

PLANNING COMMISSION AGENDA

CHAIRPERSON:

Brett Taylor



VICE CHAIRPERSON:

Liz Wynn

COMMISSIONERS: Brett Taylor, Liz Wynn, Chris Gomez, Marvin Hansen, Sarrah Peariso

MONDAY, DECEMBER 11, 2017; 7:00 P.M., COUNCIL CHAMBERS, 707 W. ACEQUIA, VISALIA CA

1. THE PLEDGE OF ALLEGIANCE –
2. CITIZEN'S COMMENTS – This is the time for citizens to comment on subject matters that are not on the agenda but are within the jurisdiction of the Visalia Planning Commission. The Commission requests that a 5-minute time limit be observed for comments. Please begin your comments by stating and spelling your name and providing your street name and city. Please note that issues raised under Citizen's Comments are informational only and the Commission will not take action at this time.
3. CHANGES OR COMMENTS TO THE AGENDA–
4. CONSENT CALENDAR - All items under the consent calendar are to be considered routine and will be enacted by one motion. For any discussion of an item on the consent calendar, it will be removed at the request of the Commission and made a part of the regular agenda.
 - Finding of Consistency 2017-06: A request by Nina Clancy to allow a modification to the Montessori School Master Plan for Conditional Use Permit 2013-29, allowing the interim use of two mobile classrooms. The site is located at 3514 S. Linwood Street (APN: 119-360-054). Conditional Use Permit No. 2013-29 was approved by the Planning Commission on October 28, 2013.
5. PUBLIC HEARING – Brandon Smith
Conditional Use No. 2017-35, a request by Verizon Wireless (Crown Castle MU LLC, property owner) to allow a modification that includes a 15-foot height extension to an existing telecommunications monopole located in the Light Industrial (I-L) zone. The site is located at 2410 S. Santa Fe Street, on the north side of K Avenue, 750 feet east of Santa Fe Street. (APN: 123-121-004).
6. PUBLIC HEARING – Paul Scheibel
Conditional Use Permit No. 2017-34: A request to modify the approved setbacks for CUP 2016-26 (Southern Highlands, TSM No. 5555), for a Planned Residential Development (PRD) to subdivide 14.30 acres into 12 parcels for multi-family units, and 71 lots for single-family residences in the R-M-2 (Multi-family Residential, 3,000 sq. ft. of lot area per unit), and R-1-5 (Single-family Residential, 5,000 sq. ft. of lot area per unit) Zone Districts. The project includes private and gated streets, and common recreation areas. The project site is located near the southeast corner of Demaree Street and Visalia Parkway (APNs 126-950-013 & 126-950-014) The project is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15305, Categorical Exemption No. 2017-80.

7. WORK SESSION – Andy Chamberlain
Work Session to Update and Receive Comments on Potential Changes to Mobile Food Vending Regulations
8. DIRECTOR’S REPORT/ PLANNING COMMISSION DISCUSSION-

The Planning Commission meeting may end no later than 11:00 P.M. Any unfinished business may be continued to a future date and time to be determined by the Commission at this meeting. The Planning Commission routinely visits the project sites listed on the agenda.

For the hearing impaired, if signing is desired, please call (559) 713-4359 twenty-four (24) hours in advance of the scheduled meeting time to request these services. For the visually impaired, if enlarged print or Braille copy is desired, please call (559) 713-4359 for this assistance in advance of the meeting and such services will be provided as soon as possible following the meeting.

Any written materials relating to an item on this agenda submitted to the Planning Commission after distribution of the agenda packet are available for public inspection in the City Office, 315 E. Acequia Visalia, CA 93291, during normal business hours.

APPEAL PROCEDURE

THE LAST DAY TO FILE AN APPEAL IS MONDAY DECEMBER 21, 2017 BEFORE 5 PM

According to the City of Visalia Zoning Ordinance Section 17.02.145 and Subdivision Ordinance Section 16.04.040, an appeal to the City Council may be submitted within ten days following the date of a decision by the Planning Commission. An appeal form with applicable fees shall be filed with the City Clerk at 220 N. Santa Fe, Visalia, CA 93292. The appeal shall specify errors or abuses of discretion by the Planning Commission, or decisions not supported by the evidence in the record. The appeal form can be found on the city’s website www.visalia.city or from the City Clerk.

THE NEXT REGULAR MEETING WILL BE HELD ON MONDAY, JANUARY 8, 2017

City of Visalia

Memo



To: Visalia Planning Commission

From: Brandon Smith, Senior Planner, (559) 713-4636
brandon.smith@visalia.city

Date: December 11, 2017

Re: **Conditional Use No. 2017-35**, a request by Verizon Wireless (Crown Castle MU LLC, property owner) to allow a modification that includes a 15-foot height extension to an existing telecommunications monopole located in the Light Industrial (I-L) zone. The site is located at 2410 S. Santa Fe Street, on the north side of K Avenue, 750 feet east of Santa Fe Street. (APN: 123-121-004).

Staff Recommendation

Staff recommends that the Planning Commission take no action on Conditional Use Permit No. 2017-33, based upon staff's finding subsequent to the project's legal notice being published that the project is a permitted use and does not require discretionary review by the City of Visalia. Staff's recommendation is based on 47 U.S.C. § 1455 (the "Spectrum Act"), the 2014 Federal Communications Commission order interpreting the Spectrum Act (the "Spectrum Act Order"), and the City's Municipal Code pertaining to regulation of wireless telecommunication facilities (see discussion below).

Discussion

On September 6, 2017, the City of Visalia reviewed Site Plan Review Item No. 2017-165, a proposal for modifications and a height extension to accommodate colocation on an existing telecommunications facility located at 2410 S. Santa Fe Street, in the I-L (Light Industrial) zone. The Planning Division determined that a Conditional Use Permit was needed for the modifications since the tower, constructed in 2001 as a "permitted" use, is now considered a legal non-conforming structure under the current Zoning Ordinance, which states that towers in the Light Industrial zone located within 100 feet of property planned/zoned residential are a "conditionally-permitted" use. The tower is located 25 feet from existing and planned residential uses located in County jurisdiction and located 90 feet from existing residential zoning in the City limits.

The applicant submitted an application for Conditional Use Permit to the City on November 20, 2017. The application included a letter (see attached letter dated November 10, 2017) which stated that, according to the congress-enacted Spectrum Act and Spectrum Act Order, and the City's Zoning Code pertaining to regulation of wireless telecommunication facilities, the proposed modifications are not considered to be a "substantial change" and therefore do not require discretionary review.

Staff reviewed the CUP material and consulted with the City Attorney's Office regarding the applicant's letter. Upon further analysis of the regulations pertaining to "substantial changes" to existing telecommunication towers, staff determined that the modifications proposed to the telecommunication tower on the subject site comply with the Spectrum Act and the City's Wireless Telecommunication Ordinance. Based on the modifications to the existing tower, no Conditional Use Permit is necessary for this project and the modifications can be permitted through the processing of a building permit.

Please note, the CUP item was legally noticed in the newspaper but staff was able to withhold the 300-foot mailed public hearing notices from being mailed out. Due to the CUP being advertised in the local newspaper, the item is required to be placed on the Planning Commission's agenda.

Attachments:

- Letter from Mackenzie & Albritton LLP dated November 10, 2017, received by the City on November 20, 2017
- Location Map

MACKENZIE & ALBRITTON LLP

155 SANSOME STREET, SUITE 800
SAN FRANCISCO, CALIFORNIA 94104

TELEPHONE 415 / 288-4000
FACSIMILE 415 / 288-4010

November 10, 2017

VIA HAND DELIVERY

Building Safety Division
City of Visalia
315 East Acequia Avenue
Visalia, California 93291

Re: Verizon Wireless Section 6409(a) Collocation Justification Analysis
Modification of Facility at 2410 Santa Fe Avenue
Eligible Facilities Request under 47 U.S.C. §1455(a)

To Whom It May Concern:

We write on behalf of Verizon Wireless with respect to the above-referenced proposal to modify an existing telecommunications monopole by collocating a new facility (the "Application"). As Verizon Wireless is proposing a modification to collocate its facility on an existing tower and the proposal will not substantially change the physical dimensions of the facility, the Application is an eligible facilities request that qualifies for approval under 47 U.S.C. § 1455 (the "Spectrum Act") and under the 2014 Federal Communications Commission order interpreting the Spectrum Act (the "Spectrum Act Order"). Pursuant to Visalia Municipal Code Section 17.32.163(I)(1), this modification to an existing facility involving no substantial change is a permitted use. The Building Safety Division should review the Application and issue a building permit.

Under the Spectrum Act Order, the City must render a decision on this eligible facilities request within 60 days of the date of application, plus the number of days it may take Verizon Wireless to respond to a timely request for information, or it will be deemed approved by operation of law.

Project Description

The existing 72.8 foot Crown Castle monopole facility at 2410 Santa Fe Avenue was originally approved in 2001 under Building Permit No. B012097. Currently, the existing facility consists of unconcealed MetroPCS panel and dish antennas mounted on the monopole with a maximum antenna height of 69.2 feet and unconcealed T-Mobile panel antennas mounted at the top of the monopole with a maximum height of 76 feet.

Existing equipment cabinets are located within Crown Castle's 1,806 square foot leased equipment area that surrounds the tower base.

To provide enhanced network service in the vicinity, Verizon Wireless proposes to mount nine panel antennas and six remote radio units ("RRUs") on a 15-foot monopole extension. One Raycap surge suppressor will be mounted to the monopole extension as well. Verizon Wireless will place associated transmission equipment in a distinct leased area within Crown Castle's leased equipment area, including two network equipment cabinets, a battery cabinet, power supply, one Raycap surge suppressor and electric and telecommunications connection panels.

The Application involves a typical wireless facility collocation and will cause little change in the appearance of the transmission tower.

The Application is an Eligible Facilities Request that Must Be Approved under the Spectrum Act and Spectrum Act Order.

Congress enacted the Spectrum Act in 2012 to expedite deployment of wireless facilities and upgrades in response to exponential growth in the demand for wireless voice and data services. The Spectrum Act states that "a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station."¹ An "eligible facilities request" is defined to include any collocation of new equipment, removal of existing equipment, or replacement of existing equipment.²

In response to requests for clarification of Spectrum Act terms by local jurisdictions and wireless carriers, the Federal Communications Commission ("FCC") initiated a rulemaking process that concluded with adoption of the Spectrum Act Order in October 2014. The Spectrum Act Order, which became effective on April 8, 2015, provides legally binding guidance on the meaning of key terms under the Spectrum Act, setting forth rules codified as 47 C.F.R. § 1.40001.³ The Spectrum Act Order rules defines a tower to include any structure built for the purpose of supporting FCC-licensed antennas.⁴ The Spectrum Act Order also sets forth six thresholds that constitute a "substantial change" in the physical dimensions of a tower.⁵

The Application clearly qualifies as an "eligible facilities request" under the Spectrum Act. The Crown Castle tower, originally approved in 2001, is eligible for collocation. The FCC has confirmed that "Legal, non-conforming structures should be

¹ 47 U.S.C. § 1455(a)(1).

² 47 U.S.C. § 1455(a)(2).

³ See 29 FCC Rcd. 12865.

⁴ See 47 CFR § 1.40001(b)(9).

⁵ See 47 CFR § 1.40001(b)(7).

available for modification under Section 6409(a), as long as the modification itself does not ‘substantially change’ the physical dimensions of the supporting structure as defined here.” Spectrum Act Order, 29 FCC Rcd. 12950 ¶ 201.

The proposed installation does not exceed any of the six thresholds such that it would “substantially change” the physical dimensions of that existing tower, as described below. We note that Visalia Municipal Code Section 17.32.163(I)(2) restates the substantial change criteria incorrectly; the City must evaluate the Application using the criteria of 47 CFR § 1.40001(b)(7).

- 1) *Increase in height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater.*

Verizon Wireless’s 15-foot monopole extension and antenna array will increase the overall height of the facility by 13 feet. The pertinent criterion is the separation from the bottom of Verizon Wireless’s panel antennas (81 feet) to the top of the highest existing T-Mobile antenna (76 feet) which will be 5 feet, well under the twenty feet of antenna array separation accommodated by this substantial change criteria. There will be no substantial change in height.

- 2) *Protrusion from the edge of the tower of more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater.*

There will be no protrusion of more than twenty feet, as the greatest new protrusion will be new Verizon Wireless antennas which will protrude only approximately 4.5 feet beyond the edge of the tower, well under the twenty foot threshold that would constitute a substantial change.

- 3) *Involves the installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four.*

There are two network cabinets and one battery cabinet proposed for this installation, all of which will be located in the Verizon Wireless equipment area, less than the threshold of four new cabinets that would constitute a substantial change.

- 4) *Entails any excavation or deployment outside the current site of the tower.*

Verizon Wireless’s equipment and its excavation for utilities will be confined within the Crown Castle lease area. At the southern property line, which is the edge of Crown Castle’s lease area, Verizon Wireless’s utilities will connect

to utilities installed in the right-of-way by other companies. Utilities in the right-of-way are beyond the scope of this permit application. There will be no excavation or deployment outside the site that would constitute a substantial change.

5) *Would defeat any concealment (stealth) elements of the existing facility.*

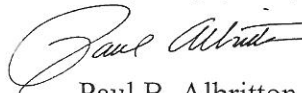
The existing monopole and antennas are unconcealed. There are no concealment elements to defeat and no substantial change with respect to this criterion.

6) *Does not comply with conditions associated with the prior approval of the existing facility, unless the non-compliance is due only to a change in height, width, etc., that does not exceed the first four thresholds.*

There are no prior conditions of approval that would render the installation non-compliant aside from any changes related to the first four “substantial change” thresholds.

In sum, because the Application qualifies as an “eligible facilities request” and does not involve any “substantial change,” the Building Safety Division should issue a building permit. Once filed, Verizon Wireless will work with the City to complete review of the Application within 60 days of filing in accordance with federal regulations.

Very truly yours,



Paul B. Albritton

Conditional Use Permit No. 2017-35

The site is located at 2410 S. Santa Fe Street, on the north side of K Avenue 750 feet east of Santa Fe Street. (APN: 123-121-004).

