

RESOLUTION NO. 17-0152

RESOLUTION OF THE MANHATTAN BEACH CITY COUNCIL DENYING A TELECOM PERMIT AND COASTAL DEVELOPMENT PERMIT CA-16-43 FOR THE CONSTRUCTION AND OPERATION OF WIRELESS FACILITY PROPOSED TO BE LOCATED AT HIGHLAND AVENUE AND 19TH STREET, AND HIGHLAND AVENUE AND 19TH PLACE

THE MANHATTAN BEACH CITY COUNCIL HEREBY FINDS, DETERMINES AND RESOLVES AS FOLLOWS:

SECTION 1. Pursuant to Manhattan Beach Municipal Code (Municipal Code) Section 13.02.030, New Cingular Wireless PCS, LLC d/b/a AT&T Mobility (Applicant) submitted an application for the subject telecommunications facility at Highland Avenue and 19th Street (19th Street/Place Facility). Concurrently, the Applicant submitted 15 other applications for wireless telecommunications facilities at other locations in the City of Manhattan Beach.

SECTION 2. Pursuant to Municipal Code Chapter 13.02, the 19th Street/Place Facility, as a “non-standard facility,” is reviewed by the Director of Community Development and is subject to final review by the City Council. On October 17, 2017, two Councilmembers requested that the Director’s decision be reviewed by the City Council.

SECTION 3. On November 16, 2017, the City Council conducted a public hearing to consider the application. The Council considered all evidence, both written and oral, presented during the public hearing. The Applicant’s representatives spoke in favor of the application. City residents spoke in opposition to the application and the installation of telecommunications facilities. After providing an opportunity to all interested parties to speak, the Mayor provided an opportunity for rebuttal to the Applicant. The Applicant’s representatives responded to questions posed by the public and by Councilmembers.

SECTION 4. The record of the public hearing indicates the following:

A. This 19th Street Facility is proposed in a densely populated residential community, comprised of primarily single family and two family residences and with limited sidewalk space.

B. Municipal Code Chapter 13.02.030 regulates the issuance of telecommunications permits in the public right-of-way. Pursuant to Municipal Code Section 13.02.100, the City can deny a telecommunications permit if it makes the following findings:

1. That installation of the facility will have significant negative impacts to the extent that it substantially interferes with the use of other properties;

2. That a feasible alternative non-residential site is available for the proposed facility;

3. That denial of the proposed facility will not result in a competitive disadvantage to the applicant;

4. That the denial does not discriminate against the applicant in favor of similarly situated competitors; and

5. That the denial shall not preclude the applicant from proposing an alternate location for the facility.

C. The 19th Street Facility is proposed in the non-appealable Coastal Zone. Accordingly, a Coastal Development Permit (CDP) is required. Pursuant to LCP Section A.96.150(A), the following findings are required to approve a CDP:

1. That the project, as described in the application and accompanying materials, as modified by any conditions of approval, conforms with the certified Manhattan Beach Local Coastal Program; and

2. If the project is located between the first public road and the sea, that the project is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act of 1976.

D. Pursuant to Section 332(c)(7) of the federal Telecommunications Act, local governments retain their authority over decisions regarding the placement, construction, and modification of personal wireless service facilities. A local government's decision to deny a request to place or construct personal wireless service facilities must be in writing and supported by substantial evidence contained in a written record.

E. A number of residents in close proximity to the proposed site submitted evidence opposing the location of the facility. They testified that the proposed antenna would directly obstruct views and that 15 residents in the immediate vicinity signed a petition against the application.

SECTION 5. Based upon substantial evidence in the record, including the evidence presented at the public hearing, the staff report and presentation, the attachments to the staff report, and all testimony at the public hearing, the City Council hereby finds:

A. This 19th Street/Place Facility is proposed in a densely populated residential community and with limited sidewalk space. Due to its close proximity to residences, the pole-mounted antenna would adversely impact views from

adjacent residences. In addition, the Applicant's proposal includes a ground-mounted cabinet that would interfere with the usability and aesthetic appearance of the streetscape. Installation of the cabinet would require a widened sidewalk and a sidewalk cut at the street corner, involving unnecessary construction and aesthetic impacts to the streetscape.

B. The City suggested that the Applicant re-design the 19th Street/Place Facility to pole-mount the proposed cabinet or relocate the facility to one of the nearby commercial properties. Similar to other facilities that the City Council approved, the ground-mounted cabinet could be mounted to a pole under an alternative design. Even more, this facility could be re-located to a commercial property only two blocks away. According to the Applicant, this commercial alternative was not previously considered or explored. Because this alternative location is only two blocks away and at a similar elevation, it could service the intended area while avoiding adverse impacts to the residential neighborhood. At the public hearing, no evidence was presented that this alternative would be infeasible. Accordingly, the Applicant and the City are exploring this alternative location.

C. Denial of the 19th Street/Place Facility, to allow the Applicant and City staff time to determine whether re-location to the nearby commercial area is feasible, would not result in a competitive disadvantage because other providers have not yet established telecommunications facilities in this area of the City. Further, the Applicant proposed the 19th Street/Place Facility along with 15 other independently operative facilities in the area, and the City Council approved up to eight of these facilities. No substantial evidence was provided to demonstrate that (a) this particular facility, at the proposed location, is necessary, or (b) the alternative location on another property is infeasible or ineffective.

D. The bases for this denial would apply to any applicant proposing a similar facility in this location. At the public hearing, the City Council and residents expressed concerns that other cell providers would also require similar facilities in this residential community, which would further impact the negative aesthetics. When feasible and effective, the City encourages wireless providers to first explore locations on a commercial property or in a commercial area. By denying the 19th Street/Place Facility as proposed, the City intends to help facilitate efforts by the Applicant, along with other cellular providers, to improve service in this area without significantly impacting aesthetics.

E. The denial does not preclude the Applicant from proposing an alternate location for the facility. Rather, as discussed above, the City has encouraged the Applicant to explore an alternative location for the 19th Street/Place Facility. To this end, the City Council has directed the Applicant and City staff to explore the possibility of siting this facility on or adjacent to a nearby commercial property. In the event that re-location to a commercial property is either infeasible or ineffective, the Applicant is encouraged to propose an alternate location or design that would achieve the desired service coverage.

F. The City Council has concurrently approved up to eight other wireless facilities. The Applicant has failed to establish that this particular facility,

in the proposed location, is needed to fill any significant gap in wireless coverage. Further, the Applicant also failed to establish that it is the least intrusive means in light of evidence at the public hearing that there are feasible alternatives that were not previously considered and that would be less aesthetically intrusive.

G. The project, as described in the application and accompanying materials, and even with the Director's imposed conditions of approval, does not conform with the certified Manhattan Beach Local Coastal Program. Pursuant to Chapter A.12, the purposes of the Residential Districts and the Single-Family Residential District are to isolate residential uses from incompatible commercial and industrial uses and facilities, to ensure adequate light and open space for each residence. The 19th Street/Place Facility, as proposed, would not conform with the purposes or vision for the residential neighborhood because this pole-mounted antenna would cause severe negative aesthetic impacts to adjacent residents and the ground-mounted cabinet would cause a physical and aesthetic obstruction in an area densely populated by residents and visitors.

H. The project is not located between the first public road and the sea and, therefore, the finding regarding conformity with the public access and recreation policies is not applicable.

I. Based on the current wireless service coverage existing in the area, and due to the approval of up to eight new wireless facilities enhancing the Applicant's service coverage in the area, denial of 19th Street/Place Facility would neither have the effect of prohibiting provision of personal wireless service nor prevent the Applicant from filling any significant gap in service coverage.

J. The 19th Street/Place Facility, as proposed, has the potential to result in significant adverse impacts in the areas of land use and aesthetics that have not been adequately mitigated. These potential impacts result from the proximity of the facility to residential uses and the failure to adequately analyze other less impactful alternative locations and designs to provide service to the areas. The Applicant has not provided sufficient information to demonstrate that there is no potential for such impacts to occur. Further, impacts to views from private residences, based on the photo simulations, and testimony at the public hearings, constitute substantial evidence of potential aesthetic and land use impacts resulting from the 19th Street/Place Facility.

SECTION 6. Based upon the foregoing, the City Council denies the application, without prejudice.

SECTION 7. The City Council's decision is based upon each independent and separate ground stated herein.

SECTION 8. The City Clerk shall mail by first class mail, postage prepaid, a certified copy of this Resolution and a copy of the affidavit or certificate of mailing to the Applicant and any other persons or entities requesting notice of the decision.

SECTION 9. The City Council hereby invites and encourages the Applicant to re-apply and consider a better location.

SECTION 10. The City Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED and ADOPTED December 5, 2017.

AYES:

NOES:

ABSENT:

ABSTAIN:

AMY HOWORTH
Mayor

ATTEST:

LIZA TAMURA
City Clerk