

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. 08/14/02 Item. 3.g.

File Number
CP 01-05-041

Application Type
Conditional Use Permit

Council District
9

Planning Area
Willow Glen

Assessor's Parcel Number(s)
451-07-003

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Teresa Estrada

Location: The northeast corner of Foxworthy Avenue and Kell Way

Gross Acreage: 1.87 Net Acreage: 1.87 Net Density: N/A

Existing Zoning: CP-Commercial Pedestrian Existing Use: 29-foot tall roof mounted monopole for a total height of 47 feet

Proposed Zoning: No change Proposed Use: Legalize existing use of monopole noted above

GENERAL PLAN

Completed by: TE

Land Use/Transportation Diagram Designation
General Commercial

Project Conformance:
 Yes No
 See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: TE

North: Commercial A(PD) Planned Development and CP-Commercial Pedestrian

East: Guadalupe River and single-family detached residential A-Agriculture and A(PD) Planned Development

South: Commercial CP-Commercial Pedestrian

West: Church/Religious Assembly R-1-8 Residence

ENVIRONMENTAL STATUS

Completed by: TE

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

Exempt
 Environmental Review Incomplete

FILE HISTORY

Completed by: TE

Annexation Title: Curtner No. 2

Date: September 1, 1955

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval
 Approval with Conditions
 Denial
 Uphold Director's Decision

Date: _____

Approved by: _____
 Action
 Recommendation

OWNER

Thomas Scott, Goodwill Industries, Inc.
1080 N. 7th St.
San Jose, CA 95112

APPLICANT

General Dynamics, Laura Spano
4000 Executive Parkway, Suite 515
San Ramon, CA 94583

DEVELOPER

Verizon Wireless, Shannon Hughes
2785 Mitchell Drive
Walnut Creek, CA 94583

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: TE

Department of Public Works

No comments

Other Departments and Agencies

None.

GENERAL CORRESPONDENCE

ANALYSIS AND RECOMMENDATIONS**BACKGROUND**

The developer, Verizon Wireless, is requesting a Conditional Use Permit to allow the continued operation of an existing 29-foot tall building mounted monopole atop an existing commercial center. The total height of the monopole is 47 feet. The Zoning Ordinance requires a Conditional Use Permit for wireless communication antennas located in the CP-Commercial Pedestrian Zoning District.

This existing monopole was approved to replace two existing monopoles atop the existing building in 1996 with a Conditional Use Permit and Development Variance (File Nos. CP95-12-076 and V96-06-022). The applicant did not file a timely renewal of the Conditional Use Permit and Development Variance as required prior to expiration of the five-year time limit, therefore the permit has lapsed. The applicant has filed a “new” Conditional Use Permit application to request the continued use of the existing, previously approved monopole for cellular service. The Approved Development Variance is no longer required due to an increase in allowed height to 50 feet in the CP-Commercial Pedestrian Zoning District as part of the zoning code update.

Surrounding uses include commercial uses to the north and south. Church/religious assembly uses are located to the west of the project site across Almaden Expressway. Single-family detached residences are located east of the project site across the Guadalupe River.

The Zoning Ordinance allows building mounted wireless antennas in the CP-Commercial Pedestrian District by right provided that such structures do not project more than six (6) feet above the structure parapet. Taller antenna proposals, such as the proposed project, require the approval of a Conditional Use Permit.

In 1996, staff explored the issues of electromagnetic radiation to determine if emissions from antennas of the proposed type posed a public health concern. Staff found that the low-frequency, low-energy, non-ionizing emission associated with wireless communications antennas were well below the recognized safety standards set by the American National Standards Institute (ANSI). Staff concluded there was no evidence that such transmission would result in adverse health effects to people living or working in the vicinity of the antennas. Further, Staff investigated reports that wireless communication transmission interfered with hearing aids, pace makers, and other electronic devices. Staff determined that the reported interference resulted from cordless telephones and not from the antennas.

Project Description

The proposed project consists of the continued use and operation of a 29-foot tall building mounted monopole atop an existing commercial structure with up to three (3) wireless communications antennas. The overall height would be 47 feet tall. This type of wire antenna monopole design is generally considered a “slim-pole”. The Zoning Ordinance allows slim-pole type monopoles to extend up to 60 feet in height. The existing antenna is located on top of an existing retail building, built in the early 1960’s that contains a Goodwill Store and a pool supply store. The antenna placement is located towards the rear side of the building above the Goodwill tenant space. The associated equipment is housed in an existing 12.6- by 28-foot lease area within the existing commercial building.

ENVIRONMENTAL REVIEW

Under the provisions of Section 15301 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.

GENERAL PLAN CONFORMANCE

The proposed use is consistent with the subject site’s General Plan Land Use/Transportation Diagram designation of General Commercial.

ANALYSIS

The primary issue analyzed is conformance to City Council Policy 6-20, Land Use Policy for Wireless Communication Antennas, which provides criteria for siting such facilities, including setbacks from residential uses, parking, height, and visual impacts.

Conformance to the Council Policy for Wireless Communications Facilities

The City of San Jose may allow the installation of wireless communication antenna with a Conditional Use Permit to ensure such projects conform to the City requirements and are compatible with the surrounding neighborhood.

The Council Policy recommends wireless antennas to be located a minimum of 50 feet horizontally from any property with a residential use or General Plan designation and that the facility does not reduce required parking. Consistent with the intent of the Council policy, the proposed antennas are located approximately 260 feet horizontally from the nearest existing residential property to the east. Additionally, the project conforms to the 50-foot maximum height limit of the CP-Commercial Pedestrian Zoning District. The roof-mounted design avoids any potential vehicle circulation impacts or loss of parking.

The Council Policy requires alternatives analysis for siting of new wireless antennas. Technically, since the previous permit for the subject monopole expired, this is considered a 'new' monopole and an alternatives analysis was required to explore alternatives to reduce visual impacts. The applicant provided an analysis of alternatives, but unfortunately no new "stealth" opportunities within the necessary service area were available or feasible. Preferred design alternatives for similar such uses have typically included the concealment of antennas within newly erected church steeples or within flagpoles. Staff confirmed that the management staff for a few of the nearby churches to the west were not interested in leasing out space to the applicant for such design alternatives.

The Council Policy requires new wireless antennas to be located as to minimize visual impacts, and to be architecturally integrated into the structure. It also requires ancillary equipment to be screened. The ancillary equipment is enclosed within a lease area in an existing tenant space of the commercial center. The existing monopole, located atop the southerly portion of the commercial structure, is barely visible from the north. Existing off-site trees within the Guadalupe River Corridor screen the monopole from the nearest residential uses to the east. The monopole is set back approximately 275 feet from Almaden Expressway and 40 feet from Kell Way to the south and is relatively visible from both of these streets.

The existing site has very minimal perimeter landscaping and only a few small trees within the existing parking area. Contrary to the City Council policy, the applicant is not proposing to add any landscaping as part of this proposal to help reduce the visual impacts of the monopole. It is Staff's opinion that this project should include the planting of several trees along both the Almaden Expressway and Kell Way frontages to help screen the new monopole. For this reason, Staff has added a condition to the project to accomplish this objective. This would provide the added benefit of improving the appearance of the overall property which is one of the most under-landscaped parcels in the area. With the inclusion of this condition in the permit, the proposed project can be found in conformance with the Council Policy.

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:

This site has a designation of General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.

The project site is located in the CP-Commercial Pedestrian Zoning District.

Under the provisions of Section 15301 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.

The existing monopole was approved to replace two existing monopoles atop the existing building in 1996 with a Conditional Use Permit and Development Variance (File Nos. CP95-12-076 and V96-06-022).

The applicant did not file a timely renewal of the Conditional Use Permit and Development Variance prior to expiration of the five-year time limit and therefor the previous permit has since lapsed and is no longer in force or effect.

A Development Variance is no longer required due to an increase in allowed height to 50 feet in the CP-Commercial Pedestrian Zoning District as part of the zoning code update.

The proposed project consists of the reinstatement of previous permit to allow the lawful operation of the existing 29-foot tall monopole with up to 3 wireless communications antennas atop an existing commercial building for a total height of 47 feet.

Associated equipment is housed in an existing 12.6- by 28-foot lease area within an existing tenant space of the commercial building.

The proposed antennas will be located approximately 275 feet from the nearest residential use.

The maximum height limit of the CP-Commercial Pedestrian Zoning District is 50 feet.

Consistent with the intent of the Council policy, the proposed antennas will not eliminate required parking.

The alternatives analysis provided by the applicant identified that no new stealth opportunities were available throughout the search ring.

The monopole is highly visible off-site from both Almaden Expressway and Kell Way elevations.

The subject site has substandard landscaping with very few existing trees which do not adequately the existing antenna structure.

Staff is recommending approval of the subject permit with the condition that new trees be placed along the Almaden Expressway and Kell Way frontages to reduce visual impacts.

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

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

The proposed project complies with all applicable provisions of the Zoning Ordinance.

The proposed project is in compliance with the California Environmental Quality Act.

The proposed project is consistent with City Council Policy 6-20: Land Use Policy for Wireless Communication Facilities with the inclusion of a permit adjustment to provide additional trees along the street frontages of Almaden Expressway and Kell Way.

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 approved development plans entitled, "Verizon Wireless Capitol/Almaden Cell Site Conditional Use Permit for a Previously Permitted Site" dated July 23, 2001, 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. **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 check 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.
3. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **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.
5. **Lighting.** This permit allows no new on-site lighting.
6. **Outside Storage.** No outside storage is permitted for the project except in areas designated on the approved plan set.
7. **Tree Removals.** No tree larger than 56 inches in circumference, at a height 24 inches above the natural grade slope, may be removed without a Tree Removal Permit issued by the Director of Planning.
8. **Colors and Materials.** All building colors and materials are to be those specified on the approved plan set.

9. **Generators.** This permit does not include approval of emergency back-up generator on the subject site.
10. **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, CP01-05-041 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.
11. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief.
12. **Fire Hydrants and Driveways.** All fire hydrants shall be at least 10 feet from all driveways to the satisfaction of the Fire Chief.
13. **Fire Flow.** Required fire flow for the site is 2,000 gpm, or as otherwise approved in writing by the Fire Chief.
14. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided to the satisfaction of the Fire Chief.
15. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San José Municipal Code on the site must be used and stored within approved buildings and/or within areas specified on the approved plan set, if any, 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.
16. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
17. **Permit Adjustment.** Prior to recordation of this permit the project applicant shall secure and agree to implement a Permit Adjustment to install street trees along both street frontages of Almaden Expressway and Kell Way within the landscape setbacks of the property and/or within tree well cutouts adjacent to the buildings to the Satisfaction of the Director of Planning.
18. **Discontinuation of Use.** Upon discontinuation of the use of the subject antennas, the applicant shall remove all antenna improvements associated with this permit within 30 days.
19. **Co-location.** The owner(s) and operators of the proposed antenna support structure shall allow the co-location of wireless communications antennas for other providers.

20. **Time Limit.** This permit shall expire five years after the date of approval. Renewal of the use through a subsequent Conditional Use Permit shall include a compliance review and an evaluation of the operation approved under the present permit.

PLEASE NOTE THAT THIS CONDITIONAL USE PERMIT HAS BEEN GRANTED FOR A PERIOD OF FIVE (5) YEARS ONLY. YOU ARE BEING SPECIFICALLY AND SEPARATELY ADVISED OF THIS TIME LIMITATION SO THAT YOU WILL CONSIDER THIS TIME LIMITATION IN YOUR DECISION TO ACCEPT THIS PERMIT OR AS YOU MAKE ANY INVESTMENT DECISION RELATED TO THIS PROPERTY.

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.

207-10/TE:jb

List of Attachments:

CEQA Exemption
CC Policy 6-20
Location Map
Plan Set

