

RESOLUTION NO. 21-19

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RICHMOND DENYING AN APPEAL BY EXTENET SYSTEMS (CALIFORNIA) LLC FROM A DENIAL BY THE PLANNING COMMISSION OF A CONDITIONAL USE PERMIT AND DESIGN REVIEW APPROVAL (PLN18-130) TO INSTALL A SMALL CELL SITE NODE ADJACENT TO 2901 GARVIN AVE.

WHEREAS, on May 16, 2018, ExteNet Systems (California) LLC (the “applicant” or “permittee” on behalf its client, T-Mobile), filed Planning Application PLN18-130 with the City of Richmond requesting a Conditional Use Permit to install and operate new, unattended wireless sites in the public right-of-way on a PG&E wood utility pole adjacent to 2901 Garvin Avenue (“subject site” or “premises”), generally consisting of adding an antenna, pole arm, radio transmission and powering equipment, as well as cables and wires on and attached to the existing pole to benefit T-Mobile (the “proposed project” or “project”); and

WHEREAS, the Design Review Board reviewed the proposed project at their November 14, 2018, meeting and voted to recommend approval of the proposed project design with additional conditions; and

WHEREAS, the Conditional Use Permit approval, conditional approval or denial is subject to the provisions of Section 15.04.806 of the Richmond Zoning Ordinance related to Conditional Use Permits, and Section 15.04.614 of the Zoning Ordinance related to wireless communications facilities; and

WHEREAS, on December 6, 2018, the Planning Commission reviewed the proposed project for conformance with the Richmond General Plan 2030, Zoning Ordinance, and Richmond Municipal Code (RMC) and denied the Conditional Use permit; and

WHEREAS, the project is categorically exempt from the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301(b), consisting of projects that involve minor alteration of existing investor and publicly-owned utility systems and/or facilities; and

WHEREAS, on April 2, 2019, the City Council conducted a properly noticed public hearing pursuant to California Government Code Section 65090, and has duly considered all written and verbal testimony presented before or during the hearing; and

WHEREAS, on the basis of the application, plans, materials, and testimony provided at or prior to the public hearing on April 2, 2019, including the agenda report dated thereof, the City Council adopts the following findings with statements of fact in denying the proposed project:

CONDITIONAL USE PERMIT FINDINGS:

- 1. The location of the proposed conditional use is in accordance with the General Plan and any applicable specific plan and the land use designation for the project site.**

Statement of Fact: ***Criterion Not Satisfied.*** None of the City’s General Plan land use classifications specifically address wireless communications facilities; however, approval of the proposed project would be inconsistent with General Plan Policy ED1.2, High Quality Infrastructure and Public Services, which aims to maintain infrastructure such as streets, freeways and utilities essential for improving the quality of life for residents and attracting businesses to locate to Richmond. In this case, closing alleged gaps in broadband coverage does not improve quality of life to the extent that the proposed wireless facility would be inconsistent with the City’s design standards. On balance, the visual impact of the proposed facility outweighs any gap that ExteNet perceived to exist and would detract from resident quality of life.

- 2. The location, size, design, and operating characteristics of the proposed use will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.**

Statement of Fact: ***Criterion Not Satisfied.*** The proposed project will be fully compliant with Federal Communications Commission (FCC) Rules and Regulations regarding radio frequency emissions safety. The FCC requires wireless providers to operate their wireless facilities within radio frequency emission limits that are considered safe for public exposure. According to a Compliance Study on Electromagnetic Fields Exposure for the proposed project, no locations in the surrounding area near the T-Mobile facility will have RF exposure levels close to the FCC's Maximum Permissible Exposure Limit. However, the Compliance Study recommends mitigation measures (signage) to raise awareness of RF exposure for persons who need to work near the antennas.

However, the proposed location, size and design would not be compatible with abutting properties and the surrounding neighborhood. The antenna would protrude more than two feet from the pole within direct line of sight from the residence at the corner of Garvin Avenue and 29th Street. In addition, the proposed pole-mounted equipment cabinet would be located at eye level and protrude approximately four inches from the pole even though the City requires all pole-mounted cabinets to be mounted as close to the pole as possible under RMC § 15.04.614.050.F.5. Accordingly, the location, size and design of the proposed facility would adversely affect the directly abutting properties and the surrounding neighborhood.

- 3. The proposed use will not create any nuisances arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding ambient conditions.**

Statement of Fact: ***Criterion Conditionally Satisfied.*** The wireless facility does not emit odor, dust, gas, vibration, smoke, heat or glare. In addition, as appropriately conditioned, the wireless facility and all equipment will not generate noise that exceeds the applicable ambient noise limits in the respective zoning district. The facility would also be subject to standard requirements that require the operator to take all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, modifications and removal of the facility. The proposed equipment and shrouds would be painted with a non-reflective finish to match the wood utility pole.

- 4. The proposed use complies with all applicable provisions of the Zoning Ordinance.**

Statement of Fact: ***Criterion Conditionally Satisfied.*** As conditioned, and as more fully discussed below, the wireless facility will comply with all provisions of the Zoning Ordinance applicable to wireless facilities.

- 5. The site of the proposed use is adequately served by highways, streets, water, sewer, and other public facilities and services.**

Statement of Fact: ***Criterion Satisfied.*** The project involves installing an unattended small cell site node onto existing PG&E wood utility poles within an urbanized and built area of the City. Potential parking spaces would only be occupied temporarily during periodic construction and maintenance activities. The proposed use would be installed on existing utility poles that are accessible from existing highways and streets, and served by existing public utilities and services.

- 6. The proposed facility complies with all criteria for a conditional use permit or an administrative use permit in accordance with Article 15.04.806 (Use Permits) and, if applicable, with the criteria for design review approval in accordance with Article 15.04.805 (Design Review).**

Statement of Fact: ***Criterion Not Satisfied.*** The project as noted above in findings 1-5 do not comply with all the criteria in Article 15.04.806 (Use Permits).

7. The proposed facility complies with all applicable standards described in this Article 15.04.614.

Statement of Fact: *Criterion Not Satisfied.* The project would not comply with all the applicable standards in Article 15.04.614 of the RMC. Specifically, the proposed residential location is the least preferred per 16.04.614.050.A, Preferred Locations and there is no evidence in the record that shows the applicant considered more preferred alternative locations in the commercial zones along 23rd Street and Grant Avenue. Moreover, all pole mounted equipment would not be installed as close to the pole as technically and legally feasible to minimize impacts to the visual profile because the equipment cabinet would be mounted on standoff brackets that protrude from the pole. In addition, the antenna would be mounted more than two feet from the pole when it could be feasibly mounted on top of the pole. As proposed, the antenna would not be painted to match the color of the pole which would be inconsistent with the existing built environment. Moreover, based on the photo simulations provided by ExteNet, the orientation of the conduit would leave exposed the cables and wires that connect between the antenna and the radio equipment at the height of the antenna mounting arm. Accordingly, the proposed facility does not comply with all applicable standards described in Article 15.04.614

8. The applicant has provided a meaningful comparative analysis that demonstrates all alternative designs and locations identified in the application review process are either technically infeasible or not potentially available.

Statement of Fact: *Criterion Not Satisfied.* The applicant did not provide a meaningful comparative analysis that demonstrates that all alternative locations identified in the review process are technically infeasible because there is no evidence in the record that shows the applicant considered more preferred alternative locations in the commercial zones along 23rd Street and Grant Avenue. RMC section 15.04.614.050 requires applicants to propose new wireless facilities in locations consistent with the City's preferred locations to the extent feasible. Locations in residential zoning districts are least preferred. RMC section 15.04.614.060(B)(3) further requires the applicant to provide a meaningful comparative analysis that demonstrates all alternative locations identified in the review process are either technically infeasible or not potentially available. Although ExteNet evaluated some alternatives in more-preferred locations, it did not consider alternative locations in the commercial zones along 23rd Street and Grant Avenue. Even if an alternative in these commercial locations would result in more facilities in total, more facilities in commercial areas are more preferred than the proposed facility in close proximity to and detracting from the nearby residences.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Richmond, does hereby deny the Conditional Use Permits and Design Review Permit for PLN18-130.

I certify that the foregoing resolution was passed and adopted by the Council of the City of Richmond at a regular meeting thereof held April 16, 2019, by the following vote:

AYES: Councilmembers Bates, Johnson, Myrick, Willis, Vice Chair Choi, and Mayor Butt.
NOES: None.
ABSTENTIONS: None.
ABSENT: Councilmember Martinez.

PAMELA CHRISTIAN
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:

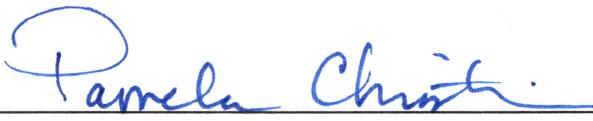
TOM BUTT
Mayor

Approved as to form:

BRUCE GOODMILLER
City Attorney

State of California }
County of Contra Costa } : ss.
City of Richmond }

I certify that the foregoing is a true copy of **Resolution No. 21-19**, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on April 16, 2019.


Pamela Christian
Pamela Christian, Clerk of the City of Richmond