

BOARD OF ZONING ADJUSTMENT
RESOLUTION NO. 2019-05

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT TO T-MOBILE
FOR THE CONVERSION OF A UNIPOLE TO A NON-CAMOUFLAGED
MONOPOLE ON AN EXISTING CELL TOWER LOCATED 420 PARADISE
ROAD

WHEREAS, an application for a Conditional Use Permit to allow the conversion of a unipole to a non-camouflaged monopole on an existing cell tower located at 420 Paradise Road, was filed by T-Mobile on March 6, 2019; and

WHEREAS, Section 10-3.405 of the Municipal Code authorize the Board of Zoning Adjustment to grant Conditional Use Permits for certain modifications to cellular facilities; and

WHEREAS, a public hearing was held by the Board of Zoning Adjustment on June 27, 2019, in City Council Chambers at 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, this matter is exempt under Section 15301(a) of the CEQA Guidelines, which exempts minor interior and exterior alterations to existing facilities.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Adjustment that it finds and determines as follows:

1. Other locations or type of telecom facilities not requiring such approval are either not available or not feasible: This is an existing location in a commercial district on a property which houses a shopping center. This proposal would replace the antenna on an existing pole. The applicant lists that the concealment shroud causes the facility to overheat, potentially causing outages. T-Mobile is also upgrading equipment. Finding a new location would create a hardship.
2. The proposed telecom facility will not adversely impact the use of the property, other buildings and structures on the property, or the surrounding area or neighborhood: The proposed tower will not adversely impact the shopping center nor the surrounding commercial and residential uses. The nearest residential unit is more than 145 feet to the east.
3. The proposed new telecom facility results in the least intrusive visual impact to the area: The existing pole is a unipole with a concealment shroud. Though the current style of facility is less visually intrusive than a monopole with an exposed antenna array, it is prone to overheating. This proposal attempts to address that. The exposed antenna array will be less likely to overheat. The new proposal is not a significant visual change.
4. The proposed site will close a significant gap in coverage: This is an existing facility. This change will not affect the coverage.
5. The proposed telecom facility conforms to the provisions of this article for such facilities: The proposed cell tower and the changes conform to the Wireless

Telecommunication Facilities provisions (Title 10, Chapter 3, Article 4) in the Modesto Municipal Code.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that a conditional use permit for 420 Paradise Road be granted subject to the following conditions:

1. All development shall conform to the plans titled "T-Mobile BUB27239 – Paradise and Chicago Ave., SC07831A – L700 CMP4 4X2" as stamped approved by the Board of Zoning Adjustment on June 27, 2019.
2. All fences, and walls shall be maintained and the premises shall be kept free of weeds, trash, and other debris.
3. Prior to issuance of a building permit, plans and technical data sheets shall be submitted to the Fire Marshall or designee for review. Plans and data sheets shall include but not be limited to the following:
 - a. Fire extinguisher systems;
 - b. On-site generators;
 - c. Compressed gasses and/or fuel storage systems.
4. Prior to placement of any stationary lead-acid battery systems or on-site generators, a permit shall be obtained from the Fire Department.
5. The property owner and developer shall, at their sole expense, defend, indemnify and hold harmless the City of Modesto, its agents, officers, directors and employees, from and against all claims, actions, damages, losses, or expenses of every type and description, including but not limited to payment of attorneys' fees and costs, by reason of, or arising out of, this development approval. The obligation to defend, indemnify and hold harmless shall include but is not limited to any action to arbitrate, attack, review, set aside, void or annul this development approval on any grounds whatsoever. The City of Modesto shall promptly notify the developer of any such claim, action, or proceeding and shall cooperate fully in the defense.

Failure to comply with any of the above conditions is unlawful and will constitute grounds for revocation of the conditional use permit.

BE IT FURTHER RESOLVED that the conditions of project approval set forth herein include certain fees, dedication requirements, reservations requirements, and other exactions, and that pursuant to Government Code Section 66020(d)(1), these conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions.

BE IT FURTHER RESOLVED that the applicant is hereby further notified that the ninety (90) days approval period in which a protest of these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a) can be filed, begins on June 27, 2019, and that if a protest is not filed within this ninety

(90)-day period complying with all of the requirements of Section 66020, the applicant will be legally barred from later challenging such exactions.

The foregoing resolution was introduced at the regular meeting of the Board of Zoning Adjustment held on June 27, 2019, by Board Member Roddick, who moved its adoption, which motion was seconded by Board Member Goriel and carried by the following vote:

Ayes: Blom, Goriel, Moradian, Roddick, Selover, Rodriguez

Noes: None

Absent: Vohra

Recused: None

BY ORDER OF THE BOARD OF ZONING ADJUSTMENT OF THE CITY OF MODESTO.

Original, signed copy on file in CEDD

Steve Mitchell, Secretary