

ZONING BOARD OF APPEALS MINUTES OF MARCH 8, 2011

Meeting called to order by Chairman Markwardt at 5:03 p.m. in the 1st Floor Conference Room, Suite 108, City Hall Plaza.

PRESENT: Richard Kenyon, Dean Markwardt, Ed Gerl, Kenneth Bargender and Scott Noble (arrived at 5:05 p.m.)

ALSO PRESENT: Planner/Zoning Administrator Miller, Deputy Clerk Panzer, Alderperson Cummings, Duffy Gaier, Jeffrey Gaier, John Berg, Dennis Boucher, Jeremy Berman, Mark Henrichs and Assistant City Attorney Wolfgram

ZB11-01 Motion by Kenyon, second by Gerl to approve the minutes of December 14, 2010 as submitted.

Motion carried

Deputy Clerk read the variance request from Wisconsin Central Ltd. for property located at 15 North Vine Avenue, zoned "B-4" General Commercial, for the purpose of installing a 250-ft communication antenna tower. The Applicant requested a 131-ft variance to erect a communication antenna tower 250-ft above ground level (AGL) to an elevation of 1,530-ft above mean sea level (AMSL). The "Airport Overlay & Height Limitation Zoning Map, Marshfield Municipal Airport, Marshfield, Wisconsin," as identified in Sec. 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 also requested a 100-ft variance from the 150-ft antenna and tower height restriction in Sec. 18-154 (4) (d) of the Municipal Code.

Background

Wisconsin Central Ltd. (WCL) wishes to construct a 250-ft above ground level (AGL) communications tower in a "B-4" General commercial district. The purpose of the tower is to allow WCL to provide more resilient and reliable communications than are currently available. The tower will provide microwave communications along WCL's rail line between Chicago and the Twin Ports of Duluth and Superior. The upgrade is also necessary to comply with the Federal Rail Safety Improvement Act of 2008 (standards that must be met by 2015) by implementing Positive Train Control. Positive Train Control is a program of integrated command, control, communications, and information systems for controlling trains movements with safety, security, precision, and efficiency.

A variance could not be administratively approved for this plan, based on Sections 18-65 (6) (e) (5), 18-65 (6) (h), and 18-154 (4) (d) of the Municipal Code. The Applicant requested variances from the Height Limitation Zoning Ordinance that restricts the height of all structures at this location to an elevation of 1399' AMSL, and from the telecommunications towers and antennas restriction that limits the height of towers to no greater than 150' AGL.

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

1. The property is located at 15 North Vine Avenue in the "B-4" General Commercial district.
2. The Lot is 34,560 sq. ft. in size with the proposed tower to be located in the middle of the property.
3. The Lot is 96-ft wide by 360-ft long.
4. The height of the proposed tower is 250-ft above ground level (AGL).
5. The base elevation of the proposed tower location is 1,280-ft above mean sea level (AMSL). The total height of the tower would reach 1,530-ft AMSL, exceeding the Height Overlay Zoning Ordinance (HLZO) for property at this location by 131 ft.
6. The Applicant is requesting a 131-ft variance from the HLZO.
7. The Municipal Code restricts communication tower heights to 150 ft.
8. With the proposed tower reach 250-ft AGL, the applicant is also requesting a variance of 100-ft.

9. An exception will be required to approve the separation between land uses. Conditional Use Permits will be required to allow the height of the proposed tower in a "B-4" General Commercial district. A Conditional Use Permit is also required for a communication tower in the "B-4" General Commercial district.
10. A variance is also required to allow for a reduction in the required setbacks from the property lines. This setback variance is not requested at this time.
11. At the February 17, 2011 Airport Committee meeting, the Airport Committee recommended denial of the request to exceed the elevation of the Height Limitation Zoning Ordinance.

Summary Responses from Applicant

(Unnecessary Hardship) "This variance is needed in order for WCL to comply with the federal mandate that WCL implement so-called 'positive train control'. This requires WCL to construct towers along its right-of-way within line-of-sight of each other. WCL's property in Marshfield is currently the only location that WCL has identified which is suitable for a tower and will provide the required line-of-sight with nearby towers."

(Unique Property Circumstances) "Due to the height of a nearby building in Marshfield, this variance is needed to construct this tower at a sufficient height to establish line-of-sight with the next tower to the south."

(No Harm to Public Interests) "Based on the Federal Aviation Administration's determination, granting this variance will have no adverse effects on the safety of air navigation at Marshfield Municipal Airport."

Jeremy Berman spoke on behalf of Wisconsin Central Limited. Wisconsin Central Limited would like to construct this tower at this location at this height, because they need to implement what is known as Positive Train Control. In 2008, there was a passenger train accident in Chatsworth, California in which 59 people were killed when an engineer blew through a signal and two trains collided. As a result of that, Congress passed a law known as the Rail Safety Improvement Act of 2008 and one of the provisions of this law is that by 2015 certain railroads need to implement a system to basically remotely control trains in the event that the train crew does something wrong and becomes incapacitated. Right now, Wisconsin Central is in the process of putting up microwave communication towers all along its line from Chicago, Illinois to Winnipeg, Canada. This property in Marshfield falls between towers that are going up in Junction City to the south and Ripplinger to the north. The reason Wisconsin Central identified this location is that it is trying to keep the towers close to its right-of-way and locate towers on property that Wisconsin Central already owns whenever that is possible. The towers need to have line of sight. Wisconsin Central Limited is still looking for alternative locations hopefully outside of the Marshfield Airport zone, outside of the three mile limits. It has not yet identified any other locations that will work. The reason for the 250' height is because there are buildings in Marshfield both to the north and the south that obstruct the communication which requires the tower to be 250'. 250' is the lowest height that they can construct this tower at to maintain communications between the other two towers.

John Berg, Airport Committee Chairman spoke against the variance request. He believes this would drastically change how the helicopter service would have to operate at the hospital.

Duffy Gaier, Assistant Airport Manager said the height limitation zoning was designed for one thing and that is safety. He stressed that the Zoning Board needs to look at the liability. If we allow a variance for this zoning and something would happen down the line, the FAA is going to come along and say for what reason did you allow this safety net to be penetrated.

Jeffrey Gaier, Airport Manger mentioned that the hospital is looking at establishing some administrative approaches going to the hospital and that is certainly going to affect the approaches of the helicopters

coming to the city itself especially in bad weather, so the height limitations zoning will be upgraded again.

Dennis Boucher, representative for St. Vincent De Paul expressed concerns about the land across the street that is for sale by St. Vincent De Paul. The land where this tower is being proposed isn't very wide. He felt it would be better to place this tower outside of town rather than to put it right on the boulevard going through the city.

John Berg said that the airport committee and airport management really wish that somehow the city or someone could look at a tower farm that is outside the city, outside the 3 mile limit that would meet everybody's needs, because the requests are becoming so great between the cellular, radio and communications companies. That way when we get a request like this one, we can say there is a site that has been okayed for towers. Go out there and negotiate with those people. If you don't have towers nobody can navigate.

Duffy Gaier said when we get a project out at the airport and we use federal entitlement dollars we have to sign assurances that will protect these guidelines that we have set up on height limitations zoning. Once we start violating the height limitations, they could come back and say you are violating the assurances that you have signed here and we would like to request our money back again.

Gerl said we don't allow big billboards in this area. How can we say that we need to put a 250' free standing tower in the middle of a section that we don't even allow signs in?

Kenyon pointed out that if you draw a 250' diameter around where the tower would be on a map, 250' would cross Veterans Parkway and the residential neighborhoods on multiple sides. There are no wires to keep this tower planted. It is just a free standing tower. The variance request is over 100% of what the current limitation would be. He wished the tower would be pushed further south of town outside of the airport zone. It would help the property owners that are near here. There is a lot to be gained by moving it a relatively short distance and if they put another tower to the north of town they could make the tower a lot shorter and they wouldn't have as many people against it.

Bargender asked if this tower is going to be used all the time or just in an emergency.

Mark Henrichs explained that the tower would be used all the time. It is going to run the red, green and yellow lights down the track along with the RTC (Radio Train Control) talking to the physical train with the radio in the train, so this tower would talk to Spencer, Auburndale and Marshfield.

ZB11-02 Motion by Gerl, second by Kenyon to deny the variance requests from Wisconsin Central Ltd.

Reasons given for denying the variance requests:

- 1) Safety.
- 2) Too close to Veterans Parkway.

Vote on motion **ZB11-02**; All Ayes.

Motion carried

Motion by Kenyon, second by Gerl to adjourn at 5:44 p.m.

Motion carried

Lori A. Panzer
Deputy City Clerk

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