

MEETING MINUTES

- a. 05.26.09
- b. 10.26.10
- c. 01.10.12
- d. 02.28.12

ATTACHMENT 12a
PLANNING & ZONING COMMISSION MEETING MINUTES 5/26/09

6. Discussions and Possible Action on Matters Related to the Following Items

a. 1035 San Pablo. Planning Application #08-038. Conditional Use Permit. Design

Review. Request for approval of a conditional use permit and design review to allow installation of a six new panel antennas and equipment boxes on the roof of an existing commercial building.

Staff recommendation: approve.

Commissioner Arkin recused himself due to proximity to his residence and to his business. Associate Planner Curl delivered the staff report. Planning Manager Bond reported the applicant requested the item be continued in order to address the staff report and the letter from Nan Wishner. Chair Maass opened the public hearing and invited the applicant to make a presentation. Misako Hill, representing AT&T, requested the item be continued.

Ed Fields, Kains Avenue, repeated the ordinance requirement for a 50-foot setback from residential, to be reduced to no less than ten. He asked for the noise study and for daylight plane to be addressed. The public notice referred to six antennas, but other places there were references to nine or twelve. He wanted a more serious study including review of existing AT&T sites and near field calculations rather than only far field calculations.

Julie Beck, 1039 Kains Avenue, wanted studies regarding radioactivity, EMF levels, the compound effect of additional antennas and existing antennas. She was concerned about inadequate noticing and impacts to residents and property values. Miriam Kaminski, Ordway Street, wanted to see a demonstration that Albany was lacking coverage and that these antennas were not really for Berkeley. Sidney Mattsen, Pomona Avenue, was concerned about health risks to residents and the environment.

Kim Linden, Stannage Avenue, noted the applicant needed to demonstrate the need. She was willing to do a coverage map. She wanted the independent engineer to review the applicant's coverage need documentation. This was the second preference zone—had the first preference zone been considered? Was this really for Albany and not for Berkeley? The applicant already had at least two existing sites in Albany. There were plans for senior housing across the street. If health concerns could not be addressed, perhaps they should not be mentioned at all in the findings? Would there be any economic impact to the city?

No one else wished to speak. Chair Maass closed the public hearing.

Commissioner Gardner found the application lacked a demonstration of service gaps in Albany, alternatives analysis, actual mapping of calculated field strength, a noise study, and a daylight plane analysis. There should be a condition that the field strength and noise would be tested after installation, with the power to revoke the permit if the levels exceeded those in the application.

Commissioner Moss wanted a map with the Berkeley and El Cerrito locations also shown. He wanted the 50-foot setback. He noted that a lot of power would be required, and wondered if

the project could be feasibly powered, especially when it came to emergency back-up power – generators and noise.

Commissioner Panian stated the application lacked an argument for the reduction of the setback. He thought the existing conditions already violated the daylight plane. He doubted signs warning people about the power output would offer significant protection. He wanted the independent reviewer present at the meeting for questions. Chair Maass asked about impacts to the tenants in the building (especially on the top floor).

Commissioner Panian moved continuation. Commissioner Gardner seconded.

Vote to continue item **6a**:

Ayes: Gardner, Maass, Moss, Panian

Nays: None

Motion passed, 4-0.

ATTACHMENT 12

Meeting Minutes Excerpt PA 08-038 1035 San Pablo Ave. AT&T Wireless

Planning & Zoning Commission Meeting 10/26/10

a. **1035 San Pablo. Planning Application #08-038. Conditional Use Permit. Design Review.** Request for approval of a conditional use permit and design review to allow installation of a nine new antennas and five equipment boxes to the roof top of an existing commercial building. *Recommendation: approval.*

Planning Manager Bond delivered the staff report. Vice Chair Moss opened the public hearing and invited the applicant to make a presentation.

Shannon McDougall, representing AT&T, spoke in favor of the application.

Francis Chapman wanted the city to prepare a long-term vision and make sure the non-conforming equipment would be brought into conformance. He stated the applicant should have used 940 San Pablo Avenue, because it was further from residential uses. He stated this needed an independent review.

Maureen Crowley, Albany resident, read from the zoning ordinance (and handed in a copy) about the height exception for rooftop equipment proviso re: aggregate percentage of square footage. There was already much more than ten percent coverage on that roof.

Ed Fields, Albany resident, stated this needed independent expertise and independent monitoring.

Julie Beck, Albany resident, wanted these uses moved away from residential uses, recommending the CMX zone, the fire station, or Town Centre.

Michael Barnes, Albany resident, tested field strengths in Albany and found them to be low for urban areas and within allowable limits. He reported it was difficult and expensive to get good coverage in Albany.

Dmitri Belser, Executive Director of the Center for Accessible Technology, reported coverage was essential for the disabled.

Heike Abeck, Albany resident, opposed the use in a residential neighborhood.

Clay Larson, reported on the height of 1035 San Pablo Avenue having been in question over the years. He requested confirmation of actual heights and an explanation why these were not located at the center of the roof rather than at the edge.

Margie Keel El Cerrito resident, had health concerns and was upset the commission had no right to address this. She was concerned property values would drop.

Jan Hitchcock, Albany resident, had health concerns, and noted other carriers had coverage in Albany (she handed in coverage map printouts).

Eric Bergman, Albany resident, opposed the use in a residential area, aesthetically and health-wise.

Resident at 1201 Dartmouth, stated the alternative sites should be addressed first.

Ms. McDougall spoke in favor of the application.

Bill Hammett, engineer, was available to answer questions.

No one else wished to speak.

Vice Chair Moss closed the public hearing. He asked staff whether Town Centre was feasible.

Planning Manager Bond indicated it might be possible with an architectural tower.

Commissioner Panian asked whether the Commission could legally approve an increase of a non-conforming use.

Planning Manager Bond reported Commissioner Gardner would have liked the alternate sites more thoroughly explored. If approved, she hoped for regular monitoring and clear safety signs.

Commissioner Panian wanted heights, setbacks, and square footages pinned down, and the appropriate approval requested (CUP, variance, etc.). Additional study of alternatives would be helpful. If/when approved, independent review and monitoring beginning within six weeks of installation.

Commissioner Maass agreed.

Vice Chair Moss asked whether the Albany Theater would have been more ideal.

Ms. McDougall noted it would likely be considered an historic site and not allowed. It would also not be a co-location. An AT&T representative, asked for alternate sites to be narrowed down.

Commissioner Panian also wanted site maps of alternates with land use explanations of obstacles.

Vote to continue item 6a:

Motion: Panian

Seconded: Maass

Ayes: Maass, Moss, Panian

Nays: None

Motion passed, 3-0.

ATTACHMENT 12c
PLANNING & ZONING COMMISSION MEETING MINUTES FROM 1/10/12

- a. **PA08-038 AT&T Roof Mounted Antennas Study Session**-The applicant is seeking Design Review and Conditional Use Permit approval to allow nine (9) new roof-top mounted panel antennas on an existing office building. 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 will be stealthed to match the existing roof penthouse.

Commissioner Arkin recused himself due to the proximity of his home to the subject site.

Ms. Hersch presented the staff report dated January 10, 2012.

Barbara Leslie, on behalf of AT&T, made a presentation to the Planning & Zoning Commission explaining wireless industry forecasts and the increase in data usage requirements.

Gordon Bell, applicant for AT&T, made a presentation to the Commission on wireless technology and siting. He presented the application request on behalf of AT&T and explained why the site is preferred.

PUBLIC HEARING OPENED.

Ed Fields, Albany Resident, made a presentation to the Planning & Zoning Commission on behalf of ARROW, Albany Residents for the Responsible Oversight of Wireless. He suggested that the roof coverage requirements would be exceeded and that the USDA site should be further considered. He also noted that co-location is preferred but not a requirement.

Maureen Crowley, Albany Resident, suggested that the staff report presented was bias and that staff and AT&T misrepresented application information. The alternatives analysis presented was not thorough enough. She reiterated the concern that the project was not consistent with Section 20.24.080 (B) of the Albany Municipal Code and that the 10% roof coverage threshold was exceeded.

Heike Abeck, resident of 1037 Kains Ave., indicated that she is an AT&T customer and has no issue with coverage. She encouraged the Commission to look at alternative sites, particularly the race track and the USDA property and suggested that roof coverage requirements be used to deny the application request. She indicated she might move from the neighborhood if the antennas are approved.

Ellen Graves, business owner at 1325 Solano Ave., noted that her cell phone does not work in her office and that her customers have trouble using their phones in her business. She supported AT&T's request.

Julie Beck, Kains Ave. resident, stated that she opposes the project. She suggested that this request was for twenty-one (21) new cell antennas composed of nine (9) enclosures housing multiple antennas on the roof. The site should be located further away from residences. She suggested that AT&T failed to show surrounding residential properties in their analysis and that the roof top coverage would be exceeded as the project is proposed.

Clay, resident of 100 Stannage, wants his phone to work and does not receive 3G coverage. He supported the application request.

John Kendall, resident of Key Route & Marin, noted that he is an AT&T customer. His phone works in Berkeley but not as well in Albany. He noted that there is greater exposure to radiation when you have less coverage. He recommended that be approved for safety reasons.

Clay Larson, Albany resident, suggested that the City's wireless ordinance be amended. He also recommended that the building height be verified by staff in the field.

Daniel Geese, is a former AT&T customer. He suggested that AT&T has done their due diligence and he supported the application request.

Michael Barnes, Albany resident, suggested that the siting of wireless facilities had become a social justice issue. He noted that the predominantly white, middle class citizens of Albany were pushing these facilities to lower income minority areas where there were fewer challenges. He presented the Commission with Utility User Tax information and noted that the City collects a cell phone tax yet does not approve infrastructure to support cell service.

Doug Donaldson, former Albany Planning Commissioner, thought the application was approvable. The community deserves reasonable cell service. He disagrees with ARROW and believes that the ordinance should be revised. He also thought that Design Review should not be a requirement for wireless facilities.

David Sanger, Albany resident, relies on cell phone service for his business. He thought AT&T was too generous with their existing coverage maps as he had poor coverage in his home and business. He referenced legal case Cingular vs. Clarktown and suggested that the City is preempting federal law. He noted that the antenna configuration is not in the City's purview. He supported the application request.

Peggy McQuaid, Albany resident, described cell phone coverage as a joke and noted that most cell phones don't work in Albany. She suggested that this was not business friendly and created a safety issue as well. She supported the application and recommended that the Wireless Ordinance be amended.

Mr. Bell explained that the electromagnetic frequency report (EMF report) analyzes the worst case scenario, with all equipment at maximum capacity. He noted that coverage objectives from the CMX Zoning District cannot be achieved to the location and distance from the desired coverage area and noted that there are obstructions which would also prevent adequate coverage.

Michael Quinto, Radiofrequency Engineer for AT&T, stated for the record that a total of nine antennas are proposed. Power wave information for the proposed site is detailed on Sheet A-2 of the submittal. The propagation amps are calibrated and prepared based on the proposed equipment contained in the application request. The site is designed to cater to subscriber demands and must comply with all FCC standards.

PUBLIC HEARING CLOSED.

Commissioner Panian- the Commission has a narrow purview in the application request review and must act consistently with the Zoning Code. Wireless facilities are not considered a public utility and are subject to a different rule. Radiofrequency and the number of antennas are not defined or specified within the Zoning Code. He suggested that a wireless facility is a conforming use but additional information is necessary before the Commission can make a decision. He suggested that the building height needed to be verified as well as information about the mechanical equipment room.

Commissioner Eisenmann- recommended that staff measure the building height. She noted that there are safety and coverage obligations associated with the request and suggested that perhaps AT&T could pursue a temporary facility and find another location.

Commissioner Maass- stated that he agreed with former Commissioner Doug Donaldson. He noted that the application must be evaluated with the tools and Code currently applicable. He suggested that the roof square footage and related calculations should be evaluated by staff. The ordinance should be reviewed and amended.

The Commission directed staff to do the following for future review of the application:

- Staff to walk the roof top and measure the building height and verify the roof-top and penthouse dimensions provided in the plans
- Staff to visit the penthouse and provide a report with photographs of the interior space
- Staff to verify the use and history of the break room/penthouse and determine when it became conditioned space and if it was ever used for mechanical equipment

ATTACHMENT 12d

PLANNING & ZONING COMMISSION MEETING MINUTES 2/28/12

- A. PA08-038: 1035 San Pablo Ave. AT&T Roof Mounted Antennas Conditional Use Permit & Design Review** - The applicant is seeking Design Review and Conditional Use Permit approval to allow nine (9) new roof-top mounted panel antennas on an existing office building. 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 will be stealthed to match the existing roof penthouse.
Recommendation: Approve the use permit and design review request subject to the findings and conditions contained as an attachment to the staff report.

If the Commission moves to deny the application, the hearing must be continued to a date certain so that staff may craft findings of denial for review and action by the Planning & Zoning Commission.

Ms. Hersch presented the staff report dated February 28, 2012. She noted that a supplemental detail and memo was provided to the Commission and located at the rear of the room. This memo included detail from the original building permit plans for 1035 San Pablo Ave. which show the roof top penthouse originally designated as a mechanical equipment room.

Commissioner Panian asked about the height of the rooftop penthouse. Is it possible that it exceeded 45 ft. in height?

Mr. Bond noted that the specific height was not measured during the site visit. However, the interior of the room had at least an 8 ft. ceiling height.

Commissioner Eisenmann asked why the proposed condition requiring a minimum of 42 ft. distance for any new mixed use construction applied only to residential and not commercial construction.

Ms. Hersch explained that the condition was recommended for inclusion by the City's wireless consultant, Jonathan Kramer. The condition as it was proposed was consistent with the Federal Telecommunications Act.

PUBLIC HEARING OPENED.

Gordon Bell, representing AT&T Wireless, noted that he did not have a formal presentation for the evening. Instead, he addressed concerns highlighted in a letter from ARROW, Albany Residents for the Responsible Oversight of Wireless. He noted that the roof coverage analysis had been thoroughly reviewed. He further noted that coverage objectives could not be satisfied from the Commercial Mixed Use (CMX) district and that a facility in that district would exceed the height requirements contained in the City's Wireless Ordinance. He also noted that the USDA was not interested in leasing to AT&T and that the building has

security restrictions. He reiterated that the site at 1035 San Pablo Ave. is a co-location site which is preferred pursuant to the Wireless Ordinance. It was also noted that waiting for the City to pursue a wireless facility on City property would not be an option for AT&T. Pursuing a temporary facility would require the same level of review as a permanent facility, and reiterated the staff report noting that there was no precedent for temporary facilities. He requested that the Commission take action on the application request filed with the City.

Commissioner Eisenmann asked about the frequency of antenna replacement. What is the average life span of an antenna?

Michael Quinto, AT&T RF Engineer, noted that antenna replacement is consistent with technology changing. He stated that five years is typical for the life span of antennas.

Barbara Leslie, representing AT&T, submitted a petition of support for the record containing 45 signatures. She also presented approximately 100 cards signed in support at the AT&T El Cerrito store from Albany residents, stating their support for the new facility. She encouraged the Commission to take action on the application this evening.

Del Price, Albany resident, expressed her support for the new facility. She stated vendors should be supported and treated equally when they file applications with the City.

Ed Fields, Albany Resident, he noted that it is the Commission that must ultimately decide if the application request conforms to the Code. He stated the application request does not satisfy the Code. He referenced the roof-top penthouse plan and noted that it exceeds the height limit for Zoning District. The structure is not intended to be used for habitable space. He further noted that the stairwell leading to the penthouse likely exceeds 100 sq. ft., was not habitable space, and would count towards the roof coverage. He also noted that the original plans show mechanical penthouse. Though the space was not used for equipment, it was specifically designed for mechanical equipment. While co-location is preferred, it is not a requirement, particularly, if the site is inadequate for a facility installation. He expressed support for the hiring of an outside consultant to determine which sites in the City are appropriate for facilities and not defer to search rings provided by the applicant.

John Kindle, resident of Key Route & Marin, noted that he is an AT&T customer. He told the Commission that during a medical emergency at his home he was unable to dial 911 from inside the home. His son had to exit the home to call for medical help. He noted that the City collects a utility user tax from cell phone bills and does not provide facilities for adequate coverage. He noted that there is greater exposure to radiation when less coverage is available. He urged the Commission to make a decision on the application request.

Francesco Papalio, resident of Key Route, cell phone towers are essential infrastructure. He noted that ARROW is an unelected, unappointed group of citizens who use obstructionist tactics to block wireless applications in Albany. The group selectively takes criteria and measurements to stall the review process. All Albany citizens should be considered in the application review, not just local opponents.

Eric Bergman, 1041 Kains Ave., noted that he looks at existing antennas on the subject site. He did not support industrial infrastructure adjacent to a residential neighborhood. He encouraged the Commission to deny the application request.

Michael Barnes, 519 Curtis St., cell phone facilities beam signal outward, not downward. He noted that the Utility User Tax is unique to Albany and that the City collects \$300,000 annually from user bills. If the City is going to collect a tax on a service, it has an obligation to support the infrastructure which makes cell phones work. He noted that he has not seen a commitment from the City Council or Planning & Zoning Commission to support the infrastructure.

Clay Larson, Albany resident, if the issue was brought to a popular vote, citizens would favor support of these facilities. However, it is the Commission's role to evaluate the application for compliance with the City's ordinance. When the roof-top penthouse was constructed, it fell under the "General Exceptions" provisions. He suggested that the equipment could be contained within existing Sprint cabinet space, not increasing the roof coverage, and could be approved in this revised configuration.

David Sanger, Albany resident, the decision should be considered in the context of public policy. There should be a way to make findings for approval for this application request and that approval would benefit thousands of local users. He noted that ARROW does not represent all Albany citizens. He noted that in reviewing the previous comments on the application, thirty (30) people expressed support while fifteen (15) did not. He suggested that ARROW's acronym could be Albany Residents Religiously Opposed to Wireless as nearly every proposal brought forward to the Commission. He suggested a variance could be supported for the project.

Heike Abeck, resident of 1037 Kains Ave., indicated that she is an AT&T customer and has no issue with coverage. She encouraged the Commission to follow the ordinance and deny the application based on roof coverage calculations. She noted her child and other children in the neighborhood play outside and would be affected by the installation. She encouraged the race track as alternative location. She indicated she might move from the neighborhood if the antennas are approved.

Winkie Campbell-Notar, representing the Albany Chamber of Commerce, expressed support for the application request. She suggested that the requirements for application are constantly changing. She noted that cell coverage is a public safety issue. Additionally, she noted that this is an equity issue with the City collecting a tax for a service it is not providing. She urged the Commission to take action.

Todd Abbott, President of the Albany Chamber of Commerce, noted that many people spoke in support of the application request. He noted that fear, uncertainty, and doubt has been used to slow the application review process. He urged the Commission to make a decision for the good of Albany residents and businesses.

Peggy McQuaid, Albany resident, urged the Commission to follow the staff recommendation and support the application request.

PUBLIC HEARING CLOSED.

Commissioner Maass noted that he agreed with many of the comments stated this evening. He noted that the Commission is limited in its purview and can only assess Design Review and Conditional Use Permit requirements within the Code. He noted that the request has to be evaluated with the regulations currently in place. He had concerns about the latest information regarding the original designation of the penthouse designed as a mechanical equipment room. He stated that he was inclined to not support the application request.

Commissioner Moss noted that the 10% roof coverage rule was approved four years ago and not intended to limit cellular facilities. He also noted that the 10% rule applies only to structures over 6 ft. in height. He was inclined to exclude the roof-top penthouse from the roof coverage calculations and recognize it as a legal non-conforming use. The Commission is required to act on the application as presented. He expressed his support for the application request and noted that it is the best location for the new facility.

Commissioner Eisenmann noted that Albany is one of the densest cities in the State of California. She expressed concern about having the ability to review the application request for condition compliance similar to other use permits. She suggested that the Code could be modified to address temporary facilities. She referenced the California Building Code definition of habitable space.

Mr. Bond explained that the space as observed was finished with a kitchen area, smoke detectors, and is conditioned with heating.

Commissioner Eisenmann asked what the roof coverage would if the roof top penthouse is counted.

In response, Commissioner Panian referenced the table contained in the staff report which provided four different roof coverage calculations.

Commissioner Panian appreciated the range of commentary provided by the public and noted that the Commission purview on the request is very narrow. He commended staff for providing a detailed analysis and providing additionally requested information. What is the appropriate intensity of use for roof top space where there are legal non-conforming conditions? The roof-top penthouse was approved a mechanical equipment with an exception to the building height. Therefore, the room should be calculated in the roof top coverage. With that, the application could be denied based solely on the roof coverage. He suggested a variance could be used to support application of the application could be modified to comply with the Code.

Commissioner Maass reiterated his lack of support for the application request.

Commissioner Panian asked what happened if there was a 2-2 vote on the item.

City Attorney Craig Labadie indicated that 2-2 vote is a failure to reach a decision. Under the Federal Telecommunications Act a decision with written findings is required so that the applicant may appeal the decision.

Commissioner Eisenmann asked about archived documents and the City's maintenance of historic records. She asked if there were permits on file for the conversion of the roof-top penthouse.

Mr. Bond explained that the City maintains historic records on a Laserfiche system, though the City's record keeping from the 1980s and 1990s was not the best. He was unable say with certainty if there was a building permit on file for the conversion of the penthouse.

Commissioner Panian asked the height of the equipment could be reduced.

Mr. Bell indicated that the drawings could be modified to reduce equipment height.

Commissioner Panian asked if would be possible to relocate the equipment to the roof-top penthouse.

Mr. Bell indicated he could check with the landlord to see if there is interest.

Ms. Hersch indicated that if the equipment were to be located in the penthouse, it would encroach in the 50 ft. setback from residential uses. She read Section 20.20.100 (D) (4) into the record and noted that the Commission has the authority to reduce the setback if noise and visual impacts are and not perceptibly greater.

The Commission agreed that the roof coverage calculations should include the roof-top penthouse and Sprint equipment, which creates 19.28% roof coverage.

Mr. Labadie noted that the Commission could direct the applicant to work with the landlord to determine if equipment could be relocated in the penthouse. Alternatively, the applicant could pursue a variance.

Commissioner Moss questioned how variance findings could be made for the project request.

The Commission directed the applicant to pursue two alternative options staff to do the following for future review of the application:

- The applicant shall work with the landlord to see if equipment can be used in the penthouse
- The applicant shall make an effort to reduce equipment to less than 6 ft. in height to minimize equipment roof coverage on the roof

Motion to move to continue item 6a to a date uncertain: Commissioner Moss

Seconded by: Commissioner Maass

Ayes: Eisenmann, Moss, Maass, Panian

Nays: None

Motion passed, 4-0.