

ZONING ADMINISTRATOR MEETING
MINUTES EXCERPT
APRIL 22, 2010

**3. CLEARWIRE
P2010-012; USE PERMIT
APN 124-202-28, 199 SAN MARIN**

Consider a Use Permit to allow three antennas, one dish antenna, and one GPS antenna located at the roof level concealed behind a parapet wall.

PRESENT:

Alex Morin; Clearwire Representative

Zoning Administrator Lazure reported that he had received no written correspondence in response to the application.

The public hearing was opened (only the representative was in attendance).

The Zoning Administrator went over the recommended Conditions of Approval.

The public hearing was closed.

ACTION:

Zoning Administrator Lazure rendered a decision of approval on April 22, 2010, in accordance with the findings and action as recommended in the staff report, subject to the following conditions:

CONDITIONS OF APPROVAL

1. The Use Permit shall be valid for one year from the date of approval. The Use Permit may be extended at the request of the applicant for additional one year increments at the discretion of the Community Development Director, in compliance with the procedures

*5/21/10 Copied to
Owner & Applicant.
(K)*

set forth in Section 19.38.180 of the Zoning Code. The applicant shall be responsible for the costs, on an hourly basis, for the City to process an extension.

2. No deviation from approved plans, including color changes or substitution of materials, shall be made without City approval. Any changes or additions to the approved project shall be submitted to the Community Development Department and shall be subject to review and approval prior to the implementation of any proposed modification.
3. All utilities connecting the approved facility visible from ground level shall be placed underground or in cable trays.
4. No exterior lighting shall be allowed for any part of the proposed facility, except as may be deemed necessary for security and shall be subject to the review and approval of the Community Development Director.
5. With the exception of emergency repairs, routine testing and maintenance activities shall be allowed only during the hours between 7:00 a.m. and 5:00 p.m., Monday through Friday. Emergency energy generators shall be used in compliance with the City's noise standards, and shall be operated only during power interruptions, or for routine testing and maintenance.
6. The Radio Frequency Radiation (RFR) generated by the approved facility, in combination with other sources of RFR, shall not expose the general public to RFR levels that exceed the allowable standards as adopted by Federal Communications Commission (FCC) and the City. Should nationally accepted research result in the establishment of substantially revised standards for human exposure to RFR and such standards are adopted by the City or otherwise determined to be applicable to the City, the applicant shall demonstrate compliance with such standards by submitting a new RFR report to the Community Development Department within 30 days of the effective date of the adoption of the revised standards. A longer period for submitting the RFR report may be granted at the discretion of the Community Development Director. The RFR report shall determine compliance with the updated standards by calculating the RFR power level of the approved facility in combination with other similar sources of RFR.
7. Within 6 months of the initiation of the operation of the approved facility, the applicant shall submit a post-construction RFR report, including the data developed, verifying that the actual levels of RFR emitted by the approved facility, operating alone, and in combination with other approved facilities, are below the FCC, threshold standards. The applicant shall be responsible for the cost of the post-construction reports to be prepared by a qualified consultant selected by the City.
8. Prior to the issuance of a building permit, the proposal shall be subject to the review and approval of the City of Novato Public Works Department. Items that may need to be addressed, include, but are not limited to:

- a. Maintenance agreements/facility maintenance requirements
- b. Shared or common use agreements
- c. Indemnification

9. This Use Permit is subject to the revocation procedures contained in Section 19.42.050.G of the Novato Municipal Code in the event that any of the terms of this approval are violated or if the uses are conducted or carried out in a manner so as to adversely affect the health, welfare, or safety of persons residing or working in the City.
10. The approval granted herein shall not become effective until all appropriate fees billed by the City of Novato to the application account are paid in full in accordance with the City's Cost Base Fee System. Failure to pay said fees may result in the City withholding issuance of related building permits, certificate of occupancy, recordation of final maps or other entitlements.
11. Indemnity and Time Limitations

The applicant shall defend, indemnify and hold harmless the City, its agents, officers, attorneys and employees from any claim, action, or proceeding brought against the City or its agents, officers, attorneys, or employees, to attack set aside, void or annul the City's decision to approve the application and associated environmental determination at issue herein. This indemnification shall include damages or fees awarded against the City, if any, cost of suit, attorney's fees, and other costs and expenses incurred in connection with such action whether incurred by the applicant, the City, and/or parties initiating or bringing such action.

The applicant shall defend, indemnify and hold harmless the City, its agents, officers, employees, and attorneys for all costs incurred in additional investigation (such as the environmental determination at issue herein or any subsequently required Environmental Document), if made necessary by said legal action and if the applicant desires to pursue securing such approvals, after initiation of such litigation, which are conditioned on the approval of such documents, in a form and under conditions approved by the City Attorney.

The applicant indemnifies the City for all the City's costs, fees, and damages which the City incurs in enforcing the above indemnification provisions.

Unless a shorter period applies, the time within which judicial review of this decision must be sought is governed by California Code of Civil Procedure, Section 1094.6.

The Conditions of Project Approval set forth herein include certain fees, dedication requirements, reservation requirements, and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the

amount of such fees, and a description of the dedications, reservations, and other exactions. The applicant is hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), has begun. If the applicant fails to file a protest within this 90-day period complying with all of the requirements of Section 66020, the applicant will be legally barred from later challenging such exactions.



ZONING ADMINISTRATOR STAFF REPORT
Use Permit

MEETING

DATE: April 22, 2010

STAFF: Rebecca Markwick, Planner I

SUBJECT: CLEAR WIRE
P2010-012; USE PERMIT
APN 124-202-28; 199 SAN MARIN (155 SAN MARIN)

75 Rowland Way #200
Novato, CA 94945-3232
(415) 899-8900
FAX (415) 899-8213
www.ci.novato.ca.us

PROJECT DESCRIPTION

The applicant has submitted a request for a Use Permit in order to allow installation of three panel antennas one dish antenna, one GPS antenna and one equipment cabinet located at the roof level, concealed by an existing parapet wall, located in San Marin Plaza.

NEED FOR ZONING ADMINISTRATOR ACTION

Novato Municipal Code Section 19.42.050/19.42.070 provides for the Zoning Administrator to hold public hearings on a Use Permit application.

BACKGROUND

Applicant: Tom Spaulding
Property Owner: San Marin Partners
Property Size: 7 acres
General Plan Designation: Neighborhood Commercial (CN)
Zoning: PD
Existing Use: Commercial
Adjacent Zoning: Business Professional Office (BPO) & Low Density Residential (R1-7.5)

ENVIRONMENTAL ASSESSMENT

The application is exempt from the requirements of the California Environmental Quality Act (CEQA) and the City of Novato Environmental Review Guidelines pursuant to CEQA Guidelines Section §15303 (New Construction) Class 3; installation of small, new equipment and facilities in small structures.

STAFF ANALYSIS

In order to grant a Use Permit, the following findings must be made consistent with Novato Municipal Code Section 19.42.050.E:

Finding 1: The proposed use is consistent with the General Plan and any applicable specific plan.

Discussion: EC Policy 13: Information Infrastructure. The City shall take action to provide the information infrastructure necessary to retain and attract targeted businesses.

The applicant is a telecommunication company and proposes the installation of wireless technology, which is consistent with and would implement the above Policy.

CI Policy 1: Compatibility of Development with Surroundings: Ensure that new development is sensitive to the surrounding architecture, topography, landscaping, and to the character, scale, and ambiance of the surrounding neighborhood. Recognize that neighborhoods include community facilities needed by Novato residents as well as homes, and integrate facilities into neighborhoods.

The proposed equipment will be architecturally consistent in design with existing on-site equipment. The equipment will match the existing antennas and satellites so that the proposed equipment blends with existing equipment.

Finding 2: The proposed use is allowed with a Use Permit within the applicable zoning district and complies with all applicable provisions of this Zoning Ordinance and any relevant Master Plan and/or Precise Development Plan.

Discussion: Section 19.38.030 of the Zoning Ordinance specifies that wireless communication facilities shall not be constructed, installed, or maintained without first obtaining a Use Permit in compliance with Section 19.42.050 (Use Permits).

Zoning Ordinance 19.38.030.A.5: The Zoning Administrator shall have the authority to approve a co-located facility when minor modifications are made to existing wireless communication facilities.

The project site is located within a PD Zoning District. The site currently has commercial development. The equipment will be co-located with the existing wireless equipment on the site.

Pursuant to Zoning Ordinance 19.38 (Wireless Communication Facilities), the current proposal would utilize the site as a co-location facility and is allowed with Use Permit approval.

Finding 3: The establishment, maintenance or operation of the use will not, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.

Discussion: An RFR statement prepared by Hammet and Edison, the applicant's consulting engineers, has been included with the application materials. According to the submitted document, the equipment complies with the prevailing standards for limiting public exposure to radio frequency energy. The estimated highest calculated level in publicly accessible areas is .48% of the applicable public limit.

Finding 4: The use, as described and conditionally approved, will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.

Discussion: The project is located on an existing commercial site and the equipment will be co-located. The closest residential use is approximately 134 feet away from the proposed equipment. The proposed antennas, microwave dishes and equipment cabinet are designed to integrate with the existing equipment that is set within a roof enclosure and will have no significant visual impact to the surrounding neighborhoods.

Finding 5: The location, size, design, and operating characteristics of the proposed use are compatible with the existing and future land uses in the vicinity.

Discussion: City standards and criteria for wireless communication facilities specify that the design of co-location sites should promote shared use among different carriers. To the extent feasible, antenna support and equipment structures should be designed to consolidate future planned facilities to eliminate or minimize the visual clutter resulting from multiple telecommunications structures.

The proposed antennas and satellites will be located directly on the roof and behind an enclosure which will minimize visual clutter.

City standards and criteria for wireless communication facilities specify that such facilities should be unlit, served by minimal road and parking areas, and shall

require additional landscaping to provide visual screening of the proposed wireless facility.

The proposed facility will be unmanned and does not require additional landscaping, roads, lighting or parking areas to serve its operation. Service workers doing routine maintenance will access the equipment using the existing roads and paths servicing the existing equipment.

RECOMMENDATION

The proposed co-located satellites and antennas comply with City standards and regulations, specified in Division 19.38 of the Novato Municipal Code, including: location compatibility and site design, co-location requirements, and levels of radio frequency radiation. Staff recommends approval based on the findings discussed in the staff analysis section of this staff report.

FINDINGS AND ACTION

1. In accordance with Section 19.42.050E and Division 19.38 of the Novato Municipal Code, and as stated in the above staff analysis section, the Zoning Administrator hereby makes the required Use Permit findings.
2. Approve the application subject to the conditions listed below.

CONDITIONS OF APPROVAL

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FURTHER ACTION

No further action on the application will be taken unless an appeal is filed in writing within ten calendar days along with the required filing fee.

SFO0507



Application for Zoning/Planning/Subdivision Action

THE CITY OF
NOVATO
CALIFORNIA

Type of Application - Please Check

- | | | |
|---|--|--|
| <input type="checkbox"/> General Plan Amendment | <input type="checkbox"/> Subdivision Tentative Map (5 or more lots) | <input type="checkbox"/> Variance |
| <input type="checkbox"/> Prezoning | <input type="checkbox"/> Land Division Tentative Map (4 or fewer lots) | <input type="checkbox"/> Accessory Dwelling Unit |
| <input type="checkbox"/> Rezoning | <input type="checkbox"/> Lot Line Adjustment (no new lots) | <input type="checkbox"/> Sign Review |
| <input type="checkbox"/> Master Plan | <input type="checkbox"/> Design Review | <input type="checkbox"/> Certificate of Compliance |
| <input type="checkbox"/> Precise Development Plan | <input type="checkbox"/> Use Permit | <input type="checkbox"/> Other _____ |

Applicant Required Information

- Assessor's Parcel No(s): 124-202-28 Existing Zoning: PD
- Property Address: 155 San Marin Dr (199)
- Property Owner a) Name: San Marin Partners Phone: _____
b) Address: 11835 Olympic Blvd, Novato Blvd
- Applicant (If Different than Owner)
a) Name: Tom Spaulding Phone: 650 380 3140
b) Address: 1910 2nd St, Kirkland WA 98033
- Name of Project (If Applicable): Apple Market
- Property Size: _____
- Type of Use Proposed (Office, Residential, Etc.): Retail
- Square Footage of Each Use or Number of Units if Residential: _____
- Purpose of Application (Brief Statement of What You Want to Accomplish):
Installation and operation of a wireless communication facility to be located at the roof level of 155 San Marin Dr.

(Attach Separate Sheets If Needed)

- Signature [Signature]
 Owner Applicant (Note: If applicant signs, an authorization signed by the owner must be attached.)

Important: Please complete Agreement for Payment of Full Cost Recovery Fees for Application Processing.

Note: Information sheets describing the review process and the additional information required for a specific type of application are available at the Novato Department of Community Development, 75 Rowland Way, #200, (415) 899-8989, www.ci.novato.ca.us.

Do Not Write Below This Line

DEPARTMENTAL PROCESS INFORMATION

Application Number(s): P2010-012 (110012)

Received by: REBECCA MARRICK Date: 2/3/10 Planning Fee Deposit: \$ 2384.00

Deemed Complete by: _____ Date: _____ Plan Storage \$ 46.00

Application Acted On By: _____ Date: _____ PW/Engineering Fee No Yes: \$ _____

(Attach PW/Engineering and Planning Worksheets)

Receipt # PROJR 222 Date 2-3-10

C.R.# 3159 Initials [Signature]

Action: _____

Conditions of Approval or Comments: _____