

ZONING BOARD OF APPEALS MINUTES OF OCTOBER 12, 2010

Meeting called to order by Chairman Markwardt at 5:00 p.m. in the 1st Floor Conference Room, Suite 108, City Hall Plaza.

PRESENT: Ed Gerl, Richard Kenyon, Dean Markwardt, Kenneth Bargender and 1st Alternate Scott Noble

EXCUSED: Todd Zieglmeier

ALSO PRESENT: Planner/Zoning Administrator Miller, Deputy Clerk Panzer, Randy Neve, Jeremy Carolfi, Clint Hager, Jim Kniech, Jeffrey Gaier and John Berg

ZB10-009 Motion by Kenyon, second by Gerl to approve the minutes of July 22, 2010 as submitted.
Motion carried

Deputy Clerk read the variance request from Randy and Tammy Neve for property located at 2617 Peachtree Circle, zoned "R-4" Residential (Low Density Single and Two-family District). Section 18-62 (5) (f) of the Municipal Code requires a minimum 25-ft rear yard setback. The Applicant requested a 13-foot rear yard setback variance along the back lot line to place a new three season screen porch addition at a setback of 12-ft.

Background

The property owners wished to add a 16-ft x 16-ft three season porch to the east side of their home (rear yard) at 2617 Peachtree Circle. Currently, the patio door leads to a landscaped rock area in the rear yard. A development permit request has been administratively denied because the proposed porch would encroach into the rear yard setback.

Planner/Zoning Administrator's statement of facts regarding the variance request:

1. The property is located at 2617 Peachtree Circle.
2. The Lot is 10,842 sq. ft. in size, and is a 119-ft x 100-ft wide lot.
3. The property is zoned "R-4" Low density single and two-family district where the minimum lot size is 8,700 sq. ft. and the minimum lot width is 60 ft. for a single family residence.
4. The Lot meets the minimum lot dimension requirements of the "R-4" District.
5. This lot is an irregular shaped corner lot with a curve on the northwest corner of the property for the Peachtree Circle right-of-way. House was setback 33 feet from the north property line and 44 feet from the west property line because of the curve of the right-of-way reducing the rear yard.
6. This property was developed in 2009 as a single-family residence with an attached garage.
7. The adjacent property to the east end of the house is currently undeveloped.
8. The house was laid out on the corner lot and due to the south yard only having a 10-ft setback, the east yard is thus the required rear yard.
9. According to the Zoning Code, corner lots shall maintain a side yard setback on all public streets which is the same as the required front yard setback. The Code does not specify which yard must have the required rear yard setback.
10. Section 18-62 (5) (f) of the Municipal Code requires a minimum 25-ft rear yard setback; the house is currently located 28 feet from the rear property line.
11. A three-season room addition is considered an attachment and must adhere to the same setbacks as the principal structure.
12. The proposed addition would be 12 feet from the rear property line and 13 feet into the required rear yard setback.

Summary Responses from Applicant

(Unnecessary Hardship) “At the time of construction, the builder placed a patio door on the east side of the home with no useable or safe access allowing use of the door. Our realtor stated that the builder had not finished but would be a “perfect spot for a deck.” The realtor was obviously unaware of the current zoning laws for this lot, or would not have mentioned that option with us. The current zoning laws, the irregular placement of the house, and irregular lot lines are prohibiting us from placement of the proposed three season porch to allow use of the entry way.”

(Unique Property Circumstances) “Compliance with the current zoning laws for this particular property would prevent us, the owners, from the construction of a useable space. Because of the unusual shape of the lot and the fact that it is a curved corner lot, the builder had to place the home in its current position from the road in order to meet setback codes for its construction. Therefore, conforming to the zoning restrictions would leave us with the burden of not having a useable space.”

(No Harm to Public Interests) “The proposed three season porch will not be detrimental to public interest because it will not impose on any neighbors or their properties. There is currently a vacant lot east of the proposed structure.”

Bargender said the lot to the east is an 80’ lot. If a house is built on that lot the applicant’s view from his porch will be the neighbor’s house. Usually people use the southern exposure for this type of addition.

Kenyon said the real shame in this is that the house was built just a year ago. The builder put in a sliding patio door and the way the zoning code is written, the Neves could have a 3’ deck without the variance and that is just blatant on the builder and on the developer for that matter too, because they should have had input on what they were doing. It would be nice to be able to put on a deck, a patio or something to get use out of that door, so it is not just a big window.

Planner/Zoning Administrator Miller explained anything above grade would not be permissible. Anything above the slab would have to be 5’ from the house foundation, essentially a detached accessory structure such as a garage or a gazebo.

Bargender asked Mr. Neve how he felt about building a detached screened in gazebo.

Mr. Neve said he and his wife talked about and looked at that option, but because of the way the house is built the deck would really make it look nice. If they would have known that they couldn’t put a deck on the house that would have swayed them from buying the house.

Planner/Zoning Administrator Miller said if this corner lot wasn’t a corner lot and this lot was facing the north Mr. Neve’s side yard could be 7 1/2’ as opposed to 12’. It doesn’t make a difference to the neighbor, because this is going to be the neighbor’s side yard regardless. Mr. Neve happens to be abutting two backyards essentially. The neighbor to the east has a very large yard, so he already has a lot of open space more so than what would be on the west side.

Chairperson Markwardt referred to #9 of the statement of facts and asked what the required front yard setback is.

Planner/Zoning Administrator Miller said Mr. Neve exceeds the required front yard setback of 25’ except on the radius, because it is a curve. On both straight of way portions of that street he is well beyond that, but because it is a curve instead of a straight block he has to be set back even further and that is kind of what the hardship is. If this was a rectangular block he could have moved the house closer to the west. Right now he is 44’ from the west. The builder typically would have had a 25’ setback. There is a

difference where that 16' wouldn't have encroached on the rear yard setback. The code is worded that way, because it is a side yard, because technically his north line would be the side yard if it were adjacent to a property, but because it is adjacent to a right of way, they have to have that 25' setback. He already essentially has two front yard setbacks, because it is a corner, making a rear yard in some of these instances difficult. The code doesn't specify which rear yard you have to have and on a corner lot it doesn't specify that you have to have a rear yard, but it is implied because all lots have a rear yard.

Bargender said the developer wedged an 80' lot in between the two properties. Basically the developer created the problem here.

Mr. Neve said he would be willing to look at making it a regular 16' x 16' basic deck and not a screened in three season room if that would make a difference.

Kenyon asked if there would be anything in the future to prevent Mr. Neve from screening in his deck if he were granted a variance to build a basic deck.

Planner/Zoning Administrator Miller said it would depend on how the variance is worded. The Board would be granting the variance for the area. A deck is less invasive than a porch and he didn't see an issue with reducing the request. If the Board were to change it now for a deck, than Mr. Neve would have to come back for a variance if he were ever to expand into a three season porch.

Planner/Zoning Administrator Miller read a letter that was received from Doneff Companies LLC, the developers of the Peachtree Subdivision and current owners of most of the remaining undeveloped lots objecting to the variance request.

Planner/Zoning Administrator Miller asked Mr. Neve if he was aware of any of the subdivision covenants that Doneff Companies LLC were referring to in this letter beyond what would be in the zoning code, because the City doesn't enforce those.

Gerl thought there was a covenant for the size of the house in that subdivision.

Planner/Zoning Administrator Miller recommended that Mr. Neve verify what his covenants are in that neighborhood, because he may have some issues there that the developer could come back on him if he violates a covenant.

Chairperson Markwardt said that the properties to the south of Mr. Neve all seem to be pretty much aligned and some of them have decks and the deck or three season room that Mr. Neve is contemplating would be about equivalent to the decks that we already see in that line. The only difference is that those properties farther to the south have much bigger back yards. He doesn't see this as being unsightly. He said he can see that a porch or a three season room would be detrimental to the person buying the small lot immediately behind Mr. Neve to the east.

Noble felt it would be consistent with the other lots other than the fact that the builder or developer just stuck an extra lot in there.

ZB10-010 Motion by Kenyon, second by Bargender to grant the variance request from Randy and Tammy Neve for a 13-foot rear yard setback variance along the back lot line to place a new three season screen porch addition at a setback of 12-ft.

Planner/Zoning Administrator Miller recommended that the Board allow Mr. Neve the option of building a three season room or a deck in case the covenant restrictions prevent him from having a buildable addition. That way he could still build a deck.

Vote on motion **ZB10-010**; as amended to allow for a 16' x 16' three season porch or 16' x 16' deck.

Motion carried

Deputy Clerk read the variance request from Country Wireless LLC for property located at 10641 County Highway B, in the Town of Lincoln, outside the City, but within the City's AIR-4 Airport Overlay Zoning District. The "Airport Overlay & Height Limitation Zoning Map, Marshfield Municipal Airport, Marshfield, Wisconsin," as identified in Section 18-65 (6) d. of the Municipal Code, requires structures at this location to not exceed 1,399-ft above mean sea level (AMSL). The Applicant requested a 28-ft variance to erect a communications tower 97-ft above ground level (AGL) that would exceed the maximum height restriction of 1,399-ft above mean sea level (AMSL) to an elevation of 1,427-ft above mean sea level (AMSL).

Background

Country Wireless wished to construct a 97-ft above ground level (AGL) telecommunications tower in the AIR-4 Airport Overlay Zoning District. The purpose of the tower is to allow Country Wireless to provide additional internet access to the surrounding community. The height of the proposed tower would exceed the allowable elevation above mean sea level (1,399 ft) by 28 feet. Because of the elevation of the property, the height of the tower exceeds the height limitation as set by the Height Limitation Zoning Ordinance (HLZO).

A variance could not be administratively approved for this plan, based on Sections 18-65 (6) (h) of the Municipal Code. The Applicant is requesting a 28-ft variance to exceed the 1399-ft Above Ground Level (AGL) elevation restriction, in order to construct the telecommunications tower.

Planner/Zoning Administrator's statement of facts regarding the variance request:

1. The property is located outside the City at 10641 County Highway B, in the Town of Lincoln, outside the City, but within the City's AIR-4 Airport Overlay Zoning District.
2. The Airport Overlay Zoning District extends three miles from the airport which includes areas outside the City Limits.
3. The subject property is 1.71 acres in size with the proposed tower to be located in the southwest corner of the property.
4. The proposed tower location is 110 ft from the nearest residence.
5. The elevation of the location for the proposed tower is 1,330' Above Mean Sea Level (AMSL). The proposed tower would extend upwards of 97' Above Ground Level (AGL).
6. The proposed tower height would extend 28-ft into the maximum elevation of the Height Limitation Zoning Ordinance (HLZO).
7. The HLZO requires a determination from the FAA as well as an approval from the airport manager.
8. The Federal Aviation Administration (FAA) has reviewed this request for the proposed tower to the HLZO and has sent a letter declaring their determination that this proposal poses no hazard to air navigation.
9. The Marshfield Municipal Airport Committee has met and has also submitted a recommendation to deny the request for a tower height variance by Country Wireless into the Height Limitation Zoning Ordinance. The Airport Committee would have no objection as long if it is under the 1,399 feet of the height limitation zoning in this area.

Summary Responses from Applicant

(Unnecessary Hardship) “The proposed location for the telecommunications tower is the only location that will allow Country Wireless to continue operating in their current location.”

(Unique Property Circumstances) “The proposed location is at the highest point in the area that will have a line of site to the Country Wireless current store location on South Maple Ave.” The applicant has also stated that there is already an existing flag pole on the property that exceeds the required height of the HLZO.

(No Harm to Public Interests) “Country Wireless has been granted a NO Hazard to Air Navigation determination by the FAA for the proposed tower. This property is not in direct line of any runway. This tower will allow Country Wireless to provide additional internet access to the surrounding community.”

Planner/Zoning Administrator Miller distributed a picture of the site for the proposed tower.

Planner/Zoning Administrator Miller said the flag pole in the middle of the picture is essentially 80’ above ground level and the tower would extend another 17’ above that. This flag pole is also above the height. This flag pole has been there for awhile and was grandfathered in and exceeds the height overlay district zoning restriction.

Kenyon asked how far away the tower would be from the flag pole.

Clint Hager said he believes the tower would be 150’ or so northwest of the flag pole. The proposed site is within 12’ to 15’ of where the farmer’s field lot line is. We have tried our best to conceal it as much as a person can.

Gerl asked for an explanation of why the Airport Committee denied this when it was already approved by the FAA to build this without a problem.

John Berg, Airport Committee Chairman, said the City worked very hard and vigorously to establish a height standard in a three mile radius around the City of Marshfield and put a lot of effort into that planning. We have a multi-million dollar Airport and to keep that multi-million dollar Airport and the projects in the state and everything there it requires some kind of a minimum height restriction around the City. Everything goes hand in hand. The DOT approved it as not being in a flight plan, but they only did that as a one side issue. When they do that they don’t take into consideration that we have the three mile radius and look at all the other things we do. If we allow one variance for this tower it would throw our whole system out of line and open up a can of worms to have all these different variances which would change our minimums for height, landings and everything else and all the aviation activity that takes place in that airport and we would be jeopardizing our whole system. One of the things that the Airport Committee is really going to take a serious effort of doing here shortly is going to all the Town Chairmen around the City and explain to them that they have to file with the state and they have to file with the City, because sometimes they jump the gun.

Jeffrey Gaier said when the FAA looks at it they don’t consider local considerations. They only have what is in front of them. The City of Marshfield is required to have this height limitation in place in order to receive state and federal funding. Last year we had to go through a compliance check in order to continue receiving state and federal funding. One thing that they were happy about was that we have not allowed any variances into the height limitations. That is a possibility, if variances are beginning to be granted into the height limitations we could lose our funding to the Airport from state and federal.

John Berg said the Airport Committee is not against Country Wireless building the tower right where they want to do it if they stay under the height restriction or if they moved it out of the three mile radius and went above the height restriction.

Bargender asked if the Airport Committee was aware of the flag pole that is on this property, because it looks like it probably exceeds the 1399'.

John Berg and Jeffrey Gaier responded no.

Bargender asked Mr. Gaier if this flag pole ever interfered with his flight operations.

Jeffrey Gaier responded no.

John Berg said that when the City developed the three mile radius, they worked extensively on that and they brought us the package and if this was grandfathered in it couldn't have been a problem. Some things were grandfathered in, but he is not aware of this flag pole being one of them. He mentioned that if they were to put this flag pole right on the airport property it wouldn't be as hazardous as it would be if it were less than 2 or 2 ½ miles out in that zone. Wood County Emergency Services came to us a couple of years ago for a communications tower out by Marshfield Scrap. We denied our own County, our own City, our own Police and Fire protection that variance of the extra feet. If we would allow this variance and something would happen out there with this there would be a lot of liability. We stuck over 4 million dollars in there in the last three years in just upgrades.

Gerl asked when this three mile radius height requirement started taking effect.

Jeffrey Gaier said the original requirement was granted long before 1986. It was updated and put into the GIS System about 2007. The latest version would be 2007.

Bargender pointed out that the flag pole is there and this tower would only be about 100' away. If this flag pole has never bothered anyone and no one has ever seen it, why would the tower be such a big issue?

Jeffrey Gaier said if we would have failed the compliance check with the state not only would we have lost any future funding, the City could have been liable to pay back every single project that we had at the Airport for the last 25 years.

Bargender asked if they will be mentioning this flag pole to the state and federal people in the next compliance check.

John Berg said it will be our duty to do so, because now we were made aware of it.

Clint Hager, Country Wireless explained that they started their company in 2005 serving a lot of the rural surrounding communities with high speed internet access where they didn't have another option like cable or DSL. We had our main point up at Weber's Farm Store at the corner of Lincoln and 14th Street on that harvester there. Our property for our office is at 1403 South Maple Avenue and we had a clear line of sight there, so we had a great communications path connecting from our main office to the first point out to provide service and get it out of town without having to add any additional towers, because the height was there already with the 80' harvester. About three months ago or so at the Farmers request, they had given us time and wanted us to move off of the property and find another location and we started looking around to get our office property at 14th Street and Maple Avenue a way out of town to meet the requirements of keeping the tower under for zoning and also trying to find a place of connect without

getting too carried away on the other end. We have been studying this for quite some time and the way we arrived at this particular property on Highway B and the Bakerville Sports Bar is because on the aerial map you will see where the trees by Wildwood Park just misses the whole woods, so we don't necessarily need to exceed the tree line there. It is actually no accident why we are choosing this particular location. It is really desirable because of the height, which is 1330' and the reason for the variance is because the trees are slightly higher than the 1399' mark. If we were to build it we would be into the trees. We need to clear the trees. Some trees are at 70', 75' or 80' and at the 1399' level that would be a 69' communications tower. A 69' tower would be lower than necessary and would not be beneficial.

Bargender asked how this variance affects the other variance request for Country Wireless.

Clint Hager said they both need to work. The other one is actually just as critical, because if we drop that from 40' down to 30' this has to be taller, which is something that the Airport won't be happy with. If these variances don't work out, we may have to relocate.

Bargender asked if they considered other farmers with silos in that Bakerville area.

Clint Hager said they have and there is an existing structure that is quite tall near the Airport. It is not visual. We would probably need a 50' variance at the 1403 South Maple Avenue office. We may be back to the drawing board. We've tried other options including fiber optic routes and that sort of thing and that wasn't priced very desirable. It was a \$30,000+ project for one mile. At that it becomes out of reach for us.

Clint Hager said that they have tried to gain access to the roof at City Hall and were rejected, because of the roof project that is going on. He was told by Dick Pokorny that he could use the roof so long as he gets a rental agreement with the competitor. It was cost prohibitive to rent with a competitor.

Chairperson Markwardt referred to motion AP10-62 of the Airport minutes of October 1, 2010 and asked if exploring the possibility of a tower farm was a possibility in the relative near future. Are there tower needs in the Marshfield area?

John Berg explained that the reason this was discussed is because of the tremendous amount of requests that are coming in. There is a request every 3 or 4 weeks for a tower.

Kenyon asked if there was an opportunity to put a tower on Airport property that would be an income opportunity for the City that would satisfy everybody.

Planner/Zoning Administrator Miller said the lower elevations are right at the base of the Airport, so even though it wouldn't affect the air traffic it would violate the ordinance significantly.

Jim Kniech, Zoning Administrator for the Town of Lincoln, said the Town of Lincoln has worked with the City in the past where the City has exercised its extraterritorial zoning. We are aware as a township that the Airport has a 3 mile radius. He has been doing this job since 2000 and this is the first time tonight that he has heard that there are compliance checks and height restrictions for the City that are different than the FAA. We always deferred it to the FAA and the Wisconsin DOT Bureau of Aeronautics to set the heights. That being said, are we as a Township suppose to come to the Airport Committee for heights on every project or do we defer to the state and federal government? He pointed out that town chairmen don't write the permits. Zoning Administrators do, so you might want to start there with your meetings. But again if the City would give us a perimeter to work with we would be more than happy to work with the City, but this is the first we've heard of it.

Chairperson Markwardt referred to the letter that was received from the FAA and read the following statement: This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body. He said as a local governmental body we can't defer to the FAA, because our own regulations may supersede those.

Jim Kniech said the Town of Lincoln has no set height restriction.

John Berg said if the Town of Lincoln has land that is under that 3 mile radius they should come one step farther to come to the City or to go through the Airport Committee with that. That is what we are trying to do, to make them aware that this extra 3 mile radius does exist in the City of Marshfield.

Planner/Zoning Administrator Miller said that the way the zoning code is written, we can't accept a variance application without a recommendation from the Airport Committee. It doesn't say that they have to approve it, but it does say that they would have to review and recommend and that is why they are involved beyond just the compliance checks. They actually have a place in this process.

Kenyon asked if a temporary variance would help Country Wireless at all as far as putting up a tower for a period of time to give them additional time to find a place that would work.

Clint Hager said it may, but these are licensed frequencies and every time we have to apply or move these they cost \$2,000.00 a link. This is 11 and 18 gigahertz and the reason for the high frequencies is because of the high bandwidth. They are also very susceptible to trees. They need line of sight. That is why we would rather not move all the time.

Kenyon asked Mr. Hager if Webers has given him a time frame as far as when Country Wireless needs to vacate.

Clint Hager said yes, we are already off of there right now.

ZB10-011 Motion by Bargender, second by Kenyon to deny the variance request from Country Wireless LLC for a 28-ft variance to erect a communications tower 97-ft above ground level (AGL) that would exceed the maximum height restriction of 1,399-ft above mean sea level (AMSL) to an elevation of 1,427-ft above mean sea level (AMSL).

Motion carried

Deputy Clerk read the variance request from Country Wireless LLC for property located at 1403-1405 South Maple Avenue, zoned "B-4" General Commercial for the purpose of installing a 40-ft communication tower with a mounted 2-ft diameter antenna. Section 18-154 (4) (f) of the Municipal Code requires that a communication tower be located no closer than 200-ft from any residential zone. The Applicant requested a 176-ft variance from the property to the east, a 142-ft variance from the nearest residential property to the south, a 57-ft variance from the nearest residential property to the west, and a 5-ft variance from the nearest residential property to the north. Section 18-154 (4)(e) of the Municipal Code requires that a communication tower have a minimum setback not less than a distance equal to 100 percent of the height of the tower from any adjoining lot line. The Applicant requested a 16-ft variance from the east property line.

Background

Country Wireless wished to construct a 40-ft above ground level (AGL) telecommunications tower in a "B-4" General commercial district. The purpose of the tower is to allow Country Wireless to provide additional internet access to the surrounding community. Due to the location and height of the tower, the

proposed tower cannot meet the setback or separation requirement from residential land use.

A variance could not be administratively approved for this plan, based on Sections 18-154 (4) (e) and (f) of the Municipal Code. The Applicant requested variances from each property line for the 200-ft separation requirement as well as a variance from the east property line for the setback requirement that is a distance equal to 100 percent of the height of the tower from any adjoining lot line.

Planner/Zoning Administrator's statement of facts regarding the variance request:

1. The property is located at 1403-1405 South Maple Avenue in the "B-4" General Commercial district.
2. The Lot is 13,816 sq. ft. in size with the proposed tower to be located in the rear yard of the property.
3. The Lot is 88-ft wide by 157-ft long.
4. The height of the proposed tower is 40-ft above ground level (AGL).
5. The Municipal Code requires a 200-ft separation from any residential zone.
6. Residential zoned property in the "R-5" Medium low density single and two-family district exists in all four directions from the business property.
7. The proposed tower location is 24-ft from the nearest residential property to the east, 58-ft from the nearest residential property to the south, 143-ft from the nearest residential property to the west and 195-ft from the nearest residential property to the north.
8. The Applicant is requesting a 176-ft variance from the property to the east, a 142-ft variance from the nearest residential property to the south, a 57-ft variance from the nearest residential property to the west, and a 5-ft variance from the nearest residential property to the north.
9. The Municipal Code requires a setback equal a distance equal to 100 percent of the height of the tower from any adjoining lot line.
10. The proposed tower is 24-ft from the east property line. All other property lines exceed 40 feet.
11. The Applicant is requesting a 16-ft variance from the east property line.
12. The height of the proposed tower exceeds the height requirements in the "B-4" district. The Municipal Code allows 35-ft and the height of the proposed tower is 40-ft.
13. A Conditional Use Permit will be required to approve the height of the proposed tower.

Summary Responses from Applicant

(Unnecessary Hardship) "Without this tower, we would be forced to relocate our business. Fiber optical cable cannot be run due to the high costs."

(Unique Property Circumstances) "Lot size does not provide enough space to conform with city ordinances in regard to proper setbacks from residential property."

(No Harm to Public Interests) "Safety and aesthetics will be priorities. This tower would connect thousands of rural, residential, and business customers in Marshfield and outlying areas to high speed internet service. The antenna will operate in the licensed frequency band and have no adverse impact to any surrounding business or residence."

Planner/Zoning Administrator Miller explained that the Board needs to look at two sections of the code. There are two dimensional requirements. One being the separation from residential property and second a separation from the adjoining lot line. There are two different variances on the same property. The 200' is the separation from residential and the 100' is separation from the nearest property line.

Chairperson Markwardt asked what alternative tower structures were.

Planner/Zoning Administrator Miller said alternative tower structures would be if it were on the roof of a building, chimney, or a light pole or something. Or an existing cell tower. It is basically using an alternative structure other than a new tower.

Chairperson Markwardt said he noticed that there is a tower there now and asked how tall the tower that is standing at the property is.

Clint Hager said 40'.

Kenyon asked if the tower would be taller or shorter than the power pole.

Clint Hager said they are shooting right underneath them. There are some really tall high line wires that run down Maple towards V & H.

Bargender said this property is surrounded by three large utility poles and this tower would be shorter than the already existing utility poles.

Clint Hager said that he noticed that there are different guidelines in the Municipal Code for what is considered a communications tower and what is considered for a residential TV reception. He thinks the intent was to keep cell towers and what not out of the back yards of residences, because the setbacks simply aren't there for residential use or HAM radio use. We don't have the 200' setback on that and the height restriction is limited to 70', or 30' above the highest point of the roof. But because of the purpose of it being commercial that is where we fall into that category.

There was no opposition from neighbors.

Planner/Zoning Administrator Miller said that if the tower would fall it could potentially hit the neighbor's garage, because it is so close.

Clint Hager said with the current plan that is proposed it wouldn't fall into the residence or into the street or alleyway. It would only impact the neighboring property to the east, the garage rooftop. It is the same design as a residential TV tower. It would be anchored to the side of the building too.

Planner/Zoning Administrator said he received an email from the Building Inspector and he said that he would have a hard time issuing a building permit for this unless there was engineering data to support the proposed use or it would be secure, so before they could even get a building permit for it they would have to make sure that there is some support data to show that it is structurally sound.

Planner/Zoning Administrator Miller said that staff is looking at revising the City's cell tower ordinance down the road. The 200' separation is the real issue here.

Noble said this is growing pains for the City because this is very much a commercial area. How can we be fair to this business?

Planner/Zoning Administrator Miller said if this was a regular TV antenna on a residential home it would need is a building permit and would need to stay below 70'.

ZB10-012 Motion by Noble, second by Kenyon to grant the variance request from Country Wireless LLC for a 176-ft variance from the property to the east, a 142-ft variance from the nearest residential property to the south, a 57-ft variance from the nearest residential property to the west, and a 5-ft variance from the nearest residential property to the north. And also a 16-ft variance from the east property line.

Motion carried

Motion by Kenyon, second by Gerl to adjourn at 6:47 p.m.

Motion carried

Lori A. Panzer
Deputy City Clerk