

FILED CITY OF OAKLAND
OFFICE OF THE CITY CLERK
OAKLAND

AGENDA REPORT

2011 OCT 20 PM 2: 30

TO: Office of the City Administrator
ATTN: Deanna J. Santana
FROM: Community and Economic Development Agency
DATE: November 1, 2011

RE: Conduct A Public Hearing And Upon Conclusion Adopt A Resolution Denying Appeal #A11114 And Upholding The Decision Of The Planning Commission To Deny Case # DR10331, To Attach An Antenna And Extension To The Top Of A Wooden Utility Pole Adjacent To 6045 Shirley Drive, Given The Project Would Negatively Impact Significant Views From Primary Living Areas At 6933 Wilton Drive

SUMMARY

On June 1, 2011, the Planning Commission denied an application submitted by Mr. Rich Hirsch on behalf of Extenet ("Extenet") for a **Regular Design Review** with additional telecommunications findings to attach an antenna to a wooden utility pole. On June 13, 2011, the appellant Ms. Patti Ringo of Extenet filed a timely Appeal of the Planning Commission's decision (#A11114). Staff recommends the City Council deny the Appeal and uphold the Planning Commission's decision to deny the application. This report describes the Appeal and staff's analysis and recommendation. Staff has attached a Resolution to this report.

FISCAL IMPACT

This is an appeal of a Zoning Application; therefore, there is no fiscal impact. Staff time required to process this appeal is cost-covered through the Appeal fees paid by the appellant.

BACKGROUND

Application

On December 4, 2010, Extenet submitted a Regular Design Review application to the Planning and Zoning Department to create a new wireless telecommunications facility. The proposal was to attach an 8'-4" antenna/extension to a 38'-6" wooden Joint Pole Authority (JPA) utility pole owned by PG&E and located in the City public right-of-way adjacent to 6045 Shirley Drive.

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Application Review and Decision

The site is a section of public right-of-way along the west side of Shirley Drive containing a 38'-6" wooden utility pole. This section of road contains no sidewalk. There are homes on down slope lots along the west side of the street and the rear yards of through lots with homes fronting Wilton Drive along the east side of the street. The area consists of a low-density neighborhood of single-family homes on wooded hillsides.

The proposal was to attach one 2'-4" tall telecommunications antenna and a six-foot tall extension ("bayonet") on top of a 38'-6" tall wooden utility pole (and equipment at seven feet to approximately thirteen feet in height) for wireless telecommunications purposes. PG&E had already applied the bayonet in anticipation of an approval; that work did not require a Building Permit and the City was not informed. The antenna would have been nearly cylindrical in shape, slightly flared out towards the bottom. The pole mounted equipment cabinets would be contained in a singular shroud painted matte (non-reflective) brown to match the color and finish of the wooden pole.

In consideration of the proposal, site surroundings, and discussions regarding recent cases related to this relatively new type of wireless antenna facility, including its proposed right of way location, staff recommended Planning Commission denial of this application for the following reasons:

The site is located in a private view corridor involving significant views from primary living spaces at 6933 Wilton Drive. The project involved an extension atop a utility pole that would encroach into this protected private view. Wilton Drive essentially runs along a ridge and the home was likely designed to take advantage of the natural view of the San Francisco Bay, bridges (Bay, Golden Gate, Richmond-San Rafael), and downtown Oakland and San Francisco. The existing "bayonet" extension is visible from the property's living room and rear view-oriented deck while standing or seated albeit its height is somewhat obscured by vegetation. Attachment of the antenna would, however, further encroach into the view. The project's encroachment into the view would likely have the effect of reducing the enjoyment and value of the property and would set an undesirable precedent, especially as other poles exist in the area. It has been staff's practice in reliance upon the Municipal Code, the General Plan, Planning Code, and Design Review Guidelines to consider major view impacts in analyzing development applications.

When the project was publicly noticed, the affected neighbor contacted staff that visited the property and confirmed the potential negative impact under the General Plan, Planning Code, and Design Guidelines. Staff informed the applicant the proposal could not be supported and offered them the option to redesign or withdraw and relocate. The applicant chose to continue with the request as submitted. On June 1, 2011 the Planning Commission denied the application and on June 13, 2011, Exenet timely submitted an Appeal of the Planning Commission's decision to the Planning and Zoning Department.

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KEY ISSUES AND IMPACTS—ISSUES RAISED ON APPEAL

The Planning Code indicates that for an appeal of a Planning Commission decision on a Design Review:

The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Commission or wherein its decision is not supported by the evidence in the record.

In considering the appeal, the Council shall determine whether the proposal conforms to the applicable design review criteria, and may approve or disapprove the proposal or require such changes therein or impose such reasonable conditions of approval as are in its judgment necessary to ensure conformity to said criteria. (OMC Sec. 17.136.090)

Following is a copy of the language contained in the Appeal letter submitted to the City:

"Extenet considers that, at the subject location, the impact of the proposed installation upon the private view corridor of the neighboring home at 6933 Wilton Drive is relatively minor, and would only impinge upon a small portion of their overall view. Further, only one home's private view is impacted, where the proposed installation would provide service to the entire neighborhood."

The appellant's appeal is attached as **Attachment A**. The Appeal essentially relies on the assumption that the Planning Commission erred in not making required findings to approve a Design Review permit for the project. The bases for the Appeal are as follows:

- (1) **The view impact resulting from the project would be minor, only, and is therefore an acceptable negative impact**
- (2) **Only one property's view would be negatively impacted by the project as opposed to several, which is an acceptable negative impact**
- (3) **The project would benefit area residents and negative impacts resulting from the project are therefore acceptable**

The appellant fails to provide a substantive basis for each of the issues raised as required in the appeal form itself and the Oakland Planning Code. The applicant-appellant's bases for the appeal, as contained in the appeal letter, are shown again in bold text below with a staff response following each point in normal type.

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(1) The view impact resulting from the project would be minor, only, and is therefore an acceptable negative impact

Staff Response:

The Appellant admits the project would result in a view impact. Under City regulations, this particular impact would be considered more than minor. Under the Planning Code, required Design Review findings indicate:

B. For Nonresidential Facilities and Signs.

1. That the proposal will help achieve or maintain a group of facilities which are well related to one another and which, when taken together, will result in a well-composed design, with consideration given to site, landscape, bulk, height, arrangement, texture, materials, colors, and appurtenances; the relation of these factors to other facilities in the vicinity; and the relation of the proposal to the total setting as seen from key points in the surrounding area. Only elements of design which have some significant relationship to outside appearance shall be considered, except as otherwise provided in Section 17.136.060;

2. That the proposed design will be of a quality and character which harmonizes with, and serves to protect the value of private and public investments in the area;
(OMC Sec. 17.136.050)

The proposal for a telecommunications facility atop a utility pole where the extension would encroach into a private view does not constitute a design preserving and enhancing the total setting as seen from key points in the area. The proposal increases the height of the utility pole by 8'-4" including the antenna array which would partially obstruct a spectacular view from an adjacent home constructed to take advantage of the view. It has been staff's practice in reliance upon the Municipal Code, Planning Code, and Design Review Guidelines (Criterion 1: View) to consider view impacts in analyzing development applications. Additionally, required Design Review findings stipulate that a project also meet Design Review Guidelines as follows:

3 That the proposed design conforms in all significant respects with the Oakland General Plan and with any applicable design review guidelines or criteria, district plan, or development control map which have been adopted by the Planning Commission or City Council (OMC Sec. 17.136.050(B)(3))

Correspondingly, the Design Review Guidelines indicate:

Criterion I: VIEWS

A project shall make a reasonable effort to maintain the most significant views from primary living spaces of existing residences on lots in close proximity to the project site. View protection is considered for views that are located within view corridors subject to view protection limitations.

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The Guidelines indicate that the three highest-priority significant views are: bridges, downtowns, and the bay. The first and third highest-priority primary living spaces are: living room and view oriented deck. The highest priority view corridor is a down slope rear elevation. View impact evaluation includes adjacent properties from seated sight lines. View protection limitations (reasonable efforts) include revising the project to maintain an effected property's best views. View protection techniques include lowering the project.

Therefore, the appellant-described view impact would not be minor and furthermore view protection has not been pursued by them.

(2) Only one property's view would be negatively impacted by the project as opposed to several, which is an acceptable negative impact

Staff Response:

Staff cannot confirm or deny this statement, but it is irrelevant. While there may be other unconfirmed potential view obstructions related to the proposal, the confirmed potential to negatively impact the property at 6933 Wilton Drive has been noted by the property owner, staff, Planning Commission, and Appellant.

(3) The project would benefit area residents and negative impacts resulting from the project are therefore acceptable

Staff Response:

Staff believes that the project can be redesigned (relocated) so that it will not negatively impact neighboring properties. In fact, the applicant has approached staff with an alternate location on a street in the area. Additionally, not all neighbors would benefit from the proposal in question. Several neighbors presumably would not use the service and although it is assumed service would improve for customers of the carrier, the Appellant has not demonstrated this.

In conclusion staff finds the proposal would create a significant negative impact to at least one property which in and of itself is grounds to deny the project. Furthermore, other unidentified views might be similarly impacted and the benefits of the project would not extend to all neighbors. Staff finds that the Planning Commission did not err in determining the proposal does not meet required regulations, findings, or guidelines.

ENVIRONMENTAL DETERMINATION

As stated in the Planning Commission report, CEQA statutorily exempts projects that are disapproved (Guidelines Section 15270). Therefore, the City Council's action to uphold the Planning Commission's denial of this application, as recommended in this staff report, is exempt from CEQA.

SUSTAINABLE OPPORTUNITIES

Economic:

To deny the appeal and disallow the proposal to attach an antenna and extension to the top of a wooden utility pole might maintain value of the property located at 6933 Wilton Drive due to prevention of view obstruction at a view property.

Environmental:

To deny the appeal and disallow the proposal to attach an antenna and extension to the top of a wooden utility pole would likely have no effect on the natural environment.

Social:

To deny the appeal and disallow construction of the proposal to attach an antenna and extension to the top of a wooden utility pole would likely have no effect on the social environment.

DISABILITY AND SENIOR CITIZEN ACCESS

The appeal or proposed construction would not affect access to disabled or senior citizens.

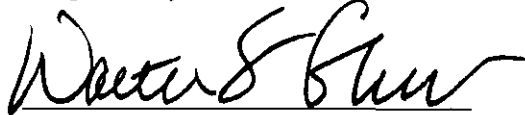
RECOMMENDATION(S) AND RATIONALE

Staff recommends the City Council deny the Appeal and uphold the Planning Commission's decision to deny the application. Staff has attached a Resolution for denial to this report.

ACTION REQUESTED OF THE CITY COUNCIL

Staff requests that the City Council Adopt a Resolution Denying Appeal # A11114 and Upholding the Decision of the Planning Commission to Deny Case # DR10331 to attach an antenna/extension to a wooden utility pole adjacent to 6045 Shirley Drive.

Respectfully submitted,



Walter S. Cohen, Director
Community and Economic Development Agency

Reviewed by:
Scott Miller, Zoning Manager

Prepared by:
Aubrey Rose, Planner II
Planning and Zoning Division

**APPROVED AND FORWARDED TO THE
CITY COUNCIL:**


Office of the City Administrator

ATTACHMENTS

- A. Appeal letter by Ms. Patti Ringo/Extenet submitted June 13, 2011
- B. Planning Commission staff report dated May 18, 2011 and decided upon on June 1, 2011
- C. Photographic views from 6933 Wilton Drive depicting extensions for staging of antennas within significant view corridors as seen from primary living spaces
- D. Letter from Mark Homer and Judy Yu (6933 Wilton Drive) dated September 28, 2011 expressing opposition to Appeal

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(Continued)

- A DECISION OF THE CITY PLANNING COMMISSION (APPEALABLE TO THE CITY COUNCIL)** Granting an application to: OR Denying an application to:

YOU MUST INDICATE ALL THAT APPLY:

Pursuant to the Oakland Municipal and Planning Codes listed below:

- Major Conditional Use Permit (OPC Sec. 17.134.070)
- Major Variance (OPC Sec. 17.148.070)
- Design Review (OPC Sec. 17.136.090)
- Tentative Map (OMC Sec. 16.32.090)
- Planned Unit Development (OPC Sec. 17.140.070)
- Environmental Impact Report Certification (OPC Sec. 17.158.220F)
- Rezoning, Landmark Designation, Development Control Map, Law Change (OPC Sec. 17.144.070)
- Revocation/impose or amend conditions (OPC Sec. 17.152.160)
- Revocation of Deemed Approved Status (OPC Sec. 17.156.170)
- Other (please specify) _____

FOR ANY APPEAL: An appeal in accordance with the sections of the Oakland Municipal and Planning Codes listed above shall state specifically wherein it is claimed there was an error or abuse of discretion by the Zoning Administrator, other administrative decisionmaker or Commission (Advisory Agency) or wherein their/its decision is not supported by substantial evidence in the record, or in the case of Rezoning, Landmark Designation, Development Control Map, or Law Change by the Commission, shall state specifically wherein it is claimed the Commission erred in its decision.

You must raise each and every issue you wish to appeal on this Appeal Form (or attached additional sheets). Failure to raise each and every issue you wish to challenge/appeal on this Appeal Form (or attached additional sheets), and provide supporting documentation along with this Appeal Form, may preclude you from raising such issues during your appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.

The appeal is based on the following: *(Attach additional sheets as needed)*

ExteNet considers that, at the subject location, the impact of the proposed installation upon the private view corridor of the neighboring home at 6933 Wilton Drive is relatively minor, and would only impinge upon a small portion of their overall view. Further, only one home's private view is impacted, where the proposed installation would provide service to the entire neighborhood.

Supporting Evidence or Documents Attached. *(The appellant must submit all supporting evidence along with this Appeal Form; however, the appeal will be limited evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.*

(Continued on reverse)

Location:	Existing wooden utility pole in public right-of-way adjacent to: 6045 Shirley Drive
Assessor's Parcel Numbers:	Adjacent: 048D-7296-027-00
Proposal:	To attach a concealed antenna on an extension (8'-4" total) to the top of a 38'-6" tall wooden utility JPA pole and related equipment in a singular sheathing at 7-ft. to 14'-9.5".
Applicant / Phone Number:	Rick Hirsch (for: Extenet) (415) 377-7826
Owners:	City of Oakland (public right-of-way); PG&E (utility pole)
Planning Permits Required:	Regular Design Review to attach a wireless telecommunications facilities to a JPA pole located in a residential zone
General Plan:	Hillside Residential
Zoning:	RH-4 Hillside Residential Zone – 4 (R-30 One-Family Residential Zone at time application submitted and deemed complete) / S-10 Scenic Route Combining Zone
Environmental Determination:	Statutorily exempt, Section 15270(a)(b)(c) of the State CEQA Guidelines: Project Which Are Disapproved
Historic Status:	None
Service Delivery District:	II
City Council District:	4
Date Filed:	December 14, 2010
Staff Recommendation:	Decision based on staff report
Finality of Decision:	<i>Appealable to City Council within 10 days</i>
For Further Information:	Contact case planner Aubrey Rose, Planner II at (510) 238-2071 or arose@oaklandnet.com

SUMMARY

The applicant Mr. Rick Hirsch (for Extenet) requests Planning Commission approval to attach one antenna and various related equipment to an existing wooden utility pole for wireless telecommunications purposes. The project is subject to Regular Design Review as an attachment to a utility pole located in a residential zone. As is the practice with all telecommunications installations located within 100-feet of residential zoning, this application is forwarded to the Planning Commission for review.

In this application, because of view impacts, staff recommends denial of the requested permit subject to the attached Findings for Denial.

BACKGROUND

Recent State case law (*Sprint v. Palos Verdes Estates*) has enabled the City to require Design Review for telecommunications facilities attached to existing Joint Pole Authority (JPA) utility poles located within the right-of-way. The Planning & Zoning Department has determined that such Design Reviews be decided at the equivalent level as telecommunications projects located on private property located in the same zone.

Under the Telecommunications Act of 1996, the Federal Communications Commission (FCC) preempted cities' zoning jurisdiction over wireless telecommunications facilities, limiting their authority to aesthetic review and confirmation of satisfactory radio frequency (RF) emissions reports. For further information the FCC can be contacted at 1-888-225-5322 or www.fcc.gov

SITE DESCRIPTION

The site is a section of public right-of-way along the west side of Shirley Drive containing a 38'-6" wooden utility pole. This section of road contains no sidewalk. There are homes on down slope lots along the west side of the street and the rear yards of through lots with home fronting Wilton Drive along the east side of the street. The area consists of a low density neighborhood of single-family homes on wooded hillsides.

PROJECT DESCRIPTION

The proposal is to attach one (1) two foot (2') tall telecommunications antenna ("Kathrein omni") and a six feet tall extension ("bayonet") on top of a twenty-nine foot tall wooden utility pole and equipment at seven feet to approximately thirteen feet in height for wireless telecommunications purposes. PG&E has already applied the bayonet in anticipation of an approval; this work does not require a Building Permit and the City was not informed. The antenna would be nearly cylindrical in shape, slightly flared out towards the bottom. The pole mounted equipment cabinets would be contained in a singular shroud painted matte (non-reflective) brown to match the color and finish of the wooden pole.

GENERAL PLAN ANALYSIS

The site is located in a Hillside Residential area under the General Plan. The intent of the Hillside Residential area is: *"to create, maintain, and enhance residential areas characterized by detached, single unit structures."* The General Plan is silent on telecommunications activities (which are now classified as Essential Service Civic Activity under the Planning Code). The project would encroach into a private view as described in the KEY ISSUES AND IMPACTS section of this report. Staff finds the proposal to not conform to the General Plan.

ZONING ANALYSIS

The site is located within the RH-4 Hillside Residential Zone - 4. The intent of the RH-4 zone is: *"to create, maintain, and enhance areas for single-family dwellings on lots of 6,500 to 8,000 square feet and is typically appropriate in already developed areas of the Oakland Hills."* At the time the project was submitted and deemed complete, the property was located within the R-30 One-Family Residential and S-

10 Scenic Route Combining Zones. The intent of the R-30 Zone is: *"to create, preserve, and enhance areas for single-family dwellings in desirable settings for urban living, and is typically appropriate to already developed lower density dwelling areas of the city."* The intent of the S-10 Scenic Route Combining Zone is: *"to create, preserve, and enhance areas where hillside terrain, wooded canyons and ridges, and fine vistas or panoramas of Oakland, neighboring areas, or the Bay can be seen from the road, and is typically appropriate to roads along or near ridges, or through canyons, of the Oakland Hills which roads have good continuity and relatively infrequent vehicular access from abutting properties."* The change in Zoning does not affect the project.

As described in the Background section of this report, telecommunications facilities located on JPA poles are now subject to Design Review. Additional findings for Macro facilities apply to all JPA cases. Additional findings for the S-10 Scenic Route Combining Zone apply to this case. Findings required to approve the project ensure the location and design are inconspicuous and concealed to the extent practicable. Authority for review and approval is to be equivalent to Zoning for private property. Therefore, the subject proposal requires Planning Commission review. The Planning Commission has approved a JPA case that was located in front of trees and not residences and has continued another case for relocation and/or redesign that was located fronting a residence. The project would encroach into a private view as described in the KEY ISSUES AND IMPACTS section of this report. Staff finds the proposal inconsistent with the Planning Code.

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act (CEQA) Guidelines statutorily exempt projects which are disapproved (Section 15270) and the proposal is therefore not subject to further Environmental Review.

KEY ISSUES AND IMPACTS

In consideration of the proposal, site surroundings, and discussions regarding recent cases under this relatively new type of review, staff recommends Planning Commission denial of this application for the following reasons:

The site is located:

- in a private view corridor involving significant views from primary living spaces

The project involves an extension atop a utility pole that would encroach into a protected private view at 6933 Wilton Drive. Wilton Drive essentially runs along a ridge and the home was likely designed to take advantage of the natural view of the San Francisco Bay, bridges (Bay, Golden Gate, Richmond-San Rafael), Oakland, and San Francisco. The existing "bayonet" extension is visible from the property's living room and rear view-oriented deck while standing or seated albeit its height is somewhat obscured by vegetation. Attachment of the antenna would, however, further encroach into the view. The project's encroachment into the view would likely have the effect of reducing the enjoyment and value of the property and would set an undesirable precedent, especially as other poles exist in the area. It has been staff's practice in reliance upon the Municipal Code, Planning Code, and Design Review Guidelines to consider major view impacts in analyzing development applications. When the project was publicly noticed, the affected neighbor contacted staff who visited the property. Staff informed the applicant the proposal could not be supported and offered them an option to redesign or withdraw and relocate. The applicant chose to sustain the request as submitted.

In conclusion, staff recommends denial of the request. The neighbor who would have a view obstructed has submitted correspondence expressing opposition to the project (Attachment D).

- RECOMMENDATIONS:**
1. Affirm staff's environmental determination.
 2. Deny the Regular Design Review subject to the attached Findings for Denial.

Prepared by:

AUBREY ROSE
Planner II

Approved by:

SCOTT MILLER
Zoning Manager
Community and Economic Development Agency

Approved for forwarding to the
City Planning Commission:

ERIC ANGSTADT
Deputy Director
Community and Economic Development Agency

ATTACHMENTS:

- A. Findings for Denial
- B. Plans
- C. Applicant's Photo-Simulations
- D. Correspondence: Mark Homer (6933 Wilton Drive)
- E. Photos from 6933 Wilton Drive provided by property owner

Attachment A: Findings for Denial

This proposal does *not* meet the following required findings under Regular Design Review Criteria (OMC Sec. 17.136.040(B)) as set forth below. Required findings *that cannot be made* are shown in bold type; explanations as to why these findings *cannot* be made are in normal type.

REGULAR DESIGN REVIEW CRITERIA FOR NONRESIDENTIAL FACILITIES (OMC SEC. 17.136.040(B))

1. That the proposal will help achieve or maintain a group of facilities which are well related to one another and which, when taken together, will result in a well-composed design, with consideration given to site, landscape, bulk, height, arrangement, texture, materials, colors; and appurtenances; the relation of these factors to other facilities in the vicinity; and the relation of the proposal to the total setting as seen from key points in the surrounding area. Only elements of design which have some significant relationship to outside appearance shall be considered, except as otherwise provided in Section 17.136.060;

The proposal for a telecommunications facility atop a utility pole where the extension would encroach into a private view does not constitute a design preserving and enhancing the total setting as seen from key points in the area. It has been staff's practice in reliance upon the Municipal Code, Planning Code, and Design Review Guidelines (Criterion I: View) to consider view impacts in analyzing development applications.

2. That the proposed design will be of a quality and character which harmonizes with, and serves to protect the value of, private and public investments in the area;

In consideration of the proposal, site surroundings, and discussions regarding recent cases under this relatively new type of review, staff recommends Planning Commission denial of this application for the following reasons:

The site is located:

- in a private view corridor involving significant views from primary living spaces

The project involves an extension atop a utility pole that would encroach into a private view at 6933 Wilton Drive. Wilton Drive which essentially runs along a ridge and the home was likely designed to take advantage of the natural view of the San Francisco Bay, bridges (Bay, Golden Gate, Richmond-San Rafael), Oakland, and San Francisco. The existing "bayonet" extension is visible from the property's living room and rear view-oriented deck while standing or seated. Attachment of the antenna would further encroach into the view. The bayonet is among trees; should these trees be removed or reduced in the future, the negative effect of the telecommunications facility on the view would be worsened. The project's encroachment into the view would likely have the effect of reducing the enjoyment and value of the property and would set an undesirable precedent, especially as other poles exist in the area.

Photos Documenting view obstructions from proposed communications
antenna to be placed atop 8' utility pole extension
6933 Wilton Dr, Oakland CA 94611
#A11114



1. Standing View from Deck
(obstruction of Berkeley and
Bay, and Mt. Tam views)

Pole top extension



2. Seated View from Deck
(obstruction of Mt. Tam View)

Pole top extension

3. View from Living Room window
(obstruction of 2 bridge view)

Golden Gate Bridge →
Bay Bridge →
Pole top extension →



4. View from 2nd Living Room window
(obstruction of San Francisco city view)

Pole top extension →





5. View from Dining Room window
(obstruction of Richmond San Rafael bridge view)

Richmond / San Rafael bridge

Pole top extension



6. 2nd View from Dining Room window – seated
(obstruction of Bay Bridge and Golden Gate Bridges view)

Pole top extension



7. Seated View from Deck

(obstruction of Richmond San Rafael bridge view)

Richmond / San Rafael bridge

Pole top extension

MARK HORNER
JUDY YU

6933 Wilton Dr
Oakland, CA 94611
510-479-1649

Sept 28, 2011

Aubrey Rose Planner II
City of Oakland Community & Economic Development Agency
Planning & Zoning Division Zoning Section
250 Frank H. Ogawa Plaza Suite 2114

RE: Case File #A11114

Dear Mr. Rose,

The proposed installation by Extenet of a communications antenna atop a utility pole extension on Shirley Drive (original Case #DR10-331) was rightfully denied by the Planning Commission back in June of this year, as it will have a significant negative impact upon our view, and value of our property, and is in clear violation of Oakland's view ordinance. Frankly, we were shocked and appalled to find that this decision was appealed by Extenet Systems, as the appeal goes counter to the recommendations, and the denial of the planning staff, the Planning Commission, Piedmont Pines Neighborhood Association, and all of the near-by-neighbors.

A unique feature of the property at 6933 Wilton Dr is how the view is perfectly framed by the cypress trees. The prior owners painstakingly sculpted these trees over three decades to preserve the stunning view and hide all existing power lines. When we purchased the property in July 2010, the view from the deck, living room, dining room, family room, and master bedroom were unobstructed. No power lines, antenna, or pole extensions were visible. This was an important criteria in our decision to buy, as was the fact that the utilities in Piedmont Pines neighborhood are to be under-grounded. The assessment for the under-grounding for our parcel was paid in full by the prior owners, Mr. Richard and Jean Spees.

The utility pole extension upon which the proposed antenna is to be placed is clearly visible from the deck, dining room, living room, and master bedroom. Any antenna, regardless of size, color, or design, placed atop this pole, will obstruct views of the Golden Gate Bridge (from deck and living room), the Richmond San Rafael bridge (from deck and dining room), and the Bay Bridge (from deck and living room). In addition, obstruction of city views of Oakland, Berkeley, San Francisco, as well as Mt. Tamalpais and the bay will occur similarly. The view obstruction will be amplified from a seated position in any of the above locations. On top of this, a communications antenna thrust up through the cypress trees will defile what was once a pristine and peaceful setting, by placing an unsightly object directly in the center of the view, visible from all points on the deck, and all primary living spaces of the house – it will glaringly stick out like a sore thumb.

After we purchased this property in July 2010 for \$1,045,000, we received a supplemental Property Tax bill in the amount of \$8,389.54. This was on top of a prior Tax bill of \$6,219.50. We are now paying \$14,609 per year in Property Tax to Alameda County. The city of Oakland has a responsibility to protect the home values of its residents. At a time when the city is clearly struggling financially, this is more important than ever, especially given that homes such as ours, many of which are located in the hills, pay a heavier tax burden. The need for communications infrastructure should not take precedence over the importance of protecting and preserving the beauty and natural setting of the Oakland Hills, and the existing views and home values of Oakland's home owners. The planning commission's decision of denial should be upheld by the City Council at the upcoming hearing on November 1, 2011.

Sincerely yours,

Mark Horner and Judy Yu

ATTACHMENT D

2011 OCT 20 PM 2:30


DEPUTY CITY ATTORNEY

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

A RESOLUTION DENYING APPEAL # A 11-114 AND UPHOLDING THE DECISION OF THE PLANNING COMMISSION TO DENY CASE # DR 10-331 TO ATTACH AN ANTENNA AND EXTENSION TO THE TOP OF A WOODEN UTILITY POLE ADJACENT TO 6045 SHIRLEY DRIVE GIVEN THE PROJECT WOULD NEGATIVELY IMPACT SIGNIFICANT VIEWS FROM PRIMARY LIVING AREAS AT 6933 WILTON DRIVE.

WHEREAS, on December 14, 2010, the applicant Mr. Rick Hirsch/Extenet, submitted an application for a Regular Design Review with additional findings to attach a 8'-4" antenna/extension to a 38'-6" wooden utility pole adjacent to 6045 Shirley Drive as case # DR10331 (Project); and

WHEREAS, the application was agendized for the Planning Commission hearing of June 1, 2011 and public notices were distributed; and

WHEREAS, the owner/occupant at 6933 Wilton Drive received public notice and contacted Planning and Zoning Division staff to express concern for potential view obstruction; and

WHEREAS, staff visited the residence and confirmed the home possesses "significant views" consisting of the San Francisco Bay, downtowns (Oakland and San Francisco), and bridges (Bay, Golden Gate, Richmond-San Rafael) from "primary living spaces" consisting of living room and view oriented deck that would be partially obstructed by the Project; and

WHEREAS, staff therefore concluded the proposal did not meet required Design Review findings under the Planning Code and did not adhere to Design Review Guidelines; and

WHEREAS, staff informed the applicant their Project would be recommended for denial for this reason and could be withdrawn and confirmed the applicant would sustain the request; and

WHEREAS, on June 1, 2011, the Planning Commission independently reviewed, considered and determined that the Project is statutorily exempt from the environmental review

requirements of the California Environmental Quality Act (“CEQA”) pursuant to section 15270 of the State CEQA Guidelines because the project was disapproved; and

WHEREAS, on June 1, 2011, the Planning Commission denied the application for case # DR10331; and

WHEREAS, on June 13, 2011 Ms. Patti Ringo/Extenet timely filed an appeal of the Planning Commission’s decision to deny the Project; and

WHEREAS, after giving due notice to the Appellants, the Applicant, all interested parties, and the public, the Appeal came before the City Council in a duly noticed public hearing on November 1, 2011; and

WHEREAS, the Appellants and all other interested parties were given the opportunity to participate in the public hearing by submittal of oral and written comments; and

WHEREAS, the public hearing on the Appeal was closed by the City Council on November 1, 2011; now, therefore, be it

RESOLVED: The City Council independently finds and determines that this Resolution complies with CEQA, as the Project is statutorily exempt from CEQA pursuant to CEQA Guideline Section 15270 “Projects Which Are Disapproved” of the State CEQA Guidelines. The Environmental Review Officer is directed to cause to be filed a Notice of Exemption with the appropriate agencies; and be it

FURTHER RESOLVED: That the City Council, having independently heard, considered, and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Application, the Planning Commission’s decision, and the Appeal, finds that the Appellant has not shown, by reliance on evidence in the record, that the Planning Commission’s decision was made in error, that there was an abuse of discretion by the Commission, or that the Commission’s decision was not supported by substantial evidence in the record. This decision is based on the November 1, 2011, City Council Agenda Report and the June 1, 2011, Planning Commission Report, which are hereby incorporated by reference as if fully set forth herein, on the reports and testimony provided at the hearing and on the City’s General Plan, Planning Code and other planning regulations as set forth below. Accordingly, the Appeal is denied, the Planning Commission’s decision to deny an 8’-4” antenna/extension to a 38’-6” wooden utility pole adjacent to 6045 Shirley Drive, is upheld, subject to the findings for denial adopted by the Planning Commission, each of which is hereby separately and independently adopted by this Council in full, as may be amended here; and be it

FURTHER RESOLVED: That, in support of the City Council’s decision to deny the Project, the City Council affirms and adopts as its findings and determinations (i) the November 1, 2011, City Council Agenda Report, attached to the report as Attachment “A” (including without limitation the discussion, findings and conclusions (each of which is hereby separately and independently adopted by this Council in full), and (ii) the June 1, 2011 City Planning Commission Staff Report denying the project [including without limitation the discussion, findings and conclusions (each of which is hereby separately and independently adopted by this

Council in full), attached to the report as Attachment "B," except where otherwise expressly stated in this Resolution; and be it

FURTHER RESOLVED: That the record before this Council relating to this Project application and appeal includes, without limitation, the following:

1. the Project application, including all accompanying maps and papers;
2. all plans submitted by the Applicant and their representatives;
3. all final staff reports, decision letters and other documentation and information produced by or on behalf of the City.
4. all oral and written evidence received by the City staff, Planning Commission and City Council before and during the public hearings on the application and appeal;
5. all matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan and the General Plan Conformity Guidelines; (b) Oakland Municipal Code, including, without limitation, the Oakland real estate regulations, Oakland Fire Code; (c) Oakland Planning Code; (d) other applicable City policies and regulations; and, (e) all applicable state and federal laws, rules and regulations; and be it

FURTHER RESOLVED: That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) Community & Economic Development Agency, Planning & Zoning Division, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, CA; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, CA; and be it

FURTHER RESOLVED: That the recitals contained in this resolution are true and correct and are an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2011

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF and PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

LEGAL NOTICE:

ANY PARTY SEEKING TO CHALLENGE THIS FINAL DECISION IN COURT MUST DO SO WITHIN NINETY (90) DAYS OF THE DATE OF THE ANNOUNCEMENT OF THIS DECISION, PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 1094.6, UNLESS A SHORTER PERIOD APPLIES.