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Memorandum

Date: October 5, 2017
To: Nathan Poore, Town Manager
Town Council
From: Amanda L. Stearns, Land Use Policy Specialist
Cc: Ethan Croce, Community Development Director
Re: Verizon Wireless - Conditional Rezoning Request - R04-022

In order to facilitate the review process for this application I have provided a summary of the procedural steps required by the Town's ordinances and the applicable state statute, 30-A §4352(8). The summary includes actions to date.

Preliminary Review

1. Council received the application on August 8, 2016 and referred it to the Planning Board for review. A peer review of the radio frequency study was also required.
2. Planning Board - October 4, 2016 - presentation
3. Planning Board - July 11, 2016 - Made recommendation to the Council.

Formal Review

1. Introduction (required by Section 213 of the Charter) - September 11, 2017 - Council scheduled hearing for October 11, 2017.
2. Council Hearing - October 11, 2017 (see notes below, may suffice as the Ordinance Hearing if no conditions or restrictions are imposed)
3. Ordinance Hearing (required by 19-17 of the Zoning Ordinance) - The hearing required by the ordinance requires that the conditions and restrictions to be considered by the Council as part of the abutter notice. Since no conditions and restrictions have been developed, the October 11, 2017 hearing does not suffice to meet this requirement unless there are no conditions and restrictions placed on the approval.
4. MRA Hearing (required by statute, same requirements of hearing in Item 2, conditions and restriction must be developed prior to the hearing being noticed)
5. Ordinance Consideration - must occur at least 14 days after the Ordinance Hearing.
6. Permit - application process is through the Planning Board

Development of Conditions and Restrictions – Section 19-72.1 of the Code of Ordinances lists examples of the types of conditions and restrictions that could be imposed on the rezoning:

Sec. 19-17.2 All development and use of rezoned property must comply with the performance standards of this [Zoning] Ordinance and with the use and spatial requirements of the zoning district in which the rezoned property is placed. Conditions imposed by the Town Council may be more restrictive, but not less restrictive, than the applicable requirements of this Ordinance. Conditions and restrictions shall relate to the physical development or operation of the property and may include, without limitation, the following:

- a. Limitations on the number and types of permitted and conditional uses, and re-designation of permitted to conditional uses and vice versa.
- b. Restrictions on the scale and density of development, and on the days and hours of operation. [could include limiting the number of co-locators or require an amendment to the rezoning if additional providers are added, could limit rezoning to include only the specific proposal in front of the Council (e.g. road design, tower height. number of co-locators), need to designate the actual portion of the parcel to be included in the rezoning (may include areas outside of the lease area as shown on the plan), could include requiring added uses to the property to be considered needing an amendment to the rezoning if it impacts or utilizes any portion of the parcel initially included in the rezoning]
- c. Specifications for the design and layout of buildings or other improvements, including landscaping. [could include buffering of the ground equipment from abutting property]
- d. Schedules for commencement and completion of construction. [could defer to Planning Board]
- e. Performance guarantees securing completion and maintenance of improvements, including landscaping, and guarantees against defects. [Could defer to Planning Board]
- f. Preservation of open space and buffers, and protection of natural areas and historic sites. [could include wetlands and vernal pool buffers as well as added no cut buffers]
- g. Provisions for reservation or dedication of land for public purposes.
- h. Contributions toward the provision of municipal services required by the development, including, for example, infrastructure improvements such as roads and sewers, and specialized maintenance needs arising from the rezoning. [could include a Town reserved site on the tower]
- i. Provisions for enforcement and remedies for breach of any conditions or restrictions.

The Council may begin discussion at their October 11 meeting after the public hearing or schedule the discussion for a future Council meeting. The Council could also give the applicant an opportunity to submit proposed conditions and restrictions to be reviewed by the Council and staff. When a list of proposed conditions is developed and the Council has endorsed a draft, staff can formalize them into a draft document to be included in the hearing notice for the Ordinance Hearing and the MRA Hearing. If conditions and restrictions are altered substantially after the Ordinance and MRA hearings, new hearings may be required. The Council may choose to hold the Ordinance

Hearing first and review the draft conditions and restrictions prior to forwarding to the Planning Board for an MRA hearing to avoid two MRA hearings if substantive changes are made.

Staff were asked to seek advice from legal regarding the impact of the Spectrum Act on the development of conditions and restrictions. Based on that discussion staff conclude that the Council may impose conditions and restrictions on the project that are directly related to specific development concerns. See the list above for examples. Conditions and restrictions do not need to be confined to the lease area of the property but if they are on a portion of the parcel that is not within the lease area, sufficient right, title, interest should be produced that authorizes the applicant to negotiate on behalf of the property owner.

Some questions that come to mind in considering conditions and restrictions are:

1. Is it the intent of the property owner to utilize the woods road cut in addition to the Verizon commercial driveway?
2. How many co-locaters are planned for the tower? Is the applicant intending to receive approval as part of this rezoning to accommodate additional providers?