

**THE CITY OF KEY WEST  
PLANNING BOARD  
Staff Report**



**To:** Board of Adjustment

**From:** Brendon Cunningham

**Through:** Amy Kimball-Murley, AICP, Planning Director

**Meeting Date:** June 15, 2010

**Agenda Item:** **Variance to Maximum Allowed Height**, pursuant to Sec. 122-420(3), to construct roof-top equipment shelters and a 125-foot wireless telecommunications monopole in a zoning district that allows for a building height of 40 feet. The property is located at 1010 Kennedy Drive (RE# 00065650-000500) in the Commercial General (CG) Zoning District.

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**Request:** To allow the construction of a wireless telecommunications facility with roof-top equipment shelters and a 125-foot tall monopole to be constructed within a designated common area on property located at 1010 Kennedy Drive

**Applicant:** AT&T Mobility, Kennedy Building Associates, LLC and Kennedy Center Condominium Association, Inc.

**Property Owner:** Kennedy Building Associates, LLC and Kennedy Center Condominium Association, Inc.

**Location:** 1010 Kennedy Drive (RE# 00065650-000500)

**Zoning:** General Commercial (CG)



**Background:**

The proposed project is located on property with an existing four story commercial building. The property is surrounded on three sides by commercially zoned properties and on one side by City owned ball fields in a public service-zoned district across Kennedy Drive. There is a residential neighborhood southwest of the property, abutting the rear-yard of the adjacent commercial uses.

**Request:**

To allow a wireless telecommunications tower in the Commercial General (CG) zoning district per Section 122-420(3) of the Land Development Regulations (LDRs) of the Code of Ordinances of the City of Key West, Florida. The allowed height in the CG zoning district is 40 feet. The existing building is 57 feet in height. The height of the proposed equipment shelters would be 70.5 feet with the tower being 125 feet high, requiring a variance to total height regulations of 85 feet. The applicant states that the need for the height is to accommodate four wireless providers on the same tower, each requiring a separation of 10 feet from each other. AT&T will occupy the top most space.

The City Charter allows that variances to height regulations be granted by the Board of Adjustment without voter ratification so long as the exceeded height is for non-habitable space. The full provision is provided as follows:

**City Charter Section 1.05, Height Restriction:**

- a) Building height restrictions in the City's Land Development Regulations and building code in effect as of the adoption of this charter section are subject to change only upon approval of a majority of the qualified electors casting ballots at a general municipal election.
- b) If the Board of Adjustment approves a height variance for habitable building space, this approval shall be submitted to the voters for ratification in the next regularly scheduled election. Board of Adjustment approval shall not become effective until voter ratification. Board of adjustment height variances for non-habitable purposes, including, but not limited to, radio towers, antennae and spires, shall be final and not be subject to referendum. Board of Adjustment height variances for build back of involuntarily destroyed structures which are nonconforming in their height shall also be final and not subject to referendum. (Ord. No. 98-21, § 2(Exh. A), 8-4-1998)

**Process:**

<b>Development Review Committee:</b>	September 17, 2009; March 25, 2010
<b>Tree Commission:</b>	April 12, 2010
<b>Planning Board:</b>	N/A
<b>Board of Adjustment:</b>	June 15, 2010

**Analysis – Evaluation for Compliance With The Land Development Regulations:**

The criteria for evaluating a variance are listed in Section 90-395 of the City Code. The Board of Adjustment before granting a variance must find all of the following:

1. **Existence of special conditions or circumstances. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other land, structures or buildings in the same zoning district.**

There are no special conditions or circumstances that are peculiar to the land that are not applicable to other land in the same zoning district. The Planning Department is aware that special conditions or circumstances are peculiar to wireless telecommunication towers that support antennas. However, the applicant has reasonable use of the property without the addition of a wireless telecommunications facility.

2. **Conditions not created by applicant. That the special conditions and circumstances do not result from the action or negligence of the applicant.**

Conditions associated with this application are created by the applicant. The applicant has reasonable use of the property without the addition of a wireless telecommunications facility. Additionally, a shorter tower could be proposed where fewer cell antennas could be collocated.

3. **Special privileges not conferred. That granting the variance requested will not confer upon the applicant any special privileges denied by the Land Development Regulations (LDRs) to other lands, buildings or structures in the same zoning district.**

Granting this variance will confer a special privilege upon the applicant that has been denied other applicants for similar projects in the past.

4. **Hardship conditions exist. That literal interpretation of the provisions of the Land Development Regulations would deprive the applicant of rights commonly enjoyed by other properties in this same zoning district under the terms of this ordinance and would work unnecessary and undue hardship on the applicant.**

To achieve the level of service desired, the applicant states that they must build a tower that exceeds the height limit for the CG zoning district. However, the applicant has reasonable use of the property without the addition of a wireless telecommunications facility.

5. **Only minimum variance granted. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.**

The variance requested for 85 feet over the allowable maximum allowed height of 40 feet in the CG zoning district is the minimum variance that will make possible the proposed use of the structure. The applicant proposes this for four service providers, each to be located ten feet from the others starting with AT&T at 125 feet. However, the applicant has reasonable use of the property without the addition of a wireless telecommunications facility.

6. **Not injurious to the public welfare. That the granting of the variance will be in harmony with the general intent and purpose of the land development regulations**

**and that such variance will not be injurious to the area involved or otherwise detrimental to the public interest or welfare.**

The General Commercial (CG) Zoning District provides for public and private utilities through a conditional use approval. The conditional use application that was submitted concurrently with this variance application for height is scheduled by the Planning Board at its meeting on June 10, 2010. The conditional use approval establishes whether the use anticipated by this variance request would be in harmony with the general intent and purpose of the Land Development Regulations. It does not appear that the granting of the variance would be injurious to the public interest or welfare.

- 7. Existing nonconforming uses of other property not the basis for approval. No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted use of lands, structures or buildings in other districts shall be considered grounds for the issuance of a variance.**

Other non-conforming properties are not considered as the basis for this request.

**Concurrency Facilities and Other Utilities or Service (Section 108-233):**

Concurrency management was not considered as part of this application. The site is fully developed. No aspect of this application will increase water, sewer or solid waste requirements. Further, there will be a slight increase in pervious surface area as a result of the reconfiguration of the landscaped area around the monopole.

**The Planning Board shall make factual findings regarding the following:**

- 1. That the standards established by Section 90-395 of the City Code have been met by the applicant for a variance.**

The applicant does not meet all the standards established by the City Code for a variance.

- 2. That the applicant has demonstrated a "good neighbor policy" by contacting or attempting to contact all noticed property owners who have objected to the variance application, and by addressing the objections expressed by these neighbors.**

The applicant held three informational meetings with surrounding property owners and interested members of the general public that might be impacted by the construction of this facility.

**RECOMMENDATION:**

The Planning Department, based on the criteria established by the Comprehensive Plan and the Land Development Regulations, recommends the request for a variance to the allowed height be **DENIED**.