

RESOLUTION NUMBER R-305921

DATE OF FINAL PASSAGE JUNE 21, 2010

A RESOLUTION DENYING THE APPEAL AND APPROVING CONDITIONAL USE PERMIT NO. 684901, FOR THE VERIZON WIRELESS COMMUNICATION FACILITY AT 704 VENTURA PLACE, IN THE VC-S AND R-S ZONES OF THE MISSION BEACH PLANNED DISTRICT WITHIN THE MISSION BEACH COMMUNITY PLAN AREA FOR THE VERIZON WIRELESS BELMONT PARK PROJECT - PROJECT NO. 193375.

WHEREAS, on March 18, 2010 the Planning Commission approved the Application of the Raymond Hamel/Owner, and Verizon Wireless/Permittee Conditional Use Permit No. 684901 to install three (3) additional antennas and associated equipment on the site located at 704 Ventura Place, San Diego, CA 92109, in the Mission Beach Planned District RS/VC-S zones of the Mission Beach Community Plan; and

WHEREAS, on March 29, 2010, Peggy Bradshaw, appellant, representing the Mission Beach Precise Planning Board, filed an appeal with the City of San Diego to appeal the Planning Commission's decision approving a Conditional Use Permit for a modification to an existing Wireless Communication Facility (WCF); and

WHEREAS, the matter was set for public hearing on June 21, 2010, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; and

WHEREAS, under Charter section 280(a)(2), this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body, a public hearing was required by law implicating due process rights of individuals affected by the

decision, and the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

NOW, THEREFORE,

BE IT RESOLVED that the Council of the City of San Diego adopts the following findings with respect to Conditional Use Permit No. 684901:

A. CONDITIONAL USE PERMIT APPROVAL – SAN DIEGO MUNICIPAL CODE (SDMC) SECTION 126.0305

1. The proposed development will not adversely affect the applicable land use plan. The Mission Beach Community Plan does not address wireless communication facilities as specific land use. However, the City of San Diego General Plan addresses these facilities, recommending that they minimize visual impacts by concealing the wireless facilities in existing structures when possible, designing facilities to be aesthetically pleasing and respectful to the neighborhood context and concealing mechanical equipment and devices associated with wireless facilities in underground vaults or unobtrusive structures. Pursuant to the San Diego Land Development Code, wireless communication facilities are permitted in all zones citywide with the appropriate permit process. Wireless communication facilities are separately regulated uses, which have limitations or require compliance with conditions in order to minimize potential impacts. The intent of the regulations is to camouflage facilities from public view. All six (6) proposed/existing panel antennas will be completely concealed inside the existing tower behind Fiberglass Resistant Panels (FRP) designed to appear as columns and shall be painted and textured to match the existing architecture of the building. The associated equipment is also concealed inside an existing room on the first floor, not visible to the public. This project is located in a split zone (Mission Beach RS and VC-S zones) on a non-residential property. Because a portion of the building is residentially zoned, the project has been elevated to take in the more restrictive of the two zoning designations and a Conditional Use Permit, Process 4 review is required under the Land Development Code. The proposed development would not adversely affect the Mission Beach Community Plan or the City of San Diego General Plan and Progress Guide.

2. The proposed development will not be detrimental to the public health, safety, and welfare. The Telecommunication Act of 1996 preempts local governments from regulating the “placement, construction and modification of wireless communication facilities on the basis of the environmental effects of Radio Frequency (RF) emissions to the extent that such facilities comply with the Federal Communication Commission’s (FCC) standards for such emissions.” The proposed project would be consistent with the FCC’s regulations for RF emissions for wireless facilities. To insure that the FCC standards are being met, a condition has been added to the permit requiring Verizon to provide an RF study prior to building permit issuance. Therefore, based on the above, 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 project complies with all applicable development regulations of the Land Development Code and the City of San Diego Communication Antenna Regulations (Land Development Code Section 141.0420). This section of the code requires telecommunication facilities to be minimally visible through the use of architecture, landscape architecture and siting solutions. The existing and proposed antennas are completely concealed behind FRP panels designed to appear as columns to match the existing building. This design will allow Verizon Wireless to operate and maintain their coverage objective while minimizing all visual impacts to the Belmont Park area. The cabinets associated with this project shall be placed inside the existing equipment room, not visible to the public. Since this wireless communication facility is designed to completely conceal all antennas and equipments from the public right-of-way, the project will also qualify as a Complete Concealment Facility resulting in no future expiration date. The design complies with the Land Development Code, The General Plan and The Wireless Communication Facility Guidelines.

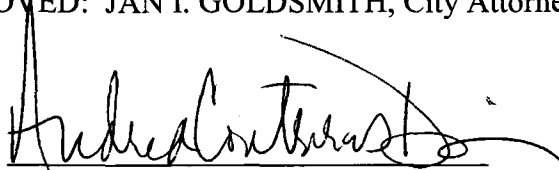
4. The proposed use is appropriate at the proposed location. Verizon is locating their Wireless Communication Facility on a split zone property, Mission Beach Planned District VC-S and RS zone. Since a portion of the building is residentially zoned, the project has been elevated to take in the more restrictive of the two zoning designations. This project site is considered a Preference 3 location in Council Policy 600-43, however, the community plan designates this property for commercial use. As a result, the use as a wireless communication facility is appropriate at the proposed location. Verizon's proposal to completely conceal their wireless communication facilities inside the existing tower behind FRP materials with the associated equipment inside an existing room on the first floor complies with the Wireless Communication Facility regulations. As a condition, Verizon Wireless is required to submit an on-air Radio Frequency Study demonstrating compliance with the Federal Communication Commission's standards. This project has been designed to comply with Section 141.0420 and the Wireless Communication Facility Guidelines. Additionally, this site will provide E911 services as well as, address Verizon's limited network coverage to the roadways, homes, and business located near and around the Belmont Park area. Thus, the proposed use is appropriate for this site; and

BE IT FURTHER RESOLVED, that the appeal of Peggy Bradshaw, representing the Mission Beach Precise Planning Board is DENIED and Conditional Use Permit No. 684901 is hereby GRANTED to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Conditional Use Permit No. 684901 copy of which is attached hereto and made a part hereof, and

BE IT FURTHER RESOLVED, that Neighborhood Code Compliance is hereby directed to work with the Mission Beach Planning Group on any code violations and ensure appropriate signs are present for this site.

APPROVED: JAN I. GOLDSMITH, City Attorney

By



Andrea Contreras Dixon
Deputy City Attorney

ACD:cw
06/28/10
Or.Dept:DSD
MMS #12299

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

WHEN RECORDED MAIL TO
CITY CLERK
MAIL STATION 2A

SPACE ABOVE THIS LINE FOR RECORDER'S USE

INTERNAL ORDER NUMBER: 24000168

CONDITIONAL USE PERMIT NO. 684901
VERIZON WIRELESS BELMONT PARK PTS NO. 193375
CITY COUNCIL

This Conditional Use Permit No. 684901 is granted by the City Council of the City of San Diego to Raymond Hamel/Owner, and Verizon Wireless/Permittee, pursuant to San Diego Municipal Code (SDMC) section 126.0305, Chapter 12, Article 6, Division 3 and Section 141.0420. The site is located at 704 Ventura Place, San Diego, CA 92109, in the Mission Beach Planned District RS/VC-S zones of the Mission Beach Community Plan. The project site is legally described as Lot "D" and the Southerly 17 feet of Lot "C," Block 95 of Mission Beach, in the City of San Diego, according to the Map thereof No. 1651 filed in the Office of the County Recorder of San Diego County, December 14, 1914.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner and Permittee for a wireless communication facility, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated March 18, 2010, on file in the Development Services Department.

The project shall include:

- a. A modification to an existing Wireless Communication Facility for three (3) additional panel antennas (for a total of six (6) Verizon Wireless panel antennas on site) behind architectural screens and the addition of two equipment cabinets located inside the Owner's store property as illustrated in the approved 'Exhibit A' dated March 18, 2010.
- b. Accessory improvements determined by the Development Services Department to be consistent with the land use and development standards in effect for this site per the adopted community plan, California Environmental Quality Act (CEQA) 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 SDMC in effect for this site.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six months after the date on which all rights of appeal have expired. Failure to utilize and maintain utilization of this permit as described in the SDMC will automatically void the permit unless an Extension of Time (EOT) has been granted. Any such EOT must meet all SDMC requirements and applicable guidelines in affect at the time the extension is considered by the appropriate decision maker.
2. No permit for the construction, occupancy 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 Owner/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.
3. 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 Development Services Department.
4. This Permit is a covenant running with the subject property and shall be binding upon the Owner/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.
5. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
6. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 (ESA) and any amendments thereto (16 U.S.C. § 1531 et seq.).
7. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial modifications to the building and site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.
8. Construction plans shall be in substantial conformity to Exhibit "A." No changes, modifications or alterations shall be made unless appropriate application(s) or amendment(s) to this Permit have been granted.
9. 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 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 the special rights which the holder of the Permit is entitled as a result of obtaining this 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 proposed 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.

10. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

11. The proposed design complies with the Telecommunication Facility Guidelines as a Complete Concealment Facility and as a result, the permit will not contain an expiration date. It is the responsibility of the Owner and the Permittee to maintain the appearance of the approved facility to the conditions set forth in this permit unless the site is removed and restored to its original condition. Code Compliance shall be notified if the appearance or the scope of the project has changed without the approval of the Development Services Department.

ENGINEERING REQUIREMENTS:

12. Prior to the issuance of any construction permits, the Owner/Permittee shall submit a Water Pollution Control Plan (WPCP). The WPCP shall be prepared in accordance with the guidelines in Appendix E of the City's Storm Water Standards.

PLANNING/DESIGN REQUIREMENTS:

13. The Permittee shall be required to place appropriate signs per CAL-OSHA requirements to the satisfaction of the Development Services Department.

14. The proposed antennas shall be completely concealed inside the existing tower structure behind FRP materials, designed with textured and detailed to match.
15. Applicant's panel antennas shall NOT be visible from any public perspective.
16. There shall be compliance with the regulations of the underlying zone(s) unless a deviation or variance to a specific regulation(s) is approved or granted as a condition of approval of this Permit. Where there is a conflict (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) for this Permit establishes a provision which is more restrictive than the corresponding regulation of the underlying zone, then the condition shall prevail.
17. The height(s) of the building(s) or structure(s) shall not exceed those heights set forth in the conditions and 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.
18. A topographical survey conforming to the provisions of the SDMC may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this Permit or a regulation of the underlying zone. The cost of any such survey shall be borne by the Permittee.
19. Any future requested amendments 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.
20. No mechanical equipment, tank, duct, elevator, cooling tower, mechanical ventilator or air conditioner shall be erected, constructed, converted, established, altered, or enlarged on the roof of any building, unless all such equipment and appurtenances are contained within a completely enclosed, architecturally integrated structure whose top and sides may include grillwork, louvers, and latticework.
21. Prior to obtaining a Construction Permit the following items must be illustrated on the construction drawings; coax cable tray, meters, telco, A/C units, generator receptacles, cable runs, and external ports. These appurtenances must be minimized visually so as to avoid the effect of changing the outward appearance of the project from what was approved on the exhibits.
22. The applicant of record is responsible for notifying the City prior to the sale or takeover of this site to any other provider.
23. Prior to the issuance of a building permit, the telecommunication provider shall provide a certified cumulative radio frequency model study demonstrating compliance with the Federal Communications Commission's Radio Frequency Guidelines. All significant contributors to the ambient RF environment should be considered in the radio frequency model study.

24. The photosimulation(s) for the proposed project shall be printed (not stapled) on the building plans. This is to ensure the construction team building the project is aware of what the completed design was approved to look like.
25. Final inspection shall not be granted until the final product conforms to the stamp approved plans and approved photosimulation(s).
26. Prior to issuance of construction permits, the applicant shall pay the Long Term Monitoring Fee in accordance with the Development Services Department Fee Schedule to cover the City's costs associated with implementation of permit compliance monitoring.
27. Per Land Development Code (LDC) section 59.5.0404 Construction Noise (a), It shall be unlawful for any person, between the hours of 7:00 p.m. of any day and 7:00 a.m. of the following day, or on legal holidays as specified in Section 21.04 of the SDMC, with exception of Columbus Day and Washington's Birthday, or on Sundays, to erect, construct, demolish, excavate for, alter or repair any building or structure in such a manner as to create disturbing, excessive or offensive noise unless a permit has been applied for and granted beforehand by the Noise Abatement and Control Administrator.
28. All construction activities (including staging areas and/or storage areas) shall be restricted to the development area as shown on the approved "Exhibit A." No equipment maintenance shall be conducted within or near the adjacent open space and/or sensitive areas and shall be restricted to the development area as shown the approved "Exhibit A" and shall not encroach into sensitive biological areas within either the open-space and/or Multi-Habitat Planning Area (MHPA) areas.

INFORMATION ONLY:

- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code section 66020.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the City Council of the City of San Diego on June 21, 2010 by Resolution No. R-2010-869.

R-305921

PTS No. 193375; Int. No. 24000168
Conditional Use Permit No. 684901
Date of Approval: June 21, 2010

AUTHENTICATED BY THE DEVELOPMENT SERVICES DEPARTMENT

Simon Tse, Associate Planner
City of San Diego

**NOTE: Notary acknowledgment
must be attached per Civil Code
section 1189 et seq.**

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

Raymond Hamel,
Owner

By _____

By _____

Verizon Wireless,
Permittee

By _____

By _____

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1189 et seq.**