



# Council Agenda Report

To: Mayor Grisanti and the Honorable Members of the City Council

Prepared by: Tyler Eaton, Assistant Planner

Reviewed: Richard Mollica, Planning Director

Approved by: Steve McClary, Interim City Manager

Date prepared: December 28, 2021 Meeting date: January 10, 2022

Subject: Appeal No. 21-006 – Appeal of Planning Commission Resolution No. 21-37 (22967.5 Pacific Coast Highway; Appellant: Steven Hakim; Applicant: Rob Searcy of Fulsang Architecture on behalf of Verizon Wireless; Property Owner: California Department of Transportation)

---

**RECOMMENDED ACTION:** Adopt Resolution No. 22-03 (Attachment 1) upholding Appeal No. 21-006 and denying Coastal Development Permit No. 20-043 and Wireless Communications Facility No. 20-022 for Verizon Wireless to install an omnidirectional canister antenna on top of a replacement streetlight pole reaching a maximum height of 34 feet, 9 inches and electrical support equipment, including Variance No. 20-028 to permit a streetlight pole over 28 feet in height and Site Plan Review No. 20-059 to install and operate a wireless communications facility within the public right-of-way located at 22967.5 Pacific Coast Highway.

**FISCAL IMPACT:** There is no fiscal impact associated with the recommended action.

**WORK PLAN:** This item was not included in the Adopted Work Plan for Fiscal Year 2021-2022.

**DISCUSSION:** At the November 2, 2021 Regular City Council meeting, the City Council conducted a public hearing, and voted to direct staff to prepare and bring back a resolution upholding Appeal No. 21-006 and denying the project to install a new wireless communications facility on a replacement streetlight pole. The November 2, 2021 City Council staff report can be found on the City's website at [malibucity.org/agendacenter](http://malibucity.org/agendacenter). As directed by City Council, attached is Resolution No. 22-03 upholding the appeal and denying the project.

**ATTACHMENT:** Resolution No. 22-03

## RESOLUTION NO. 22-03

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU, UPHOLDING APPEAL NO. 21-006 AND DENYING COASTAL DEVELOPMENT PERMIT NO. 20-043 AND WIRELESS COMMUNICATIONS FACILITY NO. 20-022 FOR VERIZON WIRELESS TO INSTALL AN OMNIDIRECTIONAL CANISTER ANTENNA ON TOP OF A REPLACEMENT STREETLIGHT POLE REACHING A MAXIMUM HEIGHT OF 34 FEET, 9 INCHES AND ELECTRICAL SUPPORT EQUIPMENT, INCLUDING VARIANCE NO. 20-028 TO PERMIT A STREETLIGHT POLE OVER 28 FEET IN HEIGHT AND SITE PLAN REVIEW NO. 20-059 TO INSTALL AND OPERATE A WIRELESS COMMUNICATIONS FACILITY WITHIN THE PUBLIC RIGHT-OF-WAY LOCATED AT 22967.5 PACIFIC COAST HIGHWAY, AND FINDING CEQA DOES NOT APPLY TO THIS DECISION (VERIZON WIRELESS)

The City Council of the City of Malibu does hereby find, order and resolve as follows:

### SECTION 1. Recitals.

A. On July 14, 2020, a new application for Wireless Communications Facility (WCF) No. 20-022 and Site Plan Review (SPR) No. 20-059 was submitted by the applicant, Fulsang Architecture, on behalf of Verizon Wireless for the installation of a replacement streetlight pole topped with a wireless antenna, associated electrical equipment and backup battery unit. Coastal Development Permit (CDP) No. 20-043 and Variance (VAR) No. 20-028 were assigned to the project.

B. On August 9, 2020, a Notice of CDP Application was posted at the subject site attached to the existing pole to be replaced.

C. On September 21, 2020, planning staff deemed the project complete for processing.

D. On May 3, 2021, the Planning Commission adopted Planning Commission Resolution No. 21-37, approving WCF No. 20-022, CDP No. 20-043, VAR No. 20-028, and SPR No. 20-059.

E. On May 12, 2021, Steven Hakim filed timely Appeal No. 21-006 of Planning Commission Resolution No. 21-37.

F. On September 16, 2021, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a radius of 500 feet from the subject property and all interested parties.

G. On October 11, 2021, the City Council continued the item to the October 25, 2021 Regular City Council meeting.

H. On October 25, 2021, the City Council continued the item to the November 2, 2021 Regular City Council meeting.

I. On November 2, 2021, the City Council held a duly noticed public hearing on the subject appeal, reviewed and considered the agenda report, reviewed and considered written reports, public testimony, and other information in the record. The City Council deliberated and voted four (yes) to one (abstain) directing staff to prepare and bring back a resolution on the Consent Agenda upholding Appeal No. 21-006 and denying the proposed project.

J. On January 10, 2022, the City Council reviewed the materials in the record and based thereon takes the following action.

SECTION 2. Appeal of Action.

The appeal filed by Steven Hakim on May 12, 2021, contends that the findings and conditions are not supported by the evidence, or the decision is not supported by the findings and there was a lack of fair or impartial hearing.

SECTION 3. Denial of Project and Findings for Denial.

Based on evidence in the record, including the Council Agenda Report for the project and the hearing on November 2, 2021, the City Council hereby grants the appeal, determines that it cannot make the findings required to approve the project, makes the following findings of fact, denies the project, and finds that substantial evidence in the record supports this decision. The project, as proposed, is not consistent with the applicable Local Coastal Program (LCP) and Malibu Municipal Code (MMC) codes, standards, goals, and policies. In addition, the findings required for these entitlements cannot be made based on the information presented, and the project does not represent the least environmentally damaging alternative. The reasons for the City Council's decision include, but are not limited to, the following:

**A. Wireless Telecommunications Antennae and Facilities (Local Implementation Plan [LIP] Chapter 3.16.5[N])**

*Finding N. No wireless telecommunication facility shall be located within five hundred (500) feet of any school ground, playground or park unless a finding is made, based on technical evidence acceptable to the Planning Manager, as appropriate, showing a clear need for the facility and that no technically feasible alternative site exists [LIP Section 3.16.5(N), 2007].*

The proposed project is located within 500 feet of Surfrider Beach which is a public park per the LCP Park Lands maps. Pursuant to LIP Section 3.16.5(N) a clear need must be demonstrated if the proposed facility was within 500 feet of a park.

Instead of demonstrating a clear need, Verizon Wireless' coverage maps showed the existing cellular coverage in the area surrounding the site was already "Good" according to their own analysis. The proposed coverage maps did not show the project would provide much improvement, if any, as the coverage in the area remained classified as "Good." The applicant asserted that the objective of the proposed site was to increase network capacity in addition to increasing cellular coverage. However,

Verizon Wireless did not provide substantial evidence in support of this claim. The City Council finds that there is not enough evidence in the record, including Verizon Wireless' statements and presentation at the meeting, to support a clear need for the facility.

Even if Verizon Wireless had demonstrated such a need, this finding still could not be made because Verizon Wireless did not demonstrate that no technically feasible alternative site exists. Other proposals that were located farther away were not shown to be technically infeasible.

#### **B. General Coastal Development Permit (LIP Chapter 13)**

*Finding 1. The project as described in the application and accompanying materials, as modified by any conditions of approval, conforms with certified City of Malibu Local Coastal Program [LIP Section 13.9(A)].*

The application and accompanying materials do not demonstrate conformance with the LCP. A clear need could not be demonstrated by the applicant showing why the proposed site should be allowed within 500 feet of a park. The applicant's submitted materials show that the site already has "Good" cellular coverage, and the applicant did not supply the City with sufficient evidence to demonstrate that the proposed site would improve cellular network or network capacity. Because the facility is within 500 feet of a park and the applicant could not demonstrate that a clear need exists for the proposed facility and that no technically feasible alternative site exists, the application is not in compliance with LCP, specifically with LIP Section 3.16.5(N).

#### **C. Variance (LIP Section 13.26.5)**

*Finding 1. There are special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surroundings such that strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under the identical zoning classification.*

There are no special circumstances or exceptional characteristics applicable to the subject property that deprives the applicant privileges enjoyed by other identically zoned property in the vicinity. The property is similar to the surrounding properties and does not contain special or exceptional characteristics, let alone such characteristics that would justify the proposed project. The project also seeks to use a design that is taller and thicker than the other utility poles and streetlights in the vicinity. The streetlight design chosen would be out of character with the surrounding neighborhood.

*Finding 3. The granting of the variance will not constitute a special privilege to the applicant or property owner.*

The granting of the variance would constitute a special privilege to the applicant. As stated in Finding 1, the proposed streetlight design has not been used in the vicinity. Other streetlight designs within the City, and especially in this area, which is highly visible and scenic, have maintained the height and aesthetic of the original pole. The proposed design by Verizon Wireless would be a taller

and thicker pole and not congruent with the surrounding streetlight poles. There are also other design alternatives, and locations, within the right-of-way that the applicant could have chosen to be more in line with the surrounding environment and achieve their coverage objectives.

*Finding 4. The granting of such variance will not be contrary to or in conflict with the general purposes and intent of this Chapter, nor to the goals, objectives and policies of the LCP.*

As stated in Section B, Finding 1, the proposed project is not consistent with the LCP.

**D. Site Plan Review (LIP Section 13.27.5)**

*Finding 1. That the project is consistent with policies and provisions of the Malibu LCP.*

As stated in Section B, Finding 1, the proposed project is not consistent with the LCP.

*Finding 2. That the project does not adversely affect neighborhood character.*

For the reasons stated in Section C, Finding 1 and Finding 3, the proposed streetlight design would adversely affect neighborhood character. There are no other streetlight poles in the vicinity that would be as tall or as thick as the proposed pole. The average height of streetlights within the area is approximately 31 feet tall while the proposed design would require a pole that is close to 35 feet tall. The design would be unique amongst other utilities within the subject area, and also has been located in the center of the adjoining lot and has not been grouped or located so as to minimize visual impacts.

**SECTION 4. Action.**

Based on the foregoing findings and evidence contained within the record, the City Council hereby denies CDP No. 20-043, WCF No. 20-022, VAR No. 20-028 and SPR No. 20-059.

**SECTION 5. Environmental Review.**

Pursuant to Section 15270 of the California Environmental Quality Act (CEQA) Guidelines, CEQA does not apply to projects which a public agency rejects or disapproves.

**SECTION 6.** The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original resolutions.

PASSED, APPROVED AND ADOPTED this 10<sup>th</sup> day of January 2022.

---

PAUL GRISANTI, Mayor

ATTEST:

---

KELSEY PETTIJOHN, City Clerk  
(seal)

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED  
BY THE CITY ATTORNEY'S OFFICE

---

JOHN COTTI, Interim City Attorney

Any action challenging the final decision of the City made as a result of the public hearing on this application must be filed within the time limits set forth in Section 1.12.010 of the MMC and Code of Civil Procedure. Any person wishing to challenge the above action in Superior Court may be limited to raising only those issues they or someone else raised at the public hearing, or in written correspondence delivered to the City of Malibu at or prior to the public hearing.