

RESOLUTION NO. 17-0157

RESOLUTION OF THE MANHATTAN BEACH CITY COUNCIL DENYING A TELECOM PERMIT FOR THE CONSTRUCTION AND OPERATION OF A WIRELESS FACILITY PROPOSED TO BE LOCATED AT 2ND STREET AND NORTH ARDMORE AVENUE

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 2nd Street and North Ardmore Avenue (Ardmore 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 Ardmore 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. This Ardmore Avenue Facility is proposed in a densely populated residential community, comprised of primarily single 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. 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. The Ardmore Avenue Facility is proposed in a densely populated residential community with limited sidewalk space. It includes a pole-mounted antenna and a ground-mounted cabinet. The ground-mounted cabinet would be located in the landscaped area adjacent to the sidewalk, which would interfere with the aesthetic appearance of the streetscape. In addition, due to its close proximity to residences, the pole-mounted antenna would adversely impact views from adjacent residences and would adversely impact the aesthetic of the residential streetscape.

B. As indicated during the public hearing, the ground-mounted cabinet could be mounted to the light pole under an alternative design. In addition, both the antenna and the cabinet could be located in Veteran's Parkway--a public parkway immediately adjacent to the proposed site. By siting the Ardmore Avenue Facility in or along Veteran's Parkway, the Applicant could expand improved coverage to a larger service area while reducing aesthetic impacts to the residential community. As indicated at the public hearing, the Applicant had not analyzed Veteran's Parkway as an alternative location. However, the Applicant agreed that it would be a feasible and effective location if the City agreed to allow a wireless facility in or along the parkway. Accordingly, the Applicant and the City will explore this alternative location.

C. Denial of the Ardmore Avenue Facility, to allow the Applicant and City staff time to explore the Veteran's Parkway alternative, would not result in a competitive disadvantage because other providers have not yet established telecommunications facilities in this area of the City. Even more, the alternative

design and alternative location would be equally or more effective in providing service to the target service area, so this denial would not result in a competitive disadvantage. Further, the Applicant proposed the Ardmore 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 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 outside of residential neighborhoods. By denying the Ardmore 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 indicated above, the City has encouraged the Applicant to explore an alternative location in Veteran's Parkway. To this end, the City Council has directed the Applicant to re-apply and directed City staff to explore appropriate locations in Veteran's Parkway.

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. 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 Ardmore 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.

H. The Ardmore 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 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, constitute substantial evidence of potential aesthetic and land use impacts resulting from the Ardmore 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