



COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION

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October 13, 2020

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Marin County Board of Supervisors
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SUBJECT: The Presbytery of the Redwoods appeal of the Marin County Planning Commission decision to deny a Conditional Use Permit and Design Review application for an AT&T wireless facility at 10 Bayview Drive, San Rafael

Dear Supervisors,

RECOMMENDATION:

Conduct a public hearing and adopt a resolution to deny the appeal and affirm the Planning Commission's decision to deny the Presbytery of the Redwoods (AT&T) Conditional Use Permit and Design Review.

SUMMARY:

On February 12, 2020, the applicant, Epic Wireless LLC, on behalf of AT&T Wireless and the property owner, submitted an application requesting Conditional Use Permit and Design Review approval to construct a new wireless communications facility (WCF) disguised as a bell tower on the grounds of the St. Luke Presbyterian Church in San Rafael. The WCF entails building a new 12 foot by 12 foot wide and 33 foot five inch tall faux bell tower structure at the front of the church to house and hide 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 service.

On Thursday, May 28, 2020, the Deputy Zoning Administrator (DZA) held a public hearing, considered all oral and written testimony received during the hearing and denied the application due to design concerns and compatibility. Subsequent to the DZA's action, the applicant filed a timely appeal of the DZA's action. The appeal petition was scheduled for consideration by the Planning Commission at the July 27, 2020 hearing. At the request of the applicants, it was postponed to a future date. As part of the postponement, the appellants agreed to extend the Federally mandated deadline (also known as shot-clock) to October 31, 2020.

On September 28, 2020, the Planning Commission reviewed the administrative record, conducted a public hearing, and affirmed the DZA's decision by denying the application. On October 8, 2020, the applicants submitted a timely appeal.

DISCUSSION

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.

Under California 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 minimizing 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.

In considering the application, the Planning Commission 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. Although the facility is designed as a faux bell tower, and would be designed to the minimum functional height required to meet the coverage requirements and demands for the area, the Planning Commission determined that the structure would be visually intrusive with a design that is incompatible with the existing buildings onsite and would cause irreversible impairment to distinct views.

REVIEWED BY:

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|--|---|
| <input type="checkbox"/> Department of Finance | <input checked="" type="checkbox"/> N/A |
| <input checked="" type="checkbox"/> County Counsel | <input type="checkbox"/> N/A |
| <input type="checkbox"/> Human Resources | <input checked="" type="checkbox"/> N/A |

SIGNATURE:

Immanuel Bereket

Senior Planner

Attachments:

1. Resolution
2. Petition of Appeal
3. Planning Commission memorandum and Resolution, dated September 28, 2020
4. Planning Commission Staff Report, dated July 27, 2020
5. Project Objectives Statement
6. Photo simulations
7. Alternative Plan analysis
8. Propagation (service coverage) map
9. Story-poles
10. Radio Frequency Emissions Compliance Report for AT&T Mobility, prepared by Waterford Consultants, LLC., dated February 3, 2020
11. Noise Compliance Report, prepared by Waterford Consultants, LLC., dated January 28, 2020
12. Supplemental Noise Compliance Report, prepared by Waterford Consultants, LLC., dated January May 21, 2020
13. Project plans, prepared by Borges Architectural Group, dated February 7, 2020
14. All correspondences received to date