

BOARD OF ADJUSTMENT MINUTES

MAY 25, 2011

The Board of Adjustment of the City of Norman, Cleveland County, Oklahoma, met in Regular Session in the South Conference Room of the Norman Municipal Building, 201-A West Gray, at 4:30 p.m., May 25, 2011. Notice and agenda of said meeting were posted in the Municipal Building at the above address 24 hours prior to the beginning of the meeting.

Item No. 1, being:

CALL TO ORDER

Chairman Tom Sherman called the meeting to order at 4:30 p.m.

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Item No. 2, being:

ROLL CALL

MEMBERS PRESENT

Jim Ruhl
Hank Ryan
Howard Saxion
Tom Sherman

MEMBERS ABSENT

Margaret Farmer

A quorum was present.

STAFF PRESENT

Doug Kosciński, Manager, Current Planning
Wayne Stenis, Planner II
Roné Tromble, Recording Secretary

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Item No. 3, being:

APPROVAL OF MINUTES OF THE APRIL 27, 2011 REGULAR MEETING.

Hank Ryan moved to approve the minutes of the April 27, 2011 Regular Meeting as submitted. Howard Saxion seconded the motion.

There being no discussion, a vote was taken with the following result:

YEAS

Jim Ruhl, Hank Ryan, Howard Saxion, Tom Sherman

NAYS

None

ABSENT

Margaret Farmer

The motion to approve the minutes of the April 27, 2011 Regular Meeting was adopted by a vote of 4-0.

* * *

Item No. 4, being:

BOA-1011-13 – SBA COMMUNICATIONS CORP. (REPRESENTED BY ATWELL, L.L.C.) REQUESTS A VARIANCE IN TWO DIRECTIONS FROM THE REQUIRED 200’ SETBACK FROM A RESIDENTIAL USE ON PROPERTY LOCATED AT 4203 WILLOW GROVE DRIVE.

ITEMS SUBMITTED FOR THE RECORD

1. Staff Report
2. Location Map
3. GIS Map with Eligible Tower Locations A and B
4. Applicant’s Statement of Justification with Attachments (3)
5. Overall Site Plan
6. Enlarged Site Plan with Elevation
7. Pre-Development Summary

PRESENTATION BY STAFF

Mr. Koscinski presented the staff report, a copy of which is filed with the minutes. There were protests filed which represent 34.2% of the notification area.

PRESENTATION BY THE APPLICANT

John Lateulere, project manager with Atwell, representing the applicant – We are proposing a 199’ tall monopole telecommunications tower. That’s measured to the top of the lightning rod; the tower itself will be 195’. It was chosen because there is no FAA requirement for either a red beacon or a flashing beacon on top of that tower. We propose a 60’x60’ fenced compound, with an 8’ tall PVC fence. The landscaping on all sides is twice what the zoning code will require. This site was chosen for AT&T because they are having capacity issues in areas by the mall; it was also chosen for coverage because the areas south and west of here are exhibiting coverage issues. That means there are too many users in the system; when you make a phone call your phone call will be dropped, and if you are using data you won’t be able to get the data you’re looking for. The original SBA search ring was just to the south and the east on the agricultural land that is owned by NFL, LLC; we have not been able to get in contact with the landowner. We contacted all of the land owners in this area; Mr. Lashbrook is the only person who was willing to work with us. This will be in the floodplain; that is not a problem and we have built these facilities in floodplains before – we don’t raise the ground where the tower is going so there is not a problem with fill in a floodplain. A floodplain permit will be required. Zone A would not require a variance; there is an existing pond and the landowner’s driveway. There is an area on the south property line that could be utilized, but that is an open area. We chose the area we did because it was behind a lot of tree cover and would not really be visible from Willow Grove Drive. Zone B is complicated because there is a drainage ditch that runs through there and currently drains stormwater from the existing duplexes to the north; that area would have to be filled. We looked at moving closer to the landlord’s house, but there is an existing gas line easement that would complicate that placement. One of the concerns stated for the 200’ setback is in case the tower collapses. We

submitted a letter that stated that this tower is designed to collapse within the compound area if there is a failure. Towers are designed to meet all state requirements. The previous variance was due to lot width; this site is impacted by the existing pond and drainage area. These homes were built in the 70s and 80s and the telecom ordinance was passed in 1996; this facility was not envisioned at that time. In '96 the cell phones were all analog-based; there were not a lot of them and capacity was not an issue. With the new technology that has come out, it has necessitated more band width, more facilities in an area to be able to meet what is required. There was a question about nearby towers and whether they can be used for collocation; the map shows 4 of the 5 closest towers. The missing tower is at Main Street and 36th and sits immediately adjacent to the back wall of a commercial strip center and there is only room for T-Mobile's equipment and no room to be able to put any equipment on the ground. The tower was constructed for four carriers. The surrounding property owners commented that this is a quiet neighborhood and this would be a commercial use; telecom towers are allowed in residential areas provided they meet setbacks. The tower is accessed on a daily basis while they're building it; once it is built it will have remote monitoring and it will be accessed on a periodic basis by maintenance people, probably somewhere between a weekly and monthly basis. Willow Grove Drive is a private road. Even though the traffic would be fairly minor once the tower is constructed, SBA has agreed to fund the landlord to maintain the private access drive and fix any asphalt or gravel that is damaged during the construction process. The neighbor immediately to the west indicated that he thought if the tower were closer to his property it could cause a restriction on future use of his property. The variance applies to our property and should not have any implication for his property. The visual impact to the duplexes to the north of the site and the single-family residences immediately west of that would be less in Zone A, but increased for residents on Willow Grove Drive. To locate the tower 200' from the west and north property lines, assuming a variance closer to the landlord's house, the visual impacts would be worsened because we would only be required to install the landscaping that we're required to have by code and we would only be required to put up an 8' barrier that could be chain-link with slats. We've tried to step forward in what we've proposed to try to better the situation. Property values were mentioned in the letters; I have a report that I can provide the staff – property values have been looked at across the nation relative to cell towers by both surrounding property owners and by tower companies and the outcome was that this does not have a significant impact. This tower will be under 200' and will not be required to be lit by the FAA. Health issues were mentioned in a number of the letters. The carrier on this tower will be AT&T. SBA only leases the space to other telecommunications carriers who are licensed by the FCC. With that FCC licensure come a lot of restrictions; there is no variance process for those restrictions. The FCC has taken into account what emission levels are and has specific regulations that must be complied with. There was a comment that the tower will be an eyesore; the visual impact of the base of the tower have been addressed through the barrier and landscaping. Towers are a permitted use on the property and the top of the tower would be visible regardless of the location. They would have preferred to locate the

tower on a different site further south; they could not contact the landlord there. They contacted the Parks Department to locate a tower in the trees of the park; the Parks Department did not return phone calls. The landlord has commented that he has an AT&T phone and can't get coverage at his property.

Mr. Ryan asked if there is any technical reason why the tower can't be located in Zone A, other than cost. Mr. Lateulere responded that Zone A is fairly constrained; the pond is more of a regulatory issue because it is figured into the floodplain and to fill the pond would require modification of the floodplain.

Chairman Sherman commented that the compound would not have to be located within the confines of Zone A or Zone B; only the tower has to meet the 200' setback.

Mr. Saxion commented that the compound wouldn't have to be square; it could be rectangular. He asked if the electric power to the compound would be underground. Mr. Lateulere indicated it would be underground from the closest transformers. The back-up generator would be located inside their precast concrete shelter. There will be a light at the door of the shelter, but no other outside lighting.

COMMENTS FROM THE AUDIENCE

1. Mona Randolph, 4401 Willow Grove Drive – I have AT&T cell phone service. I have no trouble at all with it. I've never dropped a call, never not been able to get out, or anything else and we're just about as far south and as far west as you can get. This is an addendum to my letter dated May 19. Showing the numbers of citizens against this cell tower, the request to locate a cell tower here in this area was turned down by every other eligible property owner in the far southwest Norman area. This is according to information given by the company to the City of Norman. The company disclosed that the property owner at 4203 Willow Grove Drive was the only person who agreed to lease and permit the cell tower on his property. He will receive payment each year for the duration of the lease. His decision, evidently motivated by personal financial gain, will be a cost borne by all other persons in the area in present and future years. The negative impact to the area will be substantial. Its cost to all will occur in a variety of forms and ways, both in quality of life and financial loss of property value. The Code of Norman for the 200 foot setback requirement to a property line or house was made a rule and passed by more than one person for the welfare and good of all the citizens of Norman. For reasons financial or otherwise, I don't believe any one person or company should be given the right and power to disregard this legal law and legal code over the legal rights of their neighbors or adjoining property owners. The owner of this property, a large acreage at 4203 Willow Grove Drive, wishes to have the commercial cell compound with its cell tower placed where it is least visible to himself. This seems to be without regard to neighbors or adjoining property owners who have much smaller lots where the commercial cell compound and cell tower will be virtually in their own back yard. For some, this commercial cell compound will be much less than 150 feet from their back door. The 80 by 80 foot commercial cell compound is

estimated to be about 32%, or about 1/3, the area of an individual property adjoining on the north. Those asking a variance seek to place the commercial cell compound as close to the north property line as possible. An easement limits them to 50 feet south from the property line to the north. This is their requested site. Also, it appears this requested commercial cell compound site is less than 50 feet to the adjoining property line on the west. I would ask to be shown where the commercial cell compound and cell tower could be legally placed on the property at 4203 Willow Grove Drive, and where it would still legally follow both the requirements of Section 431.2(a)(3) of Chapter 22 of the Code of the City of Norman and or the restrictive covenants of this neighborhood. The restrictive covenants for Willow Grove Drive prohibit placement of a cell tower. Article 9 states no building or structure whatever except one private dwelling house with the necessary outbuildings, including a private garage and barn shall be erected, placed or permitted on any tract or lot within said Tract II, and such dwelling house shall be used for single-family dwelling purposes only, nor shall such property be used for other than strictly residential purposes. There are other limitations in the covenant, too, which says that you can't build 150 feet from the roadway.

Chairman Sherman explained that it is not in the Board's purview to rule on restrictive covenants. The Board's only task is to deal with the request for a variance of the zoning. If the Board denies the variance, the applicant can continue with the process to place the structure in a place where no variance would be required. The issue of the covenants may come into play there, but that is a legal issue outside of the purview of the Board of Adjustment jurisdiction.

2. LeRoy Wheeler – My concern is the road. We have a private road that this company is going to be coming across with equipment. We, as landowners on Willow Grove, are going to be responsible for that road. I tried to get Doug to take the road, but he wouldn't do it. The bridge is not a safe bridge as it is now; it has washed out once. It is up to the property owners to take care of the road. There are restrictive covenants that were put in to keep things like this from happening.

3. Tyler Steer, 1938 Fillmore Avenue – I own a duplex. You were talking about a 200 foot setback from that north line originally, and then this variance is to 95 feet from that north line. That's just barely over 30 yards off my back fence to my duplex, and it's less than another 95' to the duplex from that back fence. I know he has explained that his tower will crumple on top of itself, but in all reality I don't want to test that theory. A 95' setback is absolutely ridiculous from the duplexes. There are all sorts of families and kids that are going to be looking out onto this, and all the people living on Willow Grove Road. I don't see how you can put a tower in a blatantly residential area. Saying that he's trying to give better service to the people to the south and to the west – what about going to the other side of the river where there are industrial parks. The site in the park in the trees seems like a much better place, and more should be done to get in touch with the Parks Department.

Mr. Lateulere responded that the area that needs help is the area near the mall. There is a tower to the south, and this site would also help support the coverage in that area.

Mr. Koscinski explained that the park is zoned Parkland and the only thing allowed would be a 90' stealth tower.

Mr. Steer said you don't want it in your park and I don't want it 35 yards off my back fence. You say you're going to build a barrier to block it, but a 10' barrier – when I look out my back fence I see a lot more than just 10' high. It is going to be an eyesore. I haven't read the report you read from Delaware, but I don't see how you can say it won't lower property values in that area. And if it doesn't lower property value, it definitely makes the property much less marketable because nobody wants to look out their back fence and see a 200' cell tower.

4. Brenda Lindsay, 4110 Morrison Court – We sit on our patio and try to entertain friends and we'll be looking straight at this cell tower. It's on the other side of a drainage area that runs behind our property and that's a major concern to us, because it will diminish property values, we feel.

5. Ed Bozarth, 3803 Lynnbrook Circle – I have a duplex at 4208 and 4210 Willow Pointe Drive. My concern is if this tower is built, is that going to cause any kind of conflict with TVs and cell phones. He wants to protect his renters.

Mr. Lateulere said the technology has to be tested before it is used and it doesn't cause any interference. If there is interference, the equipment will have to be tuned.

6. Roy Choate, 4520 Willow Grove Drive – We've lived out there for about 10 or 11 years. Willow Grove is a little different area. It is a neat area. It is a residential area. It's kind of a pristine area down by the river. It's a beautiful area when you come out into the open. We don't want a cell tower down there anywhere because we're going to be able to see it. We have 90' cottonwoods, but another 110' over all those is going to be an eyesore. We live in a community that we take pride in. I talked to Scott the other day and asked why are you putting the cell tower out in this, and he said because I don't want to look out my back windows over at the park and have them put it in there. Scott is going to get money for the road, and Scott came to us and wanted money from the land owners to put the road in. So Scott is going to get our money back off of that. I think you're dealing with big business here, too.

Mr. Lateulere stated that there are high tension power lines running across the property that are approximately 80' to 90' tall. We believe we can build a tower that would meet a 1:1 setback. AT&T said their required height is 100' tall. They need to center their antennas at 100' so it would be taller than 100'. That would not be drastically larger than the power poles, and there must be 30 of those on the property.

7. Glen Lindsay, 4110 Morrison Court – Nobody has addressed the environment as far as wildlife is concerned. What effect will this tower and all the signals coming to it have on the wildlife? Everybody that lives there bought their property because it backs up to nature. We've had realtors come to our door and ask us if we're interested in selling our property because they have buyers who want to buy property that backs up to nature. We endured the trench that you all went through and tore out all the drainage and didn't put it back right – that's why the pond is on the property. The creek now overflows into that property and makes that pond that wasn't there before. Now he goes out there and pumps it out because it gets infested with mosquitoes in the summer time. The pileated woodpeckers are nesting in that area; they're not on the endangered species, but they're close. We all bought that property because it backs up to nature and we don't want to look at a tower.

8. Teresa – We've lived down there since 1973. This is a beautiful area. You respect your park and don't want a cell tower in your park. This is part of Norman and everybody comes down there. I think we have just as much right to protect it. We don't want it in our residential area so we have to look at it every day. The landowner is not here.

9. Sarah Sanger, 4109 Morrison Court – I bought my house because it's nice back there and I hate to see something like that ruin it. Where they're talking about putting the cell tower is behind trees so it's blocked from the landowner's view. I don't think it's fair for him to make money off this and the rest of us to have a worse view when he's going to gain from it.

DISCUSSION AND ACTION BY THE BOARD OF ADJUSTMENT

Mr. Ryan commented that if there is property available where they can build the tower without a variance, he has a hard time justifying voting for a variance. Mr. Saxion said he is very concerned about setting a precedent. He was not here when a variance was granted for a cell tower, but he would have voted against it. This is an exceptionally large variance and he cannot support it. Mr. Ruhl agreed that it is hard to support a variance if there is room available that would not require one.

Chairman Sherman stated that the Board of Adjustment generally is not going to look favorably on requests for variances when there is an opportunity within the same property to meet the zoning codes and there is not a particular reason why those codes cannot be met. There is no question it would be a visual impairment to the people that already live there.

Howard Saxion moved to deny the Variance. Hank Ryan seconded the motion.

There being no further discussion, a vote was taken with the following result:

YEAS

Jim Ruhl, Hank Ryan, Howard Saxion, Tom

NAYS
ABSENT

Sherman
None
Margaret Farmer

Chairman Sherman announced that the motion to deny the Variance passed by a vote of 4-0.

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Item No. 5, being:

BOA-1011-14 – FOWLER MOTORS, INC. REQUESTS A VARIANCE TO THE MINIMUM HEIGHT REQUIRED FOR A HIGHWAY-ORIENTED SIGN ON PROPERTY LOCATED AT 955 INTERSTATE DRIVE.

It was determined by staff that no variance is needed. The item appeared on the agenda because it had already been advertised.

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Item No. 6, being:

MISCELLANEOUS DISCUSSION

None

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Item No. 7, being:

ADJOURNMENT

There being no further business, Chairman Sherman adjourned the meeting at 5:39 p.m.

PASSED and ADOPTED this _____ day of _____, 2011.

Board of Adjustment