

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

Agenda date: May 8, 2012
Prepared by: ALH

ITEM: 6A

SUBJECT: PA08-038: 1035 San Pablo Ave. AT&T Roof Mounted Antennas Conditional Use Permit & Design Review

Contd. from the April 24, 2012 Commission hearing to May 8, 2012

The applicant is seeking Design Review and Conditional Use Permit approval to allow nine (9) new panel antennas on an existing office building at 1035 San Pablo Ave. The equipment will be housed in new fiberglass enclosures behind the existing parapet wall. The south facing enclosure is approximately 55 sq. ft. and will house six (6) antennas. The north facing enclosure is 20 sq. ft. and will house three (3) antennas. Both enclosures are proposed to shield the antennas from public view. Related equipment is proposed to remain located on the center of the roof, though some equipment has been reduced in size. The application was most recently presented to the Planning & Zoning Commission for action on April 24, 2012 and was continued to May 8, 2012.

SITE: 1035 San Pablo Ave.

APPLICANT: Gordon Bell on behalf of AT&T Wireless

PROPERTY OWNER: James & Barbara Kelly

ZONING: SPC (San Pablo Commercial)

STAFF RECOMMENDATION

Staff recommends that the Planning & Zoning Commission review the draft findings for denial and move to deny the application request for PA 08-038 AT&T Wireless 1035 San Pablo Ave.

RECENT REVIEW

The Planning & Zoning Commission most recently reviewed this application request at the April 24, 2012 hearing. At that time, the Commission continued this item to a date certain pending staff preparation of draft findings denial of denial. The draft resolution with findings of denial is included as Attachment 3 to the staff report.

ENVIRONMENTAL ANALYSIS

Staff recommends that the proposed project is exempt from CEQA pursuant to CEQA Guidelines Section 15270(a), which exempts projects that are denied by the public agency.

SITE LOCATION



Figure 1. Site Location

FCC SHOTCLOCK REQUIREMENTS

In 2009, the Federal Communications Commission (FCC) established “Shot Clock” provisions for municipal land use planning authorities to insure timely processing of wireless applications. This decision was the result of CTIA-The Wireless Association, a trade organization representing the wireless industry, petitioning the FCC to limit local review length for application processing. The FCC’s ruling has resulted in a 90 day review limit for collocation applications and 150 day review for siting applications other than collocations. The ruling was recently challenged and upheld in the 5th Circuit Court of Appeals in the case of City of Arlington, Texas vs. The FCC.

This application request was reinitiated on October 21, 2011 when a revised application request was submitted to the City of Albany. This application was then deemed complete and letter of completeness was sent to the applicant on December 15, 2011. This application request was presented as a study session item less than one month later on January 10, 2012. A hearing recommending action was held on February 28, 2012 and the item was continued to a date

uncertain by the Planning & Zoning Commission. Modifications to the application have resulted in resetting the time frame provided for City review.

FEDERAL REQUIREMENTS

The Federal Telecommunications Act of 1996

Section 704 “Facilities Siting, Radio Frequency Emission Standards” (a) National Wireless Telecommunications Siting Policy- Section 332 (c) (47 U.S.C. 332(c)) (7) (B) Title VII, Section 704 of the Federal Telecommunications Act of 1996 precludes municipalities from making findings of denial based on radio frequency emissions or health concerns. Provision iv specifically prevents a jurisdiction from denying the application request as a result of radio frequency or health concerns. Wireless telecommunications providers and the City are required to adhere to accepted radiofrequency standards as established the Federal Communications Commission (FCC).

Public Comment

All previously received public comments from 2010 to the present are included as an attachment to the report. Additionally, other correspondence was received for the modified application and is included as an attachment to this report. (See Attachments 11 a-d)

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 Compliance
2. Findings of Denial
3. Draft Resolution Commission Resolution containing Findings of Denial
4. Alternatives Analysis Matrix
5. Alternatives Analysis Report
6. Propagation Maps (including maps for the alternatives analysis)
7. EMF Report
8. Photo Simulations
9. Revised Project Plans
10. Report From Jonathan Kramer
11. Recent & Older Correspondence
 - a. Correspondence October 2010
 - b. Correspondence ARROW dated 10/26/10
 - c. All Correspondence received for the 1/10/12 P&Z study session
 - d. All Correspondence received 2/24/12
 - e. All Correspondence received for the 2/28/12 P&Z hearing and afterwards
12. Meeting Minutes Excerpt from 10/26/10 P&Z hearing

13. Letter from AT&T Legal Counsel received 4/18/12
14. Meeting Minute Excerpt from 1/10/12 P&Z Hearing
15. Letter from AT&T's Legal Counsel Received May 4, 2012

ATTACHMENT 1 - ANALYSIS OF COMPLIANCE WITH ZONING REQUIREMENTS

20.12 Zoning Districts and Permitted Uses

General Plan: Commercial
Zoning: SPC (San Pablo Commercial)

20.16 Land Use Classifications

Office

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.

Not applicable.

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.

See Discussion of Key Issues.

20.24.080 Height Limits and Exceptions.

See Draft Findings

20.24.100 Distances between Structures.

Not applicable.

20.24.110 Fences, Landscaping, Screening.

See Draft Findings.

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

Not applicable.

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 April 13, 2012 in the form of mailed notice to property owners and occupants within a 300-foot radius, and posted in three locations. The Planning & Zoning Commission continued this item to a date certain of May 8, 2012 at its April 24, 2012 hearing.

20.100.050 Design Review.

See Discussion of Key Issues.

ATTACHMENT 2 - DRAFT FINDINGS OF DENIAL

Findings for Design Review Denial (Per section 20.100.050.E of the AMC)

<i>Required Finding</i>	<i>Explanation</i>
<p>1. <i>The project conforms to the General Plan, any applicable specific plan, applicable design guidelines adopted by the City of Albany, and all applicable provisions of this Chapter.</i></p>	<p>The Commission is unable to make the required findings for approval because the project does not comply with Section 20.24.080 (B) where roof coverage cannot exceed 10%. Currently, the roof-top coverage exceeds the threshold and is 14.5%. This coverage includes existing Sprint equipment facilities and the roof-top penthouse.</p>
<p>2. <i>Approval of project design is consistent with the purpose and intent of this section, which states "designs of projects...will result in improvements that are visually and functionally appropriate to their site conditions and harmonious with their surroundings, including natural landforms and vegetation. Additional purposes of design review include (but are not limited to): that retention and maintenance of existing buildings and landscape features are considered; and that site access and vehicular parking are sufficient."</i></p>	<p>The Commission is unable to make the required findings for approval because the project as proposed would make the legal non-conforming subject site further non-conforming by increasing the roof coverage area. Additionally, the existing building height is legal non-conforming and is 40 ft. in height.</p>
<p>3. <i>Approval of the project is in the interest of public health, safety and general welfare.</i></p>	<p>The Commission is unable to make the required findings for approval because the Zoning Code is adopted in order to protect and promote public health, safety, peace, comfort, convenience, prosperity, and general welfare. The project as it is proposed fails to comply with Section 20.24.080 (B) of the Albany Municipal Code. By failing to comply with provisions contained in the Zoning Code, the project as proposed does not protect the public health, safety and general welfare of the community.</p>
<p>4. <i>The project is in substantial compliance with applicable general and specific Standards for Review stated in Subsection 20.100.050.D.</i></p>	<p>The Commission is unable to make the required findings for approval because the proposed project is inconsistent with provision (j) "Retention and Maintenance of Buildings." The project design fails to improve the existing building and would make the building further non-compliant by increasing roof coverage.</p>

Findings for Conditional Use Permit Denial as required by Section 20.100.030.D:

Required Finding	Explanation
<p>1. <i>The size, location and intensity of the project are desirable and compatible with the neighborhood and community.</i></p>	<p>The Commission is unable to make the required findings for approval because the size of the project as proposed exceeds the roof-top coverage requirements contained in Section 20.24.080 (B). The project location is proposed to be a legal non-conforming building and roof-top. The intensity of roof coverage would be further increased if the use were to be approved and the project constructed. Due to these inconsistencies, the project is not compatible with the surrounding neighborhood and community.</p>
<p>2. <i>The project will not be detrimental to the health, safety, convenience or general welfare of people residing or working in the vicinity, or injurious to property, improvements or potential development in the vicinity, with respect to aspects including but not limited to the following:</i></p> <ul style="list-style-type: none"> a. <i>The nature of the proposed site, including its size and shape, and the proposed size, shape and arrangement of structures</i> b. <i>The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading.</i> c. <i>The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor.</i> d. <i>Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs.</i> 	<ul style="list-style-type: none"> a. The Commission is unable to make the required findings for approval because the proposed equipment and arrangement of structures would increase the roof-top coverage, which is already fails to comply with provision 20.24.080 (B) where there is a maximum of 10% roof-top coverage. b. N/A c. N/A d. N/A
<p>3. <i>That such use or feature as proposed will comply with the applicable provisions of this Chapter and will be consistent with the policies and standards of the General Plan.</i></p>	<p>The Commission is unable to make the required findings for approval because the project as proposed fails to comply with Section 20.24.080 (B) where roof coverage cannot exceed 10%. Currently, the roof-top coverage exceeds the threshold and is 14.5%. This coverage includes existing Sprint equipment facilities and the roof-top penthouse.</p>

Findings for Denial as required by Section 20.20.100F.5:

<i>Required Finding</i>	<i>Explanation</i>
The establishment or expansion of the facility demonstrates a reasonable attempt to minimize stand-alone facilities, is designed to protect the visual quality of the City, and will not have an undue adverse impact on historic resources, scenic views, or other natural or man-made resources.	The Commission is unable to make the required findings for approval because the establishment of the facility would adversely impact an existing non-conforming building. As proposed, the project would increase the roof-top coverage and fails to comply with the Albany Municipal Code.
All applicable Development Standards in subsection 20.20.100.E. above have been met; or: 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 Commission is unable to make the required findings for approval because the Section 20.20.100 (E) (2) (h) specifically cross references compliance with Section 20.24.080 (B) and classifies wireless facilities as ancillary roof-top structures which cannot exceed 10% roof-top coverage.
The placement, construction, or modification of a wireless telecommunications facility in the proposed location is necessary for the provision of wireless communication services to Albany residents and businesses, or their owners, customers, guests, or invitees, or other persons traveling in or about the City.	The Commission is unable to make the required findings for approval because the proposed location is not suitable for the installation of wireless facility as the building and roof top coverage are legal-nonconforming.
Finding for establishment of a satellite dish or parabolic antenna exceeding thirty-nine (39) inches in diameter: A smaller or different antenna cannot feasibly accomplish the provider's technical objectives and that the facility will not be readily visible.	N/A
Findings for the establishment of a wireless communications facility that is not co-located with other existing or proposed facilities or a new freestanding pole or tower (at least one (1) finding required): <ul style="list-style-type: none"> a) Co-location is not feasible; b) Co-location would have more significant adverse effects on views or other environmental consideration; c) Co-location is not permitted by the property owner; 	The project as proposed would be considered a co-location. These provisions are not applicable to the application request.

<i>Required Finding</i>	<i>Explanation</i>
d) Co-location would impair the quality of service to the existing facility; e) Co-location would require existing facilities at the same location to go off-line for a significant period of time; or	