

RESOLUTION NUMBER R-296534

ADOPTED ON MAY 21, 2002

WHEREAS, Balboa-Genesee, LLC, Owner, and American Tower Corporation, Permittee, filed an application with the City of San Diego for a conditional use permit/site development permit to construct and operate wireless telecommunication facilities known as the American Tower project, located at 5252 Balboa Avenue, and legally described as Lots 1 and 2, Clairemont Towers subdivision, Map 11432, in the Clairemont Mesa Community Plan area, in the CO-1-2 zone; and

WHEREAS, on January 24, 2002, the Planning Commission of the City of San Diego considered Conditional Use Permit/Site Development Permit [CUP/SD] No. 40-0322-01, and pursuant to Resolution No. 3224-PC voted to recommend City Council approval of the permit; and

WHEREAS, the matter was set for public hearing on May 21, 2002, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to CUP/SDP Permit No. 40-0322-01:

A. CONDITIONAL USE PERMIT FINDINGS, SAN DIEGO MUNICIPAL CODE [SDMC] SECTION 126.0305:

1. The proposed development will not adversely affect the applicable land use plan. The Clairemont Mesa Community Plan does not specifically address telecommunication facilities as a land use within the community. However, the use is permitted in all zones citywide with the appropriate decision making process. The Clairemont Mesa Community Planning Committee reviewed the project and voted 11 to 1 recommending the approval the proposed development.

Further, the proposed project is consistent with many of the goals and recommendations of the Community Plan including the provision and expansion of existing commercial uses in commercial zones and the protection of single-family and multi-family neighborhoods from encroachment of non-residential uses.

2. The proposed development will not be detrimental to the public health, safety, and welfare. The Telecommunications Act of 1996 preempts local governments from regulating the “placement, construction and modification of wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the commission’s (FCC) regulations concerning such emissions.” However, in the case of the proposed rooftop facility at 5252 Balboa, the communication antennas are completely removed from the surrounding properties and not accessible to the general public due to the height and location of the equipment. The rooftop facility is secured and access is limited to maintenance personnel only. Therefore, the project would not result in any significant health or safety risks to the surrounding area.

3. The proposed development will comply to the maximum extent feasible with the regulations of the Land Development Code. The proposed development is consistent with the City of San Diego Communication Antenna Regulations and the Development Regulations of the underlying CO-1-2 Zone. The proposed development would legalize the non-permitted antennas and associated electronic equipment. The proposed development would provide some spacial organization to the rooftop telecommunication facility and provide new screening so integration with the ten-story building is achieved. The proposed development is complying to with the Municipal Code by requesting an exception to the Clairemont Mesa Height Limit Overlay Zone in accordance with a Process Five City Council hearing for the existing antennas that add to the overall height of the structure.

4. The proposed use is appropriate at the proposed location. The proposed use is consistent with the Clairemont Mesa Community Plan and the City of San Diego Communication Antenna Regulations. Specifically, the proposed development provides a variety of collocation opportunities for the wireless industry by providing a desirable platform in the core of the community. Alternatively, the site benefits the Claremont community by anticipating the need for additional facilities in the area and should help alleviate the future penetration of wireless facilities into the surrounding residential neighborhoods. The site is zoned for commercial use and developed with a medical office building. The land use designation and zoning make this a highly preferred site for this type of development and is consistent with the expectations of the Clairemont community in regards to placement of wireless facilities. Therefore, the proposed use is appropriate at the proposed location.

B. SITE DEVELOPMENT PERMITS FINDINGS, SDMC SECTION 126.0504:

1. The proposed development will not adversely affect the applicable land use plan. Please refer to Conditional Use Permit Finding No. 1 above.

2. The proposed development will not be detrimental to the public health, safety, and welfare. Please refer to Conditional Use Permit Finding No. 2 above.

3. The proposed development will comply with the applicable regulations of the Land Development Code. Please refer to Conditional Use Permit Finding No. 3 above.

C. SUPPLEMENTAL FINDINGS, CLAIREMONT MESA HEIGHT LIMIT, SDMC SECTION 126.0504(J) :

A Site Development Permit required in accordance with Section 132.1306 because an exception from the Clairemont Mesa height limit is requested may be approved or conditionally approved only if the decision maker makes the following supplemental findings in addition to the findings in Section 126.0504(a):

1. The granting of an exception will not significantly interfere with public views from western Clairemont Mesa to Mission Bay and the Pacific Ocean within the surrounding area. The proposed development is located at 5252 Balboa Avenue in the core of the Clairemont Mesa Community. The subject property is approximately three miles from Mission Bay and setback on the mesa top well above the grade that separates West Clairemont and the rest of the community. Due to the project location and the topographic variation, the proposed project would not interfere with or limit public views to the Pacific Ocean. Therefore, granting this exception to the Clairemont Mesa Height Limit would have no effect on public views to the Pacific Ocean.

2. The granting of an exception is appropriate because there are existing structures over 30 feet in height and the proposed development will be compatible with surrounding one, two, or three-story structures; or the granting of an exception is appropriate because there are topographic constraints peculiar to the land; or the granting of the exception is needed to permit roofline and facade variations, accents, tower elements, and other similar elements and the elements will not increase the floor area of the structure. The proposed development is located on the roof of an existing 123 foot high medical office building in the community core of Clairemont Mesa. Additionally, there is a seven-story structure, approximately 84 feet high, immediately adjacent to the project site. The proposed telecommunication facility would not significantly increase the height of the existing building. All of the proposed antennas, with the exception of the omni (whip) antennas, would be at or below the existing roof line. Omni antennas by design need to clear the structure in order to receive and transmit radio signals in a 360 degree pattern. The omni antennas offer an extremely low-profile because they have a narrow diameter dimension of approximately three inches. The omni antennas would be placed in an organized pattern with equal spacing around the elevator penthouse and extend eight-feet above the existing parapet. No additional floor area will be added to the building. The narrow profile of the omni antennas will not have any substantial effect on the perceived height of the building. Additionally, the height of the structure has already been significantly reduced with the removal of the thirty foot lattice tower that was permitted on top of the roof. Therefore, granting the exception to the Clairemont Mesa Height Limit would be

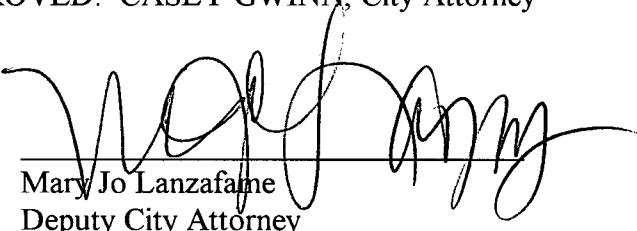
consistent with the existing development in the vicinity and would reduce the existing visual impact created by the rooftop clutter.

The above findings are supported by the minutes, maps and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED, that the recommendation of the Planning Commission is sustained, and Conditional Use Permit/Site Development Permit No. 40-0322-01 is granted to Balboa-Genesee, LLC, Owner and American Tower Corporation, Permittee, under the terms and conditions set forth in the permit attached hereto and made a part hereof.

APPROVED: CASEY GWINN, City Attorney

By


Mary Jo Lanzafame
Deputy City Attorney

MJL:pev

7/22/02

Or.Dept:Clerk

R-2002-1783

Form=permitr.frm

Reviewed by Patrick Hooper

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES DEPARTMENT
PERMIT INTAKE, MAIL STATION 501

AND WHEN RECORDED MAIL TO
CITY CLERK
MAIL STATION 2A

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Conditional Use Permit/Site Development Permit No. 40-0322-01
5252 BALBOA AVENUE
City Council

This Permit is granted by the City Council of the City of San Diego to Balboa-Genesee LLC, Owner and American Tower Corporation, Permittee pursuant to the San Diego Municipal Code. The 1.8 acre site is located at 5252 Balboa Avenue in the CO-1-2 zone of the Clairemont Mesa Community Plan Area. The project site is legally described as Lots 1 and 2, Clairemont Towers, Map No. 11432.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner and Permittee to construct and operate a telecommunication facility described as, and identified by size, dimension, quantity, type and location on the approved Exhibit "A," dated May 21, 2002, on file in the office of the Development Services Department. The facility shall include:

- a. A maximum of seventy-six total communication antennas facade mounted to the existing commercial building and the associated equipment cabinets;
 - b. Accessory improvements determined by the City Manager to be consistent with the land use and development standards in effect for this site per the adopted Community Plan, California Environmental Quality Act guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this permit, and any other applicable regulations of the Land Development Code in effect for this site.
2. Construction or demolition must commence and be pursued in a diligent manner within 36 months after the effective date of final approval by the City, following all appeals. Failure to utilize the permit within 36 months will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all the Municipal/Land Development

Code requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.

3. No permit for the construction or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this permit be conducted on the premises until:

- a. The Permittee signs and returns the Permit to the Development Services Department; and
- b. The Permit is recorded in the office of the San Diego County Recorder.

4. Unless this Permit has been revoked by the City of San Diego the property included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this permit unless otherwise authorized by the City Manager.

5. This Permit is a covenant running with the subject property and shall be binding upon the Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this Permit and all referenced documents.

6. The utilization and continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agencies.

7. Issuance of this permit by the City of San Diego does not authorize the applicant for said permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Federal Endangered Species Act of 1973 and any amendments thereto (16 U.S.C. Section 1531 et seq.)

8. The Owner/Permittee shall secure all necessary building permits. The applicant is informed that to secure these permits, substantial modifications to the building and/or site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.

9. Before issuance of any building permits, complete working drawings shall be submitted to the City Manager for approval. Plans shall be in substantial conformity to Exhibit "A," dated May 21, 2002, on file in the office of the Development Services Department. No changes, modifications or alterations shall be made unless appropriate applications or amendment of this permit shall have been granted.

10. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this discretionary permit. It is the intent of the City that the holder of this Permit be required to comply with each and every

condition in order to be afforded special rights which the holder of the Permit is obtaining as a result of this Permit. It is the intent of the City that the Owner of the property which is the subject of this Permit either utilize the property for any use allowed under the zoning and other restrictions which apply to the property or, in the alternative, that the Owner of the property be allowed the special and extraordinary rights conveyed by this Permit, but only if the Owner complies with all the conditions of the Permit.

In the event that any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new Permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the new Permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove or modify the proposed Permit and the condition(s) contained therein.

11. This Conditional Use Permit No. 40-0322 and the corresponding use of this site shall expire on May 21, 2012. Upon expiration of this Permit, the facilities and improvements described herein shall be removed from this site and the property shall be restored to its original condition preceding approval of this permit.

12. Prior to the expiration date of this Conditional Use Permit, the Permittee may submit a new Conditional Use Permit application to the City Manager for consideration with review and a decision by the appropriate decision maker at that time.

13. There shall be compliance with the regulations of the underlying zone and the City of San Diego Communication Antenna Regulations unless a deviation or variance to a specific regulation(s) is approved or granted as condition of approval of this permit. Where there is a conflict between a condition (including exhibits) of this permit and a regulation of the underlying zone, the regulation shall prevail unless the condition provides for a deviation or variance from the regulations. Where a condition (including exhibits) of this permit establishes a provision which is more restrictive than the corresponding regulation of the underlying zone, then the condition shall prevail.

14. The height(s) of the building(s) or structure(s) shall not exceed those heights set forth in the conditions and the exhibits (including, but not limited to, elevations and cross sections) or the maximum permitted building height of the underlying zone, whichever is lower, unless a deviation or variance to the height limit has been granted as a specific condition of this permit. A deviation to the 30-foot height limit has been granted as a part of this permit.

15. Any future requested amendment to this permit shall be reviewed for compliance with the regulations of the underlying zone(s) which are in effect on the date of the submittal of the requested amendment.

16. No building additions or modifications shall be permitted unless approved by the Development Services Department Director.

17. No mechanical equipment, tank, duct, elevator enclosure, cooling tower or mechanical ventilator or air conditioner shall be erected, constructed, converted, established, altered, or enlarged on the roof of the building, unless all such equipment and appurtenances are contained within a completely enclosed structure whose top and sides may include grillwork, louvers and latticework.

18. No mechanical equipment shall be erected, constructed, or enlarged on the roof of the building on this site, unless all such equipment is contained within an existing completely enclosed architecturally integrated structure.

19. Associated equipment cabinets shall be located either in an existing equipment shelter, the interior of the building or below the level of the parapet.

APPROVED by the City Council of the City of San Diego on May 21, 2002, by Resolution No. R-296534.

AUTHENTICATED BY THE CITY MANAGER

By _____

The undersigned Permittee, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Permittee hereunder.

BALBOA-GENESEEE, LLC
Owner

By _____

AMERICAN TOWERS CORPORATION
Permittee

By _____

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1180 et seq.**

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