

**STILLWATER BOARD OF ADJUSTMENT
SPECIAL MEETING OF August 29, 2023
IN ACCORDANCE WITH THE OKLAHOMA OPEN MEETING
LAW, THE AGENDA WAS POSTED August 24, 2023
IN THE MUNICIPAL BUILDING AT 723 SOUTH LEWIS STREET**

Members Present:

Brian Wiles, Chair
John Houck, Vice-Chair
Jim Rice, Member

Staff Present:

Beth Anne Childs, Special Counsel
Joshua Brown, Project Manager
Jacquelyn Porter, City Planner
Cindy Gibson, Admin. Services Manager

Members Absent:

None

Guests:

Jerrod Foutes
Hal Hodges

1. CALL MEETING TO ORDER.

Chair Wiles calls the meeting to order at 12 PM. Chair Wiles introduces the board and explains the proceedings for the evening.

The following individuals are sworn in:

Jerrod Foutes Jacquelyn Porter

2. BUSINESS ITEMS FOR CONSIDERATION, DISCUSS AND POSSIBLE ACTION ON:

- a. Jerrod Foutes, on behalf of Vertical Bridge, REIT, LLC, **VARIANCE (VAR23-013)**, is requesting to review and granting of a variance to Sec. 23-113.l(i)(l) for a telecommunication tower set back distance from a residentially zoned property at property addressed as 1730 N. Jardot Rd in Commercial General (CG) zoned district.

Chair Wiles invites Ms. Porter to present the staff report

Ms. Porter presents the report and asks if there are any questions for staff.

Vice-Chair Houck presents an original map of the City of Stillwater. He points out that most of the lots in Old Town Stillwater are 300 square feet, and if the applicant owned an entire city block then they could never place the proposed tower on any of those lots and be compliant with city ordinance. He notes that the ordinance appears restrictive, and he is concerned about the community health and it does limit the placement of cell towers within the City.

Chair Wiles clarifies that in order to be in compliance with city ordinance, the tower would need 176 feet of separation, Ms. Porter responds affirmatively.

Mr. Rice asks about the purpose of the code section in question, Ms. Porter responds that it was designed to give an adequate fall radius in the event the tower collapses.

Seeing no more questions for staff, Chair Wiles opens the public hearing and invites forward the

applicant and/or their representative, as well as anyone wishing to speak in favor of the item.

Mr. Jerrod Foutes, 4714 West 80th St, Prairie Village, KS 66208, is present on behalf of the applicant. He confirms that all the presented information has been correct and appreciates the comments concerning the nature of the lots. He states that it's a bit uncommon to have a 110% setback requirement but he understands the need to provide a safe fall distance.

Mr. Foutes continues that he attempts to place these cell towers in areas of similar uses, and he has found that storage facilities usually lend themselves well to that purpose. He also states that they received certification from an engineer detailing the fall radius for this tower. He acknowledges that there is less distance than what the ordinance requires, and that the certification of the engineer was sought in response to that. He comments that it is important to provide quality wireless coverage in this day and age when people are working remotely more often.

Mr. Foutes states that he is open to answer any questions the Board may have.

Vice-Chair Houck, referencing the attachment page z.d.1, clarifies that ordinance dictates there must be fall space equal to 10% more than the tower's height, and the tower in question is proposed to be 160 feet tall. Vice-Chair Houck questions if the engineer who drafted and submitted the report on the fall distance is a licensed structural engineer in the state of Oklahoma. Mr. Foutes believes so but is not entirely certain. Vice-Chair Houck states he does not see the engineer's certification among the submitted documents, nor is there any certified seal or stamp of approval on the documents.

Mr. Foutes believes that the drawings would be required to be signed, stamped, and sealed by a licensed engineer in the state of Oklahoma when the plans are submitted for the building permit. This request is for the use, so the details on the actual building plans aren't as relevant yet.

Vice-Chair Houck clarifies Mr. Foutes has verbally confirmed that the tower is designed to buckle in half should it fail. Mr. Foutes responds affirmatively, stating that he is not an expert but to his understanding the tower is specifically designed to collapse in on itself to a certain degree, which decreases the fall radius.

Vice-Chair Houck asks if Mr. Foutes is saying that the top half of the tower is designed to fall inward or even break off entirely, which would leave the bottom half still intact. Mr. Foutes responds affirmatively.

Vice-Chair Houck notes that if the tower fails, it would impact four homes to the west. Mr. Foutes asks if Vice-Chair Houck is asking that without the buckle point, the mentioned lots would be impacted, to which Vice-Chair Houck responds affirmatively.

Vice-Chair Houck notes that the drawings submitted are from a registered land surveyor, and as such cannot speak to the structural integrity of the tower. Mr. Foutes confirms this, and states that the tower drawings that will be submitted with the building permit will be drawn and certified by an engineer licensed in the state of Oklahoma.

Vice-Chair Houck states that he understands they intend to provide the certified drawings to

receive their building permit, but Vice-Chair Houck comments that today's hearing is to allow the use, and they can only evaluate the request based upon the currently submitted information. He adds that the Board must take into account the potential harm.

Mr. Foutes responds that the drawings are indeed survey drawings and are not the manufacturer's drawing, and the letter submitted from the engineer confirms the fall zone calculations.

Chair Wiles clarifies that Mr. Foutes mentioned he has been doing similar projects for 18 years, Mr. Foutes confirms it will be 18 years in October. Chair Wiles asks if, in his 18 years in this field, he has ever seen a tower fail. Mr. Foutes responds he has never had a tower fail, even under high wind stress. Mr. Foutes notes that it is not impossible for it to have happened somewhere, but he has never personally been told that there has been a problem with any of the tower projects he has overseen. He states it is highly unlikely for a tower to fail, given the engineering design that goes into them.

Chair Wiles asks what the difference between what would be in compliance with the ordinance, which is approximately 135 feet tall, and what is proposed, which is 160 feet tall, in terms of coverage of services this tower would provide. Mr. Foutes responds that the tower as it is proposed is already at the lowest elevation they can allow to still meet their coverage goals for the area.

Mr. Foutes also mentions that the fall zone letter was verified by an engineer licensed in the state of Oklahoma, and he can provide structural design details that are signed and certified today.

Seeing no further questions from the Board for Mr. Foutes, Chair Wiles asks if there is anyone wishing to speak in opposition or make additional comments.

Beth Anne Childs, Special Legal Counsel, notes that she has been the Special Council for this project since it first went to Planning Commission and that the applicant submitted a letter that is not included in the packet for this meeting. She strongly encourages the Board to take a look at that letter that was included in the agenda packet for Planning Commission.

Cindy Gibson, Administrative Services Manager, notes that the letter Ms. Childs is referencing was not listed in the attachments submitted with this request, which is why it is absent from the Board's agenda packet.

Ms. Childs notes that the letter is sealed by a certified P.E. in Oklahoma.

Ms. Porter pulls up the referenced letter from the City Council agenda packet.

Ms. Childs states that she would consider the letter as pertinent information that should be reviewed and discussed by the Board.

Vice-Chair Houck comments that will indeed take into consideration the aforementioned letter, which is certified by an engineer licensed in the state of Oklahoma detailing the best approximation of how failure would occur.

Chair Wiles, seeing no one present wishing to speak in opposition to the item, closes the public

hearing and invites Ms. Porter to present the alternatives.

Ms. Porter notes that there was a written objection on this item submitted to staff.

Ms. Porter states that criteria for approval, which are:

1. The application of the ordinance to the particular piece of property would create an unnecessary hardship;
2. Such conditions are peculiar to the particular piece of property involved;
3. Relief, if granted, would not cause substantial detriment to the public good, or impair the purposes and intent of the ordinance or the Comprehensive Plan; and
4. The variance, if granted, would be the minimum necessary to alleviate the unnecessary hardship.

Ms. Porter continues, stating the alternatives:

1. Find that each of the criteria for approval of the request is met. The Board will explain how each criterion is met in order to approve the variance(s).
2. Find that each of the criteria for approval of the request is met by imposing modifications or conditions to ensure that the criteria are met. The Board will explain how the criteria are met to grant partial, conditional, or modified approval of the variance(s).
3. Find that one or more of the criteria for approval of the request is not met and deny the request.
4. Table the discussion to a certain date to allow for additional information to be presented

Chair Wiles calls for the Board to discuss.

Vice-Chair Houck states that the ordinance was certainly approved with the intent to preserve the safety of the nearby residents, however he does see the need for the services the proposed cell tower would provide for the area.

Vice-Chair Houck considers the property owner to the west and their ability to enjoy their property, and how that may be impacted by the proposal. He also considers the fact that the location, which currently houses a self-storage facility had the opportunity to receive additional revenue, did not initially plan to have this tower and now needs a variance to carry out this use and this is a negative.

Vice-Chair Houck continues that it is a positive that the tower is designed to be a free-standing structure that an engineer certified in the state of Oklahoma has verified will not fall as a monolithic and will instead collapse inward to reduce the fall zone radius.

Mr. Rice comments about it being his thoughts as well.

Ms. Childs clarifies that the applicant was told from the beginning that they would need to go through Planning Commission as well as to the Board of Adjustment. She emphasizes that the applicant has been working with staff closely and has been well aware that both approval from Planning Commission/City Council and Board of Adjustment was necessary in order to carry out this project. She also notes that the City Council approved the Specific Use Permit with the condition

that the variance is approved by the Board of Adjustment.

Vice-Chair Houck notes that the person who sent in the objection letter is not among the names listed on the nearby property owner information, Mr. Rice states that it could be because the author of the letter said they had only recently purchased the property. Vice-Chair Houck wonders why they were not present at the first hearing.

Ms. Porter states it likely has to do with the timing of when the list of nearby property owners was drafted, when the property was purchased, and the radius of 300 feet that is the maximum requirement to send notices.

Vice-Chair Houck notes that they can't be completely certain since they are not present at the meeting.

Mr. Rice states that either way the Board is certainly going to consider the safety issue.

Chair Wiles states that the main concern is indeed the safety of the citizens, and the applicant has demonstrated that this tower will buckle should it fail and not fall onto the nearby residences. He continues that the 911 access should be taken into account, and that the applicant has stated the proposed tower is already at the lowest possible height.

Chair Wiles comments concerning criteria #1, application of the ordinance to the particular piece of property would create an unnecessary hardship. Mr. Rice states he believes it would. Ms. Childs asks for further explanation.

Vice-Chair Houck adds that the ordinance was written out of an abundance of concern for health and safety, and does not take into account new designs formulated to minimize those risks. He continues that he feels the property can accommodate the proposed project, and the ordinance thereby causes an undue hardship. Mr. Rice agrees.

Chair Wiles comments concerning criteria #2, such conditions are peculiar to the particular piece of property involved. Chair Wiles notes that the property and nearby plots are unusual. Vice-Chair Houck adds that it is peculiar because most properties in the City of Stillwater would not be able to accommodate the proposed tower. Mr. Rice also states that it is peculiar because it is located in a commercial area but is very near a residential neighborhood.

Chair Wiles comments concerning criteria #3. Mr. Rice notes that they have discussed the intent of the ordinance and that it was written to preserve the safety of the public, and the Board has discussed how the proposed tower's design preserves the intent of the ordinance. With that said, Mr. Rice states that he feels it would not be a danger to the public good, but would rather enhance the public good by providing wireless services to the area.

Chair Wiles comments concerning criteria #4. Vice-Chair Houck states he feels that relief, if granted, meets the minimum necessary to alleviate the hardship based on the previous discussion.

Vice-Chair Houck moves to approve the request, Mr. Rice seconds.

Roll Call:	Wiles	Rice	Houck	Vacant	Vacant
	Yes	Yes	Yes		

Time: 40 minutes

3. **MISCELLANEOUS ITEMS FROM STAFF FOR DISCUSSION AND POSSIBLE ACTION:**

- a. Next Board of Adjustment meeting Thursday, September 14, 2023.

4. **ADJOURNMENT.**

This regular meeting of the Board of Adjustment adjourned with all members in attendance in agreement at approximately 12:41 p.m.

Prepared by – Diana Hood, Associate City Planner

Reviewed by – Cindy Gibson, Administrative Services Manager

Approved by: _____

Stillwater Board of Adjustment

