

Meeting Minutes

Zoning Board of Adjustment

Tuesday, November 22, 2022
Ankeny City Council Chambers
1250 SW District Drive, Second Floor, Ankeny, Iowa

CALL TO ORDER

Chair Matt Ott called the November 22, 2022 regular meeting of the Zoning Board of Adjustment to order at 5:00 p.m.

ROLL CALL

Members present: Jeff Baxter, Matt Ott, Nichole Sungren, Kristi Tomlinson and Brett Walker. Staff: E.Jensen, E.Carstens, J.Heil, B.Morrissey, L.Hutzell, R. Kirschman, B.Fuglsang

AMENDMENTS TO THE AGENDA

There were no amendments to the agenda.

MINUTES OF THE NOVEMBER 8, 2022 REGULAR MEETING

Motion by M.Ott to approve the November 8, 2022 meeting minutes as submitted. Second by J.Baxter. Motion carried. 4 – 0 – 1. (Abstain: K.Tomlinson)

COMMUNICATIONS / CORRESPONDENCE

Chair M.Ott asked to have the record reflect that members of the Board received correspondence from the following individuals, which will be received and filed as part of the public hearing for Appeal #22-15, #22-16, #22-17 & #22-18.

William Pigg, 3305 NW Amherst Ln
Tim Jacobsen, 4103 NE 7th St
Troy Hamilton, 3213 NW Bayberry Ln
Mike and Lana Jovic, 210 NW Autumn Crest Dr
Gary and Joan Liming, 232 NW Autumn Crest Dr
Dana and Becky Anderson, 477 NW Autumn Crest Dr
Terry Cowan, 226 NW Autumn Crest Dr
Petition signed by residents of NW Autumn Crest Dr

BUSINESS ITEMS

PUBLIC HEARINGS:

#22-20

Mark Van De Pol
for property located at
4904 NE Trilein Drive
Lot 23, North Prairie Bend Plat 1
RE: Variance – Rear Yard Setback

Chair M.Ott opened the public hearing.

Tina Van De Pol, 4904 NE Trilein Drive, Ankeny said they are asking for a variance to build a sunroom on an existing covered deck. She stated that when the home was originally built, it appears that the covered deck was not in the original plan and was never permitted with the City.

Rick Carlson, Sunroom Escapes, 5600 Metro E Drive, Pleasant Hill stated the permit was approved for the 14x12-foot deck, which was inspected and passed. He is unsure who built the cover over the deck without pulling a building permit and noted that this happened prior to Mark and Tina Van De Pol owning the home. Rick Carlson said the Van De Pols went to pull a building permit for a three-season porch and were notified that the covered deck was not approved.

There were no questions from the Board.

B.Morrissey reported the subject property is located at 4904 NE Trilein Drive, east of N Ankeny Boulevard and south of NE 54th Street. The subject property along with the neighboring properties are zoned R-2, One-Family and Two-Family Residence District with restrictions. B.Morrissey stated that records indicate that the house on the property was constructed in 2009 and the original approved plans showed an unenclosed deck on the west side of the home that extends into the rear yard setback. With the Van De Pol's request for the sunroom, staff realized that there was an error since the attached deck is covered. Per Code, unenclosed decks are allowed to extend 12 feet into the rear yard setback while covered decks are not allowed, which results in the homeowner needing to acquire a variance for the three-seasons deck. B.Morrissey explained that the applicant is requesting that the current rear yard setback be reduced to 32-feet to allow for the conversion of the deck into a three-seasons deck. The current covered deck extends approximately 2 feet into the setback. Staff is not concerned with the applicant converting the deck into a three-seasons deck, due to the fact that the structure is staying in the same location and has been there for over 10-years. He said that notices were sent by mail to neighboring property and, to date, has not received any correspondence concerning the request. Staff's position is to grant a variance to Ankeny Municipal Code Section 192.04(3)(E) to allow a 32-foot rear yard setback for the conversion of an existing covered deck into a three-seasons covered deck at 4904 NE Trilein Drive. This position is based on a determination that the decreased rear yard setback from the resulting three-seasons covered deck would not impair adequate supply of air and light, would not increase public danger of fire, or diminish property values; and that this request is in harmony with the intended spirit and purpose of the Ankeny Municipal Code.

There was no one in the audience to speak for or against the request.

There were no comments from the Board.

Motion by M.Ott to close the public hearing, and receive and file documents. Second by K.Tomlinson. All voted aye. Motion carried 5 – 0.

Board Action on Filing #22-20 property located at 4904 NE Trilein Drive

Motion by J.Baxter that the Zoning Board of Adjustment grant a variance to Ankeny Municipal Code Section 192.04(3)(E) to allow a 32-foot rear yard setback for the conversion of an existing covered deck into a three-seasons covered deck at 4904 NE Trilein Drive. The Board's decision is based on a determination that the decreased rear yard setback from the resulting three-seasons covered deck would not impair adequate supply of air and light, would not increase public danger of fire, or diminish property values; and that this request is in harmony with the intended spirit and purpose of the Ankeny Municipal Code. Second by N.Sungren. All voted aye. Motion carried. 5 – 0.

#22-15, #22-16, #22-17, #22-18

GSS, Inc.

for property located at

3950 N Ankeny Boulevard

approximately 304 feet west of N Ankeny Blvd. and 333 feet north of NW Autumn Crest Drive

RE: #22-15 Variance - Height

#22-16 Variance - Rear Yard Setback

#22-17 Special Use Permit

#22-18 Conditional Use Permit

Chair M.Ott opened the public hearing.

Albert Aguirre, 6255 Beachtree Drive, West Des Moines, employed by GSS Inc. at 3311 109th Street, Urbandale is representing US Cellular. He said that US Cellular has a need to increase their coverage in the northern sections of Ankeny. Their plan is to build a 120-foot stealth monopole tower with a 30x45-foot vinyl fence compound standing 6-feet high. He stated that there would be a 285-foot concrete access drive extending back to the tower. He noted the setbacks for the monopole on the north, east and south; and then said the western setback is 31.33-feet, which is where they fall short about 40-feet for the required setback. He said he would answer any questions the Board may have.

M.Ott asked if they could provide a coverage map for the Board. Albert Aguirre acquired the maps from Associate Planner Laura Hutzell and presented them to the Board.

Shawn Hempstead, Director, GSS, Inc., 3315 NE 8th Street, Ankeny provided an overview of the current coverage and the area in which there is a need for US Cellular coverage. He said the tower would provide for a coverage level, which would be good enough for in-car coverage. M.Ott confirmed that it is a stealth monopole that they are proposing. Shawn Hempstead stated, yes. He said it is a 5 cannister pole, with three cannisters that open up. M.Ott asked if they reviewed other cell phone towers that may have the availability to provide this coverage. Shawn Hempstead said that they have, but the other tower would not be able to provide the coverage that US Cellular needs.

Albert Aguirre, GSS, Inc. addressed the concerns that were raised in the correspondence that was received from the neighbors regarding their request including, but not limited to, potential health risks, safety concerns and decrease in property values. He presented literature to the Board related to PCS transmissions/RF signals and home assessments from the Polk County Assessor. He explained that there will be no lights on the tower, a 6-foot fence around the mechanicals, planting of 14 red dogwood trees, which at maturity will be 10-feet tall. M.Ott asked about the planted height for the trees. Albert Aguirre stated, 6-feet.

K.Tomlinson asked if he could provide a picture of what this particular tower will look like, which was then presented for viewing. M.Ott wanted information as to why the panels on various towers are sometimes missing. Shawn Hempstead provided in-depth information on the components of a tower and explained frequencies as they relate to stealth monopoles. M.Ott asked if it would be fair to say that requiring a stealth monopole is not unique to Ankeny. Shawn Hempstead stated, no. Albert Aguirre followed up with closing comments with regards to their request and thanked the Board for their time.

J.Baxter asked if 120-feet is a standard height for a cell tower. Shawn Hempstead said, not really. The ideal height for this area would be 130-140-feet but with the setback requirement, they felt the variance would not be obtainable at that height.

There were no further questions from the Board.

L.Hutzell reported that the subject property is located at 3950 N Ankeny Boulevard, generally located approximately 304 feet west of N Ankeny Boulevard and 333 feet north of NW Autumn Crest Drive. The property is owned by Tony and Terry Johnson and is zoned C-2, General Retail and Highway Oriented Commercial Business District. She stated the properties directly north and west are zoned R-1, One-Family Residence District, south and east are zoned C-2, and properties to the SW are zoned R-3, Multiple-Family Residence District. L.Hutzell explained that the parcel consists of a single-family home with a detached barn, which sits on a 2.41-acre lot and is within a floodplain area known as Zone A. She stated that in an effort to increase coverage for US Cellular, GSS, Inc has applied for a Height Variance, Rear Yard Setback Variance, Special Use Permit and Conditional Use Permit, on behalf of property owners Tony and Terry Johnson, to locate a new 120-foot stealth monopole with associated equipment and a proposed access drive on the subject property. She said the proposed monopole will be located just west of the existing barn on the site and will sit inside a 30x45-foot leased area, which will be enclosed by a 6-foot high vinyl fence. She noted that there is a proposed paved access driveway extension and turn around to the south. In addition to the screening that the fence provides, the appellant has also proposed a 10-foot landscape easement on the west side of the site to help provide additional screening to residents in the southwest corner. The appellant is specifically requesting the following:

1. A Special Use Permit for the construction of a 120-foot stealth monopole including associated equipment used solely for the purpose of the transmission or relay of telephone utility service at 3950 N Ankeny Boulevard in accordance with Ankeny Municipal Code Section 196.02(1)(H).
2. A 75-foot height variance to Ankeny Municipal Code Section 192.09(3)(G), to allow a 120-foot stealth monopole in a C-2, General Retail, Highway Oriented, and Central Business Commercial District, which has a 45-foot maximum height limitation.
3. An 8.67-foot rear yard setback variance to Ankeny Municipal Code Section 192.08(3)(F), to allow a 31.33-foot rear yard setback for the construction of a 120-foot stealth monopole in a C-2, General Retail, Highway Oriented, and Central Business Commercial District, which has a 40-foot rear yard setback requirement.
4. A Conditional Use Permit for the construction of a 120-foot stealth monopole in a floodway fringe area. Ankeny Municipal Code Section 193.01(14) state that requests for conditional uses shall be submitted to the Zoning Administrator who shall forward such to the Board of Adjustments for consideration.

L.Hutzell stated that similar monopole/cell tower requests have been approved by the Zoning Board of Adjustment in the past with the most recent being June 7, 2016. She noted that notifications were mailed to all properties within 370-feet of the subject property.

L.Hutzell said the staff position is to grant a Special Use Permit to allow a stealth monopole with associated equipment to be located at 3950 N Ankeny Blvd is granted provided the following conditions are met:

1. Site Plan approval by the Plan & Zoning Commission.
2. That the tower be white or off white in color to match other cell towers in Ankeny.

The requested Special Use Permit is based on a finding that the criteria for a Special Use Permit for a communication tower preserves the intent and purpose of the Zoning Ordinance to promote public health, safety, morals, and the general welfare.

The staff position is to grant a 75-foot height variance to Ankeny Municipal Code Section 192.09(3)(G), to allow for the construction of a 120-foot stealth monopole with associated equipment, in a C-2, General Retail and Highway Oriented Commercial District, located at 3950 N Ankeny Boulevard. Staff's position is based on a determination that the increased height from the resulting monopole will not impair adequate supply of air and light, will not increase public danger of fire, or diminish property values; and that this request is in harmony with the intended spirit and purpose of the Ankeny Municipal Code.

The staff position is to grant an 8.67-foot variance to Ankeny Municipal Code Section 192.08(3)(F) to allow a 31.33-foot rear yard setback for construction of a stealth monopole with associated equipment at 3950 N Ankeny Boulevard. Staff's position is based on a determination that the decreased rear yard setback will not impair adequate supply of air and light, will not increase public danger of fire, or diminish property values; and that this request is in harmony with the intended spirit and purpose of the Ankeny Municipal Code.

The staff position is to Grant a Conditional Use Permit in a FEMA designated General Floodplain for construction of a stealth monopole with associated ground equipment in an area determined to be in a special flood hazard area based on a review by the Iowa Department of Natural Resources. Staff's position is based on the appellant following the proper procedures with the Iowa Department of Natural Resources and City Code, as well as elevating the appropriate equipment above the determined flood plain elevation.

M.Ott asked if there is any additional floodplain permitting needed. L.Hutzell responded that the State does not require a floodplain permit; however, the City will require a permit.

K.Tomlinson asked if there is a reason that the tower could not have gone a little more north, out of the floodplain and further away from the neighborhood.

Shawn Hempstead shared that there are many factors in siting a cell tower and one of them is finding a landowner that will provide a space to lease. Mr. Johnson said he would be willing to allow it, if the tower was matched up with his garage, which was best for him. He said placement on the landlord's property, in some degree, is not negotiable. He further stated that site acquisition is difficult because there is a lot of unknowns and the general fear that people have about cell towers.

M.Ott provided the opportunity for the public to speak.

Terry Anderson, 352 NW Autumn Crest Drive, spoke in opposition of the appellant's request.

Mark Havemann, 468 NW Autumn Crest Drive, spoke in opposition of the appellant's request.

Mike Jovic, 210 NW Autumn Crest Drive, spoke in opposition of the appellant's request.

Deidre Rosenfeld, 642 NW Autumn Crest Drive, spoke in opposition of the appellant's request.

Leroy Naber, 366 NW Autumn Crest Drive, spoke in opposition of the appellant's request.

Paula Miles, 386 NW Autumn Crest Drive, spoke in opposition of the appellant's request.

Jed Bockenstedt, 701 NW Autumn Crest Drive, spoke in opposition of the appellant's request.

Brittain Bachus, 658 NW Autumn Crest Drive, spoke in opposition of the appellant's request.

Bob and Susan Hunter, 492 NW Autumn Crest Drive, spoke in opposition of the appellant's request.

Lana Jovic, 210 NW Autumn Crest Drive, spoke in opposition of the appellant's request.

Shawn Hempstead, GSS, Inc. responded to the concerns and issues that were brought to the Board by the public in attendance, explaining the safety standards that are set by the FCC for cell towers. US Cellular is well within the standards that are set.

M.Ott shared that the Board had the opportunity to review correspondence received from multiple citizens, in support and others in opposition of this request.

Motion by M.Ott to close the public hearing, and receive and file documents. Second by J.Baxter. All voted aye. Motion carried 5 – 0.

M.Ott said, generally speaking, there are federal requirements and telecommunications acts that restrict a board or jurisdiction's ability to restrict siting of telecommunications and cell phone towers. He stated that he understands that the public does not want this in their backyard but the Board has very limited abilities once the provider can provide proof and justification that it is a need. M.Ott commented that the ideal location is somewhere else, but in this case that is not possible. He noted that this is part of living in a modern society. He further commented that the floodplain has been addressed with the Iowa DNR and they will be required to have a floodplain permit from the City.

N.Sungren said she reviewed a previous cell tower request that was approved by the Board. She compared the distance from the neighboring townhomes to that cell tower site versus this request. She commented that compared to the current request, it was about the same distance. The previous request also had opposition from neighboring properties. She noted that once monopoles are constructed, most people do not notice them.

K.Tomlinson commented, relating to the concerns brought up regarding health risks of monopoles, anyone could go to 10 doctors and they would get 10 different opinions. There are beliefs on both sides and how do you know which side is right. She said that it is very unfortunate that the property owners did not go farther north away from the neighborhood but the government standards make it hard for the Board to deny the request. She does feel bad for the situation and understands the neighbor's concerns.

J.Baxter said to the question of impact on health, the Board members are not experts in that field and he does not think it is up to the Board to make the determination whether or not the cell tower should be there because of potential health impacts. The Federal government sets distance requirements and those distance requirements are set by people who are experts in the field. There may be changes based on new research that comes up, but again, it is not for a volunteer Zoning Board of Adjustment to make those determinations.

E.Jensen, Director of Community Development, stated that there have been a lot of discussion about RF frequencies and health impacts. He wants to be clear that the Board let that conversation happen because they don't want to infringe on allowing people to make that discussion, but the Telecommunications Act of 1996, really limited what cities and Zoning Boards of Adjustment can do. He further said that it was further restricted by the State of Iowa when the Legislature passed the Iowa Cell Siting Act 2019. He read Iowa Code Chapter 8C.3(7) which states: *"An authority shall not reject an application, in whole or in part, based on perceived or alleged environmental effects of radio frequency emissions,..."* E.Jensen said he would like everyone to appreciate the position the City and the Board is in when they are reviewing the requests. He further said, there were concerns of where the monopole is being placed and then read Iowa Code Chapter 8C.3(2)a that states: *"An authority shall not evaluate an application based on the availability of other potential locations for the placement or construction of a tower or transmission equipment."* He hopes that everyone in the room appreciates the position that the Board is in regarding these requests.

There were no further comments from the Board.

Board Action on Filing #22-15 property located at 3950 N Ankeny Boulevard

Motion by M.Ott that the Zoning Board of Adjustment grant a 75- foot height variance to Ankeny Municipal Code Section 192.09(3)(G) to allow for the construction of a 120-foot stealth monopole with associated equipment in a C-2 General Retail and Highway Oriented Commercial District located at 3950 N Ankeny Blvd. This position is based on a determination that the increased height from the resulting monopole will not impair adequate supply of air and light, will not increase public danger of fire, or diminish property values; and that this request is in harmony with the intended spirit and purpose of the Ankeny Municipal Code.

Second by J.Baxter. All voted aye. Motion carried 5 – 0.

Board Action on Filing #22-16 property located at 3950 N Ankeny Boulevard

Motion by J.Baxter that the Zoning Board of Adjustment grant an 8.67-foot variance to Ankeny Municipal Code Chapter 192.08(3)(F), to allow for a 31.33-foot rear yard setback for the construction of a stealth monopole with associated equipment at 3950 N Ankeny Blvd. This position is based on a determination that the decreased rear yard setback will not impair adequate supply of air and light, will not increase public danger of fire, or diminish property values; and that this request is in harmony with the intended spirit and purpose of the Ankeny Municipal Code.

Second by M.Ott. All voted aye. Motion carried 5 – 0.

Board Action on Filing #22-17 property located at 3950 N Ankeny Boulevard

Motion by N.Sungren that the Zoning Board of Adjustment grant a Special Use Permit to allow a stealth monopole with associated equipment to be located at 3950 N Ankeny Boulevard provided the following conditions are met:

1. Site Plan approval by the Plan & Zoning Commission.
2. That the tower be white or off white in color to match other cell towers in Ankeny.

This is based on a finding that the criteria for a Special Use Permit for a communication tower preserves the intent and purpose of the Zoning Ordinance to promote public health, safety, morals and the general welfare.

Second by B.Walker. All voted aye. Motion carried 5 – 0.

Board Action on Filing #22-18 property located at 3950 N Ankeny Boulevard

Motion by B.Walker that the Zoning Board of Adjustment grant a Conditional Use Permit in a FEMA designated general floodplain for construction of a stealth monopole with associated ground equipment in an area determined to be in a special flood hazard area based on a review by the Iowa Department of Natural Resources. This position is based on the appellant following the proper procedures with the Iowa Department of Natural Resources and City Code, as well as elevating the appropriate equipment above the determined floodplain elevation.

Second by N.Sungren. All voted aye. Motion carried 5 – 0.

NEW BUSINESS

There was no new business.

REPORTS

There were no reports.

There being no further business, motion by J.Baxter to adjourn the meeting. Second by M.Ott. Meeting adjourned at 7:10 p.m.



Submitted by Brenda Fuglsang, Board Secretary
Zoning Board of Adjustment