

**North Little Rock Board of Zoning Adjustment
Minutes Record – November 19, 2020**

Chairman Tom Brown called the meeting of the North Little Rock Board of Zoning Adjustment to order at 1:30 P.M. in the City Council Chambers, 300 Main Street, North Little Rock, AR. Roll call found a quorum to be present; a quorum being three members present.

Members Present

Tom Brown, Chairman
Tim Giattina, Vice-Chair
Mike Abele
Gardner Burton
Steve Sparr

Members Absent

None

Staff Present

Ms. Donna James, City Planner
Mr. Tim Reavis, Assistant Director of Planning
Ms. Marie-Bernarde Miller, Deputy City Attorney
Mr. Chad Rogers, Director North Little Rock Airport

Others Present

Mr. John Pownall, Thomas Engineering, 3810 Lookout, North Little Rock, AR 72116
Mr. Todd Henson, 200 River Market Drive, Suite 330, Little Rock, AR 72201
Mr. Brandon Ruth, 600 Main Street, Suite 300, North Little Rock, AR 72114
Mr. Brad Drake, Scenic Hill Solar, 44 Isbell Lane, Little Rock, AR 72223
Dr. Chris Jones, Executive Director Innovation Hub, 201 E. Broadway, North Little Rock, AR 72214
Ms. Errin Stanger, Deputy Director Innovation Hub, 201 E. Broadway, North Little Rock, AR 72214
Mr. Scott Jackson, Boonetime Bay, LLC, Nashville, TN representing Crown Castle, Via Phone

Administrative

Approval of the 2021 Board of Zoning Adjustment Calendar

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Old Business

None

Approval of Minutes

Mr. Sparr formed a motion to approve the minutes from the previous meeting of September 24, 2020. Mr. Giattina seconded the motion. All members voted in the affirmative. The motion was approved.

BOA 2020-25, a variance from the area provision of Section 5.7 to allow the replacement of a communication tower currently a 119-foot monopole with a 140-foot monopole varying the typical maximum height allowed for a communication tower of 75-feet located at 22 Remount Road, North Little Rock, AR. Chairman Brown called the item and requested the applicant state their name and address for the record. Mr. Jackson stated he was representing Crown Castle Corporation on the current variance request to allow the replacement of an existing communications tower located at 22 Remount Road.

Chairman Brown stated to the applicant in order for the Board to grant a variance there had to be a hardship. He requested Mr. Jackson state his hardship. Mr. Jackson stated the hardship arose when a carrier approached them wanting to go onto their tower. He stated the carrier could not locate below the top tenant on the tower so the Company began to investigate what it would take to increase the height of the tower 20-feet from a structural capacity standpoint. He stated the height was not allowed to increase on the existing tower due to the foundation of the existing tower needed replacement and new steel installed. He stated in these cases a new tower was constructed in a nearby location to the existing tower and once the new tower was operational, the old tower was removed. He stated the hardship was they were trying to find a location on the tower for the new tenant but they could not go lower than the existing tenant. He stated the height and structural capacity of the existing tower did not allow for the increase in height of the existing tower.

Chairman Brown ask for comments from the Board on Mr. Jackson's stated hardship. Mr. Abele stated the letter of hardship indicated health, safety and welfare of the citizens of North Little Rock as the hardship. Mr. Jackson stated he felt the letter was referring to 911 calls and providing reliable service to the customers.

Chairman Brown read to the applicant the definition of a hardship. He stated a hardship was a special circumstance, which made it very difficult for a particular project to meet the Zoning Ordinance requirement. Special circumstances were not interpreted to be something intangible, such as lack of knowledge of the code or misinformation at the time of purchase or construction. A hardship generally occurs when the physical characteristics of a property are such that it cannot be developed as permitted by the City Zoning Ordinance. A hardship may be created by the surroundings, shape or

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topographical conditions particular to the specific property. However, the hardship cannot be self-imposed, or the result of the property owner's own action.

Chairman Brown stated to grant variances due to special conditions, where a literal enforcement of the Zoning Ordinance would result in unnecessary and undue hardship, the Board of Zoning Adjustment must first determine: the variance would not authorize the operation of a use other than the uses specifically permitted within the Zoning District of the property for which the variance was sought. The development or use of the property for which the variance was sought, if limited by a literal enforcement of the provisions of the Code, could not yield a reasonable return in service, use or income as compared to adjacent conforming property in the same Zoning District. The plight of the owner of the property for which the variance was sought was due to unique circumstances existing on the property, that the unique circumstances were not created by the owner of the property and were not due to or the result of general conditions in the Zoning District in which the property was located. He stated just because the variance would make it better for the communications provider did not constitute a hardship.

Mr. Sparr questioned the number of existing towers and the number of towers at the time of completion of the project. Staff stated there were currently two towers located on the site. Staff stated there was an existing taller tower located on the site, which would remain. Staff stated once this tower was installed the shorter of the towers would be removed. At the end of the project, there would be two towers on the site. There would be three for a short period, once the carrier's equipment was installed, and operational then the tower would be removed.

Chairman Brown questioned if there was anyone in the audience in attendance to speak for or against the request. Mr. Chad Rogers, of the North Little Rock Airport, addressed the Board on the request. Mr. Rogers stated the airport was located on Remount Road and the airport had a runway located near the location of the proposed tower. He stated he had reviewed information provided by Mr. Jackson and from a regulation stand point the Airport did not have a concern with the height. Mr. Rogers stated he understood there were requirements such as a blinking light on top of the tower and he felt this was a good requirement and appreciated the Board looking out for the Airport. He stated from the height standpoint the FAA regulated the area and if the FAA approved the height of the tower with regard to the air space, the Airport did not have a concern.

Mr. Giattina questioned staff's recommendation.

Staff stated they did not see an issue with increasing the height of the tower but if the Board did elect to approve the request there were recommended conditions to be placed on the request. Staff stated in addition to the previously noted conditions in the staff write-up there should also be a condition of a bond payable to the City of North Little Rock to cover the cost of removal of the existing tower should the owner not remove the tower to

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be replaced within 90-days of completion of the new tower. Staff stated the bond would be required prior to the issuance of a building permit

Mr. Burton questioned Mr. Jackson if he had reviewed the staff recommendations. Mr. Jackson stated he had reviewed the staff recommendations and did not see an issue with any of the requirements.

Chairman Brown stated the most important condition to him was the blinking light, which was to be on 24-hours per day and 7-days per week, 365-days per year. He stated so instead of placing one light on top there should be two or three lights so if one were to fail the others would continue to function. He stated also a building permit would not be approved until a letter from the FAA was received stating approval of the height of the tower. He stated his concern was the protection of the citizens who live in this area of the City and for the pilots flying in and out of North Little Rock.

Chairman Brown questioned if there was any additional discussion. There being none he requested a motion. Mr. Sparr provided a motion for approval of the item including all staff recommendations and comments as well as the requirement of the approval letter from the FAA prior to the issuance of a building permit and the requirement there be multiple blinking lights on top of the tower. Mr. Burton provided a second on the motion. Chairman Brown requested a roll call vote. All members voted in the affirmative. The motion was approved.

BOA 2020-23, A variance from the area provision of Section 4.2.8(c) and 5.4.3(7) to allow an increase in the rear yard lot coverage for an accessory structure (solar panel carport structure) and to allow a reduction in the required setback for roof mounted solar panels located at 204 E 4th Street, North Little Rock, AR. Chairman Brown called the item and requested the applicants come forward and state their names and addresses for the record. Mr. Brad Drake, Dr. Chris Jones and Ms. Errin Stanger came forward to address the Board on the merits of the request.

Mr. Drake stated he was present to represent the request. He stated he also had Mr. Bill Halter, the owner of Scenic Hill Solar, on the phone to also address the Board.

Chairman Brown stated he desired the spokesperson for the request to be a person representing the property. He stated Mr. Drake was a salesperson representing Scenic Hills Solar. He stated he wanted representatives from the Innovation Hub to speak and address the Board's questions.

Dr. Jones stated he was the Director of the Innovation Hub. Ms. Stanger stated she was the Deputy Director. Chairman Brown requested the applicant provide their hardship. Mr. Jones stated the Hub wanted to install solar panels to assist with the offset of the Hub's electrical cost. He stated the solar panel system as proposed would offset the Hub's electrical needs by around 45-percent. He stated with the offset of electrical costs the

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Hub would then be able to offer additional services to their clients. He stated a solar internship would be offered through the Hub. He stated the size of the solar panels came to the edge of the property so the hardship was the need for the additional area for effectiveness and efficiency.

Chairman Brown questioned the hardship. Mr. Jones stated the hardship was financial. Chairman Brown questioned the Board members if they felt this was a valid hardship. Chairman Brown stated economics was not a valid hardship.

Mr. Giattina questioned the look of the structure. Staff provided an overhead of the applicant's graphics as submitted. Staff stated in addition the applicant had provided a conceptual landscape plan, which was also provided to the Design Review Committee of the North Little Rock Planning Commission.

Ms. Stanger stated the hardship was the size of the panels. She stated the concern of staff was the panels extending to the edges of the property. She stated the request was to allow for the panels as proposed and to extend to the edges of the property for maximum efficiency of the solar panel system.

Mr. Abele questioned the letter from the Design Review Committee. He questioned the statement the design did not meet the purpose and intent of the Main Street Overlay District. Staff stated an element of the Main Street Overlay District was the Design Review Committee of the Planning Commission were to review all application going before the Board of Zoning Adjustment. Staff stated they were not looking at the hardship but only if the proposal meet the purpose and intent of the Main Street Overlay. Staff stated within the Overlay there was a statement regarding the purpose and intent of the Overlay. Staff stated within the purpose, intent were statements regarding walkability; reinforcement of the historic significance of the district and to create a mix of office, retail, cultural, residential, and entertainment functions.

Mr. Giattina stated there were new building in the area, which were modern. He stated the First Orion building as well as the entire plaza were cutting edge design.

Chairman Brown questioned why the panels could not be placed on the roof. Mr. Jones stated the roof was the first option but the building was over 100 years old and the roof would not support the weight of the panels.

Mr. Giattina questioned the design of the panels. He questioned if there was not a way to structure the design and still get the efficiency of the panels. Mr. Drake stated there was not. He stated if the panels were altered to meet the current setback requirements the efficiency would be cut so much the offset of the electrical cost to the Hub would not make the project profitable.

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Mr. Abele questioned if the size was reduced what the savings would be. Mr. Drake stated currently the off set of electrical cost was approximately 45 percent. He stated if the size were reduced to meet the current setbacks, the savings would be reduced to near 30 percent.

Mr. Giattina questioned Mr. Jones of the savings and what services would be provided and not provided without the offset in the electrical cost. Mr. Jones stated the Hub would still offer services and classes but the lack of offset in electrical cost would affect their savings. He stated the offset would save the Hub \$250 – \$300 per month.

Mr. Abele questioned the payback fee. Mr. Jones stated a large portion of the funding was from an anonymous donor so the payback fee to the Hub was minimal.

There was a general discussion concerning the size, the placement, the reduction and the economics of the project. Mr. Drake stated the solar panels were to be pitched to the south. He stated if the panel were long and narrow then the pitch would not be in place to capture the sunlight necessary to power the panels. Mr. Drake stated if the structure were long and narrow then this would affect the parking.

Mr. Giattina questioned if the landscaping indicated on the plan and referenced in the letter from the Design Review Committee would be provided. Mr. Jones stated the landscaping indicated on the elevations would be provided. He stated street trees, grass and shrubs would be provided. Mr. Jones stated a concern was also placing the panels adjacent to the street. He stated aesthetically moving the panel's further back from Broadway was more appealing.

Mr. Burton questioned staff's recommendation. Staff stated they were not supportive of the request. Staff stated they felt the structure could be built to meet the current setback requirements.

Chairman Brown questioned if there was any additional discussion. There being none he requested a motion. Chairman Brown called for a motion for approval on two occasions. Mr. Giattina provided a motion for approval. Chairman Brown called for a second on the motion. He called for a second four additional times. No second was provided. Chairman Brown stated the item failed for lack of a second.

BOA 2020-24, a variance from the area provision of Section 5.11 to allow the placement of a fence within the front yard of an apartment community currently under construction located at 630 Riverfront Drive, North Little Rock, AR. Chairman Brown called the item and requested the applicant's provide their names and addresses for the record. Mr. John Pownall and Mr. Todd Henson came forward to address the Board.

Chairman Brown stated to Mr. Pownall he was well aware that for the Board to approve the request there had to be a hardship. Chairman Brown stated the fence was installed

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without a permit and Mr. Pownall should have known a permit was required prior to the construction of the fence. Mr. Pownall stated the letter provided by the Planning Commission stated no fence was allowed beyond the front building line. He stated the property was located within the C6 Downtown Commercial Zoning District, which allowed a zero setback. He stated the fence was not placed at the zero setback line but a few feet inside the building line. He stated the front building line was the line established on the plat. He stated since the fence was not indicated beyond the front building line he was unaware there was a variance needed. He stated had this been clear then the developer would have requested the variance months ago.

Chairman Brown stated had the developer requested a permit before installing the fence he would have been told the fence as constructed/proposed was not allowed.

Mr. Henson addressed the Board stating building in different municipalities and areas all jurisdictions had their own requirements. He stated when the plans for building permit were submitted and approved the fence was indicated on the plan. He stated they felt the approval of the building permit encompassed all aspects of the development including the proposed fencing. He stated the plans were submitted for a project for plan review. He stated at the time of the Planning Commission letter he was not on board yet. He stated he was on board when the plans were submitted for plan review and the fence was included on the plans. He stated he took full ownership and was willing to pay the penalty for not securing a permit prior to construction of the fence. He stated he understood Roger Green and his folks did a portion of the plan review and Chris Wilburn and his folks a separate part of the plan review but felt the fence was being considered when going through the building permit review process since the plans submitted were for a project.

Chairman Brown questioned the Deputy City Attorney if the Board had the authority to triple fee persons who did work without a permit such as build an accessory structure or building a fence without a permit. Ms. Miller stated this Board was over the Zoning Ordinance and the authorization for triple fees of work without a permit was within the Building Codes section of the City Municipal Code. She stated this Board did not have the authority to impose the additional fee. Ms. Miller stated if the person being assessed with the triple fee did not want to pay the fee, they could appeal the decision for the assessment of the additional fee to this Board. She stated this Board could then consider whether to uphold the Building Officials determination for the triple fee or determine the triple fee was not warranted. Chairman Brown stated then if they did not like this Boards decision they could appeal the Board's decision to circuit court.

There was a general discussion concerning the Planning Commission approval letter and the placement of the fence. Mr. Pownall stated the letter clearly stated the fence was not to be located within the front building line. Chairman Brown stated the reason for the request was the fence was constructed without a permit. He stated had a permit been requested before installation then they would have been told they could not have the

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fence as indicated/constructed and would have been before the Board on the front end and not the back end.

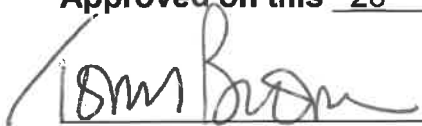
Mr. Henson stated the true hardship was the project was a \$35 million dollar project and there were 376 parking spaces, which would be unsecure. He stated this area was a high crime area and the safety and security of the residents were of the most concern. He stated without the fence the property could not be secured and put the residents and the property at high risk. Mr. Henson stated the fence material installed was placed to match the fencing on City owned property to the east. He stated the fence was placed at this location along the street right of way and the materials chosen to architecturally match the City fencing to allow for a continuous flow along Riverfront Drive.

Chairman Brown questioned if there was any additional discussion. There being none he requested a motion. Mr. Burton provided a motion for approval of the item including all staff recommendations and comments. Mr. Sparr provided a second on the motion. Chairman Brown requested a roll call vote. All members voted in the affirmative. The motion was approved.

Public Comment and Adjournment

Chairman Brown called for public comment. There being none and there being no further business before the Board and on a motion of Mr. Sparr and by consent of all members present, the meeting was adjourned at 2:20 pm.

Approved on this 28 day of January, 2021



Tom Brown, Chairman