

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 (the "Board") held a public hearing pursuant to notice at 7:00 p.m. on November 5, 2012, to hear Docket # BZDV-9-12-1113, a petition for a Variance of Development Standards from §155.208(B)(3) of the Brownsburg Zoning Ordinance, to reduce the accessory structure minimum side yard setback on the subject property in the 'C-3' zoning district.

The petitioner, Verizon Wireless, appeared by agent Matthew R. Clark of Clark Quinn Law, and presented testimony and evidence in support of their application.

FINDINGS OF FACT

The Board, having this matter presented at a public hearing on November 5, 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 1410 N Green Street, Brownsburg, Indiana, and is further identified as Indiana Parcel Number(s) 32-07-02-100-019.000-026.
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 Three Way Storage LLC is the current owner of the real estate subject to the petition.
4. The real estate to which the petition is addressed is classified as 'C-3' Commercial pursuant to the Brownsburg Zoning Ordinance.
5. The request of the Petitioner is to reduce the accessory structure minimum side yard setback, pursuant to the 'C-3' zoning district, to 6-1/2 feet on the subject property.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, and pursuant to Indiana Code the Board does now conclude:

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

The Board concluded that the subject tower is set back approximately 1059 feet from North Green Street (State Road 267), it is abutted by mini warehouses to the north and east, treed area to the west and to the south it is buffered by a tree line and a commercial bakery. It will be designed and constructed to meet all local and state structural requirements and it will meet all FCC and FAA requirements; and

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;

The Board concluded that the existing commercial ordinance permits primary structures with no side yard setbacks, however it also requires accessory structures to adhere to a 10 foot side yard setback. The structure in question is a small 299 square foot equipment shelter for the ground equipment needed for Verizon Wireless to co-locate on this existing structure. The height is approximately 10 feet and the only ground lighting is a motion activated security light. It is an unmanned facility and there will be no adverse impacts on the neighboring property due to the proposed 6-1/2 foot side yard setback.; and

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

The Board determined that the site is an irregular shape and the existing tower has been placed in the far southwest corner of the site, away from the day to day activity and the public right-of-way. It is buffered from the uses to the west by a substantial tree line. The proposed placement of the equipment shelter is necessary for several reasons: 1) there is a substantial fall in grade, of approximately 10 feet, immediately west of the proposed shelter site, shown on the accompanying topographical contour map; 2) the crane needed to place the shelter would not be able to maneuver in the area to the west of the tower; and 3) the area west of the tower would require substantial removal of trees.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the Board does now **APPROVE** the Variance of Development Standards requested by Verizon Wireless, known as Docket No. BZDV-9-12-1113 located at 1410 N Green Street, Brownsburg, IN 46112; subject to and conditioned upon the following:

1. 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;

