

City of Albany

Planning and Zoning Commission Minutes February 28, 2012 Meeting

Note: These minutes are subject to Planning and Zoning Commission approval. The minutes are not verbatim. An audiotape of the meeting is available for public review.

Regular Meeting

1. **Call to order-** The meeting of the Planning and Zoning Commission was called to order by Vice Chair Panian, in the City Council Chambers at 7:30 p.m. on Tuesday, February 28, 2012.

2. **Pledge of Allegiance**

3. **Roll Call**

Present: Eisenmann, Maass, Moss, Panian

Absent: Arkin (recused due to proximity of his residence to subject site)

Staff present: Craig Labadie, City Attorney

Jeff Bond, Community Development Director

City Planner Anne Hersch

4. **Consent Calendar**

A. **Meeting Minutes from December 13, 2011 Planning & Zoning Commission meeting**

Recommendation: Approve

Ms. Hersch noted that the Meeting Minutes were not completed in time for the meeting and were stricken from the agenda. The minutes would be completed and presented to the Commission as a future hearing.

5. **Public Comment on Non-Agenda Items**

None.

6. **PUBLIC HEARING ITEMS**

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.

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

4
5 Ms. Hersch presented the staff report dated February 28, 2012. She noted that a supplemental
6 detail and memo was provided to the Commission and located at the rear of the room. This
7 memo included detail from the original building permit plans for 1035 San Pablo Ave. which
8 show the roof top penthouse originally designated as a mechanical equipment room.

9
10 Commissioner Panian asked about the height of the rooftop penthouse. Is it possible that it
11 exceeded 45 ft. in height?

12
13 Mr. Bond noted that the specific height was not measured during the site visit. However, the
14 interior of the room had at least an 8 ft. ceiling height.

15
16 Commissioner Eisenmann asked why the proposed condition requiring a minimum of 42 ft.
17 distance for any new mixed use construction applied only to residential and not commercial
18 construction.

19
20 Ms. Hersch explained that the condition was recommended for inclusion by the City's
21 wireless consultant, Jonathan Kramer. The condition as it was proposed was consistent with
22 the Federal Telecommunications Act.

23
24 PUBLIC HEARING OPENED.

25
26 **Gordon Bell, representing AT&T Wireless**, noted that he did not have a formal presentation
27 for the evening. Instead, he addressed concerns highlighted in a letter from ARROW, Albany
28 Residents for the Responsible Oversight of Wireless. He noted that the roof coverage analysis
29 had been thoroughly reviewed. He further noted that coverage objectives could not be
30 satisfied from the Commercial Mixed Use (CMX) district and that a facility in that district
31 would exceed the height requirements contained in the City's Wireless Ordinance. He also
32 noted that the USDA was not interested in leasing to AT&T and that the building has
33 security restrictions. He reiterated that the site at 1035 San Pablo Ave. is a co-location site
34 which is preferred pursuant to the Wireless Ordinance. It was also noted that waiting for the
35 City to pursue a wireless facility on City property would not be an option for AT&T.
36 Pursuing a temporary facility would require the same level of review as a permanent facility,
37 and reiterated the staff report noting that there was no precedent for temporary facilities. He
38 requested that the Commission take action on the application request filed with the City.

39
40 Commissioner Eisenmann asked about the frequency of antenna replacement. What is the
41 average life span of an antenna?

42
43 **Michael Quinto, AT&T RF Engineer**, noted that antenna replacement is consistent with
44 technology changing. He stated that five years is typical for the life span of antennas.

45

1 **Barbara Leslie, representing AT&T**, submitted a petition of support for the record
2 containing 45 signatures. She also presented approximately 100 cards signed in support at
3 the AT&T El Cerrito store from Albany residents, stating their support for the new facility.
4 She encouraged the Commission to take action on the application this evening.
5

6 **Del Price, Albany resident**, expressed her support for the new facility. She stated vendors
7 should be supported and treated equally when they file applications with the City.
8

9 **Ed Fields, Albany Resident**, he noted that it is the Commission that must ultimately decide
10 if the application request conforms to the Code. He stated the application request does not
11 satisfy the Code. He referenced the roof-top penthouse plan and noted that it exceeds the
12 height limit for Zoning District. The structure is not intended to be used for habitable space.
13 He further noted that the stairwell leading to the penthouse likely exceeds 100 sq. ft., was not
14 habitable space, and would count towards the roof coverage. He also noted that the original
15 plans show mechanical penthouse. Though the space was not used for equipment, it was
16 specifically designed for mechanical equipment. While co-location is preferred, it is not a
17 requirement, particularly, if the site is inadequate for a facility installation. He expressed
18 support for the hiring of an outside consultant to determine which sites in the City are
19 appropriate for facilities and not defer to search rings provided by the applicant.
20

21 **John Kindle, resident of Key Route & Marin**, noted that he is an AT&T customer. He told
22 the Commission that during a medical emergency at his home he was unable to dial 911 from
23 inside the home. His son had to exit the home to call for medical help. He noted that the City
24 collects a utility user tax from cell phone bills and does not provide facilities for adequate
25 coverage. He noted that there is greater exposure to radiation when less coverage is
26 available. He urged the Commission to make a decision on the application request.
27

28 **Francesco Papalio, resident of Key Route**, cell phone towers are essential infrastructure. He
29 noted that ARROW is an unelected, unappointed group of citizens who use obstructionist
30 tactics to block wireless applications in Albany. The group selectively takes criteria and
31 measurements to stall the review process. All Albany citizens should be considered in the
32 application review, not just local opponents.
33

34 **Eric Bergman, 1041 Kains Ave.**, noted that he looks at existing antennas on the subject site.
35 He did not support industrial infrastructure adjacent to a residential neighborhood. He
36 encouraged the Commission to deny the application request.
37

38 **Michael Barnes, 519 Curtis St.**, cell phone facilities beam signal outward, not downward. He
39 noted that the Utility User Tax is unique to Albany and that the City collects \$300,000
40 annually from user bills. If the City is going to collect a tax on a service, it has an obligation to
41 support the infrastructure which makes cell phones work. He noted that he has not seen a
42 commitment from the City Council or Planning & Zoning Commission to support the
43 infrastructure.
44

1 **Clay Larson, Albany resident**, if the issue was brought to a popular vote, citizens would
2 favor support of these facilities. However, it is the Commission's role to evaluate the
3 application for compliance with the City's ordinance. When the roof-top penthouse was
4 constructed, it fell under the "General Exceptions" provisions. He suggested that the
5 equipment could be contained within existing Sprint cabinet space, not increasing the roof
6 coverage, and could approved in this revised configuration.
7

8 **David Sanger, Albany resident**, the decision should be considered in the context of public
9 policy. There should be away to make findings for approval for this application request and
10 that approval would benefit thousands of local users. He noted that ARROW does not
11 represent all Albany citizens. He noted that in reviewing the pervious comments on the
12 application, thirty (30) people expressed support while fifteen (15) did not). He suggested
13 that ARROW's acronym could be Albany Residents Religiously Opposed to Wireless as
14 nearly every proposal brought forward to the Commission. He suggested a variance could be
15 supported for the project.
16

17 **Heike Abeck, resident of 1037 Kains Ave.**, indicated that she is an AT&T customer and has
18 no issue with coverage. She encouraged the Commission to follow the ordinance and deny
19 the application based on roof coverage calculations. She noted her child and other children in
20 the neighborhood play outside and would be affected by the installation. She encouraged the
21 race track as alternative location. She indicated she might move from the neighborhood if the
22 antennas are approved.
23

24 **Winkie Campbell-Notar, representing the Albany Chamber of Commerce**, expressed
25 support for the application request. She suggested that the requirements for application are
26 constantly changing. She noted that cell coverage is public safety issue. Additionally, she
27 noted that this is an equity issue with the City collecting a tax for a service it is not providing.
28 She urged the Commission to take action.
29

30 **Todd Abbott, President of the Albany Chamber of Commerce**, noted that many people
31 spoke in support of the application request. He noted that fear, uncertainty, and doubt has
32 been used to slow the application review process. He urged the Commission to make a
33 decision for the good of Albany residents and businesses.
34

35 **Peggy McQuaid, Albany resident**, urged the Commission to follow the staff
36 recommendation and support the application request.
37

38 PUBLIC HEARING CLOSED.
39

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

1
2 Commissioner Moss noted that the 10% roof coverage rule was approved four years ago and
3 not intended to limit cellular facilities. He also noted that the 10% rule applies only to
4 structures over 6 ft. in height. He was inclined to exclude the roof-top penthouse from the
5 roof coverage calculations and recognize it as a legal non-conforming use. The Commission
6 is required to act on the application as presented. He expressed his support for the
7 application request and noted that it is the best location for the new facility.

8
9 Commissioner Eisenmann noted that Albany is one of the densest cities in the State of
10 California. She expressed concern about having the ability to review the application request
11 for condition compliance similar to other use permits. She suggested that the Code could be
12 modified to address temporary facilities. She referenced the California Building Code
13 definition of habitable space.

14
15 Mr. Bond explained that the space as observed was finished with a kitchen area, smoke
16 detectors, and is conditioned with heating.

17
18 Commissioner Eisenmann asked what the roof coverage would if the roof top penthouse is
19 counted.

20
21 In response, Commissioner Panian referenced the table contained in the staff report which
22 provided four different roof coverage calculations.

23
24 Commissioner Panian appreciated the range of commentary provided by the public and
25 noted that he Commission purview on the request is very narrow. He commended staff for
26 providing a detailed analysis and providing additionally requested information. What is the
27 appropriate intensity of use for roof top space where there are legal non-conforming
28 conditions? The roof-top penthouse was approved a mechanical equipment with an
29 exception to the building height. Therefore, the room should be calculated in the roof top
30 coverage. With that, the application could be denied based solely on the roof coverage. He
31 suggested a variance could be used to support application of the application could be
32 modified to comply with the Code.

33
34 Commissioner Maass reiterated his lack of support for the application request.

35
36 Commissioner Panian asked what happened if there was a 2-2 vote on the item.

37
38 City Attorney Craig Labadie indicated that 2-2 vote is a failure to reach a decision. Under the
39 Federal Telecommunications Act a decision with written findings is required so that the
40 applicant may appeal the decision.

41
42 Commissioner Eisenmann asked about archived documents and the City's maintenance of
43 historic records. She asked if there were permits on file for the conversion of the roof-top
44 penthouse.

45

1 Mr. Bond explained that the City maintains historic records on a Laserfiche system, though
2 the City's record keeping from the 1980s and 1990s was not the best. He was unable say with
3 certainty if there was a building permit on file for the conversion of the penthouse.
4

5 Commissioner Panian asked the height of the equipment could be reduced.
6

7 Mr. Bell indicated that the drawings could be modified to reduce equipment height.
8

9 Commissioner Panian asked if would be possible to relocate the equipment to the roof-top
10 penthouse.
11

12 Mr. Bell indicated he could check with the landlord to see if there is interest.
13

14 Ms. Hersch indicated that if the equipment were to be located in the penthouse, it would
15 encroach in the 50 ft. setback from residential uses. She read Section 20.20.100 (D) (4) into the
16 record and noted that the Commission has the authority to reduce the setback if noise and
17 visual impacts are and not perceptibly greater.
18

19 The Commission agreed that the roof coverage calculations should include the roof-top
20 penthouse and Sprint equipment, which creates 19.28% roof coverage.
21

22 Mr. Labadie noted that the Commission could direct the applicant to work with the landlord
23 to determine if equipment could be relocated in the penthouse. Alternatively, the applicant
24 could pursue a variance.
25

26 Commissioner Moss questioned how variance findings could be made for the project request.
27

28 **The Commission directed the applicant to pursue two alternative options staff to do the**
29 **following for future review of the application:**
30

- 31 • The applicant shall work with the landlord to see if equipment can be used in the
32 penthouse
- 33 • The applicant shall make an effort to reduce equipment to less than 6 ft. in height to
34 minimize equipment roof coverage on the roof
35

36 **Motion to move to continue item 6a to a date uncertain: Commissioner Moss**
37

38 **Seconded by: Commissioner Maass**
39

40 Ayes: Eisenmann, Moss, Maass, Panian

41 Nays: None

42 Motion passed, 4-0.
43

44 **7. NEW BUSINESS**
45

- 1 a. Planning & Zoning Commission Hearing Date Changes for 2013-Due to scheduling
2 conflicts with public holidays and other meeting schedules, the Commission will need to
3 review an alternative meeting schedule for selected dates in January, February, March,
4 and April of 2013.

5
6 Ms. Hersch presented the staff memo dated February 28, 2012. She noted that there will
7 be scheduling conflicts in 2013 and suggested that the second fourth Wednesdays as an
8 alternative day. The Albany Unified School District shares meeting facilities at the City
9 and is required to submit a schedule of Board meetings to the State one year in advance.

10
11 The Commission expressed a willingness to accommodate the schedule but was not
12 generally supportive of permanent changes to the schedule.

- 13
14 b. Update on Parking Discussion & Phone Survey- brief verbal update on the recently
15 approved phone survey and questions related to Measure D.

16
17 Mr. Bond briefed the Commission on the status of the phone survey. He noted that the
18 Measure D would not be included in the phone survey. Several Councilmembers
19 expressed their satisfaction with Measure D and did not wish to pursue a policy change.

- 20
21 c. Staff Update on "One Bay Area" Sustainable Community Strategy, the Alameda
22 Countywide Transportation Plan, and the Alameda County Transportation Expenditure
23 Plan.

24
25 Recommended Action: For information.

26
27 Mr. Bond presented a Power Point presentation on the Sustainable Community Strategy.
28 He noted that the City will receive new Regional Housing Needs Allocation numbers for
29 the Housing Element. The goal with the Strategy is reduce greenhouse gas emissions
30 throughout the region. A draft preferred scenario document is slated to be released in
31 March for public review. An EIR will be required for the document. The entire project is
32 expected to be adopted sometime in 2013.

33
34 **8. Announcements/Communications:**

- 35 a. City of Albany Planning and Zoning Update "E-Notification"
36 b. Update on City Council agenda items related to Planning and Zoning activities.
37 c. Review of status of major projects and scheduling of upcoming agenda items
38

39 Ms. Hersch noted that the beer pub use permit for 745 San Pablo Ave. had been upheld
40 and approved by the City Council with the Condition the Council review the use permit
41 for compliance six months from date of operation commencement.

42
43 **9. Future Planning and Zoning Commission Meeting Agenda Items:**

- 44 a. Next Regular Planning and Zoning Commission hearing scheduled for Tuesday,
45 January 24, 2012.

1

2 **10. Adjournment**

3 The meeting was adjourned at 9:55 p.m.

4

5 Next regular meeting: Tuesday, March 13, 2012, 7:30 p.m. at Albany City Hall

6

7

8 Submitted by: Anne Hersch, City Planner

9

10

11

12 **Jeff Bond**

13 **Community Development Director**