



CITY AND BOROUGH OF SITKA

A COAST GUARD CITY

Planning and Community Development Department

AGENDA ITEM

Case No: VAR 25-01
Proposal: Variance to increase maximum height from 35' to 120' for communication tower
Applicant: Richard Peterson for Tlingit & Haida, Tidal Network
Owner: James Penrose
Location: 112 & 116 Nancy Court
Legal: Lots 1 and 2, Briggs Subdivision
Zone: R-1 - Single-Family/Duplex Residential District
Size: 27,210 and 23,810 square feet
Parcel ID: 3-0648-001 and 3-0648-002
Existing Use: Residential
Adjacent Use: Residential
Utilities: Nancy Court
Access: Nancy Court

KEY POINTS AND CONCERNS

- Sitka General Code sets a maximum allowable height in the R-1 district at 35'
- Increase maximum height from 35' to 120' for communication tower.
- Property proposed to be purchased by Tidal Network.
- Tower design will allow for future collocations by other providers, further increasing competitive telecommunication service.

ATTACHMENTS

Attachment A: Aerial
Attachment B: Plat
Attachment C: Site Plan, Elevation View and Design
Attachment D: Tidal Network Response to Public Comment
Attachment E: Photos
Attachment F: Applicant Materials
Attachment G: Public Comment
Attachment H: Map of Communication Towers

BACKGROUND/PROJECT DESCRIPTION

The request is to increase the maximum allowable height of principle structures from 35' to 120' in the R-1 single-family/duplex residential district at 112 and 116 Nancy Court for the placement of a communications tower. The proposal would allow the anchor tenant, Tidal Network, to provide adequate broadband coverage to the citizens of Sitka. The maximum height of principal structures in the R-1 single-family/duplex residential district is 35'. The applicant's proposal is to build a 110' tower, with an additional 10' lightning rod at the top, bringing the total height to 120'.

The site plan depicts the communication tower on Lot 1 (116 Nancy Court) with proposed extension of the existing gravel access drive, retaining wall, filled building pad, wooden stairs, chain link fence and tree buffer. Lot 2 (112 Nancy Court) has no proposed structures and will be retained by the applicant as a buffer. Nancy Court is platted as a 20-foot municipal right-of-way but is not maintained by the city. The street is partially developed, served by municipal utilities, and there is a recorded access and utility maintenance agreement.

This item was first heard by the Planning Commission on March 5, 2025, at which it was postponed to the April 2, 2025, meeting. The Commission requested additional legal review regarding the applicability of SGC zoning provisions in this case, as well as existing case law on telecommunications towers and land use. Additionally, the applicant has provided additional information and made a few revisions to their proposal in response to concerns from the neighborhood:

- The applicant is requesting only the monopole installation, not the self-support tower.
- The pole, antenna, and equipment will be painted brown to better blend into the landscape. Any future tenants of the tower would be required to do the same with their equipment.
- The applicant has offered to install brown or black privacy slats in the compound fencing to provide additional visual buffering.
- The position of the tower has been moved 15' north relative to the site plan previously presented to further reduce viewshed impacts.

Communications Towers as Principal or Accessory Uses

The only reference to communications towers in the zoning code is SGC 22.20.055 which states that communications antennas and towers are permitted accessory uses within the R-1 & related zones as well as R-2 & related zones as long as the tower or antenna does not exceed the allowable height of structures allowed within the specific property. It adds that in all cases, towers and antennas shall be structurally sound and property constructed, and that any request for a tower or antenna exceeding the height limits of the zoning district shall require a variance. This section makes no reference to other zones where the use would be permitted or prohibited whether as a principal or accessory use.

Upon additional review with the Municipal Attorney, the silence in SGC 22.20.055 regarding broader considerations for placement of communications in other zones indicates that it is ruled by another definition and use designation. Most fittingly, communications towers and antennas that serve the public should be considered “Public facilities and utilities” as defined by SGC 22.05.1190: *“Public facilities and utilities” means land or structures owned by or operated for the benefit of the public use and necessity, including but not limited to public facilities defined in RCW 36.70A.030, as amended, and private utilities serving the public.*” This definition is further supported by the Federal Communications Commission’s (FCC) treatment of commercial mobile services as “common carriers” (47 U.S. Code § 332). The National Institute of Standards and Technology, a function of the U.S. Department of Commerce, states that in a telecommunications context, a common carrier is a telecommunications company that holds itself out to the public for hire to provide communication transmission services, and that such companies are usually subject to regulation by federal and state regulatory commissions.

Utility facilities, as a subset of public services under SGC Table 22.16.016-4 Public Facilities Uses, are a permitted use in all zones (excepting the cemetery district and the Gary Paxton special district for which allowable uses are governed by the GPIP Board). Staff therefore interpret the limitations of SGC 22.20.055 requiring communications towers to be accessory uses in R-1 & related zones and R-2 & related zones to be pre-empted by the classification of these structures as utility facilities. SGC 22.20.055 would more appropriately be applied to communications towers and antennas that do not serve the public such as a personal ham radio tower/antenna, or an antenna or satellite that someone affixes to their home or installs on their property. This narrower interpretation regarding the applicability of SGC 22.20.055 is further supported by FCC regulations regarding limitations of local zoning authorities.

Local Zoning Authority

Per 47 U.S. Code § 332, state and local governments have general authority regarding decisions regarding the placement, construction, and modification of “personal wireless services” defined as commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services. Communications towers such as those proposed by the applicant would fall under this category. However, there are limitations to that general authority including:

- Shall not unreasonably discriminate among providers of functionally equivalent services
- Shall not prohibit or have the affect of prohibiting the provision of personal wireless services
- May not regulate the placement, construction, and modification of personal wireless services 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.

These limitations have been tested in various court cases – the Municipal Attorney conducted research into applicable case law, the most relevant being *T-Mobile USA, Inc. v. City of Anacortes*, 572 F.3d 897 which was heard by the United States Court of Appeals, Ninth Circuit (to which Alaska belongs) in 2009. Key points from this case including reference to/reliance on previously established case law are:

- Denial of a request for a telecommunications tower/facility can be made on grounds such as detrimental impacts on surrounding residential property, lack of screening, view impediments, the tower being taller than surrounding trees, or other aesthetic concerns if supported by substantial evidence (i.e. well documented findings of fact). **However**, a denial on these bases is pre-empted by FCC regulations if it results in a prohibition or has the affect of prohibiting the provision of personal wireless services.
- If a denial prevents a wireless service provider from closing a “significant gap” in service coverage, this would be considered an effective prohibition on the provision of services which is pre-empted.
- If the wireless service provider (i.e. applicant) challenges a denial on the grounds that the denial prevents the provider from closing a significant gap in service, they have the burden to show:
 - The gap in service is significant
 - Their proposal is the “least intrusive means” of filling that service gap, meaning that it addresses/mitigates the concerns that would otherwise result in denial to the best of its ability
 - The lack of available and technologically feasible alternatives

ANALYSIS

The Sitka General Code limits the maximum height of principal structures to 35’ in the R-1 single-family/duplex residential district¹. The proposed height of 120’ requires a variance.

Justification

Alaska Statute 29.40.040(b)(3) states that a variance may not be granted solely to relieve financial hardship or inconvenience. A required finding for variances involving major structures or expansions in the Sitka General Code echoes this statement by stating that there must be “...special circumstances to the intended use that do not apply generally to the other properties. Special circumstances may include the shape of the parcel, topography of the lot, the size or dimensions of the parcels, the orientation or placement of existing structures, or other circumstances that are outside the control of the property owner”. In this case, the applicant’s ability to provide cellular and wireless coverage is dependent upon the height of the proposed structure and can therefore be

¹ SGC Table 22.20-1

considered a special circumstance that is unique to the proposed use.

Visual Impacts

The tower will have a visual impact on surrounding properties, as it will be visible from surrounding residences. However, the “high value” views of Sitka Sound and Mt. Edgecumbe will be unimpeded by this tower. The tower is of a similar height to the trees along the undeveloped tree line. The applicant has also proposed additional mitigations including paint to enhance camouflaging, and solid screen fencing for ground mounted equipment.

Site Development

At the previous hearing, concerns regarding site development were raised, primarily focused on the suitability of the site due to physical characteristics such as slope and drainage. The applicant responded that due to FCC licensing, a higher level of site investigation and scrutiny above local requirements including a Section 106 review for historical/cultural resources is required. Additionally, because the project is federally funded, an environmental assessment is required. Locally adopted and administered building codes require engineered building plans for the tower, and will be required to adhere to grading and drainage standards of the municipality.

Significant Coverage Gap

The applicant has identified a significant coverage gap in its service for Sitka, identified as Zone 2 which includes parks of downtown, the Sitka National Historical Park, part of the Indian River neighborhood, and the business and residential areas in the Jarvis/Smith/Price Street area, Jamestown Bay Drive, and extending down Sawmill Creek Road to cover part of the Knutson Drive neighborhood.

Alternatives

The applicant has described their efforts to secure additional/alternative sites, stating that of the 129 investigated properties in Sitka, only two properties met their coverage, financial, and development criteria. Only one of those two sites provided coverage in Zone 2 - these properties on Nancy Court. There was public comment submitted in the last hearing stating that the should be placed in a commercial or industrial zone, not a residential zone. The applicants have stated that no landowners in commercial or industrial zones were willing to outright sell or subdivide and sell their properties, and as detailed in their submission materials, leasing property is not a financially viable option under its business plan and federal grant requirements.

Least Intrusive Means

The applicant has provided several factors by which they believe the proposal to be the least intrusive means of filling its significant coverage gap in this area:

- The site is on high ground, in the far NE corner of the neighborhood
- The tower will be naturally shielded by existing terrain

- There are no places of residence uphill of the proposed tower location
- No current viewsheds of the waterfront will be impeded by the tower
- The applicant is also purchasing the vacant lot at 112 Nancy Court to ensure a natural, landscape buffer remains between current residences in the area
- The applicant has elected to build a monopole tower rather than a self-support tower to limit visual impacts
- The applicant has proposed additional mitigation measures including painting the tower and equipment to provide camouflaging and solid screen fencing to reduce visual impacts of ground mounted equipment.

Other Criteria Arising from Planning Commission Review or Public Comment

Public comment at the March 5th meeting included health concerns regarding radio frequencies, which were countered by the applicant. Ultimately, the municipality is pre-empted from regulating telecommunications infrastructure on the basis of environmental effects of radio frequency emissions under 47 U.S. Code § 332(c)(7)(B)(iv), and should therefore not be a basis for Planning Commission decision in this case. Additionally, public comment included references to negative impacts on residential property values due to telecommunications towers in close proximity. The applicant responded that there are some sources and sentiment that support that claim, and others that state the impact is minimal and/or offset by improved service and connectivity.

Comprehensive Plan Guidance

While the Comprehensive Plan does not specifically address telecommunications infrastructure, Comprehensive Plan support for this proposal can be found in actions ED 5.3 to “maintain well-functioning infrastructure upon which commerce and economic activity depend”, ED 5.4 “advocate for faster, more reliable cell and internet services.” Granting this variance would increase Sitka’s cross-network telecommunications coverage, which would benefit both commercial and personal use of cellular and wireless infrastructure.

RECOMMENDATION

Staff recommends approval of the height variance at 112 and 116 Nancy Court. The recommended findings note the visual impact to those in the neighborhood, and the potential for property value impacts, but recognize the significant coverage gap the granting of this variance would close, the lack of available alternatives, and how the proposal is the least intrusive means of filling the identified service gap.

MOTIONS TO APPROVE THE ZONING VARIANCE

1. **“I move to approve the zoning variance for increased height of a telecommunications tower at 112 and 116 Nancy Court in the R-1 - Single-Family/Duplex Residential District subject to the attached conditions of approval. The property is also known as Lots 1 and 2, Briggs Subdivision. The request is filed by Richard Peterson for Tlingit & Haida, Tidal Network. The owner of record is James Penrose.”**

Conditions of Approval

- a. The total height of the tower, including antennae, shall be no greater than 120’.
 - b. Development of the property shall be consistent with the plans and representations of the applicant as made for this variance request. Any significant changes shall require additional review and approval by the Planning Commission.
 - c. The applicant shall provide visual buffering for the tower including retention of Lot 2, Briggs Subdivision, as buffer space, painting of the tower and equipment to provide camouflage with the natural surroundings, and solid screen fencing around ground mounted equipment.
 - d. The applicant must comply with all local, state, federal, and tribal regulations regarding general site development as well as those specific to telecommunications infrastructure and operations, as well as FCC regulations regarding radio frequency emissions.
2. **“I move to adopt the findings as listed in the staff report.”**

Before any variance is granted, it shall be shown²:

- a. That there are special circumstances to the intended use that do not apply generally to the other properties. Special circumstances may include the shape of the parcel, the topography of the lot, the size or dimensions of the parcels, the orientation or placement of existing structures, or other circumstances that are outside the control of the property owner; *in this case the applicant’s ability to provide cellular and wireless coverage is dependent upon the height of the proposed structure and is therefore be considered a special circumstance that is unique to the proposed use.*
- b. The variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other properties but are denied to this parcel; such uses may include the placement of garages or the expansion of structures that are commonly constructed on other parcels in the vicinity; *the variance will allow the applicant to more effectively meet broadband coverage goals for Sitka, as the project is otherwise permitted by right. The variance will allow for adequate broadband connectivity to all surrounding areas and is in line with existing variances applying to properties that host cellular towers elsewhere within the municipality.*

² Section 22.10.160(D)(1)—Required Findings for Major Variances

- c. That the granting of such a variance will not be materially detrimental to the public welfare or injurious to the property, nearby parcels or public infrastructure; *the potential hazards to the welfare of the public, the property, nearby parcels, or public infrastructure identified through public comment were either related to matters outside the jurisdiction of the municipality to regulate (i.e. the effects of radio frequency emissions), or were concerns that would be addressed and/or mitigated by subsequent regulatory processes as will be required by federal, state, local, and tribal entities. While there is a visual impact to the neighborhood that would result from the granting of this variance, these impacts are minimized by the placement of the tower which is uphill of all existing residences and does not impede highly valued water views of Sitka Sound. The applicant has also included several mitigations that decrease visual/aesthetic impacts. Additionally, evidence presented by members of the public suggests there may be negative impacts to property values as result of granting this variance; the full extent of this impact particularly in Sitka relative to its unique housing market characteristics is unknown. Lastly, the proposed structure will have a minimal impact on existing infrastructure as it is unmanned, thus not creating additional traffic or other wear and tear on public utilities.*
- d. That the granting of such a variance will not adversely affect the comprehensive plan; *conversely, the proposal supports the Comprehensive Plan, specifically, ED 5.3 to “maintain well-functioning infrastructure upon which commerce and economic activity depend”, ED 5.4 “advocate for faster, more reliable cell and internet services.”*

The Planning Commission further finds while there are some visual/aesthetic impacts on the surrounding residential area, and the potential for negative impacts to property values in the surrounding area, these impacts are definitively overcome in terms of granting the variance by the applicant’s substantiations that:

- e. They have a significant coverage gap in Sitka that the granting of this variance would allow them to close *as demonstrated in the Tribal Network Broadband Deployment Coverage Area Overview for Sitka, specifically, the identified Zone 2.*
- f. They are employing the least intrusive means of closing this gap *by selecting a site that is uphill of all existing residences in the area, retaining an additional lot as buffer space, building a monopole tower rather than self-support tower to reduce visual impacts, and providing other mitigations including camouflaging and screening.*
- g. There were no other feasible alternatives to close the significant coverage gap; *despite an extensive investigation of sites in Sitka and efforts to work with property owners on alternative locations (particularly in commercial and industrial zones), no other locations in the identified Zone 2 met their coverage, financial, or and development criteria.*