

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

In compliance with the appropriate provisions of the Brownsburg Zoning and Subdivision Control Ordinances, the Board of Zoning Appeals (hereinafter "Board") held a public hearing pursuant to notice at 7:00 p.m. on February 13, 2012, to hear Docket # BZDV-1-12-1091, a petition for a Development Standard Variance from §155.149(C)(3)(b) to reduce the minimum setback requirement between the primary structure and a proposed Wireless Communications Tower.

The petitioner, Verizon Wireless, appeared by agent Russell Brown, and presented testimony and evidence in support of their application.

FINDINGS OF FACT

The Board, having this matter presented at a public hearing on February 13, 2012, having considered the arguments of the petitioner, and being duly advised in the premises, now finds and makes the following Findings of Fact:

1. That the legal address of the real estate subject to the petition is 1630 S. Green Street, Brownsburg, Indiana, and is further identified as Indiana Parcel Number 32-07-230-001.000-016
2. That the real estate to which the petition is addressed is within the Town of Brownsburg, Hendricks County, Indiana, and is subject to the terms and provisions of the Town of Brownsburg Municipal Code, Zoning and Subdivision Control Ordinances.
3. That Patricia Trout & John Wittman are the current owner of the real estate subject to the petition.
4. That the real estate to which the petition is addressed is currently zoned 'I-2' Industrial.
5. That the petitioner is requesting a reduction of the minimum setback requirement between the primary structure and a proposed Wireless Communications Tower.
6. That §155.149(C)(3)(b), identifies that 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.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the Board does now conclude:

1. 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 proposed monopole facility is setback in the far corner of the site in an area that 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 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 districts are precisely the areas where the structures are most appropriate.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the Board does now **APPROVE** the Development Standard Variance requested by Verizon Wireless, known as Docket No. BZDV-1-12-1091 located at 1630 South Green Street, Brownsburg IN 46112; 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.

Date: _____ By: _____
 President, Board of Zoning Appeals

Date: _____ Attest: _____
 Secretary, Board of Zoning Appeals