

Item #5:

Ord. Granting Special Use & Variation For Second Monopole

VILLAGE OF LONG GROVE

ORDINANCE NO. 2015-O-__

**AN ORDINANCE GRANTING A SPECIAL USE PERMIT AND VARIATION TO
AUTHORIZE THE ESTABLISHMENT OF A TELECOMMUNICATIONS TOWER AND
PERSONAL WIRELESS SERVICE FACILITIES AT 5105 ARLINGTON HEIGHTS ROAD**

Adopted by the
President and Board of Trustees
of
the Village of Long Grove
this ___ day of May, 2015

Published in pamphlet form by direction
and authority of the Village of Long Grove,
Lake County, Illinois
this ___ day of May, 2015

VILLAGE OF LONG GROVE

ORDINANCE NO. 2015-O-__

AN ORDINANCE GRANTING A SPECIAL USE PERMIT AND VARIATION TO AUTHORIZE THE ESTABLISHMENT OF A TELECOMMUNICATIONS TOWER AND PERSONAL WIRELESS SERVICE FACILITIES AT 5105 ARLINGTON HEIGHTS ROAD

WHEREAS, the property commonly known as 5105 Arlington Heights Road, Long Grove Illinois, and legally described in Exhibit A hereto (the "**Subject Property**"), is located within the R-2 Residential District under the Long Grove Zoning Code ("**Zoning Code**"); and

WHEREAS, the Midwest District of the Christian and Missionary Alliance ("**Owner**") is the owner of the Subject Property, as well as an adjacent parcel to the north, which parcels are improved with the Korean Full Gospel Church building, a single-family residence ("**Residence**"), and related accessory structures; and

WHEREAS, the Subject Property is also improved with a monopole telecommunications tower and personal wireless services ("**PWS**") antennae and related equipment constructed and installed pursuant to a previously-granted special use permit and other approvals; and

WHEREAS, T-Mobile Central LLC ("**Applicant**") proposes to construct and maintain a second monopole telecommunications tower ("**Tower**") and install a new PWS antenna and related equipment and facilities ("**Antenna Facilities**") on the Subject Property; and

WHEREAS, the Applicant has entered into a lease with the Owner to permit construction and installation of the Tower and Antenna Facilities on an approximately 30-foot by 30-foot portion of the Subject Property, as depicted in the plans attached hereto as Exhibit B ("**Plans**"); and

WHEREAS, the Zoning Code authorizes PWS antennae, antenna support structures, and related equipment and facilities in the R-2 Single Family Residence District only pursuant to a special use permit and subject to the special procedures and standards contained in Section 5-9-6 of the Zoning Code; and

WHEREAS, pursuant to Section 5-9-6(B)(3) of the Zoning Code, a second PWS antenna support structure is allowable on a single zoning lot pursuant to special use permit provided that such structure is located within 600 feet of both a State highway and a current Village boundary; and

WHEREAS, the proposed location of the Tower and Antenna Facilities is within 600 feet of both a State highway and a current Village boundary; and

WHEREAS, pursuant to Section 5-9-6(B)(1) of the Zoning Code, PWS antennae and support structures must be located at least 500 feet from the outside wall of the nearest single-family residence, except that such required separation may be reduced to 475 feet pursuant to special use permit where the single-family residence and the land on which the PWS facilities are located are under common ownership; and

WHEREAS, the Tower and Antenna Facilities are proposed to be located approximately 490 feet from the Residence, but the Subject Property and the Residence are under common ownership; and

WHEREAS, the Applicant has applied to the Village for a special use permit pursuant to Sections 5-3-6(K) and 5-11-17 of the Zoning Code to authorize the installation and maintenance of the Tower and Antenna Facilities on the Subject Property in the location depicted on Exhibit B, which location is approximately 490 feet from the Residence ("**Requested SUP**"); and

WHEREAS, the proposed location of the Tower and Antenna Facilities is approximately 16 feet from the northern lot line of the subject property, which encroaches on the minimum 40-foot side yard setback required by Section 5-3-12 of the Zoning Code; and

WHEREAS, pursuant to Section 5-11-15 of the Zoning Code, the Applicant has applied for a variation from the applicable side yard setback requirement to permit construction of the Tower and Antenna Facilities not less than 16 feet from the northern lot line of the Subject Property ("**Requested Variation**"); and

WHEREAS, pursuant to notice duly published in the *Daily Herald*, the Long Grove Plan Commission and Zoning Board of Appeals (“**PCZBA**”) conducted a public hearing on May 5, 2015, regarding the proposed Tower and Antenna Facilities and the requested zoning relief; and

WHEREAS, during the public hearing the PCZBA made the following findings with respect to the Requested SUP:

1. The Subject Property is located in the R-2 Residential District under the Zoning Code, and there is a pre-existing telecommunications antenna support structure on the Subject Property;
2. According to the testimony submitted by the Applicant, the Applicant intends to construct and maintain the Tower and Antenna Facilities on the Subject Property and has entered into a lease with the Owner for such purpose;
3. The Tower is proposed to be located within 600 feet of both a State highway and a current Village boundary;
4. The Tower is proposed to be located approximately 490 feet from the Residence, which Residence is under common ownership with the Subject Property.
5. The evidence presented demonstrates that, subject to the conditions hereinafter set forth, the construction and maintenance of the Tower and Antenna Facilities on the Subject Property:
 - (a) are deemed necessary for the public convenience at the Subject Property;
 - (b) are designed, located, and proposed to be operated to protect the public health, safety, and welfare; and
 - (c) have not been shown to cause substantial injury to the value of other property in the neighborhood of the Subject Property;
4. The evidence presented demonstrates that the Applicant’s proposal satisfies the requirements for granting the Requested SUP, subject to the terms and conditions hereinafter set forth; and

WHEREAS, during the public hearing, the PCZBA made the following findings with respect to the Requested Variation:

1. The Subject Property cannot yield a reasonable return for the Applicant if permitted to be used only in strict compliance with the applicable setback requirements;
2. The hardship of the Applicant is due to unique circumstances, including the locations of the pre-existing antenna support structure, PWS facilities, and

building improvements on the Subject Property and the geographic constraints on placement of the Tower and Antenna Facilities to provide adequate telecommunications service coverage throughout the Village;

3. Granting the Requested Variation will not alter the essential character of the locality;
4. The evidence presented demonstrates that the Applicant's proposal satisfies the requirements for granting a variation for the construction and maintenance of the Tower and Antenna Facilities on the Subject Property, subject to the terms and conditions hereinafter set forth; and

WHEREAS, based on these findings, the PCZBA recommended that the Applicant be granted the Requested SUP and Requested Variation, subject to the terms and conditions of this Ordinance; and

WHEREAS, the President and Board of Trustees, having considered the recommendations of the PCZBA and being fully advised in the premises, have determined that it is in the best interests of the Village and its residents to grant the Applicant the Requested SUP and Requested Variation to allow the construction and maintenance of the Tower and Antenna Facilities on the Subject Property, subject to the terms and conditions of this Ordinance as hereinafter set forth;

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LONG GROVE, COUNTY OF LAKE, STATE OF ILLINOIS, as follows:

SECTION ONE: Recitals. The foregoing recitals are hereby incorporated into and made a part of this Ordinance as if fully set forth.

SECTION TWO. Grant of Special Use Permit for the Tower and Antenna Facilities. Pursuant to Sections 5-3-6(K) and 5-11-17 of the Zoning Code, and subject to the limitations therein and the conditions set forth in this Ordinance, the Applicant is hereby granted a special use permit to authorize the Applicant to construct and maintain the Tower and Antenna Facilities on the Subject Property in the location depicted on Exhibit B, which is approximately 490 feet, but in no event less than 475 feet, from the Residence.

SECTION THREE: Grant of Side Yard Setback Variation. Pursuant to Section 5-11-15 of the Zoning Code and subject to the limitations therein and the conditions set forth in this Ordinance, the Applicant is hereby granted a variation from the minimum side yard setback requirements of Section 5-3-12 of the Zoning Code to permit construction of the Tower and Antenna Facilities not less than 16 feet from the northern lot line of the Subject Property.

SECTION FOUR: Conditions on Approval. The special use permit and variation granted pursuant to Sections Two and Three of this Ordinance shall be, and are hereby, conditioned upon and limited by the following conditions, the violation of any of which shall, in the reasonable discretion of the President and Board of Trustees, be grounds for the repeal and revocation of the special use permit without further notice or hearing:

- A. **Compliance with Plans.** The Applicant shall construct and maintain the Tower and Antenna Facilities in strict conformity with the Plans attached to this Ordinance as Exhibit B. Notwithstanding the foregoing requirement for strict conformity, minor deviations from the Plans may be permitted without amendment to this Ordinance upon written authorization of the Village Manager to address field conditions or compliance with regulatory requirements and the conditions of this Ordinance.
- B. **No Authorization of Work.** This Ordinance does not authorize commencement of any work on the Subject Property. Prior to commencing any such work, Applicant shall be required to properly apply for, pay for, and obtain all necessary permits, licenses, approvals, and other authorizations from the Village and any other governmental agency having jurisdiction over the Tower and Antenna Facilities in accordance with applicable law. The Applicant shall maintain all such licenses, permits, and approvals as required by law and shall provide copies of such licenses, permits, and approvals to the Village, and evidence of renewal or extension thereof, when requested by the Village Manager. All work relating to the installation, operation, and maintenance of the Tower and Antenna Facilities shall be performed in accordance with all applicable laws, codes, ordinances, and regulations, including the terms and provisions of this Ordinance.
- C. **Engineering Study.** Prior to the issuance of any permit for the construction of the Tower or Antenna Facilities on the Subject Property, the Applicant shall submit an engineering report, which report shall demonstrate that the Tower and Antenna Facilities are structurally sound, properly grounded, and otherwise in conformity with applicable construction and safety standards.
- D. **Term.** The special use permit, variation, and other approvals granted in this Ordinance shall be limited to the term of the lease agreement for the Tower and Antenna Facilities on the Subject Property (including any extension thereof).

- E. Abandonment and Removal. If the Antenna Facilities are not operated for a continuous period of 12 months or more, regardless of any intent to recommence use or not to abandon, then such Antenna Facilities shall be deemed to be abandoned and the special use permit therefor will immediately terminate. Under such circumstance, the Applicant shall be required to remove the Antenna Facilities and any related equipment from the Subject Property within 90 days after notice to the Applicant from the Village that such removal is required.

- F. Fees and Costs. The Applicant shall be responsible for paying all applicable fees related to the granting of the approvals set forth herein in accordance with the Zoning Code. In addition, the Applicant shall reimburse the Village for all of its costs (including without limitation engineering, planning, and legal expenses) incurred in connection with the review, consideration, approval, implementation, or enforcement of this Ordinance. Any amount not paid within 30 days after delivery of a demand in writing for such payment shall, along with interest and the costs of collection, become a lien upon the Subject Property, and the Village shall have the right to foreclose such lien in the name of the Village as in the case of foreclosure of liens against real estate.

- G. Transferees. The rights and obligations set forth in this Ordinance shall be binding on the Applicant, any and all of the Applicant's heirs, successors, and assigns, the Owner, and any and all successor legal or beneficial owners of all or any portion of the Subject Property. To the extent that a successor becomes bound to the obligation created herein pursuant to a transferee assumption agreement acceptable to the Village, and such successor demonstrates to the Village that it has the financial viability to meet the obligations herein, the Applicant shall be released from its obligations under this Ordinance to the extent of the transferee's assumption of such liability. The failure of the Applicant to provide the Village with an enforceable transferee assumption agreement as herein provided shall result in the Applicant remaining fully liable for all of its obligations under this Ordinance but shall not relieve the transferee of its liability for all such obligations as a successor to Applicant.

In addition, any violation of this Ordinance shall be deemed a violation of the Zoning Code and shall subject the Applicant to enforcement proceedings accordingly.

SECTION FIVE. Termination or Repeal; Site Restoration. If this Ordinance is terminated or repealed, then within 35 days after such termination or repeal the Applicant shall be responsible for (a) removing the Tower and Antenna Facilities from the Subject Property, and (b) restoring the Subject Property to its condition prior to the Applicant's installation of the Tower and Antenna Facilities.

SECTION SIX: Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form in the manner provided by law;

provided, however, that this Ordinance shall be of no force or effect unless and until the Applicant and Owner have (i) caused duly authorized persons to execute and (ii) thereafter file with the Village the unconditional agreement and consent in the form attached hereto as Exhibit C and by this reference incorporated herein and made a part hereof; provided further that, if the Applicant and Owner do not so file their unconditional agreement and consent within 30 days following the passage of this Ordinance, the Village Board may, in its discretion and without public notice or hearing, deem such failure as a withdrawal of the application, and repeal this Ordinance and thereby revoke the special use permits granted in this Ordinance. Upon this Ordinance having full force and effect, the Village Clerk shall cause it to be recorded in the Office of the Lake County, Illinois Recorder of Deeds.

PASSED this ___th day of May, 2015.

AYES: ()

NAYS: ()

ABSENT: ()

APPROVED this ___th day of May, 2015.

Village President

ATTEST:

Village Clerk

EXHIBIT A

LEGAL DESCRIPTION OF SUBJECT PROPERTY

THE SOUTH FIVE ACRES OF THE EAST HALF OF THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 30, TOWNSHIP 43 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPLE MERIDIAN IN LAKE COUNTY, ILLINOIS.

Common Address: 5105 Arlington Heights Road, Long Grove, Illinois 60047

P.I.N. 15-30-200-020

EXHIBIT B

PLANS

EXHIBIT C

UNCONDITIONAL AGREEMENT AND CONSENT

Pursuant to Section Four of Long Grove Ordinance No. 2015-O-____, and to induce the Village of Long Grove to grant the approvals provided for in such Ordinance, the undersigned acknowledge for themselves and their successors and assigns in title to the Subject Property that they

1. have read and understand all of the terms and provisions of said Ordinance No. 2015-O-____;
2. hereby unconditionally agree to accept, consent to, and abide by all of the terms, conditions, restrictions, and provisions of this Ordinance, the Zoning Code, and all other applicable codes, ordinances, rules, and regulations;
3. acknowledge and agree that the Village is not and shall not be, in any way, liable for any damages or injuries that may be sustained as a result of the Village's issuance of any permits for the use of the Subject Property, and that the Village's issuance of any permit does not, and shall not, in any way, be deemed to insure the Applicant and Owner against damage or injury of any kind and at any time;
4. acknowledge that the public notices and hearings have been properly given and held with respect to the adoption of the Ordinance, have considered the possibility of the revocation provided for in the Ordinance, and agree not to challenge any revocation on the grounds of any procedural infirmity or any denial of any procedural right;
5. agree to and do hereby hold harmless and indemnify the Village, the Village's corporate authorities, and all Village elected and appointed officials, officers, employees, agents, representatives, and attorneys, from any and all claims that may, at any time, be asserted against any of these parties in connection with the Village's adoption of the Ordinance granting the approvals to the Applicant pursuant to the Ordinance; and
6. represent and acknowledge that the persons signing this Unconditional Agreement and Consent are duly authorized to do so on behalf of the Applicant and Owner of the Subject Property.

T-MOBILE CENTRAL LLC

**MIDWEST DISTRICT OF THE CHRISTIAN
AND MISSIONARY ALLIANCE**

By: _____

By: _____

Its: _____

Its: _____