



30 MANSELL CT
SUITE 103
KOSWELL, GA 30078
478-282-1115

AMERICAN TOWER CORPORATION
400 CIRCLE 75 PARKWAY
SUITE 300
ATLANTA, GA 30329

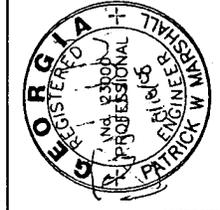
Z-51
(2008)

NO.	DATE	DESCRIPTION
1	08/05/08	ISSUED FOR PERMISSIVE REVIEW
2	08/05/08	GENERAL REVISIONS

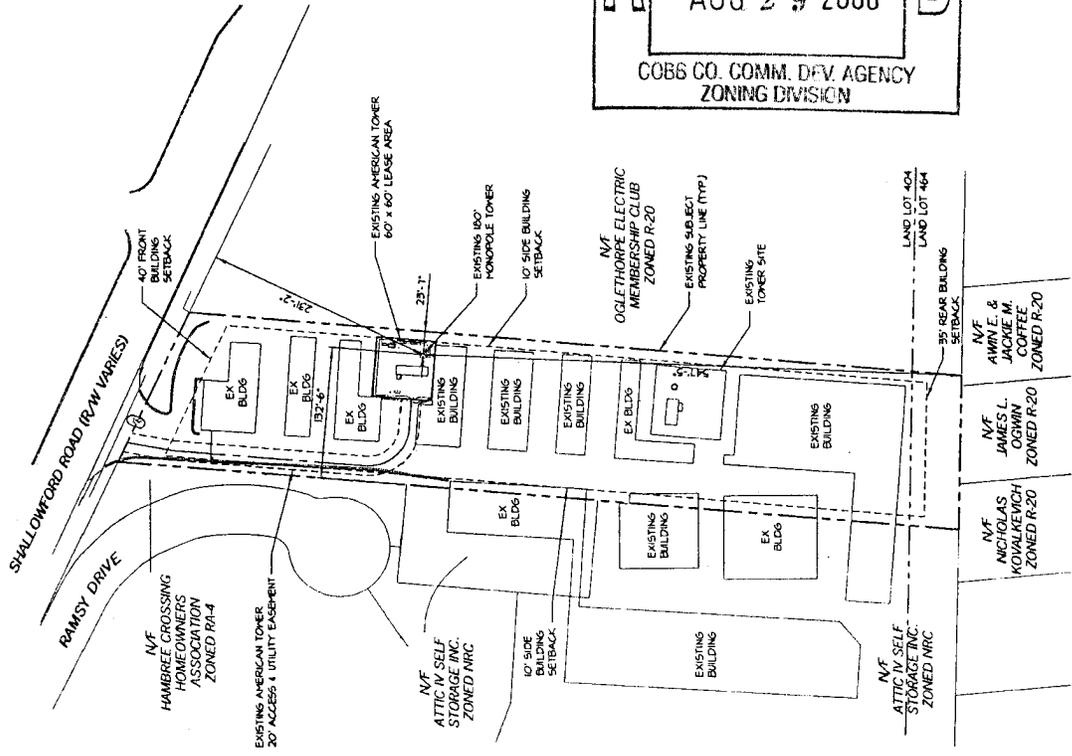
SHALLOWFORD FALLS
OVERALL SITE PLAN

NO. 11
DATE: 8/5/08
DRAWN: SDM
CHECKED: PFM
SCALE: 1" = 120'

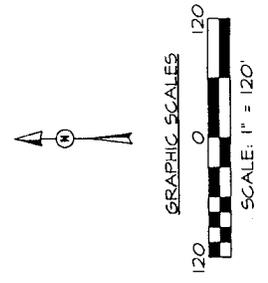
C-1



RECEIVED
AUG 29 2008
COBB CO. COMM. DEV. AGENCY
ZONING DIVISION



OVERALL SITE PLAN
SCALE: 1" = 120'



APPLICANT: American Tower Delaware Corporation

781-926-4500

REPRESENTATIVE: Barry Gannon

770-226-6467

TITLEHOLDER: Attic IX Self Storage, LLC

PROPERTY LOCATION: Located on the south side of Shallowford Road, west of Lassiter Road.

ACCESS TO PROPERTY: Shallowford Road

PHYSICAL CHARACTERISTICS TO SITE: Existing tower and self service storage facility

PETITION NO: Z-51

HEARING DATE (PC): 11-04-08

HEARING DATE (BOC): 11-18-08

PRESENT ZONING: NRC with Stipulations

PROPOSED ZONING: NRC with Stipulations

PROPOSED USE: Amending the Stipulations to Allow a Collocation on the Existing Cell Tower

SIZE OF TRACT: 3.1 acres

DISTRICT: 16

LAND LOT(S): 401

PARCEL(S): 7

TAXES: PAID X **DUE** _____

COMMISSION DISTRICT: 3

CONTIGUOUS ZONING/DEVELOPMENT

NORTH: RA-5/ Shallowford Trace subdivision

SOUTH: R-20/ Bradford subdivision

EAST: R-20/ Oglethorpe Power substation

WEST: RA-4/ Hembree Crossing subdivision

OPPOSITION: NO. OPPOSED _____ **PETITION NO:** _____ **SPOKESMAN** _____

PLANNING COMMISSION RECOMMENDATION

APPROVED _____ **MOTION BY** _____

REJECTED _____ **SECONDED** _____

HELD _____ **CARRIED** _____

BOARD OF COMMISSIONERS DECISION

APPROVED _____ **MOTION BY** _____

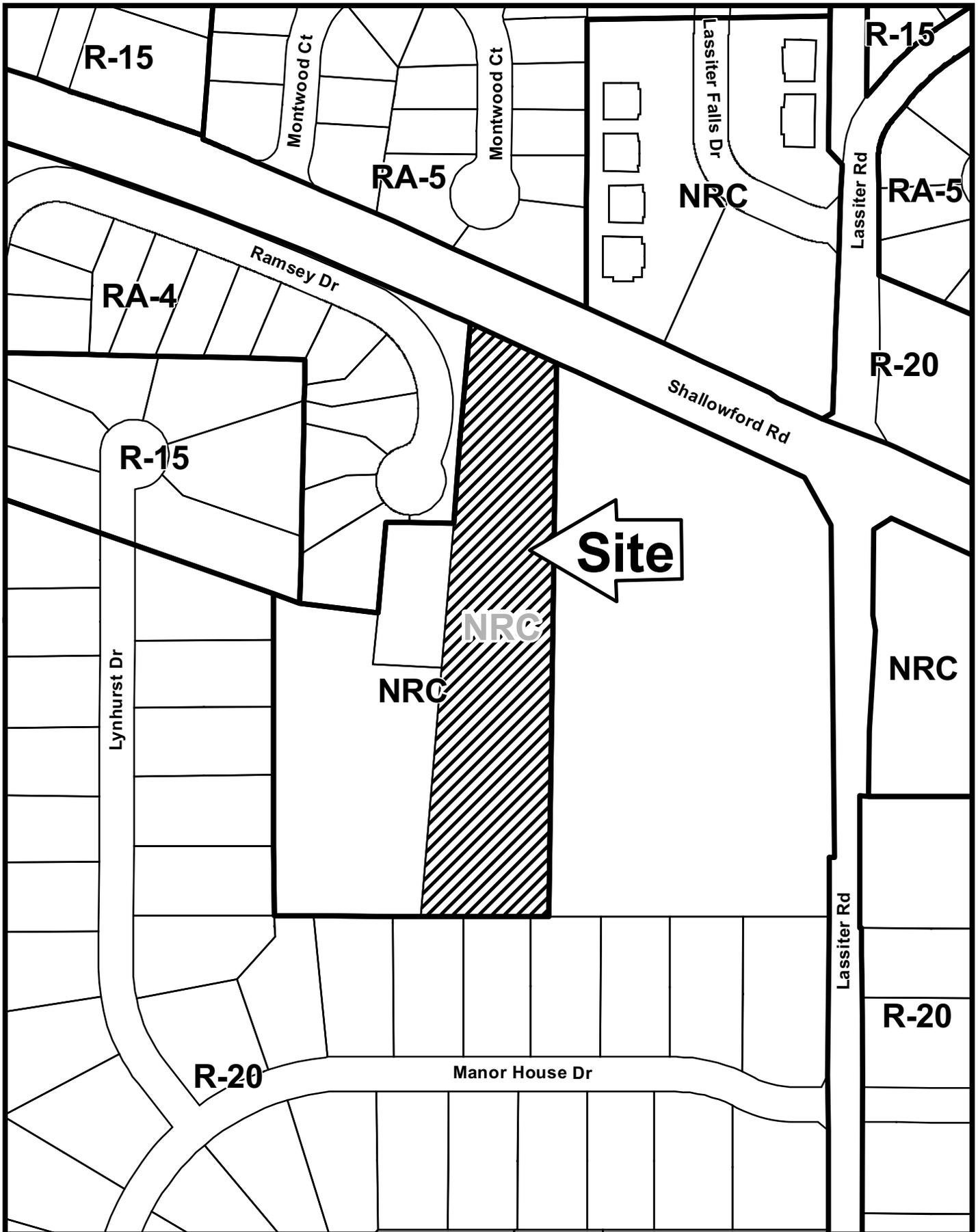
REJECTED _____ **SECONDED** _____

HELD _____ **CARRIED** _____

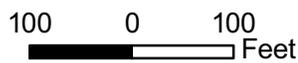
STIPULATIONS:



Z-51



This map is provided for display and planning purposes only. It is not meant to be a legal description.



 City Boundary
 Zoning Boundary

APPLICANT: American Tower Delaware Corporation

PETITION NO.: Z-51

PRESENT ZONING: NRC with stipulations

PETITION FOR: NRC with stip.

PLANNING COMMENTS:

Staff Member Responsible: John P. Pederson, AICP

Land Use Plan Recommendation: Neighborhood Activity Center

Proposed Number of Buildings: 0 **Total Square Footage of Development:** 0

F.A.R.: 0 **Square Footage/Acre:** 0

Parking Spaces Required: 0 **Parking Spaces Provided:** 0

The applicant is requesting rezoning to amend a previous stipulation that limited the number of carriers on the existing cell tower. The tower will not be increased in height, and the equipment compound will not be expanded. This request is solely to allow additional antennas to be co-located on the existing tower. The applicant has submitted a Letter of Intent, which is attached as Exhibit "A". The page with the stipulation to be amended is attached as Exhibit "B".

Historic Preservation: After consulting various county historic resources surveys, historic maps, archaeology surveys and Civil War trench location maps. Staff finds that no known significant historic resources appear to be affected by this application. No further comment. No action by applicant requested at this time.

Cemetery Preservation: No comment.

FIRE COMMENTS:

No comments.

STORMWATER MANAGEMENT COMMENTS:

No comments.

APPLICANT American Tower Corporation

PETITION NO. Z-051

PRESENT ZONING NRC w/stips

PETITION FOR NRC w/stips

NOTE: Comments reflect only what facilities appeared of record at the time of this review. Field verification required by developer.

WATER COMMENTS:

Available at Development? Yes No

Fire Flow Test Required? Yes No

Size / Location of Existing Water Main(s)

Additional Comments: Water not necessary for cell tower

Developer may be required to install/upgrade water mains, based on fire flow test results or Fire Department Code. This will be resolved in the Plan Review Process.

SEWER COMMENTS:

In Drainage Basin? Yes No

At Development? Yes No

Approximate Distance to Nearest Sewer:

Estimated Waste Generation (in G.P.D.): **A D F** **Peak**

Treatment Plant:

Plant Capacity Available? Yes No

Line Capacity Available? Yes No

Projected Plant Availability: 0 - 5 year 5 - 10 years over 10 years

Dry Sewers Required? Yes No

Off-site Easements Required? Yes* No

Flow Test Required? Yes No

Septic Tank Recommended by this Department? Yes No

Subject to Health Department Approval? Yes No

* If off-site easements are required, Developer must submit easements to CCWS for review / approval as to form and stipulations prior to the execution of easement(s) by the property owner(s). All easement acquisitions are the responsibility of the Developer.

Additional Comments:

Sewer not necessary for cell tower

Notes FYI:

Developer will be responsible for connecting to the existing County water and sewer systems, installing and/or upgrading all outfalls and water mains, obtaining on and/or off site easements, dedication of on and/or off site water and sewer to Cobb County, as may be required. Rezoning does not guarantee water/sewer availability/capacity unless so stated in writing by the Cobb County Water System. Permit issuances subject to continued treatment plant compliance with EPD discharge requirements.

APPLICANT: American Tower Delaware Corporation

PETITION NO.: Z-51

PRESENT ZONING: NRC w/stips

PETITION FOR: NRC w/stips

TRANSPORTATION COMMENTS

The following comments and recommendations are based on field investigation and office review of the subject rezoning case:

ROADWAY	AVERAGE DAILY TRIPS	ROADWAY CLASSIFICATION	SPEED LIMIT	JURISDICTIONAL CONTROL	MIN. R.O.W. REQUIREMENTS
Shallowford Road	25800	Arterial	35 mph	Cobb County	100'

Based on 2007 traffic counting data taken by GDOT.

COMMENTS AND OBSERVATIONS

Shallowford Road is classified as an Arterial and according to the available information, the existing right-of-way does meet the minimum requirements for this classification.

RECOMMENDATIONS

Recommend applicant be required to meet all Cobb County Development Standards and Ordinances related to project improvements.

STAFF RECOMMENDATIONS

Z-51 AMERICAN TOWER DELAWARE CORPORATION

- A. It is Staff's opinion that the applicant's rezoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby properties. The property is surrounded by a self storage facility on three sides, and a power substation on the fourth side.
- B. It is Staff's opinion that the applicant's rezoning proposal will not have an adverse affect on the usability of adjacent or nearby property. The property has had a cell tower on it since the mid-1990's, an additional set of antennae will be hard to notice since the tower has been here for over 10 years. The applicant's proposal would be much better, than installing a new cell tower elsewhere in the area.
- C. It is Staff's opinion that the applicant's rezoning proposal will not result in a use which would cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools. This opinion can be supported by the departmental comments contained in this analysis.
- D. It is Staff's opinion that the applicant's rezoning proposal is in conformity with the policy and intent of the *Cobb County Comprehensive Plan*, which delineates this property to be within a Neighborhood Activity Center.
- E. It is Staff's opinion that there are existing and changing conditions affecting the use and development of the property which give supporting grounds for approving the applicant's rezoning proposal. The applicant's proposal is in accordance with the *Cobb County Comprehensive Plan*. For cell towers, non-residential sites are encouraged, and the use of platted lots in residential subdivisions are discouraged, which this proposal complies. The tower is setback it's full height from all off-site residential structures, and is designed for additional co-locations, as required by code. The applicant's proposal is preferable to another tower being erected in the area.

Based on the above analysis, Staff recommends APPROVAL subject to the following conditions:

- Site plan received by the Zoning Division August 29, 2008, with the District Commissioner approving minor modifications;
- All stipulations from Z-72 and SLUP-9 of 1997 remain in full effect, except stipulation #18 from John Moore's stipulation letter dated May 11, 1999 be amended to strike-out the phrase "nor increase the number of carriers on said towers".
- Water and Sewer comments and recommendations; and
- DOT comments and recommendations.

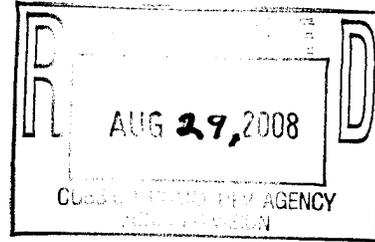
The recommendations made by the Planning and Zoning Staff are only the opinions of the Planning and Zoning Staff and are by no means the final decision. The Cobb County Board of Commissioners makes the final decisions on all Rezoning and Land Use Permits at an advertised public hearing.



AMERICAN TOWER

August 28, 2008

Mr. Mark Danneman, Zoning Administrator
Zoning Division
Cobb County Community Development Department
191 Lawrence Street
Marietta, GA 30060



RE: Rezoning Application to amend one condition of Case Z-72 and SLUP-9 of 1997 approved as Settlement Agreement by BOC 5/18/99. Property located at 3850 Shallowford Road NW (Parcel ID 16040100070).

Dear Mr. Danneman:

American Tower Delaware Corporation submits this letter in support of its rezoning application to Cobb County to amend a condition of the original rezoning which is preventing collocation of telecommunications equipment on the existing 180' monopole tower known as American Tower Facility "Shallowford Falls" #82007.

Background:

American Tower operates one of the telecommunication facilities on this property. Our facility is the northernmost telecommunication tower facility on the property closest to Shallowford Road. The facility consists of a 180' monopole telecommunications tower enclosed within a 60'x60' fenced compound leased area. This facility was originally approved a SLUP-1 by the BOC on 2/15/94. The facility was constructed in 1994 and currently is used by two wireless telecommunication service providers.

In 1997 Attic Self Storage Submitted a Rezoning and SLUP application to construct a self storage service facility on the property. These cases ultimately went into litigation and was settled and approved by the BOC on 5/18/99 subject to a settlement proposal. The settlement proposal is attached for reference. The settlement consisted of twenty-one (21) stipulations and or conditions. Stipulation #18 of this document reads ***"There shall be no further cellular towers other than the two (2) towers currently existing on the property. Additionally, Applicant agrees that it shall not increase the height of the existing towers nor increase the number of carriers on said towers. The existing cellular towers shall be regulated by all applicable federal, state, and local laws, statutes, and ordinances."***

Proposal

Clearwire US LLC has made application with American Tower to collocate its equipment on this facility. Clearwire is a wireless service provider Licensed by the FCC to construct

a wireless telecommunications network in various markets throughout the country, including the State of Georgia and in particular Cobb County. Clearwire's Radio Frequency Engineers have determined that they need to mount their antennas at a height of 150' to be able to fill in a coverage gap in this area of Cobb County. Clearwire submitted plans to Cobb County Zoning Staff in September 2007 to collocate on this facility. Cobb County staff researched the original approvals and made Clearwire and American tower aware of Stipulation #18 which prevents Clearwire and other future providers from utilizing this existing telecommunication facility. Staff stated that the only way to allow collocation was to apply for a rezoning to amend this previous condition. It should be made clear that the tower facility owners and service providers on this tower were never party to cases Z-72 and SLUP-9 which placed these restrictions on this facility and never agreed to these stipulations.

With that said we, are only interested in amending the condition to allow additional collocation to occur on this tower. In this case the language in question that needs to be amended is the language that reads "nor increase the number of carriers". We have no interest in building additional towers on this parcel or increasing the height of our existing 180' monopole tower. In addition we do not plan to expand the fenced compound or leased area of this facility.

Conclusion

Amending this condition to allow future collocation supports both Cobb County and American Towers' policy to utilize existing telecommunication towers rather than construct new facilities. Amending this condition does not change the use of the property nor the other conditions placed on this development in any other way. The facility continues to meet all Federal, State, and Local statutes and ordinances. For these reasons we respectfully request approval of this application.

Please let me know if I can assist you in any way or if you have any additional questions. I can be reached by phone at (770) 226-6467 or by email at barry.gannon@americantower.com.

Sincerely,



Barry Gannon, Zoning Specialist
American Tower Corporation

Attached Documentation

Exhibit A Constitutional rights preservation language
Case 7-72 & SLUP-9 of 1997 – Zoning Stipulations Settlement Letter
Survey with legal descriptions
Site plan
Copy of Deed
Copy of paid tax receipt
Rezoning application and fees

Exhibit A

Please understand that the following language is inserted into this Application for the sole purpose of preserving our legal remedies in the event of an adverse decision.

Denial of this Application may be considered arbitrary and capricious as between this Property Owner and American Tower Delaware Corporation, in relation to owners of similarly situated property and would constitute a taking without just compensation and without due process of law. Denial would prevent American Tower Delaware Corporation from constructing and operating facilities licensed by the FCC in the public interest and would prevent the implementation of licensing policies and objectives. Hence, such denial would be in violation of the Fifth and Fourteenth Amendments to the United States Constitution, and Sections 221 and 301 of the Federal Communications Act, and the Telecommunications Act of 1996.

Such an application of the Zoning Ordinance for Cobb County, Georgia which does not allow a communications structure and related equipment shelters to be constructed on the property as requested by the Applicant, is unconstitutional, illegal, null and void, constitutes a taking of the Applicant's property in violation of the Just Compensation Clause of the Fifth Amendment to the Constitution of the United States, Article I, Section I, Paragraph I, and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States Constitution, and denies the Applicant an economically viable use of its land while not substantially advancing legitimate state interests.

Petition N
Meeting
Continue

06-17-99
Z-51/2008
Exhibit "B"
Current zoning stipulation to be amended (#18 only).

- (13) Mechanical for the climate control self-storage facilities shall not be located to the rear of any such facilities adjacent to residentially developed property.
- (14) Outside storage shall be located as shown and depicted on the referenced site plan. No maintenance work will be permitted on any stored vehicle, and there shall be no truck rental facilities operating within the proposed development. There shall be no trucks larger than pick-up trucks. Further, there shall be no construction or maintenance vehicles and no vehicle greater in length than twenty-five (25) feet.
- (15) Trash pick-ups and delivery of business supplies shall be limited to normal business hours. Any dumpsters are to be located as far as possible from neighboring residences, including those across Shallowford Road.
- (16) There shall be no outside audio devices including, but not limited to, phone bells and loudspeakers.
- (17) Hours of operation shall be from 8:00 a.m. to 8:00 p.m. Monday through Saturday and 1:00 p.m. to 6:00 p.m. on Sunday. Not more than twenty (20) percent of the tenants shall be granted access to the proposed development at any hour.
- (18) There shall be no further cellular towers other than the two (2) towers currently existing on the property. Additionally, Applicant agrees that it shall not increase the height of the existing towers nor increase the number of carriers on said towers. The existing cellular towers shall be regulated by all applicable federal, state, and local laws, statutes, and ordinances.
- (19) There exists an ingress/egress easement running from the southerly portion of the subject property to Lassiter Road thirty (30) feet in width. Applicant agrees to convey those portions of the easement to the property owners immediately adjacent thereto.

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Stipulation to be amended