



# City of Santa Barbara California

## CITY OF SANTA BARBARA PLANNING COMMISSION

### RESOLUTION NO. 005-15

#### RIGHT-OF-WAY ADJACENT TO 3139 CLIFF DRIVE

#### CONDITIONAL USE PERMIT

APRIL 16, 2015

**APPLICATION OF PETER HILGER, APPLICANT FOR AT&T, CITY RIGHT-OF-WAY ADJACENT TO 3139 CLIFF DRIVE, GENERAL PLAN DESIGNATION: LOW DENSITY RESIDENTIAL, ONE DWELLING UNIT PER ACRE (MST2013-00117)**

The proposed project involves the replacement of an existing microcell site with a full cellular antenna site for AT&T. The existing 12-inch panel antennas located on the existing wood utility pole in the public right-of-way will be replaced with four larger 4-foot by 15-inch panel antennas on new eight-foot cross arms. The project includes new equipment in an existing underground vault. The discretionary applications required for this project is a Conditional Use Permit to allow the installation of cellular telephone antennas (SBMC §28.94.030.DD).

The Environmental Analyst has determined that the project is exempt from further environmental review pursuant to the California Environmental Quality Act Guidelines Section 15303.

**WHEREAS**, the Planning Commission has held the required public hearing on the above application, and the Applicant was present.

**WHEREAS**, no one appeared to speak in favor of the application, and one person appeared to speak in opposition thereto or with concerns, and the following exhibits were presented for the record:

1. Staff Report with Attachments, March 5, 2015.
2. Staff Memorandum, April 6, 2015.
3. Site Plans
4. Correspondence received in opposition to the project:
  - a. Gil Barry, Braemar Neighborhood Association, via email

**NOW, THEREFORE BE IT RESOLVED** that the City Planning Commission:

- I. Approved the subject application making the following findings and determinations:

**GENERAL FINDINGS FOR THE CONDITIONAL USE PERMIT (SBMC §28.94.020)**

1. *Any such use is deemed essential or desirable to the public convenience or welfare and is in harmony with the various elements or objectives of the Comprehensive General Plan.*

The cellular antenna installation is essential and desirable to the public convenience for both residents and visitors to Santa Barbara and, as discussed in Section VI.B.1 of the staff report, is consistent with applicable policies of the Santa Barbara General Plan.

2. *Such uses will not be materially detrimental to the public peace, health, safety, comfort and general welfare and will not materially affect property values in the particular neighborhood involved.*

As discussed in Section VI.B.1 and 2, and Section VII of the staff report, the cell site will not be materially detrimental; the equipment in the underground vault will not emit significant noise and the antennas will not emit radiofrequency radiation above levels established by the Federal Communications Commission.

3. *The total area of the site and the setbacks of all facilities from property and street lines are of sufficient magnitude in view of the character of the land and of the proposed development that significant detrimental impact on surrounding properties is avoided.*

The proposed project will remain in the small area of right-of-way occupied by the existing utility pole and vault. The site is buffered adequately from the surrounding properties by distance and topography.

4. *Adequate access and off-street parking including parking for guests is provided in a manner and amount so that the demands of the development for such facilities are adequately met without altering the character of the public streets in the area at any time.*

The cellular antenna site is an unmanned facility and does not generate any on-site parking demand other than occasional maintenance visits by AT&T personnel. There is adequate room to park at the site in a turnout on the south side of Cliff Drive.

5. *The appearance of the developed site in terms of the arrangement, height, scale and architectural style of the buildings, location of parking areas, landscaping and other features is compatible with the character of the area. The Planning Commission shall have the authority to approve the design of open space. Design shall mean size, shape, location and usability for proposed private, public, or quasi-public purposes and development. Approval of such open spaces may be expressly conditioned upon an offer of conveyance by the owner to the City of Santa Barbara of the development rights, the right to prohibit the construction of additional buildings, or other property rights, necessary to achieve the purposes set forth in this title.*

The proposed antennas mounted on the existing utility pole represent an increase in the visible utility infrastructure. Utility poles are not unique to this area and, as discussed in Section VI.B.2, the proposed antenna installation is the minimum size feasible to fill the gap in coverage given existing technology and engineering constraints. The project is consistent with the applicable General Plan policy to protect important public views. The project is generally compatible with the character of the area because it will become a part of the existing utilities which are unshielded and unadorned. The size of the antennas and equipment are not significant in proportion to the existing utilities, and the project has no effect on open space.

**ADDITIONAL SPECIFIC FINDINGS FOR ANTENNAS (SBMC §28.94.030.DD.2):**

- a. *Shared Use of Support Structure. The applicant had made a good faith effort to demonstrate that no existing or planned support structure, including an antenna tower, is available to accommodate the proposed antenna.*

The proposal is using an existing utility pole as the support structure.

- b. *Site Size. The site is of a size and shape sufficient to provide an adequate setback from the base of the antenna support structure to any property line abutting a residential use.*

Existing residential development in the vicinity is separated from the project by distance, vegetation, and topography. The nearest single family house to the project is approximately 200 feet away. Houses are situated on top of the hills along both sides of this portion of Cliff Drive and are approximately 55 feet higher in elevation than the project site. A drainage channel runs along the south side of Cliff Drive, and the embankments along both sides of the road are heavily vegetated.

- c. *Visual Impact. The project has been reviewed by the Architectural Board of Review. The Board may take action on the location of the antenna(s) on the site, color and size so as to minimize any adverse visual impacts by requiring that the antenna and its supporting structure be designed and placed so as to be as visually unobtrusive as feasible, taking into consideration technical engineering and other pertinent factors.*

As discussed in Section VI.B.2 of the staff report, the ABR found that the antennas and supporting structure had been reduced to be as visually unobtrusive as feasible; however, they were still unable to find No Visual Impact for an unscreened installation at this location. The ABR comments that the pole mounted equipment and conduits should be painted brown to match the existing pole and the existing ground-mounted cabinets at the site should be painted green have been incorporated as conditions of approval to further minimize the visual impacts of the proposal.

- d. *Non-ionizing Electromagnetic Radiation (NIER) Emissions. Any new transmitters and/or antennas, when combined with existing sources of NIER emissions on or adjacent to the site and when operating as designed and licensed, shall not expose the general public to ambient radiation emissions which exceed American National Standards Institute (ANSI) C95.1-1992 standard (if the Federal Communications Commission (FCC) rulemaking committee adopts a revised standard, said standard shall apply).*

As discussed in Section VII of the staff report and in the Statement by Hammett & Edison, Inc. dated June 18, 2013, the antennas will not expose the general public to ambient radiation emissions in excess of applicable FCC standards.

II. Said approval is subject to the following conditions:

- A. **Order of Development.** In order to accomplish the proposed development, the following steps shall occur in the order identified:
1. Obtain all required design review approvals.
  2. Pay Land Development Team Recovery Fee.
  3. Submit any required agreements (see Written Agreement section).
  4. Submit an application for and obtain a Public Works Permit (PBW) for all proposed construction in the Public right-of-way and complete said construction.

Details on implementation of these steps are provided throughout the conditions of approval.

- B. **Written Agreement.** The Applicant, AT&T Mobility, shall execute a *written instrument*, which shall be prepared by Planning staff, reviewed as to form and content by the City Attorney, Community Development Director and Public Works Director, indicating the following:
1. **Approved Development.** The development of the Real Property approved by the Planning Commission on March 12, 2015 is limited to the cellular antennas mounted on the existing utility pole and associated equipment in the existing ground vault and related improvements shown on the plans signed by the chair of the Planning Commission on said date and on file at the City of Santa Barbara.
  2. **Modification of Site.** The design of this installation is a compromise between the City's Architectural Board of Review and AT&T Mobility. The goal of this compromise is to minimize the visual and aesthetic impacts posed by the installation while enabling a functional installation. With this goal in mind, the approved installation constitutes the maximum acceptable size of installation in terms of the horizontal separation away from the utility pole and the vertical length of the antennas from their supporting arm. Any future collocated antennas at this location shall not frustrate the effort to minimize the visual and aesthetic impacts by exceeding the dimensions of the approved installation. In addition, any camouflaging colors or other aesthetic treatments applicable to the approved installation shall be applicable to future collocated installations.
  3. **Discontinuance of Use.** All structures and equipment associated with the cellular facility shall be removed within 30 days of the discontinuance of the use and the site shall be restored by the Applicant to its original pre-development condition.
  4. **Site maintenance.** The equipment and structures shall be maintained in good condition over the term of the permit. This shall include the painting of the equipment on the pole, keeping the project area clean and free of trash accumulation, and the structures free of graffiti.
  5. **Pesticide or Fertilizer Usage near Creeks.** The use of pesticides or fertilizer shall be prohibited within the project area.
  6. **Review of New Technology.** If the City or a member of the public brings forth any advances in technology, that would reduce visual impacts of the installation, then the City will ask the Applicant to review the technology to see if it could be applied to this site
- C. **Design Review.** The project, including public improvements, is subject to the review and approval of the Architectural Board of Review (ABR). All ABR conditions of approval shall be clearly shown and specified on the permit plans.
- D. **Requirements Prior to Permit Issuance.** The Applicant shall submit the following, or evidence of completion of the following, for review and approval by the Department listed below prior to the issuance of any permit for the project. Please note that these conditions are in addition to the standard submittal requirements for each department.
1. **Public Works Department.**
    - a. **Approved Public Improvement Plans.** Construction work in the Public right-of-way shall be submitted to the Public Works Department for review and approval.

2. **Community Development Department.**

- a. **Written Agreement.** The Applicant shall submit an executed written instrument identified in condition B, "Written Agreement" to the Community Development Department prior to issuance of any permits.
- b. **Design Review Requirements.** Plans shall show all design elements as approved by the Architectural Board of Review and all elements/specifications shall be implemented on-site, including painting all equipment cabinets as approved by the ABR.
- c. **Conditions on Plans/Signatures.** The final Resolution shall be provided on a full size drawing sheet as part of the drawing sets. A statement shall also be placed on the sheet as follows: The undersigned have read and understand the required conditions, and agree to abide by any and all conditions which are their usual and customary responsibility to perform, and which are within their authority to perform.

Signed:

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Property Owner Date

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Contractor Date License No.

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Architect Date License No.

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Engineer Date License No.

- E. **Construction Implementation Requirements.** All of these construction requirements shall be carried out in the field by the Applicant and/or Contractor for the duration of the project construction, including demolition and grading.

- 1. **Construction Contact Sign.** Immediately after permit issuance, signage shall be posted at the site that list the contractor(s) name and telephone number(s), to assist City Inspectors and Police Officers in the enforcement of the conditions of approval. The font size shall be a minimum of 0.5 inches in height. Said sign shall not exceed six feet in height from the ground if it is free-standing or placed on a fence. It shall not exceed 24 square feet if in a multi-family or commercial zone or six square feet if in a single family zone.

- F. **Prior to Final Inspection.** Prior to approval of Final Inspection, the Applicant shall complete the following:

- 1. **Repair Damaged Public Improvements.** Repair any public improvements (curbs, gutters, sidewalks, roadways, etc.) or property damaged by construction subject to the review and approval of the Public Works Department per SBMC §22.60.
- 2. **Compliance with Requirements.** All requirements of the city of Santa Barbara and any other applicable requirements of any law or agency of the State and/or any government

entity or District shall be met. This includes, but is not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.), the 1979 Air Quality Attainment Plan, and the California Code of Regulations.

3. **Approval Limitations.**

- a. The conditions of this approval supersede all conflicting notations, specifications, dimensions, and the like which may be shown on submitted plans.
- b. All antennas and related equipment, parking areas and other features shall be located substantially as shown on the plans approved by the Planning Commission.
- c. Any deviations from the project description, approved plans or conditions must be reviewed and approved by the City, in accordance with the Planning Commission Guidelines. Deviations may require changes to the permit and/or further environmental review. Deviations without the above-described approval will constitute a violation of permit approval.

4. **Land Development Team Recovery Fee Required.** The land development team recovery fee (30% of all planning fees, as calculated by staff) shall be paid at time of building permit application.

5. **Litigation Indemnification Agreement.** In the event the Planning Commission approval of the Project is appealed to the City Council, Applicant hereby agrees to defend the City, its officers, employees, agents, consultants and independent contractors (“City’s Agents”) from any third party legal challenge to the City Council’s denial of the appeal and approval of the Project, including, but not limited to, challenges filed pursuant to the California Environmental Quality Act (collectively “Claims”). Applicant/Owner further agrees to indemnify and hold harmless the City and the City’s Agents from any award of attorney fees or court costs made in connection with any Claim.

Applicant shall execute a written agreement, in a form approved by the City Attorney, evidencing the foregoing commitments of defense and indemnification within thirty (30) days of being notified of a lawsuit regarding the Project. These commitments of defense and indemnification are material conditions of the approval of the Project. If Applicant fails to execute the required defense and indemnification agreement within the time allotted, the Project approval shall become null and void absent subsequent acceptance of the agreement by the City, which acceptance shall be within the City’s sole and absolute discretion. Nothing contained in this condition shall prevent the City or the City’s Agents from independently defending any Claim. If the City or the City’s Agents decide to independently defend a Claim, the City and the City’s Agents shall bear their own attorney fees, expenses, and costs of that independent defense.

**III. NOTICE OF CONDITIONAL USE PERMIT APPROVAL TIME LIMITS:**

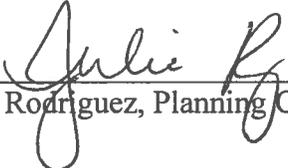
The Planning Commission action approving the Conditional Use Permit shall terminate two (2) years from the date of the approval, per Santa Barbara Municipal Code §28.87.360, unless:

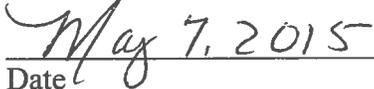
1. An extension is granted by the Community Development Director prior to the expiration of the approval; or
2. A Public Works permit for the use authorized by the approval is issued and the construction authorized by the permit is being diligently pursued to completion of Final Inspection.

This motion was passed and adopted on the 16th day of April, 2015 by the Planning Commission of the City of Santa Barbara, by the following vote:

AYES: 6 NOES: 1 (Lodge) ABSTAIN: 0 ABSENT: 0

I hereby certify that this Resolution correctly reflects the action taken by the city of Santa Barbara Planning Commission at its meeting of the above date.

  
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Julie Rodriguez, Planning Commission Secretary

  
\_\_\_\_\_  
Date

**PLEASE BE ADVISED:**

**THIS ACTION OF THE PLANNING COMMISSION CAN BE APPEALED TO THE CITY COUNCIL WITHIN TEN (10) CALENDAR DAYS AFTER THE DATE THE ACTION WAS TAKEN BY THE PLANNING COMMISSION.**

