

# Board of Zoning Appeals

December 12, 2013

**Members present:** Phil Rooney, Chairman; George McCaffee; Doug Warren.

The meeting was called to order at 6:01 p.m. by Mr. Rooney. Mr. Rooney introduced the members to the audience and the general rules were reviewed.

**Case # 51462-BA-13** (831 Fishlock Avenue) was reviewed by Todd Richard, City of Findlay:

Filed by Mr. & Mrs. Robert Smith Jr., for a variance to section 1122.05A of the City of Findlay Zoning Ordinance. An addition has been placed on the front of the dwelling that is approximately 23 feet from the front lot line. The setback requirement is 25 feet.

I discovered the construction soon after it was completed and no permit had been issued. After inspecting the site, the 2 foot encroachment was detected. The owner was given the option of either cutting it back, or attempting to get the variance.

There is a sidewalk that led to the old stoop. In order to avoid dealing with the concrete, the porch was placed closer to the street. As one drives by, the encroachment is unnoticeable and the request is relatively minor. It is not entirely out of character in this neighborhood, although many of the dwellings on this street seem to meet the front yard setback.

The future land use plan prescribes this area to remain as it is currently zoned, which means the front yard setback is 25 feet. Any hardship found in this case is self-inflicted. The big question is: Would you grant this request if the construction had never started?

Mrs. Renee Smith was sworn in. She resides at 831 Fishlock Ave. She admitted that she made the error in not getting the permit. There was no intent to circumvent the code. She submitted some signed letters in support of the request. Photographs of the porch and of some of the other structures along the street were also submitted. She said the bushes would have to be removed to get access to the porch.

Mr. Jack Quisno of 829 Fishlock Avenue was sworn in. He stated that he was in favor of the request and had no objection.

Mr. McCaffee made a motion to grant the request as presented. Mr. Warren seconded the motion. The motion carried 3-0 and the variance was granted.

**Case number 51248-BA-13** (700 Western Avenue) was introduced by Mr. Richard. This case was filed by PBM Wireless Services, LLC, on behalf of Walnut Center, LTD. The applicant is seeking a variance from section 1161.13.3B of the City of Findlay Zoning Ordinance. The tower will be approximately 380 feet

from the nearest residential structure when a 500 foot setback is required. (The setback issue regarding a setback from the lot lines 80% of the height of the tower was resolved by lowering the height of the lightning rod.)

This proposal was reviewed and approved this morning by the City Planning Commission on the condition the variance be granted.

The distance from the residential structures is at least twice the height of the tower. The danger of the tower falling on any of these structures isn't there. Given the limitations of the lot size, there are few alternatives. There is some room to move the tower 30 feet to the west since part of the Seventh Street right-of-way was vacated.

Mr. Nathan Meyer, with PBM Wireless Services was sworn in. He stated that Verizon asked his company to find a new site to improve coverage. This site was the most ideal. An updated plan was submitted to the Board. He gave an overview of the surrounding area. This proposed structure will not emit any noise, vibration, or odor, with the exception of an air conditioning unit that will keep the electronic components cooled. Since there are existing and more intense industrial uses, that this proposal would not be any more objectionable.

Mr. Wayne Borowski of 543 W. Lincoln Street was sworn in. He stated that the rules were put in place for a purpose and the neighborhood to the east of the site must be protected. The existing industrial activities provide jobs. This will be an eyesore.

Mr. Carl Kuhlman of 619 W. Lincoln Street was sworn in. He refuted Mr. Meyer's description of the uses on the west side of Western Avenue. He does not want this and asked who would want this so close to their homes? Mr. Rooney responded by saying that he lives in close proximity to a tower in a neighboring industrial district and has never objected to it. Mr. Kuhlman wanted to know why he wasn't notified of this request. Mr. Richard explained the notification process.

Mr. Robert Hollister, attorney, testified in opposition to the variance request on behalf of Reingard Enterprises and Centrex Plastics. He does not think the applicant meets the conditions to have a variance granted. He said that other nonconforming towers should not be considered when deciding this case. The owner is not being deprived of any property rights. The magnitude of the variance is 24% of the setback requirement. This is a substantial deviation. There is no reference in the request of other sites (alternatives) that should be considered. Mr. Hollister thinks a precedent will be set if the variance is granted. The view of the tower from the neighboring properties is not obscured. He presented a petition to the board of those who object to the request. Additionally, any screening would only hide the base of the tower. Mr. Hollister mentioned some other alternative sites.

Mr. Warren asked why there was a setback requirement from residential structures but not from commercial districts. Mr. Richard said there is an 80% setback from the lot lines and the language that we have is probably used by many other communities.

Mr. Meyer wanted to respond to some of the opposition's statements. He said that cell phone usage has increased and technology has improved and has become somewhat of a utility. Cell phones have become a part of the public's safety in the vent of an emergency.

Mr. McCaffee asked why this is such a special site. Mr. Meyer doesn't think other sites should be considered. He said they have looked at the possibility of co-location, which is not possible. He referred to exhibit "A".

Mr. Steven Carr, of PBM Wireless Services, was given the directive to find the appropriate site. He was sworn in. He stated that other sites were considered. Based on the research, this site and location maximizes the effectiveness of the proposed tower. To make the tower more effective would put the tower in the middle of the residential neighborhood on the east side of Western Avenue. Those who have eliminated land lines need reliable cell service, especially for emergency 911 service.

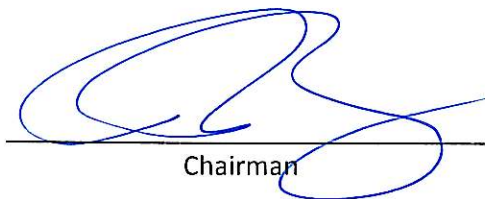
Mr. Warren asked about alternatives and Mr. Carr responded by saying that this site maximizes the service without encroaching into a residential area.

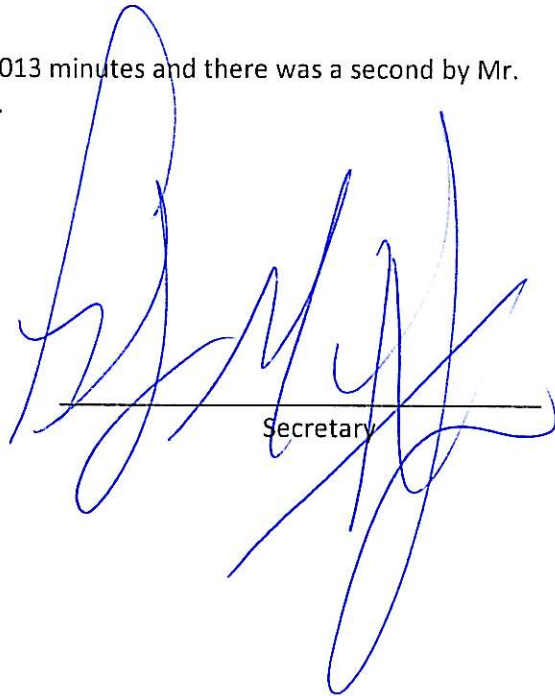
Mr. Rooney called for a motion and Mr. Richard explained that a split vote constitutes a "no action" by the Board and the case would have to be reheard. This was the result of a discussion with the City Law Director.

Mr. Rooney made a motion to approve the variance. He explained the reason for the motion, as prescribed by the Ordinance. Mr. Warren seconded the motion. By voice vote, the motion passed 2-1 with Mr. McCaffee voting against the request. The result of this vote means there is no action taken and the case will have to be reheard on January 9, 2014.

Mr. Rooney made a motion to approve the November 2013 minutes and there was a second by Mr. Warren. The motion to approve the minutes passed 3-0.

The meeting was adjourned.

  
Chairman

  
Secretary