

**CITY OF CARMEL-BY-THE-SEA
CITY COUNCIL**

CITY COUNCIL RESOLUTION NO. 2021-084

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA
DENYING AN APPEAL (APP 21-360) AND UPHOLDING THE PLANNING COMMISSION'S
DENIAL OF A DESIGN REVIEW, USE PERMIT (DR/UP 21-115, VERIZON WIRELESS -
CARMELO), AND ASSOCIATED COASTAL DEVELOPMENT PERMIT FOR THE
INSTALLATION AND OPERATION OF A WIRELESS TELECOMMUNICATIONS FACILITY
LOCATED ON THE EAST SIDE OF CARMELO STREET BETWEEN EIGHTH & NINTH
AVENUES IN THE MULTI-FAMILY RESIDENTIAL (R-4) DISTRICT**

WHEREAS, Verizon Wireless ("Applicant") submitted an application requesting approval of a Design Review, Use Permit (DR/UP 21-115), and associated Coastal Development Permit described herein ("Application") to install and operate a wireless telecommunications facility mounted to a replacement PG&E utility pole with support equipment located and camouflaged on the ground adjacent to that pole located in the public right-of-way on the east side of Carmelo Street between Eighth & Ninth Avenues in the Multi-Family Residential (R-4) District; and

WHEREAS, in accordance with the City of Carmel-by-the Sea Municipal Code ("CMC") Section 17.46.020 (General Development Standards), a conditional use permit is required for the installation and operation of all wireless telecommunications facilities, and the Planning Commission shall establish reasonable conditions to implement the purpose, provisions, and intent of Chapter 7.46; and

WHEREAS, in accordance with CMC Section 17.46.050 (Design Review), all wireless telecommunications systems shall be subject to design review approval by the Planning Commission; and

WHEREAS, in accordance with CMC Sections 17.46.030 and 17.46.060, all facilities must maintain compliance with applicable federal rules and regulations related to radio frequency exposure levels, and the applicant has submitted evidence that the proposed facility would be in compliance with those federal rules and regulations;

WHEREAS, a Coastal Development Permit is also required under CMC Section 17.52.090 (Coastal Development Permit Required); and

WHEREAS, a notice of the Planning Commission public hearing was published on September 17, 2021, in compliance with State law (California Government Code Section 65091), mailed to all property owners within a 300-foot radius of the project site, and hand-delivered by the Applicant to each property within a 100-foot radius of the project site indicating the date and time of the public hearing; and

WHEREAS, on September 29, 2021, the Planning Commission held a public hearing to receive public testimony regarding the project, including without limitation, the information provided by City staff and through public testimony on the project; and

WHEREAS, the Planning Commission adopted Resolution 2021-052-PC denying the project; and

WHEREAS, on October 8, 2021, the applicant filed an appeal (APP 21-360) to the City Council of the Planning Commission's denial; and

WHEREAS, a notice of the City Council public hearing was published on October 22, 2021, in compliance with State law (California Government Code Section 65091), mailed to all property owners within a 300-foot radius of the project site, posted at the project site by the Applicant, and hand-delivered by the Applicant to each property within a 100-foot radius of the project site indicating the date and time of the public hearing; and

WHEREAS, on December 7, 2021, the City Council held a public hearing to receive public testimony regarding the project, including without limitation, the information provided by City staff and the applicant, and through public testimony on the project; and

WHEREAS, the California Environmental Quality Act (California Public Resources Code §§ 21000, *et seq.*, "CEQA"), together with State Guidelines (14 California Code Regulations §§ 15000, *et seq.*, the "CEQA Guidelines") and City Environmental Regulations (CMC Chapter 17.60) require review of certain projects for environmental impacts and preparation of environmental documents; and

WHEREAS, the project is statutorily exempt from the California Environmental Quality Act (CEQA), State CEQA guidelines and local environmental regulations, pursuant to CEQA Guidelines section 15270 (Projects Which Are Disapproved); and

WHEREAS, this Resolution and its findings are made based upon the evidence presented to the City Council at the public hearing, including, without limitation, the staff report and attachments submitted by the Community Planning and Building Department; and

WHEREAS, the City Council did hear and consider all said reports, recommendations, and testimony hereinabove set forth and used their independent judgment to evaluate the project; and

WHEREAS, if any portion of this resolution is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the resolution; and

WHEREAS, the facts set forth in the recitals are true and correct and are incorporated herein by reference.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Carmel-By-The-Sea does hereby make the following findings and determinations regarding the Design Review:

Evidence for Denial:

- 1) CMC Section 17.12.020.H.5 states: *"No part of any antenna shall be higher than 24 feet."* The project is in conflict with 17.12.020.H.5 in that, no part of any antenna shall be higher than 24 feet and the proposed 38.7" antenna would be located on top of a 46'-6" utility pole, well over the 24-foot maximum height limit. The R-4 height limit applies to Verizon's antenna because (i) the R-4 height limit for antennas applies to all antennas erected in the R-4 district, except certain amateur radio antennas (which are subject to special privileges and exemptions from generally applicable local zoning regulations under both federal and state laws); (ii) the R-4 regulations also apply to the public right-of-way because the zoning district boundaries extend to the centerline of the public right-of-way; and (iii) the provision does not exempt antennas for telecommunications facilities. Moreover, other district-specific antenna regulations show that the exemptions for telecommunications facilities apply in some, but not all, districts as shown in the design regulations for antennas in the R-1 and commercial districts that exempt telecommunication facilities from compliance to the extent provided in Chapter 17.46. However, the antenna regulations for the R-4 district do not contain such an exemption.
- 2) CMC Section 17.46.020.A states: *"Wireless communications facilities shall be allowed within all zones except the R-1 district. Such facilities shall be discouraged in open space areas, areas of extraordinary scenic quality and in the R-4 district."* The project is in conflict with 17.46.020.A in that, wireless communications facilities are *"discouraged"* in the R-4 district and the proposed project would be located on the east side of Carmelo Street between 8th and 9th Avenues in the R-4 district. Given the existence of a more-preferred and technically feasible alternative, the denial of Verizon's application in a discouraged zone is warranted. Analysis by the City's independent expert shows that Verizon could achieve virtually all its objectives for the proposed location if it used an alternative site at the Golden Bough Playhouse that did not violate the discouraged locations provisions in the Code (i.e., not within an R-4 zoning district or within the public rights-of-way). Verizon's disclosures show that it intends provide service on low-band and mid-band frequencies to the area southwest from the proposed location. As the analysis prepared by CTC shows, an alternative location at the Golden Bough Playhouse would provide nearly identical service improvements within the low-band frequencies (at least 85% of the same service improvements to in-building services, nearly 100% of the same service improvement to in-vehicle services and more than 100% of the intended improvements to outdoor services because the alternative site would reach a larger area) and nearly 100% of the same improvements in outdoor and in-vehicle service within the mid-band frequencies. An alternative site at the Golden Bough Playhouse would also provide new in-building services within the mid-band frequencies to an area currently without those services that is slightly larger than the area Verizon's proposed location would cover. Although the in-building coverage within the mid-band would have roughly a 33% overlap with the area covered by Verizon's proposed site, this is a conservative estimate that assumes Verizon would use the same equipment at both locations rather than use more creative engineering solutions

such as it did in at the Sunset Center site where it deployed directional antennas with separate radios to boost the power output and optimize efficiency. The record also shows that the owners of Golden Bough Playhouse are receptive to allowing Verizon to place a facility on their property thus it is also available. Further, although the expert analysis evaluates a potential alternative on the Golden Bough Playhouse property, it is reasonable to assume that substantially the same results would be achieved if Verizon placed a new pole within the public right-of-way in the segments of Monte Verde or Casanova that are included in the A-1 district in which the Golden Bough Playhouse sits. Thus, while the Golden Bough Playhouse has expressed its willingness as a potential landlord to Verizon, it is also reasonable to assume that alternative locations within this non-residential district would also be technically feasible and potentially available if Verizon and the Golden Bough Playhouse could not reach agreement on a lease. Further support for the CMC's policy discouraging visibility from the front of properties is found in CMC Section 17.12.020.H.1, which prohibits antennas and supporting facilities in the front yard spaces between the property line and the portion of the main structure on the property closest to the property line.

- 3) CMC Section 17.46.040.A states: *"Site location and development of wireless communications facilities shall preserve the visual character and aesthetic values of the community. Facilities shall be integrated to the maximum extent feasible into the existing characteristics of the site and surrounding area."* The project is in conflict with 17.46.040.A in that, while the site location on the east side of Carmelo Street between 8th and 9th Avenues is in an R-4 district, it is an "island" surrounded by the R-1 district and single-family residences and directly across the street from single-family residences in the R-1 district. The code discourages wireless facilities in R-4 zones and in the public rights-of-way because wireless facilities at these locations are inherently likely to produce visual incompatibility with the surrounding areas. Moreover, even though the facility would be located in an R-4 zone, its impacts would not be. The antenna would negatively impact ocean views from neighboring properties in R-1 zones. The bulky pole-mounted accessory equipment would be prominently visible from ground level, including by the public who uses the public rights-of-way for both transportation and aesthetic/expressive purposes. Although other utilities are currently in the public rights-of-way, no other utility equipment would be as tall or have similar impacts on ocean views and Verizon's accessory equipment would be noticeably larger than other cabinets or shrouds on or adjacent to nearby utility poles, even with its re-design after the Planning Commission's denial. As such, the project is inconsistent with the visual character and aesthetic values of the surrounding single-family residential community.
- 4) CMC Section 17.46.040.C states: *"Wireless communications facilities, to every extent possible, should not be sited to create visual clutter or negatively affect important public or private views as determined by the Planning Commission."* The project is in conflict with 17.46.040.C in that, it would create visual clutter and negatively affect both important public and private views. Based on the written record submitted by the public (including photo simulations that showed the antenna protruding above the tree line, even though no other utility infrastructure would similarly protrude) and first-hand observations by the Planning Commissioners at the project site, the proposed extension would encroach into scenic

ocean views from spaces within the La Playa Carmel Hotel and surrounding residences including those across the street. Whereas these properties currently have an unobstructed view of the ocean, Verizon's proposed facility would encroach on and obstruct those views. Moreover, the encroachment into these views would exceed the overall height limit permitted by the CMC. Although Verizon has submitted revised plans that lower the overall height of the antenna by approximately 13", the impact to views has not been materially changed. Potential siting alternatives that would mitigate the visual clutter and negative view impacts include the Golden Bough Playhouse or a new pole in the public right-of-way adjacent to the Golden Bough Playhouse on Monte Verde or Casanova. Lastly, an alternative configuration that involves mounting the antenna in the communications space below the electric utility lines would eliminate the protrusion above the pole in direct line-of-sight of neighboring properties.

- 5) CMC Section 17.46.040.C states: "*Wireless communications facilities are discouraged in the public right-of-way.*" The project is in conflict with 17.46.040.C because the record that shows that there are technically feasible and potentially available alternatives located in more preferred locations. Analysis by the City's independent expert shows that Verizon could achieve virtually all its objectives for the proposed location if it used an alternative site at the Golden Bough Playhouse that did not violate the discouraged locations provisions in the Code (i.e., not within an R-4 zoning district or within the public rights-of-way). Verizon's disclosures show that it intends provide service on low-band and mid-band frequencies to the area southwest from the proposed location. As the analysis prepared by CTC shows, an alternative location at the Golden Bough Playhouse would provide nearly identical service improvements within the low-band frequencies (at least 85% of the same service improvements to in-building services, nearly 100% of the same service improvement to in-vehicle services and more than 100% of the intended improvements to outdoor services because the alternative site would reach a larger area) and nearly 100% of the same improvements in outdoor and in-vehicle service within the mid-band frequencies. An alternative site at the Golden Bough Playhouse would also provide new in-building services within the mid-band frequencies to an area currently without those services that is slightly larger than the area Verizon's proposed location would cover. Although the in-building coverage within the mid-band would have roughly a 33% overlap with the area covered by Verizon's proposed site, this is a conservative estimate that assumes Verizon would use the same equipment at both locations rather than use more creative engineering solutions such as it did in at the Sunset Center site where it deployed directional antennas with separate radios to boost the power output and optimize efficiency. Taken together, the alternative site provides substantially the same service improvements in low-band frequencies, substantially the same improvements to outdoor and in-vehicle coverage in the mid-band frequencies and new in-building services within the mid-band frequencies to an area that is essentially equal in size to the one that could be covered by Verizon's proposed site. Given the parity between the proposed and alternative sites, denial of the proposed site due to a preference for the available alternative site would not "materially inhibit" Verizon's ability to provide services. Although the CTC Report evaluates a potential alternative on the Golden Bough Playhouse structure, it is reasonable to assume that substantially the same results would be achieved if Verizon placed a new pole within the public right-of-way in the segments of Monte Verde or Casanova that are included in the

theater district (A-1 Zoning District) in which the Golden Bough Playhouse sits. Thus, while the Golden Bough Playhouse has expressed its willingness as a potential landlord to Verizon, alternative facilities within the non-residential A-1 district would also be technically feasible and potentially available if Verizon and the Golden Bough Playhouse could not reach agreement on a lease.

- 6) CMC Section 17.46.050.E states: *“Support facilities (i.e., vaults, equipment rooms, utilities, and equipment enclosures) shall be constructed out of nonflammable, nonreflective materials. Support facilities that cannot be located within existing buildings or underground shall either be located out of public view or shall be enclosed in an architecturally compatible structure on private property.”* The project is in conflict with 17.46.050.E the support facilities would not be located underground or out of public view. As previously proposed with ground-mounted equipment enclosed by a redwood grape stake fence enclosure, the enclosure would be flammable and architecturally incompatible. Although some wooden structures appear in commercial portions of the City’s public rights-of-way, no such structures exist in the vicinity of the proposed facility and none are as tall or bulky as the one proposed to house the ground equipment. Verizon’s revised configuration also violates 17.46.050.E because the pole-mounted enclosure would be publicly visible and not located underground. Even though the non-antenna wireless equipment (including the radios) can be installed in an underground vault, Verizon would install them above ground on the pole within public view. This configuration contravenes the code requirement and Verizon has made no showing that it could not install the support facilities underground. According to oral testimony by Verizon’s representative, undergrounding the nonantenna equipment was possible but would result in potentially negative aesthetic impacts and possible constructability issues. Council is unpersuaded by the testimony at the hearing regarding the infeasibility of installing the nonantenna equipment underground.
- 7) The size of the equipment area would add unreasonable visual clutter to the utility pole; the project would not be compatible with the surrounding land use; the proposed equipment area creates visual clutter and unreasonably diminishes public and private views; the pole mounted equipment would add mass to the utility pole; the alternatives analysis provided contains certain shortcomings in that it does not provide identify the personal wireless service that the applicant provides or intends to provide; the project would diminish the public use and enjoyment of the public right-of-way; and, the project would set an undesirable land use precedent within the residential area of the village that would contribute to the adverse visual impact.

BE IT FURTHER RESOLVED that the City of the City of Carmel-by-the-Sea does hereby **DENY** the Use Permit, Design Review (UP/DR 21-115) and associated Coastal Development Permit for the installation and operation of a wireless telecommunications facility located on the east side of Carmelo Street between Eighth & Ninth Avenues in the Multi-Family Residential (R-4) District.

PASSED, APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 7th day of December, 2021, by the following vote:

AYES: Baron, Ferlito, Theis, Mayor Pro Tem Richards, Mayor Potter

NOES:

ABSENT:

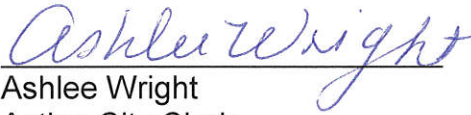
ABSTAIN:

APPROVED:

ATTEST:

Handwritten signature of Dave Potter in black ink.

Dave Potter
Mayor

Handwritten signature of Ashlee Wright in blue ink.

Ashlee Wright
Acting City Clerk