COUNTY OF ALBEMARLE PLANNING
STAFF REPORT SUMMARY

Proposal: SP202200022 and SE202200047 Verizon – Walnut Creek Park – Tier III PWSF	**Staff:** Kevin McCollum, Senior Planner
Planning Commission Public Hearing: October 11, 2022	**Board of Supervisors Hearing:** December 7, 2022
Owner: Albemarle County	**Applicant:** Verizon Wireless
Acreage: TMP 100-35 is 106.65 acres. In total Walnut Creek Park is 518.06 acres.	**Special Use Permit/Special Exception for:** Tier III Personal Wireless Service facilities in the Rural Areas (RA) district in accord with County Code § 18-10.2.2(48). A special exception request in accord with County Code § 18-5.1.
TMP: 10000-00-00-03500 **Location:** The proposed facility is located adjacent to the park maintenance building at 3760 Walnut Creek Park.	**Zoning/by-right use:** Rural Areas (RA) - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots)
Magisterial District: Samuel Miller	**Conditions:** No **EC:** Yes
School Districts: Red Hill Elementary, Walton Middle, Monticello High	
Proposal: The applicant proposes to construct a 195-foot-tall monopole tower to be used as a Personal Wireless Service Facility. The facility will include a lease area with ground equipment. The applicant has also requested a special exception to allow the antenna to be mounted 18 inches from the face of the tower instead of 12 inches.	**Requested # of Dwelling Units:** 0
DA: **RA: X**	**Comp. Plan Designation:** Rural Areas - preserve and protect agricultural, forestal, open space, and natural, historic, and scenic resources/residential density 0.5 unit/acre in development lots. Rural Areas 4 Comp Plan Area.
Character of Property: The proposed facility is located near the entrance to the Walnut Creek Park property off of Old Lynchburg Rd. The park is mostly wooded with multiple recreational amenities including bike trails, hiking trails, swimming beach, lake, various pavilions, a disc golf course, and associated parking.	**Use of Surrounding Properties:** The surrounding area (within ¼ mile) is rural with approximately 1 du/50 acres. There is some low-density residential development and farmland along Old Lynchburg Rd while a majority of the land surrounding the park is woodlands. There are two properties under conservation easement within a ½ mile radius of the park. The Carter's Bridge Ag/For district is adjacent to the park to the southeast.
Factors Favorable: 1. A facility in this location would likely improve wireless service in the area. 2. Existing vegetation would substantially screen the facility from adjacent properties and public roads. 3. The request is consistent with the Comprehensive Plan.	**Factors Unfavorable:** 1. The facility will be visible from Walnut Creek Park.
RECOMMENDATIONS: Staff recommends approval of the special use permit and associated special exception.	

STAFF CONTACT: Kevin McCollum, Senior Planner
PLANNING COMMISSION: October 11, 2022
BOARD OF SUPERVISORS: December 7, 2022

PETITION

PROJECT: SP202200022 and SE202200047 VERIZON - WALNUT CREEK PARK - TIER III PERSONAL WIRELESS SERVICE FACILITIES
MAGISTERIAL DISTRICT: Samuel Miller
TAX MAP/PARCEL(S): 10000-00-00-03500
LOCATION: The proposed facility is located immediately south of the nearest addressed parcel at 3760 Walnut Creek Park.
PROPOSAL: The applicant proposes to construct a 195-foot-tall monopole tower to be used as a Personal Wireless Service Facility. The facility will include a lease area with ground equipment. The applicant has also requested a special exception to allow the antenna to be mounted 18 inches from the face of the tower instead of 12 inches.
PETITION: Tier III Personal Wireless Service Facilities are permitted by special use permit in the RA, Rural Areas district in accord with Chapter 18, Section 10.2.2(48) of the Code of Albemarle. A special exception request may be made in accord with Chapter 18, Section 5.1 of the Code of Albemarle.
ZONING: RA, Rural Areas - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots)
OVERLAY DISTRICT(S): FH Flood Hazard Overlay
PROFFERS: No
COMPREHENSIVE PLAN: Rural Areas - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/residential density 0.5 unit/acre in development lots. Rural Areas 4 Comp Plan Area.

CHARACTER OF SURROUNDING AREA

The proposed facility is located near the entrance to the Walnut Creek Park property off of Old Lynchburg Rd. The park is mostly wooded with multiple recreational amenities including bike trails, hiking trails, swimming beach, lake, various pavilions, a disc golf course, and associated parking. The surrounding area (within ¼ mile) is rural with approximately 1 du/50 acres. There is some low-density residential development and farmland along Old Lynchburg Rd while a majority of the land surrounding the park is woodlands. There are two properties under conservation easement within a ½ mile radius of the park. The Carter's Bridge Ag/For district is adjacent to the park to the southeast. (Attachment 1 - Location Maps and Aerial Imagery)

PLANNING AND ZONING HISTORY

Walnut Creek Park is subject to approved site development plans that show the existing entrance, internal travelways, structures including the pavilions and toilets, and associated parking. The most recent approval being Letter of Revision #1 to SDP199800118 for two vaulted toilets which was approved on September 16, 2019. There are no additional special use permits or rezonings that apply to the property.

DETAILS OF THE PROPOSAL

The applicant has submitted a detailed application. (Attachment 2 – Application Narrative and Attachment 3 – Site Development Plans)

COMMUNITY MEETING

The community meeting was held at Walton Middle School on Thursday, September 22, 2022. Attendees asked questions about the tower's size, location, coverage, and health and safety impacts. The Applicant provided some additional information regarding the tower but did not provide specific coverage information. Several photo simulations of the proposed tower were shared. The Applicant provided: the height of the tower (less than 200') is to avoid lighting requirements at the top of the tower, the location is based on the topography of the site and is sited at one of the highest points of elevation on the property, any frequencies produced by the tower are well below FCC health and safety standards, and lastly, the Applicant confirmed that Verizon would be paying the County to use the land. There were no major concerns or objections raised by community member attendees.

While community members brought up questions about coverage and health and safety concerns, please note, that in accordance with the Telecommunications Act of 1996, described in further detail below, Staff does not review the proposed special use permit based on coverage or health and safety information.

ANALYSIS OF THE SPECIAL USE PERMIT REQUEST

This special use permit, and all special use permits, are evaluated for compliance with the provisions of County Code § 18-33.8(A). Each provision of that section is addressed below. The provisions of the ordinance are in bold font and underlined.

The comments below are based on staff's analysis of the application, including information submitted by the applicant. Because the applicant's submission contains detailed information, staff will not restate all the submitted information in this staff report, but refers the reader to attachments for detailed information.

No substantial detriment. **Whether the proposed special use will be a substantial detriment to adjacent parcels.**

The primary impact of this facility would be visibility. The facility would not prevent the use of any adjacent parcels. Staff opinion is that the visual impact to adjacent parcels is very limited and not to be considered a detriment.

Based on the tower viewshed analysis (Attachment 4), Staff's site visit and photos from the balloon test (Attachment 5), and the provided photo simulations (Attachment 6), Staff has determined that a majority of the tower's visibility will be from within the Walnut Creek Park property. Since this factor to be considered is substantial detriment to adjacent parcels, Staff believes the visibility from within the park itself is not of a concern for this factor.

The only additional visibility Staff observed was from small portions of Old Lynchburg Rd. Where the tower was visible along this road, the views were greatly minimized by existing trees and vegetation along the roadside and within the Park's property. Based on the tower viewshed analysis some portions of the property to the west appear to have some visibility. This potential visibility is greatly reduced by distance and existing trees and vegetation. Given all of this information, Staff concludes that the granting of this special use permit will not be of substantial detriment to the adjacent parcels.

Character of the nearby area is unchanged**. Whether the character of the adjacent parcels and the nearby area will be changed by the proposed special use.**

As mentioned above, much of the tower's visibility is from within the Walnut Creek Park property. While Staff believes that the character of the park itself may be impacted by a tower that is visible from within the park. From most of all other parcels surrounding the park property, the proposed tower is either not visible or has limited visibility. Where the tower is visible the view is mitigated by a significant number of trees and existing vegetation.

While Staff believes the character of the park itself will be somewhat changed, it is Staff's opinion that the character of the nearby area will be unchanged by the introduction of a new wireless facility.

***Harmony*. Whether the proposed special use will be in harmony with the purpose and intent of this chapter,**

Staff has reviewed this request as it relates to the "purpose and intent" that is set forth in Section 1.4 of the Zoning Ordinance, and as it relates to the intent of the Rural Areas district (Section 10.1). Staff finds that this request for a special use permit is consistent with both of these sections and will be in harmony with the purpose and intent of the Zoning Ordinance.

Section 1.4 states that the zoning ordinance is designed "to facilitate the creation of a convenient, attractive and harmonious community" and to "protect against destroying or encroaching upon historic areas." Staff believes that the siting of the tower minimizes its visibility to adjacent properties, public roads, and is away from any historic resources. It's also worth noting that any potential additional cellular service that is provided contributes to the public health, safety, convenience, and welfare. For these reasons, Staff believes that this special use permit is in harmony with this section.

Section 10.1 states that the Rural Areas district is established with the intent of: "conservation of natural, scenic, and historic resources". Again, the siting of this proposed facility helps conserve or preserve the natural/scenic views and vistas of the area and has no impacts on historic resources.

…with the uses permitted by right in the district

The proposed facility will not restrict by-right uses within the RA, Rural Areas.

…with the applicable provisions of section 5,

Personal Wireless Facilities are evaluated using the provisions of County Code § 18-5.1.40 (Attachment 7).

Below, staff comments on provisions of § 18-5.1.40 that, in the opinion of staff, require Board of Supervisors consideration.

> 5.1.40(b)(6) -*Screening and siting to minimize visibility.* The site shall provide adequate opportunities for screening and the facility shall be sited to minimize its visibility from adjacent parcels and streets, regardless of their distance from the facility. The facility also shall be sited to minimize its visibility from any entrance corridor overlay district, state scenic river, national park or national forest, regardless of whether the site is adjacent to the district, river, park or forest. If the facility would be located on lands subject to a conservation easement or an open space easement, or adjacent to a conservation easement or open space easement, the facility shall be sited so that it is not visible from any resources specifically identified for protection in the deed of easement.

To determine visibility, the applicant flew a balloon at the height of the proposed facility and staff prepared a viewshed analysis map. The viewshed analysis map calculates the area of theoretical visibility of the facility based on the height of the facility and the topography and vegetation in the area. Staff has used both resources to determine potential impacts.

As stated previously the proposed facility is well sited and provides ample opportunities for screening to minimize its visibility from adjacent parcels and streets. The location is not within any entrance corridor overlay district, state scenic river, national park or national forest. There are two nearby conservation easements (Attachment 8). Staff has reviewed these conservation easements and does not believe the tower will have any significant impact on any resources specifically identified for protection in those deeds.

Staff opinion is that this request is consistent with the provisions of County Code § 18-5.1.40(b)(6).

> 5.1.40(b)(7) *Open space plan resources.* The facility shall not adversely impact resources identified in the natural resources chapter of the county's comprehensive plan and the parks and green systems chapters in any county master plan
>
> *Staff comment: This section references the Open Space Plan, which has been replaced with text in the Rural Area Chapter and Natural Resources Chapter of the Comprehensive Plan and the Parks and Green Systems Plans in the Master Plans for the Development Areas.*

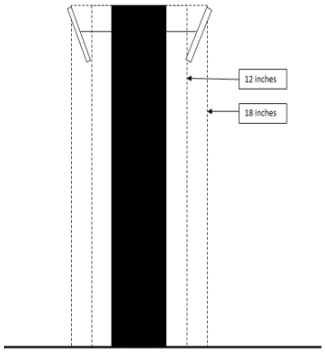
The Natural Resources Chapter contains the following statement:

> Albemarle County's natural resources are essential parts of its rural heritage and scenic beauty. These finite features help to support the County's tourist economy and are enjoyed by residents and visitors alike. Preservation of these features is the highest priority for residents. Creating high quality development and building, and maintaining infrastructure in the Development Areas can help attract new residents to the Development Areas instead of to the Rural Area. Preserving the Rural Area from residential development, in turn, preserves natural resources

The minimal visual impact of the facility is consistent with the rural heritage of the area and preserves scenic beauty. Staff opinion is that this request is consistent with the provisions of County Code § 18-5.1.40(b)(7).

> 5.1.40(b)(2)(c) *Projection*. No antenna shall project from the facility, structure or building beyond the minimum required by the mounting equipment, and in no case shall the closest point of the back of the antenna be more than 12 inches from the facility, structure, or building, and in no case shall the farthest point of the back of the antenna be more than 18 inches from the facility, structure, or building;

The applicant has requested a special exception from the antenna standoff requirements. The applicant is requesting that the standoff be increased from 12 inches to 18 inches. The impact of this request is that the antennas will not be downward tilted and will be mounted parallel to the face of the tower.



The Board of Supervisors may approve a special exception as provided for in County Code § 18-33. The criteria for reviewing this special exception are contained in County Code § 18-5.1 and § 18-33.9. The Planning Commission may provide comments to the Board of Supervisors.

Sec. 5.1 - Supplementary regulations. The following supplementary regulations apply to referenced uses in all districts whether or not such uses are permitted by right or by special use permit. These supplementary regulations are in addition to all other requirements of this chapter, the Code, and all other applicable laws. Unless a waiver or modification is expressly prohibited, any requirement of section 5 may be modified or waived in an individual case, as provided herein:

a. The Board of Supervisors may modify or waive any such requirement upon a finding that such requirement would not forward the purposes of this chapter or otherwise serve the public health, safety, or welfare or that a modified regulation would satisfy the purposes of this chapter to at least an equivalent degree as the specified requirement; and upon making any finding expressly required for the modification or waiver of a specific requirement; except that, in no case, shall such action constitute a modification or waiver of any applicable general regulation set forth in section 4 or any district regulation. In granting a modification or waiver, the commission may impose conditions as it deems necessary to protect the public health, safety, or welfare.

Sec. 33.9 - Special Exceptions; Relevant Factors to be Considered; Conditions; Revocation.

Special exceptions are subject to the following provisions:

A. *Factors to be considered when acting*. In acting upon a special exception, the Board of Supervisors will consider the factors, standards, criteria, and findings, however denominated, in the applicable sections of this chapter The Board is not required to make specific findings in support of its decision.

B. *Conditions*. In approving a special exception, the Board of Supervisors may impose reasonable conditions to address any possible impacts of the special exception. Except as the Board may specify in a particular case, any condition imposed on a special exception will be deemed essential and non-severable from the special exception itself, and the invalidation of any condition will invalidate the entire special exception.

C. The Board of Supervisors may revoke a special exception if the Board determines, after a public hearing, that the permittee or any successor has not complied with any conditions of the special exception. Notice of the public hearing will be provided pursuant to section 33.10.

The proposed increase in the standoff results in a larger cross section. An increase in cross section is most noticeable on shorter towers or where development is in close proximity to the facility.

The nearest structures to the proposed facility are approximately 800 feet (2771 Old Lynchburg Rd) and 1200 feet (2778 Old Lynchburg Rd) to the west. Additionally, there are some portions along Old Lynchburg Rd that will have some visibility of the tower. Old Lynchburg Rd is nearly 1000 feet from the proposed tower. At these distances an increase in the standoff does not significantly increase the visual impact of the facility.

Staff opinion is that the distance from the nearby dwellings and road and screening provided by the trees will mitigate the impacts of the increased antenna standoff distance of six inches. Based on these findings, Staff believes that the increased standoff would not create additional negative visual impacts. Staff supports the applicant's request for increased standoff.

…and with the public health, safety and general welfare (including equity).

The public health, safety, and general welfare of the community is protected through the special use permit process, which assures that uses approved by special use permit are appropriate in the location requested.

The applicant has submitted a narrative that discusses the service objectives of this facility.

Virginia Code § 15.2-2316.4:2(A)(1)(a) provides that a locality shall not disapprove an application on the basis of the applicant's business decision with respect to its designed service, customer demand for service, or quality of its service to or from a particular site. Due to this language, the County has not considered the applicant's service objectives from the proposed facility. The County's wireless policy is essentially one of limiting visibility. Service may be accomplished and has been accomplished for significant portions of the County, using the policy of limited visibility.

In this case, Staff notes that the tower is well sited limiting its visibility and potential impacts on adjacent properties and the surrounding area. In addition, the provision of improved wireless service may be consistent with the public health safety and general welfare. Therefore, staff recommends that the proposed facility is in harmony with the public health safety and general welfare.

Consistency with the Comprehensive Plan. **The use will be consistent with the Comprehensive Plan.**

The applicant states in its narrative that this proposal is consistent with the Comprehensive Plan, Community Facilities Chapter (Chapter 12), Objective 10 and strategy 10e.

Objective 10 states:

> Support provision of private electric, telephone, natural gas, wireless, and fiber optic service when its provision is in keeping with other aspects of the Comprehensive Plan

Strategy 10e states:

> Continue to ensure that personal wireless facilities are provided in accordance with the County's personal wireless service policy

It is important to note that strategy 10e also contains the following:

> The primary concern for the location of wireless facilities is visual impact. The Policy was put in place to ensure that the construction of new and modified facilities have limited visual impact on the community. To this end, personal wireless facilities are expected to:
>
> - Be designed to minimize visibility;
> - Utilize existing structures where possible;
> - Utilize ground based equipment for new facilities;
> - Mount antennas close to the supporting structure;
> - Be limited in size and be designed in keeping with the character of the area;
> - Not be located on ridgetops or along the ridgeline;
> - Be provided with an adequate backdrop so that they are not skylined;
> - Not adversely impact slopes in excess of 25%, wooded areas, streams and stream buffers, and wetlands in the Rural Area;
> - Not adversely impact historic and scenic resources; and
> - Not adversely impact and shown as Parks and Green Systems in the Master Plans for the Development Areas.

Staff opinion is that this proposal is consistent with this objective and strategies above.

The Comprehensive Plan designates this area as Rural Area. This designation includes preservation and protection of agricultural, forestal, and open space, and natural, historic and scenic resources. As previously discussed, the siting and design of the proposed facility helps conserve or preserve the natural/scenic views and vistas of the area by providing ample opportunities for screening to adjacent properties and public roads.

Staff recommends that this proposal is consistent with the Comprehensive Plan.

Section 704(a)(7)(b)(i) of the Federal Telecommunications Act of 1996 and Title 15.2, Chapter 22, Article 7.2 of the Code of Virginia:

During the review of this application staff has considered the provisions of Section 704(a)(7)(b)(i) of the federal Telecommunications Act of 1996 and Title 15.2, Chapter 22, Article 7.2 of the Code of Virginia. (Attachment 9)

This application is subject to the federal Telecommunications Act of 1996, which provides in part that the regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof (I) shall not unreasonably discriminate among providers of functionally equivalent services; and (II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services. 47 U.S.C. § 332(c)(7)(B)(i). Virginia Code § 15.2-2316.4:1(F)(1) likewise provides that localities may not "unreasonably discriminate between the applicant and other wireless services providers, wireless infrastructure providers, providers of telecommunications services, and other providers of functionally equivalent services."

In order to operate this facility, the applicant is required to comply with the FCC guidelines for radio frequency emissions that are intended to protect the public health and safety. Neither the Comprehensive Plan nor the Zoning Ordinance prohibits the provision of personal wireless services. However, both do implement specific policies and regulations for the siting and design of wireless facilities. The applicant has not provided any detailed additional information regarding the availability, or absence of alternative sites that could serve the same areas that would be covered with the proposed facility.

Virginia Code § 15.2-2316.4:1(E)(2) provides:

> "If the locality is aware of any modifications to the project as described in the application that if made would permit the locality to approve the proposed project, the locality shall identify them in the written statement provided under subdivision 1."

Staff provides the provision above in case the Board of Supervisors wishes to deny this application. Since Staff is recommending approval of the proposed application, there are no additional comments regarding these applicable codes and regulations.

Other Relevant Information

FCC regulations would apply to a tower constructed as proposed in this application. The regulations would limit the County's ability to review additional uses and modifications to the facility once approved. The County may only deny changes to the facility *if*:

- The tower is increased in height by more than 20 feet; or
- Antenna or other equipment would protrude more than 20 feet from the tower; or
- More than 4 ground-based cabinets are added; or
- Excavation occurs outside the lease area; or
- The change would defeat concealment elements.

Simply stated, if the County approves this monopole at 195 feet, the applicant can administratively apply for a one time increase in height by 20 feet for a total height of 215 feet. It also means that if the county approves the special exception request to increase the standoff distance of the antenna, the applicant may be able to administratively request an increase in standoff distance to a maximum of 20 feet. If the Board approves the special exception for increased antenna standoff the Board will need to determine and state clearly that the approved standoff is a concealment element. If it is not a

concealment element the antenna would be permitted to protrude up to 20 feet from the tower.

It is staff's opinion that any increase in height or antenna standoff would potentially increase the negative impacts of the facility. Therefore, Staff recommends a condition to limit the height of the tower to 175 feet, so that the maximum height permitted would be the proposed 195 feet, and a condition to limit the standoff to the proposed 18" as Staff believes that this standoff is a concealment element.

SUMMARY

Staff finds the following factors favorable to this request:

1. A facility in this location would likely improve wireless service in the area.
2. Existing vegetation would substantially screen the facility from adjacent properties and public roads.
3. The request is consistent with the Comprehensive Plan.

Staff finds the following factors unfavorable to this request:

1. The facility is visible from Walnut Creek Park.

RECOMMENDED ACTION for SPECIAL USE PERMIT

Staff recommends approval of the special use permit with the following conditions:

1. The maximum height of the tower is 175 feet above ground level.
2. The facility must be located and designed in accord with the plans titled "Walnut Creek Park – Tier III – Personal Wireless Facility," prepared by Hillary G. Siegall and dated 6/3/22.

RECOMMENDED ACTION for SPECIAL EXCEPTION REQUEST

Staff recommends approval of the applicant's request for a special exception to Section 5.1.40(b)(2)(c), subject to the following condition:

1. No antenna shall project from the facility, structure or building beyond the minimum required by the mounting equipment, and in no case shall the closest point of the back of the antenna be more than 18 inches from the facility, structure, or building, and in no case shall the farthest point of the back of the antenna be more than 18 inches from the facility, structure, or building

SUGGESTED MOTIONS:

Special Use Permit

A. If the Planning Commission **chooses to recommend approval** of this special use permit:

I move to recommend approval of SP202200022 VERIZON - WALNUT CREEK PARK - TIER III PERSONAL WIRELESS FACILITIES with the conditions outlined in the staff report.

B. If the Planning Commission **chooses to recommend denial** of this special use permit:

I move to recommend denial of SP202200022 VERIZON - WALNUT CREEK PARK - TIER III PERSONAL WIRELESS FACILITIES. *State reasons for denial.*

Any motion to recommend denial should state the reason(s) therefor and address the requirement of Virginia Code § 15.2-2316.4:1 E(2) that "If the locality is aware of any modifications to the project as described in the application that if made would permit the locality to approve the proposed project, the locality shall identify them in the written statement provided under subdivision 1."

Any motion to recommend denial should also clarify that that recommendation is not based on Virginia Code § 15.2-2316.4:2(A), but that it is based on § 15.2-2316.4:2(B)(1).

Special Exception – The Planning Commission is not required to make a recommendation on the Special Exception. However, if the Planning Commission chooses to make a recommendation the following potential motions are offered for consideration.

A. If the Planning Commission **chooses to recommend approval** of this special exception:

I move to recommend approval of SE202200047 VERIZON WIRELESS - WALNUT CREEK PARK - TIER III with the conditions outlined in the staff report.

B. If the Planning Commission **chooses to recommend denial** of this special exception:

I move to recommend denial of SE202200047 VERIZON WIRELESS - WALNUT CREEK PARK - TIER III. *State reasons for denial.*

ATTACHMENTS

Attachment 1 – Location Maps and Aerial Imagery
Attachment 2 – Application Narrative
Attachment 3 – Site Development Plans
Attachment 4 – Tower Viewshed Analysis
Attachment 5 – Staff Photo Map and Balloon Photos
Attachment 6 – Photo Simulations
Attachment 7 – County Code § 18-5.1.40
Attachment 8 – Nearby Conservation Easements Map
Attachment 9 – Federal Telecommunications Act of 1996 and Virginia Code Provisions