

BOARD OF ADJUSTMENT MINUTES
October 13, 2022
Rolla City Hall

Presiding: Chairperson Matt Crowell
Members Present: Judy Jepsen, John Meusch, Jacob Rohter (by Zoom)
Alternates Present: Jonathan Hines
Members Not Present: Laura Stoll
City Officials in Attendance: Tom Coots, City Planner, and Sarah West, Executive Assistant
Others in Attendance: Russell Been, Sasha Riedisser, and Zach Buchheit

Chairperson **Matt Crowell** called the meeting to order at 5:53 P.M. The meeting started late due to technical difficulties in connecting to Zoom. He recognized the members who were present. **Crowell** swore in all present who intended to speak.

I. APPROVE MINUTES:

John Meusch asked for an amendment to be made to the minutes to note the other persons in attendance at the meeting. **Crowell** approved the minutes from the July 7, 2022 Board of Adjustment meeting as amended by John Meusch.

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.

As the applicant was not present, the Board decided to table the case until the next scheduled meeting on November 3. A voice vote showed all in favor.

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

Tom Coots presents the staff report.

Sasha Riedisser, the Collective Solutions attorney, is located at 211 North Broadway in St. Louis, Missouri, and confirms she was sworn in. She mentions Mr. Buchheit's letter to the Board states improvements could be made to the current tower in Schuman Park to meet the 5G and FirstNet capability. However, this would be a complete redesign of the tower from the current flag pole design to a monopole. Due to this proposed unconcealed design, federal law states that it would need to go through the zoning process again. This would lead SBA to have the same issues of gaining exemptions from the setbacks that Collective Solutions is currently going through now.

Riedisser mentions the Rolla zoning code is allowed to have setbacks, but federal law is there to make sure those setbacks do not prohibit a carrier from filling a gap in coverage. She states there is no better place for the tower and not being able to build a tower and meet AT&T's coverage objectives would be a hardship. The parcel the proposed tower is located on was required by the City to have a small portion rezoned, creating a unique condition of the land and making that portion unusable for any purpose besides a tower.

Collective Solutions presents a picture to the Board of the existing tower in Schuman Park and a concept of the same tower redesigned if upgrades were made to allow for FirstNet and 5G capabilities.

Russell Been, the owner of Collective Solutions, is located at 340 Marshall Road Valley Park, Missouri, and confirms he was sworn in. He states the concept tower in the picture given to the Board is an AT&T tower with 5G and FirstNet, so the picture is an accurate representation of the proposed tower.

Zach Buchheit, representing SBA Communications, is located at 7700 Forsyth Boulevard Suite 1100 in St. Louis, and confirms he was sworn in. He states a letter from their engineer was given to AT&T in November of 2021 that offered options to modify the current tower but no response was received. He mentions there was no pictures of the upgraded Schuman Park tower put out by SBA Communications.

Buchheit states that no one on behalf of AT&T is present. Collective Solution's entire argument is their coverage objectives, but this is not a hardship imposed by the land. There is nothing unique about the land itself that causes a hardship. The hardship was self-imposed by the rezoning of the property.

He states materials submitted by Collective in the past mentioned discrimination if the tower is denied. AT&T is currently serving the community and 5G and FirstNet could be available on current tower, so there is no prohibition on service if the proposed tower is denied. The federal code being referenced talks about not discriminating against providers, not builders. Since there is no provider present, there is no discrimination against them. There cannot be discrimination between the current tower and the proposed tower as the current tower was built under a different code.

Buchheit states setbacks are common requirements across the country, and the local laws have been designed for safety in mind. Only the people interested in the property have created the hardship by rezoning the property, and nothing about the land itself creates a hardship. The land is already being used for a business. The property is a self-imposed best location that was given a limited search area.

Riedisser states AT&T is not just switching towers for financial reasons, but 5G and FirstNet cannot be put on the current tower. She points out AT&T's choice on where to locate the tower is a business decision, and state statutes dictate that authorities are not allowed to evaluate these types of decisions. She states the land owner did not want to rezone property, but the City required it. Now there is a hardship because the portion of the parcel is too small to be used for anything other than a tower.

Buchheit points out that state law says business decisions cannot be considered, so AT&T's coverage objectives should not be considered as that is a business decision.

Riedeisser states the state law uses evaluate and not consider. This does not mean you cannot take into account that AT&T needs the tower, it means that you cannot second guess whether AT&T is correct on their need for the tower.

The applicant provides a detailed site plan describing the variances needed.

Coots states the request will need four exemptions to the setbacks: from the right-of-way of Old St. James Road, from the sidewalk, from adjacent buildings, and from the property lines. The tower is 95 feet tall with a 5 foot lightning rod, so a distance of at least 100 feet is needed to meet code requirements.

The distance of the tower from the right-of-way of Old St. James Road 78 feet and 70 feet from the sidewalk. The adjacent buildings are 75.5 feet from 1850 Old St. James Road, 38 and 85 feet from the two buildings on 801 East 18th Street, and 81 feet from 1900 Old St. James Road. The tower is 25 feet from the 1850 Old St. James property line, 0 feet from 801 East 18th and 71 feet from the 809 East 18th Street property line.

Crowell asks if the people in the adjacent buildings were aware of the request. **Coots** states they were provided notice. **Crowell** asks if anyone has responded. **Coots** no.

Coots states the lot has not been subdivided, but is split zoned. The applicant is leasing the small portion that has been rezoned. **Crowell** asks if the City required the split zoning of the property. **Coots** confirms rezoning the portion of the property the applicant is leasing was a requirement of approving the Conditional Use Permit set by City Council.

Crowell moves into Board deliberation.

1st Criterion: **Crowell** states the situation is unique because City Council required the split zoning. **Coots** mentions the tower would need to have a variance for the setbacks no matter what

the property was zoned. **Meusch** mentions the applicant decided this location is best for a cell tower. **Hines** states the Board is not allowed to evaluate where the applicant can put a tower.

Crowell asks if there is any property large enough to handle the setbacks requirements in the city. **Coots** confirms there are properties within city limits, but according to the applicant, none that are in the area they need. **Crowell** states the property has a unique condition because there is no land in close proximity that would be large enough and meet coverage objectives. All Board members agreed the 1st criterion was met.

2nd Criterion: **Hines** states the applicant did not create the hardship. **Crowell** comments based upon setbacks how would any new tower be built without making some variance to Rolla's zoning code. All Board members agreed the 2nd criterion was met.

3rd Criterion: **Crowell** states the variance is based upon location and the need to cover a certain area. **Hines** comments the variance will not give special treatment to the applicant that harms the surrounding businesses. All Board members agreed the 3rd criterion was met.

4th Criterion: **Meusch** mentions there is no issues with public safety unless the tower falls. **Jepsen** points out that any building can fall and become a danger to the public. **Hines** states there is no detriment to public welfare by the tower's existence and normal use. **Crowell** mentions no neighbors have raised concerns and have had extensive time to contest the tower. All Board members agreed the 4th criterion was met.

5th Criterion: **Crowell** asks if the property was previously being used by the owner. **Coots** confirms it was being used for storage. **Hines** states the tower is not going to alter the character of the neighborhood. **Crowell** comments is the variance necessary for the reasonable use of the property if the property was already being used in a manner that was consistent with the neighborhood. He agrees the variance will not alter the character of neighborhood and is the minimum needed.

Hines states the variance is necessary for the reasonable use of a cell tower. **Meusch** comments a cell tower is a reasonable use of the property. **Crowell** it is reasonable, but is it necessary? There was a reasonable use of the property prior to the applicant wanting to build a tower. Is the variance necessary to continue to use the property? **Hines** the tower is a reasonable use so that makes the variance necessary.

Crowell asks how the criteria is interpreted. **Coots** the traditional view is the applicant cannot use the property, so a variance is needed for some reasonable use. In this case, the property is already being used. **Crowell** asks if the split zoning of the property would affect the previous use. **Coots** confirms the property could continue to be used as a storage yard with the new

zoning. **Crowell** asks if the landlord could refuse the building of the cell tower and continue using the property as before without any variances. **Coots** yes, based on what they were using it for.

Crowell asks if there is now a limited use of the property since being rezoned. **Coots** states the use would be grandfathered in. **Crowell** asks if the split zoning would grandfather in the original use. **Coots** yes it would grandfather in the use as it was the day it was zoned.

Riedeisser states there will be more economical use of the property by building a tower than using it for storage. There is no economically viable use of the small portion that was rezoned. **Crowell** asks if the Board considers the most economically viable use. **Coots** the code states the City does not have to allow for the most economical use, it has to allow a reasonable use of the property.

Crowell concerned about the variance being necessary as the property is already being used. A reasonable use of the property based on the zoning and neighborhood is storage. **Hines** we have agreed the cell tower is a reasonable use of the property. If we decide it is not necessary for a cell tower as a reasonable use, it limits the use of the land to storage. It scopes down the definition of basic reasonable use. The tower is reasonable, therefore the variance is necessary. **Crowell** states there are viable uses of the property already. Giving a variance is not essential to be able to use the property reasonably. **Jepsen, Hines, Meusch, and Rohter** agreed the 5th criterion was met. **Crowell** voted no.

6th Criterion: **Rohter** states the original intent would be the safety of surrounding areas, and engineered details were provided. All Board members agreed the 6th criterion was met.

A motion was made by Jonathan Hines, seconded by Judy Jepsen, to approve the variance to allow reduced setbacks for a telecommunications tower. A roll call vote on the motion showed the following. Ayes: Jepsen, Hines, Rohter, and Meusch. Nays: Crowell. The motion passes.

III. PUBLIC HEARING: NONE

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

Having no further business, the meeting was adjourned at 7:05 P.M.
Minutes prepared by **Sarah West**

NEXT MEETING: Thursday, November 3, 2022