

FINDINGS AND RECOMMENDATION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Application of

NEWVECTOR COMMUNICATIONS, INC.

FILE NO. CC-83-007

C.F. NO. 292583

for a council conditional use and incidental variance pursuant to the provisions of Title 23, Seattle Municipal Code (Zoning Ordinance 86300, as amended)

Introduction

NewVector Communications, Inc., formerly Advanced Mobile Phone Service, applied for a Council conditional use authorization and related variance to allow the establishment of a mobile transmission phone facility at 9417 Roosevelt Way N.E.

For purposes of this recommendation, all section numbers refer to the Seattle Municipal Code, unless otherwise indicated.

The Director's report, submitted by the Department of Construction and Land Use (DCLU), recommended that the application be granted.

The matter was heard before the Hearing Examiner on November 28, 1983.

After due consideration of the evidence presented by the applicant, the information provided by the Director's report, and all evidence elicited during the public hearing, the following findings of fact and conclusions shall constitute the recommendation of the Hearing Examiner on this application.

Findings of Fact

1. Advanced Mobile Phone Service (AMPS) filed an application for a Council conditional use to establish the use of a mobile transmission phone facility at 9417 Roosevelt Way N.E. and for a variance to allow the tower to exceed 60 ft. with less than the required setbacks. As a result of the divestiture of AT and T, AMPS became NewVector Communications, Inc., the application was orally amended at hearing to reflect that change.

2. The proposed site for the facility is a lot measuring 45 ft. by 100 ft. on the west side of Roosevelt Way N.E. zoned Community Business (BC). The lot now has a single family house and trees and other vegetation.

3. The BC zone consists of a strip running north and south along Roosevelt Way. Small commercial structures and single and multi-family residences occupy the zone. Immediately north of the subject site is a commercial structure and use and to the south is a single family residence.

4. An SF 5000 zone begins at the westerly lot line of the subject site and extends to the west. The zone is developed with single family residences.

5. The applicant proposes to establish a mobile phone transmission facility at the subject site. The facility is one of 13 to be constructed in the Puget Sound area, one of two in Seattle, making up a mobile cellular telephone system for the area. Each location has been selected through technical analysis of the requirements of the system and in relationship to others. FCC approval has been obtained for the locations.

6. The station would consist of a one-story concrete building of 550 sq. ft. area and a 150 ft. tall monopole with a triangular antenna on top. The total height of the tower would be 167 ft. One parking space would be provided.

7. The applicant proposes to maintain several of the trees on site, moving one to obscure air conditioning equipment, and provide a hedge around the perimeter of the lot. The Director recommends making approval subject to the implementation of an approved landscaping plan.

8. Section 24.44.030 permits public utility service uses necessary due to operating requirements in a BC zone when authorized by the Council.

9. Several other communications systems have located facilities on this plateau area because of its geographic and topographic suitability for such uses.

10. The Director issued a declaration of non-significance (DNS) for the proposal pursuant to SEPA. The impacts expected are those typical to small construction. He found that the traffic generated by this use would be less than that generated by the existing single family use.

11. Studies have shown that the mobile phone facility causes no interference with other communications transmissions.

12. The radio frequency (RF) radiation at the base of the antenna is .001/mW/cm² which is far below any federal standard or level of hazard to health.

13. The facility will not produce any noise.

14. Sections 24.44.120 and 24.62.040(C)(2) permit a structure in excess of 60 ft. in height in the BC zone provided there is at least a 20 ft. setback from a lot line.

15. The pole would be centered on the lot so it would be set back at least 20 ft. from the lot lines. The antenna, however, extends out some 6.5 ft. from the center of the pole in two directions so it could be in the required setback. The exact positioning of the antenna has not been determined so a variance is requested to permit the proper orientation when that is determined. The maximum intrusion into the required setback at any point would be 3 ft. 8 in.

Conclusions

1. Section 23.80.10(A)(2) provides that "(v)ariances which are part of a project which requires Council conditional use approval may be decided by the Council together with the proposal as a whole."

2. The subject lot's width is the condition that creates the hardship to the applicant. While width of 45 ft. is not unusual in Seattle, it is unusual in creating a setback difficulty for a very small development. Because of the width, without the variance the applicant would be denied a use comparable to that others enjoy in the area.

3. The variance requested is to permit the maximum amount of variance that may be necessary as it may be that proper orientation will be at an angle to the lot lines. The height of the tower and size of the antenna are the minimum they can be so that the amount of variance cannot be reduced except by acquisition of an adjoining lot. No special privilege would be conferred in granting this variance to allow a use similar to others in the area.

4. No detriment is reasonably foreseeable from the granting of the variance. The offending portion of the tower is more than 150 ft. in the air so it is not likely to be apparent that it intrudes some 3 ft. into the required setback.

5. Strictly applying the height or setback provision in this case would serve no purpose and would cause the applicant unnecessary hardship in that new property would have to be acquired.

6. The new provisions for such facilities in single family zones allow waiver of such development standards, if appropriate without meeting the stringent criteria for variance. Approval of a variance from a standard in the BC zone should then be considered consistent with the spirit and purpose of the Land Use Code.

7. As to the conditional use the Council is to consider whether the use would be materially detrimental to the public welfare or injurious to other property and whether approval will be consistent with the spirit and purpose of the Land Use Code.


8. No material detriment to the public welfare or injury to other property can be reasonably foreseen as the environmental assessment showed no significant impact and the hearing record reveals nothing detrimental. Provision of landscaping should be required to improve the appearance of a square concrete building and make it more compatible with the adjacent residential uses.

9. The Land Use Code provides for such uses. The FCC has issued its approval. Other similar uses are nearby and apparently have caused no problem. No adverse effects are foreseen. Therefore, it can be concluded that the approval of the use would not be inconsistent with the spirit and purpose of the Code.

Recommendation

The variance should be granted and the conditional use approved subject to the condition that a plan approved by DCLU for landscaping of the site be implemented.

Entered this 12th day of December, 1983.


M. Margaret Klockars
Deputy Hearing Examiner

NOTICE OF RIGHT TO PETITION FOR FURTHER CONSIDERATION

Pursuant to Section 23.80.10.E, Seattle Municipal Code, any person substantially affected by or interested in this recommendation may submit a petition in writing to the City Council requesting further consideration. The petition must be filed with the Council within fourteen days of the date of this recommendation and should be addressed to the City Council, Land Use Committee, Municipal Building, Seattle, Washington, 98104.

The petition should clearly identify specific objections to this recommendation and the relief sought; however, the petitioner should not include any additional evidence or exhibits as the Council's consideration will be based upon the record of the Hearing Examiner's hearing. If the Council determines that a factual error exists in the record or that important information is missing, the Council may have the record supplemented pursuant to Section 23.80.10.E.3 or 23.80.10.E.4. At its public meeting the Council may allow oral or written arguments based on the record.