

BOARD OF ADJUSTMENT MINUTES

July 7, 2022

Rolla City Hall

<u>Presiding:</u>	Chairperson Matt Crowell
<u>Members Present:</u>	Judy Jepsen, Jacob Rohter, John Meusch
<u>Alternates Present:</u>	Jonathan Hines
<u>Members Not Present:</u>	Laura Stoll
<u>City Officials in Attendance:</u>	Tom Coots, City Planner, and Sarah West, Administrative Assistant
<u>Others in Attendance:</u>	Russell Been and Sasha Riedisser, Applicants, Zach Buchheit

Chairperson **Matt Crowell** called the meeting to order at 5:30 P.M. He recognized the members who were present. **Crowell** swore in all present who intended to speak.

I. APPROVE MINUTES:

Crowell approved the minutes from the May 12, 2022 Board of Adjustment meeting as printed and distributed.

II. OLD BUSINESS:

1. **ZV2021-04:** Variance to Section 42-244.4 (h) to allow a reduction in the front yard setback for a sign in the C-1, Neighborhood Commercial district.

The applicant is requesting the case be postponed to the next scheduled meeting on August 4, 2022 at 5:30.

A motion was made by Jonathan Hines, seconded by Judy Jepsen, to grant the applicant's request to postpone the case to the next scheduled meeting on August 4, 2022. A voice vote shows all in favor.

III. PUBLIC HEARING:

1. **ZV2022-05:** Variance to Section 42.399 (h) to allow reduced setbacks for a telecommunications tower.

Tom Coots presents the staff report. **Crowell** asks why the City Council did not approve the setbacks with the Conditional Use Permit. **Coots** states City Council did not approve the setbacks because they felt the applicant did not prove the minimum criteria for that to be approved.

Judy Jepsen asks if there were any concerns from citizens. **Coots** states some concerns were brought up at the initial Conditional Use Permit request in regards to location and potential

health concerns, but no concerns were brought up with this variance request. **Crowell** asks if evidence was presented to validate health concerns. **Coots** confirms evidence was submitted, however, the applicant may clarify some of that evidence.

Jacob Rohter asks for the reasoning behind the distance of the setback on the cell tower. **Coots** states since the distance is equal to the height of the tower, if the tower fell, it would prevent impacting offsite locations.

Sasha Riedisser, the Collective Solutions attorney, is located at 211 North Broadway in St. Louis, Missouri. She mentions that the federal law states if a cell tower is needed in an area to improve services for a carrier, and no better location is available, denial of the proposed tower is a violation of federal law.

Russell Been, the owner of Collective Solutions, is located at 340 Marshall Road Valley Park, Missouri. He states Rolla needs more coverage in the area, especially 5G and FirstNet for first responders. This technology cannot be upgraded onto the current flag pole tower. The proposed tower has to meet AT&T's coverage demands, be 95 feet in height, and be within the search area.

Been claims if the proposed tower has to meet the setback requirements from the road and adjacent properties, the tower would end up very close to the existing business on the lot. He states that no other property within their search area would meet the setback requirements. He believes the City Ordinances are prohibiting them from getting coverage within this area.

John Meusch is now present.

Been presents pictures to the Board of existing cell towers surviving EF3 and EF4 tornadoes. He also presents an article from the American Cancer Society showing no known risks associated with exposure to RF waves from a cell tower.

Crowell asks if there was a location further away from the existing cell tower that met the setback requirements. **Riedisser** states the proposed tower has to be in close proximity to the current tower to keep the same coverage area. **Been** states that if the tower is moved too far away from the existing tower, there will be a gap in coverage.

Been states that no existing tower meets the current setback standard. He presents a document from Sabre Industries that states the proposed tower is designed that if it did fail, the fall radius would be less than 35 feet. **Crowell** asks how this is possible. **Been** states the towers are designed to release after so much pressure.

Crowell asks if the coverage radius of the proposed tower is greater than the current tower. **Been** states that increased capacity is needed, and this 5G technology can be put on the proposed tower. While the radius of coverage will not change, it will increase the number of customers they can service.

Crowell asks if a flag pole tower can be placed where the monopole is proposed to go, and the monopole tower be placed in a location where setbacks are met. **Been** states that AT&T cannot financially build two towers.

Riedisser mentions that federal law states that local authorities cannot dictate the way a carrier decides to structure its network. **Been** states that Missouri statutes override local statutes.

Riedisser states the application meets the requirements for a variance as there is no danger of the tower falling, so there is no need for a setback. She mentions that no towers in the area meet the current setback requirements, and that putting the tower will improve service and meet the goals of the ordinance.

Jepsen asks if the proposed tower could be built in other towns without Rolla's setback requirements. **Been** mentions that other towns in St. Louis County have zero setbacks between industrial districts. **Jepsen** asks if the applicant thought the Rolla Ordinances were excessive. **Been** confirms this, and states he believes these requirements prevent the best use of the property. He states that the ordinance was passed without looking for an overriding state statute, and that other areas are removing setbacks to meet state requirements.

Been states this issue is not a matter of health and safety, and there are no other locations available in their search area. There is a hardship because the ordinances are hindering Collective Solutions from placing a tower.

Crowell asks if the applicant could build the tower differently, but it is not financially viable. **Been** states he is trying to better coverage in area not increase the value of this property.

Crowell asks if the coverage could be increased in other ways, it would just be more expensive. **Been** states this is a question that cannot be considered under state statute. **Riedisser** states the back of the parcel is not economically viable other than by building a tower, since the owner is not using this land.

Crowell opens the public hearing.

Zach Buchheit, representing SBA Communications, located at 7700 Forsyth Boulevard Suite 1100 in St. Louis. He states this application is about saving money and meeting AT&T's

coverage objectives. There is no problem with coverage in Rolla, and Rolla denizens already have 5G and FirstNet. He states AT&T knew about the setback requirements before the application was submitted, because it is in the ordinance. He states there is nothing in the state legislature that says local authorities cannot consider setbacks. It is common to have setback requirements, and he claims no new information has been presented with this application regarding setbacks.

Buchheit states there is no difference in coverage between the current and proposed cell towers. He believes there is no reason to sacrifice safety if the coverage is not increasing. He mentions there is no economic hardship from denying this variance and that the application does not meet multiple criteria in order to be approved. He states this is a self-induced problem, as the applicant has limited themselves to a tiny search area. He implores the Board to deny the request, due to safety concerns and lack of information.

Been states he would gladly provide any more information that was needed. **Reidisser** mentions that the current tower does not meet requirements today, and neither the current nor proposed tower will be a detriment to public safety.

Jepsen asks if other locations met the criteria. **Been** mentions that other properties were available, but none met the setback requirements. **Reidisser** mentions the state statutes allow for local authorities to have setbacks, but state and federal laws step in if the local ordinances prevent a carrier from improving service.

Crowell asks what additional information would be needed to be able to provide staff recommendations. **Coots** states a more detailed site plan that shows the distances from the proposed cell tower to other locations is needed at a minimum.

Crowell asks to what degree the Board considers state and federal statutes. **Coots** states if the Board wants legal direction, an arrangement can be made.

Hines asks what other information is needed. **Coots** a better site plan that shows what variances are needed.

A motion was made by Judy Jepsen, seconded by John Meusch, to table the case to the next scheduled meeting on August 4, 2022 at 5:30. A roll call vote on the motion shows the following: Ayes: Crowell, Jepsen, Rohter, and Meusch. Nays: Hines. The motion passes.

Having no further business, the meeting was adjourned at 7:15 P.M.

Minutes prepared by **Sarah West**

NEXT MEETING:

Thursday, August 4, 2022