

North Little Rock Board of Adjustment

Minutes

April 19, 2018

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
Carl Jackson
Tim Giattina
Steve Sparr

Members Absent

Mike Abele

Staff Present

Shawn Spencer, Planning Director
David Forstrom, City Planner

Others Present

Marie Bernarde Miller, NLR Deputy City Attorney
Donald Edmondson, 917 North Walkers Corner Rd., Scott, AR
Deborah Edmondson, 917 North Walkers Corner Rd., Scott, AR
Jean Credit, 507 North Walkers Corner Rd., Scott, AR
Keith Harrington, 506 North Walkers Corner Rd., Scott, AR
Daniel Albritton, 610 Houston Drive, Benton, AR
Ron Price, 628, Ward, AR
Steve Blake, 1895 Hwy 80E, Calhoun, LA
Jeremiah Ashcraft, 7114 E Bethany Rd., NLR, AR
Kevin Tucker, 3806 Birmingham Lane, NLR, AR
Jason Rogers, 6600 Tracy Ave., Little Rock, AR

Administrative

None

Approval of Minutes

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

Old Business

None

New Business

1. **BOA Case 2018-6.** To allow a 6' tall chain link fence with 1' barbed wire (total of 7' tall) in front yard at an I-3 zoned property located at 7005 Highway 70.

Chairman Jackson swore in the applicant and all additional attendees who wish to speak before the board.

Mr. Forstrom showed a video of the property and explained that the building on the property was recently demolished and the applicant is requesting the fence to secure the front open area that was created.

Mr. Forstrom stated that the barbed wire chain link fence was installed without a permit even though someone called the City asking about permitting the fence and they were told it could not be permitted without receiving a variance from the BOA.

Mr. Forstrom stated that our building inspector notified the property owner that the fence was built without a permit and they must apply for a variance with the BOA. The applicant did submit a variance request for the fence on the same day that they received the violation notice.

Mr. Forstrom stated that the barbed wire was installed inclined outward and it must be modified so that it is either inclined inward or vertical as a condition of variance approval.

Mr. Forstrom stated another condition for approval is the Fire Marshal must inspect the gate to ensure there is enough clearance from the road to prevent traffic backups when vehicles are entering the property.

Chairman Jackson requested that the applicant, Mr. Jason Rogers (agent for the fence contractor), state the hardship.

Mr. Rogers stated the hardship is the location in an industrial area with very little foot traffic after business hours making it more susceptible to property crimes. The fence will secure the area.

Chairman Jackson asked if there has been a history of break-ins. Mr. Rogers referred this question to the business owner.

Mr. Ron Price, the business owner, stated there have been multiple break-ins over the last year on file with the North Little Rock Police Department and they have hired the Police Department to watch the property on average about 3 hours a night at \$50 per hour.

Mr. Giattina asked what is stored at the property.

Mr. Price stated they mostly store scrap. The most recent theft involved 5 males stealing about 500 pounds of scrap metal worth \$0.80 per pound and they have also had break-ins into the office.

Mr. Brown asked Mr. Price why he did not get a permit before building the fence.

Mr. Price said he is not in the fencing business and left it up to the fence contractor to obtain any permits if needed.

Kevin Tucker approached and was sworn in by Chairman Jackson.

Mr. Tucker stated he is the fence contractor.

Mr. Brown asked Mr. Tucker why he did not get a fence permit.

Mr. Tucker said there was some confusion between himself and Mr. Rogers.

Mr. Brown reminded everyone that the property owner is ultimately responsible for obtaining a permit.

Mr. Brown informed Mr. Price that now that he knows a permit is required he expects him to ensure he obtains a permit in the future.

Mr. Price agreed.

Mr. Sparr asked Mr. Price about the gate entrance which requires approval by the Fire Marshal.

Mr. Price stated the gate is 40' wide.

Mr. Spencer stated it is not necessarily the width but how far back the gate is located from the road so a large vehicle such as a Semi will not block traffic while waiting for the gate to open.

Mr. Spencer stated when they submit for the fence permit it will undergo commercial plan review and the Fire Marshall will have to approve the gate location.

Mr. Giattina asked if Mr. Price would agree to modify the barbed wire such that it is inclined vertical or inward if the variance is approved.

Mr. Price agreed to flip the barbed wire supports such that the barbed wire is inclined inward.

Chairman Jackson asked if there was any more discussion and there was none.

Mr. Sparr formed a motion to approve the applicant's request provided they modify the barbed wire so that it is inclined vertically or inward and the gate receives approval by the Fire Marshal.

Mr. Giattina seconded that motion and the motion passed with a unanimous vote.

2. **BOA Case 2018-8.** Height variance to allow 150' cell tower at an R-2 zoned property located on the east side of North Walkers Corner Road between Harvey Watson Place and Rogers Lane.

Chairman Jackson swore in the applicant Mr. Steve Blake and Mr. Daniel Albritton who works with Mr. Blake.

Mr. Forstrom showed pictures and aerial views of the proposed location.

Mr. Forstrom stated the applicant is requesting a proposed cell tower height variance from the 75' height allowed to a height of 150'.

Mr. Forstrom stated the area is somewhat remote with not a lot of development.

The applicant's stated reason is there is a federal program called Connect America that provides funding to help improve broadband services in rural areas. The proposed tower will improve service to the area and the 150' height is required for the coverage and the proposed height will allow co-location of other carriers resulting in less cell towers.

Chairman Jackson asked Mr. Forstrom if Federal Law requires that we must allow cell towers provided they meet certain conditions.

Mr. Forstrom referred the question to Marie Bernarde Miller, NLR Deputy City Attorney.

Ms. Miller stated that it is her understanding that an amendment to the law requires approval of height increases for existing cell towers.

Mr. Spencer affirmed that a new cell tower must meet local government regulations including our height limit of 75 feet.

Mr. Spencer all stated it typically takes many cell towers of 75 feet to provide the service of a single cell tower of 150 feet.

Ms. Miller confirmed that because this is a new cell tower it is subject to our height regulations and must not exceed 75 feet without a variance approved by the BOA.

Chairman Jackson asked the applicant to state the hardship requiring the 150' height.

Steve Blake stated that his engineer, Mr. Alrbritton, could better speak to the hardship which involves the propagation map.

Mr. Brown asked Ms. Miller to read the definition of a hardship.

Ms Miller read the definition of a hardship for the board and applicant.

Mr. Brown stated that in his opinion there was no hardship because it is not unique to the property.

Mr. Alrbritton explained that 20 years ago the frequencies were far enough apart that they would not interfere with each other. The goal today with so much more capacity with 4G, 5G, and more is to manage the RF (radio frequency) environment to prevent signal interference.

Mr. Alrbritton stated that up on I-40 they have a 300' high tower and a tower close by on the South is 173' high. They try and manage the grid so they are dominant in their coverage area so as not to cause interference.

Mr. Giattina asked Mr. Alrbritton what he meant by being dominant.

Mr. Alrbritton stated being dominant means a dominant signal in relation to other towers in the area to minimize signal interference.

Mr. Giattina asked if this was only going to be an AT&T tower.

Mr. Alrbritton stated they are building the tower but a third party will own the tower.

Mr. Spencer stated that we do require co-location.

Mr. Brown asked how many can co-locate on the tower.

Mr. Alrbritton that depends on the structural design and wind rating.

Mr. Brown asked could there be 5 or 6 more cell companies on the tower>

Mr. Alrbritton said yes if the structure would handle it.

Mr. Brown asked if they built the tower strong enough could there be 20 cell phone companies on the tower?

Mr. Alrbritton said realistically that would be difficult structurally and by code it has to be available for 4 cell phone companies.

Mr. Brown asked if the tower would have support cables or be a monopole.

Mr. Alrbritton confirmed it will be a monopole.

Mr. Giattina asked why they selected this specific location.

Mr. Alrbritton referred to the propagation map submitted and included with the agenda packet.

Mr. Alrbritton stated the reason for this location was the Connect America Fund paid for by cell phone taxes. This location is within a high density need for broadband services as identified by the FCC. The provider is based on the local area phone provider and in this area that is AT&T. The FCC requires a 10 MegaBit per second download speed at a certain volume for this program.

Mr. Brown asked if it is true that whoever owns the tower wants as many companies as possible to co-locate to defray the costs.

Mr. Alrbritton affirmed.

Mr. Brown asked Mr. Alrbritton if he is the one owning the tower.

Mr. Alrbritton stated they will not own the tower and are not building the tower as their role is site acquisition for AT&T.

Mr. Brown asked if the property will be purchased or leased.

Mr. Blake stated the property is leased.

Mr. Brown asked is it true cell towers will not be needed in the future and instead there will be small antennas located every 30 to 40 feet.

Mr. Albritton stated we are a long way from that.

Mr. Spencer stated we are working on regulations for small cellular equipment.

Mr. Brown asked Mr. Spencer to define small cellular.

Mr. Spencer stated small cellular would be small 1' antennas on street lights located approximately every block in the city but not rural areas.

Mr. Brown stated if we approve the variance it needs to be in the motion that if the cell tower is no longer needed they cannot abandon it but have to pay to tear it down and remove from the property.

Mr. Blake agreed and said he believes it is a condition of their lease.

Mr. Spencer gave the audience and board members an overview of the process. This is the first of 3 steps required for approval. The first step is to ask for a height variance before the Board of Adjustment at today's hearing. The second step is to get approval from Pulaski County because there is a Bill of Assurance on the property. The City of North Little Rock does not enforce the Bill of Assurance but Pulaski County will not approve unless the Bill of Assurance allows a cell tower. The third step is the City Council to get approval for rezoning as the current zoning does not allow cell towers.

Mr. Sparr asked Mr. Spencer what is the difference between this request and the other 5 or 6 we have approved.

Mr. Spencer affirmed there is not much difference.

Chairman Jackson asked if any member of the audience would like to speak.

Deborah Edmondson asked to speak before the board.

Ms. Edmondson asked if there will be only one tower at 150' on the lot and no additional towers ever.

Mr. Spencer stated that can not be guaranteed.

Ms. Edmondson asked if up to 6 cell companies could locate on the tower.

Mr. Spencer stated that depends on the weight and structural design.

Ms. Edmondson asked how the new tower would affect her service as right now she has AT&T and the quality is poor.\

Mr. Blake stated you should have excellent quality service and no dead zone if close to cell tower although the engineer Mr. Alrbritton stated it cannot be guaranteed you will never drop a call if you are between towers.

Ms. Edmondson asked if the residential property is rezoned would it be rezoned commercial which would allow other commercial development.

Mr. Spencer said we have not started the second step of the process but most likely it would be a Special Use and not a rezoning which would only allow a cell tower and not commercial uses.

Keith Harrington asked to speak before the board.

Mr. Harrington stated his property backs up to the proposed site of the cell tower. He also said this is a very beautiful area and the cell tower will reduce the attractiveness of the area.

Mr. Harrington stated he believes based on his research that there are health issues with cell phone towers and he is concerned about his health and that of his wife.

Mr. Harrington asked if 3 lots were leased for the cell tower.

Mr. Blake replied that they are only leasing a portion of one lot.

Mr. Harrington stated he has talked to Realtors and they have a hard time selling property next to cell towers and believe it will negatively affect his property value and some people will walk away from a property if it is near a cell tower.

Mr. Blake stated that from his standpoint there is a need as for example many children are issued computers for school and broadband services is needed for underserved rural areas.

Mr. Harrington asked if any trees will need to be cut down for the cell tower.

Mr. Alrbritton stated he does not believe any trees will need to be removed.

Jean Credit asked to speak before the board.

Ms Credit was concerned about building a cell tower at this location near homes and a church and she believes it will negatively affect the beauty of the area and bring down property values and she is opposed to the cell tower.

Mr. Harrington asked whether a house could be built on the property where the cell tower is proposed.

Mr. Spencer stated the property is zoned residential so a house could be built on the property.

Mr. Giattina asked if the church has an opinion on the cell tower and Mr. Harrington stated the pastor and the church do not want the cell tower but they do not want to get involved.

Mr. Brown reminded everyone that there is no representative here from the Church so we do not know their opinion.

Mr. Brown requested the applicant state their hardship.

Mr. Blake stated if the height is limited to 75' they will be unable to reach a lot of potential customers.

Mr. Brown stated if they vote to approve he adamantly insists the applicant adhere to conditions #5. and #6. of the staff write-up which require installing a 24/7 beacon and a back-up generator.

Mr. Blake affirmed they will comply with all 8 conditions of the staff write-up if approved.

Chairman Jackson asked if there was any more discussion and there was none.

A motion to approve the applicant's request with conditions provided in the staff write-up was made by Mr. Sparr, but failed for lack of a second.

Letters from property owners were given to the board and Mr. Forstrom stated they will be added to the case file on record.

Mr. Blake asked what is their recourse now that the variance was not approved.

Mr. Spencer noted the BOA handout states the appeal process and suggested Mr. Blake speak with Mr. Forstrom after the meeting to answer any questions.

PUBLIC COMMENT/ADJOURNMENT:

Mr. Sparr moved for the Board to adjourn at 2:31 pm.

Mr. Giattina seconded the motion and there was no dissent.

PASSED: June 28th 2018 **RESPECTFULLY SUBMITTED:**



CARL JACKSON, CHAIRMAN