



**TO:** ALBANY PLANNING & ZONING COMMISSION  
**FROM:** ANNE HERSCH, AICP, CITY PLANNER  
**SUBJECT:** PA 12-043 Metro PCS Modification at 1600 Posen (St. Mary's College High School)  
**DATE:** January 17, 2013

<b>Property Owner:</b> St. Mary's College High School 1294 Albina St. Berkeley, CA 94706	<b>Applicant/Representative:</b> Talin Aghazrian Town Consulting on behalf of Metro PCS 90 Barbara Rd. Orinda, CA 94563
<b>PROJECT:</b> Metro PCS Zoning Clearance <b>FILE:</b> PA 12-043 <b>LOCATION:</b> 1600 Posen St. <b>GP LU:</b> PQ-Public/Quasi Public <b>ZONING:</b> PF-Public Facilities <b>PLANNER:</b> Anne Hersch	Original filing: August 17, 2012 Date Deemed Complete: September 14, 2012 Date of Notice Posted/Mailed: 1/7/2013 Date of Public Hearing: January 17, 2013 <b>Total number of days to hearing: 154 days</b>

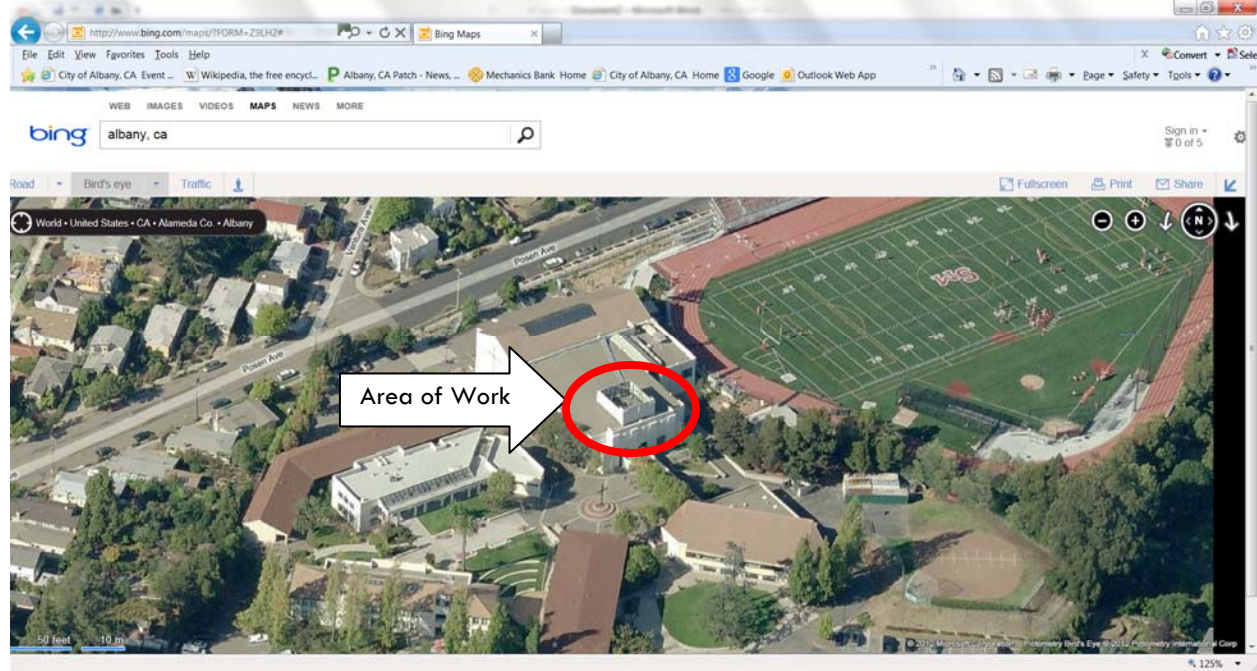
**REQUEST**

The applicant has filed a zoning clearance application for an existing Metro PCS facility at St. Mary's College High School. The scope of work includes installation of one 1 foot microwave dish which is proposed to be located behind an existing screen wall. The dish is intended to improve landline telephone service and will replace an existing copper telephone line. The dish does not impact wireless coverage. Since the dish will be screened, visual impacts are not expected.

**STAFF RECOMMENDATION**

The Planning and Zoning Commission review the proposed application and approve the Zoning Clearance.

## **SITE LOCATION**



**Figure 1.** Site Location

## **BACKGROUND/PROJECT DESCRIPTION**

A master plan Use Permit to allow three wireless carriers as well as a Mitigated Negative Declaration (MND) was approved by the Planning & Zoning Commission on November 12, 2002 by a 5-0 vote (PA 02-056). Currently, Metro PCS, T-Mobile, and Sprint have wireless facilities on the St. Mary's campus. All of the wireless facilities are located on the roof of the gymnasium building. The antennas are located behind an existing screen on the roof-top.

The master plan Use Permit was granted prior to the City's adoption of the Wireless Ordinance (adopted in 2005). Under current requirements, a wireless communications facility is not permitted on a site occupied by a school (Section 20.20.100 (D) (2) (b)). Thus the current installation is a legal non-conforming facility.

The proposed scope includes installation of one 1 foot microwave dish which is proposed to be located behind an existing screen wall on the gymnasium building. The dish does not impact wireless coverage. Since the dish will be screened, visual impacts are not expected. The dish is a site specific installation intended to improve landline telephone service to the facility and will replace an existing copper telephone line. The dish does not impact wireless coverage.

Recently, the City's practice has been to consider upgrades to antenna technologies (ex. frequencies, power, channels, positioning, etc.) as subject to review under the current ordinance (except where pre-empted by State or Federal law). These technology upgrades can be expected to extend the life of a facility. However, the proposed microwave dish does not change wireless coverage for Metro PCS.

## **ANALYSIS**

### **Zoning Clearance**

The proposed application request includes a minor modification to install a new microwave dish. While the proposal does not seek to expand or upgrade wireless service, it is a minor modification to the existing wireless facility. As noted, the existing facility is a legal non-conforming installation. Consequently, staff determined that a Zoning Clearance through the Planning & Zoning Commission would be required.

The Zoning Clearance process is included below. The applicability of this section is very broad and requires the Commission to find that the application request complies with applicable regulations and standards of Chapter 20 "Land Development."

#### **20.100.020 Zoning Clearances.**

*A. Purpose. Zoning clearances are intended to ensure compliance with the regulations and standards of this Chapter through nondiscretionary, administrative review by the Community Development Director.*

*B. Applicability.*

*1. General Requirement. A zoning clearance shall be required prior to issuance of a building permit or business license, except where other approvals are required by this Chapter.*

*2. Requirement for Signs, Home Occupations, and Tree Removal. A zoning clearance shall be required for certain new or expanded signs; for home occupations; and for tree removal in the HD Zoning District.*

*C. Procedures and Standards of Review. Approval of zoning clearances shall be subject to the common procedures in subsection 20.100.010. In addition, approval is subject to the following procedures and standards of review:*

*1. General Procedures. The Director of Community Development shall grant a zoning clearance upon determining that the proposed development complies with the applicable regulations and standards of this Chapter. In the case of any non-compliance with said regulations and standards, the application shall be considered by the Planning and Zoning Commission through the appropriate process.*

*2. Applications for Home Occupations. The Community Development Director shall review all applications for home occupations and shall approve applications that comply with the regulations and standards for home occupations in subsection 20.20.040. Review may include an inspection of the site of the home occupation.*

3. *Applications for Tree Removal (HD Hillside Development Zoning District Only). Zoning clearance applications for tree removal in the HD Zoning District shall be approved only if they are in accord with the following standards:*

a. *No Unnecessary Tree Removal. Living trees on undeveloped property shall be retained unless their removal is necessary for new development or any requirement of the Municipal Code.*

b. *Maintenance of Hillsides and Soils. Living trees that help maintain slope stability and prevent erosion shall be retained whenever possible.*

c. *Emergency Removal. In the event that a tree is in immediate danger of endangering either life or property, the tree may be removed with approval of the Community Development Director.*

4. *Applications for Signs. The Community Development Director shall review all applications for signs for conformance to the standards of this Chapter or an approved master sign program.*

D. *Appeals. An appeal of any determination made pursuant to this subsection may be made under the provisions of subsection 20.100.080.*

(Ord. No. 04-09)

#### Draft Project Conditions

A Zoning Clearance is a one-time approval where any project conditions must be satisfied at the time of building permit issuance and final inspection. A Zoning Clearance does not run with the land as it is a onetime review. Through the Zoning Clearance process, general conditions may be imposed. As part of this review, conditions related to signage, a maintenance and facility removal agreement are included.

A review of building permit application is a ministerial act which requires the City to review the request for compliance with the Building Code. The City does not have discretionary review or the ability to impose operating conditions/standards as part of a ministerial act.

#### **ENVIRONMENTAL REVIEW**

Staff has determined that the proposed project is exempt by statute from the requirements of the California Environmental Quality Act (CEQA) per Section 15268 "Ministerial Projects" of the CEQA Guidelines, which exempts building permit applications.

#### **ATTACHMENTS:**

1. Analysis of Requirements with the Zoning Code
2. Conditions of Approval
3. Application
4. Project Plans
5. Photo Simulations
6. EMF Report

## ATTACHMENT 1 – ANALYSIS OF COMPLIANCE WITH ZONING REQUIREMENTS

### 20.12 Zoning Districts and Permitted Uses

General Plan: Public/Quasi Public

Zoning: PF-Public Facilities

### 20.16 Land Use Classifications

School Use

Surrounding North - Residential

Property Use South - Residential

East – Residential

West – Residential

### 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.

### 20.24.100 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.

20.100.030 Use Permits.

Not applicable.

20.100.040 Variances.

Not applicable.

20.100.010 Common Permit Procedures.

Public notice of this application was mailed on January 7, 2013, in the form of mailed notice, to property owners and occupants within a 300-foot radius, and posted in one location.

20.100.050 Design Review.

Not Applicable

## ATTACHMENT 2 – FINDINGS

### COMMUNITY DEVELOPMENT DEPARTMENT CONDITIONS OF APPROVAL

#### SPECIAL CONDITIONS

- SPECIAL-1 Metro PCS shall permanently place and at all times maintain in good condition radio frequency emission notice signs in English and Spanish that are compliant with ANSI C95.2 color, symbol, and content conventions.
- SPECIAL-2 Each sign shall at all times bear the name of the carrier, the site identification number, and a 24-7 local or toll-free telephone number to reach a live person at the carrier's Network Operations Center.
- SPECIAL-3 The applicant shall enter into a maintenance and facility removal agreement pursuant to Section 20.20.100 (F) (6) of the Albany Municipal Code.

#### GENERAL PROJECT CONDITIONS

- Gen-1 **Project Approval.** This approval is for 1600 Posen, Metro PCS, as substantially shown and described on the project plans, except as may be modified by conditions herein. Plans include plans prepared by Apex Engineering date received August 17, 2012, (project plans include site plan, elevations), as presented to the Planning and Zoning Commission on January 17, 2013. For any condition herein that requires preparation of a Final Plan where the project developer has submitted a conceptual plan, the project developer shall submit final plan(s) in substantial conformance with the conceptual plan, but incorporate the modifications required by the conditions herein for approval by the City.
- GEN-2 **Project Approval Expiration.** The Zoning Clearance approval will expire on January 31, 2014 (one year from the date on which this approval becomes effective), or at an alternate time specified as a condition of approval, unless a building permit has been issued and construction diligently pursued; a certificate of occupancy has been issued; the use is established; the use permit, variance or design review approval is renewed. The approval may be renewed by the Community Development Director for a period up to an additional two (2) years, provided that, at least ten (10) days before expiration of one (1) year from the date when the approval becomes effective, an application for renewal of the approval is filed with the Community Development Department. The Community Development Director may grant a renewal of an approval where there is no change in the original application, or there is no request to change any condition of approval.
- Gen-3 **Fees.** The applicant shall pay any and all City and other related fees applicable to the property, as may be modified by conditions herein. Fees shall be based on the current fee structure in effect at the time the relevant permits are secured, and shall be paid before issuance of said permit or before any City Council final

action approval. Notice shall be taken specifically of Plan Check, Engineering, Fire and Inspection Fees. The project developer shall also reimburse the City for direct costs of planning; building and engineering plan check and inspection, as mutually agreed between the City and developer.

- GEN-4      **Appeals.** The Albany Municipal Code provides that any action of the Planning staff may be appealed to the Planning and Zoning Commission, and any action of the Planning and Zoning Commission may be appealed to the City Council as per the procedures described in Section 20.100.080. The City Clerk will then schedule the matter for the next available City Council meeting.
- GEN-5      **Requirement for Building Permit.** Approval granted by the Planning and Zoning Commission does not constitute a building permit or authorization to begin any construction or demolish an existing structure. An appropriate permit issued by the Community Development Department must be obtained before constructing, enlarging, moving, converting, or demolishing any building or structure within the City.
- GEN-6      **Fire Department Approval.** As part of a building permit application, the applicant shall submit written documentation that all requirements of the Albany Fire Department have, or will be, met to the satisfaction of the AFD.
- GEN-7      **Engineering Approval.** As part of a building permit application, the applicant shall submit written documentation that all requirements of the Public Works Department have, or will be, met to the satisfaction of the City Engineer.
- GEN-8      **Construction Hours.** Construction activity shall be restricted to the hours of 8:00 a.m. to 6:00 p.m. Mondays through Saturdays, and 10:00 a.m. to 6:00 p.m., Sundays and legal holidays, unless otherwise approved in writing by the City Engineer for general construction activity. Failure to comply with construction hours may result in stop work orders or other administrative actions.
- GEN-9      **Modifications to Approved Plans.** The project shall be constructed as approved. Planning staff may approve minor modifications in the project design, but not the permitted land use (per MC 20.12). A change in an item requiring discretionary approval and any other changes deemed appropriate by the Planning staff shall require further Planning and Zoning Commission approval through the Design Review process.
- GEN-10     **Hold Harmless Agreement.** Pursuant to Government Code Section 66474.9, the applicant (including any agent thereof) shall defend, indemnify, and hold harmless, the City of Albany and its agents, officers and employees, from any claim, action, or proceeding against the City or its agents, officers or employees to attack, set aside, void, or annul the City's approval concerning this application, which action is brought within the time period provide for in Section 66499.37. The City will promptly notify the applicant of any such claim action or proceeding and cooperate fully in the defense.



- GEN-11      **Public Improvements Standards.** Public improvements, as required by the City Engineer during building permit review, shall be designed and constructed in accordance with the City's Standard Specifications and Standard Details, unless specifically waived in writing by the City Engineer.
- GEN-12      **Title 24 Standards.** All construction shall be designed and built in accordance with California Title 24 handicap accessibility standards. Appropriate details and specifications shall be incorporated into the plans and submitted at time of building permit application.
- GEN-13      **Energy Conservation Standards.** All buildings shall be designed in accordance with the State of California energy conservation standards for non-residential buildings. The necessary plans and documentation shall be submitted at time of building permit application.

#### **ARCHITECTURE CONDITION**

- ARCH-1      **Material Samples.** Samples of final exterior materials and the proposed color palette shall be submitted for review and approval by the Community Development Department as part of building permit application.
- ARCH-2      **Final Architectural Drawings.** The applicant shall submit final architectural elevations, details and revisions for the review and approval of the Community Development Department as part of building permit application.

**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 the action. Appeals may be filed in the Community Development Department by completing the required form and paying the required fee. The City Clerk will then schedule the matter for the next available City Council meeting.