

**Town of Cary, North Carolina**  
**Special Use 13-SU-002 and Site Plan 13-SP-026 Staff Report**  
**North Cary Water Reclamation Facility (NCWRF) Public Safety Communications Tower**  
**Zoning Board of Adjustment Public Hearing**  
**June 3, 2013**

**REQUEST**

The Town of Cary, as the property owner, has requested approval of a Special Use permit and site plan for erection of a 260-foot-tall (274 feet to the top of the lightning rod) telecommunications (non-stealth) tower with a reduction in the required setback from the Interstate 40 right of way. The setback reduction requires approval as a special use per section 5.2.4(D)(8)(b) of the Land Development Ordinance (LDO).

**SPECIAL USE NOTES:**

*Special uses are generally compatible with other land uses permitted in the zoning district. However, because of the unique characteristics or potential impacts on the surrounding neighborhood and on the Town as a whole, they require individual consideration as to location, design, configuration, and/or operation at a particular location. [LDO Sec. 3.8.1(A)].*

*In accordance with Section 3.8.1(B) of the LDO, an associated site plan is being reviewed in conjunction with this Special Use permit application.*

*In accordance with Section 3.8.3 of the LDO, the Zoning Board of Adjustment must follow quasi-judicial procedures when deciding Special Use permits.*

**SUBJECT PARCELS**

Property Owner	Wake County Parcel Identification Number (PIN) (10-digit)	Real Estate ID Number	Deeded Acreage
Town of Cary 316 North Academy Street Cary, NC 27513	0765680977	0049308	74.29
<b>Total Area</b>			74.29

**BACKGROUND INFORMATION**

Applicant & Agent (Special Use)	Town of Cary Benjamin Shivar 316 North Academy Street Cary, NC 27513 (919) 469-4002 ben.shivar@townofcary.org
Applicant & Agent (Site Plan)	Town of Cary Terry Yates 316 North Academy Street Cary, NC 27513 (919) 469-4014 terry.yates@townofcary.org
General Location	1900 Old Reedy Creek Road
Land Use Plan Designation	Office/Industrial (OFC/IND)
Zoning Districts	Office/Research and Development (ORD)
Within Town Limits	Yes

Staff Contact	Kevin A. Hales, Senior Planner Town of Cary Planning Department P.O. Box 8005 Cary, NC 27512-8005 (919) 462-3944 kevin.hales@townofcary.org
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**LIST OF EXHIBITS**

The following documents incorporated into this staff report are to be entered into the record for the Special Use permit and development plan applications:

- Exhibit A: 13-SU-002 Application and Justification Statement (3 pages)
- Exhibit B: 13-SP-026 Application (3 pages)
- Exhibit C: 13-SP-026 Plan Set (8 pages)
- Exhibit D: Tower Depictions (13 pages)
- Exhibit E: Project Description (1 page)
- Exhibit F: Consulting Report from Integra Realty Resources (68 pages)

**PROJECT DESCRIPTION / SUMMARY OF REQUEST**

The Town’s radio communication system is vital to providing essential communications to first responders and other public safety officers providing emergency services to citizens of Cary. The Town of Cary telecommunications staff, in consultation with their communications contractors, has determined the need for additional communication infrastructure in the Town. As part of the expansion of the Town’s telecommunication infrastructure, the need for a tower in the vicinity of the North Cary Water Reclamation Facility was identified. The Town of Cary proposes to erect a 260-foot-tall (274 feet to the top of the lightning rod) lattice-style telecommunications tower on the site of the North Cary Water Reclamation Facility. The primary purpose of the proposed tower is to facilitate the provision of public safety services for the Town of Cary and other entities. The associated ground equipment would be located within a fenced compound approximately 5,000 square feet in area. Access to the tower would be provided through a new driveway from an existing parking lot on the site.

Typically, a non-stealth tower erected more than 200 feet from property zoned, used, or otherwise designated for residential purposes is permitted as a by-right use and may be approved by the Planning Director. The proposed tower would meet all of the required setbacks identified in Section 5.2.4 of the Land Development Ordinance (LDO), with the exception of the setback required from the right of way for Interstate 40. The LDO requires a setback equal to the height of the tower (260 feet) from adjacent rights of way. The proposed location would place the center of the tower 139 feet from the adjacent interstate right of way. Per Section 5.2.4(D)(8)(b) of the LDO, an applicant may request a reduction to the required setbacks through a Special Use permit.

**SITE CHARACTERISTICS**

**Streams:** Based on Cary’s GIS maps, there are a number of stream buffers that impact the larger property; however, there are no stream buffers located in proximity to the proposed tower site that would impact the project.

**Floodplain:** Based on Cary’s GIS maps, there is a small portion of floodplain in the extreme northwestern corner of the property that would not impact the proposed project.

**Wetlands:** Based on Cary’s GIS maps, there are no wetlands indicated in the vicinity of the proposed tower.

**Topography:** The proposed tower would be located on a small ridge that descends approximately five feet to the west into the parking lot and approximately six to seven feet to the northeast toward the Interstate 40 right of way.

**Surrounding Land Uses:**

**North:** Interstate 40 (Vacant RDU property and Wake Stone quarry on opposite side of right of way)

**South:** Detached dwellings, office buildings (Weston PDD), and a telecommunications facility/monopole

**East:** Embassy Suites hotel

**West:** Old Reedy Creek Road (Lofts at Weston apartments, vacant RDU and Town of Cary property on opposite side of right of way)

**SUMMARY OF PROCESS AND ACTIONS TO DATE**

**Pre-application Conference**

A pre-application conference was held with the Town of Cary Development Review Committee (DRC) on March 20, 2013, regarding the special use and the development plan.

**Development Plan**

The development plan was submitted for review on April 12, 2013. The plan set received only one review by the DRC prior to being forwarded to the Zoning Board of Adjustment for consideration and action.

**Notification**

The Planning Department mailed notification of the public hearing on the Special Use and site plan to property owners within 400 feet of the site on May 16, 2013. Notification consistent with North Carolina General Statutes was published in The Cary News on May 22 and 29, 2013.

**Property Posting**

Notice of the public hearing was posted on the property on May 17, 2013.

**COMPREHENSIVE PLAN SUMMARY**

Comprehensive Plan Element	Consistent	Not Consistent	Not Applicable
A. Land Use Plan			X
B. Parks, Recreation, and Cultural Resources Facility Master Plan	X		
C. Growth Management Plan			X
D. Affordable Housing Plan			X
E. Comprehensive Transportation Plan	X		
F. Open Space and Historic Resources Plan			X
G. Historic Preservation Master Plan			X

**A. Land Use Plan**

The current land use designation for the property is Office/Industrial (OFC/IND). The proposed communications tower is an incidental use of the property coincidental with the principal use of the property as a public utility facility. The principal use of the property is in compliance with the OFC/IND land use designation.

**B. Parks, Recreation & Cultural Resources Facilities Master Plan**

The Parks, Recreation and Cultural Resources (PRCR) Facilities Master Plan identifies no improvements that would impact the subject property.

**C. Growth Management Plan**

The Growth Management plan is not applicable to this project since the telecommunication tower is incidental to the existing use of the property as a public utility facility.

**D. Affordable Housing Plan**

The Affordable Housing Plan is not applicable to non-residential development.

**E. Comprehensive Transportation Plan (CTP)**

The site is located on the east side of Old Reedy Creek Road, where it crosses over Interstate 40.

**Old Reedy Creek Road is designated as a Collector Street.**

**Existing Section:** 2-lane roadway within approximately 100 feet of asymmetrical right of way

**Required Section:** 2-lane roadway within 120 feet of right of way (the right of way is larger than typical because of the potential for a future interchange)

**Sidewalks:** Required on both sides; none existing

**Bicycle Lanes:** 4-foot-wide bicycle lanes

**Transit:** No transit service is planned along this corridor.

**Status of Planned Improvements:** No improvements are required due to the minor nature of the project. The additional right of way needed for future widening would be dedicated along the property frontage.

**F. Open Space Plan**

There are no significant resources located on the subject property.

**G. Historic Preservation Master Plan**

There are no historic structures located on the subject property.

**CONSISTENCY WITH THE LAND DEVELOPMENT ORDINANCE (LDO)**

**Traffic**

The proposed communications tower would be an unmanned facility less than 100,000 square feet in floor area; therefore, the LDO does not require a traffic study to be performed.

**Buffers and Streetscapes**

The perimeter buffers and streetscapes are in place per the requirements of the LDO for the existing public utility facility. The proposed tower compound would be located immediately adjacent to the 100-foot-wide Thoroughfare Corridor Buffer (TCB). The proposed plan does not include any disturbance within the required buffer, consistent with the requirements for preservation and protection of existing vegetation contained within the TCB.

**USE SPECIFIC STANDARDS [LDO SECTION 5.2.4(D)]**

Section 5.2.4(D) of the LDO includes a number of specific requirements for telecommunication facilities. A brief discussion of some of the more prominent standards is included below. Except as outlined below, the proposed tower would be consistent with all applicable standards of Section 5.2.4(D).

**Co-location Opportunities**

The LDO requires that freestanding towers in excess of 150 feet be engineered and constructed to support a minimum of six different antennae arrays. The proposed tower is designed to support antennae arrays at radial heights of 170', 180', 210', 220', 225', and 250', which satisfies the LDO requirements.

**FAA Compliance**

The proposed tower would be lighted with a dual lighting system consistent with FAA requirements. Final FAA approval of the tower height and location would be required prior to issuance of a building permit.

**Neighborhood Meeting and Balloon Test**

A neighborhood meeting was held on April 9, 2013 and was not attended by any of the notified property owners. A balloon test was also conducted and results are depicted in Exhibit D.

**Setbacks**

The proposed tower would comply with all of the required setbacks with the exception of the setback from the Interstate 40 right of way to the north. The center of the tower is proposed at 139 feet from the right of way while the required setback is equal to the height of the tower, or 260 feet. Section 5.2.4(D)(6)(a)(4) of the LDO requires that requests for reductions to the required setbacks for towers that would otherwise be permitted as a by-right use be reviewed by the Zoning Board of Adjustment as a special use. Such special uses shall be approved or denied upon consideration of circumstances or aspects which reduce the effects of the facility on adjacent properties.

**PROPOSED CONDITIONS FOR THE SPECIAL USE**

Development Review Committee (DRC) staff has reviewed the application and the materials provided by the applicant both for compliance with the requirements of the LDO and for consistency with the Comprehensive Plan. DRC staff has included a brief discussion of the special use in relation to the general criteria for approval of a Special Use permit in this staff report and in the attached worksheets.

Based on information submitted by the Town and on the analysis presented within this staff report, the DRC recommends the attachment of the following conditions to this Special Use permit request:

1. The Resolution and Permit approved by the Zoning Board of Adjustment in this Special Use permit application shall be recorded with the Wake County Register of Deeds upon the expiration of the appeal period, per Section 3.8.4(E) of the LDO. The original recorded Resolution and Permit shall be returned to the Planning Department when received from the Register of Deeds.
2. The approval of this Special Use permit is conditioned on the subsequent approval of a site plan in accordance with LDO Section 3.8.1(B)(2) and as required under LDO Section 3.9.

In approving a special use, the decision-making body may attach such conditions as it deems necessary to have the proposed use meet the standards set forth in this Ordinance and to protect the public health, safety, and general welfare. All such conditions shall be stated in the resolution approving the application. [LDO Section 3.8.4(A)]

**SPECIAL USE WORKSHEET  
AND  
SUGGESTED MOTIONS**

Section 3.8.3 of the LDO states the following: “*The decision-making body shall not approve a proposed special use and any accompanying site plan unless and until it determines that the proposed use meets all the criteria set forth below, based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case.*”

- (A) The proposed use or development of the land will generally conform with the Comprehensive Plan, other official plans and manuals or documents adopted by the Town;

*The DRC has included a discussion of the special use’s consistency with the various elements of the Comprehensive Plan and with general LDO requirements as set forth earlier in this report. As identified in the staff report, the applicant has proposed a reduction of the required setback from the adjacent Interstate 40 right of way.*

LDO Section 5.2.4(D)(8)(b) includes the following language regarding the approval of requests to reduce the required setbacks for telecommunication towers:

(b) Setback Reductions

1. In considering an application for special use and/or site plan for telecommunications facilities, the Town Council and/or Zoning Board of Adjustment (ZBOA) may grant a reduction of the minimum required setbacks listed in Section 5.2.4(D) upon consideration of circumstances or aspects which reduce the off-site effects of the facility on adjacent properties. Such circumstances or aspects may include, but are not limited to: topography; berms; the proximity of existing or potential uses; existing vegetation and improvements made or proposed to the site to obscure or reduce the visibility of the tower from adjacent properties; the concentration of existing and/or proposed towers in the area; and whether the height, design (including structural features), placement or other characteristics of the proposed tower could be modified to have a less intrusive impact.

*The proposed location for the tower was chosen, in part, to reduce the impacts of the tower on the adjoining properties. By locating the tower as proposed, the tower is moved farther from the residential properties located to the south and from the hotel use located to the east. Properties to the north are separated from the subject property by the interstate right of way. The tower would be located on the northern end of the site to minimize any impacts to the future expansion of the treatment capabilities of the North Cary Water Reclamation Facility. The topography of the site places the base of the tower higher than the adjacent roadway, which will serve to minimize the immediate visibility of the ground enclosure to vehicular traffic on the adjacent interstate, though it would increase the visibility of the tower itself.*

2. Requests under this sub-section may be approved provided that such action is not inconsistent with the general purposes and applicable approval criteria of this Ordinance. The Town Council and/or ZBOA, in considering any request(s) for reduction of the minimum required setbacks under this Section, shall consider any unique circumstances for such a request(s).

*The proposed tower location has been selected to minimize the visual and other perceived impacts to developed properties surrounding the North Cary Water Reclamation Facility. The LDO serves to protect adjacent properties from the impacts from development of a site and, therefore, the proposed setback reduction necessary to*

*locate the tower away from adjacent properties developed for lower-intensity uses is generally consistent with the goals and purposes of the LDO.*

- (B) The proposed use or development of the land will not materially endanger the public health or safety;

*The proposed communications tower would be compliant with all applicable regulations of the Town except as identified in the above report. The tower would also be compliant with FCC and FAA regulations governing such structures. The site would be unmanned; therefore, no traffic impacts would be anticipated*

**TEST SATISFIED? \_\_ YES \_\_ NO**

- (C) The proposed use is reasonably necessary for the public health or general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community;

*The Town's radio communication system is vital to providing essential communications to first responders and other public safety officers providing emergency services to citizens of Cary. The Town of Cary telecommunications staff, in consultation with their communications contractors, has determined the need for additional communication infrastructure in the Town. As part of the expansion of the Town's communication infrastructure, the need for a tower in the vicinity of the North Cary Water Reclamation Facility was identified.*

**TEST SATISFIED? \_\_ YES \_\_ NO**

- (D) The proposed use or development of the land will not substantially injure the value of adjoining or abutting property;

*The LDO contains development standards designed to mitigate impacts of development on adjoining properties. The proposed tower would be in compliance with the regulations governing such development except as indicated in the report. The Town will be providing additional testimony at the hearing in support of this criterion.*

**TEST SATISFIED? \_\_ YES \_\_ NO**

- (E) The proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located;

*The proposed tower would be located on the site of an existing public utility facility, adjacent to an interstate highway. Uses on the opposite side of the interstate are also industrial in nature. The proposed location on the site was selected to minimize the potential impacts to lower-intensity uses located to the east, to the south, and to the west.*

**TEST SATISFIED? \_\_ YES \_\_ NO**

- (F) The proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities;

*The proposed tower would be located on the site of an existing public utility facility that is currently served by Town utility and public safety services. The proposed facility will be an unmanned site; therefore, no additional waste management or transportation impacts would be anticipated from the project.*

**TEST SATISFIED? \_\_ YES \_\_ NO**

- (G) The proposed use will not cause undue traffic congestion or create a traffic hazard or unsafe pedestrian pathway.

*The proposed communications tower would be an unmanned facility, with only infrequent visits for routine maintenance and/or testing. No traffic congestion or traffic hazard impacts would be anticipated from such a facility. The ground compound would be fenced in to prevent unauthorized pedestrian access and the overall site is already located within a fenced perimeter to prevent unauthorized access to the public utility facility.*

**TEST SATISFIED?  YES  NO**



## SUGGESTED MOTIONS FOR SPECIAL USE

### **MOTION TO GRANT THE APPLICATION**

For the reasons discussed, I move that we **APPROVE** the request for a Special Use permit with the requested setback reduction as the proposed use meets all of the approval criteria set forth in Sections 5.2.4(D) and 3.8.3. This approval shall include the following conditions:

1. The Resolution and Permit approved by the Zoning Board of Adjustment in this Special Use application shall be recorded with the Wake County Register of Deeds upon the expiration of the appeal period, per Section 3.8.4(E) of the LDO. The original recorded Resolution and Permit shall be returned to the Planning Department when received from the Register of Deeds.
2. The approval of this special use is conditioned on the subsequent approval of a development plan in accordance with LDO Section 3.8.1(B)(2) and as required under LDO Section 3.9.

**NOTE: The above two conditions are LDO requirements; any additional condition(s) may be added or modified at the board's discretion**

**OR**

### **MOTION TO DENY THE APPLICATION**

For the reasons discussed, I move that we **DENY** the request for a Special Use permit with the requested setback reduction as the proposed use does not meet all of the approval criteria set forth in Sections 5.2.4(D) and 3.8.3.

**SITE PLAN WORKSHEET  
AND  
SUGGESTED MOTIONS**

Section 3.9.2(I) of the LDO states that a development plan may be approved by the Zoning Board of Adjustment only if it meets six listed criteria.

1. Does the plan comply with all applicable requirements of the LDO, including the development and design standards of Chapters 7 and 8 as well as the dedication and improvements provisions of Chapter 8 as well as all applicable Town specifications?

*The proposed site plan has been reviewed by staff and is generally consistent with the applicable requirements of the LDO. Staff has only had the opportunity to complete one full review of the plan set, so there are a number of outstanding review comments that the Town will be required to address prior to final approval of the plan. The reduction in the setback from the Interstate 40 right of way is the only deviation from the LDO that the applicant has requested. The approval of the site plan should be conditioned on the Town satisfying all outstanding review comments generated by the DRC in addition to any other conditions the board may wish to add.*

2. Does the plan adequately protect other property, or residential uses located on the same property, from the potential adverse effects of the proposed development?

*The subject property is generally surrounded by non-residential uses, such as office, parks, and a hotel. The proposed tower location was selected to maximize the separation between the structure and those existing uses. Properties located to the north, closest to the tower, are industrial in nature.*

**TEST SATISFIED? \_\_ YES \_\_ NO**

3. Does the plan provide harmony and unity with the development of nearby properties?

*The proposed communications tower would be incidental to the primary use of the property as a public utility facility and would not, therefore, be anticipated to be out of harmony with surrounding developments. The proposed use represents less than 0.1% of the land area of the parent parcel, providing adequate spatial separation to all adjoining properties. Additionally, the proposed tower would be located in a manner that minimizes the visual impacts to developed properties surrounding the subject property.*

**TEST SATISFIED? \_\_ YES \_\_ NO**

4. Does the plan provide safe conditions for pedestrians or motorists and prevent a dangerous arrangement of pedestrian and vehicular ways?

*The proposed tower would be an unmanned facility and would not be expected to generate any significant vehicular traffic. Vehicles visiting the facility will utilize existing driveways that serve the public utility facility. In addition, the ground compound is a fenced enclosure within a fenced utility facility, so access by unauthorized personnel would be extremely unlikely.*

**TEST SATISFIED? \_\_ YES \_\_ NO**

5. Does the plan provide safe ingress and egress for emergency services to the site?

*The plan associated with the proposed communications tower would utilize the current ingress and egress to the existing facility. Access to the tower itself would be via access driveway from the existing parking lot for the utility facility.*

TEST SATISFIED? \_\_ YES \_\_ NO

6. Does the plan provide mitigation for traffic congestion impacts reasonably expected to be generated by the project?

*The proposed tower would be an unmanned facility and would not be expected to generate any significant vehicular traffic. Vehicular trips would be limited to occasional maintenance or testing operations.*

TEST SATISFIED? \_\_ YES \_\_ NO

#### SUGGESTED MOTIONS FOR SITE PLAN

##### **MOTION TO APPROVE THE SITE PLAN**

For the reasons discussed, I move that we **APPROVE** the proposed site plan with conditions as stated below, as it meets all of the approval criteria set of Section 3.9.2(I).

##### **This approval is conditioned upon the following:**

1. The applicant must satisfactorily address any remaining Development Review Committee comments on the master plan set submitted for signature.
2. *[insert any additional conditions necessary to bring the project into compliance with the LDO or other standards]*

**OR**

##### **MOTION TO DENY THE SUBDIVISION PLAN**

For the reasons discussed, I move that we **DENY** the proposed site plan, as it does not meet all of the approval criteria set forth in Section 3.9.2(I).