



City of Sunnyvale

Agenda Item-No Attachments (PDF)

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REPORT TO PLANNING COMMISSION

SUBJECT

Proposed Project: Appeal of a decision by the Director of Community Development approving the following:

Miscellaneous Plan Permit: To allow installation of a wireless telecommunications small cell network facility to a new pole that replaces an existing utility pole in the public right-of-way.

Location: PG&E utility pole in the public right-of-way, near 214 Commercial Street

File #: 2017-7973

Zoning: MS

Applicant: Verizon Wireless C/O The CBR Group

Appellant: Amanda Guillard, property and business owner of Seville Landscape Construction at 214 Commercial Street

Environmental Review: Class 3 Categorical Exemption relieves this project from the California Environmental Quality Act (CEQA) provisions that includes installation of small new equipment and facilities in small structures (CEQA Guidelines Section 15303).

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SUMMARY

Verizon proposed to install a wireless telecommunications small cell facility (telecom facility) on an existing PG&E utility pole in the public right-of-way (ROW), adjacent to 214 Commercial Street. The applicant provided necessary information and demonstrated compliance with the Federal Communication Commissions (FCC) limit for radiofrequency (RF) emission. The project meets current standards of the Sunnyvale Municipal Code (SMC). This project was approved by the Director of Community Development and the decision was appealed by a nearby property and business owner at 214 Commercial Street. The applicant's attorney provided a letter on April 18, 2018. Describing their understanding of the City and Federal policies (Attachment 4).

BACKGROUND

Verizon applied for a Miscellaneous Plan Permit (MPP) on November 22, 2017, to install a telecom facility in the public ROW adjacent to 214 Commercial Street across the City of Sunnyvale Corporation Yard (Corp Yard). Verizon's purpose for this proposal is to address capacity, network demand, and future technologies. See Attachment 2 for a letter from the applicant explaining the purpose, scope and justification for this proposal. The proposal includes replacement of a 43'1" pole with a new 50'6" pole and the addition of 4'0" canister antenna mounted on the new utility pole resulting in a new pole height of 54'10" (11'9" height increase from the exiting pole). The proposal also includes three equipment cabinets (RRUs), a power cabinet, and associated equipment mounted on the pole starting at 7'0" and reaching up to 18'0" above ground level. See Attachment 3 for Site Plan and Elevations.

Staff notified property owners and tenants within a 300-foot radius of the project site and posted the

notice on the proposed pole on January 17, 2018. See Attachment 5 for the Vicinity and Noticing Map. Per City code requirements the public was allowed 14 days to comment on the application and the comment period ended on January 31, 2018. Staff received comments (Attachment 6) from the property owner of 214 Commercial Street. There were no comments from any other neighbors.

An outreach meeting was held on February 2, 2018, at an operational telecom facility identical to the proposed facility. This was to demonstrate compliance of the RF emission with the FCC limit. It is documented that the maximum emission measured at the meeting was within the FCC limit.

The MPP was approved on February 7, 2018, determining that the proposal meets the Design Criteria for a telecom facility on joint poles in the public ROW.

EXISTING POLICY

(i) **Council Policy 7.2.16 - Telecommunications:** The purpose of this policy is to enable the City to retain and maintain regulatory authority within the confines of the state and federal legislation. The regulations adopted by the City Council in 2012 (Attachment 7) require applications for wireless telecommunications facilities within the public ROW to be submitted to the Planning Division. This changed the practice prior to 2012, where all such applications were processed by the Department of Public Works through consideration of an encroachment permit.

(ii) **Resolution 626-13 (SMC 19.54.160 - Telecommunication Facilities in the Public ROW):** The regulations adopted by the City Council in 2013 (Attachment 8) resulted from a study issue (CDD 12-06), which determined including wireless telecommunication facilities located on public ROW in the zoning code. These regulations included design criteria for processing any type of application (zoning or encroachment) on joint poles and light poles located in the public ROW.

ENVIRONMENTAL REVIEW

The proposed project is categorically exempt from review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guideline Section 15303 that includes installation of small new equipment and facilities in small structures.

DISCUSSION

Applications for wireless telecommunications facilities in the public ROW are reviewed using policies and code requirements adopted by the City Council in 2013. These policies include criteria to be used in the review of applications and the review types for different types of installations (see Attachment 8). If the criteria listed in the Design Criteria is met, such as the subject application, it can be reviewed at a staff level (with final appeal to the Planning Commission). If the criteria cannot be met, the application is considered by the Planning Commission (with appeal possible by the City Council).

In the subject application, staff reviewed the location and installation, and reviewed other locations with the applicant, and determined the application at the subject site met the criteria. Following the determination that it was a staff-level decision, the required comment period for the public was started.

During this comment period, staff received comments and questions from the property owner of 214 Commercial Street. Staff worked with the property owner to address the concerns. Following are the basis for her concerns with a summary of staff responses below:

- 1) Negative visual impact on the property and on the street which will impact their property value and ability to redevelop the property.

Staff Response: The proposal is evaluated based on design criteria listed in SMC 19.54.160 and the proposal meets the design criteria based on factors such as placement on pole away from primary views or corner location that can be viewed from multiple directions. The Public Utilities Code gives telecommunications companies the right to install their facilities in the public ROW subject to reasonable aesthetic regulations. The impact on property values is not part of the City's design guidelines, although the guidelines are intended to minimize the aesthetic impacts on the surrounding neighborhood as much as possible. See Attachment 9 for the property value impact analysis report provided by the applicant, which staff forwarded to the concerned property owner. Staff also worked with the concerned property owner on undergrounding of utilities, setback and parking requirements to address concerns regarding ability to redevelop the property.

- 2) Cumulative negative health impact due to RF emission from the proposed antenna and the existing telecom sites in the vicinity.

Staff Response: Public limits for RF emissions are set by the FCC and if an application includes technical information that shows that the proposed facility will be under the FCC maximum limits, the City must deem the proposed facility as compliant. See Attachment 10 for the RF report provided by the applicant. The City is not allowed by the Federal Telecommunications Act to deny a project based on RF emissions if the proposed facility is compliant.

The City and the applicant held a neighborhood meeting on Feb 2, 2018 to discuss the concerns regarding RF emission and associated compliance with FCC limits for the new wireless telecommunications facilities proposed during that time. The meeting was held at an operational telecom facility that is identical and has similar configuration to the one that is proposed adjacent to 214 Commercial Street. During that meeting, the applicant's RF emissions consultant used a handheld radio frequency meter to demonstrate that the wireless facility complied with the FCC standards. The maximum emission measured at the meeting was within the public (MPE - maximum permissible exposure) FCC limit, which is 1.0 mW/cm². See below for a table of measurements taken from the operational site:

Distance from Pole	RF Reading (in mW/cm ²)
Bottom of Pole	0.0001
10 feet	0.0002
20 feet	0.0002 - 0.0005
30 feet	0.0003-0.0006
40 feet	0.0004-0.0020
50 feet	0.0005-0.0007
70 feet	0.0004
90 feet	0.0002

- 3) Applicability of CEQA provisions for this proposal.

Staff Response: The Class 3 Categorical Exemption (CEQA Guidelines Section 15303) applies to "installation of small new equipment and facilities in small structures". The California Court of Appeal recently ruled that this exemption applies to small cell wireless projects. (*Aptos Residents Association v. County of Santa Cruz* (2018) 10 Cal.App.5th 266.)

- 4) Consideration of alternate poles, especially the ones within the Corp Yard.

Staff Response: Staff asked the applicant On December 6, 2017, to consider using one of the two existing telecommunication poles within the Sunnyvale Corporation Yard, to minimize the visual impact. The applicant responded that Verizon has a statewide franchise which gives it a right to install its equipment in public ROW under Public Utilities Code Section 7901. The City can encourage but cannot require the applicant to pursue other options such as leasing space on poles or towers that are outside of the ROW. (See Attachment 11, letter from applicant dated March 16, 2018)

PREVIOUS ACTIONS ON THE SITE

None

APPEAL AND STAFF COMMENTS ON THE APPEAL

The property owner of 214 Commercial Street filed an appeal of the Director of Community Development's approval on February 23, 2018. No other appeals were received during the 15-day appeal period. Find below the appellant's reasons for the appeal summarized from her letter (Attachment 12) and staff's comments.

1. **Close to Driveway:** The business at 222 Commercial Street immediately north of 214 Commercial Street is an Amazon Prime distribution center, with a driveway entrance in front of 222 Commercial Street is also used by 214 Commercial Street. The appellant indicates that the addition of equipment on the pole and bollards in the public ROW will create a hazardous situation when the large trucks enter and exit 222 Commercial Street, along with the landscape trucks of 214 Commercial Street

Staff Comments: The use of bollards is meant to protect the pole from vehicles. See Attachment 13 for a photo simulation showing the bollards. Staff discussed with the applicant about an option of installing the equipment on the ground. The applicant is considering this option and stated that there is a distance constraint in placement of the equipment cabinets from the antenna. It should also be noted that although the appellant's business has historically used the public ROW as an extension of their parking lot, this use has never been expressly permitted or authorized by the City. The appellant's use of this area is subject to the rights of the City and other authorized users of the public ROW.

2. **No Screening:** The appellant states that there are no trees or foliage around the proposed pole to minimize negative aesthetic impact caused by the proposed telecommunication facility.

Staff Comments: SMC 19.54.160 lists the pole selection criteria for poles located in the public ROW. The parcel at 214 Commercial Street is in M-S (Industrial and Service) zoning district. Though the selection criteria are for residential zones, they are applied to M-S zones where feasible. See excerpt from SMC 19.54.160 on pole selection below:

Pole selection in residential zones should minimize aesthetic impacts through selection of poles adjacent to trees and foliage that provide screening, placement away from primary views, placement on poles between parcel lines or adjacent to driveways and avoiding corner locations that can be viewed from multiple directions.

Although there are no trees or foliage next to the proposed pole, it is in an industrial area and is neither visible from Central Expressway nor from any arterial streets of Sunnyvale.

- 3. Proximity to Building:** The Seville Landscape building at 214 Commercial Street is 20'0" from the proposed pole. The appellant states that the subject pole is in front of the building entrance on the primary view from the building.

Staff Comments: The applicant has stated that the subject pole is the only viable option in the search ring area. The location is not optimal, but the City's authority on location of poles is limited. Staff worked with the applicant on alternate locations. See Attachment 14 for the alternative site analysis submitted by the applicant. Staff has focused attention on the design, as allowed by the zoning code.

- 4. Reduce Parking:** The appellant states that the proposed equipment and bollards will reduce the number of parking spaces in front of the property and affect the parking availability for emergency vehicles. The appellant also states that during future redevelopment of this property, parking and ADA compliance may become huge problems.

Staff Comments: The right-of-way along the Commercial Street in front of 214 Commercial Street is located within 11' from the face of curb. The property line starts after 11' from the face of curb. The bollards are proposed within the ROW and outside the property. Given the location of the right-of-way line on the property and building location, there is not enough room to fit two vehicles on the private property. The property currently uses portion of the right-of-way for parking in front of the building. As noted above, the appellant's use of the ROW for parking has not been expressly permitted or authorized by the City.

If the property is redeveloped in the future, the pole will be considered in the site review, and could be slated to be removed as part of future undergrounding of utilities. Staff recommends inclusion of a condition of approval that states the wireless telecommunication would need to be removed if future undergrounding of the pole is to be completed.

- 5. Limit of Equipment Cabinets:** The proposal includes the addition of multiple equipment cabinets to the pole that already has two (2) transformers and a small equipment cabinet. The appellant indicates that the visual simulation only shows 1 PG&E transformer when there are 2 large garbage size cabinets on this pole. The appellant states that this proposal will exceed the limit of equipment cabinets allowed per the City's design criteria.

Staff Comments: The number of equipment cabinets meet the design criteria. The proposed power disconnect and existing transformers are not counted towards the number of equipment cabinets.

FISCAL IMPACT

No fiscal impact other than normal fees and taxes are expected.

PUBLIC CONTACT

1. City Notice MPP
 - 14 notices were sent to surrounding property owners and residents within 300 feet of the project site
 - Posting on the proposed pole
2. City and Applicant Neighborhood Meeting
 - The property owner of 214 Commercial Street attended this meeting and discussed the concerns regarding RF emission and associated compliance with FCC limits with the applicant's RF consultant.
3. Appellant Email Opposition
 - See Attachment 15 for emails from the appellant opposing the proposal.
4. City Notice Appeal Public Hearing
 - 14 notices were sent to surrounding property owners and residents within 300 feet of the project site
 - Agenda posted on the City's official-notice bulletin board
 - Agenda posted on the City's website
 - Availability of the agenda and report in the Office of the City Clerk.

In addition to the City public outreach, Verizon also conducted a poll to show the level of support for the additional wireless telecommunications facility. Verizon sent text messages to Verizon customers in Sunnyvale asking for feedback about the need for additional wireless telecommunications facilities. The applicant received 418 supporting and 10 opposing responses. See Attachment 16 for a letter from Verizon Customer Relationship Management for a summary of their effort and outcome.

ALTERNATIVES

1. Deny the appeal and affirm the Director of Community Development's determination to approve the MPP, subject to Conditions of Approval (Attachment 1).
2. Deny the appeal and affirm the Director of Community Development's determination to approve the MPP, subject to modified Conditions of Approval.
3. Grant the appeal and reverse the Director of Community Development's determination to deny the MPP.

STAFF RECOMMENDATION

Alternative 1: Deny the appeal and affirm the Director of Community Development's determination to approve the MPP, subject to Conditions of Approval (Attachment 1).

Prepared by: Mary Jeyaprakash, Associate Planner

Reviewed by: Gerri Caruso, Principal Planner

Reviewed by: Rebecca Moon, Senior Assistant City Attorney

Approved by: Andrew Miner, Assistant Director, Community Development Department

ATTACHMENTS

1. Conditions of Approval
2. Applicant Letter
3. Site Plan and Elevation Drawings
4. Letter from Paul Albritton, Attorney for Verizon
5. Vicinity and Noticing Map
6. Comments from Owner of 214 Commercial Street
7. Council Policy Telecommunications
8. Resolution Telecom Design Criteria
9. Property Value Impact Analysis Report
10. Radiofrequency Report
11. Verizon's Letter Regarding Alternative Sites
12. Appeal Letter
13. Photo Simulation Showing Bollards
14. Alternative Site Analysis
15. Email Comments and Concerns from 214 Commercial St
16. Verizon Poll