

Town of Brownsburg Board of Zoning Appeals Project Synopsis

TO: Board of Zoning Appeals; Tricia Leminger
FROM: Todd A. Barker, AICP
DATE: January 30, 2011
RE: CASE # BZDV 1-12-1091/2012 -01BZA Verizon Wireless

GENERAL INFORMATION:

APPLICANT: Matthew R. Clark

STATUS OF APPLICATION: Pending a hearing before the Board of Zoning Appeals

REQUESTED ACTION: Approval of a Development Standard Variance

DATE OF APPLICATION: January 25, 2012

PURPOSE: Petitioner is requesting a reduction in the setback between a wireless communication tower and a primary structure on the same lot

ORDINANCE: §155.149(C)(3)(b) of the Brownsburg Zoning Ordinance, entitled "Location" of the General Performance Standards

A communications tower may be located on a lot occupied by other principal structures and may occupy a leased parcel within a lot meeting the minimum lot size requirements for the zoning district. In those cases the required setback between the tower and the principal building shall be at least the equivalent of the height of the tower.

PROPERTY ADDRESS: 1630 S. Green St.

PARCEL ID: 32-07-22-230-001.000-016

EXISTING ZONING: I-2

UTILITIES:

WATER:	Town of Brownsburg
SANITARY:	Town of Brownsburg
STORMWATER:	Town of Brownsburg

EXISTING SURROUNDING ZONING:

NORTH:	GB (Hendricks County)
SOUTH:	I-2
EAST:	L1 (Hendricks County)
WEST:	AGR (Hendricks County)

EXISTING USES:

NORTH:	Single Family Residential / Vacant Lots
SOUTH:	Indoor Storage / Vacant Lots
EAST:	Religious
WEST:	Single Family Residential

NEIGHBORHOOD CHARACTERISTICS:

The area adjacent to and surrounding this property includes a wide array of commercial and light industrial uses including Hendricks Regional Health, Village Pantry, racing and motorsports related businesses, Nature's Choice Landscape, etc. In addition to the non-residential uses, there are many single and two-family dwellings within the proximity of the proposed location.

TOTAL PARCEL SIZE:

5.56 AC

COMPREHENSIVE PLAN DESIGNATION:

The Future Land Use map within the Brownsburg 2020 Comprehensive Plan identifies this area as a future commercial site.

THOROUGHFARE PLAN:

The Brownsburg 2020 Thoroughfare Plan identifies State Road 267 (Green St) as "Primary Arterial"

GREENWAYS MASTER PLAN:

The Greenways Master Plan of 2008 recommends a twelve foot (12') multi-use path along this corridor.

PUBLIC NOTICE:

Notice was published in the Hendricks County Flyer on February 1, 2012

PUBLIC HEARING DATES:

February 13, 2012

PUBLIC COMMENTS:

A letter of support for the request was received from the BLTRA dated, February 3, 2012.

STATUTORY REQUIREMENTS/ FACTORS TO BE CONSIDERED:

The requirements for issuing a Developments Standards Variance are outlined in the zoning ordinance and by Indiana Code §36-7-4-918.5. It is the responsibility of the petitioner to provide evidence that proves their request complies with the three points listed below.

DEVELOPMENTS STANDARDS VARIANCE

Variances of use from the terms of this Ordinance may be approved only upon a determination in writing that the following apply:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community.
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.
3. The strict application of the terms of this Ordinance will constitute an unusual and unnecessary hardship if applied to the property for which the variance is sought.

PREVIOUS ACTIONS ON-SITE:

- 1996-34P | Zoning Map Amendment to "I-2" Zoning District
- 1998-07P | Site Development Plan for Minor Plat #170
- 1998-18P | Replat of Lot #2, of Minor Plat #170

PREVIOUS ACTION- SURROUNDING AREA:

- 1994-15P | Primary and Secondary Plat - Village Pantry at Sugar Bush
- 1994-17P | Annexation - Weld Tech (Meditch)
- 1994-18P | Zoning Map Amendment to "I-1" - Weld Tech (Meditch)
- 1994-39P | Site Development Plan - Weld Tech
- 1995-30P | Annexation - Joe and Susie Saldana
- 1996-24P | Zoning Map Amendment to "I-1" - Saldana Complex
- 1996-33P | Site Development Plan - Saldana Complex
- 2010-01BZA | Verizon Wireless – Special Exception to Permit A Wireless Communication Tower Denied
- 2010-02BZA | Verizon Wireless – Development Standard Variance to exceed the maximum height Denied
- 2010-03BZA | Verizon Wireless – Development Standard Variance to reduce the minimum setback Denied
- 2010-04BZA | Verizon Wireless – Development Standard Variance to permit a lattice tower Withdrawn

SUPPLEMENTARY DOCUMENTATION INSERT:

- APPLICATION EXHIBIT - A
- AFFIDAVIT AND CONSENT OF PROPERTY OWNER EXHIBIT - B
- DETAILED STATEMENT OF REASON EXHIBIT - C
- SITE PLAN EXHIBIT - D

- ZONING MAP
- AERIAL INSERTS
- SITE PHOTOS (PROPERTY AS WELL AS SURROUNDING PROPERTIES)

EXHIBIT - E
EXHIBIT - F
EXHIBIT - G

EXHIBIT - A
APPLICATION

TOWN OF BROWNSBURG
PLANNING & BUILDING

JAN 20 2012

**APPLICATION TO
THE TOWN OF BROWNSBURG
BOARD OF ZONING APPEALS** **DEVELOPMENT STANDARD VARIANCE**

Docket #: 2012-01 BZA / BZDV-1-12-1091 Date Received: 1/25/12
Application Fee: \$400.00 Receipt #: 1-12-3106

COMPLETE THE FOLLOWING

1. Applicant's Name: Verizon Wireless by Clark Quinn 2. Phone: 317-637-1321
3. Mailing Address: 320 N. Meridian Street, Suite 1100, Indianapolis, In 46024
4. Email Address: ebw@clarkquinnlaw.com
5. Owner's Name: Patricia Trout & John Wittman 6. Phone: 317-652-7441
7. Mailing Address: 8560 N. Co. Rd. 1050 E.
8. Email Address: _____
9. Applicant is (Check One) sole owner joint owner tenant
 agent other (specify) _____
10. Premises Affected:
A. Address: 1630 S. Green Street, Brownsburg, IN
B. Parcel Number(s): 32-07-230-001.000 14-2-22-61E 230-001
11. Existing Zoning: 1-2 12. Existing Use: Industrial
13. Surrounding Properties:

	North	South	East	West
Zoning:	GB	1-2	L1	Agricultural
Use:	Vacant & Residence	Mini warehouse/ Industrial	Church & Residential	Greenspace & Residential
14. Applicable section of the Zoning Ordinance: 1.55.149 (c) 3 (b)
(one section per application)
15. Detailed Statement of Reasons for this request: (refer to § 155.036 of the zoning ordinance) See Attached.

16. Notarization:
The above information and attached exhibits, to my knowledge and belief, are true and correct.

Matthew R. Clark Date: 1/23/2012
Signature of Applicant
Matthew R. Clark
Print

State of Indiana)
County of Marion) SS:
Subscribed and sworn to before me this 23rd day of January, 2012

County of Residence: _____
Elizabeth Bentz Williams
Signature of Notary
Elizabeth Bentz Williams
Print

Marion
My Commission Expires:
11/18/2012

EXHIBIT – B
AFFIDAVIT AND CONSENT OF PROPERTY OWNER

AFFIDAVIT AND CONSENT OF PROPERTY OWNER

I / (we) Patricia Trout and John Wittman

and X X after being first

duly sworn, depose and say:

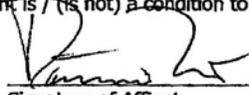
1. That I / (we) are the owner(s) of the real estate located at: 1630 S. Green Street
Brownsburg, IN 46112

2. That I / (we) authorize Verizon Wireless, by Clark, Quinn, Moses, Scott & Grahn to act as my / our agent for the building permit/improvement location permit request.

3. That I / (we) have read and examined the Application for Variance of Development Standards and am / (are) familiar with its contents.

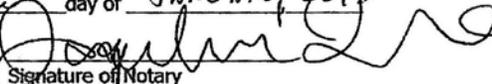
4. That I / (we) have no objection to, and consent to such request as set forth in the Application.

5. That such request being made by the Applicant is / (is not) a condition to the sale or lease of the above-referenced property.


Signature of Affiant Date: 1-24-12

Patricia Trout
Print

State of INDIANA)
County of HENDRICKS) SS:
Subscribed and sworn to before me this 24th day of JANUARY 2012


Signature of Notary

County of Residence:

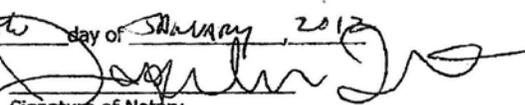
MARION
My Commission Expires:
6/2/2013

JACQUELINE TROUT
Print


Signature of Affiant Date: 1-24-2012

John Wittman
Print

State of INDIANA)
County of HENDRICKS) SS:
Subscribed and sworn to before me this 24th day of JANUARY 2012


Signature of Notary

County of Residence:

MARION
My Commission Expires:
6/2/2013

JACQUELINE TROUT
Print

EXHIBIT – C
DETAILED STATEMENT OF REASONS

DETAILED STATEMENT OF REASONS

This document is a part of the application for Variance to apply to the property located at
1630 S. Green Street Brownsburg, IN.

I/we understand that the Board's findings shall be based upon the following statutory requirements:

Development Standard / Dimensional Variance - Variances from the development standards of the zoning ordinance may be approved only upon a determination in writing that:

- 1) the approval will not be injurious to the public health, safety, morals, and general welfare of the community;
- 2) the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and
- 3) the strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property.

I hereby assert that this petition addresses the above criteria, to wit:

See Attached Statement: Dated January 23, 2012

Your statement must do two things:

(1) explain in detail the variance you are requesting;

(2) explain how your request meets the criteria listed for your type of variance.



Applicant Signature

Matthew R. Clark

Print Name

1/23/2012

Date

EXHIBIT – C
DETAILED STATEMENT OF REASONS continued

Verizon Wireless, by Clark, Quinn, Moses, Scott & Grahn
1630 S. Green Street Brownsburg

January 23, 2012
Amended February 3, 2012

Petitioner is requesting a variance to permit the proposed tower closer to the existing principal building on site than the height of the tower.

Location Variance: Section 155.149 (C) 3 (b)

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;

The subject tower is set back approximately 481 feet from Green Street, 170 from the north and west property lines and 191 feet from the south property line. The site is used for industrial purposes. The tower is located within approximately 40 feet of the existing building on site, however the owner of that building is the property owner and if approved, the applicant's landlord, the towers are designed for substantial wind and ice loading to maintain high safety standards and in the unlikely event of tower failure, it is designed to fall on itself rather than "like a pencil.

2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and

The proposed monopole facility is setback in the far corner of the site in an area is zoned for industrial use and the tower will be a light gray color. The proposed location meets all requirements for adjacent property setbacks. Wireless Communication Facilities are permitted by right in this zoning classification.

3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property.

The use will be designed, constructed and maintained as a graduated monopole. The only affected party regarding this variance is the property owner and leaseholder of the proposed wireless communication tower. The Zoning Ordinance does not address or recognize, due to the advances in technology since its adoption, the improvements to the structural integrity of towers and the mechanics allowing a tower to collapse on itself in the rare event there was a failure, therefore making this provision outdated in light of current technology. Because the ordinance only permits wireless communication towers in C-3, I-2 and I-3 Districts by right, it diminishes the ability and creates a practical difficulty for the land owner to affectively use their property, because this property in particular and these districts in general, do not, by their nature, have large undeveloped areas to meet said internal setbacks which creates an inherent conflict because these are districts are precisely the areas where are the structures are most appropriate.

EXHIBIT – C
DETAILED STATEMENT OF REASONS continued



January 27, 2012

Mr. James Grant
Verizon Wireless
250 E. 96th Street
Indianapolis, IN 46240

RE: 167' Monopole at #351 Brownsburg, IN (Sabre #53524)

Dear Mr. Grant,

As shown in our Structural Design Report #53524 Revision A dated January 26, 2012, the above referenced monopole has been designed for a Basic Wind Speed of 90 mph with no ice and 40 mph with 1" radial ice, Structure Class II, Exposure Category C, and Topographic Category 1, in accordance with the Telecommunications Industry Association Standard ANSI/TIA-222-G, "Structural Standard for Antenna Supporting Structures and Antennas".

When designed according to this standard, the wind pressures and steel strength capacities include several safety factors, resulting in an overall minimum safety factor of 25%. Therefore, it is highly unlikely that the monopole will fail structurally in a wind event where the design wind speed is exceeded within the range of the built-in safety factors.

Should the wind speed increase beyond the capacity of the built-in safety factors, to the point of failure of one or more structural elements, the most likely location of the failure would be within the upper portion of the monopole shaft. Assuming that the wind pressure profile is similar to that used to design the monopole, the monopole will buckle at the location of the highest combined stress ratio within the upper portion of the monopole shaft. This is likely to result in the portion of the monopole above "folding over" onto the portion below, essentially collapsing on itself. **Please note that this letter only applies to the above referenced monopole designed and manufactured by Sabre Towers & Poles.**

Sincerely,

Keith J. Tindall, P.E.
Vice President & Chief Engineer



1/27/12

Guyed Towers

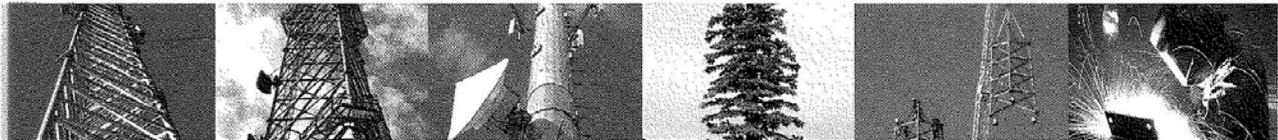
Self-Supporting Towers

Monopoles

Consoalment Structures

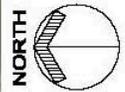
Turnkey Installations

Tower Modifications



2101 Murray Street | P.O. Box 658 | Sioux City, IA 51102-0658 | Phone 712.258.6690 | Fax 712.279.0814 | www.SabreTowersandPoles.com

EXHIBIT – D
SITE PLAN continued



TOWER TO BUILDING SET-BACKS

SCALE: 1"=50'

EXHIBIT – E
ZONING MAP

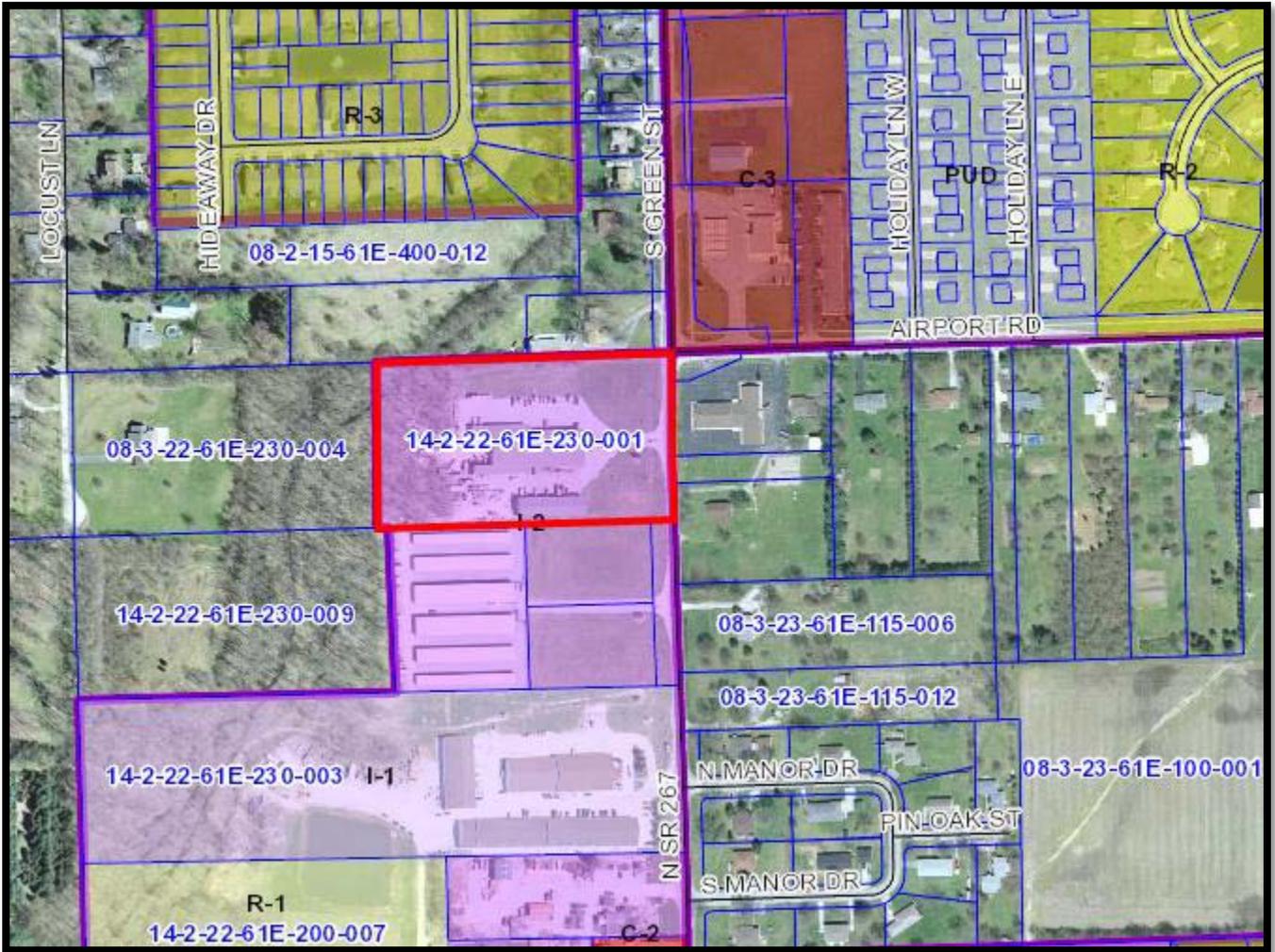


EXHIBIT – F
AERIAL INSERTS

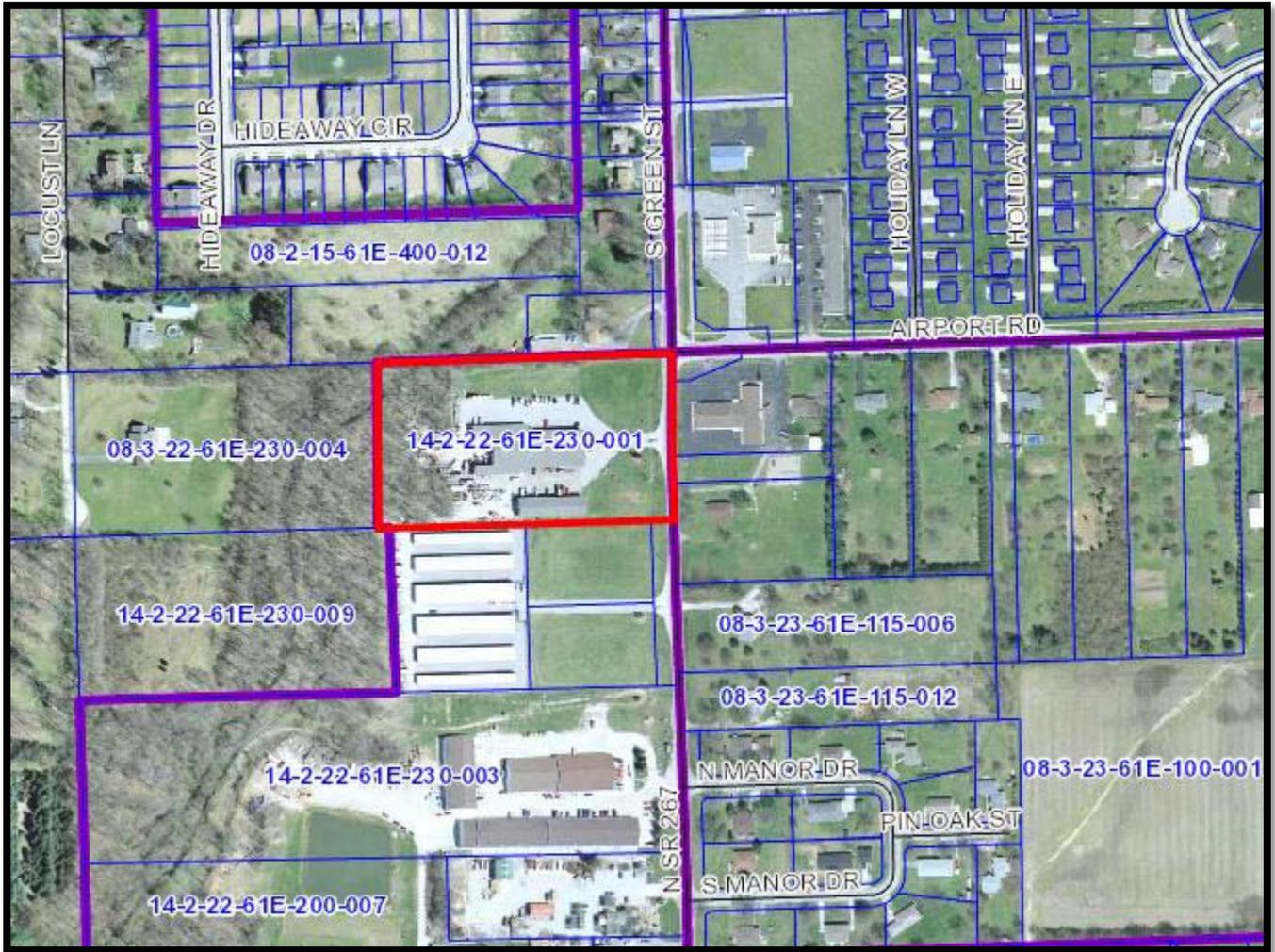


EXHIBIT – G
SITE PHOTOS



EXHIBIT – G
SITE PHOTOS continued



STAFF ANALYSIS:

The petitioner in this case is the same as in previous cases 2010-01BZA, 2010-02BZA, 2010-03BZA, and 2010-04BZA which attempted to locate a similar tower on a parcel south of the subject property, as well as to reduce the setbacks, increase the overall height and modify the permissible construction type of said tower. Those variance requests were all denied based on the facts available to the BZA at the time.

The petitioner now comes before the Board with a site properly zoned, "I-2", for Wireless Communications Facilities and requests a variance to reduce the minimum setback between the proposed tower and the existing principal buildings on the site. Currently, the Brownsburg Zoning Ordinance setback requirements from existing buildings read as follows:

§155.149(C)(3)(b) *"A communications tower may be located on a lot occupied by other principal structures and may occupy a leased parcel within a lot meeting the minimum lot size requirements for the zoning district. In those cases the required setback between the tower and the principal building shall be at least the equivalent of the height of the tower."*

As staff reviewed this application for compliance with the zoning ordinances it was determined that the necessary and required setbacks for this tower from all property lines and residential districts is compliant, and the petitioner has complied with the monopole construction requirement of the ordinance. The overall height of the proposed tower is one hundred sixty seven feet (167.00'), the maximum height of a tower in the "I-2" zoning district is one hundred eighty feet (180.00'), and therefore the tower height is also in compliance.

A closer look at the property revealed that the existing principal structure was constructed with a front yard setback of, approximately, one hundred ninety-two feet (192.00') however the minimum required setback in the I-2 district, from a Primary Arterial street, is fifty feet (50'). The total depth of the existing principal building is approximately two hundred fifty feet (250.00'). Taking into consideration the I-2 district minimum setback and the depth of the building, the tower could have been constructed without the need for a variance and have met the minimum required setbacks, had the principal building been constructed on the setback line rather than in its current location. However, since the building is setback an additional 142 feet, the tower could not feasibly be located anywhere on the site to comply with the entire setback regulations contained in the zoning ordinance.

Furthermore, the zoning ordinance is conflicting when it addresses communications facilities. The ordinance, by right, permits a wireless communications facility in the C-3, I-2, and I-3 zoning districts and restricts the setback of such facility to a minimum of the height of the tower. However, if the communication facility was constructed prior to the principal building no such setback requirement exists.

As a reminder to the Board, the conditions and affect of this petition on adjacent property values may only be considered to the extent of the setback from the existing principal structure and not the mere fact that the tower is proposed on this site -as it is properly zoned for such use.

Staff has completed a review of the Detailed Statement of Reasons, Structure Design Letter, and Structure Design Report submitted by the petitioner. Based on that information staff is in agreement with the justification and statements provided for each of the statutory criteria requirements. The full Structure Design Report referenced in the Structure Design Letter (Exhibit - C on page 7 of this synopsis) has been included as an appendix to this synopsis for the Board's review on Laserfiche, the Town's document management software; a copy is also available in the project file.

RECOMMENDATIONS:

Based upon the analysis of the submitted information by the petitioner, the Dimensional Variance (Development Standards) sections of the zoning ordinance and my comments above, it is my opinion that this request has SATISFIED the requirements for approval of a Development Standards Variance pursuant to §155.036(F) (2) (b) of the Brownsburg Municipal Code and statutory regulations of Ind. Code 36-7-4-918.5.

If the Board should decide to approve this request I recommend the approval be subject to and conditioned upon the following:

1. Approval of a site development plan, currently on-file in the Planning and Building Department;
2. Annual inspection of the tower site and facilities to ensure compliance with the zoning ordinance and to verify the site is properly secured from unauthorized entrants;
3. That a written comment be executed and recorded with the Hendricks County Recorder's Office regarding sections 155.149(C)(8)(a)&(b) of the Zoning Ordinance which state:
 - a. All abandoned or unused towers and associated facilities shall be removed by the applicant within one hundred eighty (180) days of the cessation of operations at the site unless a time extension is approved by the Administrator. A copy of the relevant portions of a signed lease which requires the applicant to remove the tower and associated facilities upon cessation of operations at the site shall be submitted at the time of application. In the event that a tower is not removed within one hundred eighty (180) days of the cessation of operations at a site, the tower and associated facilities may be removed by the town, and the costs of removal assessed against the property.
 - b. Unused portions of towers above a manufactured connection shall be removed within one hundred eighty (180) days of the time of antenna relocation. The replacement of portions of a tower previously removed requires the issuance of a new improvement location permit.
4. That a written comment be executed and recorded with the Hendricks County Recorder's Office stating that the property owner understands and accepts the inherent risk of locating a wireless communication tower at a distance less than is required by the Town's Zoning Ordinance; and
5. The approval of the Findings of Fact and Conclusions of Law.

STAFF CONTACT:

NAME: Todd A. Barker, AICP

Jonathan K. Blake

TITLE: Director of Planning

Planning Technician

PHONE: 317-852-1128

317-852-1128

EMAIL: tbarker@brownsburg.org

jblake@brownsburg.org