



10/18/2010
Item 7

October 13, 2010

Planning Division
City of Visalia
315 E. Acequia Avenue
Visalia, CA 93291
(559) 713-4440
Attn: Paul Bernal

RE: CUP No. 2010-09 / Variance No. 2010-04
Project located at 1748 East Caldwell Avenue
APN: 126-120-064

Dear Mr. Bernal:

On behalf of Verizon Wireless, I respectfully request the continuance of this item from the October 18, 2010 City Council hearing to the November 1, 2010 hearing.

The reasons for this request are as follows:

1. We were just informed today of staff's position and recommendation to the City Council to uphold the Planning Commission's decision of denial by default. We were surprised by this recommendation and we need additional time to try and address staff's concerns regarding the project.
2. Verizon is still researching the possibility of moving forward without the height variance. Additional mapping and testing is required to make a final determination.
3. Discussions with City Council have brought to light alternative designs and locations, and we have determined that additional time is necessary to adequately review these alternatives.

Please contact me if you have any questions.

Regards,

A handwritten signature in cursive script, appearing to read 'Paul Bernal'.



Jennifer Walker
SAC Wireless
Project Manager
Representing Verizon Wireless
4412 Harlin Way
Sacramento, CA 95682
(916) 601-1123
jennifer.walker@sacw.com

**City of Visalia
Agenda Item Transmittal**

Meeting Date: October 18, 2010 (continued from September 7, 2010, at the request of staff and October 4, 2010, at the request of the applicant)

Agenda Item Number (Assigned by City Clerk): 7

Agenda Item Wording:
Public hearing for:

Appeal of the Planning Commission's denial of Conditional Use Permit No. 2010-09 and Variance No. 2010-04 Verizon Wireless: The Planning Commission denied the proposal to install a new 80-ft. telecommunications tower, with 12 antenna panels, and outdoor equipment cabinets and back-up generator located at the base of the tower. The site is zoned R-1-6 (Single-Family Residential, 6,000 sq. ft. min. site area). The site is located on the north side of East Caldwell between South Stover Street and South Pinkham Street. (APN: 126-120-064). **Resolution Nos. 2010-68 and 2010-69, required.**

Deadline for Action: Per Visalia Municipal Code Section 17.02.045.B, an appeal before the City Council must be heard within 30 days of the appeal filing date. This appeal was filed on August 19, 2010, requiring the appeal to be heard by September 7, 2010. Per Visalia Municipal Code Section 17.02.045.B, an appeal before the City Council must be heard within 30 days of the appeal filing date. The deadline for the appeal being heard may be extended at the request of the applicant at the discretion of the City Council.

This appeal was filed on August 19, 2010, and the City and appellant have requested two extensions. Staff recommends that the City Council make a final decision on this appeal at the October 18, 2010, City Council meeting.

Contact Name and Phone Number:
Chris Young, Community Development Director (559) 713-4392
Paul Scheibel, AICP, Planning Services Manager (559) 713-4369
Paul Bernal, Senior Planner (559) 713-4025

Submitting Department: Community Development - Planning

Department Recommendation: Staff recommends that the City Council adopt the resolution denying Conditional Use Permit No. 2010-09 without prejudice; and, in addition, that the City Council adopt the resolution denying Variance No. 2010-04. Per Visalia Municipal Code (VMC) Section 17.42.140, denied variances cannot be re-filed under any circumstances within one year. Denying the CUP without prejudice would allow the applicant to re-file a CUP application on that site, but at no taller than the maximum height of 60-feet, as allowed by the Zoning Ordinance.

For action by:
 City Council
 Redev. Agency Bd.
 Cap. Impr. Corp.
 VPFA

For placement on which agenda:
 Work Session
 Closed Session

Regular Session:
 Consent Calendar
 Regular Item
 Public Hearing

Est. Time: 60 min

Review:

Dept. Head _____
(Initials & date required)

Finance _____
City Atty _____
(Initials & date required or N/A)

City Mgr 
(Initials Required)

If report is being re-routed after revisions leave date of initials if no significant change has affected Finance or City Attorney Review.

Denying the CUP without prejudice would allow the applicant to work with the affected neighborhood and potentially re-file a CUP application for the same or substantially the same conditional use on the same or substantially the same site without having to wait one year from the date of denial. This does not apply to the variance if the variance request is denied. Denial of the variance application requires a one year wait from the date of denial of filing the same or substantially the same variance application on the same or substantially same site.

Existing City Code Standards: The City does not have a telecommunications ordinance that could otherwise set locational and design criteria for cell tower facilities. Also, cell towers such as the facility that is the subject of this Appeal, are not specifically addressed in the City's Zoning Matrix of Allowed Uses as a specific use. Consequently, the City classifies cell towers by line item 154 "Communication Equipment Building".

The Zoning Ordinance allows Communication Equipment Buildings as a permitted use in four zones within the City (C-CM, C-S, I-L, and I-H) and as a conditional use in residential zones, quasi-public zones, and in most commercial zones.

While this Appeal is to be considered in the context of existing City ordinances, policies and precedents, the City Council may determine that it is desirable and appropriate to direct staff to research and prepare a telecommunications ordinance as a separate action. Additionally, this is the first cell tower proposal of vacant residentially zoned property. However, staff and the City Attorney do not believe this fact constitutes a precedent either for or against the subject of this appeal hearing. A more detailed discussion of this final point is provided on page 5 of this report.

Planning Commission Votes: The Planning Commission's votes were 2-2 (Segrue and Soltesz Yes, Lane and Peck No, Salinas Absent) for both the Conditional Use Permit and Variance requests. A tie vote constitutes an effective denial for a Planning Commission action.

The Commissioners voting to approve the request cited the precedent of the City's previous approvals for similar facilities. The Commissioners voting to deny the project questioned the necessity and value of the increased tower height and concern for the future development potential of the 24-acre residentially zoned site.

The applicant (now appellant) testified that the cell tower location and height are necessary to provide adequate service coverage to the southeast part of the City, and the cell tower height would provide the added benefit for facilitating a co-location capability, as was requested by City staff after the Site Plan Review state of project review.

The Commission heard testimony in opposition to the project from 14 citizens residing in the general project area. The resident's opposition was based primarily on the aesthetic impacts of the cell tower, and the potential adverse effects on the value and quality of their neighborhoods. Concerns regarding potential health impacts were raised, but not considered by the Planning Commission at the advice of the City Attorney who cited federal law that preempts local jurisdictions on health considerations regarding cell tower facilities.

Background on Conditional Use Permit No. 2010-08 & Variance No. 2010-04: The CUP is a request by Verizon Wireless to allow the installation of a co-locatable wireless telecommunications tower, with 12 antenna panels, outdoor equipment cabinets and back-up generator. The Variance is a request to allow an 80-foot tall cell tower in the R-1-6 (Single-Family Residential, 6,000 sq. ft. min. site area) zone. A pole or antenna is allowed to be beyond the height limit prescribed by the regulations for the zone in which the site is located by an additional 25 feet for a maximum allowable height of 60-feet, pursuant to Section 17.32.020 of the VMC. Verizon attest the 80-foot height is necessary for the cellular tower to service Verizon Wireless customers in the surrounding area while also facilitating a second set of panel antennas (co-location) on Verizon's monopole. The Planning Commission staff report is included as Exhibit 2.

Planning Commission Hearing: The Planning Commission opened and continued the public hearing on July 26, 2010, and continued CUP No. 2010-09 & Variance No. 2010-04 to the August 9, 2010 Planning Commission meeting (due to a request to re-notice the public hearing). During the August 9, 2010, public hearing, the Planning Commission heard staff's presentation followed by the applicant regarding the proposed cell tower. During the public hearing, 14 residents from the surrounding neighborhood spoke in opposition to the project. Their issues related to visual blight, relocation of the tower to commercially zoned property, and locating proposed antenna panels on existing towers.

The Planning Commissioners stated that they did not have an issue with cell towers on properties zoned for residential development. However, the Commissioners expressed concerns related to Verizon's necessity for additional cell tower height beyond the 60-foot allowance, and the impact the cell tower would have on the future viability of developing the 24-acre site with single-family homes.

The Planning Commission also considered the testimony and several options including approving the cell tower but denying the Variance application action (which would lower the cell tower height to 60-feet); approving a "stealth" tower design such as a tree or architectural tower; and relocation to another part of 24-acre site. In the end, the Commission vote effectively denied the project entirely. Failure to gain a majority vote resulted in automatic denial of the proposed Conditional Use Permit and Variance application requests.

Appeal Filing By Verizon: On August 19, 2010, the City Clerk staff received the appeal filing. The reasons for the appeal are stated by the appellant as follows (see Exhibit "1" for the appeal statement). In addition, on October 12, 2010, the appellant provided supplemental materials in support of their position. This is included complete as it was received by the City as Exhibit "D" of this report.

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|---|
| <ol style="list-style-type: none">1. Development of the proposed R-1-6 site was not imminent.2. The proposed tower height is based on Verizon's technical requirements.3. Verizon's need for a tower in the area to provide cell phone coverage.4. The item should have been continued to allow for additional outreach with the neighborhood. |
|---|

Issue 1 Development of the proposed R-1-6 site was imminent:

The appellant contends the Planning Commission's statements implied future development of the site was imminent and therefore resulted in the Commissions denial.

Relevant Planning Commission Determination:

The Planning Commission stated concerns regarding the viability of future residential development of the 24-acre site. The Commission noted that there was a non-conforming use on site but the primary concern was determining if the site could ever achieve maximum residential development if the cell tower were approved and constructed at the proposed location. The Commission cited the City's effort in trying to maximize residential infill development when possible, and approval of the cell tower could potentially discourage residential infill development in this area. Staff noted that a development setback of 80-feet from future residential lots was included as Conditions of Approval, but the two opposing Commissioners determined the impact of the cell tower on future residential development justifies denial of the cell tower at this location.

Issue 2 The tower height is based on Verizon's needs:

The appellant contends that Verizon's need of an 80-foot cell tower is based on the needs for cellular phone coverage in this area of the community. The requested height was not based on staff's recommendation for co-location but Verizon's determination that an 80-foot tower is required to provide the maximum coverage between this proposed tower and other Verizon cell

towers. However, Verizon was agreeable to allow co-location opportunities with other cell phone providers on the same tower.

Relevant Planning Commission Determination:

The Planning Commission considered this issue. The Commission questioned whether additional cell tower height actually resulted in other cellular phone companies co-locating onto taller towers. Staff responded that three previous CUP and Variance entitlements for additional cell tower height were approved and that one of those towers has more than one cellular phone company using the tower. This tower is located at 2411 North Dinuba Boulevard. It should be noted, there are other structures in the City of Visalia that have multiple cellular phone companies. These towers and/or structures include the radio transmission towers located on Woodland Street and Caldwell Avenue, the top of the Marriott Hotel, and water tower in the industrial park.

Staff informed the Planning Commission that co-location opportunities are encouraged by staff when feasible, and that staff's support of the additional cell tower height would not constitute an unfair precedent in conflict of the Zoning Ordinance and previous approvals of similar facilities.

The Commission deliberated the location and height of the proposed cell tower and could not come to a majority consensus on the request for the 80-foot cell tower. Two Commissioners stated their concerns that additional cell tower height does not necessarily lead to co-location opportunities as originally intended. In addition, two Commissioners could not support the Variance findings to support the additional height, and no evidence to support Verizons need for a tower at this location.

Issue 3 Verizon's need for a tower in the area to provide cell phone coverage:

The appellant contends statements were made after the public hearing was closed that questioned Verizon's need for coverage in this area and misunderstood Verizon's technology in determining site and tower height requirements.

Relevant Planning Commission Determination:

During the Planning Commission discussion, the issue on whether a cell tower was needed at this location was raised. There was not a majority consensus by the Commission regarding this issue as two Commissioners stated that they did not have an issue with Verizon's request for a cell tower at this location. The Commission did not deliberate any further on this issue other than to note that past Commission reviews on cell phone towers were analyzed based on land use impacts and did not call to the applicants business or technological decisions into question.

Issue 4 The item should have been continued to allow for additional outreach with the neighborhood:

The appellant contends that the Planning Commission should have considered continuing the item which would have allowed the appellant and residents to try to resolve issues raised during the public hearing rather than denying the project.

Relevant Planning Commission Determination:

The Planning Commission, upon receiving input from staff, the applicant, and the neighborhoods concluded that there was no favorable sentiment from the residents for the tower being in their neighborhoods. Further there would not be a strong majority consensus among Commissioners to either approve or deny the project. This was evident based on a motion presented by Commissioner Soltesz which was a motion to approve only the Conditional Use Permit. The motion failed to gain a second to support the motion. Ultimately, the Commission was split on the issue and it became apparent that continuing the item for a full Commission vote would still most likely generate an appeal to the City Council.

Prohibition on Filing New Conditional Use Permit and Variance Applications

Per Zoning Code Section 17.38.050., following the denial of a conditional use permit application or the revocation of a conditional use permit, no application for a conditional use permit for the same or substantially the same conditional use on the same or substantially the same site shall be filed within one year from the date of denial or revocation of the permit unless such denial was a denial without prejudice by the Planning Commission or City Council.

Furthermore, per Zoning Code Section 17.42.140., following the denial of a variance or exception application or the revocation of a variance or exception, no application for the same or substantially the same site shall be filed within one year of the date of denial of the variance or exception application or revocation of the variance or exception.

Cell Tower Locations

A record search of City files has disclosed there were 32 Site Plan Review submittals for cell towers and/or equipment in the City of Visalia over the course of a 10 year period (2000-2010). Of these Site Plan Review submittals, 14 of these resulted in either a CUP and/or Variance application submittal. Of these 15 CUP/Variance applications, only one cell tower was approved on land zoned for residential use. This cell tower was approved by the Planning Commission on August 9, 2010 (CUP No. 2010-010 & Variance No. 2010-05) and is located on the Visalia First Church property (southwest corner of Caldwell and Linwood).

Although the approved cell tower at the Visalia First Church property is the first cell tower recently approved on a R-1-6 zoned site, this approval does not set a precedent for either approving or denying cell towers on property zoned for residential use. The Zoning Ordinance identifies "Telecommunications Equipment Building" as a "conditionally" permitted use in the R-1 zone, and does not require "Telecommunications Equipment Building" be co-located with non-residential type uses (i.e., church site) in the R-1 zone.

It should be noted, the large telecommunication tower located at 1919 South Woodland Street is on property zoned for residential use but the tower was constructed circa 1940. There was a CUP approval in 1991 that allowed a cellular phone company to install equipment on and around the tower for the purpose of cellular phone use.

The remaining towers that were approved and constructed within the past 10 years include five cell towers constructed in the Q-P zone, two cell towers located in the C-R zone, two cell towers located in the C-S zone, three cell towers in the CSO zone, and one cell tower in the PA zone. There are other locations in the City where cellular equipment is located but did not require discretionary action. Cellular equipment can be found on water towers in the light industrial zone, on other telecommunication/radio towers, and at the top of the Marriot Hotel and Bank of the Sierra buildings.

This cell tower request (i.e., CUP No. 2010-09 & Variance No. 2010-04) is the first cell tower applied for in a residential zone that is not located on an existing church site.

Prior Council/Board Actions: None

Committee/Commission Review and Actions: The Planning Commission held a public hearing on August 9, 2010, denying Conditional Use Permit No. 201-09 and Variance No. 2010-04 on a 2-2-1 vote.

Alternatives: The City Council may:

1. Overturn the decision of the Planning Commission and approve Conditional Use Permit No. 2010-09 and Variance No. 2010-04; or
2. Approve Conditional Use Permit No. 2010-09 limiting the cell tower height to 60-feet, and deny Variance No. 2010-04; or
3. Refer the matter back to the Planning Commission; or

4. Continue the matter to a future City Council hearing for additional information if necessary.

Attachments:

- Resolutions upholding the denial of Conditional Use Permit No. 2010-09 without prejudice, and denying Variance No. 2010-04 – pg. 6
- Exhibit “1” – Appeal of Planning Commission Action dated August 18, 2010 – pg. 11
- Exhibit “2” – Planning Commission Staff report dated August 9, 2010 – pg. 14
- Exhibit “A” –Site Plans for Verizon cell tower – pg. 49
- Exhibit “B” – Verizon cell tower elevations – pg. 52
- Exhibit “C” – Photosimulation of proposed Verizon cell tower – pg. 54
- Exhibit “D” – Supplemental material provided by the appellant dated October 12, 2010

Recommended Motion: I move to deny the appeal and deny Conditional Use Permit No. 2010-09 without prejudice by adopting Resolution No. 2010 - 68, and deny Variance No. 2010-04 by adopting Resolution No. 2010 - 69.

Alternative Motion 1: I move to overturn the decision of the Planning Commission and approve Conditional Use Permit No. 2010-09 and Variance No. 2010-04.

Alternative Motion 2: I move to approve Conditional Use Permit No. 2010-09 limiting the cell tower height to 60-feet, and deny Variance No. 2010-04.

Alternative Motion 3: I move to refer the matter back to the Planning Commission.

Alternative Motion 4: I move to continue the matter to a future City Council hearing for additional information if necessary.

Environmental Assessment Status

CEQA Review: No action needs to be taken on an environmental document subject to Section 15270 of the California Environmental Quality Act. However, if the City Council approves the conditional use permit and variance as requested by the applicant, this project is categorically exempt from the provisions of CEQA under Section 15303 of the Guidelines for the Implementation of the California Environmental Quality Act (CEQA)

NEPA Review: None Required

Tracking Information: (*Staff must list/include appropriate review, assessment, appointment and contract dates and other information that needs to be followed up on at a future date*)

Copies of this report have been provided to:

Planning Commission

Appellant

Persons providing written correspondence on the matter

RESOLUTION NO. 2010-68

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VISALIA DENYING THE APPEAL AND DENYING CONDITIONAL USE PERMIT NO. 2010-09 WITHOUT PREJUDICE, A REQUEST BY VERIZON WIRELESS TO INSTALL A NEW 80-FT. TELECOMMUNICATIONS TOWER, WITH 12 ANTENNA PANELS, AND OUTDOOR EQUIPMENT CABINETS AND BACK-UP GENERATOR LOCATED AT THE BASE OF THE TOWER. THE SITE IS ZONED R-1-6 (SINGLE-FAMILY RESIDENTIAL, 6,000 SQ. FT. MIN. SITE AREA) AND IS LOCATED ON THE NORTH SIDE OF EAST CALDWELL BETWEEN SOUTH STOVER STREET AND SOUTH PINKHAM STREET.
(APN: 126-120-064)

WHEREAS, Conditional Use Permit No. 2010-09, A request by Verizon Wireless to install a new 80-ft. telecommunications tower, with 12 antenna panels, and outdoor equipment cabinets and back-up generator located at the base of the tower. The site is zoned R-1-6 (Single-Family Residential, 6,000 sq. ft. min. site area) and is located on the north side of East Caldwell between South Stover Street and South Pinkham Street. (APN: 126-120-064); and

WHEREAS, the Planning Commission of the City of Visalia, after duly published notice did hold a public hearing before said Commission on July 26, 2010, and continued said hearing to August 9, 2010; and

WHEREAS, the Planning Commission of the City of Visalia, after conducting a public hearing, and denied Conditional Use Permit No. 2010-09 & Variance No. 2010-04; and

WHEREAS, an appeal of the Planning Commission's denial of Conditional Use Permit No. 2010-09 pertaining to error or abuse of discretion by the Planning Commission in its action and pertaining to the Commission's actions not being supported by evidence in the record was received on August 19, 2010; and

WHEREAS, the City Council of the City of Visalia, after ten (10) days published notice held a public hearing before said Council on September 7, 2010; and

WHEREAS, the City Council finds the denial of Conditional Use Permit No. 2010-09 was made in accordance with Chapter 17.38 (Conditional Use Permits) of the City of Visalia, based on the evidence contained in the staff report and testimony presented at the public hearing.

WHEREAS, if Conditional Use Permit No. 2010-09 is denied without prejudice, no action needs to be taken on an environmental document subject to Section 15270 of the California Environmental Quality Act.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Visalia makes the following specific findings based on the evidence presented:

1. That the proposed project will be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity.
2. That the proposed conditional use permit is not consistent with the policies and intent of the General Plan and Zoning Ordinance. Specifically, the project is not consistent with the required findings of Zoning Ordinance Section 17.38.110:
 - The proposed location of the conditional use permit is not in accordance with the objectives of the Zoning Ordinance and the purposes of the zone in which the site is located.

- The proposed location of the conditional use and the conditions under which it would be operated or maintained will be detrimental to the public health, safety, or welfare, nor materially injurious to properties or improvements in the vicinity
3. Conditional Use Permit No. 2010-09 is denied, no action needs to be taken on an environmental document subject to Section 15270 of the California Environmental Quality Act.

BE IT FURTHER RESOLVED that the City Council hereby denies Conditional Use Permit No. 2010-09 without prejudice on the real property here in above described in accordance with the terms of this resolution under the provisions of Section 17.38.110 of the Ordinance Code of the City of Visalia.

RESOLUTION NO. 2010-169

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VISALIA UPHOLDING THE PLANNING COMMISSION'S DENIAL OF VARIANCE NO. 2010-04, A REQUEST BY VERIZON WIRELESS TO INSTALL A NEW 80-FT. TELECOMMUNICATIONS TOWER, WITH 12 ANTENNA PANELS, AND OUTDOOR EQUIPMENT CABINETS AND BACK-UP GENERATOR LOCATED AT THE BASE OF THE TOWER. THE SITE IS ZONED R-1-6 (SINGLE-FAMILY RESIDENTIAL, 6,000 SQ. FT. MIN. SITE AREA) AND IS LOCATED ON THE NORTH SIDE OF EAST CALDWELL BETWEEN SOUTH STOVER STREET AND SOUTH PINKHAM STREET. (APN: 126-120-064)

WHEREAS, Variance No. 2010-04, A request by Verizon Wireless to install a new 80-ft. telecommunications tower, with 12 antenna panels, and outdoor equipment cabinets and back-up generator located at the base of the tower. The site is zoned R-1-6 (Single-Family Residential, 6,000 sq. ft. min. site area) and is located on the north side of East Caldwell between South Stover Street and South Pinkham Street. (APN: 126-120-064); and

WHEREAS, the Planning Commission of the City of Visalia, after conducting a public hearing, and denied Conditional Use Permit No. 2010-09 & Variance No. 2010-04; and

WHEREAS, an appeal of the Planning Commission's denial of Variance No. 2010-04 pertaining to error or abuse of discretion by the Planning Commission in its action and pertaining to the Commission's actions not being supported by evidence in the record was received on August 19, 2010; and

WHEREAS, the City Council of the City of Visalia, after ten (10) days published notice held a public hearing before said Council on September 7, 2010; and

WHEREAS, the City Council finds the denial of Variance No. 2010-04 was made in accordance with Chapter 17.42 (Variances and Exceptions) of the City of Visalia, based on the evidence contained in the staff report and testimony presented at the public hearing.

WHEREAS, if Variance No. 2010-04 is denied, no action needs to be taken on an environmental document subject to Section 15270 of the California Environmental Quality Act.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Visalia makes the following specific findings based on the evidence presented:

1. That the strict or literal interpretation and enforcement of the Zoning Ordinance would not result in practical difficulty or unnecessary hardship inconsistent with the objectives of the Zoning Ordinance.

The cell tower variance request for additional height (i.e., 80-feet) can not be supported because of the visual aesthetics impacts of the cell tower and its potential effects on the value and quality of the surrounding and future neighborhoods.

2. That there are no exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property, which do not apply to the other properties classified in the same zone.

The cell tower variance request for additional height (i.e., 80-feet) can not be supported because of the visual aesthetics impacts of the cell tower and its potential effects on the value and quality of the surrounding and future neighborhoods.

3. That the strict or literal interpretation and enforcement of the ordinance would not deprive the applicant of privileges enjoyed by the owners of the other properties classified in the same zone.

The cell tower variance request for additional height (i.e., 80-feet) can not be supported because of the visual aesthetics impacts of the cell tower and its potential effects on the value and quality of the surrounding and future neighborhoods.

4. That the granting of the variance would constitute a grant of special privilege inconsistent with the limitations on other properties in the same zone.

The cell tower variance request for additional height (i.e., 80-feet) can not be supported because of the visual aesthetics impacts of the cell tower and its potential effects on the value and quality of the surrounding and future neighborhoods.

5. That the granting of the variance would be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.

The approval of this variance would be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity. The cell tower variance request for additional height (i.e., 80-feet) can not be supported because of the visual aesthetics impacts of the cell tower and its potential effects on the value and quality of the surrounding and future neighborhoods.

BE IT FURTHER RESOLVED that the City Council hereby denies Variance No. 2010-04 on the real property here in above described in accordance with the terms of this resolution under the provisions of Section 17.42.110 of the Ordinance Code of the City of Visalia.

Exhibit 1

APPEAL OF PLANNING COMMISSION ACTION

(The fee to file an Appeal is \$351. Applicants who meet specific income guidelines may be eligible to waive this fee. A fee waiver application can be obtained from the Planning Department located at 315 E. Acequia. All Appeal forms with applicable fees or waivers must be submitted to the Office of the City Clerk at 425 E. Oak Ave. Ste. 301, within ten (10) days after the action which is the subject of the appeal. If the final day to file falls on a weekend or holiday the deadline to file is extended to the next business day by 5:00 p.m.)

Planning Commission Public Hearing Date: August 9, 2010

Appellant Name: Jennifer Walker, representing Verizon Wireless

Address: 4412 Harlin Drive, Sacramento, CA 95826

Phone: (916) 601-1123

Please check the actions appealed and provide the action number. The action number may be obtained from the Planning Division at 713-4359.

- Conditional Use Permit No. 2010-09 (Section 17.02.145)
- Variance/Exception No. 2010-04 (Section 17.02.145)
- Change of Zone No. _____ (Section 17.44.080)
- Tentative Subdivision Map _____ (Section 16.04.040)
- Tentative Parcel Map No. _____ (Section 16.04.040)
- Site Plan Review Committee Determination _____ (Section 17.28.050)

In accordance with the Municipal Code of the City of Visalia, decisions by the Planning Commission may be appealed to the City Council within ten (10) days after the action which is the subject of the appeal. The appeal must state specifically where it is claimed that there was an error or abuse of discretion by the Planning Commission or whether the decision of the Commission is not supported by the evidence in the record.

List reason for appeal in accordance with the above requirements (Additional pages and/or supporting documentation may be attached)

Please see attached letter dated August 18 2010.

Signature: Jennifer Walker Date: 8-18-2010

Office Use Only

Received By: Debra Huffman

Date: 8/19/10

Faxed to City Planner: 8/19/10

City Council Hearing Date: 9/7/10





August 18, 2010

Office of the City Clerk
City of Visalia
425 E. Oak Avenue, Suite 301
Visalia, CA 93291
(559) 713-4512

RE: Appeal of Planning Commission Decision
Conditional Use Permit No. 2010-09 / Variance No. 2010-04
Hearing Date: August 9, 2010

Dear City Clerk,

On behalf of Verizon Wireless, I respectfully appeal the City of Visalia Planning Commission's 2-2 split decision, which denied the above-mentioned project.

The grounds for appeal are based upon the following errors made by the Planning Commission:

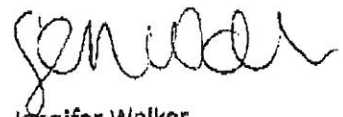
- After the public hearing was closed, statements were made by members of the Planning Commission that implied future residential development of the subject property was imminent. This is not the case, as the property has been in the family since 1947 and the owner has no intention of selling or developing the property.
- Statements were also made by members of the Commission that the City planning staff had encouraged a higher tower to allow for future collocation. Verizon is agreeable to allow collocation on their towers, but the proposed tower height is based on Verizon's need in the area.
- After the public hearing was closed, statements were made by one Planning Commissioner that misunderstood and misrepresented Verizon's technology, while questioning the legitimacy of Verizon's need for coverage in the area. Since the public hearing was closed at this point, Verizon's representative did not have an opportunity to correct or refute the misinformation.

In addition to the grounds for appeal mentioned above, another major factor influencing this appeal is that with this denial, there was a lost opportunity to work together with the concerned residents in a public forum. Evidence in the record indicates that the best course of action would have been to continue the hearing to allow the applicant time to adequately research and respond to the main concerns, to prepare an alternative sites analysis, to prepare new photosimulations from the areas with

higher opposition, and possibly come up with compromise solutions or conditions that would mitigate some of the concerns.

It is for these reasons that Verizon Wireless respectfully submits this appeal.

Regards,



Jennifer Walker
Project Manager
SAC Wireless, representing Verizon Wireless
4412 Harlin Drive
Sacramento, CA 95826
(916) 601-1123
jennifer.walker@sacw.com



REPORT TO CITY OF VISALIA PLANNING COMMISSION

HEARING DATE: August 9, 2010 (continued from July 26, 2010 meeting)

PROJECT PLANNER: Paul Bernal, Senior Planner
Phone No.: (559) 713-4025

SUBJECT: Conditional Use Permit No. 2010-09: A request by Verizon Wireless to install a new 80-ft. telecommunications tower, with 12 antenna panels, and outdoor equipment cabinets and back-up generator located at the base of the tower. The site is zoned R-1-6 (Single-Family Residential, 6,000 sq. ft. min. site area) and is located on the north side of East Caldwell between South Stover Street and South Pinkham Street. (APN: 126-120-064)

Variance No. 2010-04: A request by Verizon Wireless to install a new 80-ft. telecommunications tower, with 12 antenna panels, and outdoor equipment cabinets and back-up generator located at the base of the tower. The site is zoned R-1-6 (Single-Family Residential, 6,000 sq. ft. min. site area) and is located on the north side of East Caldwell between South Stover Street and South Pinkham Street. (APN: 126-120-064)

STAFF RECOMMENDATION

Conditional Use Permit No. 2010-09

Staff recommends approval of Conditional Use Permit No. 2010-09, as conditioned, based upon the findings and conditions in Resolution No. 2010-31. Staff's recommendation is based on the conclusion that the request is consistent with the Visalia General Plan and Zoning Ordinance.

Variance No. 2010-04

Staff recommends approval of Variance No. 2010-04, as conditioned, based on the findings and conditions in Resolution No. 2018-32. Staff's recommendation is based on the conclusion that the request is consistent with the Visalia General Plan and Zoning Ordinance.

RECOMMENDED MOTION

I move to approve Conditional Use Permit No. 2010-09, based on the findings and conditions in Resolution No. 2010-31.

I move to approve Variance No. 2010-04, based on the findings and conditions in Resolution No. 2008-32.

PROJECT DESCRIPTION

Verizon Wireless is requesting approval of Conditional Use Permit No. 2010-09 to allow the installation of a co-locatable wireless telecommunications tower, with 12 antenna panels, outdoor equipment cabinets and back-up generator. The monopole cell tower and equipment will be located approximately 57-feet from the south property line (i.e., Caldwell Avenue right-of-way) and 125-feet east of the existing metal building located to the west as depicted on Exhibits "A-1" through "A-3" (see inserts below).



The telecommunication tower will be designed as a monopole (see Exhibits "B-1" and "B-2"). This unmanned wireless telecommunications facility will consist of the following new components:

- 12 panel antennas mounted at 76-foot antenna center line of an 80-foot tall pole which allows for future co-location for wireless carriers.
- Outdoor equipment shelter and generator will be contained within an 800 square foot lease area, surrounded by an eight foot tall fence.
- A standby generator for cell tower equipment.



The tower and supporting equipment will be located directly north of the existing pipe storage area. The cell tower site is surrounded by an orchard to the north, oak trees to the east and Ingram's Irrigation Pipe business located to the west. There is an existing 107-foot tall pole with antenna, 66-foot tall flag pole, 65-70 foot tall oak trees and the Edison Transmission lines located in the immediate vicinity of the proposed cell tower site. The cell tower and equipment is proposed to be located approximately 130-feet away from the closest single-family residence which is located across the Tulare Irrigation Ditch canal to the east of the subject site.

Variance No. 2010-04 is a request to allow an 80-foot tall cell tower in the R-1-6 (Single-Family Residential, 6,000 sq. ft. min. site area) zone. A pole or antenna is allowed to be beyond the height limit prescribed by the regulations for the zone in which the site is located by an additional 25 feet for a maximum allowable height of 60-feet, pursuant to Section 17.32.020 of the Visalia Municipal Code (VMC). The applicant stated in their operational statement (see Exhibit "C"), that the height is necessary for the cellular tower to service customers in the surrounding area and to meet Verizon's coverage objective.

BACKGROUND INFORMATION

General Plan Land Use Designation	Residential Low Density
Zoning	R-1-6 (Single-Family Residential, 6,000 sq. ft. min. site area)
Surrounding Zoning and Land Use	North: Q-P (Quasi-Public) & R-M-3 (Multi-Family Residential, 1,500 sq. ft. min. site area per unit / Fortress of Truth Church & Apartments South: R-1-6 (Single-Family Residential, 6,000 sq. ft. min. site area) / Single-family residential subdivision East: R-1-6 (Single-Family Residential, 6,000 sq. ft. min. site area) / Single-family residential subdivision West: R-1-6 (Single-Family Residential, 6,000 sq. ft. min. site area) / Single-family residential subdivision
Environmental Review	Categorical Exemption No. 2010-52
Site Plan	2010-034

RELATED PLANS & POLICIES

Staff conducted a survey of the surrounding area and found three monopole cellular towers within approximately one mile of the proposed cell tower location. One of the monopole cellular towers is located within the Darrell's Mini-Storage facility located at 345 East Caldwell Avenue (just west of the Santa Fe/Caldwell intersection) while the other two cell tower are located within 800 to 1,000 feet of the K Road and Santa Fe intersection.

PROJECT EVALUATION

Staff recommends approval the Conditional Use Permit and Variance request based on project consistency with the General Plan and the Zoning Ordinance.

Recommendation

Staff's recommendation is based on the conclusion that the advantage of allowing the increased tower height, which allows for future co-location opportunities, outweighs the minimal added visual obtrusion caused by the height of the proposed monopole cell tower. Staff concludes that safety to residents will be met based on the structural integrity of the proposed monopole cell tower and its location on the property. In addition, the approval of a cell tower will address the City's goal of installing cell tower facilities that allow for co-location rather than installing towers that do not provide this benefit.

Development Standards

A telecommunications facility is a conditionally allowed use in the R-1-6 zone. A maximum height of not more than 35-feet is allowed in the R-1-6. Cellular Towers are considered exceptions of structures specified in Section 17.32.020 of the Visalia Municipal Code. The special provisions for height are that the structure may be erected to a height not more than twenty-five (25) feet above the height limit prescribed by the regulations for the zone in which the site is located.

The applicant is requesting a variance from the maximum height of 60-feet, to install a monopole cellular tower with a maximum height of 80-foot high. This would result in an excess of 20-feet beyond the maximum allowable height for the R-1-6 zone. Elevations of the proposed equipment and monopole cell tower height are depicted in Exhibits "B-1" and "B-2".

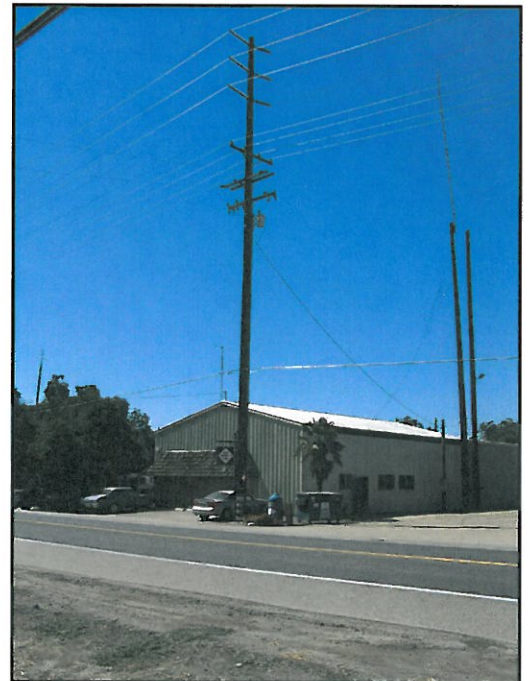
Verizon's request of an 80-foot monopole is due to the increased volume of cellular telephone traffic and the inadequate capacity for the current demand along in the southeast area of Visalia. In addition, the requested cell tower height allows for future co-location opportunities.

A recent survey of the Caldwell Avenue corridor bounded by Lovers Lane to the east and Court Street to the west identified only one cellular tower within this road segment. This tower is located at the Darrell's Mini-Storage located at 345 East Caldwell Avenue, approximately one mile from the proposed Verizon cell tower site.

There are other locations that house monopoles that meet and/or exceed the height of the proposed project. In addition, on August 27, 2001, the Planning Commission held a study session on cellular towers and equipment. The Commission formulated several recommendations which included co-location when feasible. Staff has determined that to allow the applicant to vary from the required maximum height limits would not be setting a precedent in violation of the Zoning Ordinance and complies with the Planning Commissioners recommendation to install facilities that allow for future co-location when possible.

Visual Impact

Verizon is proposing to install the monopole design due to utility poles that already surround the site. Southern California Edison high voltage utility poles (80± feet high) traverse the property along the frontage abutting Caldwell Avenue, and the existing 107-foot tall pole with antenna and 66-foot tall flag pole are located just west of the proposed monopole cell tower. The high voltage power lines, flag pole and antenna/pole provide a vertical backdrop for the proposed monopole cellular tower, lessening the potential visual impact on the surrounding area (see photo insert regarding utility poles).



City Ordinances Regulating Communications Facilities

Cellular towers are not called out in the City's Zoning Matrix of Allowed Uses as a specific use; however staff has historically classified these uses with the line item "Communication Equipment Building". The Zoning Ordinance allows Communication Equipment Buildings as a permitted use in four zones within the City (C-CM, C-S, I-L, and I-H) and as a conditional use in residential zones, quasi-public zones, and in most commercial zones.

Current Use of the Property

The site is occupied by Ingram's Irrigation Pipe business and an orchard. The site is zoned R-1-6 and could be subdivided with single-family residential development. During the Site Plan Review meeting on March 24, 2010, staff informed the applicant that the site lends itself to future single-family residential development. Staff recommended that the cell tower be located in an appropriate location so that it will not impede the future subdivision of this site (i.e., does not impede future street circulation and/or lot patterns). Although the applicant's operational statement indicates that the property owner has no intention of selling or developing the property, staff recommends that Condition No. 4 of the Conditions of Project Approval for the CUP and Variance be included if the Planning Commission approves the project. In the event that the 24-acre site is subdivided for single-family residential development, this condition requires that no single-family residential lot abut the cell tower lease area (i.e., 800 sq. ft. area). Any proposed single-family lot shall be located outside the fall area of the cell tower which equates to an 80-foot separation from any proposed single-family lot to the cell tower lease area. This separation distance has been used for previous cell tower applications based on site-line and perceived encroachment concerns of the towers and not on fall safety concerns.

Required Variance Findings

The applicant has provided the five variance findings as stated in Exhibit "D". The Commission is required to make five findings before a variance can be granted. The findings are listed below along with a discussion of each.

1. *That strict or literal interpretation and enforcement of the Zoning Ordinance would result in practical difficulty or unnecessary hardship inconsistent with the objectives of the Zoning Ordinance.*

Requiring Verizon to adhere to the 60-foot cell tower height limit would have a significant negative impact on the wireless coverage that is necessary in the area. It would result in the need for additional towers within the more densely-populated, single-family residential areas that surround the proposed tower location. Verizon's minimum height requirement in this area is 80-feet to resolve the customer complaint issues, dropped call instances, and to allow for future co-location opportunities with different cell phone carriers.

2. *That there are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property, which do not apply to other properties classified in the same zone.*

The subject property is not like other R-1-6 properties in the area. The subject parcel is more consistent with an agricultural parcel. It is over 24 acres of orchards, shops and industrial supplies & equipment. Most other R-1-6 parcels in the area are small and geared toward single-family residential. Verizon Wireless would not attempt to locate a cell tower on a small, single-family residential lot in a residential neighborhood, even though that is exactly who Verizon is trying to provide coverage to. The subject parcel is much more consistent with the types of agricultural, commercial, or even industrial parcels Verizon tries to gravitate toward for cell tower location.

Also, the subject parcel has other, existing vertical structures. There are two 67-foot tall wood poles used for the property owners' personal/business telecom use, one of which has an antenna-tip height of 107-feet in height. Even the public utility poles that are located on the property along E. Caldwell are 82-feet in height (all heights verified by surveyor).

3. *That strict or literal interpretation and enforcement of the ordinance would deprive the applicant of privileges enjoyed by the owners of other properties classified in the same zone.*

Because the nature, function and requirements for effectiveness of wireless communications is to a certain degree unique, strict or literal interpretation and enforcement of the ordinance would deprive the applicant of privileges enjoyed by the owners of other properties in the same zone.

Strict adherence to the 60-foot height limit would deprive Verizon of the ability to provide adequate wireless coverage to the area, coverage that is expected by Verizon's customers in an area that receives high complaints. Other utility providers in the area have poles of similar heights. For example, the utility poles that run along East Caldwell were surveyed at 82-feet.

4. *That the granting of the variance would not constitute a grant of special privilege inconsistent with the limitations on other properties in the same zone.*

Considering that there are multiple non-residential uses on the subject property and that there are existing poles that exceed the allowed 60-foot height in the zone, the granting of the variance for the additional 20-feet of height would not constitute a grant of special privilege. Rather, Verizon wants to install a structure which may be utilized for co-location in the future by various cell phone providers rather the constructing new facilities in the nearby area.

5. *That the granting of the variance will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.*

Permitting the variance from the maximum height limits allowed in the development of this site will not be detrimental to public health, safety or welfare. The proposed project and variance will enable Verizon Wireless to provide new and greatly improved Verizon Wireless coverage to the City of Visalia. Verizon's main objective is to provide coverage to the southeast portion of Visalia, which experiences a high volume of complaints and high dropped call instances, especially in the newly developed residential areas and roadways that surround the subject site.

Environmental Review

The requested action is considered Categorical Exempt under Section 15303 of the Guidelines for the Implementation of the California Environmental Quality Act (CEQA). (Categorical Exemption No. 2010-52).

Staff determined this project meets the criteria identified in this Categorical Exemption because the project is a request to install a monopole cell tower and create an 800 square foot lease area on property that already has existing structures of similar height located within the immediate vicinity of the proposed cell tower. In addition, this exemption allows projects determined to meet this classification consisting of construction of new small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior the structure.

RECOMMENDED FINDINGS

Conditional Use Permit No. 2010-09

1. That the proposed conditional use permit is consistent with the policies and intent of the General Plan and Zoning Ordinance.
2. That the proposed conditional use permit would be compatible with adjacent land uses.
3. That the proposed location of the Conditional Use Permit and the conditions under which it would be built or maintained will not be detrimental to the public health, safety, or welfare nor materially injurious to properties or improvements in the vicinity.
4. That the project is considered Categorical Exempt under Section 15303 of the Guidelines for the implementation of the California Environmental Quality Act (CEQA) (Categorical Exemption No. 2010-52).

Variance No. 2010-04

1. *That strict or literal interpretation and enforcement of the Zoning Ordinance would result in practical difficulty or unnecessary hardship inconsistent with the objectives of the Zoning Ordinance.*

Requiring Verizon to adhere to the 60-foot cell tower height limit would have a significant negative impact on the wireless coverage that is necessary in the area. It would result in the need for additional towers within the more densely-populated, single-family residential areas that surround the proposed tower location. Verizon's minimum height requirement in this area is 80-feet to resolve the customer complaint issues, dropped call instances, and to allow for future co-location opportunities with different cell phone carriers.

2. *That there are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property, which do not apply to other properties classified in the same zone.*

The subject property is not like other R-1-6 properties in the area. The subject parcel is more consistent with an agricultural parcel. It is over 24 acres of orchards, shops and industrial supplies & equipment. Most other R-1-6 parcels in the area are small and geared toward single-family residential. Verizon Wireless would not attempt to locate a cell tower on a small, single-family residential lot in a residential neighborhood, even though that is exactly who Verizon is trying to provide coverage to. The subject parcel is much more consistent with the types of agricultural, commercial, or even industrial parcels Verizon tries to gravitate toward for cell tower location.

Also, the subject parcel has other, existing vertical structures. There are two 67-foot tall wood poles used for the property owners' personal/business telecom use, one of which has an antenna-tip height of 107-feet in height. Even the public utility poles that are located on the property along E. Caldwell are 82-feet in height (all heights verified by surveyor).

3. *That strict or literal interpretation and enforcement of the ordinance would deprive the applicant of privileges enjoyed by the owners of other properties classified in the same zone. Because the nature, function and requirements for effectiveness of wireless communications is to a certain degree unique, strict or literal interpretation and enforcement of the ordinance would deprive the applicant of privileges enjoyed by the owners of other properties in the same zone.*

Because the nature, function and requirements for effectiveness of wireless communications is to a certain degree unique, strict or literal interpretation and enforcement of the ordinance would deprive the applicant of privileges enjoyed by the owners of other properties in the same zone.

Strict adherence to the 60-foot height limit would deprive Verizon of the ability to provide adequate wireless coverage to the area, coverage that is expected by Verizon's customers in an area that receives high complaints. Other utility providers in the area have poles of similar heights. For example, the utility poles that run along East Caldwell were surveyed at 82-feet.

4. *Because there are already other existing structures, in excess of 75 feet, in the surrounding area. Allowing the variance from the maximum height limits would not constitute a granting of special privilege.*

Considering that there are multiple non-residential uses on the subject property and that there are existing poles that exceed the allowed 60-foot height in the zone, the granting of the variance for the additional 20-feet of height would not constitute a grant of special privilege. Rather, Verizon wants to install a structure which may be utilized for co-location in the future by various cell phone providers rather the constructing new facilities in the nearby area.

5. That the granting of the variance will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity. Permitting the variance from the maximum height limits allowed in the development of this site will not be detrimental to public health, safety or welfare.

Permitting the variance from the maximum height limits allowed in the development of this site will not be detrimental to public health, safety or welfare. The proposed project and variance will enable Verizon Wireless to provide new and greatly improved Verizon Wireless coverage to the City of Visalia. Verizon's main objective is to provide coverage to the southeast portion of Visalia, which experiences a high volume of complaints and high dropped call instances, especially in the newly developed residential areas and roadways that surround the subject site.

6. That the project is considered Categorically Exempt under Section 15303 of the Guidelines for the implementation of the California Environmental Quality Act (CEQA) (Categorical Exemption No. 2010-52).

RECOMMENDED CONDITIONS OF APPROVAL

Conditional Use Permit No. 2010-09

1. That the Conditional Use Permit be developed consistent with the comments and conditions of Site Plan Review No. 2010-34.
2. That the site be developed in substantial compliance with the site plan and elevations shown in Exhibits "A-1" through "A-3" and "B-1" through "B-2".
3. That the site substantially complies with the Operational Statement as stated in Exhibit "C".
4. If the 24-acre site is subdivided for single-family residential development, any proposed single-family residential lot shall not abut the cell tower lease area and shall be located outside the fall area of the cell tower which equates to an 80-foot separation from any proposed single-family residential lot(s) to the cell tower lease area.
5. That the timeline for the lapse of this Conditional Use Permit shall be tied to the timelines for Variance No. 2010-04.

6. That Variance No. 2010-04 be approved in order for this CUP to be effective.
7. That the monopole does not exceed the height of 80-feet.
8. That the tower / monopole equipment, including fence enclosures, be removed within 180 days of non-operation of the tower.
9. That all other federal and state laws and city codes and ordinances be complied with.
10. That the applicant submit to the City of Visalia a signed receipt and acceptance of conditions from the applicant and property owner, stating that they understand and agree to all the conditions of Conditional Use Permit No. 2010-09, prior to the issuance of any building permit for this project.

Variance No. 2010-04

1. That the Variance be developed consistent with the comments and conditions of Site Plan Review No. 2010-34.
2. That the site be developed in substantial compliance with the site plan and elevations shown in Exhibits "A-1" through "A-3" and "B-1" through "B-2".
3. That the site substantially complies with the Operational Statement as stated in Exhibit "C".
4. If the 24-acre site is subdivided for single-family residential development, any proposed single-family residential lot shall not abut the cell tower lease area and shall be located outside the fall area of the cell tower which equates to an 80-foot separation from any proposed single-family residential lot(s) to the cell tower lease area.
5. That the timeline for the lapse of this Variance shall be tied to the timelines for Conditional Use Permit No. 2010-09.
6. That Conditional Use Permit No. 2010-09 be approved in order for this Variance to be effective.
7. That the monopole does not exceed the height of 80-feet.
8. That the tower / monopole equipment, including fence enclosures, be removed within 180 days of non-operation of the tower.
9. That all other federal and state laws and city codes and ordinances be complied with.
10. That the applicant submit to the City of Visalia a signed receipt and acceptance of conditions from the applicant and property owner, stating that they understand and agree to all the conditions of Variance No. 2010-04, prior to the issuance of any building permits for this project.

APPEAL INFORMATION

According to the City of Visalia Zoning Ordinance Section 17.02.145, an appeal to the City Council may be submitted within ten days following the date of a decision by the Planning Commission. An appeal shall be in writing and shall be filed with the City Clerk at 425 East Oak Avenue, Suite 301, Visalia, CA 93291. The appeal shall specify errors or abuses of discretion by the Planning Commission, or decisions not supported by the evidence in the record.

Attachments:

- Related Plans and Policies
- Resolution No. 2010-31 (Conditional Use Permit No. 2010-09)
- Resolution No. 2008-32 (Variance No. 2010-09)
- Exhibits "A-1" through "A-3" – Site Plan
- Exhibits "B-1" and "B-2" – Monopole Elevations
- Exhibit "C" – Operation Statement
- Exhibit "D" – Applicants Variance Findings
- Exhibit "E" – Letter from Jim Houck dated July 17, 2010
- Exhibit "F" – Staff's response to Jim Houck's letter dated July 21, 2010
- Categorical Exemption No. 2010-52
- General Plan Land Use Map
- Zoning Map
- Aerial Map
- Location Sketch

RELATED PLANS AND POLICIES

Conditional Use Permits (Section 17.38)

17.38.010 Purposes and powers.

In certain zones conditional uses are permitted subject to the granting of a conditional use permit. Because of their unusual characteristics, conditional uses require special consideration so that they may be located properly with respect to the objectives of the zoning ordinance and with respect to their effects on surrounding properties. In order to achieve these purposes and thus give the zone use regulations the flexibility necessary to achieve the objectives of this title, the planning commission is empowered to grant or deny applications for conditional use permits and to impose reasonable conditions upon the granting of such permits. (Prior code § 7525)

17.38.020 Application procedures.

- A. Application for a conditional use permit shall be made to the planning commission on a form prescribed by the commission which shall include the following data:
1. Name and address of the applicant;
 2. Statement that the applicant is the owner of the property or is the authorized agent of the owner;
 3. Address and legal description of the property;
 4. The application shall be accompanied by such sketches or drawings as may be necessary by the planning division to clearly show the applicant's proposal;
 5. The purposes of the conditional use permit and the general description of the use proposed;
 6. Additional information as required by the historic preservation advisory committee.
- B. The application shall be accompanied by a fee set by resolution of the city council sufficient to cover the cost of handling the application. (Prior code § 7526)

17.38.030 Lapse of conditional use permit.

A conditional use permit shall lapse and shall become void twenty-four (24) months after the date on which it became effective, unless the conditions of the permit allowed a shorter or greater time limit, or unless prior to the expiration of twenty-four (24) months a building permit is issued by the city and construction is commenced and diligently pursued toward completion on the site which was the subject of the permit. A permit may be renewed for an additional period of one year; provided, that prior to the expiration of twenty-four (24) months from the date the permit originally became effective, an application for renewal is filed with the planning commission. The commission may grant or deny an application for renewal of a conditional use permit. In the case of a planned residential development, the recording of a final map and improvements thereto shall be deemed the same as a building permit in relation to this section. (Ord. 2001-13 § 4 (part), 2001: prior code § 7527)

17.38.040 Revocation.

Upon violation of any applicable provision of this title, or, if granted subject to a condition or conditions, upon failure to comply with the condition or conditions, a conditional use permit shall be suspended automatically. The planning commission shall hold a public hearing within sixty (60) days, in accordance with the procedure prescribed in Section 17.38.080, and if not satisfied that the regulation, general provision or condition is being complied with, may revoke the permit or take such action as may be necessary to insure compliance with the regulation, general provision or condition. Appeals of the decision of the planning commission may be made to the city council as provided in Section 17.38.120. (Prior code § 7528)

17.38.050 New application.

Following the denial of a conditional use permit application or the revocation of a conditional use permit, no application for a conditional use permit for the same or substantially the same conditional use on the same or substantially the same site shall be filed within one year from the date of denial or revocation of the permit unless such denial was a denial without prejudice by the planning commission or city council. (Prior code § 7530)

17.38.060 Conditional use permit to run with the land.

A conditional use permit granted pursuant to the provisions of this chapter shall run with the land and shall continue to be valid upon a change of ownership of the site or structure which was the subject of the permit application subject to the provisions of Section 17.38.065. (Prior code § 7531)

17.38.065 Abandonment of conditional use permit.

If the use for which a conditional use permit was approved is discontinued for a period of one hundred eighty (180) days, the use shall be considered abandoned and any future use of the site as a conditional use will require the approval of a new conditional use permit.

17.38.070 Temporary uses or structures.

- A. Conditional use permits for temporary uses or structures may be processed as administrative matters by the city planner and/or planning division staff. However, the city planner may, at his/her discretion, refer such application to the planning commission for consideration.
- B. The city planner and/or planning division staff is authorized to review applications and to issue such temporary permits, subject to the following conditions:
 1. Conditional use permits granted pursuant to this section shall be for a fixed period not to exceed thirty (30) days for each temporary use not occupying a structure, including promotional enterprises, or six months for all other uses or structures.
 2. Ingress and egress shall be limited to that designated by the planning division. Appropriate directional signing, barricades, fences or landscaping shall be provided where required. A security officer may be required for promotional events.
 3. Off-street parking facilities shall be provided on the site of each temporary use as prescribed in Section 17.34.020.
 4. Upon termination of the temporary permit, or abandonment of the site, the applicant shall remove all materials and equipment and restore the premises to their original condition.
 5. Opening and closing times for promotional enterprises shall coincide with the hours of operation of the sponsoring commercial establishment. Reasonable time limits for other uses may be set by the city planner and planning division staff.
 6. Applicants for a temporary conditional use permit shall have all applicable licenses and permits prior to issuance of a conditional use permit.
 7. Signing for temporary uses shall be subject to the approval of the city planner.
 8. Notwithstanding underlying zoning, temporary conditional use permits may be granted for fruit and vegetable stands on properties primarily within undeveloped agricultural areas. In reviewing applications for such stands, issues of traffic safety and land use compatibility shall be evaluated and mitigation measures and conditions may be imposed to ensure that the stands are built and are operated consistent with appropriate construction standards, vehicular access and off-street parking. All fruits and vegetables sold at such stands shall be grown by the owner/operator or purchased by said party directly from a grower/farmer.
- C. The applicant may appeal an administrative decision to the planning commission. (Ord. 9605 § 30 (part), 1996: prior code § 7532)

17.38.080 Public hearing--Notice.

- A. The planning commission shall hold at least one public hearing on each application for a conditional use permit.
- B. Notice of the public hearing shall be given not less than ten days nor more than thirty (30) days prior to the date of the hearing by mailing a notice of the time and place of the hearing to property owners within three hundred (300) feet of the boundaries of the area occupied or to be occupied by the use which is the subject of the hearing, and by publication in a newspaper of general circulation within the city. (Prior code § 7533)

17.38.090 Investigation and report.

The planning staff shall make an investigation of the application and shall prepare a report thereon which shall be submitted to the planning commission. (Prior code § 7534)

17.38.100 Public hearing--Procedure.

At the public hearing the planning commission shall review the application and the statement and drawing submitted therewith and shall receive pertinent evidence concerning the proposed use and the proposed conditions under which it would be operated or maintained, particularly with respect to the findings prescribed in Section 17.38.110. The planning commission may continue a public hearing from time to time as it deems necessary. (Prior code § 7535)

17.38.110 Action by planning commission.

- A. The planning commission may grant an application for a conditional use permit as requested or in modified form, if, on the basis of the application and the evidence submitted, the commission makes the following findings:
 - 1. That the proposed location of the conditional use is in accordance with the objectives of the zoning ordinance and the purposes of the zone in which the site is located;
 - 2. That the proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.
- B. A conditional use permit may be revocable, may be granted for a limited time period, or may be granted subject to such conditions as the commission may prescribe. The commission may grant conditional approval for a permit subject to the effective date of a change of zone or other ordinance amendment.
- C. The commission may deny an application for a conditional use permit. (Prior code § 7536)

17.38.120 Appeal to city council.

The decision of the City planning commission on a conditional use permit shall be subject to the appeal provisions of Section 17.02.145. (Prior code § 7537) (Ord. 2006-18 § 6, 2007)

17.38.130 Effective date of conditional use permit.

A conditional use permit shall become effective immediately when granted or affirmed by the council, or upon the sixth working day following the granting of the conditional use permit by the planning commission if no appeal has been filed. (Prior code § 7539)

17.30.170 Development standards--Design district B.

The following development standards shall apply to property located in district B;

- A. Building height: fifty (50) feet maximum.
- B. Required yards:

1. Front: fifteen (15) feet minimum;
 2. Side: zero;
 3. Street side on corner lot: ten feet minimum;
 4. Side yards abutting an R-A, R-1 or R-M district: fifteen (15) feet minimum;
 5. Rear: zero;
 6. Rear yards abutting an R-A, R-1 or R-M district: twenty (20) feet minimum.
- C. Parking as prescribed in Chapter 17.34.
- D. Site area: five acre minimum.
- E. Landscaping:
1. Front: fifteen (15) feet minimum;
 2. Side: five feet minimum (except where a structure is located on a side property line);
 3. Street side on corner lot: ten feet minimum;
 4. Rear: five feet minimum. (Prior code § 7467)

17.32.020 Height limits.

- A. Measurement. The height of a structure shall be measured vertically from the average elevation of the ground level along the front property line to the highest point of the structure.
- B. Exceptions. Towers, spires, cupolas, chimneys, penthouses, water tanks, flagpoles, monuments, scenery lofts, radio and television aerials, transmission towers, fire towers and similar structures and necessary mechanical appurtenances covering not more than ten percent of the ground area covered by the structure may be erected to a height not more than twenty-five (25) feet above the height limit prescribed by the regulations for the zone in which the site is located. Utility poles and towers shall not be subject to the height limits prescribed by the regulations for the zone in which the site is located. Utility poles and towers shall not be subject to the height limits prescribed in the zone regulations. Nothing in this title pertaining to fence and wall heights shall be construed so as to apply to a fence or wall required by any law, regulation or safety standard of the state of California or agency thereof. (Prior code § 7478)

Variance
(Section 17.42)

17.42.010 Variance purposes.

The city planning commission may grant variances in order to prevent unnecessary hardships that would result from a strict or literal interpretation and enforcement of certain regulations prescribed by this title. A practical difficulty or unnecessary hardship may result from the size, shape or dimensions of a site or the location of existing structures thereon, from geographic, topographic or other physical conditions on the site or in the immediate vicinity, or from population densities, street locations or traffic conditions in the immediate vicinity. The power to grant variances does not extend to use regulations, because the flexibility necessary to avoid results inconsistent with the objectives of the zoning ordinance is provided by the conditional use provisions of this title. (Prior code § 7555)

17.42.030 Variance powers of city planning commission.

The city planning commission may grant variances to the regulations prescribed by this title with respect to fences and walls, site area, width, frontage coverage, front yard, rear yard, side yards, height of structures, distance between structures and off-street parking facilities, in accordance with the procedures prescribed in this chapter. (Prior code § 7557)

17.42.070 Investigation and report.

The city planning staff shall make an investigation of the application and shall prepare a report thereon which shall be submitted to the city planning commission. (Prior code § 7561)

17.42.080 Public hearing procedure.

At a public hearing the city planning commission shall review the application and the statements and drawings submitted therewith and shall receive pertinent evidence concerning the variance, particularly with respect to the findings prescribed in Section 17.42.090. (Prior code § 7562)

17.42.090 Variance action of the city planning commission.

- A. The city planning commission may grant a variance to a regulation prescribed by this title with respect to fences and walls, site area, width, frontage, coverage, front yard, rear yard, side yards, height of structures, distances between structures or landscaped areas or in modified form if, on the basis of the application, the report of the city planning staff or the evidence submitted, the commission makes the following findings:
 - 1. That strict or literal interpretation and enforcement of the specified regulation would result in practical difficulty or unnecessary hardship inconsistent with the objectives of the zoning ordinance;
 - 2. That there are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property which do not apply generally to other properties classified in the same zone;
 - 3. That strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges enjoyed by the owners of other properties classified in the same zone;
 - 4. That the granting of the variance will not constitute a grant of special privilege inconsistent with the limitations on other properties classified in the same zone;
 - 5. That the granting of the variance will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.
- B. The city planning commission may grant a variance to a regulation prescribed by this title with respect to off-street parking facilities, if, on the basis of the application, the report of the city planner or the evidence submitted the commission makes the findings prescribed in subsection (A)(1) of this section and that the granting of the variance will not result in the parking of vehicles on public streets in such a manner as to interfere with the free flow of traffic on the streets.
- C. A variance may be revocable, may be granted for a limited time period, or may be granted subject to such conditions as the commission may prescribe.
- D. The city planning commission may deny a variance application. (Prior code § 7563)

17.42.110 Appeal to city council.

- A. Within five (5) working days following the date of a decision of the city planning commission on a variance or exception application, the decision may be appealed to the city council by the applicant or any other interested party. An appeal shall be made on a form prescribed by the commission and shall be filed with the city clerk. The appeal shall specify errors or abuses of discretion by the commission, or decisions not supported by the evidence in the record.
- B. The city clerk shall give notice to the applicant and the appellant (if the applicant is not the appellant) and may give notice to any other interested party of the time when the appeal will be considered by the city council. (Prior code § 7565)

Section 17.42.140 Revocation.

A variance granted subject to a condition or conditions shall be revoked by the city planning commission if the condition or conditions are not complied with. (Prior code § 7568)

RESOLUTION NO. 2010-31

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF VISALIA APPROVING CONDITIONAL USE PERMIT NO. 2010-09, A REQUEST BY VERIZON WIRELESS TO INSTALL A NEW 80-FT. TELECOMMUNICATIONS TOWER, WITH 12 ANTENNAS, AND OUTDOOR EQUIPMENT CABINETS AND BACK-UP GENERATOR LOCATED AT THE BASE OF THE TOWER. THE SITE IS ZONED R-1-6 (SINGLE-FAMILY RESIDENTIAL, 6,000 SQ. FT. MIN. SITE AREA) AND IS LOCATED ON THE NORTH SIDE OF EAST CALDWELL BETWEEN SOUTH STOVER STREET AND SOUTH PINKHAM STREET. (APN: 126-120-064)

WHEREAS, Conditional Use Permit No. 2010-09, A request by Verizon Wireless to install a new 80-ft. telecommunications tower, with 12 antennas, and outdoor equipment cabinets and back-up generator located at the base of the tower. The site is zoned R-1-6 (Single-Family Residential, 6,000 sq. ft. min. site area) and is located on the north side of East Caldwell between South Stover Street and South Pinkham Street. (APN: 126-120-064); and

WHEREAS, the Planning Commission of the City of Visalia, after duly published notice did hold a public hearing before said Commission on July 26, 2010; and

WHEREAS, the Planning Commission of the City of Visalia finds the Conditional Use Permit No. 2010-09 to be in accordance with Chapter 17.38.110 of the Zoning Ordinance of the City of Visalia based on the evidence contained in the staff report and testimony presented at the public hearing; and

WHEREAS, the Planning Commission finds the project to be Categorically Exempt consistent with the California Environmental Quality Act (CEQA) and City of Visalia Environmental Guidelines.

NOW, THEREFORE, BE IT RESOLVED that the project is exempt from further environmental review pursuant to CEQA Section 15303.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Planning Commission of the City of Visalia makes the following specific findings based on the evidence presented:

1. That the proposed project will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity.
2. That the proposed conditional use permit is consistent with the policies and intent of the General Plan and Zoning Ordinance. Specifically, the project is consistent with the required findings of Zoning Ordinance Section 17.38.110:
 - The proposed location of the conditional use permit is in accordance with the objectives of the Zoning Ordinance and the purposes of the zone in which the site is located. The proposed use is similar in nature and intensity to other surrounding cell towers in the area. The project site has adequate separation and buffering to the residences located to the north, east and west.

- The proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity. The proposed use is similar in nature and intensity to other surrounding cell towers in the area. The project site has adequate separation and buffering to the residences located to the north, east and west.
3. That the project is considered Categorically Exempt under Section 15303 of the Guidelines for the Implementation of the California Environmental Quality Act (CEQA). (Categorical Exemption No. 2010-52).

BE IT FURTHER RESOLVED that the Planning Commission hereby approves the Conditional Use Permit on the real property here described in accordance with the terms of this resolution under the provisions of Section 17.38.110 of the Ordinance Code of the City of Visalia, subject to the following conditions:

1. That the Conditional Use Permit be developed consistent with the comments and conditions of Site Plan Review No. 2010-34.
2. That the site be developed in substantial compliance with the site plan and elevations shown in Exhibits "A-1" through "A-3" and "B-1" through "B-2".
3. That the site substantially complies with the Operational Statement as stated in Exhibit "C".
4. If the 24-acre site is subdivided for single-family residential development, any proposed single-family residential lot shall not abut the cell tower lease area and shall be located outside the fall area of the cell tower which equates to an 80-foot separation from any proposed single-family residential lot(s) to the cell tower lease area.
5. That the timeline for the lapse of this Conditional Use Permit shall be tied to the timelines for Variance No. 2010-04.
6. That Variance No. 2010-04 be approved in order for this CUP to be effective.
7. That the monopole does not exceed the height of 80-feet.
8. That the tower / monopole equipment, including fence enclosures, be removed within 180 days of non-operation of the tower.
9. That all other federal and state laws and city codes and ordinances be complied with.
10. That the applicant submit to the City of Visalia a signed receipt and acceptance of conditions from the applicant and property owner, stating that they understand and agree to all the conditions of Conditional Use Permit No. 2010-09, prior to the issuance of any building permit for this project.

RESOLUTION NO. 2010-32

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF VISALIA APPROVING VARIANCE NO. 2010-05, A REQUEST BY VERIZON WIRELESS TO INSTALL A NEW 75-FT. STEALTH TELECOMMUNICATIONS TOWER, WITH 12 ANTENNAS, AND OUTDOOR EQUIPMENT CABINETS AND BACK-UP GENERATOR LOCATED AT THE BASE OF THE TOWER. THE SITE IS ZONED R-1-6 (SINGLE-FAMILY RESIDENTIAL, 6,000 SQ. FT. MIN. SITE AREA) AND IS LOCATED ON THE SOUTHWEST CORNER OF WEST CALDWELL AVENUE AND SOUTH LINWOOD STREET. (APN: 119-630-059)

WHEREAS, Variance No. 2010-05, A request by Verizon Wireless to install a new 75-ft. stealth telecommunications tower, with 12 antennas, and outdoor equipment cabinets and back-up generator located at the base of the tower. The site is zoned R-1-6 (Single-Family Residential, 6,000 sq. ft. min. site area) and is located on the southwest corner of West Caldwell Avenue and South Linwood Street. (APN: 119-630-059); and

WHEREAS, the Planning Commission of the City of Visalia, after published notice scheduled a public hearing before said commission on July 26, 2010; and

WHEREAS, the Planning Commission of the City of Visalia finds Variance No. 2010-05, as conditioned by staff, to be in accordance with Section 17.42 of the Ordinance Code of the City of Visalia based on the evidence contained in the staff report and testimony presented at the public hearing; and

WHEREAS, the Planning Commission of the City of Visalia finds the project to be Categorically Exempt consistent with the California Environmental Quality Act (CEQA) and City of Visalia Environmental Guidelines.

NOW, THEREFORE, BE IT RESOLVED that the project is exempt from further environmental review pursuant to CEQA Section 15303.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Planning Commission of the City of Visalia makes the following specific finding based on the evidence presented:

1. *That strict or literal interpretation and enforcement of the Zoning Ordinance would result in practical difficulty or unnecessary hardship inconsistent with the objectives of the Zoning Ordinance.*

Requiring Verizon to adhere to the 60-foot cell tower height limit would have a significant negative impact on the wireless coverage that is necessary in the area. It would result in the need for additional towers within the more densely-populated, single-family residential areas that surround the proposed tower location. Verizon's minimum height requirement in this area is 80-feet to resolve the customer complaint

issues, dropped call instances, and to allow for future co-location opportunities with different cell phone carriers.

2. *That there are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property, which do not apply to other properties classified in the same zone.*

The subject property is not like other R-1-6 properties in the area. The subject parcel is more consistent with an agricultural parcel. It is over 24 acres of orchards, shops and industrial supplies & equipment. Most other R-1-6 parcels in the area are small and geared toward single-family residential. Verizon Wireless would not attempt to locate a cell tower on a small, single-family residential lot in a residential neighborhood, even though that is exactly who Verizon is trying to provide coverage to. The subject parcel is much more consistent with the types of agricultural, commercial, or even industrial parcels Verizon tries to gravitate toward for cell tower location.

Also, the subject parcel has other, existing vertical structures. There are two 67-foot tall wood poles used for the property owners' personal/business telecom use, one of which has an antenna-tip height of 107-feet in height. Even the public utility poles that are located on the property along E. Caldwell are 82-feet in height (all heights verified by surveyor).

3. *That strict or literal interpretation and enforcement of the ordinance would deprive the applicant of privileges enjoyed by the owners of other properties classified in the same zone. Because the nature, function and requirements for effectiveness of wireless communications is to a certain degree unique, strict or literal interpretation and enforcement of the ordinance would deprive the applicant of privileges enjoyed by the owners of other properties in the same zone.*

Because the nature, function and requirements for effectiveness of wireless communications is to a certain degree unique, strict or literal interpretation and enforcement of the ordinance would deprive the applicant of privileges enjoyed by the owners of other properties in the same zone.

Strict adherence to the 60-foot height limit would deprive Verizon of the ability to provide adequate wireless coverage to the area, coverage that is expected by Verizon's customers in an area that receives high complaints. Other utility providers in the area have poles of similar heights. For example, the utility poles that run along East Caldwell were surveyed at 82-feet.

4. *Because there are already other existing structures, in excess of 75 feet, in the surrounding area. Allowing the variance from the maximum height limits would not constitute a granting of special privilege.*

Considering that there are multiple non-residential uses on the subject property and that there are existing poles that exceed the allowed 60-foot height in the zone, the granting of the variance for the additional 20-feet of height would not constitute a grant of special privilege. Rather, Verizon wants to install a structure which may be utilized for co-location in the future by various cell phone providers rather than constructing new facilities in the nearby area.

5. *That the granting of the variance will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity. Permitting the variance from the maximum height limits allowed in the development of this site will not be detrimental to public health, safety or welfare.*

Permitting the variance from the maximum height limits allowed in the development of this site will not be detrimental to public health, safety or welfare. The proposed project and variance will enable Verizon Wireless to provide new and greatly improved Verizon Wireless coverage to the City of Visalia. Verizon's main objective is to provide coverage to the southeast portion of Visalia, which experiences a high volume of complaints and high dropped call instances, especially in the newly developed residential areas and roadways that surround the subject site.

6. That the project is considered Categorical Exempt under Section 15303 of the Guidelines for the implementation of the California Environmental Quality Act (CEQA) (Categorical Exemption No. 2010-52).

BE IT FURTHER RESOLVED that the Planning Commission hereby approves Variance No. 2010-05, as conditioned, on the real property herein above described in accordance with the terms of this resolution under the provision of Section 17.48.110 of the Ordinance Code of the City of Visalia, subject to the following conditions:

1. That the Variance be developed consistent with the comments and conditions of Site Plan Review No. 2010-34.
2. That the site be developed in substantial compliance with the site plan and elevations shown in Exhibits "A-1" through "A-3" and "B-1" through and "B-2".
3. That the site substantially complies with the Operational Statement as stated in Exhibit "C".
4. If the 24-acre site is subdivided for single-family residential development, any proposed single-family residential lot shall not abut the cell tower lease area and shall be located outside the fall area of the cell tower which equates to an 80-foot separation from any proposed single-family residential lot(s) to the cell tower lease area.
5. That the timeline for the lapse of this Variance shall be tied to the timelines for Conditional Use Permit No. 2010-09.
6. That Conditional Use Permit No. 2010-09 be approved in order for this Variance to be effective.
7. That the monopole does not exceed the height of 80-feet.
8. That the tower / monopole equipment, including fence enclosures, be removed within 180 days of non-operation of the tower.
9. That all other federal and state laws and city codes and ordinances be complied with.

10. That the applicant submit to the City of Visalia a signed receipt and acceptance of conditions from the applicant and property owner, stating that they understand and agree to all the conditions of Variance No. 2010-04, prior to the issuance of any building permits for this project.