AGENDA

The Rolla Board of Adjustment
Rolla City Hall, 3rd Floor Conference Room, 901 North Elm Street
Thursday, September 15, 2022 @ 5:30 PM

Board Members: Matt Crowell (Chairperson), Judy Jepsen (Vice-Chairperson), Laura Stoll, Jacob Rohter, John Meusch, Jonathan Hines (Alternate)

I. APPROVE MINUTES:
Review of the Minutes from the Board of Adjustment meeting held on July 7, 2022.

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.

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

III. PUBLIC HEARING:
NONE

IV. OTHER BUSINESS/REPORTS FROM THE CHAIRPERSON, COMMITTEE, OR STAFF:
NONE

NEXT MEETING DATE: October 6, 2022 (To be postponed to October 13 if there is any business)
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 Cellective 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 Cellective 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 the 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
Meeting Date: September 15, 2022

Subject: 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.

Applicant and Notice:
Applicant/Owner - Charles Arthur and Stephen Moorkamp of Pine Tree Investments, LLC
Public Notice - Letters mailed to property owners within 300 feet; Legal ad in the Phelps County Focus; signage posted on the property; https://www.rollacity.org/agenda.shtml

Background: The applicants recently completed construction of a dental office on the subject property. The applicants are seeking to erect a monument sign to identify the property. The proposed sign would be located 3 feet from the front property line. The minimum front yard setback is 10 feet.

The Board of Adjustment did conduct a public hearing at the December 9, 2021 meeting. After closing the public hearing and deliberations, the Board voted to table/continue the deliberations to the next meeting to allow for a 5th Board member to be appointed by the City Council. The applicant has been waiting since that date for the Board to consist of 5 members, although the applicant did request a postponement in July 2022 due to a schedule conflict.

Property Details:
Current Zoning - C-1, Neighborhood Commercial
Current Use - Dental office

Code Reference:

Sec. 42-244.4. General Sign Provisions.
h. Setbacks. Unless exempt by Subsection 42-244.4(f), all signs, including temporary signs and exempt signs, shall conform to the side and rear setback requirements of the zoning district they are located in. However, the front of the lot shall be defined as any lot line that fronts a street. Such signs shall have a minimum rear yard setback of ten feet and a minimum side yard setback of five feet.

C-1, Neighborhood Commercial DISTRICT
Sec. 42-186.3 Area Requirements.
Minimum setback dimensions:
- Front yard: 10 feet from the front lot line.
- Each side yard: 5 feet measured from side lot line.
- Rear yard: 10 feet from the rear property line.
Variance Approval Criteria:

A variance must be reviewed to ensure that the following criteria are met:

1. The applicant must demonstrate that special circumstances or conditions applying to the land or buildings for which the variance is sought; which circumstances or conditions are peculiar to such land or building and do not apply generally to lands or buildings in the same zone or neighborhood; and that said circumstances or conditions are such that the strict application of the provisions of the regulation creates an unnecessary economic hardship by depriving the applicant of the reasonable use of such land or building.

2. The alleged hardship has not been created by any person currently having interest in the property.

3. The purpose of the variance is not based exclusively on the desire to enhance the value of the property, or increase the return or income from the property.

4. The granting of such variance will not be detrimental to the public welfare or substantially or permanently injurious to the property or improvements in such zoning or neighborhood areas in which the property is located.

5. The granting of the variance is necessary for the reasonable use of the land or building and that the variance as granted by the Board is the minimum variance that would accomplish this purpose, and will not alter the essential character of the neighborhood.

6. The literal enforcement and strict application of the provisions of the Rolla Planning and Zoning Code will result in an unnecessary hardship inconsistent with the general provisions and intent of the regulations and that in granting such variance the spirit of the regulations will be preserved and substantial justice done.

7. (Use Variances Only) The use is consistent with the intent of the Comprehensive Plan.

Discussion: The applicant states that the property location on Pine Tree Rd is impacted by reduction in visibility from existing trees along the street. The property is also near a slight curve in the roadway. The trees and the curve does reduce visibility of the sign for drivers in either direction. Removal of enough trees to provide the visibility is not preferred by the applicant. The location of the proposed sign does not appear to impact the visibility for vehicles exiting the driveway.

Staff Recommendation:

Staff recommends that the Board further review all criteria to ensure the criteria are met. Staff concedes that some or all of the criteria may be met for this request based on maintaining proper visibility for the sign.

Alternatives:
The Board of Adjustment has the following alternatives of action:

1. Find that each of the criteria for approval of the variance(s) are met and explain how each criteria is met for the record.

2. Find that the criteria for approval of the variance could be met through the imposition of conditions or limitations to ensure that the criteria are met. The Board will explain how each criteria is met and grant partial, conditional, or modified approval of the variance(s).

3. Find that one or more of the criteria for approval of the request is not met and deny the request.

4. Table the discussion to a certain date to allow for additional information to be presented.

Prepared by: Tom Coots, City Planner

Attachments: Public Notice Letter, Application, Letter of Request, Sign Plan, Minutes from December 9, 2021 Board of Adjustment meeting
Project Information:
Case No: ZV21-04
Location: 425 Pine Tree Rd
Applicant: Moorkamp and Arthur Family Dentistry
Request: Variance to allow a sign setback in the C-1, Neighborhood Commercial district

Public Hearing:
Board of Adjustment
December 2, 2021
5:30 PM
City Hall: 1st Floor

For More Information Contact:
Tom Coots, City Planner
tcoots@rollacity.org
(573) 426-6974
901 North Elm Street
City Hall: 2nd Floor
8:00 – 5:00 P.M., Monday - Friday
Who and What is the Board of Adjustment?
The Board of Adjustment (BOA) is an appointed group of citizens from Rolla who are charged with hearing and deciding Variances, Appeals, and Special Exceptions.

What is a Variance?
A Variance is a request for relief from a particular provision in the zoning code. A Variance should only be granted if certain criteria are met. Variances are frequently sought to allow things such as reduced setback, lot size or increased height.

What is an Appeal or Special Exception?
An Appeal is a request for an interpretation of the meaning of the zoning code from the Board of Adjustment. A Special Exception is a request to allow certain uses.

How Will This Impact My Property?
Each case is different. Adjacent properties are more likely to be impacted. Please contact the Community Development Office at (573) 364-5333 if you have any questions.

What If I Have Concerns About the Proposal?
If you have any concerns or comments, please try to attend the meeting. You may learn details about the project at the meeting. You will be given an opportunity to ask questions or make comments.

What If I Cannot Attend the Meeting?
Please try to attend the meeting if you have any questions or concerns. However, if you are unable to attend the meeting, you may provide written comments by letter or email. These comments will be presented to the Board.

What If I Have More Questions?
Please contact the Community Development Office if you have any additional questions.
## Application Checklist:

- Completed Application Form **✓**
- Agent Letter (If Applicable) **✓**
- Filing Fee - $350 **✓**
- Legal Description (Unplatted and Irregular Lots Only) **✓**
- Site Plan/Survey (If Applicable) **✓**
- Letter of Request:  
  Please include description of project, request, how criteria for approval are met, and any other pertinent information. **✓**

## Office Use Only:

- Case No: **2U21-04**
- DRC Meeting Date: **10.5.21**
- Advertise By: **10.8.21**
- Submission Date: **9.17.21**
- BOA Hearing Date: **11.4.21**
INFORMATION:

Variance are required to meet the following criteria:

1. The applicant must demonstrate that special circumstances or conditions applying to the land or buildings for which the variance is sought; which circumstances or conditions are peculiar to such land or building and do not apply generally to lands or buildings in the same zone or neighborhood; and that said circumstances or conditions are such that the strict application of the provisions of the regulation creates an unnecessary economic hardship by depriving the applicant of the reasonable use of such land or building.
2. The alleged hardship was not created by any person currently having an interest in the property.
3. The purpose of the variance is not based exclusively on the desire to enhance the value of the property, or increase the return or income from the property.
4. The granting of such variance will not be detrimental to the public welfare or substantially or permanently injurious to the property or improvements in such zoning or neighborhood areas in which the property is located.
5. The granting of the variance is necessary for the reasonable use of the land or building and that the variance as granted by the Board is the minimum variance that would accomplish this purpose, and will not alter the essential character of the neighborhood.
6. The literal enforcement and strict application of the provisions of the Rolla Planning and Zoning Code will result in an unnecessary hardship inconsistent with the general provisions and intent of the regulations and that in granting such variance the spirit of the regulations will be preserved and substantial justice done.

7. (Use Variances Only) The use is consistent with the intent of the Comprehensive Plan.

Appeals are required to meet the following criteria:

1. The Appeal was filed within 15 days or after the administrative officer has rendered a decision.
2. The interpretation of the code as made by the administrative officer was incorrect or unclear.

Special Exceptions are required to meet the following criteria:

1. The request is consistent with the general spirit and intent of the regulations.
2. The request is consistent with the general and specific rules for the Special Exception.
3. The request serves the general welfare and preserves the community interest.

Acknowledgement and Authorization:
The owner(s) understand and agree that the application will be placed on hold until a complete application and all required items on the checklist are received. The owner(s) understand and agree to permitting employees of the City of Rolla to enter the subject property for purposes of posting a yard sign(s), retrieving the yard sign(s), taking photographs of the property/building(s), and investigating the property for pertinent information related to the request. Should ownership of the property change after the application is submitted, authorization is required from the new owner to continue with the review of the request, or the request will be withdrawn from consideration. The undersigned understands that refunds may be provided if the request is withdrawn prior to the Board of Adjustment hearing, less any costs already incurred.

Property Owner(s):

Applicant/Agent (If Different From Owner)

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Sign

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Board of Adjustments,

We are requesting a variance for a ground/monument sign for our dental office at 425 Pine Tree Rd. We are requesting to place our sign closer than regulated to our property line on the north side of our entrance from Pine Tree Rd. Due to the unique layout of our lot, it would be necessary to remove the majority of the trees that line Pine Tree Rd to allow visibility of our sign for convenient viewing from passing vehicles approaching from the north and prevent sudden stops to enter our parking lot. Removing so many trees along the roadside would also significantly alter the character of Pine Tree Road and provide less barrier for our surrounding residential neighbors to the south as well. Please see attached layout plans and feel free to reach out to us at any time for any questions or concerns. We appreciate your consideration.

Respectfully,

[Signature]
Charles Arthur, DDS

[Signature]
Stephen Moorkamp, DDS
Option 1: 27" x 6' Double Sided LED Lit Aluminum Sign With Push Through Acrylic Letters
Option 2: 27" x 6', Double Sided Non Lit Aluminum Sign 2" Reveal, Stone Base By Others
Chairperson Thomas Sutton called the meeting to order at 5:45 P.M. He recognized the members who were present. Sutton swore in all present who intended to speak.

I. OTHER BUSINESS/REPORTS FROM THE CHAIRPERSON, COMMITTEE, OR STAFF:

Introduction of new Board member, Matt Crowell.

II. APPROVE MINUTES:

Sutton approved the minutes from the August 5th, 2021 Board of Adjustment meeting as printed and distributed.

III. OLD BUSINES: NONE

IV. PUBLIC HEARING:

1. Request: 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.

Tom Coots introduced the variance request ZV2021-04 for a property located at 425 Pine Tree Road and presented the information in the staff report.

Judy Jepsen commented on the sight line issue, as people would be looking for the sign if they had previously made a dentist appointment. Matt Crowell asked if the applicants were to place the sign where it would currently be allowed, what would tree removal entail. Coots states this would be something the applicant should be able to answer.
Sutton opens the public hearing.

Charles Arthur, located at 1328 Chelsea Lane, and Stephen Moorkamp are the applicants. They confirmed they were sworn in.

Arthur gives the dimensions of the proposed sign, as well as the proposed area. He mentions if the variance is granted, the sign would be 7 feet from the sidewalk, and 15 ½ feet from the road. He stated that customers have voiced concerns over the sudden stopping from both directions due to lack of visibility of the current sign.

Moorkamp states they want to keep the natural beauty of the area, and while it is possible to cut down trees on the southbound side, they would prefer not to. They cannot cut down trees on the northbound side.

Stoll commented that she could not see their building or their sign. Jepsen thought the building was very visible.

Jepsen asked if the sign would be lit. Arthur stated there would be subtle ground lighting, but no internal lighting. He states the base of the sign is only about 2 foot tall. Moorkamp states their sign would be similar to City park signs.

Sutton closes the public hearing and moves into Board deliberation.

Jepsen asks if the proposed sign was the only commercial sign on Pine Tree Road. Arthur states there are other signs along the roadway that are closer to the street than the proposed sign.

Stoll comments the sign would blend with the area. Crowell asks to what extent the board considers aesthetics as a factor. Coots states it likely could be in some of the criteria.

Coots asks the board to go over the criteria for approval.

1st Criterion: Crowell expresses concern that the trees hindering visibility is not a unique circumstance to this lot. Jepsen asks if the applicant wishes to be one foot closer than the standard. Coots seven feet closer. Sutton commented the he thought the first criterion was met. Crowell stated if the safety problem was only due to trees on the northbound side hindering visibility, then this was not a unique issue. If the safety issue was caused due to the trees on the southbound side, which the applicant couldn’t remove, then there would be an issue that would be unique to the property. Coots states that due to the trees, the visibility on the south side begins at 130 feet from the driveway. Crowell asks if it is possible to move the sign to the north to gain visibility. Coots states it is possible to move the sign, but moving farther from the driveway would work against providing added visibility to allow people to see the sign and turn to the driveway. Crowell is 130 feet not safe? Coots says it would be ideal for a 200-300 foot range at this speed of traffic.

All Board members agreed the 1st criterion was met.
2nd Criterion: Sutton and Stoll expressed that they thought the hardship was not created by the applicant. Jepsen objected, stating the applicant bought the site and planned the building there. Crowell asks if it would have been reasonable to place the driveway somewhere else? Coots says the building could not have shifted further north; the applicant will have to say if the building could have been placed elsewhere on the lot. The building was built at that location on this lot due to the beauty of the area. Crowell in reality the building could have been placed somewhere else, and the driveway could have been redirected. Coots states no zoning issues would have stopped that. Arthur states that the building was best placed in the current position due to the size of the building and uniqueness of the lot. In operatory rooms, north facing windows are best to keep the sun out of everyone’s eyes. Crowell there is land to the east, is there a reason nothing was built there? Moorkamp there was a sewage issue. Crowell you couldn’t have built in that area due to the current existing utilities? Jepsen there was an issue with the sewer connection? Moorkamp yes. Crowell when picking the site, was there consultation with the City or did you submit plans without consultation? Arthur yes, with Archer-Elgin, the City, and the architect. If any sign was moved north, you would lose visibility due to the slope of the roadway. Steve Flowers commented there were elevation problems with moving the building as they did not have the proper slope to get to the sewer.

Stoll, Crowell and Sutton agreed the 2nd criterion was met. Jepsen voted no.

All Board members agreed the 3rd criterion was met.

4th Criterion: Sutton have we heard from any neighbors? Coots no issues.

All Board members agreed the 4th criterion was met.

5th Criterion: Coots stated the applicant placed the sign as far from the sidewalk as they could. There could be alternatives to the applicant’s sign placement and size. Crowell what would be the impact of moving the sign further from the road? Is this the minimum for safety purposes? Arthur stated they wanted their sign to fit in with the neighborhood. Moorkamp stated patients have complained about not being able to see their sign.

Stoll, Crowell and Sutton agreed the 5th criterion was met. Jepsen voted no.

All Board members agreed the 6th criterion was met.

Crowell asked the applicant their timeframe, and if it was a hardship to delay this issue. Arthur just more delay. Crowell due to disagreement, it would be beneficial to table the issue, possibly gaining another member’s insight, as it does not appear that you will have enough votes for approval of the request.

(Note: A variance requires at least 4 votes for approval to approve the request. Since only 4 members are present, all 4 must vote to approve to be able to approve the request. A 5th Board member may be appointed prior to the next meeting)
Arthur commented that an alternative pole sign would not be beneficial as all their neighbors are two-story residential duplexes, so the sign would be in direct line of sight.

A motion was made by Laura Stoll, seconded by Matt Crowell, to table the issue to the next meeting scheduled for January 6th, 2022. A vote on the motion showed the following: Ayes: Crowell, Stoll, Jepsen, and Sutton. Nays: None. The motion passes unanimously.

2. **Request: ZV2021-05**: Variance to Section 42-177.2 to allow a reduction in the side yard setback in the R-3, Multi-family district.

Tom Coots introduced the variance request ZV2021-05 for a property located at 1206 Bardsley Road and presented the information in the staff report.

Sutton opens the public hearing.

Jason Smith, located at 18500 Deep Woods Trail, is the applicant. He confirmed he was sworn in. He is proposing that the building would be built five feet from the property line with a five foot wooden deck up against the property line.

Sutton asked how long the applicant owned the property. Smith stated the property was purchased in 2019.

Jepsen asked if the property was surveyed prior to being purchased. Smith stated he paid for a survey after purchase. The purchase was through tax sale, which takes one year to gain ownership of the property.

Crowell asked if there was a way to shift the building south and west to avoid the issue. Smith not if we are going to meet the City Code for parking. In order to create the needed parking spots, the building can’t be moved south. Jepsen commented about the requirement for green space as well.

Sutton asked if the apartment complex as a whole could be smaller. Smith stated a smaller complex could be built.

Mike Dees, located at 110 South Elm Street, owns the property adjacent to the subject property. He expressed concern with the property lines backing up against 405 East 12th street, and whether he would have access to his property. Smith confirms his property line goes across an alleyway, and he states he intends to improve and asphalt the alleyway and not restrict access.

Jennifer Smith, who partners in ownership of the subject building, states that the property lines do not impact Dees from getting to his property.

Jepsen is that a widely used alleyway? Smith yes, it is used for parking.
Susan Harmon, who owns 407 East 12th Street, also expressed concern about the alleyway access.

Sutton closes the public hearing and moves into Board deliberation.

Coots asks the board to go over the criteria for approval.

All Board members agreed the 1st criterion was met.

All Board members agreed the 2nd criterion was met.

3rd Criterion: Crowell the applicant could build a smaller unit. Stoll states safety being an issue as a corner of the building will be very close to the roadway. She also asks for confirmation about the deck on the back of the house being covered under the Code. Coots states the code allows for uncovered decks to encroach into a front yard, but does not for a side or rear yard. Flowers stated the Code allows concrete to be poured right up to the property line.

All Board members agreed the 3rd criterion was met.

4th Criterion: Crowell commented about the setbacks being right up against the neighbors to the east. Smith commented that the neighbors on the eastern side have not said anything opposing the variance. He also stated it would not be beneficial to the citizens of Rolla to have a building five feet closer to a major thoroughfare. He pointed out the building itself would not be up against the property line, instead it would be the edge of the porch. Stoll asked if shortening the porch would be plausible. Smith stated it might not be useable. Jepsen stated that a small porch would be a safety issue.

Stoll, Jepsen, and Sutton agreed the 4th criterion was met. Crowell voted no.

5th Criterion: Crowell comments that he believes there are other reasonable uses of this land. Jepsen is that ours to determine? Crowell states the Board is there to determine if this variance is necessary. The applicant can build without the variance, and can also provide alternatives that does not violate the setback. He states that safety is not the only factor to consider. Smith comments that this is a special circumstance, and he believes his request to be reasonable. He states that he applied for the variance at the recommendation of Tom Coots.

Stoll, Jepsen, and Sutton agreed the 5th criterion was met. Crowell voted no.

6th Criterion: Crowell states this is not simply a safety issue; there are setbacks for a reason.

Stoll, Jepsen, and Sutton agreed the 6th criterion was met. Crowell voted no.

Stoll asked the applicant about the timeframe, and would delaying create a hardship. Smith stated yes, as waiting would result in losing contractors.
Crowell stated he was not opposed to a compromise. He expressed concern over no buffers between future owners of the properties.

Smith asks what the current Code says about how close each structure can be. Flowers states it depends on the zoning and what fire separation is required. Some lots allow for zero lot lines. In this case, there is a 5 foot setback required between both property lines, thus buildings can be no closer than 10 feet. Smith states there is currently at least a 15 foot separation between buildings.

Crowell asks how high off the ground is the planned deck? Smith about four feet. Crowell asks if a condition could be made for a fence. Sutton asks if there was room for a fence. Flowers a fence can be built right up against the property line, or attached to the deck if they wish. Stoll asks if the applicant can build a privacy fence on the deck instead of railing. Flowers confirms this to be true.

Crowell states there are competing interests. Stoll asks if the applicant would be willing to compromise. Smith says yes. Would one foot off the property line be a reasonable compromise? Crowell states he would prefer two feet instead. He asks if adverse possession plays a role in decision making. Coots states that if the public is using the property, the public can maintain that use. Crowell states the setbacks would stay with the original property lines. Jepsen asks if the City replaced the sidewalk, could they move it back off the property line. Coots states they could replace it in the same spot.

Crowell proposes a two foot setback from the neighboring property. Flowers asked if a two foot area could be maintained. Crowell withdraws his objection and motion, and supports the application.

A motion was made by Matt Crowell, seconded by Laura Stoll, to approve the application as submitted. A roll call vote on the motion showed the following: Ayes: Crowell, Stoll, Jepsen, and Sutton. Nays: None. The motion passes unanimously.

Having no further business, the meeting was adjourned at 7:57 P.M.

Minutes prepared by Sarah West

NEXT MEETING: Thursday, January 6, 2022
Meeting Date: September 15, 2022

Subject: Variance to Section 42-399 to allow reductions in the setbacks for a telecommunications tower.

Applicant and Notice:
- Applicant: Russell Been of Celective Solutions, LLC
- Owner: B Dunnigan Tours, LLC
- Public Notice: Letters mailed to property owners within 300 feet; Legal ad in the Phelps County Focus; signage posted on the property; [https://www.rollacity.org/agenda.shtml](https://www.rollacity.org/agenda.shtml)

Background:
The applicant seeks to construct a telecommunications tower on the subject property. A Conditional Use Permit was reviewed in 2021 to allow a telecommunications tower on the property. The CUP was denied by the City Council. The CUP was reconsidered and approved by City Council in April 2022. One of the approved conditions was that the applicant seek variances from the setbacks in the wireless communications facilities regulations. The property was also rezoned to the M-1, Light Manufacturing district in June 2022.

The applicant seeks variances from the setback requirements from the right-of-way of Old Saint James Rd; from the sidewalk on Old Saint James Rd; from parking areas; from other buildings; and from adjacent properties.

The Board held the public hearing at the July 2022 meeting and tabled the discussion to allow for the applicant to present additional information.

Property Details:
- Current Zoning: M-1, Light Manufacturing
- Current Use: Vacant

Code Reference:

**SUBDIVISION IIa. WIRELESS COMMUNICATIONS FACILITIES CODE**

**Sec. 42-399. General Requirements.**

8. Design.
7. Setbacks. All Support Structures, including any portions of any Wireless Communications Facilities thereon and associated structures, fences, and walls (except for parking associated with the Wireless Communications Facility) shall be separated from any rights-of-way, sidewalk or street, alley, parking area, playground, or other building, and from the property line of any adjacent property at least a horizontal distance equal to the height of the Support Structure, including any portions of any Wireless Communications Facilities thereon.
Variance Approval Criteria:
A variance must be reviewed to ensure that the following criteria are met:

1. The applicant must demonstrate that special circumstances or conditions applying to the land or buildings for which the variance is sought; which circumstances or conditions are peculiar to such land or building and do not apply generally to lands or buildings in the same zone or neighborhood; and that said circumstances or conditions are such that the strict application of the provisions of the regulation creates an unnecessary economic hardship by depriving the applicant of the reasonable use of such land or building.
2. The alleged hardship has not been created by any person currently having interest in the property.
3. The purpose of the variance is not based exclusively on the desire to enhance the value of the property, or increase the return or income from the property.
4. The granting of such variance will not be detrimental to the public welfare or substantially or permanently injurious to the property or improvements in such zoning or neighborhood areas in which the property is located.
5. The granting of the variance is necessary for the reasonable use of the land or building and that the variance as granted by the Board is the minimum variance that would accomplish this purpose, and will not alter the essential character of the neighborhood.
6. The literal enforcement and strict application of the provisions of the Rolla Planning and Zoning Code will result in an unnecessary hardship inconsistent with the general provisions and intent of the regulations and that in granting such variance the spirit of the regulations will be preserved and substantial justice done.

Discussion: The applicant seeks several variances. The proposed tower is 95 feet tall, plus does have a 5 foot tall lightning rod mounted on top. The setback should be measured from the tower enclosure.

The Board should review each type of variance separately, but could consider the various instances of variances of each type at the same time.

1. Variance for setback to right-of-way of Old Saint James Rd: Tower is located 78 feet from the street right-of-way.
2. Variance for setback to the sidewalk along Old Saint James Rd: Tower is located 70 feet from the sidewalk along the street.
3. Variance for the adjacent buildings: Tower is located approximately 75.5 feet from 1850 Old Saint James Rd; and 38 feet/85 feet from 801 E 18th Street; and 81 feet from 1900 Old Saint James Rd (subject property).
4. Variance for the property lines of adjacent property: Tower is located approximately 25 feet from 1850 Old Saint James Rd; 0 feet from 801 E 18th Street; and 71 feet from 809 E 18th Street.

Staff Recommendation:
Staff recommends that the Board review each type of variance request separately. Evidence that the tower should not impact Criteria 4 seems to have been presented for each request. Criteria 5 appears to be met based on the evidence and specific location. Staff recommends that the Board further review Criteria 1, 2, 3, and 6 to ensure that the variance(s) may be approved.
Alternatives:
The Board of Adjustment has the following alternatives of action:

1. Find that each of the criteria for approval of the variance(s) are met and explain how each criteria is met for the record.
2. Find that the criteria for approval of the variance could be met through the imposition of conditions or limitations to ensure that the criteria are met. The Board will explain how each criteria is met and grant partial, conditional, or modified approval of the variance(s).
3. Find that one or more of the criteria for approval of the request is not met and deny the request.
4. Table the discussion to a certain date to allow for additional information to be presented.

Prepared by: Tom Coots, City Planner
Attachments: Public Notice Letter, Application, Letter of Request (revised), Site Plan/Elevation (revised)
Project Information:
Case No: ZV22-05
Location: 1898/1900 Old Saint James Rd
Applicant: Collective Solutions
Request: Variance from Section 42-399 (h) to allow reduced setbacks for a telecommunications tower

Public Hearing:
Board of Adjustment
June 2, 2022
5:30 PM
City Hall: 1st Floor

For More Information Contact:
Tom Coots, City Planner
tcoots@rollacity.org
(573) 426-6974
901 North Elm Street
City Hall: 2nd Floor
8:00 – 5:00 P.M.
Monday - Friday
Who and What is the Board of Adjustment?
The Board of Adjustment (BOA) is an appointed group of citizens from Rolla who are charged with hearing and deciding Variances, Appeals, and Special Exceptions.

What is a Variance?
A Variance is a request for relief from a particular provision in the zoning code. A Variance should only be granted if certain criteria are met. Variances are frequently sought to allow things such as reduced setback, lot size or increased height.

What is an Appeal or Special Exception?
An Appeal is a request for an interpretation of the meaning of the zoning code from the Board of Adjustment. A Special Exception is a request to allow certain uses.

How Will This Impact My Property?
Each case is different. Adjacent properties are more likely to be impacted. Please contact the Community Development Office at (573) 364-5333 if you have any questions.

What If I Have Concerns About the Proposal?
If you have any concerns or comments, please try to attend the meeting. You may learn details about the project at the meeting. You will be given an opportunity to ask questions or make comments.

What If I Cannot Attend the Meeting?
Please try to attend the meeting if you have any questions or concerns. However, if you are unable to attend the meeting, you may provide written comments by letter or email. These comments will be presented to the Board.

What If I Have More Questions?
Please contact the Community Development Office if you have any additional questions.

LEGAL DESCRIPTION
A LEASED PREMISES BEING PART OF SECTION 1 IN TOWNSHIP 37 NORTH, RANGE 8 WEST IN PHELPS COUNTY, MISSOURI AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 37 NORTH, RANGE 8 WEST; THENCE SOUTH 78 DEGREES 54 MINUTES 10 SECONDS EAST, 902.63 FEET TO A POINT IN THE EAST RIGHT OF WAY LINE OF OLD ST. JAMES ROAD, SAID POINT BEING THE NORTHWEST CORNER OF SURVEY RECORD BOOK 12 PAGE 130; THENCE ALONG SAID RIGHT OF WAY LINE, NORTH 23 DEGREES 00 MINUTES 40 SECONDS EAST, 63.76 FEET TO THE SOUTHWEST CORNER OF THE PARENT PARCEL DESCRIBED IN DOC# 2018-5993 12/31/2018; THENCE LEAVING SAID RIGHT OF WAY LINE, ALONG THE SOUTH LINE OF SAID PARENT PARCEL; NORTH 89 DEGREES 47 MINUTES 30 SECONDS EAST, 21.76 FEET TO THE POINT OF BEGINNING OF SAID LEASE PREMISES; THENCE NORTH 23 DEGREES 00 MINUTES 40 SECONDS EAST, 100.00 FEET TO A POINT; THENCE SOUTH 62 DEGREES 51 MINUTES 12 SECONDS EAST, 200.00 FEET TO THE SOUTH LINE, THENCE SOUTH 89 DEGREES 47 MINUTES 30 SECONDS WEST, 217.06 FEET TO THE POINT OF BEGINNING. CONTAINING 9974 SQUARE FEET OR 0.23 ACRES, MORE OR LESS.

AND A PROPERTY COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 37 NORTH, RANGE 8 WEST; THENCE SOUTH 78 DEGREES 54 MINUTES 10 SECONDS EAST, 902.63 FEET TO A POINT IN THE EAST RIGHT OF WAY LINE OF OLD ST. JAMES ROAD, SAID POINT BEING THE NORTHWEST CORNER OF SURVEY RECORD BOOK 12 PAGE 130; THENCE ALONG SAID RIGHT OF WAY LINE, NORTH 23 DEGREES 00 MINUTES 40 SECONDS EAST, 127.85 FEET TO THE POINT OF BEGINNING OF UTILITY/ACCESS EASEMENT; THENCE CONTINUING NORTH 23 DEGREES 00 MINUTES 40 SECONDS EAST, 45.94 FEET TO A POINT; THENCE SOUTH 62 DEGREES 51 MINUTES 12 SECONDS EAST, 20.05 FEET TO THE NORTHWEST CORNER OF A LEASED PREMISES; THENCE ALONG THE WEST LINE OF SAID LEASED PREMISES, SOUTH 23 DEGREES 00 MINUTES 40 SECONDS WEST, 44.49 FEET TO A POINT; THENCE LEAVING SAID LEASED PREMISES, NORTH 66 DEGREES 59 MINUTES 20 SECONDS WEST, 20.00 FEET TO THE POINT OF BEGINNING. CONTAINING 904 SQUARE FEET OR 0.02 ACRES, MORE OR LESS.
**Contact Information:**

**Property Owner:**
B. Dunnigan Tours, LLC

Name(s)
1900 Old St. James Road

Mailing Address
Rolla, MO 65401

City, State, Zip
(573) 202-3949

Phone

Email

**Agent/Applicant (If Different Than Property Owner):**
Russell Been, Collectives Solutions, LLC

Name
340 Marshall Road

Mailing Address
Valley Park, MO 63088

City, State, Zip
(314) 989-9810

Phone
russ@collectivesolutions.com

Email

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**Property/Request Information:**

**Request:**

- [x] Variance
- [ ] Special Exception
- [ ] Appeal

Sec. 42-399, subsec: 8, subsubsec: 7

**Code Section (Variance/Appeal Only):**

1900 Old St. James Road, Rolla MO 65401

**Property Address/Location:**

M-1

**Property Zoning:**

Wireless Communications Facility

**Proposed Development/Project**

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**APPLICATION CHECKLIST:**

- [ ] Completed Application Form
- [ ] Agent Letter (If Applicable)
- [ ] Filing Fee - $350
- [ ] Legal Description (Unplatted and Irregular Lots Only)
- [ ] Site Plan/Survey (If Applicable)

**Letter of Request:**
Please include description of project, request, how criteria for approval are met, and any other pertinent information.

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**OFFICE USE ONLY:**

Case No: ZV 22-05

DRC Meeting Date: 5.17.22

Advertise By: 5.12.22

Submission Date: 4.27.22

BOA Hearing Date: 6.2.22
**INFORMATION:**

Variance are *required* to meet the following criteria:

1. The applicant must demonstrate that special circumstances or conditions applying to the land or buildings for which the variance is sought; which circumstances or conditions are peculiar to such land or building and do not apply generally to lands or buildings in the same zone or neighborhood; and that said circumstances or conditions are such that the strict application of the provisions of the regulation creates an unnecessary economic hardship by depriving the applicant of the reasonable use of such land or building.
2. The alleged hardship was not created by any person currently having an interest in the property.
3. The purpose of the variance is not based exclusively on the desire to enhance the value of the property, or increase the return or income from the property.
4. The granting of such variance will not be detrimental to the public welfare or substantially or permanently injurious to the property or improvements in such zoning or neighborhood areas in which the property is located.
5. The granting of the variance is necessary for the reasonable use of the land or building and that the variance as granted by the Board is the minimum variance that would accomplish this purpose, and will not alter the essential character of the neighborhood.
6. The literal enforcement and strict application of the provisions of the Rolla Planning and Zoning Code will result in an unnecessary hardship inconsistent with the general provisions and intent of the regulations and that in granting such variance the spirit of the regulations will be preserved and substantial justice done.
7. (Use Variance Only) The use is consistent with the intent of the Comprehensive Plan.

**Appeals** are *required* to meet the following criteria:

1. The Appeal was filed within 15 days or after the administrative officer has rendered a decision.
2. The interpretation of the code as made by the administrative officer was incorrect or unclear.

**Special Exceptions** are *required* to meet the following criteria:

1. The request is consistent with the general spirit and intent of the regulations.
2. The request is consistent with the general and specific rules for the Special Exception.
3. The request serves the general welfare and preserves the community interest.

**Acknowledgement and Authorization:**

The owner(s) understand and agree that the application will be placed on hold until a complete application and all required items on the checklist are received. The owner(s) understand and agree to permitting employees of the City of Rolla to enter the subject property for purposes of posting a yard sign(s), retrieving the yard sign(s), taking photographs of the property/building(s), and investigating the property for pertinent information related to the request. Should ownership of the property change after the application is submitted, authorization is required from the new owner to continue with the review of the request, or the request will be withdrawn from consideration. The undersigned understands that refunds may be provided if the request is withdrawn prior to the Board of Adjustment hearing, less any costs already incurred.

Properly Owner(s):

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Applicant/Agent (If Different From Owner): 

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<th>Collectives Solutions LLC</th>
<th>Agent Parallel Infrastructure</th>
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Collective Solutions, LLC

To: Tom Coots

From: Russell S. Been, Collective Solutions, LLC, agent for Parallel Infrastructure

CC: City of Rolla Missouri Planning and Zoning Commission

Date: 9/9/2022

Re: Request for relief of setbacks for wireless telecommunications facility located at 1900 Old St. James Road

AT&T, in order to improve service and capacity in the Rolla, Missouri area, has contracted with Parallel Infrastructure to construct a 95' tall monopole style wireless communications facility. This facility will include a lighting rod and associated fencing and ground equipment. At the suggestion of the City of Rolla planning department, privacy slats have been added to the fencing.

Sec. 42-399, Subsection 8, subsubsection 7 requires a wireless communications tower be set back from the property lines the height of the telecommunications tower. In order to located the tower in the area recently rezoned per the request of the Rolla City Council, Collective Solutions, LLC requests on behalf of Parallel Towers, LLC, relief from the setback requirements listed in said section of the Rolla City Zoning code. We are requesting a setback of 35 feet from the southern property line and 93 feet from the western property lines. The tower will meet the required setbacks from the northern and eastern property lines.

Parallel request the following minimum setbacks:

0’ from the tower fence to the southern property line
70’ from the tower fence to the sidewalk on East Side of Old St. James Road
78’ from tower fence to right of way for Old St. James Road
75.5’ from Tower Fence to Building at 1850 Old St. James Road
38’ from Tower fence to Large Building at 801 E. 18th
85’ From Tower fence to Small building at 801 E. 18th
0’ from Tower Fence to On Site parking lot
81’ From Tower Fence to On site building
71’ From Tower Fence to Property line at Parcel ID: 71-09-1.0-01-003-002-010.000
1. Federal Courts have determined that the minimum height needed for a cell tower is the height that allows the tower to meet the carrier’s coverage objectives. In the case of this proposed tower, AT&T’s Radio Frequency engineers have determined that in order to meet the coverage objectives for this area of Rolla and for FirstNet, their antennas would need to be 95’ above ground level. In order to meet this coverage objective, the property would need to be zoned industrial. If the strict application of the ordinance were applied there would be no property in the area of the required tower that would allow a tower of a height that would able to meet the coverage objective. In order to meet this coverage objective a tower would have to be located on a property that met three specific requirements: 1. The property would have to be located on our search area. 2. The property would need to be zoned M industrial and 3. The property would have to be more that 200’ x 200’ wide. Within our search area as described in the map below, there are several “M” zoned properties. There are none however, that are wide enough to meet the required setbacks as indicated in the second exhibit. Therefore the setback variance would not be specific to just the subject property. Also, should the strict setbacks be applied, the tower would be placed in the center of the driveway in front of the landowners garage bays thereby creating an unnecessary economic hardship by depriving the owner of the reasonable use of the land and building on the property.

2. The hardship has to due with the size, shape and location of the “M” zoned section of the property and by the coverage objective need by AT&T and FirstNet was not created by anyone having interest in the property.

3. The purpose of the variance is to allow for a wireless communications facility to be built that will allow for the latest technology to be built in the area and to enhance FirstNet coverage in the area. Not to enhance the value of the property or increase the return of the or income of the property.

4. The granting of such variance will not be detrimental to the public welfare or substantially or permanently injurious to the property or improvements in such zoning or neighborhood areas in which the property is located, but in truth just the opposite. By allowing the variance and thereby allowing the new tower, AT&T will be able to install and enhance their public safety system, FirstNet, which is in use by the Rolla police department, and will allow better coverage to first responders in times of emergency. It will also allow AT&T to install their 5G network which will bring the most up to date technology to the area. As companies and individuals become more and more reliant on technology such as 5G and IOT coverage of the most up to date technology is crucial. Companies and individuals are taking a harder look at the existing wireless infrastructure as they are moving into new cities and new houses they are considering wireless infrastructure above things such as schools. The recent pandemic has taught us that it is vital to the public welfare that wireless infrastructure be at it peak capacity and technology.

5. One of the reasons the location was picked was due to the industrial nature of the neighborhood. Should a tower of the minimum height to reach our carriers coverage objective be allowed in the industrially zoned section of this property, this is the minimum variance needed to accomplish this. The essential character of the neighborhood would remain unchanged.

6. The literal enforcement and strict application of the Rolla zoning code would result in a hardship inconsistent with the general provisions and intent of the regulations and that in granting such variance the spirit of the regulations will be preserved and substantial justice done. The strict application of the zoning code would not allow a tower with the ability to meet AT&Ts coverage objectives to be built. As mentioned, to meet our coverage objectives the tower would need to be 95’ tall with a 5’ lighting rod in the area highlighted by our search area. The property would need to be zoned as “M” to allow a tower to be the height needed to meet our coverage objective and the property would have to be 200’ x 200’ and there is no property within our search area that meets all three criteria. Up to this point there is no tower within the city of Rolla that has been subject to a strict application of a 1 to 1 setback. Section 704 of the Federal Telecommunications Act of 1996 does not allow a jurisdiction to “discriminate among providers of functionally equivalent services” so by allowing this tower to meet the same criteria as those providers of equivalent services, justice shall be done.
95' Set Back Zone From Fence

95' From Tower Center

81'

70'

78'

85'

38'

38'

71'

78'

85'

1900 OLD ST JAMES

Tower Center

1900 OLD ST JAMES