

RESOLUTION NO. 17-0153

RESOLUTION OF THE MANHATTAN BEACH CITY COUNCIL DENYING A TELECOM PERMIT AND COASTAL DEVELOPMENT PERMIT CA-16-45 FOR THE CONSTRUCTION AND OPERATION OF WIRELESS FACILITY PROPOSED TO BE LOCATED AT MARINE AVENUE AND BAYVIEW DRIVE

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 Marine Avenue and Bayview Drive (Marine Avenue 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 Marine Avenue 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 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. The Marine Avenue Facility is proposed in a densely populated residential community, comprised of primarily multi-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;

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

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

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

F. The Marine Avenue 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:

G. 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

H. 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.

I. 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.

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 Marine Avenue Facility would site a wireless antenna adjacent to multi-family residences in a densely populated residential community. Due to its close proximity to residences, the pole-mounted antenna would adversely impact views from adjacent residences and adversely affect the aesthetic character of the residential neighborhood. The Marine Avenue Facility also includes a ground-mounted cabinet, which the Applicant relocated from the residential sidewalk to the right-of-way adjacent to a gas station in a Commercial Zone across the street from the proposed antenna. The proposed location and design of the Marine Avenue Facility's antenna would have significant negative aesthetic impacts to views from adjacent residences and of the residential streetscape.

B. The City suggested that the Applicant relocate the Marine Avenue Facility to the gas station across the street from the proposed location. As noted

above, the Applicant re-located the Marine Avenue Facility's ground-mounted cabinet to the gas station across the street from the wireless antenna because the originally proposed location would have impacted residential access. As shown in the coverage map, the proposed antenna's service coverage would extend to the beach. Relocating the antenna to the gas station across the street would result in similar or better service for the intended coverage area. Further, this alternative would locate the wireless and cabinet in the same location, which would allow the Applicant to mount the cabinet on the pole rather than the ground, similar to other facilities approved by the City. At the public hearing, the Applicant indicated that this alternative is likely feasible and that it was not previously considered or explored. Accordingly, the City and Applicant are exploring this alternative commercial location.

C. Denial of the Marine Avenue Facility, to allow the Applicant and City staff time to explore the alternative commercial site across the street, would not result in a competitive disadvantage because other providers have not yet established telecommunications facilities in this area of the City and the alternative location is an equally or more effective option for service coverage. Further, the Applicant proposed the Marine Avenue 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. The City's policy is to encourage wireless providers to first explore commercial locations and avoid aesthetic impacts to residential neighborhoods. By denying the Marine Avenue 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 re-locate the Marine Avenue Facility to the commercial location across the street from the proposed location. To this end, the City Council has directed the Applicant and City staff to prepare plans and simulations for this alternative location. 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 High-Density 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 Marine Avenue 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 Marine Avenue 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 Marine Avenue 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, the failure to adequately analyze other less impactful alternative locations and designs to provide service to the areas, and 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, constitute substantial evidence of potential aesthetic and land use impacts resulting from the Marine Avenue 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