

SPECIAL USE PERMIT

FILE NO. SP12-035

LOCATION OF PROPERTY North side of Leigh Avenue, approximately 370 feet southerly of Southwest Expressway (1089-1091 Leigh Avenue)

ASSESSOR'S PARCEL NUMBER 284-31-006

ZONING DISTRICT CP Commercial Pedestrian

GENERAL PLAN DESIGNATION Neighborhood/Community Commercial

PROPOSED USE Special Use Permit to increase the height of an existing wireless communication monopole from 35'-3" to 60'-0", add six panel antennas, install equipment cabinets and one 30kW stand-by emergency diesel generator, install two new GPS antennas on the equipment enclosure cover, and remove one ordinance-sized 83" pine tree on a 0.35 gross acre site

ENVIRONMENTAL STATUS Exempt

OWNER Kashima Hideyoshi and Yaeko Trustee
333 West El Camino Real, Suite 240
Sunnyvale, California 94087

APPLICANT NSA Wireless, on behalf of Verizon Wireless
2000 Crow Canyon Place
San Ramon, California 94583

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 zoned CP Commercial Pedestrian.
3. The subject site is 0.35 gross acre in size.
4. The site is mostly occupied by an existing commercial building.
5. This Special Use Permit request is to allow installation of a new wireless communications antenna slimline monopole with six antennas, associated equipment, two GPS antennas on the equipment enclosure cover, and one 30kw stand-by emergency diesel generator. The project will also require the removal of one ordinance-sized 83 inch pine tree.
6. The diameter of the monopole is 18 inches and it is 60 feet in height.

7. Section 20.80.1900 of the San José Municipal Code states that 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
8. Under the provisions of Section 20.200.1430 a slimline monopole is defined as a single antenna pole not exceeding 1.5 feet in diameter at base of the antenna or pole, with antennas screened by an enclosure not exceeding 3 feet in diameter, and associated mechanical equipment that is used for a wireless communications network.
9. Under the provisions of Section 20.30.100 of the San José Municipal Code, a Special Use Permit is required for the installation of a slimline monopole and a standby emergency generator.
10. San Jose Municipal Code establishes a maximum sound level at 60 decibels at the commercial property line.
11. The current ambient sound level at the western property line is between 66.6 (nighttime) and 71.3 (daytime) decibels.
12. The noise generated at the western property line post-construction will be between 66.7 decibels (nighttime) and 71.3 decibels (daytime).
13. The Director of Planning in conjunction with the Bay Area Air Quality Management District (BAAQMD) has determined that emissions from standby generators shall not exceed 15 tons/year of Nitrogen Oxide or Fine Particulate Matter.
14. The proposed standby emergency generator and equipment will be enclosed within a new block enclosure with a metal equipment cover.
15. The proposed installation is adjacent to a commercially zoned property on all sides. The nearest residential units are approximately 300-feet to the northwest beyond Southwest Expressway, 275-feet to the east beyond Leigh Avenue, and 600-feet to the southwest beyond De Rose Way.
16. Section 13.32.070 of the San José Municipal Code requires the issuance of a Tree Removal Permit for the removal of any live tree measuring 56 inches or more in circumference at a height of twenty-four inches above natural grade. Section 13.32.080 allows a Tree Removal Permit request to be included as part of an application for a development permit under the provisions of Title 20.
17. The Director of Planning, Building, and Code Enforcement found the proposed project to be exempt pursuant to Section 15301(a) of the California Environmental Quality Act (CEQA).

FINDINGS

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

1. That the trees affected are of a size, type and condition, and are in such a location in such surroundings, that their removal would not significantly frustrate the purposes of Chapter 13.32; and
2. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question.

3. 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 equipment enclosure is screened from view behind the existing commercial building
 - b. Parking spaces are not being displaced and circulation aisles are not affected by this proposal.
 - c. The proposed project conforms to the applicable provisions of Title 20 of the San José Municipal Code.
4. 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 proposed project substantially complies with the applicable criteria of City Council Policy 6-20: Land Use Policy for Wireless Communication Facilities.
5. 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 15301(a) 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.
 - c. The proposed project will not significantly alter the existing ambient sound levels at the property line.
 - d. The proposed project will comply with the air quality standards established by the Director of Planning in conjunction with the BAAQMD.
6. 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.
7. Traffic access, pedestrian access and parking are adequate in that:
 - a. The proposal does not affect existing vehicular or pedestrian access to the site.
8. 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.
 - e. The proposed restaurant use is consistent with the site's General Plan land use designation of Neighborhood/Community Commercial.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Director of Planning finds and concludes pursuant to 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 and standby emergency generator 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 and use of the approved monopole and associated improvements has not commenced, pursuant to and in accordance with the provision of this Special Use 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, "Verizon Wireless, Southwest Expressway, PSL #184672, Crown Castle, Site ID: 880468", last revised January 7, 2013, on file with the Department of Planning, Building and Code Enforcement.
5. **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.
6. **Wires.** All wires shall be located either within the pole or otherwise enclosed as to not be visible outside the equipment enclosure.
7. **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, SP12-035, shall be printed on all construction plans submitted to the Building Division.
8. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings, structures, fencing, and wall surfaces within 48 hours of defacement.
9. **Radome.** The monopole shall be designed with a radome enclosing the antenna, not to exceed 36 inches in diameter, to meet the definition of a slimline monopole set forth in Title 20.
10. **Generator Model Limitations.** The subject permit is for a 30 kW Standby/Backup Generator with a 132 gallon diesel tank. Any substitution shall require approval by the Director of Planning.
11. **Tree Removal and Replacement.** This Permit includes the removal of one ordinance-sized tree. Within 90 days of removal of the trees, the applicant shall plant four (4) 24-inch box trees as indicated on the approved Site Plan and make a donation of \$300 per tree removed to the "Our City Forest" non-profit organization, (408) 998-7337 or www.ourcityforest.org. The applicant shall provide appropriate evidence such as, but not limited to, photographs and/or receipts to the Planning Project Manager, to verify compliance with the mitigation requirements. Such evidence should be labeled SP12-035 and sent to the Planning Project Manager, within 30 days of the replacement of each subject tree. A donation receipt to "Our City Forest" for offsite tree planting shall be provided to the Planning Project Manager prior to removal of the subject tree.
12. **Permit Posting.** Prior to commencement of and during removal of any ordinance-size tree pursuant to this Permit, the applicant shall post on the site, or cause to be posted, a copy of this validated Permit in conformance with the following:

- a. The copy of the permit shall be a minimum size of 8.5 by 11.0 inches; shall be posted at each public street frontage within 2 feet of the public sidewalk or right-of-way; and shall be posted in such a manner that the permit is readable from the public sidewalk or right-of-way; or
 - b. If the site does not have a public street frontage, a copy of the permit shall be posted at a location where the permit is readable from a common access driveway or roadway.
13. **Presentation of Permit.** During removal of any ordinance-size tree pursuant to this permit, the applicant shall maintain the validated permit on the site and present it immediately upon request by the Director of Planning, Building and Code Enforcement, Police Officers or their designee.
 14. **BAAQMD Permit Required.** The applicant will obtain a permit for the standby/generator, as necessary, from the Bay Area Air Quality Management District.
 15. **Hours of Operation of the Generator.** The emergency generator may be operated for the purpose of mitigating “emergency conditions” during times of interrupted power supply such as during blackouts from local power company.
 16. **Testing or Maintenance.** Test and maintenance of the generator shall be limited to the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday and may occur 2 hours per month on weekdays up to 24 hours in any calendar year.
 17. **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.
 18. **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.
 19. **Revocation.** This Special Use Permit is subject to revocation for violation of any of its provisions or conditions.

APPROVED and issued on this 1ST day of March 2013.

Joseph Horwedel, Director
Planning, Building, and Code Enforcement

Deputy