

Planning Commission Minutes

July 22, 2024

CALL TO ORDER 6:02 p.m.

INVOCATION Mr. Rizzotti gave the invocation.

FLAG SALUTE Mr. Rizzotti led the flag salute.

ROLL CALL

Present- - - - Planning Commission Members: Chair, Christopher Rizzotti; Vice Chair, Samantha Wick; Members, Narek Mkrtooumian, Jason Bennett

Absent- - - -
Also Present- Senior Assistant City Attorney, Iain Macmillan; Senior Assistant City Attorney, Lisa Kurihara; Assistant Community Development Director, Fred Ramirez; Planning Manager, Scott Plambaek; Principal Planner, Amanda Landry; Senior Planner, Greg Mirza-Avakyan; Associate Planner, Fatima Benitez; Clerical Worker, Diana Arias

ANNOUNCEMENTS None.

HEARINGS

1. Project No. 24-0003035 | An appeal of an approval of Administrative Use Permit for an unmanned Wireless Telecommunication Facility on a Commercial

PROJECT DESCRIPTION:

An Appeal of the Community Development Director's Decision to Conditionally Approve Project No. 23-0005025, an Administrative Use Permit (AUP) to Install a New Unmanned Roof-Mounted Wireless Telecommunication Facility (WTF) on an Existing Commercial Building located at 800 S. Main Street. The proposed WTF location is zoned NB (Neighborhood Business).

ENVIRONMENTAL REVIEW:

Approval of the Project is exempt from the California Environmental Quality Act pursuant to Section 15303 of the CEQA Guidelines pertaining to new construction of a limited

Building located at
800 S. Main Street.

number of small facilities or structures, installation of small new equipment and facilities in small structures, and conversion of small structures from one use to another where only minor exterior modifications are made. There are no unusual circumstances that would preclude the use of this in Section 15300.2 of the CEQA Guidelines apply to this Project.

Meeting Disclosures:

Chair Rizzotti recused themselves from the hearing due to having conflict in this matter.

Vice Chair Wick stated they did receive a phone call about the matter from a member of the public and encouraged them to call in during tonight's meeting.

Notices Given:

Assistant Community Development Director Ramirez confirmed for the Commission that notices were given per the Burbank Municipal Code requirements.

Written Communication:

Assistant Community Development Director Ramirez stated the communications was provided in the agenda packet.

Staff Report:

Associate Planner Benitez presented the project to the Commission. At the end of the staff presentation, Associate Planner Benitez described one change from the published staff report and indicated that condition number one of the proposed Planning Commission Resolution be revised to clarify that the project proposes a total of three antennas.

Applicant Presentation:

Applicant Rob Searcy, representative of Dish Wireless LLC, explained this is the carrier's first proposed location in the city and at this building location and that this project is part of a long range effort to establish the subject carrier's national system. Furthermore, applicant's representative noted that this project is one of twelve sites being proposed in the City of Burbank. Dish Wireless is a new entrant into the national mobile services competition and this project will tie into the backbone of their regional system, which has not been turned on yet; the goal is to have it turned on sometime in 2025. Applicant Searcy explained the project site is consistent with the Burbank Municipal Code and complies with the

Administrative Use Permit conditions for locating a wireless facility in a commercial zone on top of the roof.

Applicant Searcy clarified the scope of the project. Dish Wireless, LLC is proposing a single facility, consisting of three sectors with one antenna per sector, and each sector will have two radios with a total of six radios. This equipment has been designed to be ten feet from the closest part of the edge of the building, and only secured individuals will have access. Access to the facility will be located on the southeastern corner of the building a secured ladder will be installed. Dish Wireless will not allow access from any person from the public to the rooftop facility.. The Burbank Municipal Code requires that the equipment is screened from public view, and the facility will be visually screened from the public by increasing the height of the equipment enclosure. When the Wireless Facility is turned on the antenna has a propagation that projects out in a conical level out to the horizon causing power signals to go outwards. Applicant Searcy clarified the EME Report given to the city concluded that the proposed facility would operate at less than one percent of the maximum permissible exposure at ground. Dish Wireless did design the site to potentially add one future antenna and two radios however they are aware they would have to come back to the Planning Commission for approval and amend the Administrative Use Permit to reflect that change in performance. Applicant Searcy noted their work with city staff over the past 10 months, their engagement with members of the public inquiring about the project and the applicable requirements under local and federal regulations. Applicant Searcy noted the potential benefits of these types of WTFs provide for emergency communication services during catastrophic events.

Appellant Presentation:

Appellant Nicolette LeFebre, local homeowner, started by requesting to continue the hearing to another date due to their attorney not being able to attend.

City Attorney Iain Macmillan stated that there is no legal reason to continue the hearing, especially because all parties were notified very early on, in compliance with City public noticing requirements, and the city did not receive any objections.

The Appellant was reallocated the time used to discuss with staff and the City Attorney about the appropriateness of a continuance.

Appellant LeFebre, stated they reside near the proposed project site and voiced their opposition to the proposed AUP approval for the installation of Wireless Telecommunication Facilities on top of a neighborhood business building adjacent to a (Single Family Residential) R-1 zoned residential block. The appellant noted that there are two preschools and Mckinley Elementary near the project site. The appellant voiced concerns about potential impacts to local business, property values, degrading neighborhood aesthetics, and health concerns. Further, the Appellant raised the following new issues:

- Freestanding WTFs including a screening device cannot exceed a height of 35 feet above the ground surface unless approved by a CUP;
- The city denied a WTF project on the Little White Chapel on height restrictions;
- Under the requirements for WTF in the single-family residential zone the Council, Planning Commission, and Director must find that a WTF is necessary to address a significant gap in coverage and there are no feasible alternative locations or design configurations that would be less intrusive;
- The project does not provide documentation of a gap coverage and the Applicant did not provide proof that shows exhaustion of alternative locations;
- The city has the authority to adopt a setback ordinance to provide minimum distance from schools, daycares and residential properties;
- The City should impose additional setback requirements;
- Appellant requests the Planning Commission to view a presentation from leading experts like Dr. Kent from New Hampshire, to learn more about cellular placements before making a final decision.

Appellant LeFebre asked the Commission to take into consideration her noted concerns and to deny the AUP request in accordance with federal regulations and concluded by thanking the Commission for their consideration.

Public Comment:

Marva Lea Kornblatt pointed out differences between the public notices for the AUP that include the number of antennas, the site's zoning, and footprint of the property. The commentor

also noted that in the staff report on page 4 it declares that the project is exempt from development review and therefore not subject to review by the Rancho Review Board. They noted their disagreement with this city determination. They mention the proposed project is a new installation and is attached to the building in a R-1 Zone therefore, the project should require a CUP and not an AUP.

Sherry Tilley expressed concerns with the proposed facilities' location near two preschools. The commentor noted that if there is no law in the City restricting this proximity that there should be one established. In closing the commentor asked if the city and the applicant had exhausted all alternative locations.

Sara, parent of a student that attends preschool near the project site, believes staff has not complied with the laws and ordinances including the FCC Telecommunication Act of 1996. The commentor noted that the city does have the ability to control the location of these facilities in the city.

Krista Heske, owner/director of Our Village Preschool, stated they were in attendance with their business partner to express concerns regarding the approval of the Administrative Use Permit for the proposed 5G tower at 800 South Main Street. Commentor stated their concerns regarding potential health and environmental risks associated with the proposed project and inquired about further analysis on these issues before project approval. Commenter expressed their desire for the city to prioritize establishing protections for the siting of these type of facilities to protect children and for those who spend their time educating and caring for them.

Nikki Combs, owner/director of Our Village Preschool, stated they are greatly concerned with the radiation from the multiple 5G cellphone towers that will be installed less than 300 feet from the preschool; commentor noted health and safety concerns for students and teachers. The commentor stated they did not receive the first notice, then reached out to other schools around the site to find out the four schools were not notified either and concluded that the city should notify all the schools in the area and require that the schools notify students' families, since not all students live within the 1,000 feet notification area.

Jessica Makinson, parent of a student enrolled in a nearby preschool, noted an example of an instance of fire fighters having a cell tower removed, because of multiple cases of cancer in the same site. Commenter voiced concerns with the lack of study on the strength of the 5G technology.

Emily Gabel-Luddy, noted that they felt AUP findings 1 and 3 could not be made; she stated the proposal was piecemealing a larger project under CEQA, because the applicant may be proposing additional equipment for this facility in the future. The commenter provided copies of the public notices for the originally approved AUP for the project with the differences highlighted and an aerial photograph to identify the proximity of nearby preschool and childcare facilities from the project site. Commenter noted that the R-1 zoning of part of the project site was omitted from the two notices and that the project should be denied as result of this omission. Commenter noted that the use permit would run with the land, and that the R-1 zoning consideration should be considered as part of the project request. Commentor reiterated their concern with piecemealing under CEQA and requested the project's denial.

Staff Response:

Associate Planner Benitez explained the following requirements under the Burbank Municipal Code (BMC):

- Height Requirements. BMC Section 10-1-1118(d)(4)(A) notes that roof-mounted Wireless Telecommunication Facilities are allowed to go up to 15 feet in height and this project is 10 feet in height meeting the requirement.
- The BMC requires an AUP for the project because the building on which the facility is being proposed is in a non-residential zone, and is residentially adjacent.
- BMC Section 10-1-1914(4), related to the City's Development Review process does apply to the project because the total area it will occupy is approximately 400 square feet.
- Additionally, the City's adopted Wireless Telecommunication Facility Ordinance does not require wireless facilities to be set back a certain distance from educational uses or other wireless facilities.
- The project's mailing labels were provided by the applicant with a signed affidavit acknowledging that the map maker provided all the mailing labels for properties that were within the 1,000 feet radius of the project site; In light of prior public input, it was noted that one property was not on the original labels and staff required

the applicant to provide updated labels so that the project could be re-noticed by staff to include the missing property.

- Noted that City staff's review is limited to the proposed project presented as part of the applicant's AUP submittal.

Senior Planner Mirza-Avakyan noted that while the supplemental application form for the AUP includes two areas to provide findings to address a gap in wireless coverage by the applicant and the feasibility of alternate locations for the project, these findings are required only for wireless facilities located in single family residential zones. Staff noted that the siting of the proposed wireless facility is on the portion of the project site zoned as Neighborhood Business Zone, and that rear of the project site zoned R-1 does not include siting of any portion of the wireless facility.

Principal Planner Landry provided context behind the Wireless Telecommunication Facility Ordinance, which included a multiyear effort starting in 2011 to update the City's Wireless Telecommunications Facilities regulations. Staff noted the extensive public outreach and engagement process that was undertaken to update these regulations and the current regulations reflect the collaborative effort undertaken between the community and City Council to regulate a freestanding facility more heavily.

Assistant Community Development Director Ramirez answered the questions regarding any potential future changes to the scope of the project and that those types of changes would require new project approvals. Staff noted that the existing project was reviewed and determined to be in conformance with applicable exemptions under CEQA.

Applicant Rebuttal

Applicant Searcy, clarified there will not be nine antennas at the project site. Applicant Searcy noted that the EME Study showed the analysis of nine antennas, and that was an over analysis. Dish Wireless acknowledged that any future modifications to the proposed facilities and requested entitlements would have to come back for review by the relevant decision-making body. Representative noted that the project was not being piecemealed under CEQA. Applicant Searcy noted the federal regulations preempting project approvals consideration of any health and safety issues.

Regarding the gap of coverage Applicant Searcy noted that the network and project site are not up and running, but that this project would be the backbone system once operational.

Appellant Rebuttal

Appellant LeFebre made note that city ordinances have not been updated in nearly ten years, and asked staff if there are any alternative sites. Appellant LeFebre inquired about who would be liable regarding any health issues for neighboring residents.

Commission/ Staff Q&A

Commissioner Bennett asked staff for clarity on the comments made by the public regarding the schools being properly notified.

Associate Planner Benitez explained that there was only one property that was not properly notified in the initial AUP notice, and that in response, staff did send out a second AUP public notice ensuring all required properties received a notice, and did not receive further comments from other properties claiming that they did not receive the second notice.

Commissioner Mkrtoumian asked staff whether the building is an existing non-conforming structure, and if yes, why are we allowing it to expand.

Associate Planner Benitez confirmed the building was legal non-conforming.

Senior Planner Mirza-Avakyan further explained that the building itself is legal non-conforming regarding the height, but the wireless facility under the applicable wireless regulations has different standards that allow it to be 15 feet above the existing building roof.

Principal Planner Landry elaborated that the building height itself is legal non-conforming and the existing building height is not being changed as part of this application. The wireless facility being placed on top of the building is what is being considered and that is subject to its own development standards and considerations under the City's wireless regulations.

Vice Chair Wick asked staff what the current height is allowed for the Neighborhood Business Zone and what is the height of the screen enclosures.

Principal Planner Landry responded that these facilities must be screened to make sure they are concealed from views and final height of the enclosure would depend on the project's height.

Vice Chair Wick asked the applicant's representative if this was their first project that has a hearing.

Applicant Searcy answered it was the first project for Dish Wireless needing a public hearing.

Vice Chair Wick asked how many times Dish Network has noticed in other cities and were there any issues.

Applicant Searcy answered Dish Wireless has public noticed around twenty-five times in the last couple of years and have not had any issues.

Senior Planner Mirza-Avakyan answered Vice Chair Wick's questions regarding maximum height requirements for these facilities. Staff explained the max height for the building is the internal height from average grade to the ceiling of the structure, which is 25 feet.

Principal Planner Landry elaborated that the property development standards for the Neighborhood Business zone do allow heights to exceed 25 feet with a Conditional Use Permit. Staff identified that the max height with an additional 15 feet can be approved without a Conditional Use Permit if a 45 degree visibility angle can be maintained.

Associate Planner Benitez answered the Vice Chair's second question regarding the existing equipment screen height. Staff stated that currently the existing rooftop screen is roughly about 6 to 7 feet high, but that the new screen for the wireless facility will be required to increase in height to ensure all the wireless accessories are completely screened from the public view.

Vice Chair Wick asked what the max height is required in R-1-H zone.

Senior Planner Mirza-Avakyan answered it has the same height requirement as the R-1 zone, which is 30 feet to the top roof and 20 feet to the top of the building plate.

Deliberation

Commissioner Mkrtoumian expressed this was a difficult position to be in and to not have the evidence of otherwise why it should not be approved. Commissioner Mkrtoumian noted the Commission is tasked with assessing the project's compliance with the required findings and consistency with applicable general plan and zoning code requirements.

Commissioner Bennett stated disappointment with the lack of facts supporting many of the points raised by the appellant and speakers and the lack of facts or other information necessary to support the appeal. Commissioner Bennett voiced concerns regarding the restricted feasibility for allowing the buildout of any wireless infrastructure in the city if the appeal was granted, given that residential and commercial zoned properties are abutting in all parts of the city.

Vice Chair Wick expressed empathy toward the speakers and stated it is not an easy position to be in and emphasized the Commission's responsibility is to ensure compliance with applicable regulations and not to make policy. Vice Chair Wick stated there was no new information about the project that would make it not exempt under staff's proposed environmental assessment pursuant to CEQA. Vice Chair Wick agreed with Commissioner Bennett about the appeal having a lack of facts. Vice Chair Wick did not see that the Commission could make the findings necessary to deny the project.

Commissioner Bennett made a motion, including the modification to Condition 1 to clarify the number of antennas to three, to deny the appeal and approve the Community Development Director's Decision to Conditionally Approve Project No. 23-0005025, an Administrative Use Permit (AUP) to Install a New Unmanned Roof-Mounted Wireless Telecommunication Facility (WTF) on an Existing Commercial Building Located at 800 South Main Street. The proposed WTF location is zoned NB (Neighborhood Business).

Motion carried by 3-0 vote. Motion passes.

REPORTS TO
COMMISSION

None.

ORAL
COMMUNICATIONS

Emily Gabel-Luddy suggested to the Commission they put on a future agenda consideration of potential updates to the City's Wireless Telecommunication Facilities regulations.

Marvalba Kornblatt stated the Conditions of Approval are only significant if someone is aware of them to reinforce and codes are meant to be revisited and revised.

Nicolette LeFebre mentioned that appeal fees were paid and they were only given 10 business days to gather everyone. Due to the summer their attorney already had things in motion if they were not able to continue the hearing then they should be allowed to have another hearing with their attorney present.

Chair Rizzotti believed this would be addressed by the City Council.

Assistant Community Development Director Ramirez explained there is always an appeal process after the decision of the Commission, and it is up to the appellant if they want to undertake that effort.

Chair Rizzotti asked if the Planning Commission has the power to waive that fee.

Assistant Community Development Director Ramirez answered no and noted that only the City Council can modify fees.

City Attorney MacMillan clarified the appeal process and noted that there is an appeal period, and the last step administratively is to file an appeal that goes to City Council. City Attorney MacMillan noted the appeal provisions in the resolution adopted tonight and the City Municipal Code appeal requirements and associated fees, are also listed on the City website.

APPROVAL OF
MINUTES

Commissioner Wick made a motion to approve the minutes from the May 13, 2024, Planning Commission meeting. Seconded by Commissioner Bennett, carried by a vote of 4-0.

INTRODUCTION
OF ADDITIONAL
AGENDA ITEMS

Chair Rizzotti suggested a future agenda item to discuss the Wireless Telecommunication Facility regulations.

CITY PLANNER
COMMENTS

Assistant Community Development Director Ramirez noted the Commission's request and then gave an update on the status of the Burbank Rancho Neighborhood Specific Plan development effort, which includes the process to select a consultant firm to work on the development of the plan.

Respectfully Submitted,

Secretary of the Planning Commission

ADJOURNMENT
TO THE PLANNING
COMMISSION
MEETING OF
AUGUST 12, 2024