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El Paso County, CO



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RESOLUTION NO. 22-79 AMENDED

**BOARD OF COUNTY COMMISSIONERS
COUNTY OF EL PASO, STATE OF COLORADO**

**APPROVE VARIANCE OF ATC FALCON TOWER VARIANCE OF USE
RENEWAL (VA-21-005)**

WHEREAS, American Tower, did file an application with the Planning and Community Development Department of El Paso County for approval of a variance of use within the RR-5 (Residential Rural) district to allow a freestanding Commercial Mobile Radio Service (CMRS) facility where such is not permitted for property located within the unincorporated area of the County, more particularly described in Exhibit A, which is attached hereto and incorporated by this reference; and

WHEREAS, a public hearing was held by the El Paso County Planning Commission on March 3, 2022, upon which date the Planning Commission did by formal resolution recommend approval of the subject variance of use; and

WHEREAS, a public hearing was held by this Board on March 15, 2022; and

WHEREAS, based on the evidence, testimony, exhibits, recommendations of the El Paso County Planning Commission, presentation and comments of the El Paso County Planning and Community Development Department and other County representatives, comments of public officials and agencies, comments from all interested persons, comments by the general public, and comments by the County Commissioners during the hearing, this Board finds as follows:

1. That the application for the variance of use was properly submitted for consideration by the Board of County Commissioners.
2. That proper posting, publication and public notice were provided as required by law for the hearings before the Planning Commission and the Board of County Commissioners.
3. That the hearings before the Planning Commission and Board of County Commissioners were extensive and complete, that all pertinent facts, matters and issues were submitted, and that all interested persons and the general public were heard at those hearings.
4. That all exhibits were received into evidence.

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5. That the proposed land use does permit the use of any area containing a commercial mineral deposit in a manner which would interfere with the present or future extraction of such deposit by an extractor.
6. That for the above-stated and other reasons, the proposed variance of use is in the best interest of the health, safety, morals, convenience, order, prosperity and welfare of the citizens of El Paso County.

WHEREAS, pursuant to Section 5.3.4 of the El Paso County Land Development Code, as amended, in approving this variance of use, the Board of County Commissioners considered one or more of the following criteria:

1. The strict application of any of the provisions of the Land Development Code would result in peculiar and exceptional practical difficulties or undue hardship on either the owner or the contract purchaser of the property;
2. The proposed use is compatible with the surrounding area, harmonious with the character of the neighborhood, not detrimental to the surrounding area, not detrimental to the future development of the area, and not detrimental to the health, safety, or welfare of the inhabitants of the area and the County;
3. The proposed use will be able to meet air, water, odor or noise standards established by County, State or Federal regulations during construction and upon completion of the project;
4. The proposed use will comply with all applicable requirements of the Land Development Code and all applicable County, State, and Federal regulations except those portions varied by this action;
5. The proposed use will not adversely affect wildlife or wetlands;
6. The applicant has addressed all off-site impacts;
7. The site plan for the proposed variance of use will provide for adequate parking, traffic circulation, open space, fencing, screening, and landscaping; and/or
8. Sewer, water, storm water drainage, fire protection, police protection, and roads will be available and adequate to serve the needs of the proposed Variance of Use as designed and proposed.

NOW, THEREFORE, BE IT RESOLVED the Board of County Commissioners of El Paso County, Colorado, hereby approves the application by American Tower, for a variance of use to allow a freestanding Commercial Mobile Radio Service (CMRS) facility where such is not a permitted use for the unincorporated area of

El Paso County as described in Exhibit A, which is attached hereto and incorporated herein by this reference;

BE IT FURTHER RESOLVED the following conditions and notations shall be placed upon this approval:

CONDITIONS

1. Approval is limited to one (1) commercial tower and associated antenna(s) as depicted in the applicant's letter of intent and site plan drawing, with a maximum height of the CMRS facility of 251 feet above natural ground elevation.
2. Any subsequent co-location, additional equipment shelter or additional antenna on the tower site other than that shown on the site plan shall be subject to administrative review and approval by the Planning and Community Development Department Director.
3. The variance of use approval shall be deemed abandoned, and of no further force and effect, if the primary intended use and/or activity has been discontinued for a period of one (1) year. For the purpose of this condition, the variance of use shall be deemed discontinued if the primary intended use has not been actively and regularly conducted on the approved site.
4. A dimensional variance shall be applied for and approved prior to building permit authorization for the CMRS Facility.

NOTATIONS

1. Variance of use approval includes conditions of approval and the accompanying site plan and elevation drawings. No substantial expansion, enlargement, intensification or modification shall be allowed except upon reevaluation and public hearing as specified in the El Paso County Land Development Code.
2. The Board of County Commissioners may consider revocation and/or suspension if zoning regulations and/or variance of use conditions/standards are being violated, preceded by notice and public hearing.

AND BE IT FURTHER RESOLVED the record and recommendations of the El Paso County Planning Commission be adopted, except as modified herein.

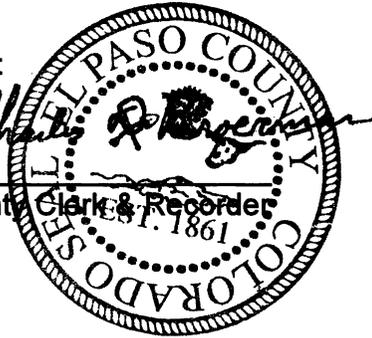
DONE THIS 15th day of March 2022, at Colorado Springs, Colorado.

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

ATTEST:

By: _____

County Clerk & Recorder



By: _____

Chair

Stan VanderWey

EXHIBIT A

Property located in El Paso County, Colorado
Gary L. Anderson and Anita L. Anderson Revocable Trust

All that real property situated in City of Colorado Springs, County of EL Paso, State of Colorado, described as follows:

A parcel of land being a portion of Lot 3 in the Northwest One-quarter of Section 5, Township 14 South, Range 64 West of the Sixth Principal Meridian, County of El Paso, State of Colorado, more particularly described as follows:

Commencing at the North One-quarter corner of said Section 5:

Thence South 89° 54' 00" West along the North line of the Northwest One-quarter of said Section 5 a distance of 250.00 feet; thence South 00° 06' 00" East a distance of 30.00 feet to a point on the South line of the 30 foot road right-of-way established by the County commissioners of said El Paso County in the Document recorded in Book A at Page 78, said point being the true point of beginning; thence continuing South 00° 06' 00" East a distance of 500.00 feet; thence South 89° 54' 00" West a distance of 500.00 feet; thence North 00° 06' 00" West a distance of 500.00 feet to a point on the South line of said 30 foot road right-of-way; thence North 89° 54' 00" East along said South right-of-way line a distance of 500.00 feet to the true point of beginning.

Containing 250,000 Square feet or 5.7392 acres, more or less, (5.74 acres, more or less)

AND BEING the same property conveyed to Gary L. Anderson from Gary L. Anderson, Trustee of the Declaration of Trust of Marvin R. Anderson and Ethel M. Anderson dated November 14, 1998 recorded as Reception No. 98172029, as amended by Marvin R. Anderson on February 6, 2013, Recorded as Reception No. 213033516 by Warranty Deed dated May 21, 2014 and recorded May 03, 2014 in Instrument No. 214047186.

AND BEING the same property conveyed to Gary L. Anderson and Anita L. Anderson Revocable Trust from Gary L. Anderson by Quitclaim Deed dated June 22, 2017 and recorded June 27, 2017 in Instrument No. 217074641.

Tax Parcel No. 4405000007