

Shutts & Bowen LLP

James F. Johnston

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right, positioned over the printed name "James F. Johnston".

JFJ:mm

VARIANCE PROJECT NARRATIVE

Verizon Wireless (“Verizon”) is proposing to install a 150’ monopine communication tower on property in the City of Port Orange (“City”) located at 4500 Eastport Park Way and identified by Parcel ID#631030000060 (the “Property”). The Property is owned by US Glass Holdings LLC and is currently vacant. The Property is approximately 1.09 acres, but the communication tower and accessory equipment will be located within a fenced compound on a 100’ x 100’ lease area of the Property. The Property has the Warehouse/Industrial future land use and is zoned Light Industrial. Verizon is proposing to locate the communication tower on the Property in order to fill an existing coverage and capacity gap in its service in the area, as discussed and depicted in the Verizon RF Engineering’s April 21, 2023 report (the “Report”), attached hereto and incorporated herein as **Exhibit “A”**. As indicated in the June 8, 2023 letter from Tower Engineering Professionals (the “Letter”), attached hereto and incorporated herein as **Exhibit “B”**, there are no available communication towers or structures in Verizon’s search ring area on which its antennas could be located to properly resolve the existing coverage and capacity gap. Additionally, the proposed 150’ communication tower height is the minimum height necessary in order for Verizon to be able to properly locate its antennas and resolve the coverage and capacity gap.

Pursuant to Chapter 16, Section 9 of the City’s Land Development Code (“Code”), camouflaged communication towers are permitted on Light Industrial zoned property subject to meeting the other applicable site development criteria. Code Section 9(c)(8)a. requires a communication tower to be setback from all property lines of the parent parcel a minimum distance of 110 percent of the fall radius of the tower or the minimum zoning district setback, whichever is greater. Additionally, the Code defines “fall radius” as the “greater of the height of a communication tower or the calculated distance measured from the center of the base of a communication tower which defines the maximum circular area into which the tower and any further distance in which part of a tower may fall in case of structural failure or collapse.” Therefore, based on the Code setback provisions, the proposed 150’ communication tower must be setback 165’ from all of the parent parcel property lines. Based on the Property configuration, the proposed communication tower does not meet the 165’ setback requirement from the parent parcel property lines to the north, east, west. Chapter 16, Section 9(d)(10) of the Code permits an applicant to file an application for a variance to the setback requirements, and Chapter 19, Section 1(g)(5) of the Code further states that “variances may be granted to any person applying for a permit for personal wireless communications-related development from any requirement of this code which, as applied to such person, would have the ‘effect of prohibiting the provision of wireless communication services,’ as that phrase is used in Section 704 of the Telecommunications Act of 1996.”

Therefore, applicant is requesting variances from Section 9(c)(8)a. of the Code to reduce the required setbacks for the proposed communication tower from the parent parcel property lines as follows:

	Required Separation	Separation Provided	Requested Separation Reduction Variance
North	165’	55’	110’

South	165'	204'	None
East	165'	118'	47'
West	165'	59'	106'

As is established below, the proposed communication tower meets the variance criteria contained in Section 9(d)(10) of the Code, and not approving the variance would have the effect of prohibiting Verizon's provision of wireless communications services in the surrounding area.

Variance Review Criteria

- A) A detailed explanation, with supporting engineering information by a licensed engineer or other data as applicable, as to why a variance from the requirements of this chapter 16, section 9 is required, including a detailed explanation addressing the relevant engineering criteria.**

As depicted on the Report maps, the proposed 150' monopine communication tower is required by Verizon in this location and at this height in order to resolve an existing coverage and capacity gap in the immediate area. Verizon's closest facilities to the proposed tower are over one mile away, as shown on the Report exhibits. Without the new facilities, the neighboring sites will reach their capacity limits, which will impact the ability of Verizon's customers to make and receive calls and to use data services. The new facilities will also provide additional coverage and capacity resources to the residential developments in the surrounding neighborhoods.

Additionally, as discussed in the Letter, there are no other towers or structures in the relevant Verizon search ring area on which the needed facilities can be collocated at the required height and there is no available municipal use property in the search ring area on which the communication tower can be located. Therefore, a new communication tower on private property is required. The proposed monopine communication tower, which is a recognized camouflage tower type, is being located on Light Industrial zoned private property, which is the highest priority ranking available for the proposed facility.

- B) What special conditions exist that create an unreasonable hardship or practical difficulty with complying with the specific requirements for which a variance is requested.**

The proposed communication facility is being located on the highest priority ranked site that is available. Additionally, the site is Light Industrial zoned and surrounded by other Light Industrial zoned property. The closest residential structure to the east is over 500 feet away, and the closest residential structure to the south is over 900 feet away. However, the parent parcel that is available for the location of the communication tower is not of a size that will allow the setback requirements to be met from the north, west, and east property lines. The size of the parent parcel and the size and availability of other parcels in the Light Industrial zoned area makes it impossible for the communication tower of the size required by Verizon to meet the 110 percent of full radius setback requirement from all of the parent parcel property lines.

As shown on the Report and the Letter, (i) the search ring for the proposed tower to fill Verizon's existing coverage and capacity gap limits its potential location to the surrounding area, and (ii) the proposed 150' height of the communication tower and antennas is the minimum height needed in order to fill Verizon's existing coverage and capacity gap. These special conditions create the need for Verizon to obtain the variances from the setback requirements. Otherwise, a literal interpretation of the setback requirements would act as an effective prohibition on Verizon's ability to provide wireless services to its customers in this geographic area of the City. This would create an undue hardship on Verizon and its customers by preventing the resolution of the coverage and capacity gap in the area.

C) Nature and characteristics of the surrounding neighborhood.

The communication tower is proposed to be located on the Property within the Eastport Business Park, which has Light Industrial zoning and is developed with warehouse uses. All of the surrounding property is zoned Light Industrial, and the abutting property to the west and south includes property owned by the Eastport Business Park Owners Association, Inc. and the St. Johns River Water Management District that is heavily wooded with a mature tree canopy. Additionally, the balance of the Property to the east of the communication tower site is heavily wooded with a mature tree canopy, and the property to the north of the communication tower site is developed with a stormwater pond and a warehouse building. Light Industrial zoned property is a higher priority zoning for locating a communication tower, and such a use is permitted on the Property. Finally, the closest residential property, which is over 500 feet to the east, is further buffered from the Property by Eastport Park Way, undeveloped Light Industrial zoned property within the Eastport Business Park, and a railroad corridor.

D) The impact the variance would have on the surrounding neighborhood, including photo simulations if applicable.

As depicted on the Verizon photo-sims attached hereto and incorporated herein as **Exhibit "C"**, the proposed communication tower will have a limited impact on the closest residential neighborhoods based on distance and buffers on the intervening properties. The surrounding neighborhood is Light Industrial zoned and developed with the Eastport Business Park that includes warehousing. This is the exact type of neighborhood where a communication tower should be located since it provides additional buffers from the closest residential neighborhoods while also allowing those residents to be served by Verizon and any other provider that collocates on the communication tower. The compatibility of putting a communication tower on the Property is further recognized by the Code, which permits the use on the Property and ranks Light Industrial zoned property as one of the highest priority locations for new communication towers. Additionally, the proposed communication tower will be camouflaged as a monopine based on the surrounding mature tree canopy, which will further mitigate any visual impacts from the proposed communication tower.

E) Whether the variance requested arises from a condition that is unique and peculiar to the land involved and is not created by the actions of the property owner or applicant.

As outlined in the Letter, during the site acquisition process extensive efforts were made, without success, to find a collocation site or a willing landowner in the search ring area with a parcel of a higher priority and of sufficient size to avoid the need for any variances. However, a suitable existing tower or structure for collocation or property for a new communication tower not requiring a variance were not available. Therefore, the special conditions and circumstances outlined in more detail above, which did not result from the actions of Verizon, necessitate the variance requests.

F) If applicable, topography, tree coverage and foliage in the immediate surrounding area of the proposed wireless communication facility or within the surrounding neighborhood.

As outlined in more detail above, the Property is undeveloped and contains an existing, mature tree canopy and extensive native vegetation that will serve to buffer the proposed communication tower. Additionally, the abutting properties also have a mature tree canopy that will buffer the use. These existing conditions provide a substantial buffer to the surrounding properties, which are Light Industrial zoned and part of the Eastport Business Park. Further, there are additional buffers between the proposed communication tower and the closest residential use to the east, including other Light Industrial zoned property, a road, and a railroad corridor.

G) Design of the proposed wireless communications facility with particular reference to achieving compatibility with the surrounding neighborhood and eliminating adverse visual impacts.

Based on the existing mature tree canopy on the balance of the Property and on the abutting parcels, applicant has proposed a camouflage monopine communication tower design in order to eliminate any adverse visual impacts from the proposed communication tower on the surrounding neighborhood. Additionally, the location of the communication tower within a Light Industrial zoned business park developed with warehouse uses serves as an appropriate location for the communication tower that will buffer it from the closest residential, while also benefiting the surrounding neighborhood by providing reliable coverage and capacity to Verizon's wireless customers in the area. Additionally, since approximately 80% of all 911 calls are now made from wireless devices, resolving the coverage and capacity gap in the area and providing reliable wireless services improves the health, safety, and welfare of the residents in the neighborhood.

H) Whether there is an alternative location or wireless communications facility that would not require a variance or would have less impact than the requested variance.

As discussed in greater detail in the Letter and the Report, there are no existing communication towers or structures located in the search ring area on which Verizon's wireless communication facilities can be located at the required height. Additionally, TEP conducted an extensive site location review process for a proposed communication tower location in the required

search ring area, and the proposed location is the best available location based on meeting the intent and requirements of the Code and finding a willing landowner in the limited search ring area for the communication tower.

D) Any other information the city may reasonably require to process the request for variance.

Granting the variance will not confer a special privilege on Verizon. Instead, it will allow Verizon to fulfill its mandate to provide reliable wireless coverage to its existing and future customers in the surrounding area. A denial of the variance will prevent Verizon from locating a communication tower on the Property and will have the effect of prohibiting Verizon's wireless communication services in the surrounding area.



Site Number: 706190
Site Name: East Port Orange
Proposed Monopine

4500 Eastport Park Way
Port Orange, FL 32127
(Volusia County)

East Port Orange Photosims

Legend

- Proposed Tower
- 1 Viewpoint Location 1
- 2 Viewpoint Location 2
- 3 Viewpoint Location 3
- 4 Viewpoint Location 4

Google Earth

900 ft



Location 1 - Existing View



Photo facing West toward the proposed tower location from Frederick Ave

Location 1 - Proposed View



Photo facing West toward the proposed tower location from Frederick Ave

Location 2 - Existing View



Photo facing South toward the proposed tower locations from Eastport Park Way

Location 2 - Proposed View



Photo facing South toward the proposed tower locations from Eastport Park Way

Location 3 - Existing View



Photo facing South toward the proposed tower locations from Eastport Park Way

Location 3 - Proposed View



Photo facing South toward the proposed tower locations from Eastport Park Way

Location 3 - Proposed View



Photo facing South toward the proposed tower locations from Eastport Park Way

Location 4 - Existing View



Photo facing East toward the proposed tower locations from Spruce Creek Rd. (Tower not visible)

Location 4 - Proposed View



Photo facing East toward the proposed tower locations from Spruce Creek Rd. (Tower not visible)

RELEASE OF RESERVATION OF TREE
CONSERVATION EASEMENT, OFFICIAL
RECORDS BOOK 7573, PAGE 1123, PUBLIC
RECORDS OF VOLUSIA COUNTY, FLORIDA

OWNER: ST JOHNS RIVER WATER MANAGEMENT DISTRICT
PARCEL ID: 631013030131
(NOT INCLUDED)

OWNER: EASTPORT BUSINESS PARK OWNERS
ASSOCIATION INC
PARCEL ID: 631030000001
(NOT INCLUDED)

NORTH LINE OF LOT 6,
EASTPORT BUSINESS PARK- UNIT II,
PLAT BOOK 54, PAGE 128

PROPOSED 100'X100'
VERIZON WIRELESS LEASE AREA

TRACT 'D'

RELEASE OF RESERVATION OF TREE
CONSERVATION EASEMENT, OFFICIAL
RECORDS BOOK 7416, PAGE 4406, PUBLIC
RECORDS OF VOLUSIA COUNTY, FLORIDA

OWNER: ST JOHNS RIVER WATER MANAGEMENT DISTRICT
PARCEL ID: 631013030131
(NOT INCLUDED)

TRACT 'B'

DETENTION
POND

EDGE OF
TREELINE

POINT OF BEGINNING
PROPOSED 100'X100' VERIZON
WIRELESS LEASE AREA

EASTPORT BUSINESS PARK- UNIT II
PLAT BOOK 54, PAGE 128

LOT 6

PARENT TRACT
OWNER: US GLASS HOLDINGS LLC
PARCEL ID: 631030000060
(OFFICIAL RECORDS BOOK 7606, PAGE 4856, OF THE
PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA)

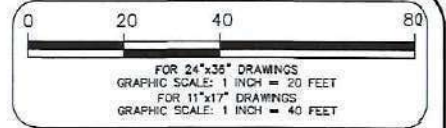
INTERIOR IMPROVEMENTS, IF ANY,
OTHER THAN THOSE SHOWN
HEREON, WERE NOT LOCATED OR
SHOWN AS PART OF THIS SURVEY

POINT OF COMMENCEMENT

PROPOSED 100'X100' VERIZON WIRELESS LEASE AREA
PROPOSED 30' WIDE NON-EXCLUSIVE VERIZON
WIRELESS ACCESS & UTILITY EASEMENT
THE NORTHEAST CORNER OF LOT 6, EASTPORT
BUSINESS PARK- UNIT II, PLAT BOOK 54, PAGE 128,
PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA
FOUND 5/8" CAPPED IRON ROD (LB 3019)

POINT OF BEGINNING

PROPOSED 30' WIDE NON-EXCLUSIVE VERIZON
WIRELESS ACCESS & UTILITY EASEMENT



12979 N TELECOM PARKWAY
TAMPA, FLORIDA 33637
(813) 615-1422
FLORIDA LICENSED BUSINESS 7906

REVISIONS

NO.	DESCRIPTION	DATE
1	ADDED CONTOURS PER CLIENTS REQUEST. NO FIELD WORK WAS PERFORMED AS PART OF THIS REVISION.	JLF 7/12/22

PREPARED FOR:

verizon

7701 E. TELECOM PARKWAY
TEMPLE TERRACE, FLORIDA 33637

**THIS SURVEY IS NOT VALID OR COMPLETE
WITHOUT SHEETS 1 & 2 BEING BOUND TOGETHER.
SEE SHEET ONE FOR SURVEYORS SIGNATURE AND
SEAL, SURVEYORS NOTES, DESCRIPTIONS,
LEGEND, AND VICINITY MAP.**

SPECIFIC PURPOSE SURVEY OF PROPOSED VERIZON WIRELESS LEASE AREA

DRAWING INFORMATION:

FIELD DATE:	05-10-2022
DRAWN DATE:	05-16-2022
CHECK DATE:	05-17-2022
SEC.-TWP.-RGE.:	10-16S-33E

SITE INFORMATION:

EAST PORT ORANGE
4500 EASTPORT PARK WAY
PORT ORANGE, FLORIDA 32127
(VOLUSIA COUNTY)

SMW PROJECT NUMBER:
22-5252

SURVEY
SHEET 2 OF 2

NOTES:

1. PLAN PREPARED WITH THE BENEFIT OF A TITLE REPORT.
2. PLAN DOES NOT REPRESENT AN ALTA/NSPS LAND TITLE SURVEY.
3. BEARINGS ARE BASED ON THE WEST RIGHT-OF-WAY LINE OF EASTPORT PARK WAY, BEING S25°05'25"E, PER EASTPORT BUSINESS PARK- UNIT II, PLAT BOOK 54, PAGE 128, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.
4. THE COORDINATES SHOWN HEREON ARE IN NORTH AMERICAN DATUM OF 1983, ARE TO THE THIRD ORDER OF ACCURACY, AND IS BASED ON MULTI FREQUENCY GNSS CORRECTIONS OBTAINED FROM THE FLORIDA DEPARTMENT OF TRANSPORTATION'S FLORIDA PERMANENT REFERENCE NETWORK (FPRN).
5. THE ELEVATIONS SHOWN HEREON ARE IN NORTH AMERICAN VERTICAL DATUM OF 1988, ARE TO THE THIRD ORDER OF ACCURACY, AND IS BASED ON MULTI FREQUENCY GNSS CORRECTIONS OBTAINED FROM THE FLORIDA DEPARTMENT OF TRANSPORTATIONS FLORIDA PERMANENT REFERENCE NETWORK (FPRN).
6. DISTANCES ARE HORIZONTAL GROUND UNLESS OTHERWISE NOTED.
7. THE TOWER CENTER IS LOCATED IN ZONE "X" AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN ACCORDING TO FEMA COMMUNITY PANEL #12127C0388J DATED SEPTEMBER 29, 2017.

LEGEND

EXIST. PROPERTY LINE

ADJ. PROPERTY LINE

EXIST. UTILITY POLE

EXIST. TELCO PEDESTAL

PROPERTY CORNER

LEASE/EASE. CORNER

EDGE OF PAVEMENT

OVERHEAD WIRE

RIGHT-OF-WAY

CHAIN LINK FENCE

CLEARING LIMITS

EXISTING TREE LINE

N/F
RELEASE OF RESERVATION
OF TREE CONSERVATION
EASEMENT
DB: 7573, PG: 1123

N/F
ST JOHNS RIVER WATER
MANAGEMENT DISTRICT
PARCEL ID: 631013030131
DB: N/A, PG: N/A

N/F
EASTPORT BUSINESS PARK
OWNERS ASSOCIATION INC
PARCEL ID: 631030000001
DB: N/A, PG: N/A

N/F
US GLASS HOLDINGS LLC
PARCEL ID: 631030000060
DB: 7606, PG: 4856

N/F
RELEASE OF RESERVATION
OF TREE CONSERVATION
EASEMENT
DB: 7416, PG: 4406

LANDLORD NOTES (PORT ORANGE CODE REQUIREMENTS):

1. THE SITE SHALL BE LANDSCAPED WITH AUTOMATIC UNDERGROUND IRRIGATION SYSTEM IN ACCORDANCE WITH PORT ORANGE LAND DEVELOPMENT CODE CHAPTER 13, SECTION 7.
2. ADEQUATE OFF-STREET PARKING IS REQUIRED IN ACCORDANCE WITH PORT ORANGE LAND DEVELOPMENT CODE CHAPTER 12, SECTION 6. PAVED (CONCRETE OR ASPHALT) DRIVEWAY WOULD BE CONSISTENT WITH EXISTING DEVELOPMENT WITHIN THE PARK.
3. VISUAL BARRIER SCREENING IS REQUIRED IN ACCORDANCE WITH PORT ORANGE LAND DEVELOPMENT CODE CHAPTER 13, SECTION 3.
4. ALL EQUIPMENT SHALL BE CONCEALED FROM STREET AND OTHER PROPERTIES IN AN ARCHITECTURAL MANNER IN ACCORDANCE WITH PORT ORANGE LAND DEVELOPMENT CODE CHAPTER 13, SECTION 5.
5. PROPOSED GENERATOR SHOULD BE SOUND ATTENUATED IN ACCORDANCE WITH PORT ORANGE LAND DEVELOPMENT CODE CHAPTER 14, SECTION 6.
6. STORMWATER RUNOFF SHOULD BE DIRECTED TO THE EXISTING STORMWATER COLLECTION AND TREATMENT SYSTEM IN ACCORDANCE WITH PORT ORANGE LAND DEVELOPMENT CODE CHAPTER 10.
7. ALL ON-SITE ELECTRICAL, TELEPHONE AND UTILITY LINES SHALL BE UNDERGROUND IN ACCORDANCE WITH PORT ORANGE LAND DEVELOPMENT CODE CHAPTER 11, SECTION 8.

SITE PLAN

SCALE: 1" = 40'



PLANS PREPARED FOR:

verizon

4700 EXCHANGE COURT, SUITE 100
BOCA RATON, FL 33431
(561) 995-5539

PROJECT INFORMATION:

VZW SITE #: 706190
VZW SITE NAME:
EAST PORT ORANGE

4500 EASTPORT PARK WAY
PORT ORANGE, FL 32127
(VOLUSIA COUNTY)

PLANS PREPARED BY:

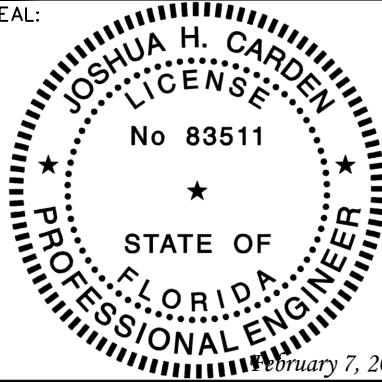
TOWER ENGINEERING PROFESSIONALS

326 TRYON ROAD
RALEIGH, NC 27603-3530
OFFICE: (919) 661-6351
www.tepgroup.net
FL COA # 31011

DIGITAL SEAL:

THIS DOCUMENT HAS BEEN DIGITALLY SIGNED AND SEALED BY JOSHUA H. CARDEN USING A DIGITAL SIGNATURE AND DATE. PRINTED COPIES OF THIS DOCUMENT ARE NOT CONSIDERED SIGNED AND SEALED AND THE SIGNATURE MUST BE VERIFIED ON ANY ELECTRONIC COPIES.

SEAL:



2	02-07-23	CONSTRUCTION
1	08-10-22	CONSTRUCTION
REV	DATE	ISSUED FOR:

DRAWN BY: MJC CHECKED BY: JHJ

SHEET TITLE:

SITE PLAN

SHEET NUMBER:	REVISION:
C-1	2
TEP#:306522.672213	

NOTES:

- 1. PLAN PREPARED WITH THE BENEFIT OF A TITLE REPORT.
- 2. PLAN DOES NOT REPRESENT AN ALTA/NSPS LAND TITLE SURVEY.
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- 6. DISTANCES ARE HORIZONTAL GROUND UNLESS OTHERWISE NOTED.
- 7. THE TOWER CENTER IS LOCATED IN ZONE "X" AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN ACCORDING TO FEMA COMMUNITY PANEL #12127C0388J DATED SEPTEMBER 29, 2017.

TOWER SETBACK TABLE		
DESIGNATION	DIRECTION	SETBACK
A	NORTH	±55'
B	SOUTH	±204'
C	EAST	±118'
D	WEST	±59'

LEGEND	
	EXIST. PROPERTY LINE
	PROPERTY CORNER

SETBACK PLAN

SCALE: 1" = 600'



PLANS PREPARED FOR:

verizon

4700 EXCHANGE COURT, SUITE 100
BOCA RATON, FL 33431
(561) 995-5539

PROJECT INFORMATION:

VZW SITE #: 706190
VZW SITE NAME:
EAST PORT ORANGE

4500 EASTPORT PARK WAY
PORT ORANGE, FL 32127
(VOLUSIA COUNTY)

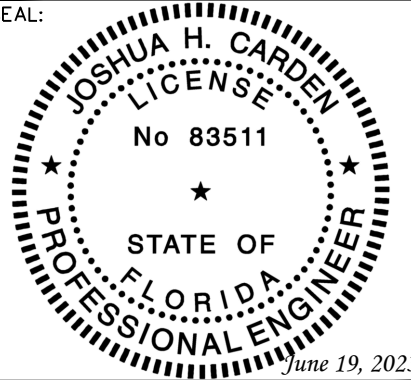
PLANS PREPARED BY:

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RALEIGH, NC 27603-3530
OFFICE: (919) 661-6351
www.tepgroup.net
FL COA # 31011

DIGITAL SEAL:

THIS DOCUMENT HAS BEEN DIGITALLY SIGNED AND SEALED BY JOSHUA H. CARDEN USING A DIGITAL SIGNATURE AND DATE. PRINTED COPIES OF THIS DOCUMENT ARE NOT CONSIDERED SIGNED AND SEALED AND THE SIGNATURE MUST BE VERIFIED ON ANY ELECTRONIC COPIES.

SEAL:



4	06-19-23	CONSTRUCTION
3	04-05-23	CONSTRUCTION
REV	DATE	ISSUED FOR:

DRAWN BY: MJC CHECKED BY: JHJ

SHEET TITLE:

SETBACK PLAN

SHEET NUMBER:	REVISION:
C-1A	4
TEP#:306522.672213	

NOTES:

- 1. PROPOSED GENERATOR TO BE GENERAC SG050NA – LEVEL 2 SOUND ATTENUATED.
- 2. THE SPARK GAP SHOWN REQUIRES AN INTEGRAL MANUAL SHUTOFF VALVE TO BE INSTALLED ON THE TANK, IN COMPLIANCE WITH NFPA 58 6.28.3.

PROPOSED VERIZON 50kW GENERATOR ON A 4'-0"x20'-0" CONCRETE PAD. SEE NOTE 1 AND SHEETS C-5 & C-6 FOR DETAILS.

PROPOSED 5'-0" PROPANE TANK SPARK RADIUS. SEE NOTE 2.

PROPOSED VERIZON 500 GALLON PROPANE TANK ON A 4'-0"x20'-0" CONCRETE PAD. SEE SHEET C-5 & C-6A FOR DETAILS.

PROPOSED VERIZON 100'x100' LEASE AREA

PROPOSED VERIZON 80'x80' CHAIN-LINK FENCED COMPOUND

PROPOSED VERIZON 4'-0"x12'-0" EQUIPMENT PAD. SEE SHEET C-4 FOR DETAILS.

PROPOSED VERIZON 15'-0"x30'-0" LEASE AREA

PROPOSED VERIZON EQUIPMENT CABINET. SEE SHEET C-6 FOR DETAILS.

PROPOSED VERIZON 2' WIDE ICE BRIDGE EXTEND TO TOWER. SEE SHEET C-7 FOR DETAILS.

PROPOSED VERIZON 200A METER

PROPOSED 150' MONOPINE TOWER. SEE SHEET C-3 FOR ELEVATION.

PROPOSED VERIZON H-FRAME WITH INTEGRATED LOAD CENTER, RAYCAP, AND TELCO BOX. SEE SHEET E-6 FOR DETAILS.

PROPOSED VERIZON SERVICE RACK. SEE SHEET E-6A FOR DETAILS.

PROPOSED VERIZON 20'x100' GRAVEL PARKING AND TURNAROUND AREA

PROPOSED 12' WIDE DOUBLE ACCESS GATE. SEE SHEET C-9 FOR DETAILS.

PROPOSED LOCATION OF GATE-MOUNTED SIGNS. SEE SHEETS C-9 & C-9A FOR DETAILS.

PROPOSED 2"-#57 STONE SURFACE ABOVE 4" DENSE GRADE STONE MIX BASE TO EXTEND 1' OUTSIDE FENCED COMPOUND



PLANS PREPARED FOR:

verizon

4700 EXCHANGE COURT, SUITE 100
BOCA RATON, FL 33431
(561) 995-5539

PROJECT INFORMATION:

VZW SITE #: 706190
VZW SITE NAME:
EAST PORT ORANGE

4500 EASTPORT PARK WAY
PORT ORANGE, FL 32127
(VOLUSIA COUNTY)

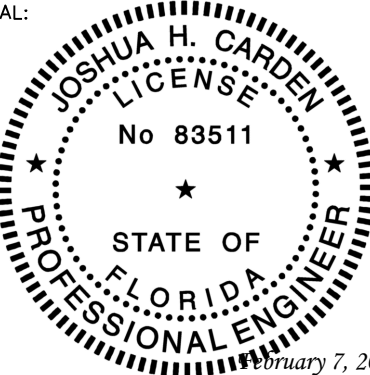
PLANS PREPARED BY:

TOWER ENGINEERING PROFESSIONALS
326 TRYON ROAD
RALEIGH, NC 27603-3530
OFFICE: (919) 661-6351
www.tepgroup.net
FL COA # 31011

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SEAL:



2	02-07-23	CONSTRUCTION
1	08-10-22	CONSTRUCTION
REV	DATE	ISSUED FOR:

DRAWN BY: MJC CHECKED BY: JHJ

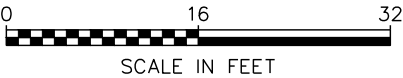
SHEET TITLE:

**COMPOUND
DETAIL**

SHEET NUMBER:	REVISION:
C-2	2
TEP#:306522.672213	

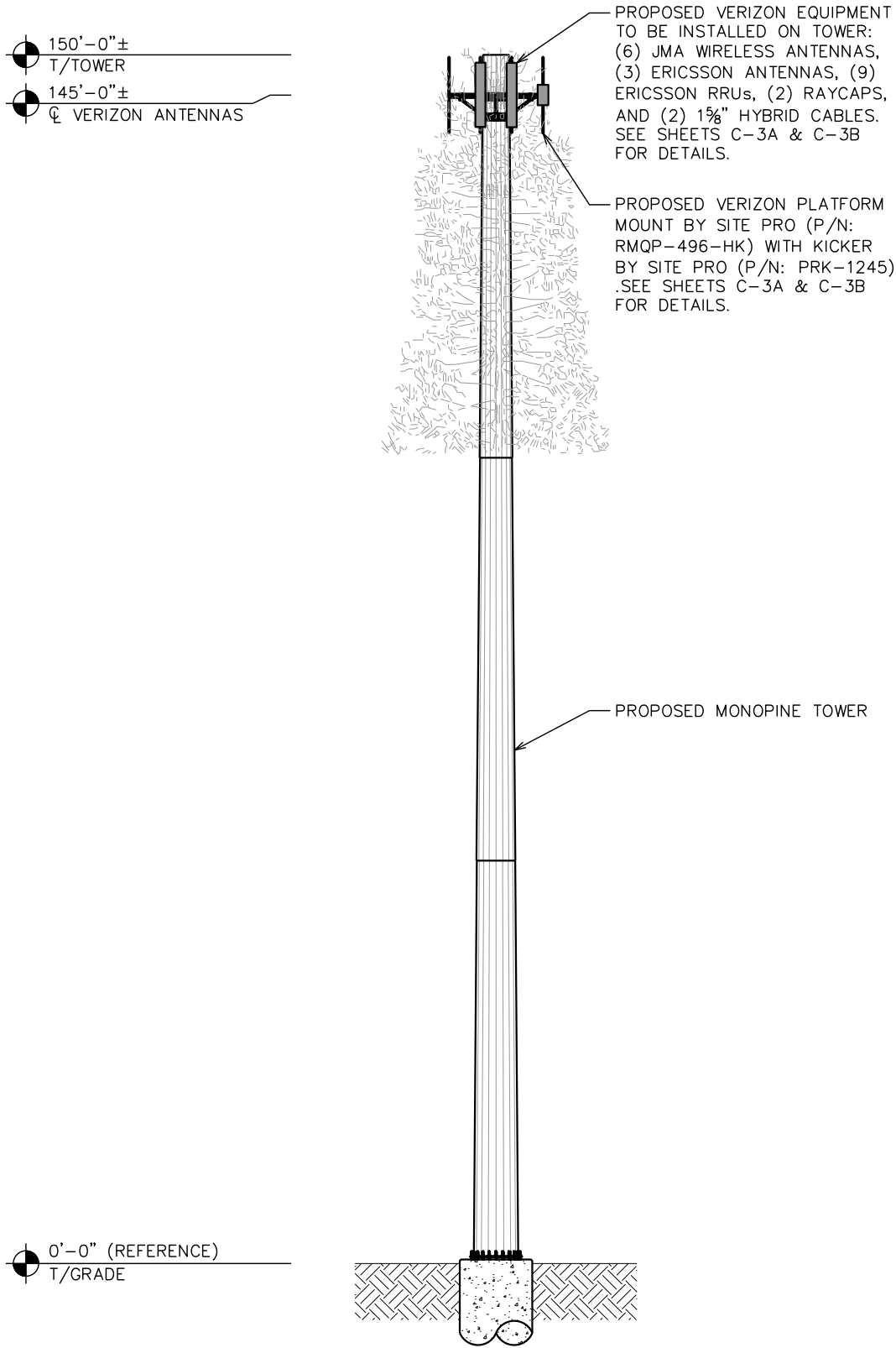
COMPOUND DETAIL

SCALE: 1/16" = 1'-0"



NOTES:

1. PROPOSED HYBRID CABLES TO BE RUN IN A MANNER CONSISTENT WITH THE PASSING STRUCTURAL ANALYSIS REPORT.
2. TOWER ELEVATION SHOWN IS A SCHEMATIC. THE CONTRACTOR TO VERIFY ACTUAL TOWER DESIGN & LOADING WITH TOWER DRAWINGS FROM MANUFACTURER AND/OR STRUCTURAL ANALYSIS REPORT PRIOR TO CONSTRUCTION.
3. TOP OF APPURTENANCE HEIGHT IS 155'-0".



PLANS PREPARED FOR:



4700 EXCHANGE COURT, SUITE 100
BOCA RATON, FL 33431
(561) 995-5539

PROJECT INFORMATION:

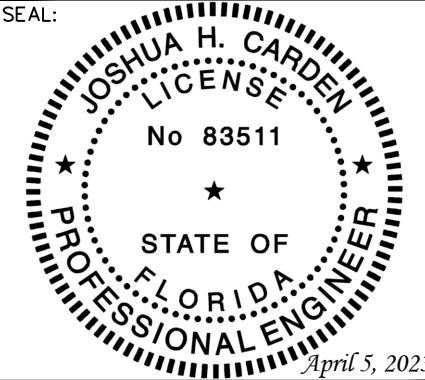
VZW SITE #: 706190
VZW SITE NAME:
EAST PORT ORANGE

4500 EASTPORT PARK WAY
PORT ORANGE, FL 32127
(VOLUSIA COUNTY)

PLANS PREPARED BY:

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3	04-05-23	CONSTRUCTION
2	02-07-23	CONSTRUCTION
REV	DATE	ISSUED FOR:

DRAWN BY: MJC CHECKED BY: JHJ

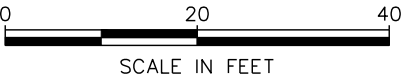
SHEET TITLE:

TOWER
ELEVATION

SHEET NUMBER: C-3	REVISION: 3 TEP#:306522.672213
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TOWER ELEVATION

SCALE: 1" = 20'





STAFF REPORT

4th Amendment to the Master Development Agreement and Conceptual Development Plan for the Pavilion at Port Orange Planned Commercial Development CASE NO. PRZA-23-0005

REQUEST:	To approve the Fourth Amendment to the Master Development Agreement and Conceptual Development Plan for the Pavilion at Port Orange Planned Commercial Development to add an automated car wash as an allowed use on Lots 1A or 1B and modify the CDP regarding access between Lots 1A and 1B.
LOCATION:	5435 and 5437 S. Williamson Boulevard (Figure 1)
PROPERTY OWNERS:	Port Orange Town Center, LLC, and Bridgestone Retail Operations, LLC
APPLICANT:	Steven Schlossberg, Dunlawton Investments, LLC
STAFF CONTACT:	Penelope Cruz, Planning Manager (386)506-5671
STAFF RECOMMENDATION:	Approval
PLANNING COMMISSION:	August 24, 2023

INTRODUCTION

The proposed 4th Amendment to the Pavilion at Port Orange Master Development Agreement (MDA) is to add an automated car wash as an allowed use on either Lot 1A or 1B and remove a cross-access driveway requirement between Lots 1A and 1B on the Conceptual Development Plan (CDP). Lots 1A and 1B of the Pavilion at Port Orange PCD are located on the east side of Williamson Boulevard, north of Summer Trees Road.

Figure 1. Location Map



MASTER DEVELOPMENT AGREEMENT

The current MDA allows for either a convenience store with gasoline pumps or a motor vehicle service center to be developed on Lots 1A, 1B, or 2 (outparcel lots along Williamson Boulevard), in addition to the other commercial uses allowed throughout the development such as bars, health/exercise clubs, hotels, theaters, beauty/barber shops, offices, restaurants, and retail. In 2013, a motor vehicle service center use (Firestone Complete Auto Care) was constructed on Lot 1B. Therefore, a second motor vehicle service center use or a convenience store with gasoline pumps cannot be built on Lots 1A or 2. According to the Land Development Code (LDC), a car wash falls under the broad list of businesses listed in the definition of a motor vehicle service center use.

The proposed amendment is to add an automated car wash as an allowed use on either Lots 1A or 1B. While an automated car wash is an appropriate use within a shopping center, the location of this use will be limited to only Lots 1A or 1B, so it would not be a primary focus near the main entrance or core of the development. In addition, Lots 1A and 1B are located at the northwest corner of the shopping center, away from the core of the development, and the likelihood of these lots being developed with an office, retail, or restaurant is limited. Therefore, the proposed amendment allows for these lots to be developed with a use that would serve vehicles already visiting the shopping center or vehicles driving along this corridor. If the amendment is approved, the applicant is required to submit a site plan to develop a car wash on Lot 1A.

CONCEPTUAL DEVELOPMENT PLAN

The current CDP requires a cross-access driveway along the front of Lots 1A and 1B. The applicant is requesting to remove this requirement from the CDP and not be required to build a cross-access driveway when Lots 1A is developed. According to the applicant, the request is due to the traffic circulation layout for a proposed car wash on Lot 1A. The applicant states that the proposed traffic circulation layout is for vehicles to enter and exit the site at separate designated points along the rear of the property to ensure the safest and most efficient traffic pattern for getting vehicles in and out of the carwash and site (Figure 2 on Page 3).

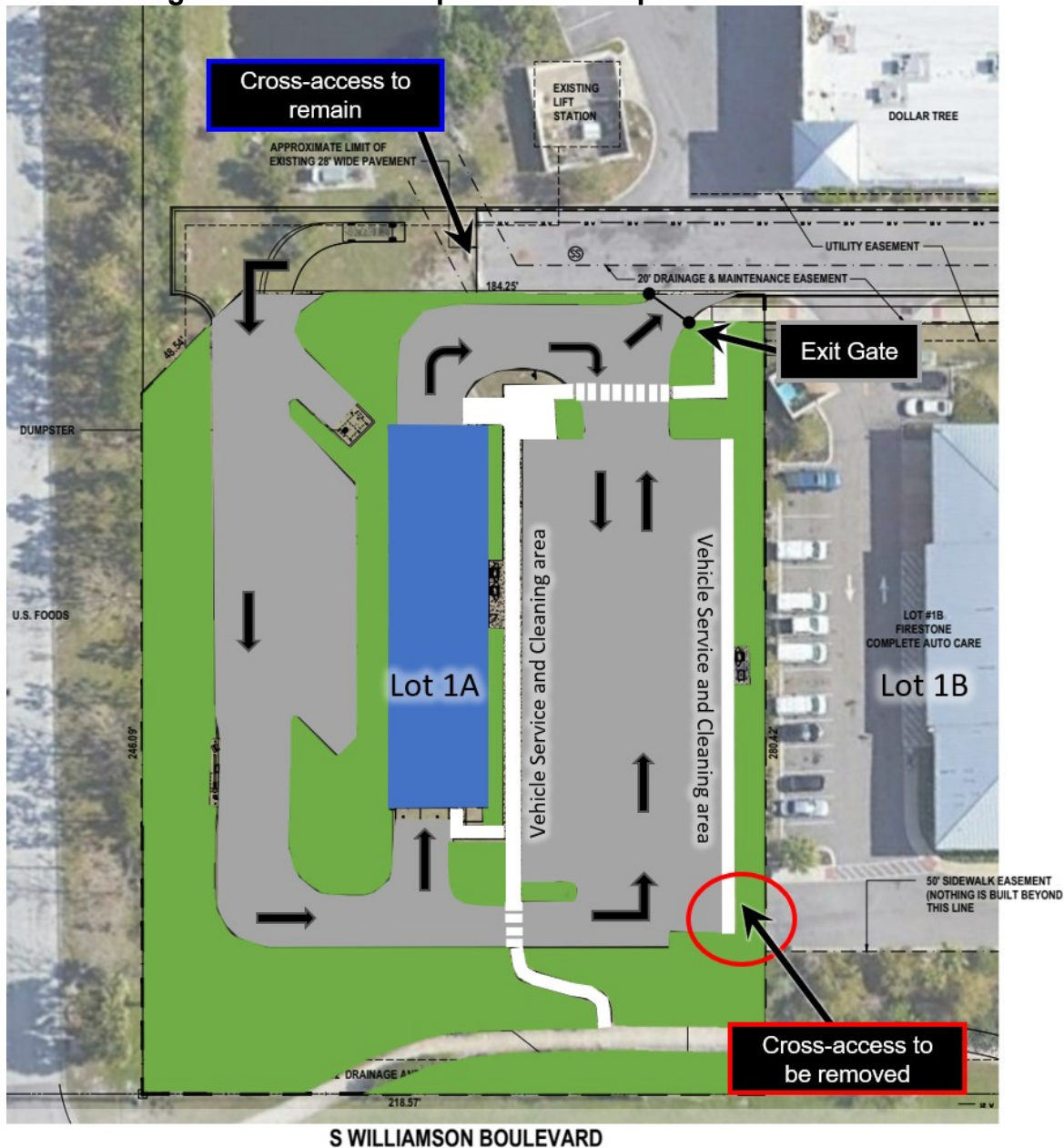
The applicant is concerned that if the cross-access driveway between Lots 1A and 1B is required to be constructed along the front of Lot 1A, it will allow for multiple points of access to the carwash, and the proposed carwash has been designed to have a single, gated point of access, for vehicles to enter the site and get in line to pay and enter the carwash. In addition, the parking area on the south side of the carwash will be a vehicle detailing area for patrons that have paid for a carwash to park and dry, vacuum, and detail their vehicle, and not connecting the cross-access driveway into this detail area will minimize the number of vehicles traveling through an area where people will be out of the vehicles and detailing vehicles.

The purpose of a cross-access driveway between lots is to limit driveways on major roadways and provide for interconnectivity between lots without requiring vehicles to use the city's roadway network to access other uses or lots within a commercial development. If the revision to the CDP is approved, Lot 1A will still be accessed from an internal cross-access driveway along the rear of Lot 1A, providing interconnectivity with all lots within

the Pavilion at Port Orange. There are no plans or requirements to connect through to the US Foods site.

Before development on Lot 1A, a site plan must be submitted to the city and approved by the Staff Development Review Committee (SDRC). Any development on Lot 1A will be required to meet the standard commercial site requirements (landscape buffers, screening, tree preservation, architecture, traffic concurrency, drainage and other infrastructure, parking, etc.) in the City's Land Development Code and the Pavilion at Port Orange MDA and CDP.

Figure 2. Draft Concept Plan for Proposed Car Wash on Lot 1A



While the request is to not construct the cross-access driveway along the front of Lots 1A and 1B, there will be cross-access between Lots 1A and 1B through the cross-access driveway on the shopping center property, along the rear of Lots 1A and 1B.

Figure 3. Existing Cross-Access Drives Near Lots 1A and 1B



CONSISTENCY WITH THE COMPREHENSIVE PLAN

The subject property is designated *Commercial* on the City's Future Land Use Map. The original MDA was found to be consistent with the City's Comprehensive Plan and City's Future Land Use (FLU) Map when it was originally approved in 2007. The proposed Fourth Amendment does not change the FLU designation for the property, and the proposed uses being added to the list of permitted uses of the PCD are consistent with the existing FLU designation of the property.

PUBLIC NOTICE

A Public Notice sign was posted on the site on June 23, 2023. At the time this agenda item was prepared, staff had not received any calls regarding the proposed amendment.

RECOMMENDATION

Staff recommends approval of the Fourth Amendment to the Master Development Agreement and Conceptual Development Plan for the Pavilion at Port Orange Planned Commercial Development, subject to the City Attorney's review of legal form and content.

ATTACHMENTS

Exhibit 1 - Fourth Amendment to the to the Master Development Agreement for the Pavilion at Port Orange Planned Commercial Development

EXHIBIT 1

This Instrument Prepared By:
Jeffrey P. Brock, Esquire
Smith Bigman Brock, P.A.
444 Seabreeze Blvd., Suite 900
Daytona Beach, FL 32118

STATE OF FLORIDA

FOURTH AMENDMENT TO THE MASTER DEVELOPMENT AGREEMENT FOR THE PAVILION AT PORT ORANGE PLANNED COMMERCIAL DEVELOPMENT (PCD)

COUNTY OF VOLUSIA

THIS FOURTH AMENDMENT TO THE MASTER DEVELOPMENT AGREEMENT FOR THE PAVILION AT PORT ORANGE PLANNED COMMERCIAL DEVELOPMENT (PCD) (this "Fourth Amendment") is entered into by and between THE CITY OF PORT ORANGE FLORIDA, a chartered municipal corporation located in Volusia County, Florida (the "City"), PORT ORANGE TOWN CENTER, LLC, a Delaware limited liability company, owner of Lot 1A ("Lot 1A Owner"), and BRIDGESTONE RETAIL OPERATIONS, LLC, a Delaware limited liability company, owner of Lot 1B, ("Lot 1B Owner"), (collectively the "Owners")

WHEREAS, the City and Lot 1A Owner entered into the "Master Development Agreement for The Pavilion at Port Orange Planned Commercial Development (PCD) Agreement" (the "MDA"), recorded in Official Records Book 6173, Page 1611, Public Records of Volusia County, Florida; and

WHEREAS, the City and Lot 1A Owner entered into the "First Amendment to the Master Development Agreement for The Pavilion at Port Orange Planned Commercial Development (PCD) Agreement" (the "First Amendment"), recorded in Official Records Book 6250, Page 2994, Public Records of Volusia County, Florida; and

WHEREAS, the City and Lot 1A Owner entered into the "Second Amendment to the Master Development Agreement for The Pavilion at Port Orange Planned Commercial Development (PCD) Agreement" (the "Second Amendment"), recorded in Official Records Book 6399, Page 2732, Public Records of Volusia County, Florida; and

WHEREAS, the City and Lot 1A Owner entered into the "Third Amendment to the Master Development Agreement for The Pavilion at Port Orange Planned Commercial Development (PCD) Agreement" (the "Third Amendment"), recorded in Official Records Book 6538, Page 95, Public Records of Volusia County, Florida; and

WHEREAS, the only property subject to this Fourth Amendment are Lots 1A and 1B of the Pavilion at Port Orange plat, more particularly described in the legal description attached hereto and incorporated herein as Exhibit "A" (the "Property");

WHEREAS, the City and Owners wish to further amend the Master Development Agreement, and the Conceptual Development Plan as set forth in Composite Exhibit "B" of the MDA ("CDP"), as previously amended, for the purposes of adding permitted uses, removing the requirement for a cross access drive between Lot 1A and Lot 1B as shown on the CDP; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the City, Owners and Developer hereto covenant and bind themselves as follows:

1. The recitals provided above are recognized as true and correct representations and are incorporated herein.

2. The Conceptual Development Plan as set forth in Composite Exhibit "B" of the MDA ("CDP") is hereby amended as it applies to Lots 1A and 1B to remove the requirement for and delineation of the cross-access drive between Lots 1A and 1B, as set forth in Exhibit "B", attached hereto and made apart hereof by this reference.

3. Paragraph 8, PCD PERMITTED USES, Subsection A., Permitted Principal Uses, of the MDA, as it applies to Lots 1A and 1B, is hereby amended as follows:

"8. PCD Permitted Uses

A. Permitted Principal Uses:

Banks with Drive Thru Lanes (limited to Lots 1A, 1B, 2, 3 and 4)

Bars/Lounges/Nightclubs/Liquor Stores

Business Services

One automated Carwash with ancillary vacuum and detail stations (Limited to Lots 1A or 1B)

Communication Towers

One Convenience Store with Gasoline Pumps or one Motor Vehicle Service Center (Limited to Lots 1A, 1B, or 2)

Financial Services

Furniture and Appliance Stores

Game/Recreation Facilities

Health/Exercise Clubs

Hotels/motels

Medical Offices/Clinics

Motion Picture and Performing Arts Theaters

Newsstands/Bookstores

Office Supplies

Professional Offices

Personal Services, including, but not limited to: Beauty/Barber Shops

Pet Stores w/Veterinary Clinics and In-House Training Services

Restaurants, Including Food and Alcoholic Beverage Sales in Outdoor Area

Retail Home Improvement Centers with Outdoor Sales Center (Screened in Accordance with the LDC)

Retail Sales, including but not limited to:

Department Stores

Electronic Sales

Resale Stores

Resales

Rental and Services

Retail, Grocery and Drug Stores

Specialty Retail Sales

Video Rentals

Retail Nurseries and Garden Supplies with Outdoor Garden Sales Center (Screened in accordance with LDC)

Stormwater retention facilities, including a standalone stormwater pond on the County Pond Property, if necessary, in accordance with Section 6 herein

Xerographic and Offset Printing"

4. This Fourth Amendment shall be effective as of the date it is executed by all parties.

5. This Fourth Amendment shall be recorded in the Public Records of Volusia County, Florida, at Owners' expense.

6. The Master Development Agreement, as previously enacted and amended by the First, Second, and Third Amendments thereto, shall remain in full force and effect except with respect to those matters specifically amended by this Fourth Amendment.

IN WITNESS WHEREOF, the parties hereto attached their hands and seals on the dates set forth below:

Signed, sealed and delivered
in the presence of:

**THE CITY OF PORT ORANGE,
FLORIDA, a Florida municipal
corporation**

Witness 1

By: _____
Donald O. Burnette, Mayor

Print Name- Witness 1

Witness 2

Print Name- Witness 2

Attest: _____
Robin L. Fenwick, MMC, City Clerk

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged by me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2023, by Donald O. Burnette, Mayor and Robin L. Fenwick, City Clerk, both of the City of Port Orange, Florida, a chartered municipal Corporation, on behalf of the City. They are personally known to me and did not take an oath.

Notary Public

Notary Seal

Signed, sealed and delivered in the presence of:

LOT 1B OWNER:

**BRIDGESTONE RETAIL
OPERATIONS, LLC, a Delaware
limited liability company**

Witness 1

By: _____

Print Name: _____

Title: _____

Print Name- Witness 1

Date: _____

Witness 2

Print Name- Witness 2

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged by me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2023, by _____, as _____ of Bridgestone Retail Operations, LLC, a Delaware limited liability company on behalf of the company. He/She is personally known to me or produced _____ as identification.

Notary Public

Notary Seal

Signed, sealed and delivered in the presence of:

LOT 1A OWNER:

**THE PAVILION AT PORT
ORANGE LLC, a Florida limited
liability company,
By: CBL & ASSOCIATES LIMITED
PARTNERSHIP, a Delaware limited
partnership, its manager,
By: CBL HOLDINGS I, INC., a
Delaware corporation, its sole general
partner**

Witness 1

Print Name- Witness 1

Witness 2

Print Name- Witness 2

By: _____
Name

Title: _____

Date: _____

STATE OF TENNESSEE
COUNTY OF HAMILTON

The foregoing instrument was acknowledged by me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2023, by _____, _____ of CBL Holdings I, Inc., a Delaware corporation, sole general partner of CBL & Associates Limited Partnership, a Delaware limited partnership, Manager of The Pavilion at Port Orange, LLC, a Florida limited liability company. She is personally known to me and did not take an oath.

Notary Public

Notary Seal

Exhibit A
Legal Description

Lot 1A

LOT 1A AND THE WESTERLY 26.6 FT OF LOT 1B OF THE PAVILION AT PORT ORANGE AS RECORDED IN PLAT BOOK 55, PAGE 13 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

THE ABOVE DESCRIPTION CONTAINS 1.39 ACRES MORE OR LESS.

Lot 1B

LOT 1B LESS THE WESTERLY 26.60 FT OF THE PAVILION AT PORT ORANGE AS RECORDED IN PLAT BOOK 55, PAGE 13 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

THE ABOVE DESCRIPTION CONTAINS 1.19 ACRES MORE OR LESS.

Exhibit B
Conceptual Development Plan

THE SPECIFIC NUMBER OF PARKING SPACES, BUILDING FOOTPRINTS, PARKING LOT LANDSCAPE ISLANDS AND LANDSCAPE AREAS AROUND BUILDINGS ARE CONCEPTUAL. THE CITY RESERVES THE RIGHT TO REVIEW SAME DURING THE SITE PLANNING PROCESS AND TO REQUIRE MODIFICATIONS TO ENSURE COMPLIANCE WITH THE REQUIREMENTS OF THE MDA FOR THIS PCO.

COMPLIANCE WITH THE ENVIRONMENTAL PRESERVATION CODE MAY NECESSITATE MODIFICATION OF THE CONCEPTUAL PLAN.

LOT 5 SITE DEVELOPMENT DATA	
Land Area (Lot 5 only)	63.88 acres
Shopping Center Building Area	382,305 sf
Office Area (at 445 on second level)	37,945 sf
Theater (2,750 seats)	44,024 sf
Building Coverage Percentage	16%
Total Impervious Area	40.65 acres
Open Space Provided	19.17 acres
Vehicle Use Area	1,086,200 sf
Interior Landscape Area Required (12%)	131,544 sf
Interior Landscape Area Provided	190,415 sf
Total Minimum Parking Required	2,145 spaces
Shopping Center: 1,577 spaces	
Theater / Office: 568 spaces	
Total Parking Shown (shown with Lots 6-10)	2,384 spaces
Standard Spaces: 1754	
Compact Spaces: 595	
Accessible Spaces: 65	
Bicycle Parking Required	239 spaces
Bicycle Parking Provided (80 provided by Lots 6-10)	239 spaces

REVISION TO MASTER SITE PLAN TO ELIMINATE SHARED DRIVEWAY BETWEEN LOT 1A AND LOT 1B

ELIMINATE SHARED DRIVEWAY BETWEEN LOT 1A AND LOT 1B

SITE PLAN LEGEND	
RIGHT-OF-WAY/PROPERTY LINE	---
CURB & GUTTER	---
DUMPSTER	□
COMPACTOR	□
NORMAL POND WATER LEVEL	~~~~~
PRESERVED EX. WETLANDS & TREES	~~~~~

4th AMENDMENT TO THE MDA
THE PAVILION AT PORT ORANGE
by:
LUPHAM, INC.
265 KENILWORTH AVE
ORMOND BEACH, FL
JUNE 7, 2023
REVISED AUGUST 16, 2023

EXHIBIT B MASTER SITE PLAN

