

CITY OF CARMEL-BY-THE-SEA

DEPARTMENT OF COMMUNITY PLANNING AND BUILDING

Findings for Decision

DR 19-129 & UP 19-130 (Verizon Wireless)
San Antonio 1 NW of 10th Ave (Site 1)
San Antonio 3 SE of 13th Ave (Site 2)
10th Ave 1 NW of Dolores (Site 3)
Lincoln 3 NE of 12th Ave (Site 4)
Mission 2 SW of 12th Ave (Site 5)

PROJECT DESCRIPTION

Consideration of an Appeal (APP 19-261) of the Planning Commission's denial of Design Review (DR 19-129, Verizon Wireless), Use Permit (UP 19-130, Verizon Wireless) and associated Coastal Development Permit, and consideration of an Encroachment Permit (EN 19-072, Verizon Wireless) for the installation, operation and maintenance of five wireless communications facilities on existing PG&E utility poles located within the public right-of-way in the Single-Family Residential (R-1) Zoning District.

FINDINGS OF FACT:

1. The project sites are located within the public right-of-way in the R-1 Zoning District at the following five locations: San Antonio 1 NW of 10th Ave (Site 1); San Antonio 3 SE of 13th Ave (Site 2); 10th Ave 1 NW of Dolores (Site 3); Lincoln 3 NE of 12th Ave (Site 4); and, Mission 2 SW of 12th Ave (Site 5). Each location contains an existing wooden utility pole owned by PG&E.
2. On March 27, 2019, Use Permit and Design Review applications were submitted to install, operate and maintain five, wireless communications facilities.
3. Each facility was proposed to contain one, 4' tall antenna mounted to the top of the utility pole and one, 6' tall equipment shroud mounted 9' above grade for the remote radio units (RRU's), power supply and other associated equipment. A disconnect switch and pole meter would also be mounted to the utility pole below the equipment shroud. The antenna, associated equipment and all attachments would be painted a matte brown color.
4. Pursuant to CMC Section 17.46.010 (Purpose), the purpose of the Telecommunications and Wireless Facilities Ordinance is to establish comprehensive requirements and development standards for the siting, design, construction, maintenance and monitoring of wireless communications facilities in Carmel-By-The-Sea. Additionally, the regulations are designed to promote public health, safety and community welfare; preserve the

natural resources and scenic quality of Carmel-By-The-Sea; and, protect the health and character of the City's residential neighborhoods while encouraging managed development of telecommunications infrastructure and services throughout the City.

5. Pursuant to 17.46.020 (General Development Standards), wireless communications facilities are required to obtain a Use Permit and Design Review approval from the Planning Commission.
6. The project was scheduled to be heard by the Planning Commission on May 8, 2019. The applicant requested a continuance to the June 12, 2019 meeting. The project was heard by the Planning Commission on June 12, 2019 and was denied.
7. On June 26, 2019 the applicant filed an appeal of the Planning Commission's denial and submitted a revised project for a 3' tall antenna and similar associated equipment.
8. The appeal was scheduled to be heard by the City Council on August 6, 2019. The applicant requested a continuance to the September 10, 2019 meeting. The appeal was heard by the City Council on September 10, 2019.
9. The proposed project is categorically exempt from CEQA requirements, pursuant to Section 15270 (Projects Which Are Disapproved) of the California Environmental Quality Act (CEQA), CEQA does not apply to projects which a public agency rejects or disapproves.

FINDINGS FOR CONDITIONAL USE PERMIT APPROVAL (CMC 17.64.010.A)

1. *That the proposed use will not be in conflict with the City's General Plan.*

As further stated below, projects that do not comply with the zoning code and all applicable design and development standards cannot be found in conformance with the General Plan/Local Coastal Program.

2. *That the proposed use will comply with all zoning standards applicable to the use and zoning district.*

The proposed use does not comply with the zoning standards set forth in Chapter 17.46 which prohibits wireless communication facilities in the R-1 zoning district and discourages such facilities in the public right-of-way. The size of the equipment area would add unreasonable visual clutter to the utility pole at a height readily visible to the public and adjacent private residences. Additionally, Sites 1 and 2 are located within the Beach & Riparian Overlay District and the Coastal Commission Appeal Jurisdiction which

is an area of extraordinary scenic quality and public views to and along the ocean and scenic coastal areas must be protected.

3. *That granting the use permit will not set a precedent for the approval of similar uses whose incremental effect will be detrimental to the City, or will be in conflict with the General Plan.*

The granting of the use permit is likely to set a precedent for additional wireless facilities to be placed in the public right-of-way in the R-1 district. The incremental effect of multiple facilities on a single pole or the addition of new poles in the public right-of-way would be detrimental to the aesthetics of the R-1 zoning district.

4. *That the proposed use will not make excessive demands on the provision of public services, including water supply, sewer capacity, energy supply, communication facilities, police protection, and fire protection.*

The project would not make excessive demands on public services.

5. *That the proposed use will not be injurious to public health, safety or welfare.*

The applicant submitted documentation from Hammett & Edison, Inc concluding that each location will comply with FCC guidelines with the application of mitigation measures; however, the report assumes that the only individuals that might approach the pole are workers and that they would have adequate warning through posted caution signs on the pole. The report does not consider residents, or persons hired by residents, performing maintenance activities on private property in close proximity to the wireless facility, such as tree maintenance workers, painters or roofers. Additionally, the report recommends safety training but does not indicate who and by what means the safety training will be provided. The RF analysis submitted is not based on proper assumptions and the mitigation measures are inadequate to ensure public safety and therefore compliance with FCC RF emissions standards has not been adequately demonstrated.

6. *That the proposed use will be compatible with surrounding land uses and will not conflict with the purpose established for the district within which it will be located.*

The project would not be compatible with surrounding land uses and would conflict with the purpose established for the R-1 zoning district because, a) the proposed facilities would be 16'-25' taller than the maximum allowed structure height of 24' in the R-1 district; b) the size and location of the equipment area, and the orientation towards private residences is incompatible with the residential village character of the neighborhood; and, c) the proposed parking bollards would create a permanent obstruction in the public right-of-way which is generally prohibited.

7. *That the proposed use will not generate adverse impacts affecting health, safety, or welfare of neighboring properties or uses.*

The applicant submitted documentation from Hammett & Edison, Inc concluding that each location will comply with FCC guidelines with the application of mitigation measures; however, the report assumes that the only individuals that might approach the pole are workers and that they would have adequate warning through posted caution signs on the pole. The report does not consider residents, or persons hired by residents, performing maintenance activities on private property in close proximity to the wireless facility, such as tree maintenance workers, painters or roofers. Additionally, the report recommends safety training but does not indicate who and by what means the safety training will be provided. The RF analysis submitted is not based on proper assumptions and the mitigation measures are inadequate to ensure public safety and therefore compliance with FCC RF emissions standards has not been adequately demonstrated.

FINDINGS FOR DESIGN REVIEW APPROVAL (CMC 17.58.060.B):

1. *The proposed project conforms to the applicable policies of the General Plan and the Local Coastal Program.*

As further stated below, projects that do not comply with the zoning code and all applicable design and development standards cannot be found in conformance with the General Plan/Local Coastal Program.

2. *The project complies with all applicable provisions of Title 17.*

The project does not comply with applicable provisions of Title 17 which prohibits wireless facilities in the R-1 zoning district and discourages them in the public right-of-way. Additionally, the proposed equipment area creates visual clutter and unreasonably diminishes public and private views. Furthermore, Sites 1 and 2 are located within the Beach & Riparian Overlay District and the Coastal Commission Appeal Jurisdiction which is an area of extraordinary scenic quality and public views to and along the ocean and scenic coastal areas must be protected.

3. *The project is consistent with applicable Design Guidelines.*

The project is not consistent with applicable design guidelines which state that equipment should be located inside existing buildings or underground. Additionally, the R-1 zoning district limits the heights of residential structures to 24' and the proposed height increases to the poles would exceed this maximum by 16' to 25' making the project significantly out of scale with the neighborhood context. Furthermore, Sites 1 and

2 specifically are located in an area of extraordinary scenic quality (Beach & Riparian Overlay District) and the increased pole heights would be incompatible with the protection of public views to and along the ocean and scenic coastal areas. The pole-mounted equipment would add mass to the utility poles locations not typically used for equipment and readily visible to the public and adjacent private residences.

ENCROACHMENT PERMIT STANDARDS

- A. *Need. The applicant shall be determined to have a justifiable need for the encroachment, and the encroachment shall not be contrary to the public interest.*

The Alternatives Analysis provided contains shortcomings in that it does not identify the personal wireless services the Applicant provides, or intends to provide, that it contends are being effectively prohibited. Additionally, the Analysis does not describe the key performance indicators (KPI) used to determine whether service is adequate or the standards for each KPI. Finally, the Analysis does not identify current KPIs or project what they would be post-installation of the facilities and how many people would be affected. Therefore, the standard of need has not been adequately demonstrated and this standard cannot be met.

- B. *Safety. The granting of an encroachment permit shall not create a hazard to public health or safety.*

The Applicant submitted a report prepared by Hammett & Edison, Inc. that bases its conclusions on inadequate assumptions by not addressing the fact that certain facilities are in tree lines, , and the City, the electric utility and property owners may come within close proximity to the antennas in the course of tree trimming, or other maintenance activities. Similarly, the reports only consider whether exposure levels will be exceeded inside homes and do not consider general public uses that may bring the public much closer to the antennas than estimated. Therefore, the analysis is not actually based on a careful consideration of accessibility and uses around the proposed antennas and the Applicant has not demonstrated that the project will not create a hazard to the public health or safety.

- C. *Drainage. The proposed encroachment shall not adversely affect the normal drainage of surface water, unless an acceptable mitigation is included that will be advantageous to the general public and meet the standards herein.*

No adverse impacts to drainage have been identified. Therefore, the project would meet this standard.

D. Circulation and Parking.

- 1. The proposed encroachment shall not adversely affect vehicular and/or pedestrian traffic nor the parking of vehicles.*
- 2. The proposed encroachment shall not adversely impact existing rights-of-way nor preclude or make difficult the establishment or improvement of existing or potential streets or pedestrian ways.*

Parking bollards are proposed adjacent to several utility poles and would create an obstruction that would impede the parking of vehicles on the unpaved portion of the public ROW. This encroachment would have an adverse impact on the parking of vehicles within the ROW of the residential area. The loss of parking in the ROW would be adverse and detrimental to the parking of vehicles.

E. Public Use and Enjoyment.

- 1. The proposed encroachment shall not diminish public use or enjoyment, either visual or physical, of the City property or public right-of-way to be encroached upon.*
- 2. The encroachment and enjoyment shall be in the public interest.*
- 3. The length of time an encroachment has existed shall not by itself prejudice a decision.*

The project would diminish public use and enjoyment of the public ROW and would not be in the public interest. The height of existing utility poles would increase substantially, 16' to 25' above the maximum allowed building height in the R-1 district. Additionally, the project includes a 6' tall equipment cabinet mounted 9' above grade, which would be readily visible to the public and to adjacent private residences and would diminish the visual enjoyment of the public ROW. Furthermore, two of the five sites would be located in the Beach & Riparian Overlay District and Coastal Commission Appeal Jurisdiction, which is an area of extraordinary scenic quality due to its proximity to natural resources. Lastly, the Alternatives Analysis does not adequately demonstrate that a significant gap in service exists but rather shows that service is widely available in the 700 MHz band throughout the City. Therefore, the project does not meet the standards for public use and enjoyment or demonstrate that the encroachment would be in the public interest.

F. Compatibility.

- 1. The proposed encroachment and its mitigation shall be consistent with the General Plan and the adopted ordinances of the City. Particular attention shall be given to Section P1-*

48 of the General Plan, which prohibits the construction of sidewalks and concrete curbs in the R-1 district, unless necessary for drainage and/or pedestrian safety.

- 2. The encroachment shall not create, extend, or be reasonably likely to lead to an undesirable land use precedent.*
- 3. Granting of a permit shall not adversely affect the usability or enjoyment of one or more adjoining parcels.*
- 4. The proposed encroachment and its mitigation shall be compatible with the surrounding area and adjoining properties.*

The project is not consistent with the Municipal Code, residential design guidelines and public way design and therefore is not consistent with the General Plan. The project would set an undesirable land use precedent within the residential area of the village that would contribute to adverse visual impacts as well as adversely affecting the enjoyment of the ROW and adjacent property by creating unreasonable aesthetic impacts in a village characterized by its scenic environment as well as parking impacts.

G. Public Property/Greenbelt.

- 1. The proposed encroachment shall not adversely affect any public property, including existing vegetation or its root structure, and shall not significantly reduce greenbelt area that may be used for tree planting.*
- 2. Significant trees which would be affected by the proposed encroachment shall be identified by the Director of Forest, Parks and Beach and approval for removal shall follow City policy.*

Ground disturbance would be limited to the removal and replacement of three of the utility poles, the installation of parking bollards and the installation of ground test wells. Impacts to nearby trees and their root systems would need to be further evaluated prior to and during any construction activity. Tree protection measures would also need to be in place prior to any construction activity. The loss of parking in the ROW would be a significant adverse impact to public property.