

BOARD OF ZONING ADJUSTMENT
RESOLUTION NO. 2016-01

A RESOLUTION GRANTING A VARIANCE TO VERIZON WIRELESS FOR A
90-FOOT TALL MONOPOLE WIRELESS COMMUNICATIONS FACILITY
LOCATED AT 1700 CLAUS ROAD

WHEREAS, an application for a Variance for a 90-foot tall monopole wireless communications facility located at 1700 Claus Road, was filed by Epic Wireless on behalf of Verizon Wireless on September 9, 2015; and

WHEREAS, the proposed 90-foot tall monopole is higher than the maximum allowable height of 70-feet in the industrial zones/business park and therefore requires a variance pursuant to Section 10-3.407(c); and

WHEREAS, Sections 10-1.302(a) of the Municipal Code authorize the Board of Zoning Adjustment to grant Variances for Cell Wireless Telecommunication Facilities subject to the findings specified in Section 10-3.407(c); and

WHEREAS, a public hearing was held by the Board of Zoning Adjustment on January 28, 2016, in Chambers, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered; and

WHEREAS, the Board of Zoning Adjustment certifies it has received and reviewed the Initial Study, Environmental Assessment No. EA/C&ED 2015-19, which concluded that the project is within the scope of the General Plan Master EIR (SCH No. 2007072023) and that pursuant to Section 21157.1 of the Public Resources Code, no new environmental review is required.

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

1. There are special radio frequency technology circumstances or conditions applicable to the property or building in question, which do not exist for other properties or buildings within a radius of two thousand (2,000) feet from the proposed facilities site, because the surrounding properties within 2,000 feet from the project site are zoned residential (R-1, R-2, R-3), commercial (C-1, C-2, C-3, C-M, DC) and have a maximum height of 50-70 feet. The proposed location of the proposed telecom facility in an area designated for Business Park uses is preferable to a location further west or south in a residential neighborhood. The proposed tower is appropriately located in an area designated for Business Park uses, at a sufficient distance from surrounding residences and will not adversely impact the use of the property or other buildings in the surrounding area
2. The special radio frequency technology circumstances or conditions are such that strict application of the provisions of Chapter 3, Article 4, Title 10 of the Modesto Municipal Code would deprive the applicant of their ability to close a demonstrated significant gap in coverage or service in its own network coverage using the least intrusive means, because Verizon is currently at 105 feet RAD (Radio Antenna Distribution) at the MID tower and a drop of 35 feet in RAD height will cause significant loss in coverage

to the surrounding community. In order for Verizon to provide service that the existing MID tower provides, Verizon must remain within 15 feet of the existing height currently installed at the MID location, thus closing a significant gap in coverage to the surrounding areas.

3. Granting the variance will be consistent with the intent and purpose of Section 1-3.407(c) of Chapter 3, Article 4, Title 10, of the Modesto Municipal Code and the Federal Communications Act of 1996 (Public Law 104-104), because the proposed tower is located approximately 750-feet from Claus Road, and therefore the increase in height over the permitted height of 70-feet is not visually significant. In addition, Verizon will comply with the prevailing standards for limiting public exposure to radio frequency energies.
4. An Initial Study was prepared by the City of Modesto that analyzed whether the subsequent project may cause any significant effect on the environment that was not examined in the Master EIR and whether the subsequent project was described in the Master EIR as being within the scope of the report.
5. The subsequent project will have no additional significant effect on the environment, as defined in subdivision (d) of Section 21158 of the Public Resources Code that was not identified in the Master EIR.
6. No new or additional mitigation measures or alternatives are required.
7. The subsequent project is within the scope of the project covered by the Master EIR.
8. All applicable policies, regulations, and mitigation measures identified in the Master EIR have been applied to the subsequent project or otherwise made conditions of approval of the subsequent project.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that a variance for 1700 Claus Road be granted subject to the following conditions:

1. All development shall conform to the plot plan and elevations titled "Verizon Wireless-Empire Relo, 1700 Claus Rd., Modesto, CA 95355, Project Number: 20141078510, Location Number: 297653" as amended in red and stamped approved by the Board of Zoning Adjustment on January 28, 2016.
2. All chain-link fences, and walls of proposed cabinets shall be maintained and the premises shall be kept free of graffiti, 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. Existing underground and overhead electric facilities and existing irrigation lines within the project site shall be removed, protected, or relocated as required by the MID and the City Engineer or designee. Appropriate easements for electric facilities and irrigation lines to remain shall be dedicated as necessary.
 6. 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.

In addition, the following recommended Conditions of Approval are mitigation measures from the Modesto Urban Area General Plan Master Environmental Impact Report that should be applied to the project:

7. AQ-40: The City of Modesto shall require all access roads, driveways, and parking areas serving new commercial and industrial development are to be constructed with materials that minimize particulate emissions in accordance with the requirements of SJVAPCD Regulation VIII and are appropriate to the scale and intensity of the use.
8. AQ-42: All disturbed areas, including storage piles, which are not being actively utilized for construction purposes, shall be effectively stabilized of dust emissions using water, chemical stabilizer/suppressant, covered with a tarp or other suitable cover or vegetative ground cover.
9. AQ-43: All on-site unpaved roads and off-site unpaved access roads shall be effectively stabilized of dust emissions using water or chemical stabilizer/suppressant.
10. AQ-44: All land clearing, grubbing, scraping, excavation, land leveling, grading, cut & fill, and demolition activities shall be effectively controlled of fugitive dust emissions utilizing application of water or by presoaking.
11. AQ-46: When materials are transported off-site, all material shall be covered, or effectively wetted to limit visible dust emissions, and at least six inches of freeboard space from the top of the container shall be maintained.

12. AQ-47: All operations shall limit or expeditiously remove the accumulation of mud or dirt from adjacent public streets at the end of each workday. (the use of dry rotary brushes is expressly prohibited except where preceded or accompanied by sufficient wetting to limit the visible dust emissions.) (Use of blower devices is expressly forbidden.)
13. AQ-48: Following the addition of materials to, or the removal of materials from, the surface of outdoor storage piles, said piles shall be effectively stabilized of fugitive dust emissions utilizing sufficient water or chemical stabilizer/suppressant.
14. AQ-49: Within urban areas, track out shall be immediately removed when it extends 50 or more feet from the site and at the end of each workday.
15. AQ-50: Any site with 150 or more vehicle trips per day shall prevent carryout and track out.
16. AQ-51: Limit traffic speeds on unpaved roads to 15 mph.
17. AQ-53: Install wheel washers for all exiting trucks, or wash off all trucks and equipment leaving the site.
18. AQ-54: Install wind breaks at windward side(s) of construction areas.
19. AQ-55: Suspend excavation and grading activity when winds exceed 20 mph. Regardless of wind speed, an owner/operator must comply with Regulation VIII's 20 percent (20%) opacity limitation.
20. AQ-56: Limit the area subject to excavation, grading and other construction activity at any one time.
21. N-2: The Noise Ordinance prohibits the loud and raucous operation or use of any of the following before 7:00 a.m. or after 9:00 p.m. daily (except Saturday and Sunday and State or Federal holidays, when the prohibited time shall be before 9:00 a.m. and after 9:00 p.m.):
 - a. A hammer or any other device or implement used to pound or strike an object.
 - b. An impact wrench or other tool or equipment powered by compressed air.
 - c. A hand-powered saw.
 - d. Any tool or piece of equipment powered by an internal-combustion engine such as, but not limited to, chain saw, backpack blower, and lawn mower.
 - e. Any electrically powered (whether by alternating current electricity or by direct current electricity) tool or piece of equipment used for cutting, drilling, or shaping wood, plastic, metal, or other materials or objects, such as, but not limited to, a saw, drill, lathe, or router.

- f. Any of the following: heavy equipment (such as but not limited to bulldozer, steam shovel, road grader, back hoe), ground drilling and boring equipment (such as but not limited to derrick or dredge), hydraulic crane and boom equipment, portable power generator or pump, pavement equipment (such as but not limited to pneumatic hammer, pavement breaker, tamper, compacting equipment), pile-driving equipment, vibrating roller, sand blaster, gunite machine, trencher, concrete truck, and hot kettle pump.
22. N-3: Construction equipment and vehicles should be equipped with properly operating mufflers according to the manufacturers' recommendations. Air compressors and pneumatic equipment should be equipped with mufflers, and impact tools should be equipped with shrouds or shields. Equipment that is quieter than standard equipment should be utilized. Haul routes that affect the fewest number of people should be selected.

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 January 28, 2016, 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.

BE IT FURTHER RESOLVED by the Board of Zoning Adjustment that the Secretary of the Board is directed to file with the Stanislaus County Clerk a Notice of Determination in regard to the environmental impact of the proposed variance.

The foregoing resolution was introduced at the regular meeting of the Board of Zoning Adjustment held on January 28, 2016, by Robert Selover, who moved its adoption, which motion was seconded by Vladimir Rodriguez and carried by the following vote:

Ayes:	Matas, Morris, Pollard, Rodriguez
Noes:	Selover
Absent:	Self
Recused:	None

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

Original, signed copy on file in CEDD

Patrick Kelly, Secretary