



**STAFF REPORT TO THE MARIN COUNTY PLANNING COMMISSION  
JONES APPEAL OF PRESBYTERY OF THE REDWOOD (AT&T) USE PERMIT AND  
DESIGN REVIEW**

**Recommendation:** Deny the appeal and sustain the Deputy Zoning Administrator's Decision to deny the Presbytery of the Redwood (AT&T) Use Permit and Design Review

**Hearing Date:** Monday, July 27, 2020

Application No(s): P2770  
Agenda Item: 2

Owner(s): Presbytery of the Redwood/St. Luke Presbyterian Church

Last Date for Action: x/xx/2020

Assessor's Parcel No(s): 186-132-26  
Property Address: 10 Bayview Drive, San Rafael

Project Planner: Immanuel Bereket  
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[ibereket@marincounty.org](mailto:ibereket@marincounty.org)

Signature:

Countywide Plan Designation: SF-3 (Single-Family, one unit per one to five acres)  
Zoning District: R1-B4 (Single-Family Residential Combined District)  
Environmental Determination: Categorical Exemption, per CEQA Guidelines §15303

**PROJECT SUMMARY**

The applicant, Epic Wireless LLC, on behalf of AT&T Wireless and the property owner, is requesting Use Permit and Design Review approval to construct a new 33 feet five-inch tall wireless communications facility (WCF) disguised as a bell tower on the grounds of the St. Luke Presbyterian Church lot located in San Rafael. The WCF entails building a new 12 foot by 12 foot wide and 33 foot five inches tall faux bell tower structure at the front of the church to house and camouflage nine-panel antennas (three sets of three antennas), 15 relay radio units (RRUs) and associated equipment cabinets. The proposed structure would be set back at least 65 feet from all property lines. The WCF and related equipment would be installed within the proposed faux bell tower and would provide 4G and LTE wireless technology.

Use Permit approval is required for the installation of a new wireless communications facility in the R1-B4 zoning district, and Design Review is required because the project entails physical improvements related to the installation of a wireless facility.

## **PROJECT SETTING**

Characteristics of the site and surrounding area are summarized below:

- Total Lot Area:** 2.3 acres.
- Adjacent Land Uses:** Single-family residences to the north, west, and east. Point San Pedro Road forms the southern boundary of the site. Single-family residences are located between Point San Pedro Road and San Rafael Bay.
- Topography and Slope:** The project site has an average 20 percent slope to the west. The area of the proposed structure is fully improved with a concrete walkway.
- Existing Vegetation:** Vegetation consists of mature Oak, Eucalyptus and Bay trees as well as landscaped ornamental trees and shrubs.

**Environmental Hazards:** None identified.

The project site is a 2.3-acre lot within a residential zone that is developed with a church and related buildings. The site contains a 3,840 square foot church and a detached 4,520 square foot two-story sanctuary building. The fellowship hall, which measures approximately 21 feet above grade, features an approximately 40-foot tall church steeple that narrows as it soars up to the sky and is capped with a cross. The peaked roof of the sanctuary building measures approximately 18 feet eight inches above the surrounding grade. An existing driveway serves the project site off of Bayview Drive. Development in the area is with residential uses, with occasional open spaces punctuating the otherwise minimally developed area. There is a grove of mature Oak, Eucalyptus, and Bay trees to the west and southwest, with other trees planted along the entire perimeter of the church. No tree removal or significant grading would be required to construct the project.

Topography in the area up-slopes from the south to the north, from the San Rafael Bay to the north to the project site and beyond. The project site is at a lower elevation than the adjacent residences to the north, northwest, and northeast. Available views are both immediate and distant in nature, including a view of the San Rafael Bay, the San Rafael Bridge, distant cities, distinctive geologic features such as the East and West Marin Islands, Marin Islands National Wildlife Refuge, hillside terrain, wooded canyons, ridges or bodies of water. Since the owner of existing development on the church site has taken considerable efforts to preserve the views, the properties to the north, northwest, and northeast, enjoy varying degrees of views.

## **BACKGROUND**

A Use Permit and Design Review application was submitted on February 12, 2020. Upon receipt, the application was transmitted to the Department of Public Works (DPW) and the Marin County Fire Department (CSA 31). On March 12, 2020, the application was deemed incomplete pending installation of story-poles and preparation of alternative site analysis. On April 30, 2020, the applicant indicated the story poles had been installed and submitted the additional site analysis. On May 12, 2020, the application was deemed complete.

A notice was posted on the project site on February 24, 2020, identifying the applicants and describing the project and its location. A site visit was conducted on the same day the notice was posted, and subsequent site visits were made on April 24, 2020 to confirm story-poles were installed and May 13, 2020, to take additional pictures of the proposed facility from off-site locations. The Community Development Agency provided a mailed public notice on April 26, 2020, identifying the applicant, describing the project and its location, hearing date, and location in accordance with California Government Code requirements. Said notice was mailed to all property owners within 600 feet of the subject property.

On Thursday, May 28, 2020, the Deputy Zoning Administrator denied the project. Subsequent to the Deputy Zoning Administrator's decision, Carl Jones, an agent for AT&T, filed a timely appeal of the Deputy Zoning Administrator's action (see attached letters dated June 4 and 11, 2020). AT&T included several exhibits with their appeal letter that explain their reasons for filing the appeal. The letters dated June 4 and June 11, 2020 and prepared by John di Bene, General Attorney for AT&T, are attached to this report for the Planning Commission's review and consideration.

## **KEY ISSUES**

The County's discretionary authority in reviewing all applications for wireless facilities is significantly limited by State and Federal laws, specifically by the Federal Telecommunications Act of 1996 and the California Government Code § 65850.6 and § 65964.1.

The Federal Telecommunications Act limits the County's consideration of the project under these local standards in two significant ways. First, Federal law prohibits the County from either conditioning or denying the project based on concerns stemming from the environmental effects of radiofrequency (RF) emissions if the proposed facility complies with federal RF standards. Second, Federal law prohibits the County from denying the project if: (a) the facility is necessary to fill a significant service gap in the applicant's wireless network; and (b) the facility is the least intrusive means of filling the service gap. As a faux bell tower, the proposed would be designed to the minimum functional height required to meet the coverage requirements and demands for the area. However, the structure would be visually intrusive with a design that is incompatible with the existing buildings. In addition, under Federal law, the County may not regulate wireless facilities in a manner that would "prohibit or have the effect of prohibiting" an entity from providing telecommunications service or personal wireless services.

Under California state law, if the County fails to act on an application within the timeframes established by the Federal Communications Commission, an applicant may seek relief through the courts to deem the application approved as proposed. The County may impose design requirements as long as those requirements are reasonable, technically feasible, and are reasonably directed to avoiding or remedying the intangible public harm.

Consideration of the project is also governed by the County's Telecommunications Facilities Policy Plan (TFPP). The TFPP was first adopted in 1990 and comprehensively updated in 1998, mainly in response to the advent and deregulation of the cellular telephone market and to reflect significant legislative changes in the 1996 Act. The TFPP promotes the goal of mitigating visual impacts by reducing the number of new sites through co-location or clustering of multiple facilities and by various siting and design techniques. The Implementation section of the TFPP sets forth the various thresholds for the Planning Division's review of wireless facilities, including design considerations.

## **PUBLIC COMMENT**

During the project review process, the County received comments regarding the health concerns, design compatibility, impacts to view and view corridors, proximity to residences, and whether or not alternatives sites have been exhaustively explored.

As noted above, federal law prohibits local governments from considering radio frequency (“RF”) emissions as a basis for denying or regulating wireless facilities if (as is the case here) the applicant has demonstrated that the proposed wireless facility complies with the FCC’s RF emissions regulations. Further, in considering the application, the Deputy Zoning Administrator reviewed and considered all written exhibits and letters submitted by the applicant which address issues related to aesthetics, views, location and alternative sites and designs. All correspondences are included as part of the Deputy Zoning Administrator file for this project. Therefore, the Planning Commission is limited to making findings based on the requirements in the County’s Telecommunications Facilities Policy Plan (TFPP) and within the constraints of Federal and State law governing the regulation of telecommunications facilities. The Planning Commission should therefore focus its consideration of the appeal and the required findings based on the evidence in the record and considering the wireless facilities design and location criteria set forth in the TFPP.

## **RECOMMENDATION**

Staff recommends that the Planning Commission review the administrative record, conduct a public hearing, consider all oral and written testimony received during the hearing and, deny the Jones’ appeal and affirm the Deputy Zoning Administrator’s denial of the Presbytery of the Redwood (AT&T) Use Permit and Design Review.

### Attachments:

1. Recommended resolution
2. Deputy Zoning Administrator Staff Report and Resolution, dated May 28, 2020
3. Deputy Zoning Administrator Hearing Minutes from May 28, 2020
4. Appeal Petition with exhibits, dated June 4, 2020
5. Revised Appeal Petition, dated June 11, 2020
6. All correspondences received to date
7. Project Objectives Statement
8. Photo simulations
9. Alternative Plan analysis
10. Propagation (service coverage) map
11. Story-poles
12. Department of Public Works, Inter-Office Memorandum, dated May 12, 2020
13. Radio Frequency Emissions Compliance Report for AT&T Mobility, prepared by Waterford Consultants, LLC., dated February 3, 2020
14. Noise Compliance Report, prepared by Waterford Consultants, LLC., dated January 28, 2020
15. Supplemental Noise Compliance Report, prepared by Waterford Consultants, LLC., dated January May 21, 2020
16. Project plans, prepared by Borges Architectural Group, dated February 7, 2020