

# Board of Zoning Appeals

## January 16, 2014

**Members present:** Phil Rooney, Chairman; David Russell, Secretary; George McAfee; Sharon Rooney.

The meeting was called to order at 6:02 p.m. by Mr. Rooney. Mr. Rooney introduced the members to the audience and the general rules were reviewed.

This meeting was held on this date because of a lack of a quorum for the meeting scheduled on January 9, 2014.

**Case # 51248-BA-13** (700 Western Avenue) was reviewed by Todd Richard, City of Findlay:

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 applicant has proposed a new communications tower that is approximately 380 feet from the nearest residential structure when a 500 foot setback is required.

At the December 12, 2013 hearing, there was a split vote resulting in "no action". This has caused the case to be reheard.

The City Planning Commission has approved the proposal on the condition a variance be granted.

Given the size of the site, and the fact the distance from the nearest residential structure is three times the height of the tower, the request has validity. To maximize the effectiveness of the service without encroaching into a residential neighborhood, the proposed site is appropriate.

On the other hand, would moving it 500 feet from the residential structures and increasing the height allow the tower to maintain the desired effectiveness?

Granting a variance would set a precedent and the justification must be clear.

Mr. Nathan Meyer, of PDM Wireless Services, was sworn in. Mr. Meyer made a lengthy and detailed presentation outlining the justification for the variance. In summary, Mr. Meyer stated that the tower is not required to have a beacon by the FAA. The tower will be of a monopole design. The tower will allow co-location. The site will have a fence surrounding the tower and appurtenances. It will be a wood fence that will have a residential appearance.

The proposed use would certainly not have the same impact that other uses permitted in the district would have. The tower will not cause noise, vibration, odor, etc. This use is not as intense as other uses permitted in the district.

Mr. Meyer put into perspective the distance the tower will be from the residential structures. He mentioned some other towers that currently exist in Findlay and the fact they are in residential areas.

Mr. Meyer applied each element of the variance criteria to his request to justify the reasons why the variance should be granted.

Mr. Russell asked about the fact the tower would be so close to the airport. Mr. Meyer explained the intricacies of putting a tower close to an airport and it limits any alternative to place the tower elsewhere. This proposal does have FAA approval.

Mr. McAfee asked about why the tower did not have to have a beacon. Mr. Meyer said the height and location both have an impact on whether a tower must be illuminated.

Mr. Robert Hollister, attorney for Centrex and Reingard Enterprises, began his testimony. The first issue he wanted to address was in reference to statements made during the first hearing (December) by the Board Chairman, Mr. Rooney. Mr. Hollister wanted to state for the record that those comments biased Mr. Rooney and he should recuse himself from the proceedings. A letter was given to the city administration from Mr. Hollister regarding his protest.

Mr. Rooney stated that he had consulted with Mr. Rassmussen, City Law director, and he was advised that he could indeed participate and vote on the variance request.

Mr. Hollister stated that there are no special circumstances or hardships to have this variance granted. He stated that a precedent would be set in this case. The deviation from the requirement would be 24%, which should be considered substantial.

By denying the variance, the owner is not being deprived of any property right. Alternative sites have not been considered. There are other sites available that would meet the zoning regulations.

Mr. Hollister stated that the tower will still be very visible.

Mr. Hollister stated for all of those reasons, the variance request should be denied.

Mr. Carl Kuhlman, 619 W. Lincoln Street, was sworn in. He said that there is a lot of information regarding the health, safety, and welfare regarding cell towers and cell phones. The towers do collapse for many reasons and could do damage to the surrounding buildings. He referenced the Federal Communications Act of 1996. He asked that the variance request be denied.

Mrs. Susan Kuhlman, 619 W. Lincoln St., was sworn in. She has a concern with health issues (cancer). The FCC has no idea what these towers are emitting. There is a danger of collapse, fire, etc.

Jane Riker, 431 W. Lincoln St., was sworn in. She has done some research through the internet and found there is a decrease in property values from 2 to 20%. The U.S. Fish and Wildlife has a concern of radiation. This tower could have a negative impact on wildlife.

Mr. Kuhlman quoted the City of Findlay Zoning Ordinance (section 1101). He mentioned the intent and purpose of the code. He also referenced section 1115.07 regarding conditions to grant a variance.

Mrs. Rooney asked Mr. Meyer how many towers have fallen down and caught fire.

Mr. Meyer was aware of one tower that fell because a truck hit a guy wire. The proposed tower does not have a guy wire. This style has been around since 1998. These towers have survived Hurricane Katrina. The houses usually are destroyed before the towers would ever have a chance to fall on them.

Mr. McAfee asked Mr. Richard about the percentage of deviation that Mr. Hollister referenced. Mr. Hollister quoted the section. Mr. Richard stated that this is only a guideline.

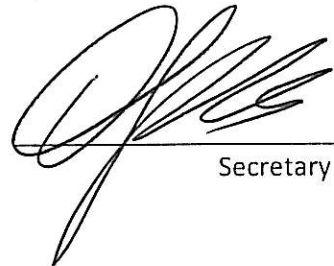
Mr. Russell made a motion to grant the variance with the condition a permit be obtained within 60 days. Mrs. Rooney seconded the motion. The motion passed 3-1.

The minutes from the November 2013 meeting were approved.

Officers were maintained as they stand. Mr. Rooney will be the Chairman and David Russell, will continue as secretary, as motioned and voted upon by the Board.

The meeting was adjourned.

  
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Substitute Chairman

  
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Secretary