



Z O N I N G
A D J U S T M E N T S
B O A R D
NOTICE OF DECISION

DATE OF BOARD DECISION: June 27, 2019
DATE NOTICE MAILED: July 2, 2019
APPEAL PERIOD EXPIRATION: July 17, 2019¹
EFFECTIVE DATE OF PERMIT (Barring Appeal or Certification)²: July 18, 2019

0 Euclid Avenue – Berryman Reservoir

Use Permit #ZP2018-0236 to establish a new 50' high “monopole” 4G LTE wireless facility operated by Verizon Wireless at the East Bay Municipal Utility District site consisting of six antennas, six remote radio units, and associated ground equipment.

The Zoning Adjustments Board of the City of Berkeley, after conducting a public hearing, **DENIED** the following permits:

- Use Permit to establish a Wireless Telecommunications Facility, under BMC Section 23C.17.100.A.2;
- Use Permit to establish a Wireless Telecommunications Facility in the R-1 Single Family Residential District, Hillside Overlay, under BMC Section 23D.16.030; and
- Administrative Use Permit to establish Wireless Telecommunications Facility, other than those located within the public right-of-way built higher than 35' in height in the R-1H Single Family Residential District, Hillside Overlay under BMC Sections 23E.96.070 and 23D.04.020.

APPLICANT: David Haddock, Ridge Communications Inc for Verizon Wireless, 12919 Alcosta

¹ Pursuant to BMC Section 23A.08.030, the appeal period begins on the first business day following the date the Notice of Decision is mailed. Pursuant to BMC Section 1.04.080, any deadline that falls on a non-business day is extended until the next business day.

² Pursuant to BMC Section 23B.32.090, the City Council may certify any ZAB decision for review during the 14-day appeal period after the notice of the ZAB's decision is issued. Certification has the same effect as an appeal. However, BMC Section 1.04.070 suspends or “tolls” the Council's deadline to certify when the Council is on recess. Thus, in cases where the 14-day appeal period is scheduled to *end* during a Council recess, the certification deadline is extended past the end of the recess for the remainder of the appeal period. In cases where the appeal period *begins* during a Council recess, the certification deadline is extended until 14 days after the first Council meeting after the recess. *Extension of the certification deadline has no effect on the appeal deadline.*

ZONING ADJUSTMENTS BOARD
NOTICE OF DECISION
Use Permit #ZP2018-0236
0 Euclid Avenue
July 2, 2019
Page 2 of 5

Bldv, Suite 1, San Ramon, CA 94583

ZONING DISTRICT: R-1H, Single Family Residential District – Hillside Overlay

ENVIRONMENTAL REVIEW STATUS: Categorically exempt pursuant to Sections 15301 and 15303 of the CEQA Guidelines (“Existing Facilities” and “New Construction or Conversion of Small Structures”).

The Zoning Application and application materials for this project is available online at:
<http://www.cityofberkeley.info/zoningapplications>

FINDINGS, CONDITIONS AND APPROVED PLANS ARE ATTACHED TO THIS NOTICE

BOARD VOTE: 0-9-0-0

YES: CLARKE, HABIBI, KAHN, KIM, LEE-OWENS, OLSON, SELAWSKY, SHEAHAN,
TREGUB

NO:

ABSTAIN:

ABSENT:

TO APPEAL THIS DECISION (see Section 23B.32.050 of the Berkeley Municipal Code):

To appeal a decision of the Zoning Adjustments Board to the City Council you must:

1. Submit a letter clearly and concisely setting forth the grounds for the appeal to the City Clerk, located at 2180 Milvia Street, 1st Floor, Berkeley; or by facsimile to (510) 981-6901. The City Clerk’s telephone number is (510) 981-6900.
2. Submit the required appeal fee (checks and money orders payable to “City of Berkeley”):
 - a. The fee for persons other than the applicant is \$500. This fee may be reduced to \$100 if the appeal is signed by persons who lease or own at least 50 percent of the parcels or dwelling units within 300 feet of the project site, or at least 25 such persons (not including dependent children), whichever is less.
 - b. The fee for all appeals by Applicants is \$2500.
3. The appeal must be received prior to 5:00 p.m. on the "APPEAL PERIOD EXPIRATION"

ZONING ADJUSTMENTS BOARD

NOTICE OF DECISION

Use Permit #ZP2018-0236

0 Euclid Avenue

July 2, 2019

Page 3 of 5

date shown above (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).

If no appeal is received, the permit will be issued on the first business day following expiration of the appeal period, and the project may proceed at that time.

NOTICE CONCERNING YOUR LEGAL RIGHTS:

If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Zoning Adjustments Board at, or prior to, the public hearing.
2. You must appeal to the City Council within fourteen (14) days after the Notice of Decision of the action of the Zoning Adjustments Board is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, your appeal of this decision must including the following information:
 - A. That this belief is a basis of your appeal.
 - B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
 - C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been

taken, both before the City Council and in court.

PUBLIC COMMENT:

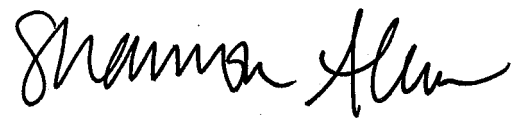
Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission or committee for further information.

FURTHER INFORMATION:

Questions about the project should be directed to the project planner, Loyal Nawfal, at (510) 981-7410 or lnawfal@cityofberkeley.info. All project application materials, including full-size plans, may be viewed at the Land Use Planning Division, 1947 Center Street, 2nd floor, Monday through Friday from 8:30 a.m. to 4 p.m. (except on holidays and reduced service days; check City's website for details).

ATTACHMENTS:

1. Findings for Denial



ATTEST:

Shannon Allen, Secretary
Zoning Adjustments Board

cc: City Clerk
Building and Safety Division
Central Library - Reference Desk
Public Works Engineering Division
ZAB Members

ZONING ADJUSTMENTS BOARD
NOTICE OF DECISION
Use Permit #ZP2018-0236
0 Euclid Avenue
July 2, 2019
Page 5 of 5

First Source
Amy Davidson, Housing Department

Applicant:

David Haddock, Ridge Communications Inc.
for Verizon Wireless
12919 Alcosta Blvd., Suite 1
San Ramon CA 94583

Property Owner:

East Bay Municipal Utility District
Attn: Rob Korn
P.O. Box 24055
Oakland, CA 94623

Interest Party:

Christian Raisner
Email: clraisner@outlook.com

0 Euclid Avenue – Berryman Reservoir

Use Permit #ZP2018-0236 to establish a new 50' high “monopole” 4G LTE wireless facility operated by Verizon Wireless at the East Bay Municipal Utility District site consisting of six antennas, six remote radio units, and associated ground equipment.

FINDINGS OF DENIAL

1. Pursuant to Berkeley Municipal Code Section 23B.32.040, the Zoning Adjustments Board (ZAB) finds that the proposed project, under the circumstances of the particular case existing at the time at which the application is granted, will be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or working in the area or neighborhood of such proposed use and will be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City, because the application did not provide adequate evidence that the proposed wireless telecommunications facility is required to support the need to prevent a gap in coverage or capacity shortfall.

Pursuant to Berkeley Municipal Code Section 23C.17.100.B.3, the ZAB does not find that the proposed facility “is necessary to prevent a significant gap in coverage or capacity shortfall in the applicant’s service area, and is the least intrusive means of doing so” because the applicant has not provided sufficient information to support a finding that the facility is necessary to support the existing Verizon facilities, particularly in order to increase the capacity of Verizon’s network.

Additionally, the ZAB finds that the applicant did not demonstrate as required by BMC Section 23C.17.040.C.2 that that the proposed facility is necessary to prevent or fill a significant gap or capacity shortfall in the applicant’s service area, or that it is the least intrusive means of doing so, or that there are not any alternative sites that will have fewer aesthetic impacts while providing comparable service.

2. Pursuant to Berkeley Municipal Code Section 23C.17.100.B.1, the ZAB finds that the project is not consistent with the requirements of this chapter and applicable specific requirements applicable because the project does not meet the provisions of the 2002 General Plan, particularly Policy LU-7 Neighborhood Quality of Life, Action A, Policy UD-16 Context, and Policy UD-24 Area Character, and does not meet the objectives of the chapter per BMC Section 23C.17.0520.B.1 (Purpose), as the proposed wireless telecommunications facility:
 - a. Is not consistent with the scale or historic character of the surrounding uses;
 - b. Does not foster an aesthetically pleasing urban environment;

- c. Does not prevent visual blight, protect and preserve public safety and general welfare; and
 - d. Does not maintain the character of residential areas, consistent with the adopted General Plan and Area Plans.
3. Pursuant to Berkeley Municipal Code Sections 23C.17.100.B.2.a and 23C.17.100.B.2.b, the ZAB finds that with the limited information provided, it is not possible to determine if a monopole or monopine, away from trees, in an area of complex elevations will not be readily visible.

Similarly, the applicant did not demonstrate that the proposed project meets the requirements of BMC Section 23C.17.070.C (Design Requirements) which requires that “no readily visible antenna shall be placed at a location where it will impair a significant or sensitive view corridor”. The applicant did not demonstrate that the application meets the requirements of BMC Section 23C.17.070.C.3 that the proposed monopole was designed to be the minimum functional height and width required to support the proposed antenna installation, or that a higher than the minimum monopole height will facilitate other objectives of the Chapter.
