

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. 05/02/05 Item

File Number
CP05-010

Application Type
Conditional Use Permit

Council District
4

Planning Area
Berryessa

Assessor's Parcel Number(s)
595-04-073

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Sanhita Mallick

Location: South side of Sierra Road, 1,600 feet easterly of Piedmont Road

Gross Acreage: 5.16

Net Acreage: n/a

Net Density: n/a

Existing Zoning: R-1-8 Residence

Existing Use: Religious Assembly (Christ Life Lutheran Church)

Proposed Zoning: No Change

Proposed Use: Co-location of Cellular antennas in previously approved bell tower and associated equipment on the ground

GENERAL PLAN

Completed by: SM

Land Use/Transportation Diagram Designation
Urban Hillside

Project Conformance:
 Yes No
 See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: SM

North: Single-family/vacant land

A(PD) Planned Development/Agricultural

East: Single-family/ vacant land

R-1-8 Residence

South: Single-family/ vacant land

R-1-8 Residence

West: Single-family

R-1-1 Residence

ENVIRONMENTAL STATUS

Completed by: SM

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

Exempt
 Environmental Review Incomplete

FILE HISTORY

Completed by: SM

Annexation Title: Penitencia No. 3

Date: March 20, 1958

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval
 Approval with Conditions
 Denial
 Uphold Director's Decision

Date: _____

Approved by: _____
 Action
 Recommendation

APPLICANT

Pamela Nobel
NSA Wireless Inc.
2603 Camino Ramon #170
San Ramon CA 94583

OWNER

Christ the Life Lutheran Church
Attn: Richard McKinney
3412 Sierra Road
San Jose, CA 95132

DEVELOPER

At & T Wireless/Cingular
651 Gateway Boulevard #1500
San Francisco, CA 94080

Department of Public Works
Memo received with no comments.

Other Departments and Agencies

City of San Jose Fire Department

GENERAL CORRESPONDENCE

None received

ANALYSIS AND RECOMMENDATIONS**BACKGROUND**

The applicant, AT& T Wireless/Cingular, is requesting a Conditional Use Permit to allow the installation of up to six (6) wireless communication antennas within a previously-approved 30-foot tall bell tower on the subject site, and associated mechanical equipment within a 384 square foot extension of a previously-approved 1249 square foot fenced equipment shelter. The project site is in R-1-8 Residence Zoning District. The Zoning Ordinance requires a Conditional Use Permit for installation of wireless communication antennas in the R-1-8 Residence District.

The 30 foot tall bell tower was permitted through a Conditional Use Permit, File No. CP04-062, approved by the Planning Commission on January 26, 2005. This “bell” tower was proposed and expressly designed for the purpose of housing six wireless communication antennae inside it and to architecturally blend in with the existing church. The tower has not been constructed yet.

The antennae facility is proposed to be located on the Christ for Life Lutheran Church site at the south side of Sierra Road, 1,600 feet easterly of Piedmont Road (3430 Sierra Road). The site is bounded by single-family residences to the north, west, and east, and to the south. The proposed wireless communications antenna would be located approximately 330 feet from the closest residential structure.

In 1996, Planning staff explored the issues of electromagnetic radiation to determine if emissions from the proposed antennae posed a public health hazard. 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 that 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, pacemakers, and other electronic devices. Staff determined the reported interference resulted from cordless telephones and not from antennas.

Project Description

The project proposes six (6) panel wireless communication antennae to be installed within a previously-approved 30-foot tall bell tower. The tower is proposed to be located at the southern end of the church school building. The bell tower is a free standing structure separate from the existing church building and on-site daycare facility, and will be located on a vacant interior portion of the site, southerly of the parking lot.

All equipment associated with the antennae will be located within an extension of previously-approved 1249 square foot fenced equipment shelter. The proposed extension area is approximately 384 square feet in size, and will be fenced off in order to screen all equipment from public view. The proposed six-foot tall solid Redwood fence will be architecturally integrated with the previously approved fence, and landscaping in front of the fence will be chosen to match the rest of the landscaping around the shelter.

ENVIRONMENTAL REVIEW

Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be 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. Section 15301 defines Class 1 as consisting of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The key consideration is whether the project involves negligible or no expansion of an existing use.

The project falls under Class 1 described above in that the project involves only the co-location of wireless communications antennae within a previously approved bell tower, and placing of equipments in a small extension of previously approved equipment shelter.

GENERAL PLAN CONFORMANCE

The San José 2020 General Plan Land Use/Transportation Diagram designation of the subject site is Urban Hillside. The proposed project conforms to this designation in that wireless communication antennae/monopoles that are in conformance with the development standards stipulated in the City's Zoning Ordinance and applicable City policy, are allowed on parcels with this designation.

Additionally, City Council Policy 6-20 states that antennae located on residentially-designated properties developed solely with non-residential uses, such as public/Quasi Public facility such as religious assembly (church), may be acceptable, subject to review in accordance with the City's Zoning Ordinance. The proposed project is for co-location of antenna within a previously approved bell tower, which is on the premises of an existing church. Therefore the project is found conforming to the policy.

ANALYSIS

The primary issue analyzed for the proposed project is conformance with: 1) the Zoning Ordinance, and 2) City Council Policy 6-20 for Wireless Communication Facilities.

Conformance to the Zoning Regulations

The proposed wireless communication antennae will be installed within a previously approved 30-foot tall bell tower. The parcel on which the project is proposed is located in R-1-8 Residence Zoning District. Installation of building-mounted wireless antennas is permissible in the R-1-8 Residence Zoning District with a Conditional Use Permit.

The co-location project does not affect the existing height and setbacks of the previously-approved bell tower and the equipment enclosure. The R-1-8 Single-Family Residence Zoning District allows a maximum building height of thirty-five feet. The height of the tower is thirty feet. The bell tower will be painted to match other existing structures on the subject site.

The antennae will be hidden within the bell tower, and all ancillary equipments will be screened from view. Therefore, the antennae do not add to the visual clutter of the existing or already approved structures.

Based on the above analysis, staff concludes that the project is in conformance with the Zoning Regulations.

Conformance to City Council Policy 6-20 for Wireless Communications Facilities

The attached Council Policy provides direction for appropriate and inappropriate land use designations for wireless communication antennas, and criteria for siting such facilities including location, height, setbacks from residential uses, and parking.

Appropriate Land Use Designations for Wireless Communications Antennas. The Council policy discourages wireless communications facilities from all residential designations except Residential Support for the Core. However, the Policy states that antennas located on residentially-designated properties developed solely with non-residential uses, such as Public/Quasi Public facility like religious assembly (church), may be acceptable, subject to review in accordance with the City's Zoning Ordinance. The proposed project is for co-location of antennae within a previously-approved bell tower within the premises of an existing church, and complies to the Zoning Ordinance. Thus the project conforms to the Council policy.

Building Mounted Antennas. The Council Policy requires building mounted antennas to be located to minimize visual impacts and to be architecturally integrated into the structure. It also requires ancillary equipment to be screened. The proposed antennae are co-located within a previously approved bell tower, which is architecturally integrated with the existing building on the site. In addition, the proposed equipment cabinets are effectively screened by a new wooden fence and landscaping that matches the previously approved equipment shelter.

Height. The Council Policy allows building-mounted antennae if they (1) conform to General Plan height restrictions, (2) are architecturally-integrated in to the building, and (3) are in proportion to the height of the building. The proposed co-location of the antennae does not add to the height of the previously-approved bell tower within which they would be mounted. The proposed antennae do not add any new visual impact in that the antennae are not visible from outside.

Setbacks from Residential Uses. As part of its criteria for siting Wireless Communication antennas, the Land Use Policy for Wireless Communication Facilities requires that new wireless communications antenna (monopoles) should be located no closer than 35 feet from any property with a residential use or one foot for every foot in height of the proposed structure, whichever is greater. The applicant's proposal is consistent with the Council Policy in that the proposed wireless communication antenna, enclosed within a previously

approved 30-foot high bell tower would be located in excess of 270-feet from the adjacent residential uses.

Parking. Wireless communication facilities should not reduce existing parking on the site unless the Zoning District parking requirements can be met. The current project does not reduce any existing on-site parking.

RECOMMENDATION

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 Urban Hillside on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the R-1-8 Residence Zoning District.
3. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from environmental review requirements.
4. Single-family detached residential uses surround the subject site.
5. The project proposes to install six (6) wireless communications antennae within a previously-approved bell tower at the south end of the church parking lot on the Christ Life Lutheran Church site on the south side of Sierra Road, 1,600 feet easterly of Piedmont Road.
6. The ancillary equipment is proposed to be located within an extension of a previously-approved equipment shelter outside of the existing building. The extension will be screened from view by a 6 foot tall fence that is architecturally-integrated to the rest of the enclosure. This placement will not remove any required parking.
7. The wireless communications antennae are to be located within a previously approved bell tower approximately 30 feet in height, and do not result in any increase in height of the tower. The bell tower meets the height limit of 35 feet in the R-1-8 Residence Zoning District.
8. The wireless communication antennas are proposed to be located a minimum of 270 feet horizontally from adjoining single-family residences.
9. No generator is proposed as part of this project.

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

1. The proposed project is consistent with the adopted San José 2020 General Plan Land

Use/Transportation Diagram of the City of San José.

2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
4. The proposed project complies with the applicable criteria of City Council Policy 6-20, Land Use Policy for Wireless Communications Facilities.
5. The proposed project is in compliance with the California Environmental Quality Act.
6. The proposed antenna facility is compatible with the surrounding neighborhood.

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 and Development Exception 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. **Payment of Recording Fees.** Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara should be submitted to the Director of Planning within 30 days of approval of this permit, but must be submitted prior to issuance of a Building Permit. Submittal of the recording fee less than one week prior to issuance of a Building Permit will delay the Building Permit issuance for up to one week to allow for recordation of the permit with the County Recorder. This Permit shall be effective at such time when recordation with the County of Santa Clara occurs.
2. **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.

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, “Cingular Wireless Services LLC, Site number SNFCCA2352A, Site Name Piedmont & Sierra”, dated September 16, 2004, and last revised on April 12, 2004, 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. **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.
3. **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.
4. **Colors and Materials.** All colors and materials are to be those specified on the approved plan set.
5. **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, CP04-062, 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.

6. **Anti-Graffiti.** The applicant shall remove all graffiti from structures and fence surfaces within 48 hours of defacement.
7. **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.
8. **Generator.** No installation of generator is approved as part of this permit.
9. **Responsibility.** The Applicant shall agree to be responsible for any damage caused by its activities to any existing public or private structures or facilities.
10. **Building Permit/Certificate of Occupancy.** 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.
11. **Liability.** The Applicant shall indemnify and hold harmless the City and any officers and employees thereof against and from all claims, loss, liability, damages, judgments, decrees, costs and expenditures which the City of such officer or employee may suffer, or which may be recovered from or obtainable against the City of such officer or employee, proximity caused by and growing out of or resulting from the exercise of the Permit.
14. **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 Jose Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in a manner as to cause a nuisance, as defined above.
15. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San Jose Municipal Code requires that all land development approvals and applications for such approvals in the City of San Jose 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 Jose-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 Jose-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 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.
16. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
17. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours

of defacement.

18. **Lighting.** This permit allows no on-site lighting.
19. **Outside Storage.** This permit allows no outside storage.
20. **Sign Approval.** This permit approves no signs. All proposed signs shall be subject to approval by the Director of Planning.
21. **Screen for Ancillary Equipment Shelter.** The screen for ancillary equipment shall be constructed, painted and landscaped to match that of the previously approved shelter.

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 Chapter 20.100.190 of 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.