

## **SPECIAL USE PERMIT**

<b>FILE NO.</b>	<b>SP11-034</b>
<b>LOCATION OF PROPERTY</b>	<b>Northwest corner of Meridian Avenue and Parkmoor Avenue (1539 Parkmoor Ave)</b>
<b>ASSESSOR'S PARCEL NUMBER</b>	<b>277-22-021</b>
<b>ZONING DISTRICT</b>	<b>CN – Commercial Neighborhood</b>
<b>GENERAL PLAN DESIGNATION</b>	<b>Neighborhood/Community Commercial</b>
<b>PROPOSED USE</b>	<b>Special Use Permit for the installation of a new 60 foot tall wireless communications antenna slimline monopole and associated equipment at an existing 13.8 acre shopping center</b>
<b>ENVIRONMENTAL STATUS</b>	<b>Exempt</b>
<b>OWNER</b>	<b>Chiechi Park West VI 1524 Padres Drive San José, CA 95125</b>
<b>APPLICANT</b>	<b>Valerie Tallerico Trillium Telecom 7901 Stoneridge Drive, Suite 503 Pleasanton, CA 94588</b>

### **FACTS**

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

1. This site has a designation of Neighborhood/Community Commercial on the adopted Envision San José 2040 General Plan Land Use/Transportation Diagram.
2. The site is located in the CN – Commercial Neighborhood Zoning District.
3. The site is 13.8 acres in size and is developed as a shopping center.
4. The site shopping center site is bounded by Parkmoor Avenue to the south, Meridian Avenue to the east and Chiechi Avenue to the north. There are existing commercial developments adjacent to the site to the northeast and west.
5. This Special Use Permit request is to allow installation of a new wireless communications antenna slimline monopole and associated equipment within an enclosure.
6. Under the provisions of Section 20.20.100 of the San José Municipal Code, a Special Use Permit is required for the installation of a slimline monopole.

7. The diameter of the monopole is 18 inches, and is 60 feet in height; the radome enclosing the antennas has a diameter of 36 inches.
8. Under the provisions of Section 20.80.1900 the maximum height of a wireless communication antenna may be increased over the required maximum height of the zoning district in which it is located up to a maximum of sixty feet provided that the antenna is a wireless communications antenna slimline monopole.
9. The proposed monopole is located in the southwest corner of the shopping center site along the western property line.
10. The proposed monopole is approximately 385 feet from the nearest residential unit to the west separated by an existing commercially developed property. The proposed monopole is approximately 400 feet from the nearest residential unit to the north across Chiechi Avenue.
11. The proposal includes planting of nine (9) Chinese pistache trees along the north (Chiechi Avenue) property line.
12. The Director of Planning, Building, and Code Enforcement found the proposed project to be exempt pursuant to Section 15303 of the California Environmental Quality Act (CEQA).
13. Per the Telecommunications Act of 1996, local jurisdictions cannot deny communications antennas based on perceived health or environmental impacts since the project must conform to Federal Communications Commission (FCC) regulations. A licensed engineer prepared a report for the proposed project demonstrating compliance with FCC specified guidelines. The report described, under the worst-case scenario where all proposed and existing antennas are active simultaneously at full power, that the maximum possible Radio Frequency (RF) exposure on nearby building rooftops is 5.5% of the Maximum Permissible Exposure (MPE) limit. The maximum cumulative power density for the proposed and existing antennas is calculated to be 2.9% of the MPE limit at ground level.

## **FINDINGS**

The Director of Planning concludes and finds, based on the analysis of the above facts, that:

1. The interrelationship between the orientation, location and elevations of the proposed monopole and related equipment and other uses on-site are mutually compatible and aesthetically harmonious in that:
  - a. The proposed monopole and equipment enclosure is located near the southwest corner of the shopping center site. The proposal meets the Zoning Code wireless communications antenna, slimline monopole design standard with a pole diameter not exceeding 18 inches and antennas screened by an enclosure that does not exceed 36 inches in diameter.
2. The orientation, location and elevation of the proposed building(s), structure(s) and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood in that:
  - a. The proposed development does not unreasonably interfere with the light and air available to adjacent sites.

- b. The proposal meets the Zoning Code wireless communications antenna, slimline monopole design standard with a pole diameter not exceeding 18 inches and antennas screened by an enclosure that does not exceed 36 inches in diameter.
  - c. The proposed project complies with the applicable criteria of City Council Policy 6-20, Land Use Policy for Wireless Communication Facilities. The guideline for minimum setback of a 60-foot tall monopole from a residential property line is 60-feet. The proposed monopole is approximately 310-feet from the nearest residential property line to the west. The project includes planting of nine (9) new Chinese pistache trees along the north (Chiechi Avenue) property line.
3. The environmental impacts of the project will not have an unacceptable negative effect on adjacent property or properties in that:
    - a. Under the provisions of Section 15303 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 project will not have a significant adverse effect on the environment.
    - b. The proposed project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the California Department of Fish and Game Code.
  4. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain the appearance of the neighborhood.
  5. Traffic access, pedestrian access and parking are adequate in that:
    - a. The proposed number, size and access of parking spaces comply with the requirements of the Zoning Ordinance.
    - b. The proposal does not affect existing vehicular or pedestrian access on the site and around the perimeter of the existing buildings.
  6. This permit, as issued, furthers the policies of the General Plan, in that the project conforms to the General Plan Land Use/Transportation Diagram designation of Neighborhood/Community Commercial and furthers the policies of the General Plan, in that the project is consistent with the General Plan Telecommunications goal and policies that supports the provision of state-of-the-art telecommunication services for households, businesses, institutions, and public agencies throughout the city to foster fiscal sustainability, an innovative economy, support environmental leadership, and meet the needs of quality neighborhoods.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Director of Planning finds and concludes pursuant to the Special Use Permit Finding (Section 20.100.820) of the San José Municipal Code:

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;
  - 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 development features prescribed in this Title, or as is otherwise required in order to integrate the use with existing and planned uses in the surrounding area; 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 quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
  - b. By other public or private service facilities as are required.

Based upon the above-stated findings and subject to the conditions set forth below, the Director of Planning approves, pursuant to Part 7 of Chapter 20.100 of the San José Municipal Code, the subject proposal to allow the installation of a wireless communications antenna slimline monopole on the subject property.

**APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
  - a. Acceptance of the Permit by the applicant; and
  - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Special Use Permit shall automatically expire four years from and after the date of issuance hereof by said Director, if within such four-year period, the proposed construction of the wireless communications antenna has not commenced, pursuant to and in accordance with the provision of this Planned Development Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, The Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20.

3. **Building Permit/Certificate of Occupancy.** If applicable, procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San Jose Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Conformance with Plans.** Construction and development shall conform to the approved development plans entitled, "CC3720A, Parkmoor Ave. and Meridian Ave., 1539 Parkmoor Ave., San José, CA 95128", last revised November 5, 2012, on file with the Department of Planning, Building and Code Enforcement.
5. **Time Limit.** This Special Use Permit expires and has no further force or effect 10 years from the approval date of this Permit. At that time, that applicant/owner shall provide information to the City to determine if the monopole is still needed, based on improvements in technology or availability of alternative building-mounted opportunities in the vicinity. Please note that this Special Use Permit has been granted for a period of 10 years only. The applicant is hereby 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.
6. **Renewal.** The permit holder may seek renewal of a time-conditioned Special Use Permit by filing a timely renewal application on the form provided by the Director of Planning. In order to be timely, an application for renewal must be filed more than 90 calendar days but less than 180 calendar days prior to the expiration of the Special Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Special Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.
7. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code or state laws. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance.
8. **Nuisance.** As required by Title 20 of the San Jose Municipal Code, construction on this site shall be conducted in a manner, which does not create a public or private nuisance. The City must abate any such nuisance immediately upon notice.
9. **Wires.** All wires shall be located either within the pole or otherwise enclosed as to not be visible outside the equipment enclosure.
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, SP11-034, shall be printed on all construction plans submitted to the Building Division.
11. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings, structures, fencing, and wall surfaces within 48 hours of defacement.

12. **Landscaping.** Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner.
13. **Discontinuation of Use.** Upon discontinuation of the use of the subject antennas, the applicant shall remove all antenna improvements and related equipment/enclosures associated with this permit within 30 days.
14. **Co-location.** The owner(s) and operators of the proposed antenna support structure shall fully cooperate and allow the co-location of antennas for other providers. Other wireless providers shall also be allowed to add on to existing at grade equipment enclosures.
15. **Generator.** This project does not include an approval for a standby or back-up generator. Any such proposal will require additional permits.
16. **Signs.** No new signs are approved with this permit.
17. **Revocation.** This Special Use Permit is subject to revocation for violation of any of its provisions or conditions.

**APPROVED** and issued on this **15<sup>th</sup> day of February 2013.**

Joseph Horwedel, Director  
Planning, Building, and Code Enforcement

Deputy