

Minutes
WARRICK COUNTY AREA BOARD OF ZONING APPEALS
Regular meeting to be held in the Commissioners Meeting Room,
Third Floor, Historic Courthouse,
Boonville, Indiana
February 27, 2023 at 6:00 P.M.

PLEDGE OF ALLEGIANCE:

MEMBERS PRESENT: Terry Dayvolt, Chairman, Paul Keller, Doris Horn, Mike Moesner, and Jeff Valiant, Jeff Willis and Mike Winge.

Also present was Morrie Doll, Attorney, Molly Barnhill, Executive Director, Jen Hollander, staff.

MINUTES: Upon a motion made by Jeff Valiant and seconded by Mike Winge the Minutes of the last regular meeting held January 23, 2023 were approved as circulated.

Chairman Dayvolt said it looks like we have a special use and a variance tonight.

SPECIAL USES:

BZA-SU-23-03

APPLICANT: River City Wireless, Inc. by Rodney Nicholson, Owner

OWNER: Oakland Holdings LLC by Jordan Aigner, Member

PREMISIS AFFECTED: Property located on the west end of Roslin Road approximately 2,500 feet NW of the intersection formed by Victoria Woods Dr. and Roslin Road. Boon Twp. 17-6-8

NATURE OF THE CASE: Applicant requests a Special Use, SU-18, from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow: an Improvement Location Permit to be issued for a 124' (120' with a 4' lightening rod) self-supporting tower and associated equipment in a lease area all in a "M-2" General Industrial Zoning District. *Complete legal on file. (Advertised in the Standard on February 16, 2023)*

Chairman Dayvolt asked for a staff report.

Mrs. Barnhill said return receipts, we have all the green cards except for three; the notice sent to David and Leigh Ann Harris and two to Country Gal LLC, however we do have the white pay receipts showing they were mailed correctly. She continued the existing land is vacant, the surrounding zoning and land use to the north is zoned "A" Agricultural Zoning District and "PUD/C-2" Community Commercial Zoning District being Friedman Park and Victoria Golf Course maintenance building. To the south, west and east are "M-2" General Industrial Zoning being vacant. She said there is no flood plain, and their access will require a low volume commercial entrance permit to be approved by the County Engineer and it will be onto Roslin Road. She said we have received a copy of the Real Estate and Tower Lease Agreement, it is in my packet, but it is big so if anyone would like to see it I can show you. She said their statement

says the proposed use for this area includes a 120ft (plus 4 ft lightning rod for total height of 124 ft) self-supporting tower with appurtenances for the applicant's internet company, the applicant is working with the owner to make high speed internet more accessible in this area of the county, this site will provide excellent service to this underserved area. She said also tonight we received a Limited Power of Attorney to allow Jeramy to represent Jordan Aigner who is the owner of Oakland Holdings.

Chairman Dayvolt said state your name please.

Jeramy Elrod said with Morley, 4800 Rosebud Lane, I am the project engineer also tonight representing the owner which is Oakland Holdings, LLC. He continued also with us tonight is the applicant which is River City Wireless, Rodney Nicholson, he is here to answer the tough questions. He said just to add a little to the staff report, I have passed out a couple of exhibits, one which is just kind of some aerial images of kind of where in the world it's at, again it would be off the cul-de-sac end...just west of the cul-de-sac on Roslin Road. He said I also passed out the site plan that was filed...I talked to Molly earlier today, we did make an amendment to the site plan that was originally filed, the only thing that we did after coordinating with Center Point on an easement they had was we moved our proposed tower location 40 feet due west, which in the grand scheme of things doesn't change anything for us, but again it was an easement deal with Center Point. He continued again the purpose of it, again to just expand the rural broadband foot print, it's something River City Wireless has done successfully in Warrick County, they have also had some help from Economic Development to try to get some folks...and they think this will be a good spot for kind of their next tower to expand rural broadband coverage.

Chairman Dayvolt asked if there were questions from the Board.

Mike Moesner asked is it a free standing tower.

Jeramy Elrod said yes, if I say anything wrong Rodney is going to yank my chain.

Mike Moesner said I think I have heard in the past where they talk about they will self...

Jeramy Elrod said correct, yeah.

Mike Moesner said crumble away or whatever you want to call it.

Jeramy Elrod said yeah, I was actually just talking to Rodney about that, I think we have provided in there the fall radius, I know by code we show the code radius which is a 300 foot radius, these towers effectively have a zero foot...they kind of buckle in the middle and fall directly down. He asked Rodney do you remember what that letter said as far as the fall radius.

Rodney Nicholson said Rodney Nicholson, River City Wireless. He continued we actually talked to the engineer and had this tower redesigned, if it were to buckle in a storm it is going to buckle at around the 50 to 60 foot mark over on itself, I did that because of the power lines, with

them being so close its worth the few extra bucks to beef up the bottom and have it do that. He said you can't put zero in a letter because there are standards that you have to follow, but in theory this would literally have a zero fall radius if it ever buckled.

Mike Moesner said okay, thank you.

Chairman Dayvolt said would you sign in Mr. Nicholson please. He said it doesn't look like it is close to any other structures in this.

Jeramy Elrod said that is correct, yeah.

Chairman Dayvolt asked so there are no lots from the development that is going to be close to this.

Jeramy Elrod yeah, no the closest one is Eastwick, the more recent development on Roslin we have a measurement there it is 875 feet to the nearest property line to Eastwick, probably another hundred foot or so to the nearest house in Eastwick, so about 950 feet or so.

Chairman Dayvolt asked questions from the Board.

Jeff Willis said this is down there past where Roslin ends but kind of next to the trail...

Jeramy Elrod said yes.

Jeff Willis said power lines.

Chairman Dayvolt asked anymore questions from the Board, seeing none, is there anyone here for or against this project that would like to speak. He said seeing none any more questions by the Board, I will entertain a motion.

I, Jeff Valiant, make a motion finding of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.

5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

In addition, the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to any required State or Federal Permits.
2. Subject to an Improvement Location Permit being obtained.
3. Subject to any required Building Permits being obtained.
4. Subject to the Special Use not being altered to become any other use nor expanded than that which was approved by the Board of Zoning Appeals.
5. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
6. Subject to all public utility easements and facilities in place.
7. Subject to an anti-climbing device and/or fence, be put up around tower.
8. Subject to the Low Grade Commercial Drive being completed and certified by their engineer or surety posted.
9. Subject to the following from the Warrick County Comprehensive Zoning Ordinance:

Each operator of a telecommunications facility must send to the Area Plan Commission a copy of any notice sent to the FCC of intention to cease operations. All abandoned or unused towers and associated facilities shall be removed within six (6) months of the cessation of operations at the site unless a time extension is approved by the Board of Zoning Appeals. A copy of the relevant portions of a signed lease which requires the applicant to remove the tower and associated facilities upon cessation of operations at the site shall be submitted prior to issuance of the required improvement location permit, shall be incorporated as part of the permit, and permit approval shall be conditioned upon removal of the structure(s) within six (6) months after cessation of the use. In the event that the tower is not removed within six (6) months of the cessation of operations at a site, the tower and associated facilities may be removed by the County and the costs of removal assessed against the property. (pg. 35)

Motion was seconded by: Doris Horn and carried unanimously.

Jeramy Elrod said thank you.

Mrs. Barnhill said you're welcome.

Rodney Nicholson said thank you guys very much.

Mrs. Barnhill said Rodney we can have you're approval ready to pick up tomorrow afternoon, I don't know how fast you are wanting to get...

Rodney Nicholson said I am actually digging a hole when I leave here, I think they are ready for internet that fast, and I'm just kidding you Molly. He said tomorrow is good, that would be okay, if they had their choice I would be working on it tonight.

Mrs. Barnhill said don't forget about the driveway.

Rodney Nicholson said so get with Bobby, on the pull off.

Mrs. Barnhill said have Jeramy do it.

VARIANCES:

BZA-V-23-02

APPLICANT & OWNER: Tina M. Reeves

PREMISES AFFECTED: Property located on the south side of Sycamore St. approximately 0 feet SW of the intersection formed by Sycamore St. and Third St. Lots 127 and 145 in the Town of Elberfeld 19-4-9. *70 N Third St.*

NATURE OF THE CASE: Applicant requests a variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for a 20'x 29' addition to the existing SFD encroaching 15' into the 25' front building setback line and also being 5' from an existing unattached accessory building. All in "R-1A" One Family Dwelling Zoning District. (*Advertised in the Standard on February 16, 2023*)

Chairman Dayvolt asked for a staff report.

Mrs. Barnhill said on the return receipts all the green cards except for two, the notice sent to Ethan A Clark and Stacey M Loeffler & Kevin M Davis were returned to sender, both notices were sent correctly. She continued the existing use is single-family dwelling and unattached accessory building, surrounding zoning and land use to the north, south, east, and west is zoned "R-1A" Single Family Dwelling Zoning and are single family dwellings. She said there is no flood plain, they have an existing drive on Sycamore Street in the Town of Elberfeld. She continued we received a letter from the Warrick County Building Inspector, Dennis Lockhart, granting a variance for the addition to be closer than 10 feet from the unattached garage. There is a copy in your packets. She said the applicant's statement says I need a variance to do an addition to my

home. My home was built prior to 1964; therefore, it is in the 25' building setback line and 5' from the garage, the application is in order.

Chairman Dayvolt asked for questions from the Board.

Mike Moesner said looking at the drawing here it is not any further out then the existing buildings.

Tina Reeves said it is going to look lovely when it's done.

Chairman Dayvolt said so really the only thing is 5 feet from the garage.

Mrs. Barnhill said asked what.

Chairman Dayvolt said I said the only thing the addition would be 5 foot between it and the garage.

Mrs. Barnhill said the 5 feet and...

Chairman Dayvolt said because they are already existing.

Mrs. Barnhill said but we wouldn't give them a permit to add to the encroachment, so yes they had to the variance to cover that as well.

Chairman Dayvolt said questions from the Board, seeing none, is there anybody here for or against this project. He said seeing none, I will entertain a motion.

I, Mike Winge, make a motion to approve the Variance Application based upon and including the following findings of fact:

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.
3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is.

Attorney Doll said the age of this house was built...

Tina Reeves said it was built in 1930.

Attorney Doll continued proceeding the setback Ordinance.

Mrs. Barnhill said it was built prior to 1964 which is when Planning and Zoning was created.

Tina Reeves said it was built in 1930's.

Attorney Doll said 1930's, and the proposed addition is located no further in proximity, close proximity to the street and...

Tina Reeves said oh, no it is going to be flush with that side of the house, Sycamore side of the house.

Attorney Doll said okay, that's why.

Mike Winge said I will take that.

4. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
5. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
6. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.
7. That the hardship to the applicant's use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
8. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.
9. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.

10. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:
 - a. Subject to an Improvement Location Permit being obtained.
 - b. Subject to a Building Permit being obtained.
 - c. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
 - d. Subject to all utility easement and facilities in place.

Jeff Willis said in the letter from the...how far is it going to be from the unattached garage.

Mrs. Barnhill said 5 feet.

Chairman Dayvolt said 5 feet.

Jeff Willis said the Building Commissioner said or a length of 10 feet from the unattached garage.

Attorney Doll said I thought it was 10 feet.

Mrs. Barnhill said it says be closer to or the length of 10 feet.

Chairman Dayvolt said it is ok for the addition to be closer to or the length of 10 feet from the unattached garage.

Mrs. Barnhill said it is worded a little different.

Jeff Willis said I just wanted to make sure that we are on the...is this going over a property line or is it going right up to the property line.

Mrs. Barnhill said she has two lots there and the buildings already go over it.

Jeff Willis said okay.

Mrs. Barnhill said the addition will go over it, but she owns them both and has buildings on both. She said it is kind of that dashed line right through the middle.

Jeff Willis said right, I saw the purple line in the picture, I just wanted to make sure.

Mike Moesner said in fact it shows in existing it is only 2 feet away from the building there.

Jeff Willis said it is 5 feet.

Tina Reeves said its 5 feet.

Mike Moesner said on the...

Mrs. Barnhill said on the existing.

Mike Moesner said on the existing garage there is an existing 9 foot addition that is only 2 feet away from the existing car port, see that. He said so I don't think that is a problem.

Jeff Willis said those were my question.

Mrs. Barnhill said okay.

Chairman Dayvolt asked is there any more discussion by the Board. He said seeing none I will entertain a vote.

Motion was seconded by Paul Keller and carried unanimously.

Tina Reeves said thank you very much.

Mrs. Barnhill said you're welcome, we will have an approval ready for you to pick up on Wednesday so any time after Wednesday you can come in and get your permits.

Tina Reeves said okay, after Wednesday.

Mrs. Barnhill said yeah, Wednesday or after.

Tina Reeves said okay, thank you.

Mrs. Barnhill said you're welcome.

ATTORNEY BUSINESS:

Attorney Doll said none.

EXECUTIVE DIRECTOR BUSINESS:

Mrs. Barnhill said no sir.

Mike Winge made the motion to dismiss at 6:22p.m. Doris Horn seconded the motion and it carried unanimously.

Terry Dayvolt, Chairman

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of the said Board at their monthly meeting held February 27, 2023.

Molly Barnhill, Executive Director