

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
FROM: GABE OSBURN, DIRECTOR OF PLANNING AND ECONOMIC
DEVELOPMENT
SUBJECT: VERIZON TELECOMMUNICATION FACILITY APPEAL

AGENDA ACTION: RESOLUTION

RECOMMENDATION

It is recommended by the Planning Commission and the Planning and Economic Development Department that the Council, by resolution, deny the appeal and uphold the decision of the Planning Commission to approve a Conditional Use Permit for a wireless telecommunication tower and associated ground equipment for the property located at 244 Colgan Avenue.

EXECUTIVE SUMMARY

On January 11, 2024, the Planning Commission unanimously approved a Conditional Use Permit for a wireless telecommunications tower, along with supporting ground equipment, for the property located at 244 Colgan Avenue. On January 18, 2024, the Design Review Board unanimously approved a Design Review application for the design of the proposed 69-foot tower and associated fencing. The Design Review Board included two additional conditions of approval in the resolution, 1) requiring that the chain-link fencing surrounding the equipment include brown slats, and 2) requiring that the tower be constructed as a monopole, not a monopine, with no foliage. On January 22, 2024, the City Clerk's Office received an Appeal of the Planning Commission's action, prepared by Paul-Andre Schabracq, Sidnee Cox and Kim Schroeder, requesting that the City Council deny the Conditional Use Permit for the proposed telecommunications facility. The Design Review Board's action on the design of the tower was not appealed.

BACKGROUND

On July 19, 2023, the applicant submitted Conditional Use Permit and Design Review applications for the proposed telecommunications facility.

Under the Telecommunications Act of 1996 (the "Act"), Federal law requires that requests to authorize the installation of wireless communications equipment must be

acted upon in a “reasonable period of time”, which was later determined to be 150 days. Due to circumstances beyond the control of City staff, the review and issuance of the Condition Use Permit could not reasonably be completed within the application shot clock period, which ended on November 28, 2023.

On November 17, 2023, the applicant accepted City staff’s request for a Tolling Agreement that would extend the review timeframe and shot clock of this project from November 28, 2023, to January 15, 2024, to allow this project to be scheduled for the two required public hearings.

On November 17, 2023, a Notice of Application was distributed to properties within 600 feet of the project site.

A public hearing was scheduled for the December 14, 2023, Planning Commission meeting for consideration of the Conditional Use Permit. However, in order to allow time to address concerns raised by the community, the applicant requested that the Commission continue the item to the regular meeting of January 11, 2024. As such, the applicant also agreed to extend the review timeframe and shot clock of the project from January 15, 2024, to February 2, 2024.

On December 21, 2023, the applicant requested that the Design Review Board similarly continue the public hearing to a date certain of January 18, 2024.

On January 11, 2024, following a public hearing, the Planning Commission voted 6-0, with one Commissioner absent, to approve the Conditional Use Permit for the telecommunications facility.

On January 18, 2024, following a public hearing, the Design Review Board voted 5-0, with one Board member absent, to approve the Design Review application for the telecommunications tower and fencing, with two additional conditions of approval requiring that the chain-link fencing include brown slats, and that the tower be constructed as a monopole, not a monopine, with no foliage.

On January 22, 2024, the City Clerk’s Office received an Appeal of the Planning Commission’s action, prepared by Paul-Andre Schabracq, Sidnee Cox and Kim Schroeder, requesting that the City Council deny the Conditional Use Permit for the proposed telecommunications facility.

The appeal period for the Design Review Board’s action on the Design Review application closed on January 29, 2024 with no appeal filed. As such, the approval of the design of telecommunications tower and fence, with the added conditions of approval, is final.

On January 24, 2024, the applicant accepted City staff’s request for a Tolling Agreement that would extend the review timeframe and shot clock of this project from

February 2, 2024, to March 27, 2024, to allow this project to be scheduled for the City Council Public Hearing.

PRIOR CITY COUNCIL REVIEW

Not applicable.

ANALYSIS

1. General Plan

The General Plan land use designation for the site is Light Industry, which is intended for light industrial, warehousing and heavy commercial uses. Uses appropriate to this land use category include auto repair, bulk or warehoused goods, general warehousing, manufacturing/assembly with minor nuisances, home improvement retail, landscape materials retail, freight or bus terminals, research oriented industrial, accessory offices, and employee-serving commercial uses, and services with large space needs, such as health clubs.

While there are no goals or policies that speak directly to telecommunications facilities, cellular phone service has become an integral part of personal and business communication. As such, installation of the proposed telecommunications facility implements a variety of overarching General Plan goals by creating a functional place for those who live and work within the City. Specifically, the Economic Vitality element of the General Plan 2035 calls out the emergence of telecommunications companies, among other industries, as contributing to the dynamic regional economy. The General Plan also includes goals and policies related to ensuring the availability of emergency communications facilities in the event of a disaster.

2. Zoning

The [Zoning Code](#) implements the goals and policies of the General Plan by classifying and regulating the use of land and structure development within the City.

Surrounding Zoning Districts:

North: Multi-Family Residential (R-3-15 and Planned Development)

South: General Commercial (CG)

East: Light Industrial (IL)

West: General Commercial (CG)

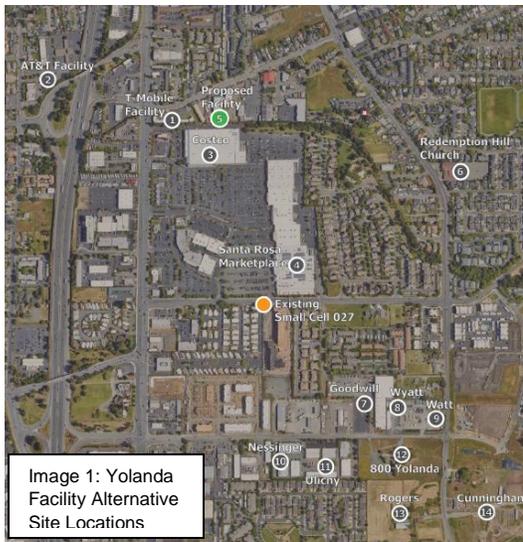
The project site is within the Light Industrial (IL) Zoning District, which is applied to areas appropriate for some light industrial uses, as well as commercial service uses and activities that may be incompatible with residential, retail, and/or office

uses. The IL zoning district is consistent with the Light Industry land use classification of the General Plan.

Zoning Code Section [20-44](#), defines telecommunication facility standards. The project is considered a major telecommunications facility and as such, has been required to obtain a Major Conditional Use Permit (CUP) and a Major Design Review Permit (DR). Pursuant to Zoning Code Section [20-44.020](#), the review authorities are the Planning Commission (Conditional Use Permit) and the Design Review Board (Design Review).

Pursuant to Zoning Code Section [20-30.070](#), the height of telecommunication facilities are specifically addressed in Zoning Code Chapter 20-44 and more specifically, Zoning Code Section [20-44.030\(G\)](#) states, "The facility shall be as small as possible and the minimum height necessary without compromising reasonable reception or transmission." Staff has interpreted this language to allow the review authority discretion regarding the height limits of telecommunication facilities. Based on the information included in the application materials, staff finds that the proposed height of the tower is necessary to maintain adequate height for function while allowing future collocation of the site.

The project complies with development standards, design guidelines, and application requirements set forth in Chapters 20-24 (Industrial Zoning Districts) and 20-44 (Telecommunications Facilities) of the City Code. The tower and all related equipment will be placed adjacent to an existing industrial structure, shielding the equipment from public view, and the equipment will be placed behind a 7-foot 2-inch tall chain-link fence with solid brown slats. The project will not interfere with other industrial and commercial operations in the vicinity.



Section 20-44.060 of the Zoning Code regulates the location of telecommunication towers by requiring an alternative site analysis, a separation between facilities, a good faith effort in achieving collocation, minimum roads and parking areas as necessary to serve the facility, and operation in compliance with the Federal Communication Commission's (FCC) human exposure standards for non-ionizing electromagnetic radiation (NIER), which is attached to this report and also stated within the applicant's project description. The applicant has provided analysis of fourteen alternative sites for

the necessary coverage, all of which were ruled out due to an inability of the sites to address service coverage gaps, and the site has been found to have the necessary access through existing roads. Two potential collocation sites were

identified in the greater vicinity, but those nearby T-Mobile and AT&T rooftop facilities are on buildings too low in height and/or too distant to serve the service gap. Other tower locations evaluated are either closer to residences or too distant to serve the gap. Further, an Electromagnetic Energy (EME) Exposure Report, prepared by OSC Engineering, Inc., dated May 19, 2021, concluded that the proposed placement of the tower at the subject site will not result in exposure of the public to excessive levels of radio-frequency energy as defined in the FCC Rules and Regulations.

- a. Zoning Code Section 20-44.060(F)(18) specifically prohibits all major telecommunication facilities from locating in any residential zoning district, and The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the City Code.
- b. The proposed use is consistent with the General Plan and any applicable specific plan.
- c. The design, location, size, and operating characteristics of the proposed activity would be compatible with the existing and future land uses in the vicinity.
- d. The site is physically suitable for the type, density, and intensity of use being proposed, including access, utilities, and the absence of physical constraints.
- e. Granting the permit would not constitute a nuisance or be injurious or detrimental to the public interest, health, safety, convenience, or welfare, or materially injurious to persons, property, or improvements in the vicinity and zoning district in which the property is located.
- f. The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA).

Section 20-44.060(F)(19) requires a 75-foot setback from a major facility to any habitable structures. As noted above, the proposed facility would be located in the IL Zoning District and would be over 200 feet from the nearest habitable structure. Section 20-44.060(G) provide that the following findings must be made for commercial telecommunications facilities:

- a. The proposed site results in the least potentially adverse impacts than any feasible alternative site.
- b. The applicant has provided a written explanation why the subject facility is not a candidate for co-location.

- c. All commercial telecommunications facilities shall be served by the minimum roads and parking areas necessary.
- d. Commercial telecommunications facilities shall be operated in compliance with the Federal Communication Commission's (FCC) human exposure standards for non-ionizing electromagnetic radiation (NIER), and the applicant for commercial telecommunication facilities shall be responsible for demonstrating that the proposed facility will comply with this standard.

Pursuant to Zoning Code Section 20-52.050(F), the following findings are required for approval of the Conditional Use Permit:

Major telecommunication facilities are allowed within the IL zoning district upon approval of a CUP and DR. Staff finds that the project complies with all requisite requirements of the Zoning Code, and that all required findings can be met, as shown in the draft resolution included as an attachment to this Staff Report.

3. Appeal

The appellant has provided the following grounds for appeal in their January 22, 2024, Appeal application, along with City staff's response to each:

- a. The proposed wireless facility does not meet the vision, goals or policies of the City of Santa Rosa General Plan.

Response: As noted in the General Plan section of this report (above), and in the draft resolution of approval, the proposed project has been found to be in compliance with the City's General Plan. Specifically, while there are no specific goals or policies related to telecommunications facilities, these types of facilities have been found to implement a variety of overarching General Plan goals by creating a functional place for those who live and work within the City.

- b. The proposed wireless facility does not meet the requirements of the City of Santa Rosa Zoning Code, including, but not limited to Chapter 20-44, Telecommunications Facilities; Chapter 20-10, Purposes of Zoning Code; Chapter 20-30, Standards For All Development and Land Uses.

Response: As noted in the Zoning section of this report (above), and in the draft resolution of approval, the proposed project has been found to be in compliance with all applicable sections of the City's Zoning Code.

- c. The proposed wireless facility presents an environmental threat, particularly with respect to Colgan Creek, Mark West Creek, the Russian River and Laguna de Santa Rosa.

Response: As noted in the Environmental Impact section of this report (below), and in the draft resolution of approval, the proposed project has been found in compliance with the California Environmental Quality Act (CEQA). While the appellant did not provide any specifics regarding the assertion of an environmental threat, concerns were raised during the Planning Commission meeting regarding the faux pine needle material entering into the adjacent creek and causing an impact. It should be noted that, as part of the Design Review Board's approval on January 18, 2024, the Board conditioned the project to be a monopole, rather than a monopine, with no foliage. As such, there would be no impact related to faux pine needle material.

- d. The proposed wireless facility violates not only the applicable provisions of federal, state and local law, but the legislative intent upon which they were enacted.

Response: The appellant has not provided any specifics with regard to how the proposed facility violates federal, state and local law. City staff is not aware of any inconsistency of the proposed facility with federal or state law, and, as noted in subsection 'c' above, the facility has been found in compliance with the City's Zoning Code.

- e. Granting Verizon's application will cause an unnecessary proliferation and redundancy of telecommunications facilities without closing any purported gaps in service or purported lack of capacity, nor improving cellular service in the surrounding community.

Response: The City's Zoning Code does not discourage proliferation of telecommunications facilities, and in fact encourages consideration of multiple, shorter facilities. The Code requires applicants to collocate, if possible, which minimizes the number of facilities. Code § 20-44.060(G)(3). However, according to the applicant, Verizon Wireless determined that there are no existing wireless facilities where collocation could meet its service objective, and therefore a new facility is required to meet rapidly increasing demand in the area.

- f. Verizon has failed to present "hard data" sufficient to prove a gap in service or lack of capacity and has failed to prove a need for the proposed tower, i.e. gap in service or lack of capacity, nor improving cellular service in the surrounding community.

Response: See the coverage response to subsection 'e' above.

- g. By its own admission the Maximum Permissible Exposures (MPE) generated by Verizon's cell tower will exceed the Federal Communications

Commission's (FCC's) maximum MPE. Waterford Consultant's report states that mitigation of the maximum power output of this cell tower would be required by reducing the power output of the facility by 3db to bring the facility into FCC's Radio Frequency Radiation (RFR) compliance. It is not specified how will this be verified and who will monitor ongoing compliance.

Response: The federal government has largely preempted local government regulation in the area of Radio Frequency (RF) emissions, making the FCC the federal agency responsible for setting nationwide guidelines for safe RF levels, and severely limiting local authority to regulate RF emissions or to deny an application to install wireless service facilities based on concerns about RF emissions. Federal law specifically provides that "no state or local government or instrumentality thereof may regulate the placement, construction and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the FCC regulations concerning such emissions" (47 U.S.C. §332(c)(7)(B)(iv)). Federal courts have also held that the FCC has exclusive jurisdiction over RF interference issues and thus local zoning ordinances and permit conditions cannot regulate RF interference (*Southwestern Bell Wireless v. Johnson County Board of County Commissioners*, 199F. 3d 1185 (10th Cir. 1999)).

- h. The proposed location for the monopole cell tower fails to establish a Fall Zone or Safe Zone for the large retailer, Costco, with over 1,000 daily visitors in addition to numerous staff, and for other businesses located in the Fall Zone.

Response: There are no requirements for a "fall zone" or "safe zone" in the City's Zoning Code or within the Building Code.

- i. Verizon's cell tower application and staff reports do not indicate compliance with the applicable technical requirements of the following codes: the National Electric Code (NEIC) and the City of Santa Rosa's Building Codes.

Response: The City's Building Division has reviewed the plans submitted for Conditional Use Permit and Design Review and has not indicated any issues with the proposal. The next step for the project will be submittal of a building permit, at which time the proposed facility will be reviewed for compliance with all applicable building code requirements.

- j. Verizon has failed to investigate appropriate least intrusive alternate

locations in a good faith manor.

Response: The applicant has provided analysis of two alternative sites for the necessary coverage. The adjacent property, located at 1800 Santa Rosa Avenue, has an existing T-Mobile site that was determined to have no room for collocation. The second alternative site, which was proposed to be on the roof of the Goodwill that is located at 651 Yolanda Avenue, denied Verizon's proposal of building a rooftop telecommunications tower.

- k. Verizon has failed to show that their proposed wireless facility is the least intrusive means to close a purported gap in service or lack of capacity.

Response: The Zoning Code's permit findings and telecommunications standards do not require demonstration of a gap in service, lack of capacity, or need for a new wireless facility. These concepts are drawn from federal law and court decisions, but apply only if a wireless facility is denied, and the applicant files a lawsuit against a city claiming a prohibition of service in violation of the federal Telecommunications Act. See 47 U.S.C. § 332(c)(7)(B)(i)(II); see also *American Tower Corp. v. City of San Diego*, 763 F.3d 1035, 1056 (9th Cir. 2014). These concepts are not applicable to the City's decision.

- l. The proposed wireless facility will inflict a substantial adverse impact on the aesthetics and character of the adjacent surrounding homes and community.

Response: As stated in Design Review Board Resolution Number DRB-2024-002, the architectural design of the proposed facility is compatible with the character of the surrounding neighborhood, in that the base of the cell tower and all related ground equipment will be screened from public view and placed behind an existing commercial building to minimize visual impacts as much as possible. Further, given the surroundings, the Design Review Board found that the originally proposed faux monopine would not have been an appropriate design, and that a simple monopole would fit in better with the surrounding properties.

- m. The proposed wireless facility will cause a significant decrease in property values in the adjacent surrounding community.

Response: The City's action on Design Review and Conditional Use Permits are required to meet specific findings as stated in Zoning Code Sections 20-52.030(I) and 20-52.050(F), respectively. The findings do not include a finding regarding property value. As such, the City does not consider property value in taking action on such permits.

- n. Verizon's Visual Assessment is defective. No images were presented from the perspective of the affected property owners and residents. The images presented were taken from perspectives and angles which deliberately failed to present accurate views of the proposed cell tower. The Design Review Board's recommendation to remove the faux tree in favor of a monopole renders Verizon's visual analysis inadmissible.

Response: The applicant has provided updated photo simulations that show the proposed monopole at the requested vantage points.

- o. A gap in service or a lack of capacity in a particular frequency is not sufficient to prove a need for construction of a new wireless facility. Cellular service can shift to a different frequency to maintain service. Verizon has failed to prove that there is a gap in service or lack of capacity in multiple frequencies that would warrant approval of their application.

Response: See the coverage response to subsection 'e' above.

- p. Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act would allow Verizon to increase the tower size by up to 20 feet without the need for further zoning approval. In fact, the City would be prohibited from denying, controlling, enjoining or otherwise regulating increased height of the tower.

Response: Increased height is typically requested to allow co-location on existing telecommunication towers allowing multiple carriers to utilize one facility. Pursuant to Zoning Code Section 20-44.060(D), minor modifications consistent with the requirements of Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, are subject to minor Design Review. Section 6409 also states that an increase in height less than ten percent or less than 20 feet does not constitute a substantial change, therefore, a Conditional Use Permit is not required. It would, however, require minor Design Review.

In the rare event that a carrier wants to increase the height of an existing tower for other reasons, Zoning Code Section 20-44.060(B) directs that minor modifications to existing legally established minor or major towers in any zoning district shall require both minor Conditional Use Permit and minor Design Review. Again, we would defer to Section 6409 for the definition of substantial change.

FISCAL IMPACT

Denial of the Appeal and approval of the Conditional Use Permit will not impact the

General Fund.

ENVIRONMENTAL IMPACT

The project has been found in compliance with the California Environmental Quality Act (CEQA). Pursuant to CEQA Guidelines Section 15303, the project qualifies for a Class 3 categorical exemption, which exempts the construction of new small structures in that telecommunication towers are considered small structures that are similar to this Project. No exceptions to the exemptions apply and there is no reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances (CEQA Guidelines Section 15300.2)

Pursuant to CEQA Guidelines Section 15183, the proposed use is also statutorily exempt from CEQA as it is consistent with General Plan 2035, for which an Environmental Impact Report was certified by Council in 2009.

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

1. Planning Commission

The proposed project was scheduled for review by the Planning Commission on December 14, 2023. However, to allow time to address concerns raised by the community, the Commission continued the public hearing to January 11, 2024. While the project was continued, the Commission allowed those who had come to the Council Chambers for the December 14th meeting to speak under non-agenda items. Ten people spoke, nine were in opposition to the project and one was in support (see attached meeting minutes).

On January 11, 2024, following the public hearing, the Commission voted 6-0, with one Commissioner absent, to approve the Conditional Use Permit for the telecommunications facility. During the hearing, approximately 16 people spoke, 15 in opposition and one in support (see attached meeting minutes).

2. Design Review Board

The proposed project was scheduled for review by the Design Review Board on December 21, 2023. However, due to the Conditional Use Permit portion of the project being continued by the Planning Commission, the Board similarly continued the Design Review item to January 18, 2024.

On January 18, 2024, following a public hearing, the Design Review Board voted 5-0, with one Board member absent, to approve the Design Review application for the telecommunications tower and fencing. The Board included two additional conditions of approval requiring that the chain-link fencing include brown slats, and that the tower be constructed as a monopole, not a monopine, with no foliage. No one spoke during the public hearing on Design Review (see

attached meeting minutes). An appeal of the Design Review Board's action was not filed within the 10-day appeal period (by January 29, 2024), and as such the Design Review approval is final.

NOTIFICATION

The Appeal was noticed as a public hearing for the March 26, 2024, City Council meeting per the requirements of Chapter 20-66 of the City Code. Notification of the public hearing was provided by posting an on-site sign, publishing notice in a newspaper of general circulation, mailed notice to surrounding property owners and occupants, electronic notice to parties that had expressed interest in projects taking place in this geographic area of Santa Rosa, and bulletin board postings at City Hall and on the City website.

Pursuant to Government Code Section 65091, where necessary, the City has incorporated notice procedures to the blind, aged, and disabled communities. These procedures include audio amplifier/assistive listening device support at public meetings, closed captioning, and optical character recognition conversion of electronic notices.

ATTACHMENTS

- Attachment 1 - Disclosure Form
- Attachment 2 - Project Description
- Attachment 3 - Neighborhood Context Map
- Attachment 4 - Network Map
- Attachment 5 - Plan Set
- Attachment 6 - Electromagnetic Energy (EME) Report
- Attachment 7 - RFC Compliance Report
- Attachment 8 - Photo Simulations
- Attachment 9 - Explanation of Best Server Plots and Capacity Data
- Attachment 10 - RF Justification
- Attachment 11 - OKU Solutions FCC Compliance Letter, January 7, 2024
- Attachment 12 - Planning Commission Resolution No. PC-2024-001
- Attachment 13 - Planning Commission December 14, 2023, Meeting Minutes
- Attachment 14 - Planning Commission Draft January 11, 2024, Meeting Minutes
- Attachment 15 - Design Review Board Resolution No. DRB-2024-002
- Attachment 16 - Design Review Board Draft January 18, 2024, Meeting Minutes
- Attachment 17 - Appeal Form, received January 22, 2024
- Attachment 18 - Applicant's Preliminary Responses to Grounds of Appeal
- Attachment 19 - Community Correspondence
- Attachment 20 - Appellant Memo Supporting Appeal
- Attachment 21 - Applicant's Presentation
- Attachment 22 - Appellant's Presentation
- Attachment 23 - Applicant's Responses to Grounds of Appeal
- Attachment 24 - Public Correspondence Received as of March 20, 2024

- Resolution

PRESENTER

Suzanne Hartman, City Planner