



Board of Zoning Appeals

Meeting Minutes

June 24, 2019

7:00 p.m.

New Albany Board of Zoning Appeals met in the Council Chamber of Village Hall, 99 W Main Street and was called to order by Board of Zoning Appeals Chair, Mr. Gallagher, at 7:00 p.m.

Those answering roll call:

Mr. Everett Gallagher	Present
Mr. Kirk Smith	Absent
Ms. Andrea Wiltrout	Present
Ms. Kerri Mollard	Absent
Mr. Shaun Lajeunesse	Present
Ms. Marlene Brisk (council liaison)	Present

Staff members present: Steven Mayer, Development Services Manager; Chris Christian, Planner; Mr. Mitch Banchefsky, City Attorney; and Josie Taylor, Clerk

Moved by Ms. Wiltrout to approve the May 29, 2019 meeting minutes, as corrected; seconded by Mr. Lajeunesse. Upon roll call: Ms. Wiltrout, yea; Mr. Lajeunesse, yea; Mr. Gallagher, yea. Yea, 3; Nay, 0; Abstain, 0. Motion passed by a 3-0 vote .

Mr. Gallagher asked for any corrections or additions to the agenda.

Mr. Christian stated none from staff.

Mr. Gallagher swore to truth those wishing to speak before the Board of Zoning Appeals (hereafter, "BZA").

V-48-2019 Variance

Variance request to C.O. 1179.06(3)(A) to allow a cell tower to be located 40 feet from a single family residential lot where city code requires a minimum 200 foot setback (PID: 222-001516-00).

Applicant: UAS Inc, c/o Rob Ferguson

Mr. Mayer presented the staff report. Mr. Mayer noted the cell tower would also be below the 200 foot setback limit for other surrounding properties but that the forty (40) foot setback was the closest the cell tower would be to any surrounding property.

Mr. Mayer stated the Planning Commission had reviewed and tabled this application the prior week.

Mr. Gallagher asked where the heat map zone being shown in the presentation was located.

Mr. Mayer pointed out where US-62, Morse Road, and Thompson Road were located on the heat map in the presentation.

Mr. Mayer noted that the applicant had flown a red balloon 130 feet high and taken photographs of it to illustrate what views of the cell tower would be like from various areas around the cell tower.

Mr. Mayer stated that the Planning Commission had tabled this application. Mr. Mayer stated staff recommended the BZA allow for testimony from the applicant and comments from residents this evening. Mr. Mayer stated the Planning Commission was required to take action on this application before the BZA could take action on the application and, therefore, staff recommended the application be tabled this evening.

Mr. Gallagher asked if the city law director wanted to add anything to the staff report.

Mr. Banchefsky stated there had been an issue that arose at the Planning Commission meeting he wanted to address at this time. Mr. Banchefsky noted the federal government had determined cell towers were per se safe in terms of health risks. Mr. Banchefsky added that Federal Communications Commission (FCC) regulations say a decision by a local planning commission or jurisdiction cannot in any way be based upon safety issues.

Mr. Gallagher asked for elaboration on the context of safety.

Mr. Banchefsky replied the electromagnetic radiation from the antenna itself.

Mr. Gallagher asked if the safety issue was exclusively to the electromagnetic radiation.

Mr. Banchefsky stated that was correct.

Moved by Ms. Wiltrout to accept the staff report and related documents into the record, seconded by Mr. Lajeunesse. Upon roll call vote: Ms. Wiltrout, yea; Mr. Lajeunesse, yea; Mr. Gallagher, yea. Yea, 3; Nay, 0; Abstain, 0. Motion carried by a 3-0 vote.

Mr. Rob Ferguson, site acquisition consultant for Verizon, stated the applicant had arrived at this parcel at Temple Beth Shalom ("TBS," hereafter) after a long search. Mr. Ferguson stated the search began in 2008 and property owners had not entered into negotiations. Mr. Ferguson noted that other structures in the area where an antenna might be placed were not available and that putting antennas onto transmission towers, once a possibility, is no longer preferred due to safety concerns for the workers on those lines. Mr. Ferguson also stated there had been deed restriction issues on some properties. Mr. Ferguson stated that zoning codes drive cell tower providers and site acquisition people like himself to large parcels of land that provide a buffer to residents. Mr. Ferguson stated the current proposed location was the only one they had been able to work with.

Mr. Ferguson stated that the applicant had initially considered a monopine design for this cell tower.

Ms. Wiltrout asked what a monopine design was.

Mr. Ferguson stated it looked like a pine tree.

Ms. Wiltrout asked how tall.

Mr. Ferguson replied it would have been 130 feet to the top of the branches and then a lightning rod, so same size tower. Mr. Ferguson stated there was one in Dublin and Pickerington, and they pretty much looked like pine trees.

Mr. Ferguson stated they had flown a red, five (5) to six (6) foot wide balloon, which was the largest he could get, to mimic what the height of the cell tower would be on the TBS property. Mr. Ferguson stated that as they had gone through the process that morning the New Albany Company, who had to release a deed restriction for the cell tower to be situated on TBS property, had looked at the balloon from areas around the neighborhood and ultimately approved the location but had decided it would be a monopole facility.

Ms. Brisk asked who had made the decision that it would be a monopole facility.

Mr. Ferguson stated it had been the design review committee for the New Albany Company and added that he had submitted that paperwork and had a copy of it with him if anyone needed to see it.

Ms. Wiltrout asked if public land had been considered.

Mr. Ferguson replied Thompson Road Park had been considered.

Ms. Wiltrout asked if there was any more information on Thompson Road Park since the prior week's Planning Commission meeting.

Mr. Ferguson replied there is flood plain that runs all the way up the center of that property until it fans out into the parking lot and the applicant could not locate a tower there. Mr. Ferguson stated that if the applicant were going to put a tower, they would propose to put it behind the main structure, just to the west. Mr. Ferguson noted there was no tree cover there, but that is where they would have proposed it. Mr. Ferguson stated the applicant had looked at that location and said it was pretty far north and it would not solve the service gap in coverage the applicant is trying to achieve.

Mr. Gallagher asked how 5G technology and the changes happening there impact this analysis.

Mr. Kurt Bolane, Verizon radio frequency engineer, noted that 5G is a standard not a frequency band, so 5G would fix what was wrong with 4G and allow enhancements for things such as self-driving cars.

Mr. Gallagher noted that he had read there would be multiple small towers throughout an area to facilitate 5G and he wanted to understand if this need could be solved through a number of smaller towers throughout the community.

Mr. Bolane replied that this location is 4G.

Mr. Gallagher stated he was looking forward because 5G is around the corner

Mr. Bolane stated that was true, that he believed what Mr. Gallagher was talking about was the frequency of 5G and Verizon has millimeter wave , in the 39 GHz range, which is really small distance coverage for about a 100 meters.

Mr. Gallagher asked if there was another way that technology might solve this issue in another way that did involve this tower.

Mr. Bolane stated that for this application and coverage this tower in this location was the best solution.

Ms. Wiltrout stated the search seemed to have started in 2008 and cell phone use has changed so much since 2008 and asked why there was a critical need now.

Mr. Bolane replied that his job is to plan ahead and noted the applicant had increased its coverage footprint in the north of New Albany but this area had not seen any change in coverage footprint. Mr. Bolane noted there is a need, toward the southeast, in Jefferson Township, that this tower would also help address.

Ms. Wiltrout asked if the applicant could describe the timeline and how the need had grown and where the applicant saw it going if this is not built; how necessary was this structure for New Albany.

Mr. Bolane stated he would not be here if it was not necessary to take care of service and had not looked at other solutions for this service gap.

Mr. Wiltrout asked if the applicant could explain the problem that exists and how they know this is a critical need in the community.

Mr. Bolane stated it was the dropped calls shown on the heat map in the presentation.

Ms. Wiltrout asked what the numbers represented, if it was dropped calls per day, week, year.

Mr. Bolane stated they were 4G dropped connections for most of the days in April 2019.

Ms. Wiltrout asked how this compared to other months.

Mr. Bolane responded that typically, as the summer comes, it gets worse and in winter, due to loss of leaves on trees, it may be better.

Mr. Gallagher asked for information about the economics of a cell tower, asking if this was leased space involving rent and so forth.

Mr. Ferguson stated it was an original five (5) year term with typically five (5) renewals, making it a thirty (30) year lease, and included a monthly payment and typically a cost of living adjustment.

Mr. Gallagher asked if this was something the applicant negotiated with the party or if it was standard.

Mr. Ferguson stated the applicant negotiates.

Mr. Gallagher asked if they had just not been able to strike a deal with other property owners and if they paid more could they get a deal elsewhere.

Mr. Ferguson stated it was safe to say that those they had spoken to about monetary terms they did not get too far but would be in the ballpark. Mr. Ferguson stated this was not an inexpensive site for the applicant and the need has been here since 2008 and has grown, gotten worse, since that time.

Mr. Gallagher asked if in theory they could find something if they bumped up the consideration.

Mr. Ferguson stated he did not have that data to share.

Mr. Gallagher asked if the applicant set up a fund or if there was any type of ARO type of obligation. Mr. Gallagher asked that in years from now, as technology moves on and the tower has to come down, who would pay for that.

Mr. Ferguson stated there were terms in the lease that say that if the tower becomes obsolete Verizon will take it down.

Mr. Gallagher asked if there was any type of bond or guarantee for that.

Mr. Ferguson stated no.

Mr. Banchefsky stated there was a bond requirement in the codified ordinances that as part of the application process to build this tower a bond will have to be posted.

Mr. Gallagher asked if the bond would be sufficient to remove the tower from the site.

Mr. Banchefsky stated they believed so.

Mr. Ferguson stated they had sent a letter in stating the applicant agreed with that obligation.

Ms. Brisk asked if the plan was for Verizon to own this tower.

Mr. Ferguson responded yes.

Ms. Brisk asked if Verizon would have other licensees utilizing the surface off of this tower.

Mr. Ferguson stated every tower was pretty much structurally built for co-location and this tower is a co-locatable tower and co-locators can go on it as long as they can perform at 125 feet, which they should be able to do so.

Ms. Brisk asked if they would pay a license fee to Verizon for co-locating on the tower.

Mr. Ferguson stated yes, there is ground space in this particular site so TBS could negotiate its own ground rent with any future carrier that would come.

Ms. Brisk stated the applicant had noted that coverage, the dropped calls, were getting worse and asked if there were reasons that was predictable, was it more people in the area, more homes, was it technology demands, what was causing it to become a more difficult problem.

Mr. Bolane stated he could not explain why, saying that in the summer it gets worse because of the physics of the tree leaves and degradation of radio frequency signal. Mr. Bolane said in this area it was a lot of growth and people use their devices even more with unlimited plans and, if people have coverage inside their homes they are using that also.

Ms. Brisk asked if people have coverage in their homes and are using the wifi, is that coming off of the tower.

Mr. Bolane said that was not automatic.

Ms. Brisk stated City Council had been presented by warnings recently that they would be seeing a lot of microcell towers coming in because of newer technology in peoples' homes and they would need things closer to their residences. Ms. Brisk asked how that interplays with this, why can they not work with more microcells instead of another great big tower.

Mr. Bolane stated part of this is that 4G technology, 5G millimeter wave, has 100 to 200 meter coverage. Mr. Bolane stated a lot of these parcels have houses that are setback a long way from the road and a millimeter wave requires line of sight. Mr. Bolane stated typically where there was landscaping and a lot of trees, such as in New Albany, 5G will not penetrate that millimeter wave. Mr. Bolane said, in theory, they could put in a bunch of small cells but he is not allowed to go on a private easement.

Ms. Brisk stated City Council had been kind of warned that they would be coming in to go all over residential areas with micro cell towers and that they should be prepared for this. Ms. Brisk said she was seeking to understand if once this tower was put in would the next ask then be ten (10) little microcells all around it.

Mr. Bolane stated no, he did not want to put in any more cells than he had to because for every network element you introduce an interferer. Mr. Bolane said it was kind of like your spouse trying to talk to you when your child was closer to you and that at the same volume you could not hear the spouse that was further away.

Ms. Brisk stated he was then saying this tower alleviates the need for a lot of other microcells.

Ms. Brisk stated there was a massive tower at Thompson Road by Home Depot and asked if there was nothing that could be done.

Mr. Bolane stated there were two (2) of them, the one to the north has an FM tower that is AT&T's and said Verizon is on the tower to the south.

Ms. Brisk asked if there was no way to boost those signals.

Mr. Bolane stated part of the problem was that they were already maxed out. Mr. Bolane stated you were limited in that the distance you have to cover your weakest point is as far as it can reach. Mr. Bolane said they had kind of surrounded the problem and now they had to get closer to the problem because that was how the physics worked. Mr. Bolane stated he wished he could change that but he could not.

Mr. Gallagher stated he had that similar question about those towers because where a lot of those drops are appears to be closer to those towers than where the applicant is proposing.

Ms. Wiltrout stated she had a question about the map in the presentation and asked if an area of red shown next to the orange outline would be fixed by this tower.

Mr. Bolane stated no.

Ms. Wiltrout asked if that orange would still be there even if this tower were built.

Mr. Bolane stated that ideally, by offloading the red ones with this new tower, those red ones would get better served by this tower here, Plain Township macro, the one by Home Depot.

Ms. Wiltrout stated okay.

Mr. Bolane stated they were trying to offload. Mr. Bolane stated a site was overloaded with drops and indicated another site saying it had capacity issues. Mr. Bolane said this was more of a system performance improvement.

Mr. Lajeunesse asked if there was an alternative solution to what was being discussed here.

Mr. Bolane stated that to address this coverage gap with one site this was the best solution.

Mr. Lajeunesse asked if it was the best, the only.

Mr. Bolane stated it was the most optimal; he could not say if it was the only solution, no. Mr. Bolane said it was buildable, zonable, .and they had a willing landlord.

Mr. Lajeunesse asked if it was the most cost effective.

Mr. Bolane stated cost effective depended on who you talked to. Mr. Bolane said on a recurring lease basis probably not, from a network node element, putting one element in versus how many others it would take, yes, it makes more sense.

Mr. Lajeunesse asked, back to the Thompson Road location, was there anything that prevented them from building in a flood plain, what if they elevated the tower a little bit.

Mr. Bolane stated that was more of how it looked.

Mr. Lajeunesse asked if there was anything legally preventing this.

Mr. Ferguson stated the equipment base at the base of this compound would have to be elevated and it would have to be elevated however many feet above the flood plain it would need to go.

Mr. Lajeunesse asked if technically they could do it just at more cost.

Mr. Ferguson stated that you could build anything engineering wise. Mr. Ferguson said they had looked at this before, not in this location, but you put a fence around that and, in the Thompson Road area, it becomes, since there is not any natural screening in that area, rather monstrous (not the size of the tower but the equipment area that would serve, the radios that would service the antennas).

Ms. Wiltrout asked if they could provide screening around it.

Mr. Ferguson stated some, maybe not as much as the natural screening in this proposed location. Mr. Ferguson stated part of the drawback to the Thompson Road Park location was that it would not do anything for this area.

Ms. Wiltrout asked which area, if it would not serve that green area.

Mr. Ferguson stated it would not serve the area he indicated and noted, on the presentation, which towers Verizon was on. Mr. Ferguson stated what they were saying was there were no towers, no co-locatable structures, anywhere in there that are not a transmission, there is not another tower they could go in anywhere in this area to be able to plug the service and capacity problem and that is why they are looking in this area.

Mr. Gallagher asked if the towers help attract wildlife, large birds like falcons or hawks.

Mr. Bolane stated a lot of the towers up north attract osprey and, per federal regulations, once an osprey builds a nest they cannot touch the tower for the summer. Mr. Bolane said once the osprey were gone, others would come in and someone then had to be paid to go, from the environmental agency, to make sure it was not an endangered bird. Mr. Bolane said that does happen and he has seen it once in central Ohio.

Mr. Gallagher asked if they ever got hawks.

Mr. Bolane asked building nests.

Mr. Gallagher stated yes.

Mr. Bolane stated they have to go check out the nests.

Mr. Gallagher stated his rationale was that if something attracts hawks, thinking about safety, knowing that the BZA could not consider electromagnetic safety, as an owner of a Yorkshire terrier, they were very concerned about hawks and some of the neighbors in the area, if there were something that attracted more hawks that might attack a small dog, that certainly could be problematic.

Mr. Bolane stated he had a shorkie and would put one in his back yard because the hawks would go after the squirrels.

Mr. Gallagher asked Mr. Bolane and Mr. Ferguson if they both owned homes.

Mr. Ferguson replied yes.

Mr. Gallagher asked if a tower was behind his property, how would he think about that.

Mr. Ferguson stated he was in German Village and he had them surrounding his community. Mr. Ferguson said he cannot see any towers from his house.

Mr. Gallagher asked if they were within forty (40) feet of his property.

Mr. Ferguson said no.

Mr. Gallagher asked Mr. Ferguson if he were thinking about buying a property and there was a tower within forty (40) feet and one where there was no tower, all other things equal, how would he evaluate those properties and which one would he buy.

Mr. Ferguson said he would have to see the properties and, all things being equal, if he had no coverage or if he had poor coverage, he would probably want a home close to a place that had a tower near it. Mr. Ferguson stated he did not know if he would want one sitting right on top of his property, but said that when they go to communities they go to parcels where they can find a pathway to a probable zoning solution.

Mr. Gallagher asked if an AT&T map would look similar to the one presented by the applicant.

Mr. Ferguson replied that he did not know.

Mr. Gallagher stated he was just thinking that one could maybe change carriers if they did not have service at their house.

Ms. Wiltrout stated she had a lot of questions about the map, but would not belabor them. Ms. Wiltrout stated she would tell them about what she would like to see, and maybe they could think about providing that information. Ms. Wiltrout said she wished she could see a timeline of the need and how it has increased over time, and maybe where they see this going. Ms. Wiltrout stated she would really like to understand whether or not this tower will be obsolete someday with the move to 5G technology. Ms. Wiltrout asked if maybe they could speak to that right now. Ms. Wiltrout stated that right now she did not have a good understanding of what a 4G tower will do if the push is to move to 5G technology.

Mr. Bolane said that in his 29 years with Verizon, he did not recall decomming a tower; decomming being going off a tower. Mr. Bolane said it was like you would upgrade your phone every two (2) or three (3) years, probably longer now that they don't buy people a new phone, but it's the same with electronics. Mr. Bolane said electronics get upgraded but the radio frequency is the radio frequency; the frequency band does not change. Mr. Bolane said that in Columbus, when he first started they had cellular frequencies and had two (2) carriers, Verizon and Ameritech. Mr. Bolane said then came Sprint and they got more frequency, but they had not decommed a tower and did not perceive them decomming a tower. Mr. Bolane noted that once customers get used to coverage from a certain tower you are asking for pain if you turn it off. Mr. Bolane stated they have moved towers, decommed them and moved them because they lost the lease or landlord kicked them off, but said they were not going to change the inherent coverage because customers get used to that and, as Mr. Gallagher noted, there are four (4) other people they can go to.

Ms. Wiltrout asked if buying a new phone would make this problem go away.

Mr. Bolane stated that when they put in a new tower like this, typically the usage goes up around all the sites. Mr. Bolane said it decreases some, but it does not necessarily decrease as much as you think it would. Mr. Bolane stated if he covered half of the need on the map, or sixty percent (60%) of this need, there may not be a sixty percent (60%) decrease, there may only be a forty percent (40%). Mr. Bolane said the enhancement of having the site will increase the net traffic; it finds traffic.

Ms. Wiltrout asked how they knew the data was based on dropped data and not just powering off or something malfunctioning with the phone.

Mr. Bolane stated there was a lot of messaging that goes on between the device and the system, there was a ton of messaging. Mr. Bolane said he pulled the data himself

from a tool that he could have the ESNs of the people that dropped, so they are drops.

Mr. John Fixari stated his family had been in New Albany for about 25 years. Mr. Fixari stated he was speaking on behalf of the rest of his family and that their property butts right up to TBS. Mr. Fixari said for most of the year, summer included, they could see TBS. Mr. Fixari stated this would be absolutely an eyesight despite whatever vegetation coverage there is and would be visible from pretty much all aspects of their property. Mr. Fixari stated that part of what makes living in New Albany great is the aesthetics of it. Mr. Fixari noted he was part of New Albany Presbyterian Church and the village had done a land swap with the church because they wanted this big, beautiful building to be the first thing that people saw as they entered New Albany. Mr. Fixari stated that if this tower goes up, right before people see the church they will see the tower. Mr. Fixari said you could see how visible it would be from US-62 and it will be one of the first things seen as you go into New Albany.

Mr. Fixari stated that as someone who had been a Verizon customer since 2002, and his parents since the mid 90s, they have never really had issues with dropped calls. Mr. Fixari noted that from what he could understand on the map, they appear to be right in the middle of that and there does not appear to be a lot of dropped calls in their house. Mr. Fixari said at one point there were ten (10) of them living on the property, all with Verizon phones, and this seems to be a solution for a problem that is really quite minimal, at least to someone who uses it.

Mr. Lajeunesse asked if Mr. Fixari had a cell booster in his house connected to the network.

Mr. Fixari said not that he was aware of.

Ms. Wiltrout asked Mr. Fixari which of the properties that were part of the zoning variance he owned.

Mr. Fixari indicated the parcel of woods his family owned and the parcels and houses they owned on the presentation materials. Mr. Fixari stated it would be visible and an eyesore from pretty much all of them. Mr. Fixari stated they were pretty set back, far from this road because they do enjoy privacy, and it's a very scenic area and that would greatly disrupt that.

Ms. Brisk asked if they knew how many feet from the residences the tower would be.

Mr. Fixari stated those were the physical structures but that they were out in that area constantly.

Ms. Brisk asked if one of those was his primary residence.

Mr. Fixari indicated which house was his primary residence and which was those of his parents and his brother.

Mr. Paul Baily, a resident of the Oxford subdivision, stated he was a custom builder in New Albany and had made a huge investment in Oxford personally, really his life's savings. Mr. Baily said it would have a significant impact. Mr. Baily said the most important thing the board needed to consider was that the criteria of the zoning code was pretty clear, 200 feet, and this did not meet that. Mr. Baily said it was an eyesore and was not something he wanted to look at. Mr. Baily indicated his home on the presentation materials and said the rest of the properties looked vacant but actually were not. Mr. Baily indicated a house he believed was being built at this time, a lot he owned, a lot on which he said there were residents who were not aware of this at all that he had tried to communicate with, and other lots he owned or that had residents on them. Mr. Baily said that from his perspective, especially in the winter when there was no foliage, it was very, very visible. Mr. Baily said he had AT&T, not Verizon, and he had dropped calls but he would still not want a tower right there, saying he thought it needed to meet code.

Mr. Baily said the balloon they had put up was five (5) feet, which could be seen pretty well, and the tower was more than double the size of the balloon plus a ten foot lightning rod on top of it. Mr. Baily said he thought it was significant. Mr. Baily asked to return to the map of dropped calls and stated he had done some math quickly, did not know if it was accurate, but took the 1,170 calls and said that over the course of a month that was forty (40) dropped calls at the maximum of those groups, per day, on average, and said he did not think it was worth it in terms of the aggregate number. Mr. Baily said he did not want the tower and thought they needed to follow the code and the code says 200 feet.

Mr. Lajeunesse asked if Mr. Baily was saying that he would accept the tower if it was a 200 foot variance.

Mr. Baily stated they need to find somewhere where it meets 200 and indicated on the presentation where possible locations for that might be. Mr. Baily said he did not want the tower period, he did not want to see it. Mr. Baily said he did not think the value of the properties where he lives are worth as much if there is a tower there. Mr. Baily stated that when you talked about visually coming into the community, and New Albany in general, it was not something people wanted to see either.

Mr. William Fannin, Jr. (hereafter, "Mr. Fannin"), stated he had been a builder/developer in the area since New Albany club was built. Mr. Fannin stated the property at 5055, the Timmons property, had been approved for a lot split and had been approved and platted, just not yet filed and recorded with the county. Mr. Fannin stated the real hardship here was for the contiguous owners. Mr. Fannin stated the BZA had a tough job and that as a builder/developer he had presented variance requests as a builder for customers. Mr. Fannin noted he had been on the zoning appeals board in Gahanna and could identify with some of what the BZA deals with, but forty (40) feet was unbelievable for a cell tower. Mr. Fannin stated he had built against power lines and everything else and he just thought this was such a hardship for the property owners. Mr. Fannin said he actually had the listing on the property for a little while, it has expired, so he had a little bit of an interest there, but he is friends with the Timmons family and they are his colleagues and customers, so Mr. Timmons asked him to show up on his behalf.

Mr. Gallagher stated that if his recollection was correct the BZA approved something for the Timmons property maybe December 2017 or something.

Mr. Mayer stated that was correct.

Mr. Gallagher stated he remembered that because it was his birthday.

Mr. Joe Golian stated he lived on Whitehouse Lane and had talked to his neighbors and was the mouthpiece for them all. Mr. Golian stated he had been unaware of this until this evening, and where it was going to be located. Mr. Golian stated he was against it. Mr. Golian said aesthetically it was not going to be pretty coming into New Albany. Mr. Golian said that secondly, he thought that most of the dropped calls shown in the presentation were either Columbus or Gahanna and not even in New Albany. Mr. Golian said he was unsure why they would bear the ugliness of this tower for people in the City of Columbus or Gahanna which was going to be closer to Morse Road. Mr. Golian stated if that was where the dropped calls were then the tower should be in that area. Mr. Golian stated that, again, there was data but you could manipulate data any way you wanted, so he did not know what period the dropped calls were from, what information they used, whether it was verifiable or made up.

Mr. Golian stated they had said there were other possible solutions they could investigate and asked what they were, saying they had not shared that with them today. Mr. Golian asked if they were more costly or what, was this the cheapest option, please share this with us. Mr. Golian asked if they had investigated any property in the Gahanna or Columbus area, noting south of Morse Road there was a lot more retail development, not as much residential, and this might be a better area that would serve this area here, or even down here against some Gahanna area. Mr. Golian asked why they were in New Albany, aside from the aesthetics, for someone else's dropped calls. Mr. Golian stated he did not think that was fair and he would like to see more information gathered that verifies this, some information about other alternatives, and more information of why they had not investigated other areas in Columbus or Gahanna. Mr. Golian asked that this application be tabled or denied.

Mr. Brandon Pauley stated he was an attorney retained by various residents in the surrounding neighborhoods, specifically the residents of 5055 Johnstown Road, 7080 Oxford Loop North, 5741 Thompson Road, 3860 Oxford Loop West, and 6860 Oxford Loop South. Mr. Pauley provided the BZA with a letter he wanted to be made part of the record this evening which he had written on behalf of his clients. Mr. Pauley stated the letter goes through some issues related to the variance application at issue this evening. Mr. Pauley stated that what he tried to do in the letter was take a very concise approach to the Duncan factors, which were recognized in the state of Ohio as sort of the Blue Book for how to determine area variance requests. Mr. Pauley stated that here, because it was asking for a setback from property lines, it was an area variance.

Mr. Pauley stated he wanted to remind and direct the BZA's attention to their own zoning code, which was specific as it related to telecommunication towers and residential districts. Mr. Pauley stated this was zoned R2 and the setback requirement

for R2 zoning was 200 feet. Mr. Pauley stated the maximum tower height that was allowed in New Albany was 200 feet, saying he thought there was a correlation there. Mr. Golian stated that when you looked at towers that were shorter, fifty (50) feet or less, the zoning code required the height of the tower plus twenty (20) feet as a setback. Mr. Pauley stated that even though the microwave health issues are not really of concern, when talking about this significant ask for a variance there are other safety concerns that come to mind.

Mr. Pauley stated a 140 foot tower, 130 plus the lightning bolt, if there was, and he was speculating, a total failure of the structure of the tower that would significantly impact the neighboring residential properties. Mr. Pauley stated these were, just as was previously explained, property that could potentially be developed into housing and had been in front of the BZA for housing. Mr. Pauley stated that Franklin County, Maine, in February 2019, had a total tower collapse due to ice and wind, 100 mph wind, that blew the tower over. Mr. Pauley stated those were issues he hoped the BZA looked into and investigated so they would see some of the different safety concerns other than just the microwave emissions.

Mr. Pauley stated another safety concern, if they looked at the structure and the architectural drawings for the tower, they would see what was called an ice bridge. Mr. Pauley stated an ice bridge was on that tower to protect the tower from falling ice. Mr. Pauley said we lived in a four season climate, there was winter, there was snow, there was ice. Mr. Pauley stated at the top of the tower, oftentimes, there could be chunks of ice that formed. Mr. Pauley stated tornadoes had just come through Dayton and our communities with impactful winds. Mr. Pauley stated that if that were to happen in the wintertime, they would hope the BZA considered the well drafted, the thoughtful consideration, that went into its own zoning code in requiring the setbacks as they were and enforced those setbacks in this scenario.

Mr. Pauley stated they were going to supplement as it related to the conditional use application. Mr. Pauley stated they had issues with the application as submitted. Mr. Pauley stated specifically the zoning code called for co-location when there was an ability to co-locate. Mr. Pauley stated there were other tower construction companies, one being American Tower and the other being Crown Castle, that were in the business of vertical real estate. Mr. Pauley stated they built towers so other carriers could co-locate. Mr. Pauley stated they would ask that those considerations also be explained fully so that the residents were made aware of what other options were available to Verizon. Mr. Pauley stated they also wanted to have a somewhat transparent look at what were the true costs, if there were alternatives that might be a little bit more expensive but were still feasible, the residents should know that.

Ms. Brisk stated Mr. Pauley had talked about co-location and asked if he was advising the BZA if he was aware of other co-location options that were not being taken advantage of here and would he be able to present that.

Mr. Pauley stated he would be able to present on that, there was public record. Mr. Pauley stated the two companies he had mentioned, Crown Castle and American Tower, their tower locations, and in some instances availability of space on the tower and the height at which you could co-locate, were available and were of public record.

Mr. Pauley requested that it be not just in the application what Verizon already has and what their resources are, but to look at the full spectrum and especially because the zoning code is so specific about co-locating, that they ask and they demand that Verizon be transparent with what the co-locating abilities are for this project.

Ms. Brisk stated she thought the BZA was asking that too but she was also asking if Mr. Pauley had anything he could present that would also probably be a very good idea.

Mr. Pauley stated he would put that in writing and have exhibits. Mr. Pauley noted he was not an engineer, he was just a dumb lawyer, but he would put out options and would put out what his residents, living in the community, what their view point was of this and they had the right to have their voices heard and sometimes getting an annoying lawyer involved amplified that voice.

Ms. Brisk asked if staff had received a copy of Mr. Pauley's letter.

Staff replied they had a copy.

1:07:35 Moved by Ms. Wiltrout to accept the letter presented tonight by Mr. Pauley into the record, seconded by Mr. Lajeunesse. Upon roll call vote: Ms. Wiltrout, yea; Mr. Lajeunesse, yea; Mr. Gallagher, yea. Yea, 3; Nay, 0; Abstain, 0. Motion carried by a 3-0 vote.

Ms. Leslie Timmons, said she was going to cover information that others had covered, not the least of which was that she was co-owner of the property at 5055 Johnstown Road where the tower would be forty (40) feet from their property line. Ms. Timmons noted it was very clear to her that most of the dropped calls were in Columbus and Gahanna, not part of New Albany. Ms. Timmons stated that was a huge concern that they were going to have to have the eyesore in New Albany which will mostly be benefiting the outlying areas. Ms. Timmons stated that from what she could see the bulk of those calls, at least to the west, were probably a lot of those LC communities. Ms. Timmons stated she knows they said more people were buying cell phones, but more people are living off of Morse Road then were living there ten (10) years ago. Ms. Timmons said it was a great detriment to her. Ms. Timmons said her backyard was beautiful, it was lovely and she concurs with what the Fixaris said, it's been a little slice of heaven with deer and owls going through. Ms. Timmons said that to have all of a sudden a 140 foot tower would really be devastating. Ms. Timmons stated she urged the BZA to really consider this thoughtfully and particularly in regards to the variance. Ms. Timmons said it was practically on their property.

Mr. Gallagher asked the applicant if they would like to make further comments after hearing from the citizens in the community.

Mr. Joe Perotti, attorney for Verizon Wireless, thanked those present for having him and the applicant this evening. Mr. Perotti stated that typically when there were local concerns in connection with cell phone towers they were usually not as civil as this. Mr. Perotti noted he had been called every name in the book, he had had the police called to protect him, and said this was a breath of fresh air when people were civil.

Mr. Perotti stated that in connection with comments made by Mr. Pauley, the first thing Verizon seeks to do, as well as all wireless providers, was to seek to co-locate on an existing structure. Mr. Perotti stated that was not just something they do in their business interest, because its more cost effective. Mr. Perotti stated if there was some infrastructure in the area, not even a communications tower, whether it was Crown, or AT&T, or ATC, if there was an existing water tower, or school, or something of adequate height, that was where they always attached their antennas to. Mr. Perotti stated first it was more cost effective, they did not need to construct a new facility, oftentimes they did not need to attend zoning hearings because they were reviewed administratively, depending on the zoning ordinance. But, Mr. Perotti stated, principally, the FCC mandated that if there was an existing tower within the area that provider had to go on that tower, they just couldn't litter municipalities with other infrastructures because they wanted to.

Mr. Perotti stated, the village of New Albany was permitted, under its zoning code, to cover a communications tower but that zoning ordinance was also subject to federal law, subject to the federal Telecommunications Act. Mr. Perotti stated that what the Telecommunications Act did when it was passed in 1996 was to establish a two-part test where if a provider established both prongs then it was entitled to construct that facility. Mr. Perotti stated the purpose of that, passed Congress, was really the impetus of this application. Mr. Perotti asked to return to the view of the adjoining properties, of the homes in the area, in the presentation. Mr. Perotti stated that just to give the BZA a better perspective of the Telecommunications Act, more and more the applicant needed to be closer to residents just because they needed to service the residents. Mr. Perotti stated that 76% of 911 calls originate from a cell phone. Mr. Perotti stated half the households across the country have eliminated their land lines, so, more or less, there's no more low hanging fruit, just about anywhere in the country to construct communications facilities.

Mr. Perotti stated that if they looked at the parcels surrounding where the proposed facility is located, if that communications tower were put on any parcel around it, it looked like they were going to need a setback variance. Mr. Perotti stated that, more or less, what the zoning code would do was prevent the filling of the gap in coverage in Verizon wireless service, which runs afoul of the Telecommunications Act. Mr. Perotti stated that what the Act did was provide the two-part test he had alluded to. Mr. Perotti stated the first of which was can the applicant fill a significant gap in coverage and they had expert testimony here this evening, from Mr. Bolane, comment on the significant gap in coverage.

Mr. Perotti stated the second part of the test was, is that gap in coverage filled by the least intrusive means. Mr. Perotti stated that least intrusive means standard was a term of art, and all it required of the applicant was to identify existing structures, if they exist, and then compare a meaningful analysis of those structures. Mr. Perotti asked to return to the slide in the presentation showing the coverage gap and stated the infrastructure identified on this was where Verizon was currently operating its wireless signal. Mr. Perotti stated those signals could not penetrate to where the gap in coverage was and, as Mr. Ferguson alluded to earlier today, there is just no other existing structure to accommodate Verizon's antennas to fill the gap in coverage.

Ms. Brisk asked if there had been any case law, any precedent, that tells us what a significant gap in coverage is.

Mr. Perotti stated yes, a significant gap in coverage is defined by the FCC as an inability of wireless providers to access the wireless network, and that was identified by dropped calls. Mr. Perotti stated that every time somebody tries to get on the network, if it's at capacity, which this site can be, then someone else is dropped off.

Ms. Brisk asked if there had been any decisions that tell us what volume of dropped calls; obviously, if there were two (2) dropped calls that would not be a significant gap in coverage. Mr. Brisk asked how would we know when it was significant.

Mr. Perotti stated that was what Verizon's radio frequency engineer testified to, that there was a significant gap in coverage in this area.

Ms. Brisk said that we were to rely on what they define as significant. Ms. Brisk stated she was trying to get to the bottom line of it, that's the best we can have in terms of guidance at this point is what their definition says is a significant gap.

Mr. Perotti stated Verizon monitors their wireless network nationwide so when a site becomes stressed or a series of sites become stressed, as in the case here, then you need enough facility to accommodate the existing sites and to fill that gap in coverage. Mr. Perotti stated that otherwise, they would not have submitted this application.

Ms. Wiltrout asked Mr. Perotti what number, in his mind, represents a significant gap.

Mr. Perotti asked if she was asking him to quantify what the term significant gap is.

Ms. Wiltrout stated yes, under the FCC, for the two-part test.

Mr. Perotti stated there was not a set number that the FCC establishes, he said he could not quantify it in terms of legalese. Mr. Perotti said it was something that the wireless company establishes when it cannot accommodate users in the area and said that was what they had here. Mr. Perotti said that as far as a strict definition, in quantifiable terms, as related to dropped calls in this area, he could not give a definition pursuant to the Telecommunications Act or the FCC.

Ms. Wiltrout asked if Mr. Perotti had any case citations that could be looked up to read for precedents of previous decisions that have found a significant gap in situations like this.

Mr. Perotti stated he did not have them with him but that there was a sizable portion of case law he could provide.

Ms. Brisk stated that would be helpful.

Mr. Gallagher stated he had a question for Mr. Perotti. Mr. Gallagher stated that as discussing dropped calls and so forth, he had gone to Ohio Stadium at a football game and calls drop because you have 100,000 people using their cell phones. Mr. Gallagher stated that as more people move in to an area or there is a denser number of people in the space, it seems like your risk for dropped calls increases off. Mr. Gallagher stated the more people, or more cell phones being used in an area, you have more likelihood for a dropped call.

Mr. Perotti stated of course.

Mr. Gallagher stated that one of the things talked about in the community was impact and the whole idea of paying forward. Mr. Gallagher stated that when we built something we wanted to make sure we had appropriate infrastructure. Mr. Gallagher stated he thought he had heard from several of the citizens here tonight about maybe part of the reason they were seeing the red zone in the presentation was due to all the new apartments, the Lifestyles, all the new activity and so forth. Mr. Gallagher stated it seemed like all of that development that went in did not appropriately plan for the impact on all the infrastructure, including telecommunications. Mr. Gallagher stated that was just an observation and asked if that was fair.

Mr. Perotti stated the technology was always ahead of the law, so he guessed one way to answer his question was the fact that radio frequency signals do not stop at a municipality's border, they bleed into other municipalities, and vice versa. Mr. Perotti stated he did not know if their radio frequency engineer also wanted to add to what he was about to say, but when you added an existing facility in this area, it could also cause interference and overlap with existing sites. Mr. Perotti stated you really had to be careful where you would put in antennas when other sites were already providing a signal or the signal was just stymied because of the number of users on the network.

Mr. Gallagher stated maybe it might be a good thing for people who might be building apartments complexes or other structures or whatnot, to think about the impact it could have on the telecommunications in that area.

Mr. Perotti stated he supposed he would have to ask them. Mr. Perotti stated that one of the recent tower sites that he had, they submitted a zoning application and there was a condominium complex where the developer opposed the application. Mr. Perotti stated that long story short, he requested that they place the communications facility around the condominium complex, around the residential subdivision, so that it would service future property owners and tenants that he would have. Mr. Perotti stated it's something that developers can think about.

Mr. Gallagher stated that developer certainly had forward thinking.

Mr. Perotti stated, perhaps, maybe not, saying he guessed it depended on a case by case

Mr. Lajeunesse asked about alternative locations such as in Columbus and Gahanna, was that explored at all.

Mr. Ferguson stated that when a search area comes out it was pretty much determined, there is a circle on it, in this case it was a half mile; they were trying to find a location in that half mile area or around that half mile area. Mr. Ferguson stated he guessed that area was about a mile and a quarter to a mile and a half down to that area, so he had not looked in that area, not to solve this particular problem.

Mr. Lajeunesse asked if that could be an alternative.

Mr. Ferguson stated the search ring was right on top, it's at the intersection of Thompson and US-62.

Ms. Wiltrout asked who crafted the search ring, you did.

Mr. Perotti stated the first thing that Verizon does is they issue what is called a search ring and that ring represents an area where Verizon has a gap in coverage. Mr. Perotti stated typically they were anywhere from a quarter mile to a half mile radius. Mr. Perotti stated that what Verizon does is it contacts Mr. Ferguson's firm and says find us a property within this search ring that is zonable, buildable, that they can enter into a lease agreement with the property owner, and that will fill Verizon's gap in coverage. Mr. Perotti stated that Mr. Ferguson physically searches the area, finds this property, brings it to Verizon, and asks if it will work. Mr. Perotti stated that if it does not, for whatever reason, he goes on to property two (2) or three (3) and so forth. Mr. Perotti stated the search ring that was issued was not anywhere near where that red shaded area is on the bottom left, as Mr. Ferguson just said. Mr. Perotti said it was essentially right on top of where the proposed facility is located; any other area, outside that search ring, would not work for Verizon's coverage gap.

Ms. Brisk asked if before they ask him where he can go and build a tower, do they first contact American Tower and Crown Castle and other providers to see whether they have any co-location opportunities within that circle.

Mr. Perotti replied absolutely.

Ms. Brisk stated so that was done here.

Mr. Perotti stated yes.

Ms. Brisk asked if there was anything the applicant could present the BZA with that would show them.

Mr. Perotti stated those numbers were not located within the search ring.

Ms. Brisk stated so you are telling us there were none in that area.

M. Ferguson stated any towers that were seen there that were available for co-location were the towers marked on the presentation. Mr. Ferguson stated that when he said that, they are physically constructed, and pointed them out on the presentation. Mr. Ferguson said that was the telecom infrastructure that exists for them to look at and they are on all those towers already. Mr. Ferguson said that as he stated in his earlier

presentation, the only tall structure that he could look at was transmission lines that were running through there and they are not really structurally feasible to solve the problem.

Mr. Baily asked if it was possible to find another location that met most of the criteria, for the dropped call issue, but was not the optimum, perfect location within that half mile radius, that might be three-quarters of a mile, might be a mile and a half, but solves sixty percent (60%) of the dropped call issue, stops 75% of it. Mr. Baily stated it might be a better compromise that allows them to get most of what they need and solves for the rest of them.

Mr. Perotti stated the Telecommunications Act provides a burden shifting scheme, so once the applicant submits a zoning application, it identifies a gap in coverage, it determines that there are no existing infrastructure in the area, once the applicant establishes its prima facie case, then it's up to the municipality or any residents to show that there are technologically feasible alternatives and in this case there simply are none. Mr. Perotti stated that was the test under the Telecommunications Act that he would urge this municipality to look at.

Mr. Fannin stated that was great, but they were relying on information coming from the source. Mr. Fannin stated he would like to see something that was at least in writing or a fact the applicant could share with them because he is still concerned. Mr. Fannin stated he did not understand, if that was where the location of dropped calls were, which is in the LC community or thereabouts, then they should be bearing the brunt of it, not us. Mr. Fannin asked the applicant to show us their alternatives, the data, something that's concrete if they were going to say that is your burden, he would like to see it, not just rely on what they say.

Ms. Timmons stated they were talking about searching from a center point and asked if that was the case, why were they looking at Thompson Park to begin with.

Mr. Ferguson stated because that is municipal property and it came up for them to investigate.

Mr. Lajeunesse asked but that was not going to solve the entire problem.

Mr. Ferguson stated that's right, that's just a physical property of TBS being a better location for what Verizon is trying to do than Thompson Park.

Mr. Lajeunesse asked why that was abandoned, Thompson Park, because of the flood plain.

Mr. Ferguson replied flood plain, and the transmission lines, and the fact that the performance of that location was less than the location they presently have.

Mr. Gallagher stated he had several questions for staff that did not have to be answered tonight, but at some point he would like an answer. Mr. Gallagher stated he noted in the United Acquisitions Services letter of May 16th, and saw Mr. Pauley also included the reference this evening, in talking about the variance of 200 feet and

asked how they came about with their zoning. Mr. Gallagher stated this was from the UAS letter, when its less than fifty (50) feet in height, shall be set back from any property line abutting a single family or two-family resident lot by an amount equal to the height of the tower plus twenty (20) feet. Mr. Gallagher stated he wanted to understand, and would like some background on, the logic or wisdom that went in to that standard. Mr. Gallagher stated there was obviously some analysis, some thought process, and wanted to understand the legislative history of that and why that came about.

Mr. Mayer stated they could research that and have it prepared for the next meeting.

Mr. Lajeunesse stated he was curious in the area they were talking about where it's the problem area of coverage, how many New Albany residents are Verizon customers within that domain, roughly.

Mr. Perotti asked if that was far as sharing the number of users.

Mr. Lajeunesse stated not users, residents that live within the domain.

Mr. Perotti asked how many residents live within the area they are attempting to serve.

Mr. Lajeunesse stated the problem area.

Mr. Perotti stated he did not know.

Mr. Lajeunesse asked if they could get that information.

Mr. Perotti asked if he was asking about the number of homes, physical people.

Mr. Lajeunesse stated yes, because that is where it is going to impact them the most.

Mr. Perotti stated they could not reveal their subscribers' information because that was proprietary for each wireless provider.

Mr. Gallagher stated they could take an area and tell the BZA how many people.

Mr. Lajeunesse stated so within that coverage area that they are missing, how many residents live in that coverage area.

Mr. Gallagher added, that were Verizon customers.

Mr. Fixari stated if they could state, from the map in the presentation, where the zones were located, if they were in New Albany to see who is actually affected by the problem.

Mr. Perotti asked if they were asking for the number of homes in a specific area.

Ms. Wiltrout stated they were asking for the number of people who are experiencing this.

Mr. Gallagher stated they were asking how many Verizon customers are in New Albany in this problem area.

Ms. Wiltrout stated how many New Albany residents are experiencing a significant gap in coverage.

Mr. Lajeunesse said the logic in his head with the dropped coverage was if those people were just passing through there or do they actually live there and are being impacted by this every day.

Moved by Ms. Wiltrout to table V-48-2019 and come back at the next available meeting to vote, seconded by Mr. Lajeunesse. Upon roll call vote: Ms. Wiltrout, yea; Mr. Lajeunesse, yea; Mr. Gallagher, yea. Yea, 3; Nay, 0; Abstain, 0. Motion carried by a 3-0 vote.

Meeting adjourned at 8:32 pm.

Submitted by Josie Taylor.

APPENDIX



**Board of Zoning Appeals Staff Report
June 24, 2019 Meeting**

**CELL TOWER
VARIANCE**

LOCATION: 5089 Johnstown Road (PID: 222-001516-00).
APPLICANT: UAS Inc. c/o Rob Ferguson
REQUEST: Variance to C.O. 1179.06(3)(A) to allow a cell tower to be located 40 feet from a single family residential lot where city code requires a minimum 200 foot setback.
ZONING: R-2
STRATEGIC PLAN: Neighborhood Residential
APPLICATION: V-48-2019

Review based on: Application materials received May 17, 2019

Staff report prepared by Chris Christian, Planner

I. REQUEST AND BACKGROUND

The applicant requests a variance from Codified Ordinance Section 1179.06(3)(A) to allow a cell tower to be located 40 feet from a single family residential lot where city code requires a minimum 200 foot setback.

The applicant proposes to install a 130 foot tall cell tower with a 10 foot lightning rod attached, totaling 140 feet in height. The cell tower is proposed to be located at the rear of the Temple Beth Shalom property located at 5089 Johnstown Road. The tower is being installed in order to fill a service gap. The cell tower will be located 250+ feet away from the Temple Beth Shalom, 600+ feet from the Oxford subdivision and 500+ feet from the nearest single family home. The cell tower is proposed to be located 40 feet from an adjacent single family residential property line.

The property has a residential zoning classification, but contains a religious use. Cell towers are permitted on residentially zoned properties that contain religious uses as a conditional use. On June 17, 2019 the Planning Commission is scheduled to evaluate the conditional use application.

II. SITE DESCRIPTION & USE

The site is located on the west side of Johnstown Road, south of Thompson Road. There is an institutional use on the property, the Temple Beth Shalom. The property is adjacent to another institutional use as well as single family residential to the west and the Oxford subdivision to the south.

III. ASSESSMENT

The application complies with application submittal requirements in C.O. 1113.03, and is considered complete. The property owners within 200 feet of the property in question have been notified.

Criteria

The standard for granting of an area variance is set forth in the case of *Duncan v. Village of Middlefield*, 23 Ohio St.3d 83 (1986). The Board must examine the following factors when deciding whether to grant a landowner an area variance:

All of the factors should be considered and no single factor is dispositive. The key to whether an area variance should be granted to a property owner under the “practical difficulties” standard is whether the area zoning requirement, as applied to the property owner in question, is reasonable and practical.

1. *Whether the property will yield a reasonable return or whether there can be a beneficial use of the property without the variance.*
2. *Whether the variance is substantial.*
3. *Whether the essential character of the neighborhood would be substantially altered or adjoining properties suffer a “substantial detriment.”*
4. *Whether the variance would adversely affect the delivery of government services.*
5. *Whether the property owner purchased the property with knowledge of the zoning restriction.*
6. *Whether the problem can be solved by some manner other than the granting of a variance.*
7. *Whether the variance preserves the “spirit and intent” of the zoning requirement and whether “substantial justice” would be done by granting the variance.*

Plus, the following criteria as established in the zoning code (*Section 1113.06*):

8. *That special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable to other lands or structures in the same zoning district.*
9. *That a literal interpretation of the provisions of the Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Zoning Ordinance.*
10. *That the special conditions and circumstances do not result from the action of the applicant.*
11. *That granting the variance requested will not confer on the applicant any special privilege that is denied by the Zoning Ordinance to other lands or structures in the same zoning district.*
12. *That granting the variance will not adversely affect the health and safety of persons residing or working in the vicinity of the proposed development, be materially detrimental to the public welfare, or injurious to private property or public improvements in the vicinity.*

III.EVALUATION

Variance to C.O. 1179.06(3)(A) to allow a cell tower to be located 40 feet from a single family residential lot where city code requires a minimum 200 foot setback

The following should be considered in the Board’s decision:

1. The city’s Codified Ordinance Section 1179.06(3)(A) requires cell towers to be

- setback 200 feet from single family residential lots. The applicant is proposing locate a cell tower on the Temple Beth Shalom property, 40 feet away from a single family residential property, therefore the applicant is requesting a variance.
2. The applicant proposes to install a 130 foot tall cell tower with a 10 foot tall lightning rod, totaling 140 feet in height. on the Temple Beth Shalom property located at 5089 Johnstown Road. The tower will be set back 250+ feet from the Temple Beth Shalom and 370+ feet from Johnstown Road.
 3. This property is adjacent to the edge of the community, where the general vicinity is mostly rural in nature with larger, single family residential lots.
 4. The tower will be located in the rear of the Temple Beth Shalom property within a 29'x32'x7' fenced area with ground equipment.
 5. The "spirit and intent" of the zoning requirement is preserved since even though the tower is proposed to be installed 40 feet away from a residential property, the tower will be 500+ away from the nearest single family home. This is due to the more rural character of area, the Temple Beth Shalom is adjacent to several large single family residential lots. Additionally, there are existing tree stands and other landscaping that will serve to limit the visibility of the tower at ground level. Due to this existing character, greater separation between these uses is achieved.
 6. It does not appear the problem can be solved by some manner other than the granting of a variance. The applicant has provided information stating that this location is the most suitable in order to address a service gap in this area and was the only parcel that was available to remedy the service issues. The applicant provided documentation that demonstrates that they have gone through a design process that is sensitive to the surrounding community. Additionally, there are no suitable towers in the area to co-locate onto that will remedy this service issue. Moving the tower further east, away from the rear property line will result in the tower being located closer to Johnstown Road. Also, moving the tower does not appear to be practical since the church parking is located there.
 7. The variance request does not appear to be substantial. The existing tree stands and additional landscaping will provide screening for the cell tower from adjacent residential properties. The tower will still be setback 500+ feet away from the nearest residential home. Due to the large setbacks, the tower will fit into the existing tree line and its visibility at the ground level will be limited.
 8. It does not appear that granting the variance will substantially alter the essential character of the neighborhood, nor will adjacent properties suffer a substantial detriment. The existing tree stands, additional landscaping and will provide screening for adjacent residential properties.
 9. It appears that granting the variance will not adversely affect the health and safety of persons residing in the vicinity.
 10. Granting the variance would not adversely affect the delivery of government services.

IV. RECOMMENDATION

Staff recommends approval of the variance request should the Board of Zoning Appeals find the application has sufficient basis of approval. The variance request appears to meet the spirit and intent of the zoning requirement.

The spirit and intent of the code requirement is to maintain separation between uses. While the tower is located 40 feet away from a residential property line, the closest single family home is greater than 500 feet away from the tower. The applicant has designed a solution that is sensitive to the surrounding community and address the cell service need in the area. The desired tower design maximizes setbacks from all buildings in the area and utilizes existing landscaping to provide screening for the structure which will allow the tower to appear to be part of the existing tree line and will not appear to be out of place. This is due more rural character of the surrounding area with larger single family residential lots. Additionally, the existing tree stands and other landscaping will serve to limit the visibility of the tower at ground level.

V. ACTION

The Commission shall approve, approve with supplementary conditions, or disapprove the application as presented. If the application is approved with supplementary conditions, the Planning Commission shall direct staff to issue a zoning permit listing the specific conditions listed by the Planning Commission for approval.

Should the Planning Commission find that the application has sufficient basis for approval, the following motion would be appropriate:

Move to approve application V-48-2019 with the following conditions:

- 1) The conditional use application is approved by the Planning Commission.

Approximate Site Location:



Source: Google Maps