ZONING ADJUSTMENTS BOARD

STAFF REPORT

FOR BOARD ACTION
NOVEMBER 8, 2012

1861 Solano Avenue

Use Permit #11-10000032 to establish a new wireless telecommunication facility for AT&T including twelve antennas on the façade of the Oaks Theatre and related equipment in an outdoor lease area.

I. Application Basics

A. Land Use Designations:

- General Plan: NC Neighborhood Commercial
- Zoning: C-SO Solano Avenue Commercial and R-1H Single Family Residential Hillside Overlay

B. Zoning Permits Required:

- Use Permit to establish a telecommunication facility, under BMC Section 23C.17.100.A.2
- Use Permit to establish a telecommunication facility, under BMC Section 23E.60.030

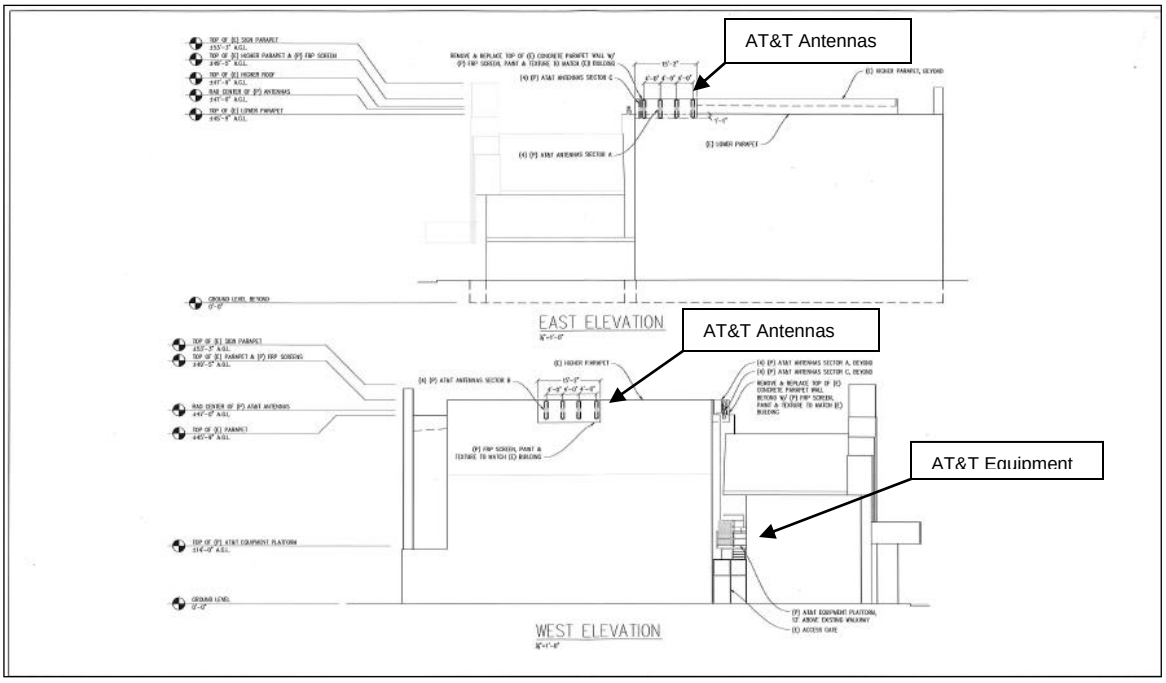
C. CEQA Determination: Categorically exempt pursuant to Section 15301 of the CEQA Guidelines ("Existing Facilities").

D. Parties Involved:

- Applicant — AT&T c/o Valeria Tallerico, 7901 Stoneridge Dr., Ste. 503 Pleasanton, CA 94588
- Property Owner — John Gordon/Janis Mitchel, 2095 Rose St., Berkeley, CA, 94709

Figure 1: Vicinity Map

Figure 2: Elevations



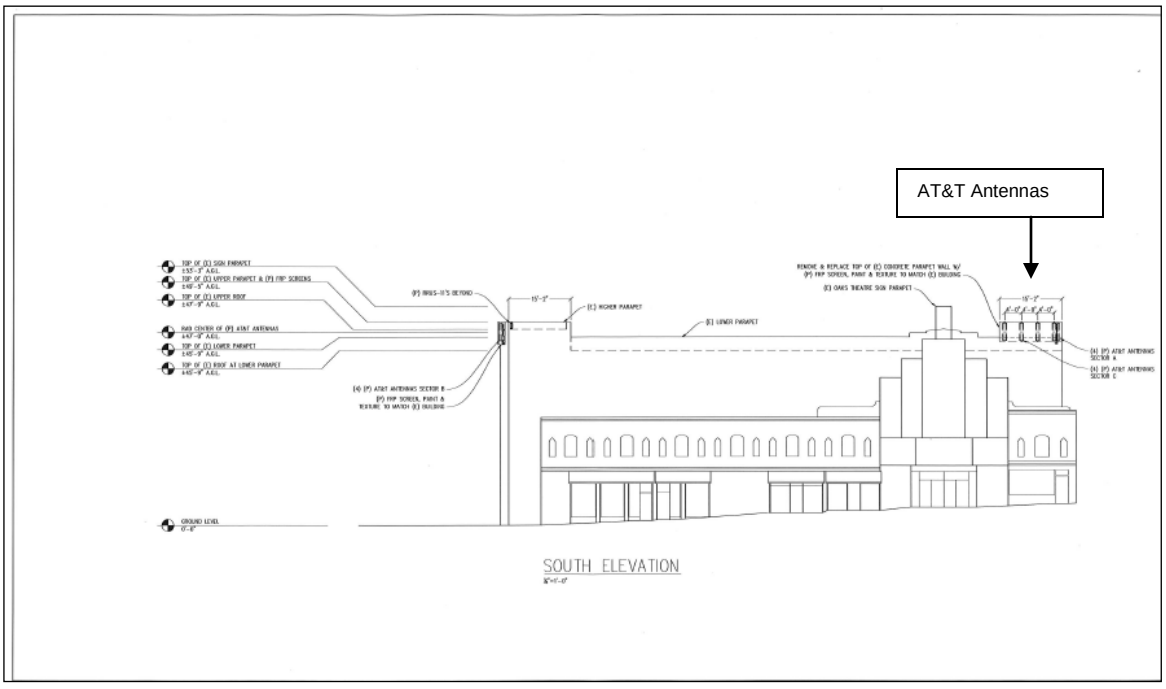


Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Oaks Theatre	C-SO, R-1H	Neighborhood Commercial
Surrounding Properties	North	Single Family Residences	R-1H	Low Density Residential
	South	Chase Bank Former Andronicos Supermarket	C-SO	Neighborhood Commercial
	East	Restaurants	C-SO, R-1H	Neighborhood Commercial and Low Density Residential
	West	Retail, Household Service (repair), Mechanic's Bank	C-SO, R-1H	Neighborhood Commercial

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Historic Resources	Yes	Designated City of Berkeley Landmark February 2, 2006

Table 3: Project Chronology

Date	Action
August 30, 2011	Application submitted
April 24, 2012	LPC Review
October 5, 2012	Application deemed complete
October 25, 2012	Public hearing notices mailed/posted
November 8, 2012	ZAB hearing
December 4, 2012	PSA deadline[1]

1. Project must be approved or denied within 60 days after being determined to be exempt from CEQA, or 60 days after adoption of a negative declaration, or 180 days after adoption of an EIR (Govt. Code Section 65950).

II. Project Setting

A. Neighborhood/Area Description:

The project site is located on the north side of Solano Avenue. The surrounding area consists of a mixture of office, retail, restaurant uses, and residential to the rear (north of the site) and residential uses to the south on Fresno Street.

B. Site Conditions:

The project site is a developed site consisting of The Oaks Movie Theatre, designated as a City of Berkeley Landmark on February 2, 2006. The existing building is two-stories and 49'5" in height. AT&T proposes to install twelve telecommunication antennas on the façade of the building.

There are no existing telecommunication facilities at this location.

III. Project Description

AT&T proposes to install twelve antennas and install nine cabinets on a steel platform twelve feet above an existing walkway. The proposal involves four main elements:

1) Remove the existing concrete parapet wall at the façade at the south east corner of the building and install eight 4'3" tall antennas behind new Radio Frequency Transparent screening, painted to match the existing building;
2) Install four 4'3" tall antennas behind a Radio Frequency Transparent screen at the west façade;
3) Install cable trays on the rooftop and along the south and west side of the building. The cable tray will be painted to match the building and resemble a downspout from the roof of the building; and
4) Install nine equipment cabinets on an 8'2"X20' raised platform located above an existing walkway located between the theatre building and the lobby building.

IV. Community Discussion

A. Neighbor/Community Concerns:

Prior to submitting the application to the City, a pre-application poster was erected by the applicant in August, 2011. On October 11, 2012, the City mailed 102 notices to adjoining property owners and occupants, and to interested neighborhood organizations. As of writing this staff report, staff has received five letters in support of the AT&T installation, two in opposition, and correspondence from the Thousand Oaks Neighborhood Association (TONA) stating no opposition to the proposed project (see Attachment 12 – Correspondence).

B. Committee Review:

Prior to submitting the Use Permit, the applicant obtained Landmarks Preservation Commission (LPC) approval on May 4, 2011. After the Use Permit was submitted, AT&T revised the design of the installation and received LPC approval of the revised design on April 24, 2012 (see Attachment 4 – LPC approval).

V. Issues and Analysis

A. Key Issues:

1. Compliance with FCC Regulations: Section 704 of the Telecommunications Act of 1996 (47 U.S.C. §332(c)) prohibits local governments from regulating proposed wireless service facilities on the basis of the environmental effects of radio frequency emissions if the facilities comply with the Federal Communication Commission's (FCC) regulations. Berkeley Zoning Ordinance Section 23C.17.100.B.1 requires the Zoning Adjustments Board to make a finding that the facility will comply with these regulations.

   The applicant provided a report prepared by William F. Hammett, P.E., of Hammett & Edison, Inc. Consulting Engineering, an electrical and mechanical engineer registered with the State of California, as required by Berkeley Zoning Ordinance Section 23C.17.040.F (see Attachment 4). Hammett & Edison evaluated the proposed AT&T antenna installation for compliance with appropriate guidelines limiting human exposure to radio frequency (RF) electromagnetic fields. The May 2, 2012 report states that the antennas are designed to concentrate their energy towards the horizon and that very little energy is directed toward the sky or the ground and that due to the short wavelength of the frequencies assigned by the FCC for this wireless service, the antennas require line-of-sight paths for their signals to provide adequate coverage. The Hammett & Edison report states that based on "worst-case" assumptions, the maximum RF exposure level at the ground near the AT&T facility is calculated to be 3.4% of the public exposure limit, and the maximum calculated level at the second-floor elevation of any nearby building (including nearby residences) is 5.9% of the applicable public exposure limit.

   The AT&T antennas are façade mounted and are not accessible to the general public; therefore, Hammett & Edison states that there are no mitigation measures necessary to comply with the FCC public exposure guidelines. To prevent occupational exposures that might occur during such activities as building maintenance, the Hammett & Edison report recommends that explanatory warning signs be posted at the view screen enclosures to prevent access within thirteen feet directly in front of the antennas themselves. Such signs should be readily visible from any angle of approach to persons who might need to work within that distance. These requirements are included in the conditions of approval (see Attachment 1).

   In summary, the Hammett & Edison report concludes that the proposed AT&T antenna installation and facility will comply with the prevailing FCC Standards for limiting public exposure to radio frequency energy and will not cause significant impact on the environment and that the highest calculated level in publicly accessible areas are less than the prevailing standards allowed for exposures of unlimited duration.

RCC reviewed and evaluated the submitted RF report (see Issue #4 Facility Need) and concurs with its analysis and conclusion that the proposed antenna installation will comply with the FCC guidelines for radio frequency emissions.

2. Visibility: Under Berkeley Zoning Ordinance Section 23C.17.100.B.2, the Zoning Adjustments Board must make a finding that the facility will either: (1) not be readily visible; or (2) that it is not feasible to incorporate additional measures that would make the facility not readily visible.

   The design incorporates a number of features to ensure that the facility would not be readily visible (see photo simulations Attachment 7), including:

   i. Support equipment cabinets will be located on a raised steel platform in an interstitial space between two buildings on the site and will not be visible to the general public;
   ii. Cable trays will be located on the rooftop and along the side of the building, painted to match the building and will resemble a downspout from the roof of the building; and
   iii. Antennas will be façade-mounted, screened in "antenna boxes", constructed of Radio Frequency Transparent material, painted and textured to match the existing building.

3. Certification of Facilities: Under Berkeley Zoning Ordinance Section 23C.17.100.4, in order to approve a new or modified wireless facility, the Board must find that the operator (AT&T) has submitted the following information for all its facilities within the City of Berkeley: (1) within 45 days of initial operation or modification of a telecommunications facility, written certification by a licensed engineer that the facility's radio frequency emissions are in compliance with the approved application and any required conditions, as well as a determination that the facility meets the FCC requirements; and (2) annual written certification by an authorized representative for the wireless carrier that each of its facilities within the City is being operated in accordance with the approved local and federal permits.

   AT&T has submitted the required facility compliance reports to staff. The reports indicate that all AT&T facilities within the City are operating in compliance with the approved conditions and meet the FCC compliance. AT&T has also submitted written certification that all AT&T facilities within the City are being operated in accordance with approved local and federal permits (see Attachment 9).

4. Facility Need: Under Berkeley Zoning Ordinance Section 23C.17.100.B.3, the Board must find that the facility is necessary to prevent or fill a significant gap in coverage or capacity shortfall in the applicant's service area and that the proposed installation is the least intrusive means of doing so.

The City commissioned a peer review prepared by RCC Consultants to independently review the AT&T proposal to verify the need for the facility (see Attachment 6).

Based on the coverage maps, drive data and network data provided by AT&T, RCC states that AT&T demonstrated a coverage gap in its network in the area surrounding Solano Avenue and Contra Costa Avenue, especially in-building coverage, and that adjacent telecommunication sites are too far from the intended coverage area to provide adequate in-transit and in-building coverage. RCC analyzed three alternative sites considered by AT&T and determined that the proposed location at 1861 Solano is the best site to achieve better coverage because of the height of the Oaks Theatre.

RCC concludes that the installation of the proposed AT&T facility at this location will substantially mitigate the gap of in-transit and in-building coverage in the subject area.

5. Noise: The Land Use Planning Division has found that equipment cabinets required to support wireless antennas can generate noise exceeding the limits of the City's Noise Ordinance outlined in Chapter 13.40 of the Berkeley Municipal Code. For this reason, the City of Berkeley requested that AT&T submit a noise study performed by an acoustical, mechanical, or electrical engineer. AT&T retained the services of Charles M. Salter Associates, Acoustics Specialists. Charles M. Salter Associates submitted an acoustical report, dated October 10, 2011 (see Attachment 10).

   The Charles M. Salter report states based on a worst case assumption that all the equipment would be operating simultaneously during very warm weather, the approximately 100' distance to the nearest residential structure at 861 Station Avenue, the location of the equipment in a service well, and the approximate 31' difference in elevation, the equipment would generate up to 22 dB at the nearest neighboring residential residences and the AT&T equipment should not increase the existing ambient noise. The noise report states that the noise from the new AT&T equipment would comply with the City's Noise Ordinance, Section 13.40 which limits exterior noise in residential districts to 55 dBA during the day between the hours of 7:00 a.m. to 10:00 p.m. and 45 dBa during the night between the hours of 10:00 p.m. to 7:00 a.m.

   Staff spoke to the author of the Charles M. Salter report, Mr. Eric A. Yee, regarding potential impacts to the surrounding commercial businesses. Mr. Yee stated that given the location of the equipment in a stairwell, that there is a solid wall separating the location of the equipment and the nearest commercial structure to the west at 1857 Solano, and that the noise standards for commercial districts are less restrictive at 65 dBA during the day and 60 dBA at night, the installation of the AT&T equipment should not increase the existing ambient noise in this area.

The Land Use Planning Division retained the firm of Illingworth and Rodkin, Inc. to review the Charles M. Salter noise assessment study for the AT&T proposal. Illingworth and Rodkin reviewed the technical content of the report, assessed the criteria used in the study, the predictive methods used in the analysis, the projections of future noise levels, and verified Charles M. Salter's findings that the AT&T proposal would comply with the City of Berkeley noise standards (see Attachment 11, letter to City dated January 5, 2011).

B. Conclusion:

Based on information provided to the City, Staff believes that the proposed project would enhance wireless connectivity in the area while not posing a threat to public health, or result in a structure that is detrimental to views or noise for the following reasons:

- Landmarks Preservation Commission Review approval;
- The applicant's narrative statements;
- The RF report prepared by a certified electrical engineer;
- The report by the City's RF engineer verifying the necessity of the facility upgrade;
- The Certification of AT&T Facilities operating in Berkeley; and
- The report by AT&T's acoustical consultant concluding that the proposed equipment would not have any detrimental noise impacts, and would not exceed the City's Community Noise Ordinance,

C. General and Area Plan Consistency:

General Plan Policy Analysis: The 2002 General Plan contains several policies applicable to the project, including the following:

1. Policy LU-7–Neighborhood Quality of Life, Action A: Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.

2. Policy UD-16–Context: The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings.

3. Policy UD-24-Area Character: Regulate new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in.

   Staff Analysis: The proposed design incorporates reasonable measures to reduce the visibility of the facility and to match the architecture of the existing

building. The design was reviewed and given Landmarks Preservation Commission approval.

VI. Recommendation

Because of the project's consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, Staff recommends that the Zoning Adjustments Board:

APPROVE Use Permit #11-10000032 pursuant to Section 23B.32.040 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. Findings and Conditions
2. Project Plans, received September 7, 2012
3. Applicant Statement and Analysis of Alternative sites, received August 30, 2011
4. Landmarks Approval dated April 24, 2012
5. Engineering Report on Radio Frequency Analysis prepared by William F. Hammett, P.E., dated May 2, 2012
6. Third Party Wireless Facility Application Review prepared by Dieter J. Preiser, PMP, RCC Consultants, dated and September 2, 2012 and December 13, 2011
7. Photos Simulations (Existing and Proposed)
8. Coverage Maps (Existing and Proposed)
9. AT&T Certification, dated May 16, 2011
10. Acoustical Study prepared by Eric A. Yee, Principal Consultant, Charles M. Salter Associates, dated October 10, 2011
11. Noise analysis Peer Review Report, dated January 5, 2011 and prepared by Jordan L. Roberts, Staff Consultant Illingworth & Rodkin, Inc.
12. Correspondence Received
13. Notice of Public Hearing

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