

# Staff Summary Report



Board of Adjustment Hearing Date: April 28, 2010

Agenda Item Number: 3

**SUBJECT:** This is a public hearing for an appeal of the January 5, 2010 Hearing Officer's decision to deny the request by **VERIZON WIRELESS (PL090471)** located at 3207 South Wilson Street for one (1) variance.

**DOCUMENT NAME:** 20100428dssl01

**PLANNED DEVELOPMENT (0406)**

**COMMENTS:** Appeal of the January 5, 2010 Hearing Officer's decision to deny the request by **VERIZON WIRELESS (PL090471/VRA10001)** (Kellie Sweat/Willmeng Construction Inc., applicant; East Group Properties, property owner) located at 3207 South Wilson Street in the GID, General Industrial District for:

**VAR09015** Variance to waive mechanical equipment screening on three (3) sides of the building.

**PREPARED BY:** Sherri Lesser, Senior Planner (480-350-8486)

**REVIEWED BY:** Steve Abrahamson, Planning & Zoning Coordinator (480-350-8359) *SEA*

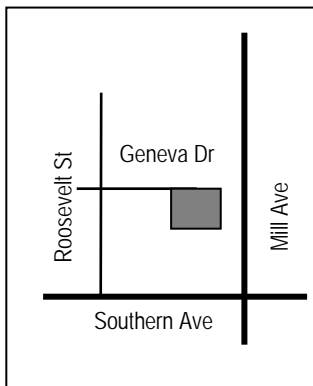
**LEGAL REVIEW BY:** N/A

**DEPARTMENT REVIEW BY:** N/A

**FISCAL NOTE:** N/A

**RECOMMENDATION:** N/A

**ADDITIONAL INFO:**



The applicant for Verizon Wireless is appealing the Hearing Officer Decision to deny a variance to waive the required mechanical equipment screen. Mr. Williams (Hearing Officer) denied PL090471/VAR09015 stating that the request did not meet the Zoning and Development Code criteria for approval of a variance.

The appellant contends that the equipment is not visible from the elevations based on line of sight and existing landscaping thus the equipment screen is not necessary. They have provided a letter of appeal explaining their objections to the variance denial and are appealing the Hearing Officer's decision.

**PAGES:**

1. List of Attachments
2. Comments; Conditions of Approval; History & Facts/Description; Zoning & Development Code Reference

**ATTACHMENTS:**

1. Location Map(s)
2. Aerial Photo(s)
3. Letter of Intent
4. Site plan
5. Staff Photograph(s)
- 6-7. January 5, 2010 Hearing Officer Minutes
8. Applicant's Letter of Appeal

**COMMENTS:**

The applicant for Verizon Wireless is appealing the Hearing Officer Decision to deny a variance to waive the required mechanical equipment screen. Mr. Williams (Hearing Officer) denied PL090471/VAR09015 stating that the request did not meet the Zoning and Development Code criteria for approval of a variance.

The appellant contends that the equipment is not visible from the elevations based on line of sight and existing landscaping thus the equipment screen is not necessary. They have provided a letter of appeal explaining their objections to the variance denial and are appealing the Hearing Officer's decision.

**Public Input**

Staff has not received any new public input for the appeal.

**Variance**

The Zoning and Development Code, section 4-405 requires all roof top mechanical equipment shall be concealed on all sides by elements that are an integral part of the building design and are equal to or greater in height than the mechanical equipment.

**SHOULD THE BOARD OF ADJUSTMENT ELECT TO TAKE AFFIRMATIVE ACTION  
ON THE REQUEST, THE FOLLOWING CONDITIONS OF APPROVAL SHOULD  
APPLY.**

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**CONDITION(S)  
OF APPROVAL:**

1. Modify the approved building permit to reflect the elimination of the mechanical screening.
2. Paint the mechanical units to complement the building color.

**HISTORY & FACTS:**

|                   |  |
|-------------------|--|
| October 8, 2009.  | Building Permit issued for tenant improvement, site work and gates for Verizon Wireless, 3207 South Wilson Street.   |
| October 16, 2009. | Courtesy Inspection performed by planning inspector for review of roof top equipment and screening. Screening only required on north, south, and east side. West side can be omitted. Existing roof HVAC on west portion of roof |
| January 5, 2010   | The Hearing Officer denied a request by Verizon Wireless to waive the required mechanical equipment screen.  |

**DESCRIPTION:**

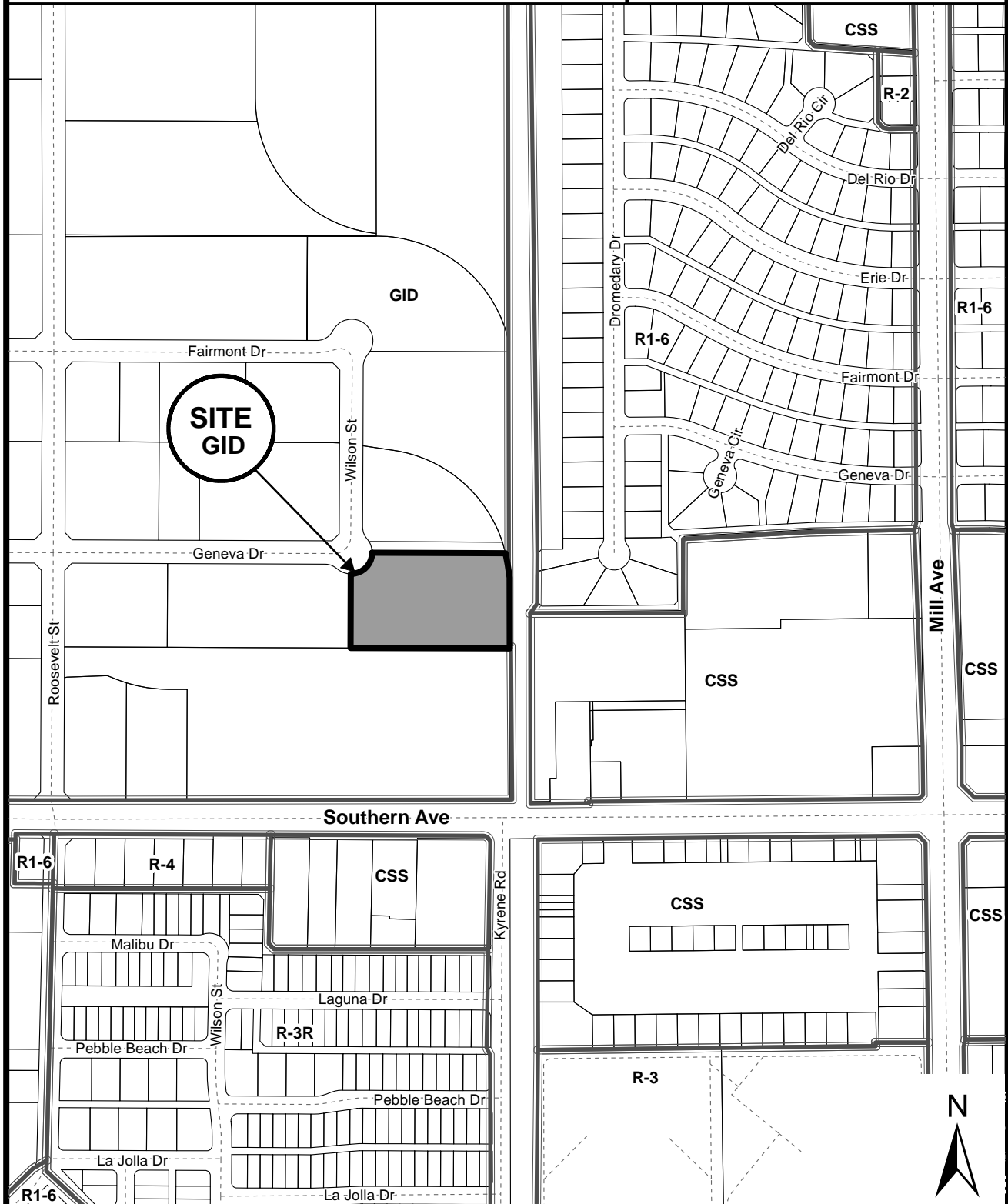
Owner – East Group Properties  
Applicant – Kellie Sweat/Willmeng Construction Inc.  
Existing Zoning – GID, General Industrial District

**ZONING AND  
DEVELOPMENT  
CODE REFERENCE:**

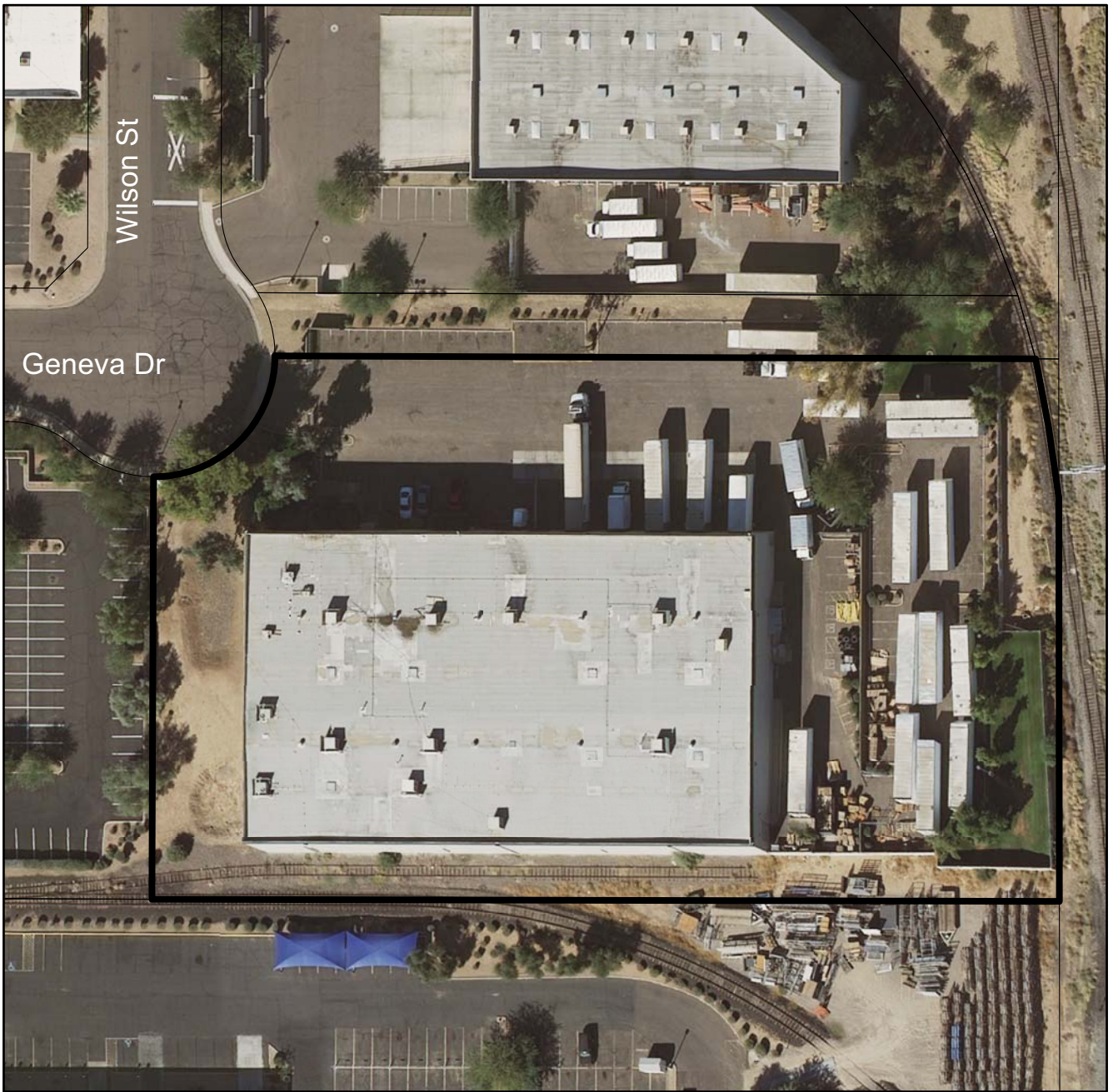
Part 4, Chapter 4, Section 4-405.  
Part 6, Chapter 3, Section 6-309

**VERIZON WIRELESS**

**PL090471**



**Location Map**



**VERIZON WIRELESS (PL090471)**



December 8, 2009

City of Tempe  
Development Services  
31 E. 5<sup>th</sup> St.  
Tempe, Arizona 85281

RE: Request for Variance – 3207 South Wilson Street, Tempe, Arizona

To Whom It May Concern:

EastGroup Properties, hereinafter referred to as ("Owner"), is hereby requesting a variance on the screening of new mechanical units placed on the roof at the above mentioned address where Verizon Wireless has recently moved in as a tenant. Based on line of site, no mechanical units are visible on the east and north ends of the building. Owner acknowledges and respectfully agrees that the new units are visible from the south side of the building and should be screened and will do so according to our permitted project. The current permitted plans (BP 090971) include a screen wall on north, east and south ends of the building. Field inspectors have advised west end is not necessary, as the units on the west end of the building are not new.

If approved Owner would screen the south end mechanical units and would not install the screen wall on east, north, or west ends of the building. Please feel free to contact me if there are any questions. We sincerely appreciate your consideration.

Respectfully,

A handwritten signature in black ink, appearing to read "Michael P. Sacco, III".

Michael P. Sacco, III  
Vice President







**VERIZON WIRELESS**

**3207 SOUTH WILSON STREET**

**PL090471**

**REAR OF BUSINESS – VIEW TO NORTH**





5. Request by the **GOLD EXCHANGE (PL090465)** (Camille Massih, applicant; Western American Investments, property owner) located at 1730 East Apache Boulevard, Suite No. 113 in the CSS, Commercial Shopping and Services District for:

**ZUP09172** Use permit to allow a resale retailer (precious metal buyer).

Mr. Camille Massih was present to represent this case.

Sherri Lesser, staff planner, gave an overview of this case and stated that public input had been received on this request. COA #7 addresses the security issues for this business.

In response to a question from Mr. Williams, Mr. Massih acknowledged that he understood the seven (7) conditions of approval and had no problem with them.

**DECISION:**

Mr. Williams approved PL090465/ZUP09172 subject to the following conditions:

1. The use permit is valid for The Gold Exchange and may be transferable to successors in interest though an administrative review with the Development Services Manager, or designee.
2. All permits and clearances required by the Building Safety Division for tenant improvements shall be obtained prior to the use permit becoming effective.
3. Any expansion or intensification of the use will require a new use permit.
4. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
5. All business signs shall receive a Sign Permit. Please contact Planning staff at 480-350-8331.
6. A sales tax license from the City of Tempe Tax and License Division shall be obtained prior to the use permit becoming effective.
7. The applicant shall work with the Tempe Police Department to create a Security Plan for the business. Contact the Crime Prevention Department at 480-858-6330.

6. Request by **VERIZON WIRELESS (PL090471)** (Kellie Sweat/Willmeng Construction Inc., applicant; East Group Properties, property owner) located at 3207 South Wilson Street in the GID, General Industrial District for:

**VAR09015** Variance to waive mechanical equipment screening on three (3) sides of the building.

Mr. Mike Sacco of East Group Properties was present to represent this case.

Sherri Lesser, staff planner, gave an overview of this case and stated that no additional public input had been received since the staff report had been issued. This request is located in an industrial area. Staff is recommending denial of this request as they do not support waiving of mechanical screening. Staff consistently requires screening of mechanical equipment to maintain the integrity of the building(s).

Mr. Williams asked if there was anything peculiar about this site that would support this request for a variance. Ms. Lesser responded that there was not.

Mr. Sacco noted that the staff summary report (Additional Information Section on the front page) indicated that the variance request was to waive the required screening of roof top equipment for three sides of the building

north, east and south but should read: north, east and west sides of the building. He explained that there were previously evaporative coolers located on this building which were 48 inches high which were replaced with fifteen (15) A/C units which were 36 inches high. He further stated that there is no visibility of these units on the north east or west sides line of sight and provided pictures that depicted the physical situation. He indicated that they were actually willing to screen the roof top units on the south side where they are slightly visible. Mr. Sacco stated that the cost of screening all four (4) sides of the building would be \$25,000. The south side will cost \$8,000 however they are trying to avoid the significant additional cost of \$17,000 as it is unnecessary.

Ms. Ladene Martin, Tempe resident, stated that she had lived in her home, located directly behind this building, for 35 years. She explained the auditorium effect that nearby buildings had on her property, and indicated her concern with the noise factor and also the material used for screening of the roof top equipment and whether it would sufficiently mitigate the noise produced from the A/C units.

Mr. Williams explained that typically these type of screens are constructed of wood or metal components and were architecturally integrated with the building. He asked staff if any particular details on the screening of this building existed. Ms. Lesser responded that the plans were currently under review by the Building Safety Department.

Ms. Kellie Sweat of Willmeng Construction Inc. described the design particulars of the screening that had been approved when the building permit was issued. She indicated that she could not comment on the sound/noise barrier that these screens would provide as she did not know. However, she stated that the A/C units that had been installed were a higher grade than what was typically installed for residential units and should be quieter. She stated that when on-site review of the building was conducted by the City, it was her understanding that it had been determined that no screening would be required at the west side as it had been 'grandfathered' in.

Mr. Williams questioned staff as to whether the City requirements on line of sight for screening included the noise factor in addition to the visual aspects. Ms. Lesser responded that while she could appreciate the applicant's point of view regarding the line of sight, typically the City requires mechanical screening to be the height of the units to adequately shield them from view. She explained that although the line of sight may be higher or lower, that is not taken that into consideration nor shielding/barrier for the noise factor.

Mr. Williams stated that while he appreciated the information presented by the applicant and property owner, and the financial aspects of providing the mechanical screening, financial hardship cannot be considered as a reason for approving the variance although it is recognized and appreciated that this is a significant cost to the property owner. He explained that other property owners are responsible to provide screening according to the code and that he did not see anything special about this property that would be applicable to special privileges or hardship. Regarding the noise factor, he agreed with the applicant that it was undetermined how much noise shielding the mechanical screening would provide but screening would be visually beneficial to the surrounding neighborhood and would provide some noise screening as well.

**DECISION:**

Mr. Williams denied PL090471/VAR09015.

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7. Request by **SAFeway #1535 (PL090477)** (Jeff Winter/Esencia LLC, applicant; Safeway Inc., property owner) located at 1515 East Elliot Road in the PCC-1, Planned Commercial Center Neighborhood District for:

**ZUP09178** Use permit to allow outdoor display.



January 18, 2010

City of Tempe  
Development Services  
31 E. 5<sup>th</sup> St.  
Tempe, AZ 85281

RE: Request for Appeal

To Whom It May Concern:

EastGroup Properties would like to appeal the Hearing Officer's decision to deny our variance request on the screening of new mechanical units placed on the roof at Verizon Wireless, 3207 S. Wilson Street. Based on line of site, no mechanical units are visible on the east and north ends of the building. Field inspectors have advised west end is not necessary, as the units on the west end of the building are not new. Furthermore, the mechanical units that we installed on the building replace taller, louder, less efficient units that were previously in place. EastGroup does acknowledge and respectfully agree that the units are visible from the south side of the property and should be screened and will do so according to our permitted project. During these difficult economic times it does not make sense for us to make an improvement of significant monetary cost for which nobody will realize a benefit.

If approved Eastgroup would screen the south end mechanical units and would not install the screen wall on east, north, or west ends of the building. Please feel free to contact me if there are any questions. We sincerely appreciate your consideration.

Respectfully,

A handwritten signature in black ink, appearing to read "Michael P. Sacco, III".

Michael P. Sacco, III  
Vice President