

**BOARD OF ZONING ADJUSTMENT
STAFF REPORT**

Date: July 6, 2015

CASE NUMBER

5937

APPLICANT NAME

Cellular South Real Estate

LOCATION

1621 Virginia Street
(Southeast corner of Lott Street and Virginia Street)

VARIANCE REQUEST

HEIGHT: Height Variance to allow a 152’ monopole telecommunications tower in a B-3, Community Business District.

SETBACK: Setback Variance to allow the tower within 17’-6” of the lease parcel line.

PARKING SURFACE: Parking Surface Variance to allow a gravel access drive and parking.

TREE PLANTING: Tree Planting Variance to allow no tree plantings.

**ZONING ORDINANCE
REQUIREMENT**

HEIGHT: The Zoning Ordinance limits structures to a 45’ height in a B-3, Community Business District.

SETBACK: The Zoning Ordinance requires telecommunications towers to be setback the height of the tower (152’) from the lease parcel line.

PARKING SURFACE: The Zoning Ordinance requires paved access and parking surfaces.

TREE PLANTING: The Zoning Ordinance requires one tree per every 30’ of lease parcel perimeter.

ZONING

B-3, Community Business

AREA OF PROPERTY

2,100 Square Feet / 0.05± Acre

**TRAFFIC ENGINEERING
COMMENTS**

No traffic impacts anticipated by this variance request.

ENGINEERING

COMMENTS

If the Parking Surface Variance is approved the approval will need to include the following conditions:

- a. Submit and receive a Tier 2 Land Disturbance Permit for the proposed site development.
- b. Submit a ROW Permit for the work within the Public ROW.

URBAN FORESTRY

COMMENTS

No comments.

CITY COUNCIL

DISTRICT

District 2

ANALYSIS

The applicant is requesting Height, Setback, Residential Buffer, parking Surface and Tree Planting Variances to allow a 152' monopole telecommunications tower setback 5'-10" from a lease parcel line and 159' from residential property, with a gravel access and parking drive, and with no tree planting provided, in a B-3, Community Business District; the Zoning Ordinance limits structures to a 45' height, with telecommunications towers to be setback the height of the tower (152') from a lease parcel line, and with a residential buffer separation of 200' or 150% of the height of the tower, whichever is greater (228'), with paved access and parking surfaces, and with one tree per every 30' of lease parcel perimeter, in a B-3, Community Business District.

The applicant has also submitted a Planning Approval application to allow the proposed tower in a B-3 district, a two-lot Subdivision application to separate the lease parcel for the tower from the parent stadium parcel, and a Planned Unit Development application to allow shared access for the two proposed lots, scheduled for the November 20th Planning Commission meeting. At the meeting, the Commission heldover the requests until the January 15, 2015, meeting so that the applicant can meet with the Mayor and the Ladd-Peebles Stadium Board to explore other locations further from adjacent residences.

The Telecommunications Towers and Facilities Ordinance establishes specific criteria for granting setback and height variances. The Ordinance states that a modification to the setback requirement should be considered in situations where "the only alternative is to locate the tower at another site which poses a greater threat to the public health, safety or welfare or is closer in proximity to a residentially zoned land."

The Zoning Ordinance states that no variance shall be granted where economics are the basis for the application; and, unless the Board is presented with sufficient evidence to find that the variance will not be contrary to the public interest, and that special conditions exist such that a literal enforcement of the Ordinance will result in an unnecessary hardship. The Ordinance also states that a variance should not be approved unless the spirit and intent of the Ordinance is observed and substantial justice done to the applicant and the surrounding neighborhood.

Variances are not intended to be granted frequently. The applicant must clearly show the Board that the request is due to very unusual characteristics of the property and that it satisfies the variance standards. What constitutes unnecessary hardship and substantial justice is a matter to be determined from the facts and circumstances of each application.

Concerning the Height Variance request, as required by Section 64-4.J.4.4 of the Zoning Ordinance, the applicant has submitted written, technical evidence from an engineer that the proposed Tower or Telecommunications Facilities cannot be installed or collocated on another tower or usable Antennae Support Structure in order to meet the coverage requirements of the applicant's wireless communications system. The applicant has also submitted information indicating that the tower will be capable of accommodating two additional cellular carriers. Also submitted was evidence that the tower meets the structural requirements of Section 64-4.J.6 of the Zoning Ordinance.

Specific to the Height Variance request, there are two other cellular communications towers within a one-half mile radius of the subject site. One is owned by Alabama Power Company and within its service compound approximately 900' to the Southeast, but it is only 105' high which is insufficient to provide adequate service. A 140' high tower located approximately 775' to the Southwest is on Mobile County Public School property, but it is restricted to the sole use of the Mobile County Public School System by variance approval conditions. In light of the technical data submitted and the illustration of a hardship imposed by inadequate collocation capabilities on other towers within the area, the Height Variance request would seem reasonable.

With regard to the Setback and Residential Buffer requests, the applicant has illustrated through the site plan submitted that other areas of the stadium site would be inadequate for the construction of the tower compound due to the reduction of available parking spaces for stadium events. The area designated for the tower compound is adjacent to a corner indentation of the existing detention facility within the Southeast corner of the stadium parking lot in an area not used for event parking. Due to the area allotted for the tower compound, a hardship is illustrated in meeting the required lease parcel setbacks and the Setback Variance request would be justified. And due to the proximity of residential property adjacent to the stadium site, a hardship in meeting the Residential Buffer Separation requirement is imposed by the site's location. Therefore, the Residential Buffer Separation Variance request would be justified.

Pertaining to the Surface Variance request, the gates to the tower compound would be located approximately 30' West of the paved parking lot drive along the East side of the stadium site. The associated access and parking space for the compound would be between the gates and the paved stadium drive. The applicant has simply requested the Parking Surface Variance request but has not indicated a hardship associated with such. However, as much of the stadium parking within this area is a gravel-grass mixture, and the access drive would be of short length and low-usage, the granting of the Surface Variance request would not be out of order.

The applicant also requests a Tree Planting Variance to not require tree plantings around the tower compound. Ordinarily, one tree would be required per 30' of lease parcel perimeter. However, in discussions with Urban Forestry, it has been revealed that when the adjacent detention compound was being planned, the stadium staff specifically requested that no trees be

planted in any area other than along the South side of the detention compound in order to maximize usable parking area. In keeping with that request, and due to the short length of the fence along the tower compound's South side (25'), it is recommended that the Tree Planting Variance request be approved.

The applicant has demonstrated that hardships would be imposed by a literal interpretation of the Zoning Ordinance with respect to the height limitations, setback, and residential buffer separation requirements for telecommunications towers. Although no direct hardship has been demonstrated with respect to the Surface Variance request, the proposed surface would be in keeping with that within that area of the stadium parking lot. And the fact that the stadium staff previously requested no tree plantings be required due to conserving parking area would lend justification to the granting of the Tree Planting Variance request.

RECOMMENDATION: As the Planning Commission has held their associated cases over until January 15, 2015, and as the location of the tower may change due to the Commission's request to consider other locations, it is recommended that the variance requests be heldover until the February 2, 2015, Board meeting, with any revisions to be submitted as soon after the January 15, 2015 Planning Commission meeting as possible.

Revised for the February 2015 meeting:

This application was heldover from the December, 2014 meeting due to the fact that the Planning Commission heldover the associated cases until their January 15th meeting to allow other locations on the site for the proposed cell tower to be considered. However, as other locations are still being considered for the tower location, the applicant and the Ladd-Peebles Board decided to holdover the associated Planning Commission applications until the Commission's April 16th meeting. Therefore, this application is recommended for holdover to the Board's May 4th meeting to allow the applicant and the Ladd-Peebles Board to finalize the new location of the proposed tower, and if necessary, prepare a new application for submittal.

RECOMMENDATION: *Based on the preceding, this application is recommended for holdover to the Board's May 4th meeting to allow the applicant and the Ladd-Peebles Board to finalize the new location of the proposed tower, and if necessary, prepare a new application for submittal.*

Revised for the May 2015 meeting:

This application was heldover from the Board's February meeting to allow the applicant and the Ladd-Peebles Board to finalize the new location of the proposed tower, and if necessary, prepare a new application for submittal.

No new information has yet been submitted by the applicant. However, the applicant conducted a public meeting concerning the proposed new tower location prior to the Planning

Commission's April 16th meeting. Because of public concerns at that meeting, the applicant requested that the Commission holdover the associated Planning Commission applications until their June 18th meeting. Therefore, this application should be heldover in order to be considered after the June 18th Planning Commission meeting.

RECOMMENDATION: Based on the preceding, this application is recommended for holdover to the Board's July 6th meeting in order to allow the Planning Commission to consider the requests before it and to allow the applicant to finalize the new location of the proposed tower, and if necessary, prepare a new application for submittal.

Revised for the July 2015 meeting:

This application was heldover from the Board's May meeting to allow the Planning Commission to consider the requests before it and to allow the applicant to finalize the new location of the proposed tower, and if necessary, prepare a new application for submittal.

The applicant submitted revised Subdivision, Planning Approval and Planned Unit Development applications for the Planning Commission's consideration at the June 18th meeting. Those applications were approved by the Commission, thus the tower is now approved to be located on the proposed site. A revised site plan was also submitted for the various requests in this application.

The revised site plan indicates the proposed location of the tower to be approximately 345' West of the previously proposed location, and approximately 390' from the residentially zoned property along the East side of the Ladd Stadium site. The new location also places the tower approximately 350' from the residentially zoned property along the South side of Dublin Street which is currently used as a public school. Therefore, the previously requested Residential Buffer Variance would be moot as the 152' high tower would be set back over 150% of that height (228') from any residentially zoned property.

The tower compound is proposed to be at the West end of the existing detention compound as opposed to the previously planned location at the East end. It has been revised slightly larger to 60' by 35'. Since the tower is proposed to be centered within the compound, the lease parcel Setback request has been modified to be 17'-6" from the lease parcel line. Other than the proposed location and size of the lease parcel/lot compound, there have been no revisions to the Height, Parking Surface and Tree Planting Variance requests.

The applicant has demonstrated that hardships would be imposed by a literal interpretation of the Zoning Ordinance with respect to the height limitations and setback requirements for telecommunications towers. Although no direct hardship has been demonstrated with respect to the Surface Variance request, the proposed surface would be in keeping with that within that area of the stadium parking lot. And the fact that the stadium staff previously requested no tree plantings be required due to conserving parking area would lend justification to the granting of the Tree Planting Variance request.

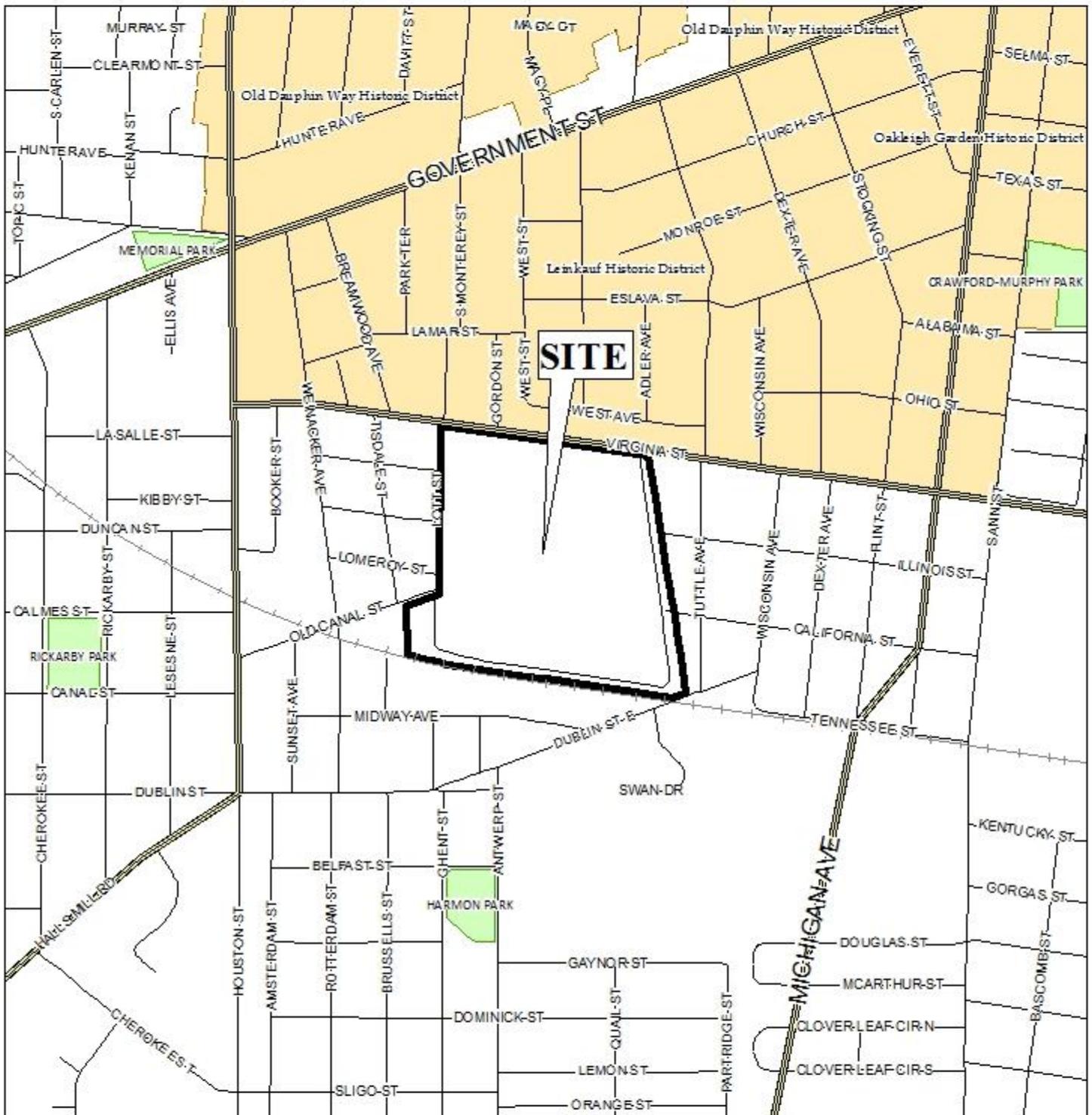
RECOMMENDATION: *Staff recommends to the Board the following findings of facts for approval:*

- 1) *Based on the fact that the site is within a public stadium parking lot, the variance will not be contrary to the public interest;*
- 2) *These special conditions (the site is of limited space and adjacent to an existing compound which was given special considerations for development) exist such that a literal enforcement of the provisions of the chapter will result in unnecessary hardship; and*
- 3) *That the spirit of the chapter shall be observed and substantial justice done to the applicant and the surrounding neighborhood by granting the variance in that no other tower sites were available for collocation.*

Therefore, this application is recommended for approval, subject to the following conditions:

- 1) *the tower is limited to a monopole design with an over-all height of 152', including the lightning rod;*
- 2) *subject to the Engineering comments: (a. Submit and receive a Tier 2 Land Disturbance Permit for the proposed site development. b. Submit a ROW Permit for the work within the Public ROW.); and*
- 3) *full compliance with all municipal codes and ordinances.*

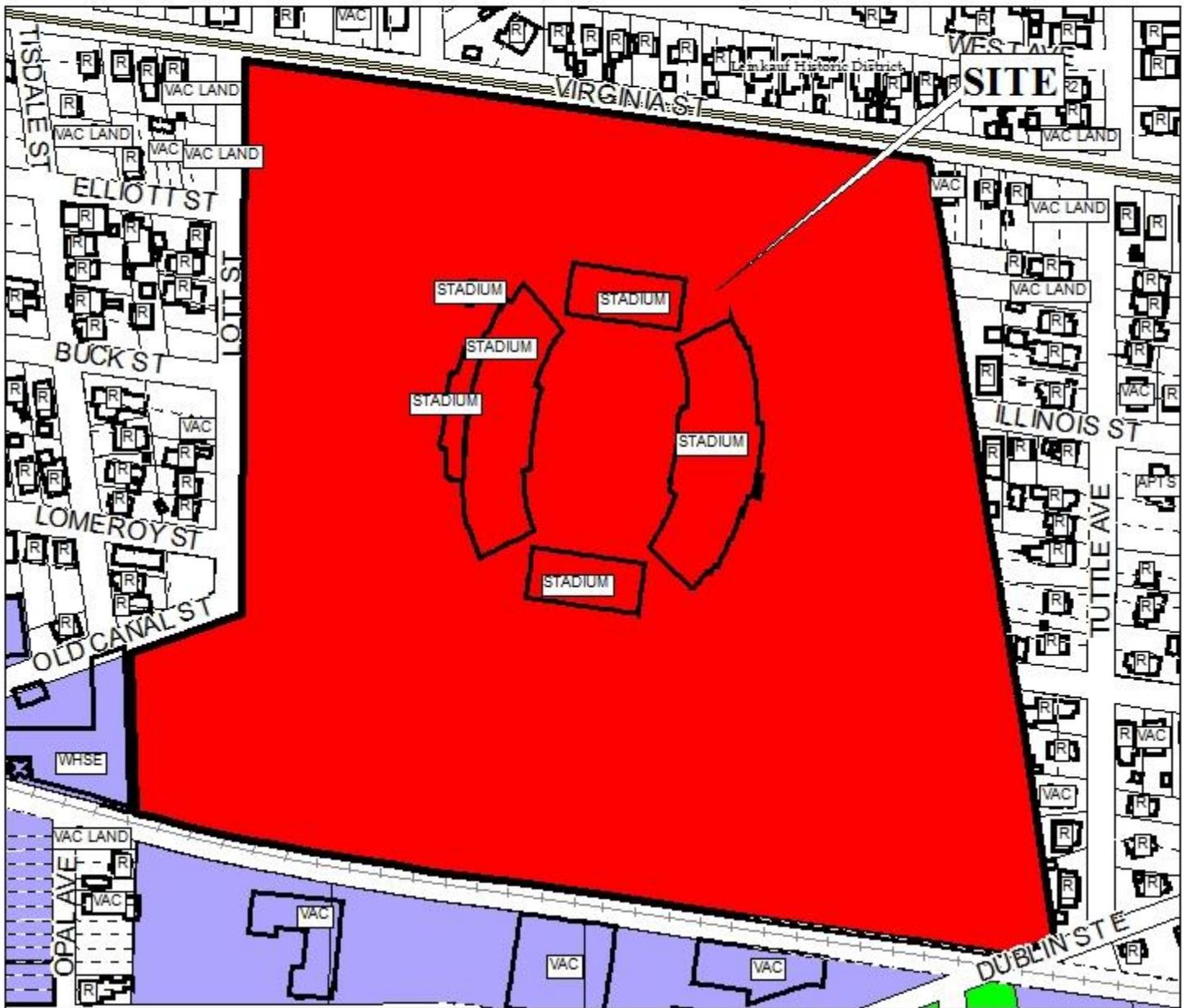
LOCATOR MAP



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BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by residential units.

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APPLICANT Cellular South Real Estate

REQUEST Height, Setback, Residential Buffer, Parking Surface, & Tree Planting Variances

R-A	R-3	T-B	B-2	B-5	MUN	SD-WH	T5.1
R-1	R-B	B-1	B-3	I-1	OPEN	T3	T5.2
R-2	H-B	LB-2	B-4	I-2	SD	T4	T6



**BOARD OF ADJUSTMENT
VICINITY MAP - EXISTING ZONING**



The site is surrounded by residential units.

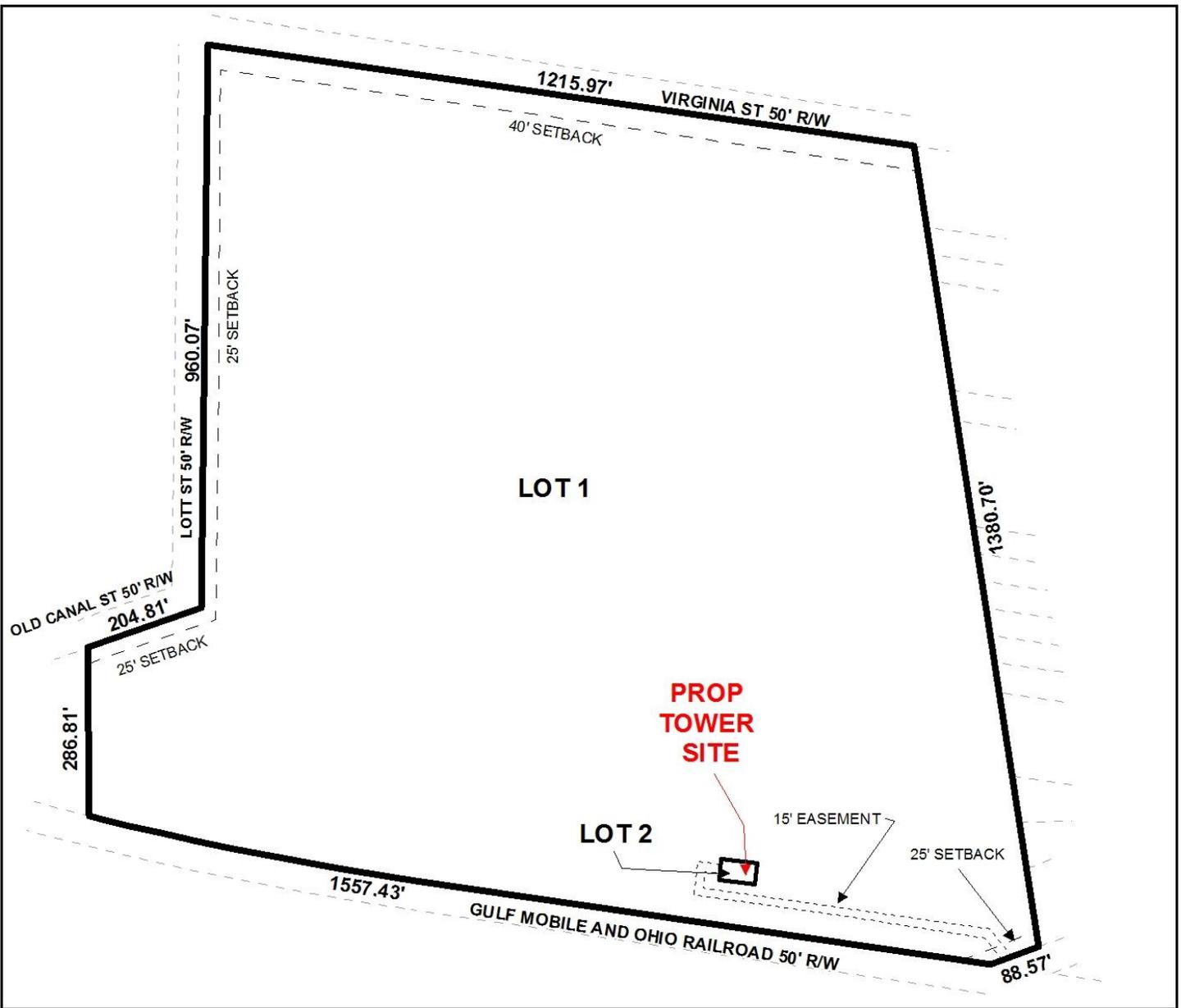
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SITE PLAN

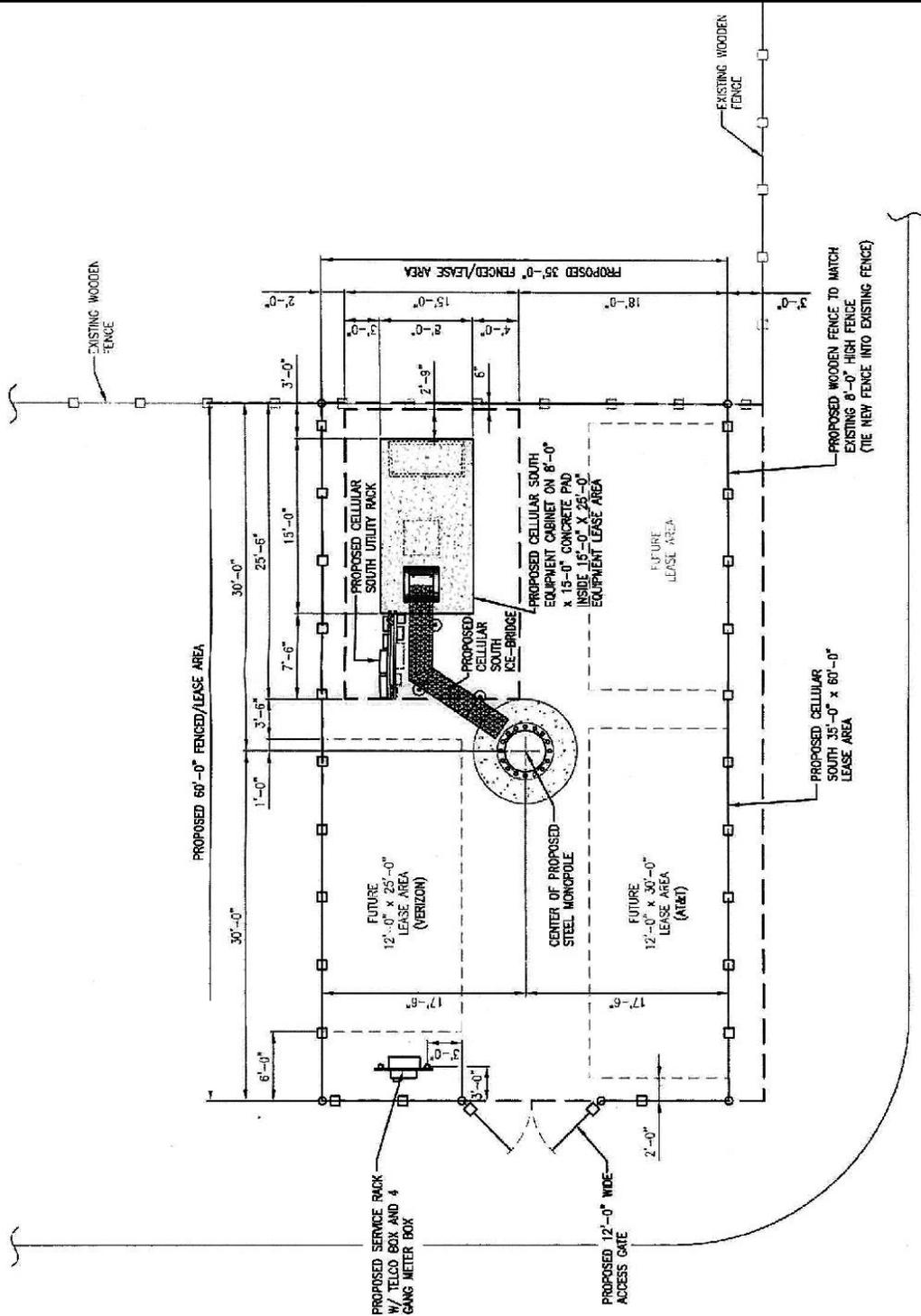


The site plan illustrates the proposed lots, and easement, and setbacks.

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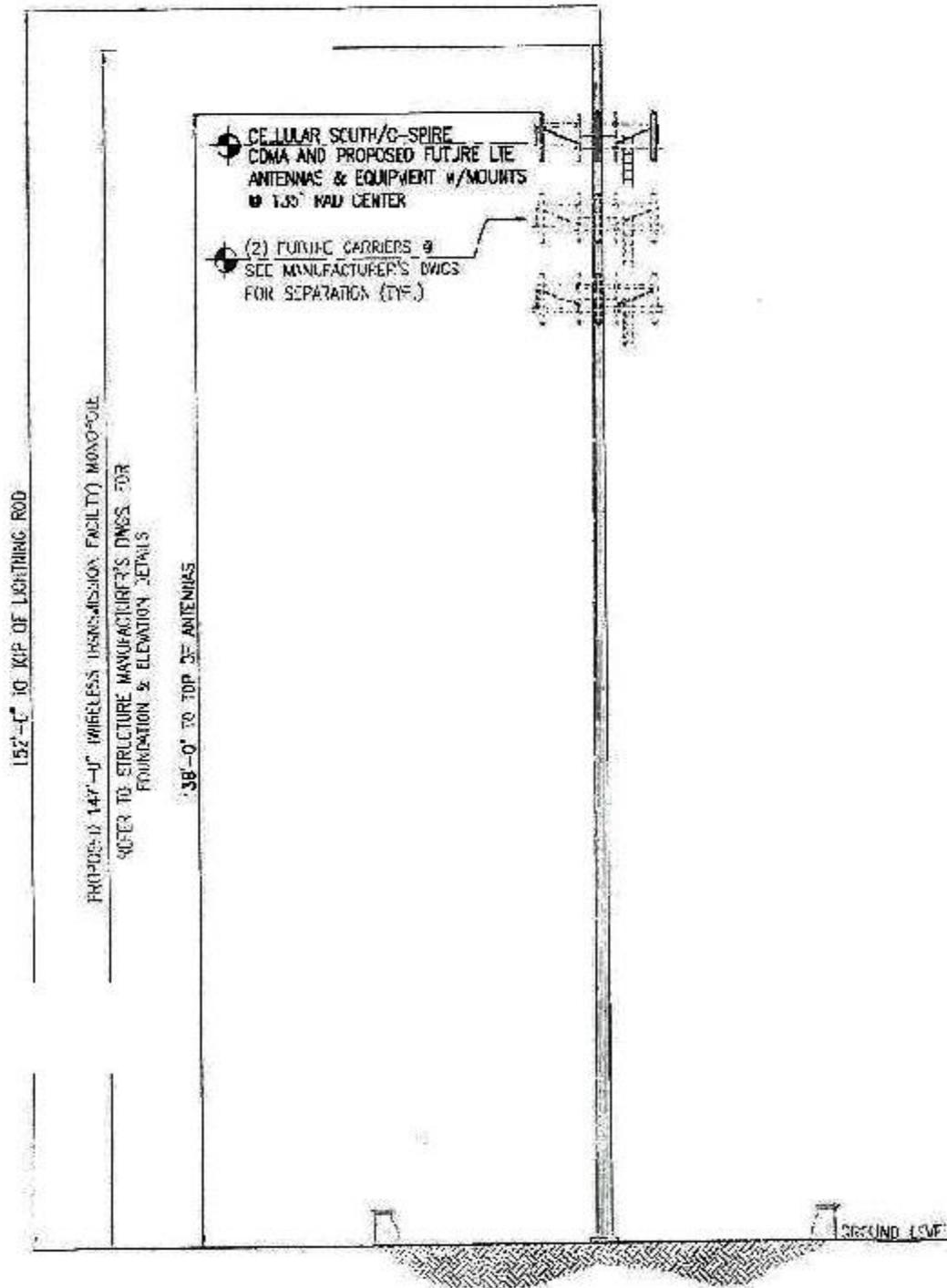
DETAIL SITE PLAN



APPLICATION NUMBER 5937 DATE July 6, 2015
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 REQUEST Height, Setback, Residential Buffer, Parking Surface, & Tree Planting Variances



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