

BOARD OF ZONING ADJUSTMENT  
RESOLUTION NO. 2023-10

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT TO CONVERT AN EXISTING CAMOUFLAGED WIRELESS UNIPOLE INTO A NON-CAMOUFLAGED MONOPOLE WITH AN OPEN ANTENNA ARRAY, AT AN EXISTING CELLULAR FACILITY LOCATED AT 1104 SCENIC DRIVE.

WHEREAS, an application for a Conditional Use Permit to allow the conversion of an existing unipole cellular tower into a non-camouflaged monopole with an open antenna array at an existing cellular facility within General Commercial zone on property located at 1104 Scenic Drive, was filed by Nicole Comach for SBA Monarch Tower III, LLC.

WHEREAS, Section 10-9.102 of the Municipal Code authorize the Board of Zoning Adjustment to grant Conditional Use Permits; and

WHEREAS, a public hearing was held by the Board of Zoning Adjustment on October 26, 2023, in Chambers, 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 a request for a modification of the existing telecommunications facility, previously approved in 2008 (Project ID APR-07-013) not a request for a new telecommunications facility.

The existing 80' height of the tower is needed for T-Mobile's customers to have access to the best coverage possible. The rooftops in the area do not meet this requirement because they are at most 25' high.

There are no other existing monopoles within a quarter mile of the existing facility. The location and height of the existing location are integral to serve the coverage objective of the surrounding area. There are no other locations within this corridor that will be equal to or better to serve T-Mobile's network.

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 site is an existing cellular facility and will not adversely impact the use of the property. The facility is unmanned, only uses a very small footprint of the property (approx. 1,000 sq. Ft.) and does not require extensive maintenance. The lease area is not proposed to be expanded, and the location of the tower would remain unchanged.

The existing facility is an integral part of T-Mobile's network that is already in place. Without the site, the network will be significantly impacted and result in a gap in coverage and disruption of service for the community and travelers in the area. This site will provide continued telecommunications coverage to the community, including enhanced emergency response, better reception quality and higher security and privacy for telephone users. The project proposal continues to fit the intended goals because it will reduce risk of injury or death through enhanced cellular phone service, promote efficiency of public services through enhanced cellular phone service, and does not generate a large amount of traffic, noise, congestion, or odors. Moving the site would cause unnecessary disruptions to the setting due to the tower removal and reconstruction nearby.

3. The proposed new telecom facility results in the least intrusive visual impact to the area:

The site modification will resemble other facilities that are similar in height in the area and fits in with the aesthetic of the C-2 General Commercial zone in which it is located. This site modification is required to provide 5G technology and service to residential and commercial areas surrounding the junction of Scenic Drive and Coffee Road in Modesto, CA. Without this modification, residents and visitors in this area will not have access to the latest technology service offered by T-Mobile which includes 5G and the fastest data speeds available over a cellular network. In addition, the FCC and CPUC have mandated to T-Mobile that 88% of the population in the USA have access to download speeds of at least 50 Mbps and this modification is crucial in adding population count to this goal. With the current on-site technology and proposed tower modification, T-Mobile cannot meet this goal in this area.

4. The proposed site will close a significant gap in coverage:

Without the modifications, T-Mobile's network will be significantly impacted and result in a gap in coverage and disruption of service for the community and travelers in the area.

5. The proposed telecom facility conforms to the provisions of this article for such facilities:

The proposed cell tower and the changes would conform to the Wireless Telecommunication Facilities provisions (Title 10, Chapter 3, Article 4) in the Modesto Municipal Code. The proposed modification of the existing telecom facility will enhance the cellular service of the surrounding area and conform with the provisions of the Article. The modification will allow T-Mobile, combined with Sprint, to accommodate and service their customers properly without call drops and slow data speeds.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that a Conditional Use Permit for the conversion of the existing unipole cellular tower into a non-camouflaged monopole with an open antenna array located at 1104 Scenic Drive be granted subject to the following conditions:

1. All development shall conform to the plans titled "T-Mobile Site ID: SC13447A Project: Replacement 1104 Scenic Dr., Modesto, CA 95350" as

stamped approved by the Board of Zoning Adjustment on October 26, 2023.

2. All fences, and walls shall be maintained in good condition 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. The project identification "PLN2023-00421" on all sheets.
  - b. Generator holding fuel shall be UL2085 rated;
  - c. Total electrolyte in batteries shall not exceed 50 gallons.
4. 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.

The foregoing resolution was introduced at the regular meeting of the Board of Zoning Adjustment held on October 26, 2022, by Board Member Niskanen, who moved its adoption, which motion was seconded by Board Member Goriel and carried by the following vote:

Ayes:	Blom, Goriel, Niskanen, Riddle, Vohra
Noes:	None
Absent:	Desai
Recused:	None

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

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Jessica Hill, Secretary