North Little Rock Board of Adjustment

Minutes

December 21, 2017

The meeting of the North Little Rock Board of Adjustment was called to order by Chairman Carl Jackson at 1:30 P.M. in the Planning Office (Conference Room B).

Members Present

Tom Brown
Mike Abele
Carl Jackson
Tim Giattina
Steve Sparr

Members Absent

None

Staff Present

David Forstrom, City Planner

Others Present

Daniel McFadden, North Little Rock City Attorney’s office
John Eley, 4405 East Drive, NLR, AR  72118
Scott Lewellen, 33300 Kanis Road, Paron, AR  72122

Administrative

None

Approval of Minutes

Mr. Sparr formed a motion to approve the minutes from the previous meeting in November. Mr. Giattina seconded the motion and there was no dissent.
Old Business

None

New Business

1. **BOA Case 2017-22.** Height variance to allow 180' cell tower at a Conservation (CONS) zoned property located at 12005 Faulkner Lake Road

Chairman Jackson swore in the applicant Mr. Scott Lewellen and a member of the public wishing to speak on another case, Mr. John Eley, and asked them to state names and addresses for the record.

Mr. Forstrom showed the aerial view of the property and discussed the remote location near wetlands and in the floodplain of a Conservation zone.

Mr. Jackson requested Mr. Lewellen to state his case and hardship. Mr. Lewellen noted the request is for a tower over 75' requiring BOA approval. The 180' tower requested will provide an increased coverage area and allow multiple cell phone service providers to collocate and therefore reduce the number of towers required in the service area.

Mr. Brown asked the applicant to state their hardship.

Mr. Lewellen stated that the hardship is any tower over 75' must come before the Board of Adjustments.

Mr. Brown stated he has still not heard a hardship and requested Mr. Forstrom read the definition of a hardship.

Mr. Forstrom read the definition of a hardship as “A Hardship should not be created by the owner, it should be due to unique circumstances existing on the property”.

Mr. Brown stated he needs Mr. Lewellen to describe the unique circumstances of the property that create the hardship.

Mr. Lewellen stated that a 75' tower would work on a cleared lot but due to the trees height of up to 60' you cannot get multiple tenants due to the 10' minimum tenant separation requirements.

Mr. Jackson asked Mr. McFadden of the City Attorney’s Office if Federal regulations state we cannot turn down a tower.
Mr. McFadden stated he has the federal law with him and you can turn down a new tower.

Mr. Brown stated that he believes the reason he wants the 180’ is for commercial reasons to get as many cell provider tenants as possible to help pay for it.

Mr. Abel asked what happens to adjoining properties if the tower collapses.

Mr. Forstrom stated that our regulations require a minimum buffer distance between the tower and adjoining properties.

Mr. Lewellen stated this monopole tower has design break points so that it will break and fall upon itself. Older towers did not have this design feature.

Mr. Brown stated he has still not heard a hardship. Mr. Brown believes in the next 5 to 10 years cell towers will be absolute and replaced with microcell antennas every 20 feet or so and he is proposing an ordinance that requires towers to be removed at owner expense when they are no longer utilized.

Mr. Lewellen confirmed in the next 10 years or so that cell towers would start to become obsolete and be replace by direct satellite transmission or microcell antennas.

Mr. Abel asked about the impact of the wetlands on approval.

Mr. Forstrom stated that in the site plan review process it will be reviewed for compliance with floodplain and wetland regulations and must meet all requirements before the site plan is approved. Mr. Forstrom stated he has discussed this with Michael Klamm, Floodplain Manager, and the project can meet floodplain regulations with elevation of the equipment.

Mr. Giattina asked about implications of the tower height on the Little Rock Airport.

Mr. Lewellen stated one of the first things done in looking for cell tower sites is getting a written determination of No Hazard to Aviation from the FAA which they have for this location.

Mr. Forstrom stated a letter from the FAA is also one of the conditions listed for approval.

Mr. Jackson asked Mr. McFadden of the City Attorney’s Office that he believes the applicant has not really stated a hardship unique to the property and his hardship is a commercial one as the increased height will make the project economically viable.
Mr. Forstrom stated the code reads that if you want to go higher than 75' you must get approval from the Board of Adjustment. Mr. Forstrom stated that we have previously approved heights above 75' and that this situation in his opinion is different from a hardship variance. We limit height to 75' but give the board the ability to review requests for increased heights and the discretion to look at the site and surrounding area and visual and other factors of compatibility and approve heights above 75'.

Mr. McFadden stated that in his opinion he did not necessarily see a hardship but he is not a voting member.

Mr. Sparr asked what is significantly different from this request as compared to previously approved requests.

Mr. Forstrom stated that the previous cell tower height above 75' Board of Adjustment approval off Counts Massie Road had similar arguments of larger coverage and ability to have multiple carriers with the increased height thereby reducing the number of cell towers. Mr. Forstrom stated that in this case the location is more remote than the previously approved cell tower.

Mr. Brown asked the difference between this request and other approvals. Mr. Forstrom stated he was only familiar with the case last year on Counts Massie Road and the previously approved tower had more visibility and residential impact issues as compared to this case. There were no objections from the surrounding property owners and the owners of the nearby apartments supported the tower due to perceived benefit of better cell phone service.

Mr. Lewellen reminded the board that he submitted propagation maps showing the difference between 75' and 180' which is about twice the coverage area. Approval of the 180' will reduce the proliferation of cell towers.

Mr. Brown stated there are 32 towers on city property and that he lives across from one and they have numerous colocations.

Mr. Forstrom added that with the remote location consisting of floodplain and wetlands that if you had to pick an ideal location this would be one.

Mr. Abel asked what is the zoning across the street?

Mr. Forstrom stated it is vacant commercial and residential.

Mr. Jackson asked if staff recommends approval with conditions.

Mr. Forstrom affirmed.
Mr. Brown told the applicant you are not going to give me a hardship because you
don’t have one although he does not have a problem with the request.

Mr. Brown requested that when someone makes a motion that the 24/7 beacon
listed as one of the conditions must stay on continuously and not go off during the
day.

Mr. Lewellen confirmed the beacon would be on continuously day and night.

Mr. Jackson stated the floor is open for any further discussions.

Mr. Abel formed a motion to approve the applicant’s request with the conditions
#1. - #7. in the staff write-up.

Mr. Sparr seconded the motion and it was passed with a unanimous vote.

PUBLIC COMMENT/ADJOURNMENT:

Mr. Jackson recognized Mr. Eley who had previously been swore in and asked him to
state his name and address for the record.

Mr. John Eley of 4405 East Drive addressed the board regarding previous BOA Case
2017-13 regarding a driveway located at the property line at 4411 East Drive. Mr. John
Eley is an abutting property owner to 4411 East Drive.

Mr. Eley summarized the history of this case and the actions of his neighbor.

Mr. Eley believes that the property owner at 4411 East Drive has not adhered to the
conditions of his BOA variance approval requiring the driveway to be cut back 1’ from
the property line back to the fence and the drainage system relocated so the water flows
to the street or on to the north side of the driveway.

Mr. Eley claims the property owner at 4411 East Drive has installed a drainage pipe and
cleanout valve on his property.

Mr. Eley asked that this issue go before our code court.

Mr. McFadden asked Mr. Eley if he has contacted our code enforcement office and filed
a complaint about this issue.

Mr. Eley stated he has talked to code enforcement about other issues but not this issue
and he needs our help.
Mr. Forstrom stated that the Board of Adjustment’s role is to rule on variance requests and that is the limit of their scope. This would be a code enforcement issue and not a matter for this board.

Mr. Jackson affirmed that the board did want to listen to his comments but you need to talk with code enforcement as this is outside the scope of the board.

Mr. McFadden also suggested Mr. Eley work with an attorney.

Mr. Brown suggested to Mr. Eley he could also contact his aldermen and gave Mr. Eley their names.

Mr. Jackson said Mr. Forstrom will assist Mr. Eley in contacting Code Enforcement regarding this issue.

Mr. Eley expressed his appreciation to the board for listening to him and appreciated the kindness shown by the board.

Mr. Sparr formed a motion to adjourn at 1:59 pm and Mr. Giattina seconded the motion which passed without dissent.

PASSED: **January 25, 2018**

RESPECTFULLY SUBMITTED:

[Signature]

CARL JACKSON, CHAIRMAN