

BOONE COUNTY BOARD OF ADJUSTMENT

BOONE COUNTY GOVERNMENT CENTER

801 E. WALNUT ST., COLUMBIA, MO.

Thursday, July 23, 2015

The meeting was called to order at 7:00 p.m. in the Boone County Commission Chambers having a quorum present.

Member Thomas read the procedural statement stating that this Board is appointed by the Boone County Commission to consider specific application of the zoning and subdivision regulations. The Board is empowered to enter rulings that may give relief to a property owner from the specific application of the Zoning and Subdivision regulations. Generally, variances can only be granted in situations where by reason of shape, topography or other extraordinary or exceptional situation or condition of a specific ordinance would result in peculiar and exceptional difficulties to or exceptional and demonstrable undue hardship upon the owner of the property as an unreasonable deprivation of use as relating to the property. A variance from the strict application of this ordinance can be granted provided the relief requested will not substantially impair the intent, purpose and integrity of the zoning regulations.

Notice of this meeting has been published in accordance with our by-laws for the proper number of days. All decisions of the Board are based on the zoning or subdivision regulations for Boone County, Missouri, and they are hereby made a part of the record of this meeting.

This Board is comprised of five members, with three members constituting a quorum. An applicant must receive at least three votes in order to receive the relief that they have requested from the Board. Any applicant appearing before this Board has the right to be heard by all five members. At times that all five members are not present, the applicant, and only the applicant, may choose to wait until such time as all five members are present to hear their request.

Roll call was taken:

Present: Frank Thomas
Rhonda Lightfoot
Lance Robbins

Absent: Cindy Bowne
Vacant Seat

Staff: Thad Yonke, Senior Planner
Bill Florea, Senior Planner
Uriah Mach, Planner
Paula Evans, Secretary

Minutes of the July 2, 2015 meeting were approved by acclamation.

REQUEST

1. Case Number 2015-009

Request by Mark Kuhn on behalf of SBA Towers V, LLC for a variance from the requirement to provide a 175' setback from the property line for a proposed telecommunications tower on 5.84 acres located at 3200 N Billie Jean Dr., Columbia (Zoning Regulations Section 15. B. (4) (c) 3.2.

Chairperson Thomas asked the applicant if he wished to continue with the hearing tonight only having three members present.

The applicant stated he wished to be heard tonight.

Planner, Thad Yonke gave the following staff report:

The property is zoned A-2 as is the adjacent property and is located northeast of the Columbia municipal limits, south of Mexico Gravel Road. The property is currently vacant. The applicant would like to place a transmission facility with a 175 foot tall tower on this site. The zoning regulations require that a tower be set back from the property lines by a distance equal to the tower height. The tower will have a height of 175 feet, including antennas and lightening rod, but will be 139 feet from the closest property line. The original zoning for this property is A-2. This 5.84 acre tract was created by survey in June 1995. A singlewide mobile home was placed on the property in 1995. A modular house replaced the mobile home in 1998 and an accessory structure was added in 2003. In May 2015 the applicants submitted a request for a variance from the setback requirements for this tract that would have permitted a 190 foot tall tower. The variance request was denied.

The requested variance is from Zoning regulations Section 15.B (4)(c). Transmission facilities shall be set back from abutting property or roads sufficient to:

- (c) 1. Substantially contain on-site ice-fall or debris from tower failure;
- (c) 2. Protect the general public from NIER in excess of that allowed in Section (6)
- (c) 3. Create open spaces for public safety purposes. A site is of sufficient size to comply with this requirement if:
 - (c) 3.1 Accessory structures and guy wire anchors shall comply with the setback standard in the underlying zoning district;
 - (c) 3.2 A tower base is set back from property lines or roads by a distance equal to the tower height

Staff notified 46 property owners.

Present representing the request:

Joe Markus, Site Acquisition Manager, Black & Veach, 204 Mattina, St. Peters, MO

Mr. Markus presented a power point presentation showing the location of the proposed tower and surrounding area.

Mr. Markus stated the tower is located in the right center of the property. There is one home about 300 feet from the tower, at 600 feet there are couple more homes and it gains from there. The applicants are requesting a variance for the tower setback from the property line, the required setback is one to one, and the structure itself is 165 feet with a 10 foot lightening rod on top. Once you get 100 yards from the tower you will not see the lightening rod. The north side setback is 139 feet at its lowest point. The east, west, and south sides all exceed the minimum setback. The setback would be achieved if topography wasn't an issue. The tower is a monopole design and it is not lighted. The topography on the property is the wetlands, floodplain and terrain height that denies

the applicant the ability to meet the required setback. The tower cannot be moved any further south or east because of the floodplain. The terrain falls 10 or 15 feet into the floodplain area, there are also wetlands to the south and east. Topography is what keeps the applicants from meeting the required setback. The tower could meet the setbacks if not for the topography and then they wouldn't need a variance.

Mr. Markus stated the decrease in the setback is not going to create any safety concerns. Towers don't just fall over; if they fail they are designed to crumple into the fall zone. The tower site has been drilled and the geotech study has been done and that will decide how deep the pier will be. Typically around here you will find a 30 foot pier and 180,000 pounds of concrete underneath one of these towers. The tower setbacks in Boone County are different than a lot of jurisdictions. Getting the variance won't permit the applicants to build a tower it is only going to shorten the setback, the project still needs a conditional use permit and to get that the applicants would have to go before the Planning and Zoning Commission and the County Commission. The residents have concerns about property values, structural integrity and viewsheds and all of those are legitimate concerns by the residents but they are things that are addressed and the applicants will have to address as part of the conditional use permit process. This variance is strictly for the setback because the topography will not let us move it to where we can get the fall zone.

Open to public hearing.

No one spoke in favor of the request.

Present speaking in opposition:

Thomas Gallihugh, 6501 E Martin Ct, Columbia

Mr. Gallihugh presented a handout.

Mr. Gallihugh stated he works for Verizon Wireless and is concerned about property values, safety, and whether this is the right thing for the community. Cell phone signals are based off a sweet spot, when a car is driving another tower intercepts without a dropped call. There is currently about a two-bar signal in the area, you don't lose any signal, it is a 3G connection out there. In the handout there are surveys done by doctors, attorneys, Harvard University, and studies that range the percentage of value that homes decrease. They encourage cell phone sites to go on large properties where it is not near a community. Many property owners around cell phone sites have their property reassessed and their taxes usually go down. This area is not really considered a sweet spot; Two Mile Prairie is actually considered the sweet spot for the area. There are deals with Battle Elementary School that already has a tower they are working on the transition of that. The school system actually has a higher strict policy with the FCC so they make sure inspections are done and everything is kept up. The safety factor hasn't been met, if they are going to put in a tower they should present the dimensions and fencing. When surrounding property owners sell their homes they have to disclose that information to the buyer. Five acres is not big enough for this tower and it is right next to a community. Through 1000 investigations provided by the US Navy all the way through Harvard University they did testing on 2G, 3G and 4G and it is a health concern. We don't need a tower to go up in a community. The public school systems sent the stuff out but they are requiring a very strict demand and no one wants to hook up Verizon Wireless off their tower because of the strict demand on safety and with the inspections that the schools are requesting.

Mr. Gallihugh stated he is against this request and that working for Verizon Wireless he knows there is a decrease in property value. There are better areas for this. When you get to the end of Mexico Gravel Road that is when service drops down to 1G but if you put a tower up where Two Mile Prairie is it then expands the circle bubble therefore it transitions over. Two Mile Prairie would be the best spot for it and they are open to it.

Also present speaking in opposition:

Juanita Brown, 3150 Billy Jean Dr, Columbia

Ms. Brown stated she lives right next to the proposed site. The tower is too big for the property; if it would fit on the property they wouldn't need a variance. It takes away from the value of the surrounding homes. There are other places that the applicants can put a tower. For that big of a project Ms. Brown doesn't feel it is a safe place to put it when you have minimal feet away from where you could mess up. It will take away from property value and from the aesthetics of the area. Ms. Brown stated she is on the south side and if the tower fell over it would hit her property line and possibly her outbuilding. Ms. Brown asked how many times can the applicant come and ask for a variance and how many times does she need to come and defend her property and her property value.

Also present speaking in opposition:

Robert Clements, 3106 N Lawrence Dr, Columbia.

Mr. Clements stated he doesn't understand why we have to be here again after it was already turned down before. Mr. Clements stated he is concerned about the property values and though he is not that close to it he doesn't want to look at a tower every morning.

Closed to public hearing.

Mr. Yonke stated he heard inaccurate information in the original presentation. The closest point is to the corner at 139 feet however the 175 does not meet the requirement to the north property line either. It would only be 144 feet from the north property line.

Mr. Markus stated the applicants met the setbacks on the south, east, and west sides.

Member Thomas asked who the property owners to the north are.

Mr. Markus stated he didn't know.

Member Thomas asked the applicant if they made any effort to expand the lot to make the tower fit on the property

Mr. Markus stated no.

Member Thomas stated the last time the applicants requested a variance from the Board they requested a 190 foot tower and the applicants were pretty adamant that 190 feet was the height that the tower needed to be.

Mr. Markus stated the applicants needed that to get as much coverage area as they could. They can still cover at a lesser height but not quite as well.

Member Thomas stated that this may not be the best location for the tower.

Mr. Markus stated it is still the best location.

Member Robbins asked what the property was used for prior to this project.

Mr. Markus stated at one time it had a single wide trailer on it and then a small modular home.

Member Robbins asked if they took out the modular home to make room for this project.

Mr. Markus stated the modular home had been removed before the applicants found the site. The lot is empty.

Member Robbins stated the intent of the ordinance is that the tower should be able to fall onto its own property. Member Robbins stated he is looking for some sort of demonstrable circumstance that says that the property needs to be used for a cell tower and that is the only thing the property can be used for.

Mr. Markus stated he didn't believe the applicant needed to prove that it is the only thing it can be used for but at this time it is the highest and best use. In regard to the setback towers don't just fall over.

Member Robbins stated the Board is tasked with upholding the intent of the ordinance and the ordinance says that the tower has to fall within the property lines unless there is a demonstrable hardship and that it takes away from the use of the property. The property has other uses other than a tower which the neighbors obviously don't want.

Mr. Markus stated the property to the north has a large commercial building. It is not like this is a strictly residential neighborhood; the property to the northwest has more commercial buildings.

Member Thomas stated a variance is about deprivation of use; there are other uses for the property. There are other ways that the applicants can make the property larger or go to a different location. The applicants indicated that they haven't contacted any other property owners to try and make the property comply.

Mr. Markus stated the applicants have tried finding other properties that would comply and spent two years doing that. The applicants have contacted just about everyone that has a piece of property big enough to put a tower on in the area within the scope of service. This is the only property available. At the time that the applicants started they thought it would be usable but until you get it surveyed you don't know exactly where the property lines are. The applicants thought the property would be usable for a tower and have the proper setbacks. Mr. Markus stated he doesn't know that the Board can come back and say that any alternate use of a property, you could use it for a riding stable there are a lot of uses for a property but if that were the criteria there wouldn't be any need for a variance unless you were trying to build on a cliff. There is always something you could find to do on a property.

Mr. Yonke stated you cannot use this property for a riding stable.

Mr. Florea stated there are numerous uses available for this property.

Member Thomas stated he finds it hard to believe that in the due diligence the applicants didn't notice that the property had the topography that it does.

Mr. Markus stated tower site acquisitions are so complicated and lengthy to do that you do it on one piece of property; you wouldn't consider doing it on two pieces of property.

Member Lightfoot stated the applicants mentioned that the applicants already did the drilling and geotech study. Did the applicants look at the topography to see that it was in the flood zone?

Mr. Markus stated once the applicants got in to it they did realize it and that is when they knew they would have to apply for a variance. This is the only piece of property that was available.

Member Robbins made and Member Lightfoot seconded a motion to deny the request by Mark Kuhn on behalf of SBA Towers V, LLC for a variance from the requirement to provide a 175' setback from the property line for a proposed telecommunications tower on 5.84 acres located at 3200 N Billie Jean Dr., Columbia

Member Thomas	Yes	Member Lightfoot	Yes
Member Robbins	Yes		

Motion to deny the request carries unanimously

2. Case Number 2015-010

Request by Roderic and Christina Dablemont for a variance from the 15-foot side setback in the A-2 zoning district for an existing structure on .96 acres, located at 810 E High Point Ln., Columbia. (Zoning Regulations Section 10.A).

Chairperson Thomas asked the applicants if they wished to continue with the hearing only having three members present.

The applicants stated they wished to be heard tonight.

Planner, Bill Florea gave the following staff report:

The property is zoned A-2 as is the adjacent zoning and is located south of Columbia, approximately 1 mile west of Pierpont. There is a house and accessory structure on this property. The requested variance is to allow a side setback of less than 15 feet. The original zoning for this site is A-2. The accessory structure is located too close to the side property line. The applicant and the property owner to the west have agreed to adjust the lot line between the two properties but that will result in the building still being less than the required setback of 15 feet. The requested variance is from Zoning Regulations Section 10.A which requires a minimum side setback of 15 feet in the A-2 zoning district. Staff notified 23 property owners.

Present representing the request:

Steve Heying, surveyor, 1202 Madison St, Columbia
Rod Dablemont, 810 E High Point Ln, Columbia
Brad Underhill, 750 E High Point Ln, Columbia

Mr. Heying stated the garage on Mr. Underhill's property was built in 1994 and it met the setbacks when it was built but there wasn't enough room between the two buildings. On Mr. Dablemont's property the house was built in 1973 and the garage was probably built around the same time. Mr. Heying asked why when the garage was permitted on Mr. Underhill's property why was it not realized that there wasn't enough space in between the two buildings. This is a pre-existing condition not of either property owners fault; the applicants bought the property not knowing that there was a problem. The situation got exacerbated when the property owners tried to use each others property not knowing where the property line was. Mr. Heying found the property line and found out that it was about a foot off the corner of Mr. Dablemont's garage. The property owners have decided to split the distance between the two buildings as being the best alternative.

Mr. Underhill stated the garage on his property was built by the same person that owned Mr. Dablemont's property and he later split the property.

Mr. Dablemont stated the line that designates the current property line would prevent Mr. Dablemont from getting around the garage.

Open to public hearing.

No one spoke in favor or opposition to the request.

Closed to public hearing.

Member Robbins asked if either of the garages were destroyed would they be able to be built within compliance due to the configuration of the houses.

Mr. Heying stated no, they are on concrete foundations.

Mr. Yonke stated that is typical. There is a capability to build a building in compliance on both properties.

Mr. Heying stated the Mr. Dablemont's house is in the way. Mr. Underhill could build another garage elsewhere on his property. Mr. Dablemont would not be able to build a garage beside his house.

Mr. Yonke stated it could be built behind the house; there are other places on the property.

Member Thomas asked if either of the garages are attached to the home.

Mr. Heying stated no.

Member Thomas asked the distance from Mr. Dablemont's house to the property line.

Mr. Heying stated he didn't look at the house. The garage is 22 to 24 feet wide and 10 feet from the house.

Mr. Dablemont stated there is a deck between the garage and house.

Member Lightfoot made and Member Thomas seconded a motion to **approve** the request by Roderic and Christina Dablemont for a variance from the 15-foot side setback in the A-2 zoning district for an existing structure on .96 acres, located at 810 E High Point Ln., Columbia:

Member Thomas	Yes	Member Lightfoot	Yes
Member Robbins	Yes		

Motion to approve the request carries unanimously

3. Case Number 2015-011

Request by Brad Underhill for a variance from the 15-foot side setback in the A-2 zoning district for an existing structure on .96 acres, located at 750 E High Point Ln., Columbia. (Zoning Regulations Section 10.A).

Planner, Bill Florea gave the following staff report:

The property is zoned A-2 as is the adjacent zoning and is located south of Columbia, approximately 1 mile west of Pierpont. There is an accessory structure on this property. The requested variance is to allow a side setback of less than 15 feet. The original zoning for this site is A-2. The property owner to the east has a structure that is located too close to the side property line. The applicant and the adjoining property owner have agreed to adjust the lot line between the two properties but that will result in the building still being less than the required setback of 15 feet. The requested variance is from Zoning Regulations Section 10.A which requires a minimum side setback of 15 feet in the A-2 zoning district. Staff notified 23 property owners.

See discussion and public hearing under Case 2015-010 Dablemont

Member Robbins made and Member Thomas seconded a motion to **approve** the request by Brad Underhill for a variance from the 15-foot side setback in the A-2 zoning district for an existing structure on .96 acres, located at 750 E High Point Ln., Columbia **with the following condition:**

- The existing structure maintain the same location, footprint, and square footage. If the existing structure has been damaged, by any cause, equal to more than seventy-five percent of the actual value of the structure immediately prior to the damage then any replacement structure must be built in compliance with the required setback.

Member Thomas	Yes	Member Lightfoot	Yes
Member Robbins	Yes		

Motion to approve the request carries unanimously

OLD BUSINESS

- a. Certificate of Decision - Case # 2015-006 Donn & Judith Benish
- b. Certificate of Decision - Case # 2015-007 Patrick Lee Revocable Trust
- c. Certificate of Decision - Case # 2015-008 Alexis M Booska

Chairperson Thomas approved and signed the certificates of decision.

NEW BUSINESS

Annual election of officers

This item was tabled until the next regularly scheduled meeting.

ADJOURN

Meeting adjourned at 7:51 p.m.

Respectfully Submitted,

Paula L Evans
Secretary

Minutes approved this 22nd day of October, 2015