

**CITY OF ALBANY
PLANNING AND ZONING AGENDA
STAFF REPORT**

Agenda date: July 26, 2011

Prepared by: JB

ITEM/ **6a**
SUBJECT: **Planning Application #11-004. Conditional Use Permit. Design Review.** The applicant requests City approval to allow the removal of the four existing wireless communication antennas and replacement with four new antennas on an existing 65-foot high monopole. The monopole is an existing legal non-conforming facility pursuant to the Wireless Communication Facility provisions of the City's Planning and Zoning Code.

SITE: **Wireless Antenna at 423 San Pablo**

APPLICANT/
OWNER: **Crown Castle for Verizon Wireless**

ZONING: **SPC (San Pablo Commercial)**
 Residential Commercial Transition District Overlay

STAFF RECOMMENDATION

Staff recommends that the Planning and Zoning Commission deny the application unless substantial evidence is submitted for the record to support the finding that strict compliance with the Planning and Zoning Code would not provide for adequate radio-frequency signal reception and that no other alternative solutions that would meet the development standards are feasible.

BACKGROUND/PROJECT DESCRIPTION

The applicant requests City approval to allow the removal of the existing wireless communication antennas and replacement with four new antennas on an existing 65-foot high monopole. The existing pole is located at the rear (east) side of the property. Also currently installed on the monopole are antennas serving Metro PCS.

The existing monopole is 65-feet in height. Under current codes, the maximum height of a monopole is 48 feet (ten feet greater than maximum building height allowed in the zoning district). Thus, the monopole is an existing legal non-conforming facility pursuant to the Wireless Communication Facility provisions of the City's Planning and Zoning Code. Among the objectives of the City's Planning and Zoning Code is not to extend the life of legal non-conforming structures.

The existing monopole features two sets of antennas. The first set, located at 45 feet above grade, serves Metro PCS. The second set, at 59 feet, serve the applicant. The City's Code requires that new wireless communication facilities shall be co-located with existing facilities

and with other planned new facilities whenever feasible and aesthetically desirable to minimize overall visual impact. In this situation, due to the Metro PCS antennas, the facility will remain in operation regardless of the outcome of the Verizon application.

An application for a conditional use permit was originally submitted on June 22, 2009 and reviewed by the Commission on April 27, 2010. At that time, the proposal was to increase the number of antenna enclosures from four to six. The Commission expressed concern that the proposed project was an expansion of a legal non-conforming use, and continued the item to its May 25, 2010 in order to allow time for the applicant to provide additional information.

The May 25, 2010 hearing date was continued to June 22, 2010, and then subsequently to a future undetermined date because the information requested by the Commission had not been received. On September 24, 2010, the City's building inspector observed new antennas being installed without City approval, and issued a stop work order.

On October 14, 2010, the applicant submitted revised plans that reflect the installation of four antenna enclosures rather than six. On October 26, 2010, the Planning and Zoning Commission reviewed the revised application. The Commission noted that the proposal was similar to maintenance and did not require formal Commission action, and thus voted 3-0 to authorize staff to approve the installation of the antennas as a ministerial action. In the course of the meeting, the applicant withdrew the application for the use permit.

On November 1, 2010, Councilmember Atkinson made a request that the City Council review the Commission's decision on this matter.

The review was conducted on December 13, 2010, and the City Council voted unanimously to approve a determination that the proposed project was not routine maintenance but instead an upgrade to a nonconforming facility. The council directed that the matter be returned to the Planning & Zoning Commission and staff for a Conditional Use Permit including a full analysis of whether alternative solutions are feasible if a new application is filed.

On January 20, 2011, the applicant submitted a new application (see attachments). This appears to be the same plans evaluated by the City in 2010.

ENVIRONMENTAL ANALYSIS

Staff has determined that the proposed project is categorically exempt from the requirements of CEQA per Section 15301, "Existing Facilities" of the CEQA Guidelines, which exempts alterations to existing facilities.

DISCUSSION OF KEY ISSUES

Pursuant to the Telecommunications Act of 1996, the Federal Communications Commission (FCC) is the primary regulator of wireless communications, including the design and operation of equipment. In addition, the FCC has adopted radio frequency exposure emissions regulations. Because of Federal law, the City is not allowed to regulate wireless facilities based on radio frequency emissions. The Telecommunications Act of 1996, however, preserves the City's zoning powers with respect to the local regulation of the placement of wireless

telecommunications facilities, subject to certain limitations (Excerpt from the Telecommunications Act is attached).

In 2005, the City adopted Wireless Communications Facilities (Planning and Zoning Code Section 20.20.100 attached). The city's regulations are focused on the location and design of antennas. The key features of the regulations include:

- Allowing wireless facilities in the SPC (San Pablo Avenue), SC (Solano Commercial), and CMX (Commercial Mixed-Use) zoning districts.
- Establishing development standards, operation and maintenance standards, and specifying application submittal requirements.
- Requiring a maintenance and facility removal agreement.
- Allowing the City to conduct studies to ensure compliance with City and FCC standards.

Overall, the City must balance both the provisions of the Municipal Code and the provisions of Federal law. The implementation of local government ordinances is becoming increasingly contentious and litigation between carriers and municipalities has occurred in a number of communities throughout the country. In particular, the City should take care to make sure that its regulations do not discriminate between types of wireless communications technology or carriers and that significant gaps in coverage do not occur because of City actions.

Zoning District

The existing pole is located within ten feet of an apartment building. Under current code, in the San Pablo Commercial District, any wireless communication facility shall be set back from a residential district by fifty feet. This particular block of San Pablo, however, is zoned SPC all the way to Kains Avenue. Thus, while the apartment building is a legal use in a SPC district, it is not specifically located within a residential district. The Residential-Commercial Transition Overlay designation provides general guidance on mix of uses in the district related to primarily to street frontage.

Screening

At the time of its installation, no effort was made to screen the antennas. Under current codes, a new facility could be required to be screened or to incorporate alternative designs such as flush mounting on existing buildings. In a completely new facility, more subtle designs with screening or alternative approaches such as flush mounting on existing buildings would be preferred. Given the size and location of the monopole, additional screening would not appreciably improve the appearance, and could be counter-productive by making the tower more visible. Installations that attempt to mimic trees or other natural features are rarely effective aesthetically, particular in urban settings such as the case with this application

Exceptions to Height Requirements

In filing its application for a conditional use permit, Section 20.20.100F5.a.(3) allows Crown Castle to seek an exception to the height limitation that makes the wireless facility nonconforming. This section states:

“...Finding for an exception to the Development Standards: Strict compliance would not provide for adequate radio frequency signal reception and that no other alternative solutions which would meet the Development Standards are feasible.”

The applicant would have the burden of proving that they grounds for an exception.

This process would require a study to evaluate whether alternatives exist to the upgrade of the nonconforming facility that would allow Verizon to obtain adequate radio frequency signal reception.

Attached is an exchange of correspondence between the applicant and the City regarding the completeness of the application. The basis of the staff recommendation is that there is not yet sufficient information in the record to be able to evaluate or recommend approval of an exception.

Appeals:

The Albany Municipal Code provides that any action of the Planning and Zoning Commission may be appealed to the City Council if such appeal is filed within 14 days of the date of action. Appeals may be filed in the Community Development Department by completing the required form and paying the required fee.

Attachments:

1. Analysis of Zoning Requirements
2. Excerpt from Federal Telecommunications Act
3. Excerpts from Planning and Zoning Code
4. Application, Correspondence & Plans

ATTACHMENT 1 - ANALYSIS OF COMPLIANCE WITH ZONING REQUIREMENTS

20.12 Zoning Districts and Permitted Uses

General Plan: Commercial
Zoning: SPC (San Pablo Commercial)
Residential-Commercial Transition Overlay

20.16 Land Use Classifications

Wireless Communication

Surrounding	North - Commercial	East - Residential
Property Use	South - Commercial	West - Commercial

20.20.080 Secondary Residential Units.

Not applicable.

20.24.020 Table of Site Regulations by District.

Not applicable.

20.24.030 Overlay District Regulations.

See Discussion.

20.24.040 Hillside Residential Regulations.

Not applicable.

20.24.050 Floor-Area-Ratio.

Not applicable.

20.24.060 Setback Areas, Encroachments.

Not applicable.

20.24.070 Setbacks with Daylight Planes.

Not applicable.

20.24.080 Height Limits and Exceptions.

See Discussion of Key Issues.

20.24.100 Distances between Structures.

Not applicable.

20.24.110 Fences, Landscaping, Screening.

Not applicable.

20.24.130 Accessory Buildings.

Not applicable.

20.28 Off-Street Parking Requirement.

Not applicable.

20.40 Housing Provisions

Not applicable.

20.44 Non-conforming Uses, Structures and Lot

Not applicable.

20.48 Removal of Trees

Not applicable.

20.52 Flood Damage Prevention Regulations

Not applicable.

20.58 Art in Public Places Program

Project may be subject to Art in Public Places Program requirements. Specific details will be required at time of application for a building permit.

20.100.030 Use Permits.

Not applicable.

20.100.040 Variances.

Not applicable.

20.100.010 Common Permit Procedures.

Public notice of this application was provided on July 15, 2011 in the form of mailed notice to property owners and occupants within a 300-foot radius, and posted in three locations.

20.100.050 Design Review.

See Discussion of Key Issues.