

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

STAFF REPORT

Hearing Date/Agenda Number
June 22, 2005

File Number
CP05-018

Application Type
Conditional Use Permit and Development Variance

Council District
4

Planning Area
Alum Rock

Assessor's Parcel Number(s)
254-16-034 and -035

PROJECT DESCRIPTION

Completed by: Sanhita Mallick

Location: Northwest corner of Interstate 680 and Mabury Road

Gross Acreage: 0.97

Net Acreage: 0.97

Net Density: n/a

Existing Zoning: R-1-8

Existing Use: Building-mounted wireless communications antennae on PG&E tower

Proposed Zoning: No change

Proposed Use: Additional building-mounted wireless communications antennae on PG&E tower

GENERAL PLAN

Completed by: Sanhita Mallick

Land Use/Transportation Diagram Designation
Medium Low Density Residential (8 DU/AC)

Project Conformance:
 Yes No
 See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: Sanhita Mallick

North: Single-family detached residential/PG&E tower/ Highway 680

R-1-8 Residence and Interstate 680

East: Single-family detached residential and Highway 680

R-1-8 Residence and Interstate 680

South: Single-family detached residential/PG&E tower/Mabury Road

R-1-8 Residence and Mabury Road

West: Single-family detached residential

R-1-8 Residence

ENVIRONMENTAL STATUS

Completed by: Sanhita Mallick

Environmental Impact Report found complete
 Negative Declaration circulated on

Exempt
 Environmental Review Incomplete

FILE HISTORY

Completed by: Sanhita Mallick

Annexation Title: McKee No. 80

Date: January 20, 1976

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval
 Approval with Conditions

Date: _____

Approved by: _____
 Action
 Recommendation

OWNER/DEVELOPER

PG&E
Attn: Lori Austin
77 Beale Street, Room B13K
San Francisco, CA 94105

Luke Stamos
Planning Consultant
Ruth & Going Inc.
P.O. Box 26460
San Jose CA 95159 - 6460

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: Sanhita Mallick

Department of Public Works

See attached memorandum and letter.

Other Departments and Agencies

None.

GENERAL CORRESPONDENCE

None.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The developer, Cingular Wireless Network, is requesting a Conditional Use Permit to allow installation of up to six building-mounted wireless communications antennae on an existing Pacific Gas and Electric (PG&E) transmission tower, and placement of associated equipment cabinets in a fenced enclosure adjacent to the tower on the subject site. The Zoning Ordinance requires a Conditional Use Permit for installation of building mounted wireless communications antennae in the R-1-8 Residence District.

The subject lot is approximately 30 feet in depth. A Development Variance is required for the proposed location of the equipment enclosure, in order to reduce the minimum required front yard setback for buildings of 25 feet and the minimum required rear yard setback of 20 feet. The tower is located on a site north of Mabury Road, adjacent to another parcel owned by PG&E that lies between the rear yards of single-family residences fronting on Gateview Drive and Interstate 680. Access to the site is through Lava Way and the adjacent lot owned by PG&E.

Co-location of wireless antenna by Pacific Bell Mobile Services and Sprint PCS on the same PG & E Tower was previously permitted by Conditional Use Permits CP00-043 and CP01-017 respectively. A Development Variance (V01-016) for this site had been granted along with previous Conditional Use Permit CP01-017.

The site is surrounded by Sinclair Freeway (Highway 680) to the east, Mabury Road to the south and single-family detached residential uses to the north and the west. Additional PG&E transmission towers are located on the north and south of the subject tower.

In 1996, Planning staff explored the issues of electromagnetic radiation to determine if emissions from the proposed antennas posed a public health hazard. Staff found that the low-frequency, low energy, non-ionizing emission associated with wireless communications antennae 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 antennae. Further, staff investigated reports that wireless communication transmission interfered with hearing aids, pace makers, and

other electronic devices. Staff determined the reported interference resulted from cordless telephones and not from antennae.

Project Description

The proposed project will install up to six (6) building-mounted wireless communications antennae on an existing PG&E transmission tower approximately 112 feet in height. The antennae will be at a height not to exceed 70 feet. New equipment cabinets will be located in an enclosure adjacent to the tower. The enclosure will not exceed 10 feet in height, and will be approximately 10 feet in width and 16 feet in length. The equipment area will be enclosed by a wood fence not to exceed 6 feet in height.

GENERAL PLAN CONFORMANCE

The proposed use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Medium Low Density Residential (8 DU/AC) in that wireless communication antennae that are in conformance with the development standards stipulated in the City's Zoning Ordinance and applicable City policy, may be allowed with a Conditional Use Permit in the R-1 Residence zoning districts.

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 may be acceptable, subject to review in accordance with the City's Zoning Ordinance. The antennae are installed on an existing PG & E tower and is adequately setback from adjoining uses.

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 on an existing PG & E tower, and placing of equipments in a fenced equipment shelter.

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 and 3) the necessity for granting a Development Variance for the proposed location of the equipment enclosure in order to reduce the minimum required front yard and rear yard setbacks

1. Conformance to the Zoning Regulations

The project proposes co-location of antennas on an existing PG & E tower. The parcel on which the project is proposed is located in R-1-8 Residence Zoning District. Installation of structure-mounted wireless antennas is permissible in the R-1-8 Residence Zoning District with a Conditional Use Permit. The front and rear yard setback of the equipment enclosure and the tower is lower than the minimum required in this zoning district. The co-location project uses a Development Variance granted to the site so that reduced front- and rear-yard setbacks of the existing PG & E tower and the equipment enclosure is permitted. For further discussion, see section 3 below.

The maximum building height allowed in the R-1-8 Residence Zoning district is 35 feet. However, the antennae are to be mounted on an existing 112 feet PG & E tower. Placement of antennae will not increase the height of the tower.

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

2. City Council Policy 6-20 for Wireless Communications Facilities Antennas

The attached Council Policy provide direction for appropriate land use designations for wireless communication antennas, and criteria for locating 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 Council Policy states that antennae located on residentially-designated properties developed solely with non-residential uses, like a public/quasi public facility may be acceptable, subject to review in accordance with the City's Zoning Ordinance. The proposed project is for placement of wireless communication facility on a parcel developed solely with PG & E towers, and thus conforms to the Council policy.

Reduction of Visual Clutter. The Council Policy states that new wireless communication antennae should be sited so as to minimize visual impacts. The proposed antennae will be located on an existing PG & E tower and has been designed and placed to have a minimal degree of visibility, and will not create visual clutter on the site. The antenna will be painted a flat non-reflective grey, to match the tower.

The Council Policy also requires ancillary equipment to be screened. The proposed equipment cabinets will be effectively screened since they are located within an existing equipment shelter that is screened by an existing six-foot tall wooden fence. The shelter walls will be painted an earth tone color to blend with the surroundings. The shelter is screened from the Highway 680 by an existing row of dense and tall trees and shrubs.

Because existing trees substantially screen the site, staff has determined that additional landscaping is not necessary as would normally be required by City policy. Furthermore, PG&E's own requirements prevent the applicant from being able to provide landscaping around the tower. As conditions of the two previous Conditional Use Permits, previous wireless carriers have offered to provide rear-yard landscaping to adjacent home-owners or have made in-lieu contribution to Our City Forest. As condition of this permit, the applicant will be required to plant street trees along Gateview Drive to the satisfaction of the Director of the Department of

Streets and Traffic or make an in lieu contribution to Our City Forest, or any other similar fund, to the satisfaction of the Director of Planning.

Height. The maximum building height allowed in the R-1-8 Zoning district is 35 feet. However, the antennae are to be mounted on an existing 112 feet PG & E tower. Placement of antennae will not increase the height of the tower.

Setbacks from Residential Uses. As part of the criteria for siting Wireless Communication Antennas, the Land Use Policy for Wireless Communication Facilities requires that structure-mounted antennae should be located no closer than 35 feet horizontally from any property with a residential. The antenna is approximately 50 feet away from the nearest residential property line. Therefore, the proposal is consistent with the Council Policy.

Parking. Wireless communication facilities should not reduce existing parking on the site unless the zoning district parking requirements can be met. There is no existing on-site parking and therefore the current project does not reduce any on-site parking.

3. Development Variance to reduce required front yard and rear yard setbacks.

The Zoning Ordinance provides criteria for issuance of development variances (Sections 20.100.1300 through 20.100.1330). A Variance can be granted because of special circumstances uniquely applicable to the subject property, including (but not limited to) size, shape, topography, location, or surroundings. The variance, subject to such conditions as may be imposed thereon, will not impair the utility or value of adjacent property or the general welfare of the neighborhood, and the integrity and character of the zoning district in which the subject property is situate.

The project requires a Variance from the R-1-8 Residence Zoning District minimum front yard setback (25 feet) and minimum rear yard setback (20 feet) requirements for buildings. The project proposes, instead of the allowed setbacks, a minimum front yard setback of 5 feet and a minimum rear yard setback of 12 feet.

A Development Variance (No. V01-020) was granted to this site as part of a previous Conditional Use Permit CP01-017, on the grounds of the unique configuration of the subject property and the pre-existing setbacks established by the PG & E tower. These site specific conditions are same in case of the proposed project, and staff has determined that the current project could use the benefit of the previous Development Variance. In spite of the reduced setbacks, the antennae will be approximately 50 feet away from the rear property lines of the nearby residences.

PUBLIC OUTREACH

A public hearing notice was mailed to the owners and tenants within 500 feet of the subject site and staff has been available to respond to any questions regarding the project.

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 Medium Low Density Residential (8 DU/AC) 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 and PG&E towers generally surround the subject site to the north and south.
5. The project proposes the installation of up to six (6) wireless communications antennae on a PG&E tower and placement of associated equipment cabinets in an enclosure approximately 10 feet in width, 16 feet in length, and a maximum of 10 feet in height. The PG&E tower is located a minimum of 50 feet horizontally from adjacent single-family residences.
6. The cabinets will be screened by a wood fence.
7. The City Council Land Use Policy for Wireless Communications Facilities is applicable to this application.

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, including a reduced minimum front yard setback and a reduced minimum rear yard setback through a Development Variance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project complies with the applicable criteria of the City Council Land Use Policy for Wireless Communications Facilities.
5. The proposed project appropriately locates wireless communication antennae in an existing PG&E corridor for high-tension lines exceeding 200 kilovolts.
6. The proposed project contains adequate setbacks of at least 50 feet horizontally from residential uses.
7. The proposed project does not increase the height of an existing PG&E transmission tower.
8. The proposed project adequately screens ancillary equipment cabinets from residential uses.
9. The proposed project will not eliminate required parking.

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/Development Variance 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.
3. **Site Development Permit.** This permit fulfills the requirement for a Site Development Permit.
4. **Variance.** This permit fulfills the requirement for a variance.

CONCURRENT CONDITIONS

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

1. **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.
2. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, " Gateview PG & E Tower SH-022-01 Cingular Wireless" dated March 7, 2005, last revised on April 4, 2005, on file with the Department of City Planning and Building and to the San José Building Code.
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. **Outside Storage.** No outside storage is permitted except in areas designated on the approved plan set.

6. **Lighting.** On-site lighting shall use Low-Pressure Sodium fixtures and be designed, controlled and maintained so that no light source is visible from outside of the property. Electroliers shall not exceed 8 feet above grade.
7. **Colors and Materials.** All wireless communications antennae colors and materials are to be those specified on the approved plan set.
8. **Good Neighbor Fencing.** All good-neighbor fencing surrounding the subject site shall be repaired by replacing weak, rotted, or broken posts, stringers, and fence boards. After repair, all good-neighbor fencing surrounding the subject site shall be treated with an oil-based stain to the satisfaction of the property owner.
9. **Anti-Graffiti.** The applicant shall remove all graffiti from structures and fence surfaces within 48 hours of defacement.
10. **Tree Removals.** No tree larger than 56 inches in circumference, at a height of 24 inches above the natural grade slope, shall be removed without a Tree Removal Permit issued by the Director of Planning.
11. **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, CP 05-018, 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. *Archaeology.* There shall be monitoring of site excavation activities to the extent determined by a qualified professional archaeologist to be necessary to insure accurate evaluation of potential impacts to prehistoric and/or historic resources.
 - (1) If no resources are discovered, the archaeologist shall submit a report to the Director of Planning, Building and Code Enforcement verifying that the required monitoring occurred and that no further mitigation is necessary.
 - (2) If evidence of any archaeological, cultural and/or historical deposits are found, hand excavation and/or mechanical excavation will proceed to evaluate the deposits for determination of significance as defined by CEQA guidelines. The archaeologist shall submit reports, to the satisfaction of the Director of Planning, describing the testing program and subsequent results. These reports shall identify any program mitigation that the Developer shall complete in order to mitigate archaeological impacts (including resource recovery and/or avoidance testing and analysis, removal, reburial and curation of archaeological resources).
 - (3) In the event that human remains and/or cultural materials are found, all project-related construction shall cease within a 50-foot radius in order to proceed with the testing and mitigation measures required. Pursuant to Section 7050.5 of the Health and Safety Code and Section 5097.94 of the Public Resources Code of the State of California:

- (a) In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified by the developer and shall make a determination as to whether the remains are native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission, who will attempt to identify descendance of the deceased Native Americans. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the landowner shall reinter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
 - (b) A final report shall be submitted to the Director of Planning prior to release of a Certificate of Occupancy. This report shall contain a description of the mitigation programs and its results including a description of the monitoring and testing program, a list of the resources found, a summary of the resource analysis methodology and conclusions and a description of the disposition/curation of the resources. The report shall verify completion of the mitigation program to the satisfaction of the Director of Planning.
12. **Hazardous Materials Storage.** Due to the proximity of this site to residential uses, this Permit specifically prohibits the storage or use of hazardous materials in any area other than inside the structures as shown on the approved plan. No hazardous materials shall be stored in underground tanks or in structures accessory to the main buildings.
 13. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San Jose Municipal Code on the site must be used and stored in full compliance with the City's Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San Jose Fire Prevention Bureau.
 14. **Street Trees.** Street Trees shall be planted on the street frontage of Gateview Drive to the satisfaction of the Director of the Department of Streets and Traffic. A permit is required from the Department of Streets and Traffic, (408) 277-4373.
 15. **Mechanical Equipment.** No roof-mounted or other exterior mechanical equipment shall be located within 120 feet of a residential property line unless a Sound Engineer has certified that noise level from such equipment will not exceed 55 DNL at the residential property line.
 16. **Noise.** The noise level from all operations on the subject site shall not be permitted to exceed 55 decibels DNL at the property line.
 17. **Height.** The wireless communications antennae shall not exceed 70 feet in height.
 18. **Collocation.** The applicant and wireless communication facility operator shall facilitate the future collocation of wireless communication antennae on this tower. The applicant and wireless communication facility operator shall notify the Director of Planning of any proposals by other wireless communication providers to collocate antennae on this tower. The

notification shall occur within 30 days of receipt of the proposal, and shall include the file number of this Permit.

19. **Permit Adjustment for Additional Collocation.** The Director of Planning may approve a Permit Adjustment for additional collocation for building mounted wireless communication antennae and associated equipment on the subject site.

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 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.
3. **Time Limit.** This Conditional Use Permit expires and has no further force or effect five years from the date this Permit. At that time, that applicant/owner shall provide information to the City to determine if the extension to the PG&E tower is still needed, based on improvements in technology or availability of alternative building-mounted opportunities in the vicinity.
4. **Renewal.** The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Director of Planning, Building and Code Enforcement. 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 Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.

c:

Building Division (2)
Engineering Services

Luke Stamos, Planning Consultant, Ruth & Going Inc., P.O. Box 26460, San Jose CA 95159 – 6460
PG&E, Attn: Lori Austin, 77 Beale Street, Room B13K, San Francisco, CA 94105

Attachments: Department of Public Works Memorandum, Fire Department Memorandum