



Office of the City Manager

ACTION CALENDAR
September 16, 2003

To: Honorable Mayor
and Members of the City Council

From: Weldon Rucker, City Manager

Subject: 1600 Shattuck Avenue – Public Hearing on Appeal of Zoning Adjustment Board’s Approval of a Sprint Wireless Communication Facility

RECOMMENDATION

Conduct a Public Hearing, allowing each of the two appellants and the applicant five minutes each to summarize their position, and continue the hearing until October 21, 2003 to allow adequate time for public review of an engineering report providing independent evaluation of technical aspects of the proposed project.

FISCAL IMPACTS OF RECOMMENDATION

None. The Berkeley Wireless Communication Facility Ordinance requires that the applicant pay for an independent consultant to conduct peer review of an application.

CURRENT SITUATION AND ITS EFFECTS

On December 12, 2002, the Zoning Adjustments Board (ZAB) conducted a public hearing on an application to establish a Sprint Wireless Communication Facility including three antennas on the rooftop and associated equipment in the basement of a two-story, mixed use retail and office building at the southwest corner of Shattuck Avenue and Cedar Street. The ZAB voted 7-2 (two abstaining) to approve the project. A Notice of Decision was issued on January 10, 2003.

Two separate appeals of the Zoning Adjustments Board’s decision were filed. The primary issues raised in the appeals were that the project location was misrepresented as a commercial area, the applicant is capable of providing satisfactory service without adding the proposed facility, and public health consequences were not adequately addressed.

On April 1, 2003, the Council voted to set the item for a public hearing on June 17, 2003. At the June 17, 2003 meeting, the applicant and the appellants agreed that the hearing be continued without being opened until September 16, 2003 so an engineering report could be provided with an independent evaluation of technical aspects of the proposed project.

The Berkeley Municipal Code requires a public hearing to commence within 60 days of the date the vote to hold a hearing was taken (exclusive of any tolling period). Therefore, the public hearing must be opened and testimony taken on September 16, 2003 unless the applicant and appellants agree to a continuance without opening the hearing, as they did on June 17, 2003.

BACKGROUND

The Wireless Communication Facility Ordinance allows the City to hire “an independent qualified radio frequency or electrical engineer to evaluate any technical aspect of the proposed telecommunication facility, including, but not limited to, compliance with applicable Federal emission standards, feasibility of co-location, need for proposed location and suitability of alternate sites, potential for interference with existing or planned public safety emergency response telecommunication facilities, or analysis of feasibility of alternate screening methods or devices.” When the Council set the appeal for public hearing, staff initiated the process to hire an expert third party to review the application.

Initially staff approached MACRO Incorporated, the firm working with the City to review the Public Safety Building antenna tower. They were unable to accommodate the request, but referred the City to CSI Telecommunications in San Francisco as having the appropriately licensed and credentialed staff to perform the peer review in accordance with the Berkeley Wireless Telecommunication Facility Ordinance. The consultant did not provide all of the information for a contract to be processed until August 25, 2003. The consultant indicates that a report should be completed for public review by the end of September.

Subsequent to the April 1, 2003 Council meeting, the Council requested that staff provide a side-by-side comparison between the San Francisco Wireless Telecommunications Services (WTS) Facilities Siting Guidelines and the Berkeley Wireless Telecommunication Facility Ordinance. Staff will submit this information as an attachment to the October 21, 2003 Council report.

RATIONALE FOR RECOMMENDATION

Continuation to October 21, 2003 will provide time for the independent engineering report to be reviewed by staff, the Council, the applicant, and the appellants; and will allow a more informed decision to be made.

ALTERNATIVE ACTIONS CONSIDERED

If the applicant and appellants agree to a continuance without opening the hearing, the continuance could be moved to the Consent Calendar. However, the appellants have not agreed to a continuance, and have stated that they want to make a presentation to the Council.

The Council could open and close the public hearing on September 16, 2003 and take action; however, this would not allow consideration of the information to be included in the independent engineering report.

Action Deadlines:

1. Date appeal first appeared on Council agenda: April 1, 2003.
2. Deadline for public hearing (a public hearing must commence within 60 days of the date the vote to hold a hearing was taken, exclusive of tolling period): July 4, 2003 (The public hearing was set for June 17, 2003 and continued to September 16, 2003 with approval of appellants and applicant.)
3. The appeal must be disposed of within 30 days from the date the public hearing is closed or the decision of the ZAB is deemed affirmed.

1600 SHATTUCK AVENUE

COUNCIL ACTION
September 16, 2003

CONTACT PERSON:

Wendy Cosin, Deputy Director, Planning and Development, (510) 981-7402

Approved:

A handwritten signature in black ink, appearing to read 'Dan Marks', written over a horizontal line.

Dan Marks
Interim Planning Director