

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

Hearing Date/Agenda Number
P.C. 01-22-03 Item. 3.g.

File Number
CP 02-041

Application Type
Conditional Use Permit

Council District
8

Planning Area
Evergreen

Assessor's Parcel Number(s)
659-04-055

STAFF REPORT

PROJECT DESCRIPTION

Completed by: John W. Baty

Location: South side of Silverland Drive approximately 100 feet westerly of Foxboro Place (2932 Silverland Court)

Gross Acreage: 6.01

Net Acreage: 6.01

Net Density: N/A

Existing Zoning: R-1-5

Existing Use: Church

Proposed Zoning: No change

Proposed Use: 264 square foot utility facility with emergency backup generator

GENERAL PLAN

Completed by: JWB

Land Use/Transportation Diagram Designation
Low Density Residential (5 DU/AC)

Project Conformance:
 Yes No
 See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: JWB

North: Single-family Detached Residential

A(PD) Planned Development

East: Single-family Detached Residential

R-1-5 Single-family Residential

South: Vacant

R-1-5 Single-family Residential /A-
Agriculture

West: Vacant

A-Agriculture

ENVIRONMENTAL STATUS

Completed by: JWB

Environmental Impact Report found complete
 Negative Declaration circulated on
 Negative Declaration adopted on

Exempt
 Environmental Review Incomplete

FILE HISTORY

Completed by: JWB

Annexation Title: Evergreen No_144

Date: July 27, 1981

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval
 Approval with Conditions
 Denial

Date: _____

Approved by: _____
 Action
 Recommendation

OWNER

Evergreen Valley United Methodist Church
ATTN: Robert F. Harding, President
2932 Silverland Court

APPLICANT / DEVELOPER

AT&T Broadband
ATTN: Robert Wallace
4040 Pike Lane

San Jose, CA 95135-2008

Concord, CA 94520

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: JWB

Department of Public Works

See attached Final Memo

Other Departments and Agencies

N/A

GENERAL CORRESPONDENCE

None received

ANALYSIS AND RECOMMENDATIONS**BACKGROUND**

The applicant, AT&T Broadband, is requesting a Conditional Use Permit to allow an approximately 264 square foot utility facility and 95.2 BHP diesel emergency stand-by/backup generator. The subject property is zoned R-1-5 Residential and is currently developed with an existing church. Utility facilities in residential zoning districts may be allowed only upon issuance of and compliance with a Conditional Use Permit. Stand-by/backup generators that meet the air quality and noise standards for residential zoning districts are permitted with the issuance of a Special Use Permit. The Zoning Ordinance has specific provisions, which allow for development permits for the same project to be reviewed and acted on under a unified process. In this instance both the utility facility and the stand-by/backup generator are processed as a Conditional Use Permit. Surrounding uses include single-family detached houses to the north and east and vacant properties to the south and west.

PROJECT DESCRIPTION

The proposed utility facility consists of an approximately 264 square foot one-story building and fenced enclosure located at the southeastern edge of the existing church parking lot. The facility is a secondary hub, which provides remote switching capability for digital cable television and broadband internet service between AT&T's main transmission facility and the Evergreen area. The associated stand-by/backup generator would help to ensure continuous service during power failures. The facility will be unmanned requiring only periodic visits by AT&T technicians for routine checks and maintenance.

ENVIRONMENTAL REVIEW

The Director of Planning has determined that this project is exempt from environmental review under the provisions of the California Environmental Quality Act pursuant to Section 15332, which pertains to in-fill development projects. The project does not exceed air quality or noise standards established by the Zoning Ordinance (See Analysis Section on Conformance to Zoning Ordinance).

GENERAL PLAN CONFORMANCE

The project site has a General Plan Land Use/Transportation Diagram designation of Low Density Residential (5 DU/AC). The proposed utility facility is consistent with the subject site's General Plan designation.

ANALYSIS

The primary issues analyzed for the project include (1) location and design and (2) conformance to the Zoning Ordinance performance standards for stand-by/backup generators.

Location and Design

The proposed location for the hub facility is in the existing open field at the edge of the southeast corner of the existing church parking lot. This proposal does not interfere with the church's conceptual build-out plans, which call for additional buildings and parking to be built at the western end of their property. The proposed location is not readily visible or accessible to the general public. It is located approximately 350-feet from the nearest public street (Silverland Drive) and approximately 155-feet from the nearest rear yards of the residences to the east. The proposed location provides easy access for facility maintenance through the existing church parking lot and driveway that connects to San Felipe Road.

The hub equipment is contained within a pre-fabricated concrete building that is clad with lap siding and a gabled roof with composition shingles to match the church. The generator is located within an area enclosed by solid wood fencing. The facility is designed with colors and materials to look like an accessory structure associated with the existing church buildings.

Conformance to Zoning Ordinance

The Zoning Ordinance establishes performance standards for air pollution and noise. The thresholds for emissions and health risk generated by the use are 15 tons/year or 80 pounds/day of either Nitrogen Oxide (NO_x) or Fine Particulate Matter (PM₁₀) and an annual emissions associated with the project that would result in an incremental cancer risk less than 1.0E-05 (ten in a million), were the exposure to continue for 70 years. For noise the standard is 55 decibels at property line. The proposed generator does not exceed these standards. At a maximum 32 test hours per year the generator will emit approximately one (1) pound of Nitrogen Oxide and less than one (1) pound of Fine Particulate Matter per year. According to the Bay Area Air Quality Management District (BAAQMD), with generator testing limited to 32 hours per year, the generator would be in accordance with the District's Risk Management Policy.

Following the recommendations outlined in the sound study prepared for this project, the noise generated by the air conditioning units and the diesel generator would be 27 decibels at the nearest residential property line to the east and 45 decibels at the nearest property line to the south. The proposed structure conforms to all setbacks and height requirement set forth in the R-

1-5 Zoning District. The existing church has no pending code violations related or unrelated to the proposed utility facility.

PUBLIC OUTREACH

A notice of the public hearing for the subject permit was distributed to the owners and tenants of all properties located within 500 feet of the subject site.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Low Density Residential (5 DU/AC) on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the R-1-5 Residence Zoning District.
3. The project site is 6.01 acres in area.
4. The project site is currently developed with an existing church.
5. The project proposes a 264 square foot utility facility and stand-by/backup diesel generator.
6. The proposed structure uses colors and finish materials similar to that of the existing church building on site.
7. The proposed utility facility is located 350 feet from the nearest public street and 175 feet from the nearest residential structure.
8. The noise level projection of the facility is 27dBA at the closest residential property line and 45dBA at the closest property line.
9. The proposed stand-by/backup generator does not exceed the air quality or noise standards for residential zoning districts.
10. Under the provisions of Section 15332 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project conforms to the City's General Plan.

2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site;
or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Construction and development shall conform to the approved development plans entitled, "AT&T Broadband Secondary Hub Site", dated, November 18, 2002, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24).
2. **Generator Specifications.** This stand-by or backup electrical power generator shall be limited to the 95.2 HP, Caterpillar, Model D50P2S-2.
3. **Operation of Generator.** The stand-by or backup electrical power generator shall be operated only during interruptions of electrical service from the distribution system or transmission grid due to circumstances beyond the operator's control. Testing shall be limited to no more than 32 hours per year and shall be limited to weekdays between the hours of 9:00 a.m. and 5:00 p.m.
4. **Record of Operation.** The applicant shall maintain an accurate record of the operation of the generator to the satisfaction of the Director of Planning of the City of San Jose and appropriate local, State, and Federal agencies. These records shall cover at least the following items:
 - a. Hours of operation and testing.
 - b. Operational problems, complaints, and difficulties.
 - c. A log of Special Occurrences to include the following: fires, earthquakes, unusual and sudden settlement, injury and property damage accidents, explosions, discharge of hazardous or other wastes not permitted in the class of the site involved, citizen complaints received, flooding, unscheduled shutdowns, and other unusual occurrences.
 - d. Dust and litter control efforts and results.
 - e. Description of materials received, identified by source and material.

- f. The records shall be open to inspection by the City of San Jose and other duly authorized regulatory and enforcement agencies during normal business hours.
5. **Facility Maintenance.** The applicant shall maintain the utility facility, including the electrical power generator, in a safe and clean manner.
6. **Maximum Noise Levels.** The maximum noise level of the stand-by or backup electrical power generator and/or air conditioning units at any property line shall not exceed the applicable noise standard of 55 decibels.
7. **Bay Area Air Quality Management District Permit.** A Bay Area Air Quality Management District (BAAQMD) permit has been issued for the use or evidence provided to the satisfaction of the Director that the use complies with all applicable BAAQMD requirements has been submitted to the Director.
8. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
9. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
10. **Street Cleaning and Dust Control.** During construction, the developer shall damp sweep the public streets each working day. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.
11. **Nuisance.** This use shall be operated in a manner, which does not create a public or private nuisance. Upon notice by the City any such nuisance must be abated immediately.
12. **Colors and Materials.** All colors and materials shall be as specified on the approved plan set.
13. **Outside Storage.** No outside storage is permitted except in areas designated on the approved plan set.

14. **Hazardous Materials Storage.** Any hazardous materials regulated by Chapter 17.68 of the San José Municipal Code on the site must be used and stored and in full compliance with the City's Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San José Fire Prevention Bureau.
15. **Industrial Waste.** If industrial waste, as defined by Section 15.12 of the San José Municipal Code, is to be discharged into the sanitary sewer system, a clearance shall be obtained from the Water Pollution Control Plant, Industrial Waste Section.
16. **Construction Conformance.** A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms with all applicable requirements of the subject Permit, including the plan sets. To prevent delays in the issuance of Building Permits, please notify Planning Division staff at least one week prior to the final Building Division inspection date.
17. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-16203) to the satisfaction of the Director of Public Works:
 - a. *Sewage Fees.* In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
 - b. *Geology.* A Geologic Hazard Clearance is required prior to Building Permit approval.
18. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, CP02-041 shall be printed on all construction plans submitted to the Building Division.
 - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
 - c. *BAAQMD Permit.* The project developer shall obtain the necessary permits from the Bay Area Air Quality Management District.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.