

ARROW → Albany Residents for Responsible Oversight of Wireless

July 26, 2011

RE: Opposing upgrade of cellular antennas at 423 San Pablo Ave. (Planning Application #11-004 for 7/26/11 Planning & Zoning Commission agenda)

To the Members of the Planning and Zoning Commission:

This letter is in reference to Planning Application #11-004. The applicant, Crown Castle, seeks to upgrade cellular antennas on the legally non-conforming monopole at 423 San Pablo Avenue.

We believe the Planning and Zoning Commission should deny this application based on:

- the requirements of Section 20.20.100 of the city's Planning and Zoning Code for wireless telecommunications facilities
- the City Council's denial of the same application on December 13, 2010 based on the determination that the application is not for routine maintenance but an upgrade of a legally non-conforming cell tower.

The monopole is legally non-conforming because it exceeds the height limit for the zoning district and does not meet the code's requirements for aesthetic screening of cellular antenna sites. In addition, the pole does not meet the code's intent of a minimum setback of 50' from a residential use (it is located less than 15' from an apartment building).

Crown Castle's requested upgrade would expand the number of Verizon antennas from 4 to 6 (although the new installation would be designed to look like only 4 antennas through the use of antenna housings that appear single but contain two antennas). The new antennas would provide an entirely new service, long-term evolution (LTE), as shown in the coverage maps accompanying the application. One seemingly minor detail of the application that makes clear that the applicant is seeking an upgrade is the proposal to add 8 new coaxial cables to serve the additional antennas. This is clearly not a "like for like" replacement of antennas, as asserted by the applicant in correspondence in the packet for tonight's meeting.

Under the wireless telecommunications portion of the city code, only routine maintenance is allowable on a legally non-conforming cell tower that was in use at the time the ordinance was passed, as is this case with this monopole. Modifications and upgrades are not permitted.

Verizon is entitled to provide its new LTE service to Albany but is not entitled to locate the new LTE antennas on this legally non-conforming (and aesthetically offensive) monopole. The antennas must be located at a site that conforms to code requirements.

As the staff report for this application notes, and as the City Council made clear when it voted to deny this application last December, the only way an applicant could seek an exemption from the wireless ordinance's prohibition of an upgrade at this site would be to demonstrate, through a thorough, factual analysis of alternative solutions, that there are no other feasible sites from which cellular service could be provided.

The applicant has not preformed this required study. The assertion (in the applicant's correspondence that is part of tonight's packet) that the applicant has determined that other nearby existing Verizon could not house the new antennas is not a sufficient analysis of alternative sites. As laid out in detail in Section 20.20.100F4.b.(2) of the wireless telecommunications portion of the city's planning and zoning code, an alternatives analysis must, among other things:

Identify and indicate on a map, at a minimum, two (2) viable technically feasible, and potentially environmentally equivalent or superior alternative locations outside the prohibited and restricted areas which could eliminate or substantially reduce the need to locate in a restricted area. If there are fewer than two such alternative locations, the applicant must provide evidence establishing that fact. The map shall also identify all locations where an unimpaired signal can be received to eliminate or substantially reduce the need for such a location..."

and

"Document good faith and diligent attempts to rent, lease, purchase or otherwise obtain the use of at least two (2) of the viable, technically feasible alternative sites which may be environmentally equivalent or superior to the proposed project site."

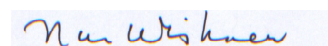
In the words of one experienced wireless consultant: "there is *always* an alternative location."

The roof of El Cerrito Plaza, for example, is an appropriate commercial site that is very close to and appears at least equivalent if not higher in elevation than the location of this tower, and hosts other cellular antennas. This is only one example of a reasonable alternative site that should have been examined in a thorough alternatives analysis. The Plaza site would be especially appropriate to consider because the 423 San Pablo tower, although located in Albany, is extremely close to the El Cerrito border and at least some of the coverage from the antennas on this tower is clearly directed into El Cerrito. Albany's wireless telecommunications ordinance requires that facilities located in Albany be for the purpose of serving Albany residents.

Why would Crown Castle refuse to do the alternatives analysis that the city code requires? One logical answer is that Crown Castle has no interest in performing an analysis that would show that its current tenant, Verizon, could feasibly locate the new antennas at other sites not owned by Crown Castle.

I regret that I cannot attend tonight's meeting. Please contact me if you have questions.

On behalf of ARROW:



Nan Wishner

From: [Francis Cebulski](#)
To: [Leo Panian](#); [Phillip Moss](#); [David Arkin](#); [Peter Maass](#); [Stacy Eisenmann](#)
Cc: [Jeff Bond](#)
Subject: Re: Crown Castle Application to Upgrade Antennas at 423 San Pablo Avenue Cell Tower
Date: Monday, July 25, 2011 1:27:43 PM

Dear Planning and Zoning Commissioners:

I am writing regarding item 6A on your July 26, 2011 agenda, to urge you to deny Planning Application 11-004, a request by Crown Castle to upgrade antennas on the non-conforming monopole at 423 San Pablo Avenue for the following reasons:

- This application seeks to upgrade Verizon's installation on this pole from 4 to 6 antennas (using two devices that appear to be a single device but contain "two antennas in one"). This upgrade would provide an entirely new service, Long Term Evolution (LTE), as indicated in the coverage maps accompanying the application. Although Crown Castle states that this is a "like for like" replacement of antennas, it is, in fact, a significant upgrade that would extend for years or even decades, the life of this non-conforming monopole.
- This application is identical to the application previously denied by the City Council at its appeal hearing in December 2010. The Council determined at that time that the proposed upgrade and modification of the Verizon antennas is not "routine maintenance," which would be the only alteration that the city's wireless telecommunications ordinance allows on this monopole, which is non-conforming because it exceeds the height limit for this zoning district.
- Under the city's wireless ordinance, the only way Crown Castle/Verizon could obtain a permit to upgrade the antennas on this monopole would be, as the staff report points out, to prove, by means of a detailed, complete, and factual alternatives analysis, that there is no other feasible location from which Verizon could provide service to residents of Albany.
- Crown Castle's correspondence indicates that the company has refused to prepare the required alternatives analysis, insisting that the application is not an upgrade despite the City Council's previous determination that it is.
- In the absence of the required analysis, the Commission has no choice but to deny the application. Verizon is entitled to provide its new LTE service to Albany residents but is not entitled to upgrade its facilities to provide that service on this particular non-conforming pole.
- Other wireless carriers have antennas on the roof of El Cerrito Plaza a few hundred feet from this tower. This is only one reasonable alternative site that should have been examined in a viable alternatives analysis, particularly because at least a portion of the coverage from this tower, which is at the Albany-El Cerrito border, is clearly aimed at El Cerrito, and our ordinance requires that facilities located in Albany be for the purpose of serving Albany residents.
- It is worth noting that Crown Castle, which owns the monopole, is the applicant for this permit and logically has little or no interest in performing an analysis that would show viable alternative sites not owned by Crown Castle where the Verizon antennas could be located in compliance with the requirements of our ordinance.
- This tower is visibly leaning; its out of plumb status raises safety questions that do not appear to be addressed in the engineering reports provided by Crown Castle in response to the city's inquiries regarding the tower's structural integrity and safety

Thank you for upholding the provisions of our wireless ordinance, which are intended to mitigate the visual, aesthetic, and public safety impacts of towers such as this one. My wife and I are longtime Albany residents and homeowners, having lived in Albany since 1980, where all our children attended schools.

Sincerely,

Frank Cebulski

627 Talbot Avenue

Albany, CA 94706-1307

510.526.6061 home

510.334.3195 mobile

Email: cebulski@pacbell.net

From: mpbridgeway@comcast.net
To: [Jeff Bond](#)
Cc: [Chris Hunter](#)
Subject: Verizon Tower at 423 San Pablo Ave
Date: Friday, July 22, 2011 5:50:14 PM

Hi Jeff,

We received the notice regarding the cellular telephone tower proposed changes. We can understand this construction companies and Verizons need to upgrade the tower. Still, we would like to understand how Crown Castle, LLC plans to access the tower for construction and maintenance of the existing cellphone tower adjacent to our parking lot and building? Will their construction crew park their vehicles on the street? How will they manage their time and equipment? Will their work cause egress or a disruption to our business and privacy problems for our patient care needs?

We may have trouble attending this meeting Tues evening.

Patricia & Michael Doucet

MP Bridgeway Properties

From: efields@berkeley.edu
To: [Leo Panian](#); [Phillip Moss](#); [David Arkin](#); [Peter Maass](#); [Stacy Eisenmann](#)
Cc: [Jeff Bond](#)
Subject: 423 San Pablo, #11-004 Crown Castle for Verizon Wireless
Date: Monday, July 25, 2011 9:06:40 PM
Attachments: [423SPA-Review425PM.doc](#)
[423SPA-Letter-11-09-10.doc](#)
[DBXLH-6565A-VTM.pdf](#)

Members of the Planning and Zoning Commission,

I am attaching letters written to the City Council at the end of 2010 for your consideration in regards to this item on tomorrow night's agenda.

Thank you,

Ed Fields

November 9, 2010

To: Albany City Council

Re: Council Review of Planning Application #09-031

Crown Castle/Verizon-423 San Pablo Avenue

From: Ed Fields and Nan Wishner

The new proposal by Verizon/Crown Castle to replace the 4 existing antennas on the monopole at 423 San Pablo avenue with 4 new antennas must still be considered an upgrade, as described in Verizon/Crown Castle's original application for installation of six antennas: two for cellular (800 Mhz) coverage, two for PCS (1,900 MHz) coverage, and two for new "long-term evolution" (LTE) service. [From 6-22-09 Application for Conditional Use Permit: "Verizon Wireless proposes to install (2) additional antennas mounted to (E) monopole. No change to azimuths. Also add (8) new coax."]

Two of the currently proposed antennas are the same model as proposed previously, to provide new LTE data communications services. The other two newly proposed antennas are dual band antennas, and each antenna will replace the function of a pair of existing antennas—to provide cellular and PCS coverage. The manufacturer describes these dual band antennas as "Two DualPol antennas under one radome."

Each of the dual band antennas requires 4 cables, whereas the two currently installed antennas that each dual band antenna would replace each require only two cables. All the antennas are "dual polarized," but these new two are dual band, and each band is dual polarized. All of these details clearly indicate that the "dual band" antennas are two antennas in one. The manufacturer emphasizes on one of its publicity sheets that these dual band antennas are, among other things, designed "for ease in obtaining zoning approvals."

In other words, under the current proposal, six antennas would still be installed where there are now four; Verizon has simply revised the antenna models so that what would appear to be two new antennas would actually contain four antennas.

The nonconforming monopole may still have a similar appearance with the four new Verizon antenna radomes, but the effect will be to extend the life of a nonconforming structure by providing new antennas for a new technology on a new frequency band, in addition to the existing technologies and frequency bands. This is essentially a 50% increase in capability.

Now that Crown Castle has been advised that only maintenance is allowed on a nonconforming facility, they are referring to what they previously described as an upgrade as "routine maintenance."

The following are all quotes from the information provided by Crown Castle:

"The purpose of these 'antennas' will be to enhance the overall Verizon network."

"The proposed equipment modification will be located on an (e) Cellular facility. Therefore, the 'usage' is allowed, as we are merely 'upgrading' the facility to eliminate the need for an additional cell site in the area."

"This is a request to upgrade the existing facility, installation of 'LTE' (long term evolution) which will support the data services on your Verizon Wireless phone."

"We did not seek alternatives, as we are upgrading our existing network at this location, the purpose is to upgrade the facility with LTE, which is a direction all our facilities are moving towards."

"Alternative locations are not feasible, as we are 'upgrading' this existing facilities, [sic] not expanding or increasing the number of cell sites, merely enhancing our network."

"This is technological advancement with each individual facility, this is not a 'new build' site, we are enhancing the "data" capability services for this location."

Note that basis of our concern is not a question of Verizon's right to upgrade its facilities, enhance its network, or provide new technologies or services in Albany, but rather that this particular existing facility does not conform with our Zoning Ordinance and does not allow those upgrades.

A court decision, T-Mobile vs. Anacortes, has been mentioned as applicable to the 423 San Pablo Avenue situation. However, that decision refers to closing a significant gap in coverage and the need to rebut the provider's alternatives analysis by showing "the existence of some potentially available and technologically feasible alternative to the proposed location." In contrast, Crown Castle has done no alternatives analysis and has not alleged any significant gap in coverage. We have stated in previous correspondence regarding this application that the facility is legally nonconforming, and cannot be upgraded due to the following issues of nonconformance with our current Zoning Code, all of which the T-Mobile vs. Anacortes decision states are "legitimate concerns for a locality": "height of tower," (the existing tower is 17 feet higher than the 48 foot height allowed by the current ordinance), "proximity to residential structures," and "aesthetic concerns."

Also mentioned in our previous correspondence regarding this application, Albany's Wireless Telecommunications Facility ordinance clearly states that only "routine maintenance" is allowed on legal nonconforming structures (Section I3, "Existing Uses"). Our ordinance makes clear in Section F1 that the following activities are not routine maintenance but "upgrades" or "modifications" (and are subject to major or minor use permits, design review, and a building permit): "...any change in the specifications or conditions stipulated in the approved permit, including but not limited to, changes in power input or output, number of antennas, antenna type or model, number of channels per antenna above the maximum specified in a use permit, repositioning of antennas, increase in proposed dimensions of tower or support structure, or any other facility upgrades." This application entails changes in power output, increase in number of antennas, and changes in antenna type and model.

December 7, 2010

From Ed Fields

Mayor and Members of the City Council,

Here are some thoughts and questions I would like you to consider in your review of Planning Application #09-031 for wireless communication antennas at 423 San Pablo Avenue.

Is the Wireless Communications Facility at 423 San Pablo Avenue nonconforming according to Albany Municipal Code Chapter XX Planning and Zoning?

It is 17 feet taller than the 48-foot height limit for wireless towers in the SPC district, and it does not meet the aesthetic and screening requirements. It is also located within ten feet of an apartment building. See staff reports dated April 27 and October 26, 2010.

Section 20.20.100, I. 3. of the Planning and Zoning Code states that only routine maintenance is allowed on nonconforming uses. Section 20.20.100, F.1. lists "changes in power input or output, number of antennas, antenna type or model, number of channels per antenna above the maximum specified in a use permit" among others, as modifications or upgrades requiring a use permit.

If it is nonconforming, then upgrades or enlargement of use are not permitted. Is this project an upgrade?

In their application for a Conditional Use Permit and in their letters, Crown Castle consistently refers to the project as an "upgrade." In addition to its existing services, as the result of this project, Verizon would provide a new wireless LTE service using new antennas on an additional new (700 Megahertz) frequency band, with new channels in addition to the existing ones. No Verizon cell phone on the market before December 2010 has the capability to utilize this LTE service.

The City cannot regulate the technologies which Verizon can use, but can enforce the limitation on upgrading and expansion of use of nonconforming facilities. Verizon is free to request to add LTE antennas elsewhere in the City, in conformance with our current zoning code.

Will there be new antennas?

Verizon currently operates 2 Cell and 2 PCS antennas on this monopole. The application requests installation of 2 new Cell, 2 new PCS, and 2 LTE antennas. The Cell and PCS antennas would be combined in a "dual band" antenna that is under a single housing. See attached Andrew product specifications.

What additional upgrades are needed to serve the new antennas? Are additional cables needed?

Yes. At least four new coaxial cables would be added. See the original application and the revised plans dated 10/7/10 which request eight additional coaxial cables.

Each of the four existing antennas requires 2 cables for a total of 8. Each of the two proposed dual band antennas which would replace the four existing antennas requires 4 cables, (2 for each of the antennas within the housing). These are equivalent to the 8 cables required to provide the existing services.

Additionally, the two new LTE antennas each require 2 cables. The net result would be (six) antennas which require 12 cables in total.

This proposal for additional cables makes it clear that there would be more antennas installed and more services provided than there are currently.

Is additional ground-mounted equipment needed? Yes. See Kramer report.

Will there be additional output power? Yes, one LTE channel at 400 watts (for each sector). See Hammett & Edison report.

Can the City regulate the location/placement of wireless antennas?

The Telecommunications Act gives local government authority "over decisions regarding the placement, construction, and modification of personal wireless service facilities." Section 332(c)(7).

"Nothing in the Telecommunications Act forbids local authorities from applying general and nondiscriminatory standards derived from their zoning codes."

[*Aegerter v. City of Delafield*, 174 F.3d 886, 891 \(7th Cir.1999\)](#)

What does the Telecommunications Act of 1996 prohibit the City from doing?

Unreasonably discriminating among providers.

Prohibiting or having the effect of prohibiting the provision of personal wireless services.

Regulating on the basis of environmental effects to the extent that facilities comply with FCC regulations.

Denying the application at 423 San Pablo Avenue would not discriminate; the prohibition against upgrades of nonconforming facilities applies to all providers, as does the right to apply for new antennas at any site that conforms with our ordinance's requirements. Denying the antennas on this monopole would not prohibit Verizon from providing wireless service; they operate another site in the city and, as noted above, are free to apply to locate these new antennas in conformance with our ordinance. For this application, there is no issue regarding regulating environmental effects beyond what the FCC regulations require.

What procedures must be followed under the Telecom Act?

Local government shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time.

Decision to deny a request to place, construct, or modify personal wireless service facilities shall be in writing

[A]nd supported by substantial evidence contained in a written record.

Regarding the substantial evidence requirement, the court in *U.S. Cellular v. City of Broken Arrow, Oklahoma*, ruled that the court's only concern is (emphasis added) "whether the [local authority's] decision, **as guided by local law**, is supported by substantial evidence." In other words, the local authority must document in writing how its decision conforms to its local laws.

Crown Castle/Verizon has not provided an alternatives analysis as requested by the City's planning department on July 21, 2009 and as required by our ordinance.

"For a telecommunications provider to argue that a permit denial is impermissible because there are no alternative sites, it must develop a record demonstrating that it has made a full effort to evaluate the other available alternatives and that the alternatives are not feasible to serve its customers." ([Todd, 244 F.3d at 63](#))