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A D J U S T M E N T S  
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S T A F F R E P O R T

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FOR BOARD ACTION  
APRIL 27, 2017

## 1615 Martin Luther King Jr. Way

Use Permit #20140025 to establish and to install a new roof-top wireless telecommunication facility with eight antennas and eight remote radio units concealed within a 10-ft tall enclosure screen atop an existing four-story residential building and related support equipment to be mounted atop a third-story roof and similarly screened.

### I. Background

#### A. Land Use Designations:

- General Plan: Medium Density Residential
- Zoning: Restricted Multi-Family Residential

#### B. Zoning Permits Required:

- Use Permit, under BMC Section 23C.17.100 Paragraph A to establish a wireless telecommunication facility
- Use Permit, under BMC Section 23D.32.030 to establish a wireless telecommunication facility in the R-2A district
- Administrative Use Permit, under BMC Section 23D.04.020. Paragraph B to build a roof-mounted wireless telecommunication antennas to a greater height than the average building height limit of the R-2A district
- Administrative Use Permit, under BMC Section 23D.32.070 Paragraph C for a residential addition averaging more than 14 ft. in height

#### C. CEQA Determination: Categorically exempt pursuant to Section 153303 of the CEQA Guidelines ("New Construction or Conversions of Small Structures").

#### D. Parties Involved:

- Applicant Maria Kim, Complete Wireless Consulting for GTE Mobilnet of California Limited Partnership, d/b/a Verizon Wireless; 2009 V Street, Sacramento, CA 95818
- Property Owner Alex Papahadjopoulos, 215 Chestnut Street, Piedmont, CA 94611

Figure 1: Vicinity Map

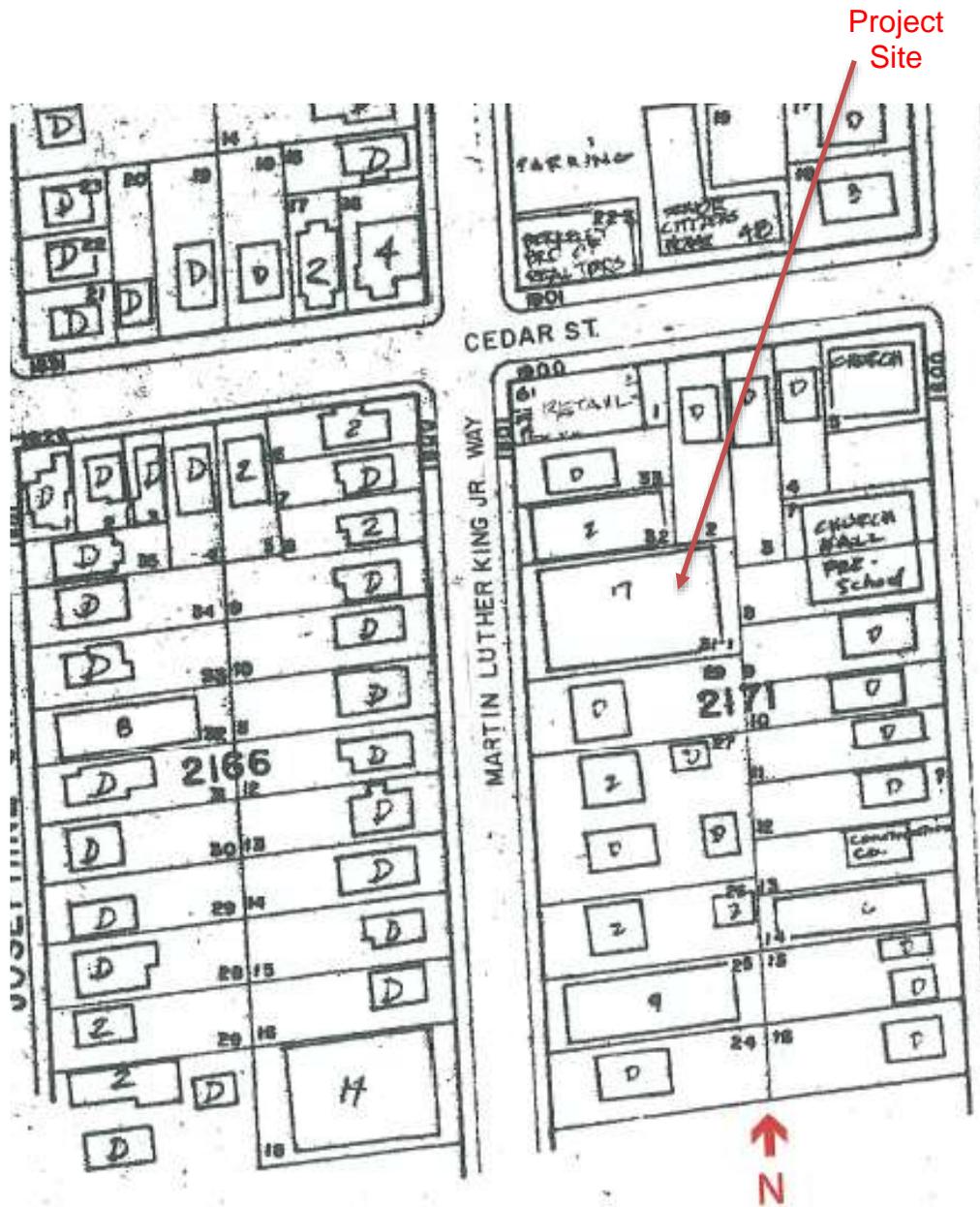
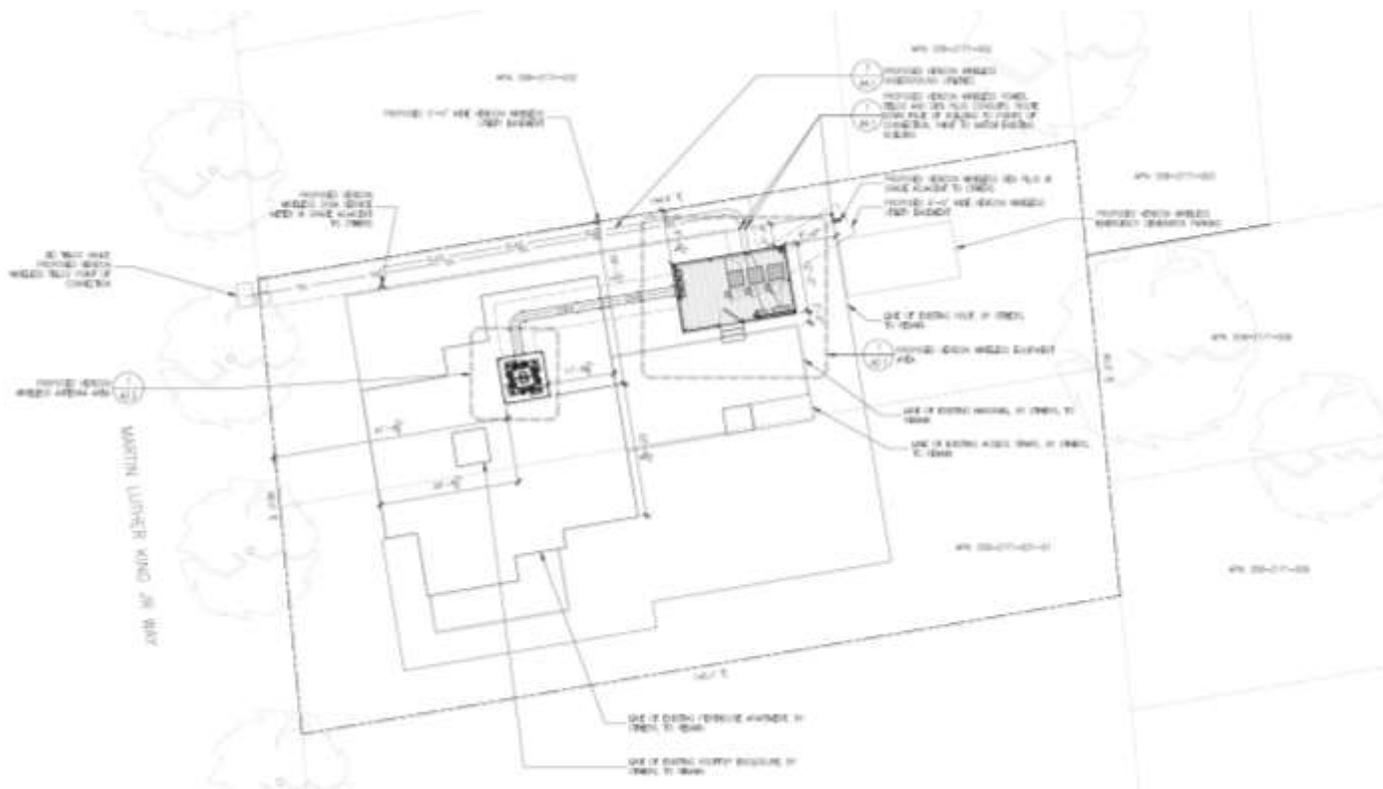


Figure 2: Site Plan



Note : Attachement 2 is the project plan set, and includes this site plan at a larger scale.

**Table 1: Land Use Information**

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Multi-Family Residential	R-2A	Medium-density Residential
Surrounding Properties	North	Two-unit residential		Medium-density Residential/ Neighborhood Commercial
	South	Single-family dwelling		Medium-density Residential
	East	Single-family dwellings		
	West	Religious assembly and childcare; dwellings		

**Table 2: Special Characteristics**

Characteristic	Applies to Project?	Explanation
Complies with FCC standards for RF EME levels	Yes	47 United States Code § 332 (c) (7) (iv) prohibits the regulation of personal wireless facilities by state and local governments on the basis of radio frequency emissions to the extent that such facilities comply with the Federal Communication Commission’s regulations concerning such facilities and emission levels. This application demonstrates compliance with all applicable FCC standards as described in Section V-A of this report and documented in Attachment 4; the City’s RF EME consultant has peer reviewed and confirmed these facts.
Subject to Federal shot clock and/or Tolling Agreement	Yes	47 United States Code § 332 (c) (7) (iii) and implementing FCC Regulations, including Regulation 09-99 as well as Section 6409 of the Spectrum Act (2012), require state and local governments to act on wireless telecommunication applications within a reasonable time period of time and mandate the following periods: 60 days for non-substantial changes, 90 days for co-locations, and 150 days for new facilities where future co-locations are presumed. This proposed facility for a new facility shall receive action within 150 days or other timeframe as the applicant and City agree. In this case, the City’s current tolling extension will expire May 19, 2017.
Subject to preemptive State approval	No	Pursuant to California Government Code section 65964.1 for Wireless telecommunications facility approval, this request may not be deemed approved when the reasonable time frames of the federal code are not met (see explanations, above) because the proposed facility does meet the State’s criteria under California Government Code section 65850.6.

Characteristic	Applies to Project?	Explanation
Historic Resources	No	This property is not a City of Berkeley Landmark, and does not appear on the State's Register of Historic Resources or Historic Resource Inventory. Staff has no reason to believe this property represents a historic resource.
Rent Controlled Units	Yes	The subject building is regulated under Berkeley's Rent Control Ordinance, BMC Chapter 13.76. The proposed project would not affect this status or the status of any rental units in the building.

**Table 3: Project Chronology**

Date	Action
September 10, 2014	Application submitted
October 7, 2014	Application deemed incomplete
July 2, 2015	Neighborhood Outreach meeting held at North Berkeley Senior Center
July 27, 2015	Tolling agreement received
August 25, 2015	Supplemental RF EME study by Hammett & Edison received
August 27, 2015	Public hearing notices mailed/posted
September 10, 2015	ZAB hearing – hearing continued to permit additional public outreach
October 20, 2015	Neighborhood Outreach meeting held at North Berkeley Senior Center
December 15, 2015	Tolling extension received
August 23, 2016	Tolling extension received
October 7 & 25, 2016	Applicant revised Project Plans and provided a revised Maintenance and Operation Statement
November 10, 2016	Tolling extension received
January 16, 2017	Supplemental RF EME study with additional data received
February 13, 2017	Application deemed complete
February 2017	Tolling extension received
March 2017	Tolling extension received
April 12, 2017	Public Hearing Notices mailed/posted
April 27, 2017	ZAB Hearing
May 19, 2017	Current tolling extension to expire

**Table 4: Development Standards**

Standard BMC Sections 23C.17.060, 23D.32.070-080		Existing	Proposed	Permitted/ Required
Lot Area (sq. ft.)		11,600	11,600	5,000 min.
Gross Floor Area (sq. ft.)		18,400	18,400	Not regulated
Dwelling Units		17	17	7 max.
Building Height	Average (ft.)	40.5	40.5	28 max.
	Stories	4	4	3 max.
Roof projections for wireless facilities (ft.)		2 (not wireless)	10	15 max.
Building Setbacks (ft.)	Front	15	15	15 min.
	Rear	42	42	15 min.
	Left Side	4	4	4 min.
	Right Side	7	7	4 min.
Lot Coverage		48	48	35 max.
Parking		17	17	One per unit min.

## II. Project Setting

**A. Neighborhood/Area Description:** The project site is at 1615 Martin Luther King (MLK) Jr. Way, three parcels south of Cedar Street. MLK Jr. Way is one of Berkeley’s major streets and Cedar Street serves a collector. The neighborhood surrounding the 1600-block of MLK Jr. Way is primarily a low- to medium-density residential area with a mixture of single-family homes, duplexes and small multi-family residential developments in the suburban cottage style. There are a limited number of large, modern-style multi-family developments which were constructed during the 1960’s. There are two low-rise commercial buildings on the east side of the intersection of MLK Jr. Way and Cedar Street; one hosts the North Berkeley Wine Merchants (at 1601 MLK Jr.). A church with a school and childcare center facility, Berkeley Fellowship of Unitarian Universalists, is located on the southwest corner of Cedar and Bonita Street (1606 Bonita); it extends south and shares a rear property line with the project site.

This neighborhood is walking distance to commercial districts such as Downtown and North Shattuck.

**B. Site Conditions:** The subject parcel is an interior lot on the east side of the 1600-block of MLK Jr. Way. It is larger than most parcels in the neighborhood with an area of approximately 11,600 sq. ft.

The main building was constructed in 1965 under Building Permit #104-455. It is four stories and approximately 40.5 ft. tall and contains 17 apartment units. There are four units on each of the first through third floors, and a penthouse unit that

comprises the entire fourth floor and features access to roof decks that provide east-facing views at the front of the building and west facing views at the rear. The property contains a total of 17 parking spaces, some located in the basement of the main building while others are located in the rear yard setback.

It is designed in a modern style with flat roofs and stucco façades articulated with small private balconies. The front yard features a wooden fence enclosing a private outdoor space, a retaining wall along the sidewalk and landscape plantings.

This building was legally constructed and, therefore, its excessive conditions related to building height (40.5 ft. where a maximum of 28 ft. is permitted), unit density (a total of 17 where only seven are permitted) and lot coverage (48% where only 35% is permitted) are lawfully non-conforming. It is taller, larger and more dense than the two- and three-story residential buildings that surround it.

### **III. Project Description**

This Use Permit proposal request the establishment and installation of a new, un-manned wireless telecommunication facility on the roof of a four-story residential building. The facility would consist of two primary components: a four-sector antenna unit mounted within a leased area on the roof of the fourth-story penthouse apartment of the subject building; and a collection of support equipment to be located at the rear of the building on the third-story roof, adjacent to the fourth-story penthouse. Both components of the facility would be concealed from direct view behind screens. Access to the proposed facility would be provided by an existing roof access door above the third story, and the access to the penthouse-mounted antennas unit would be via ladder from the third floor roof.

The antenna lease area on the roof of the penthouse would include a total of eight individual panel antennas paired into four directional sectors: north, south, east and west. The panel antennas would be approximately 6 ft. above the roof surface. The proposed 10 ft.-tall screen enclosure would be textured and painted to match the subject building and comprise an area totaling 64 sq. ft.

The equipment lease area on the third floor would include several devices to support the proposed facility as well as a heating/ventilation/air conditioning (HV/AC) unit. The entire collection of devices would be concealed behind a 10 ft.-tall screen wall with a total area of 240 sq. ft. The power connections and necessary utilities would be provided via several hundred feet of cables, also concealed in a channel system designed and painted to match adjacent surfaces. The applicant has revised an earlier version of this proposal, to remove a back-up generator in this location and has requested, instead, to place a temporary generator on the ground at the rear of the building as needed; however, this location would interfere with access to parking and is not recommended. Please see the Project Plans, Attachment 2, for full details.

The Applicant Statement describing the project and their client's need to establish such a facility is included as Attachment 3 of this report.

## IV. Community Discussion

**A. Neighbor/Community Concerns:** Prior to submitting this application to the City in September 2014, the applicant installed a yellow Proposed Development Sign at the site and has maintained the sign since that time. On July 2, 2015 the applicant hosted a neighborhood meeting at the North Berkeley Senior Center but it was not well attended. The applicant hosted a second event on October 20, 2015 accompanied by the project RF EME engineer William Hammett of Hammett & Edison, and more than twenty interested parties attended including some residents of the subject building.

Since this application has been under review, staff has received multiple inquiries, correspondence, and telephone calls from local neighbors and residents of the building. The written correspondence is included as Attachment 10 of this report. Their stated concerns relate to: the appropriateness of the subject property for this kind of non-residential use; potential health risks of radio frequency electromagnetic emissions (RF EME) exposure; the City's review process and opportunities to be heard by decision-makers; whether the proposed facility is designed to minimize visual and aesthetic impacts; and the assurance of privacy for residents of the building. All of these matters are addressed in the report with the exception of potential health risks because the prevailing federal, state and local laws preclude the City's regulation of RF EME and RF EME levels that comply with the standards set by the Federal Communication Commission.

On August 20, 2016 and March 20, 2017 staff visited the site and the residence of Mary Broderick a long-term tenant of the building and current occupant of the penthouse, Unit 401. Photographs of the Berkeley Hills view from Unit #401 are provided as Attachment 8 of this report and discussed in Section V-D, below.

On April 12, 2017 City staff mailed and posted notices of this public hearing in accordance with the requirements of BMC Section 23B.32.020. Similar notice was provided on August 27, 2015 for the previous hearing held September 10, 2015.

**B. Committee Review:** This application is not subject to review by the Design Review Committee or the Landmarks Preservation Commission.

## V. Issues and Analysis

**A. Compliance with BMC Chapter 23C.17 for Wireless Telecommunication Facilities.** The Federal Communications Commission, pursuant to regulations established under the Telecommunications Act of 1996 and the Spectrum Act of 2012, regulates the development of wireless communications infrastructure, limiting the scope and duration of local government review (47 USC § 332). The City of Berkeley's regulations with respect to wireless facilities have been written to compliment the Federal requirements, while protecting public safety, and promoting community welfare and aesthetic quality. They are found in BMC Chapter 23C.17. These regulations focus on compliance with established standards for necessity, RF EME exposure and noise, and regulate provider compliance, design and parking. Table 5, below, summarizes the application requirements and conformance of this

project to the required findings established in Chapter 23C.17 for the approval of Use Permits for new wireless communication facilities.

**Table 5: Wireless Facility Compliance Checklist – BMC 23C.17**

Regulatory requirement	BMC citation	Satisfied?	Explanation
<p><b>Necessity.</b> The applicant's statement of the project objectives and necessity demonstrate that project will prevent or fill a significant gap in coverage or capacity; and these statements have been peer reviewed to confirm that the project will meet these objectives.</p>	<p>23C.17.040; 23C.17.100</p>	<p>Yes.</p>	<p>A peer review by the City's consulting engineer (AECOM, March 16, 2017) confirmed that the applicant's statement of project necessity complied with applicable FCC standards.</p>
<p><b>RF EME exposure.</b> Compliance with FCC RF EME exposure limits shall be demonstrated and peer reviewed.</p>	<p>23C.17.040.F.1</p>	<p>Yes.</p>	<p>On April 15, 2016 William Hammett of Hammett &amp; Edison, Inc. prepared a RF EME study of the proposed facility and then supplemented the study with additional data on January 16, 2017. This study predicts that the RF EME levels for the proposed facility would not exceed the FCC's standards for public exposure limits. Predicted levels inside the subject building would not exceed 6.8% of the limit, or 2.6% at the ground, or 0.72% near the rear property line. A peer review study by the City's engineering consultant, AECOM, confirmed the accuracy of the calculations and methodology presented in the study and the conclusions of compliance with FCC standards.</p>
<p><b>Noise.</b> Applicant shall provide a noise study demonstrating that the facility will comply with the Berkeley Community Noise Ordinance (BMC 13.40).</p>	<p>23C.17.080.C</p>	<p>Yes.</p>	<p>The applicant provided a noise study, see Attachment 6, which concludes that the proposed facility would comply with City's noise ordinance. The study included a proposed roof-mounted generator which has been removed from the project plans, so the noise levels from the facility are expected to be even lower than the estimates in the noise study.</p> <p>On September 4, 2015 the City's noise consultant, Illingworth &amp; Rodkin, peer reviewed the applicant's noise study and confirmed compliance with the Community Noise Ordinance.</p>
<p><b>Provider compliance certification.</b> Operator has filed a statement of compliance with FCC requirements with respect to all of their facilities in the City of Berkeley.</p>	<p>23C.17.090.A.2 or 23C.17.100.B.4</p>	<p>Yes.</p>	<p>Verizon provided the requisite annual compliance report on January 6, 2017. See Attachment 7.</p>

Regulatory requirement	BMC citation	Satisfied?	Explanation
<b>Projection Limits.</b> Project is within the applicable limits for rooftop projections.	23C.17.060.D; 23E.40.060.B	Yes	The proposed roof-mounted antennas and screening device measure approximately 10 ft. in height and would project approximately 10 ft. above the penthouse roof. The proposed roof equipment and screen enclosure measure approximately 10 ft. in height and would project 10 ft. above the third floor roof. These measurements would comply with the City's maximum projection standard of 15 ft.
<b>Design.</b> Project is designed to minimize potential visual impacts.	23C.17.070	No	The proposed rooftop facility is designed with the screening devices that would result in even greater mass and bulk at the subject building which currently exceeds the development standards for the R-2A Zoning district. This condition would not minimize the proposed facility's visual impacts. See Sections V.C and D of this report.
<b>Parking.</b> Project shall not reduce parking below the amount required.	23C.17.070.O	No	The proposed facility does not require removal of any of the existing on-site parking spaces at the subject property. However, the temporary placement of an emergency generator in a required vehicle aisle would impair functionality of the existing parking at this property and, thereby, would violate the requirement to maintain parking access in accordance with BMC Section 23D.12.020.B.

This proposal satisfies the federal and state requirements for approval but does not meet all of the City's local requirements for compliance, compatibility and general non-detriment. The proposal is not designed in manner that would minimize its potential visual impacts related to building mass and view impacts. The proposed location of the temporary generator at the rear of the building would interfere with the vehicle access to the required on-site parking. And the proposal represents the intensified use of a property that is already functioning beyond the limits of the district. Therefore staff cannot recommend favorable action on this request. These matters are described in more detail below.

**B. Intensification of the use of a lawfully non-conforming residential development.** The subject property is lawfully non-conforming owing to its excessive residential unit density, lot coverage, average building height and number of stories; see Development Standards, Table 4 in this report. While the residential use of the property conforms to R-2A regulations, the property currently supports 17 units where only seven would be permitted. This means that, even now, the property functions at a level that is greater and more intense than the district would otherwise allow.

Although wireless telecommunication facilities are a permitted land use in this district, the request to establish an additional use at this over-developed property appears to be contrary to at least one of the Purposes of the R-2A district:

*D. Permit only that intensity of use which will be compatible with existing low density residential structures and will be detrimental to the immediate neighborhood (BMC Section 23D.32.020 – Purposes).*

In Staff's opinion, the proposed facility represents a request to further intensify use of a property that has already surpassed the intended limits of development and activity in this residential district. The Board may find that this request is not permissible under these conditions.

This intensification would be further exacerbated by the proximity of the facility to the existing dwelling uses on the property. The City has approved other wireless facilities on non-conforming residential properties, most recently at 2708 College Avenue, Use Permit #2016-0161. However, the subject property and proposal are unique because of the facility's proposed proximity to the existing residential units in the building, particularly Unit 401 – the fourth-story penthouse. In this instance the facility would be immediately above (e.g. proposed antennas) and adjacent (e.g. proposed support equipment) to this existing residence; in other instances, the approved facilities were located above stairwell penthouses and on roof surfaces with no adjacent dwelling uses. Operation of the approved facility on College Avenue will not interfere with the building's residential occupants. In contrast, the subject proposal lacks a similarly adequate separation between the existing and proposed activities.

The operation and maintenance of the proposed facility could result in impacts to the privacy and comfort of the residents at 1615 MLK Jr. Way. For example, access to the proposed antennas would be provided via a ladder from the third floor roof to the fourth floor roof, and this ladder would be placed near the otherwise private penthouse and roof deck of Unit 401. The applicant's Maintenance and Operations Statement does not provide enough information for the City or residents to determine the practical effects of these two activities coexisting. It is difficult to understand the delineation between the proposed commercial operation and the continued enjoyment and expectation of residential privacy. Some building residents have documented their concerns about this matter in correspondences to the City, namely Mary Broderick of Unit 401 and Josh Apgar of Unit 306; see Attachment 10.

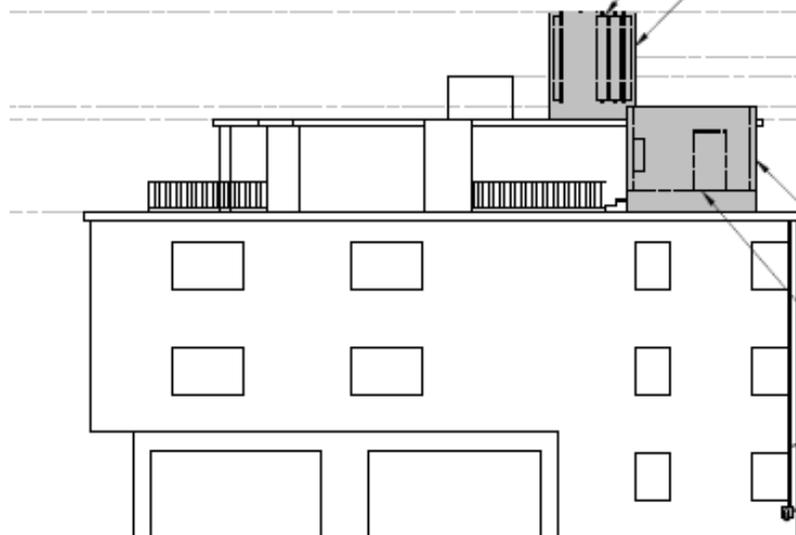
For all of these reasons, staff concludes that this proposal for a new wireless telecommunication facility would not be appropriate for this site, where it would intensify the use of the property in manner that would be incompatible with this existing low-density residential neighborhood and the nearest dwellings within the building.

**C. Building mass and proposal for additional vertical and horizontal projection.**

The subject building is lawfully non-conforming for its height, residential density, and lot coverage. Though the proposed wireless facility would conform to the maximum roof projection limits for such a facility, the proposal would worsen the appearance of the existing building's height, massing and bulk.

At four stories and 40.5 ft. in height, the subject building is taller than the two- and three-story buildings in the immediate vicinity of the project site and surpasses the R-2A district maximum permitted height of only three stories and 28 ft. (Berkeley Municipal Code Section 23D.32.070.C). This building is larger and taller than the surrounding buildings and, therefore, is the most prominent built structure in the immediate area and is readily visible. The proposed facility would add to the building's perceived size and its visual impact, furthering the ill effects of its non-conforming conditions and potentially resulting in aesthetic impacts. Although the proposed screening devices are intended to conceal the roof-mounted antennas and roof equipment, they would create the appearance of more bulk and building mass. Please see the building elevation drawings in Attachment 2 and Figure 3 below.

**Figure 3. Existing building (white) & proposed facility profile (gray).**



These conditions represent aesthetic impacts that would be counter to the City's wireless telecommunications ordinance, which mandates that wireless facilities minimize visual impacts and be compatible in scale and integrated architecturally with the design of surrounding buildings; see BMC Section 23C.17.070 – *Design Requirements*. Therefore, staff recommends that the Board find these aspects of the proposal detrimental and not permissible.

- D. Potential view obstruction.** The applicant proposes to locate the equipment lease area for the new facility on the third-story roof of the subject building. In this location, the equipment and proposed enclosure screen would be immediately adjacent to Unit 401, which is the fourth-story penthouse residence at this site. Please see Attachment 2, Project Plans.

Contrary to the Applicant Statement, the proposed 10 ft.-tall enclosure for the rooftop equipment would result in an obstruction of a view corridor from Unit 401. Photographs taken from the penthouse are provided in Attachment 8 of this report. This photograph documents the existing, east-facing view of the Berkeley Hills from the rear windows and roof deck of Unit 401. Staff's annotated version of the

photograph illustrates the effect the proposed placement of the rooftop equipment and screen would have on this view.

The Zoning ordinance definition of *view corridor* (BMC Section 23F.04) includes vistas of the Berkeley Hills, such as the view of the Hills from Unit 401. Under Section 23D.32.090 (Findings) impacts to views must be considered when residential additions are proposed for buildings and structures in the R-2A district. The proposed 10-ft. enclosure screen is defined as a *residential addition* (BMC Section 23F.04) and, therefore, must be denied if found to unreasonably obstruct views.

Because a significant view from Unit 401 would be obstructed by the proposed facility, and because the applicant has not presented a thorough study of alternative locations for this facility that might avoid this impact, staff concludes that the obstruction is not reasonable and believes the Board could deny this Use Permit request in accordance with BMC Section 23D.32.090 Paragraph B.

- E. No alternative designs or sites presented or identified.** The applicant has not presented an alternative design for this site that would meet its stated coverage objectives while lessening or avoiding the potential impacts related to use intensity, building massing and view obstruction. Parking access impediments could be avoided by locating the proposed back-up generator within the equipment lease area instead of at the proposed location behind the building within the vehicle maneuvering aisle. However, there are no available interior locations for the proposed equipment lease area, and there appear to be no alternative exterior locations due to the over-built conditions of this property. It is unclear if alternative locations for the equipment lease areas can be provided on this property.

The applicant considered only one other site in this area: the Calvary Presbyterian Church at 1940 Virginia Street. According to the Applicant Statement, challenges in the lease negotiations process prevented the Virginia location from becoming a viable candidate. However, no other sites are mentioned in the Applicant Statement and no analysis of the site acquisition criteria has been presented.

Absent a presentation or consideration of alternatives that might result in lessened impacts, staff cannot conclude that this proposal represents the least intrusive means of achieving the applicant's stated objectives to fill gaps in their coverage area. Thus, the Applicant has not demonstrated that this request for a new wireless telecommunication facility has met the Finding for Approval in BMC Section 23C.17.100.B.3, which stipulates that new Berkeley sites must not only be necessary to prevent or fill a significant gap in coverage, but also be "the least intrusive means of doing so." Given the lack of evidence to make such a case for this request, staff cannot recommend approval of this Use Permit application.

- F. Recommendation for denial.** The subject property has been developed well beyond the parameters of the Zoning ordinance, and owing to its excessive size and bulky design, is out of scale and inconsistent with the character of the other residential buildings in the immediate vicinity. The design of the proposed wireless facility exacerbates these undesirable qualities. Under these circumstances, the

proposal is potentially detrimental to the building's occupants, the neighbors of the property, the neighborhood in general and the City because it would:

- Be inconsistent with City's regulatory design and parking standards for wireless facilities (see Table 5);
- Be out of scale with the low-rise development pattern of neighborhood;
- Increase the building's excessive mass;
- Exacerbate building's visual and aesthetic incongruity with its surroundings; and
- Obscure a view corridor.

The applicant has not demonstrated that this proposal, with its potential impacts, represents the least intrusive means of achieving the desired coverage objectives.

For all of these reasons, staff recommends that the Board deny the applicant's request to establish a new roof-mounted, wireless telecommunications facility, with a finding that, although the proposal meets other permitting and regulatory requirements, it would be detrimental to views and result in aesthetic impacts to the subject property as well as to the neighborhood and the City in general, which are inconsistent with the City's adopted regulations for these kinds of facilities, and because it is not the least intrusive means of meeting the applicant's coverage objectives.

**G. General Plan Consistency:** 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: As discussed previously and in detail, the proposed roof-mounted wireless telecommunication facility is found to be inconsistent with these Policy directives because it would be:

- Designed in a manner that would exaggerate the poor visual qualities, non-conforming height and overall size of the existing building;
- Incompatible with the scale and character of the surrounding developments that abut and confront the project site;
- A building addition that would obstruct a view corridor; and
- An intensification of use beyond what is preferred in the district.

## VI. Recommendation

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

DENY Use Permit #2014-0025 pursuant to Section 23B.32.030 and subject to the attached Findings (see Attachment 1).

### Attachments:

1. Findings of Denial
2. Project Plans, received October 7, 2016
3. Applicant Statement incl. Maintenance & Operations Statement & Coverage Maps
4. Photo simulations
5. RF EME study by Hammet and Edison with supplemental information, submitted January 16, 2017
6. Acoustic study by Bollard Acoustical Consultants, Inc., submitted September 10, 2014
7. Annual Certification of Compliance, received January 6, 2017
8. Photographs: Potential view obstruction from Unit 401 at 1615 MLK Jr. Way
9. Notice of Public Hearing, mailed and posted April 11, 2017
10. Correspondence Received

**Staff Planner:** Fatema Crane, Senior Planner; fcrane@cityofberkeley.info, (510) 981-7410