

MINUTES OF THE MEETING OF THE NORTH PLATTE BOARD OF ADJUSTMENT HELD ON THE 25th DAY OF OCTOBER 2022 IN THE CITY HALL COUNCIL CHAMBERS.

MEMBERS PRESENT: Jim Backenstose, Paul Pedersen, Greg Wilke, John Patterson, Robert Stefka

MEMBERS ABSENT: David Fudge

STAFF MEMBERS PRESENT: Judy Clark, Planning Administrator. Michelle Bain, Recording Secretary. Bill Troshynski, City Attorney

Notice of the meeting was given in advance thereof, by posting in at least three places in the City as follows: North Platte Public Library, Lincoln County Courthouse, and City Hall offices.

Notice of the meeting was given to the Chairman and all members of the Board of Adjustment. Availability of the agenda was communicated in the advance notice and in the notice to the Chairman and members of the Board. All proceedings thereafter shown were taken while the convened meeting was open to the attendance of the public.

Chair Wilke called the meeting to order at 8:30 a.m. and stated a current copy of the open meetings act of Nebraska is posted at the back of the Council Chambers.

2. Patterson moved and Pedersen seconded the motion to approve the minutes of the August 23, 2022 Board of Adjustment meeting. Roll call vote: "Aye": Backenstose, Wilke, Pedersen, Patterson, Stefka. "Nay": None. Absent: Fudge. Motion carried.
3. Public Hearing. File No. BA22-005 Discuss and consider action on an application by Industrial Tower West, LLC for variances to North Platte City Code of Ordinances Section 156.305 (F)(1) All towers, telecommunication facilities, or antennas up to 55 feet in height shall be set back on all sides a distance equal to the underlying setback requirement in the applicable zoning district. Tower, telecommunication facilities, or antennas in excess of 55 feet in height shall be set back 1 additional foot for each foot of tower height in excess of 55 feet. In a B-2 District, the required rear yard setback for a 100' tower is 45 feet, and the required side yard setback is 50 feet. The applicant is proposing a 30 foot rear and 30 foot side yard setback. The property is located at 1302 S Chestnut in a B-2 Highway Commercial District and described as the N 124 feet of the E half of Block 2, Storm's First Subdivision, North Platte Lincoln County, Nebraska.

Chair Wilke opened the public hearing.

Judy stated that this is an amendment to a conditional use permit approved by the North Platte City Council on June 15, 2021 for an 80' aesthetic tower to be located at 1302 S Chestnut in conjunction with a new Viaero retail building. The company has been contacted by other cell businesses with requests for collocation. In order to allow for collocation, the style of tower and height of the tower will need to be changed. Increasing the height of the tower increases the required setbacks; therefore, the proposed new 100' tower will require variances to the rear yard and side yard setbacks. Planning Staff has reviewed the site plan and general characteristics of the area. The property is located in a commercial district with neighboring properties all used for commercial or retail businesses and is located in a high traffic area. It does not appear granting the variance would cause a detriment to surrounding property owners.

Chris Riha, Site Acquisition with Industrial Towers, 1811 W. 2nd, Suite 55, Grand Island, was present. He stated they want to allow the collocator to have their own pedestal. They would be around the 90' elevation, the collocator would be around 80'. The purpose of increasing the height is to get the frequencies more uniformly distributed especially past Nebraskaland Bank. The pole needs to have the girth to take some punishment, i.e. wind, storm, tornado. The proposal for this tower is two 3 sectors for us and U.S. Cellular. It is a girthy monopole that exceeds the standard industry to take punishment. He has a 100 page plus report that talks about ice on it, no ice on it, etc. They do have insurance if it does fall. They like to accommodate 3 sets of collocators and it's hard to know what other collocators will need for requirements. There are no guarantees about how a tower will fall but they are well engineered. The foundation won't come out. They get a soils report that tells how it has to be compacted. This will be a monopole tower with no guy wires.

There was discussion about whether the structure would “stick out” in the area and if it could still be an aesthetic pole.

Mr. Riha explained this pole has a different foundation on it. This one has more antennas and weight, the gauge of that steel and foundation is totally different than aesthetic pole.

Pedersen asked about setbacks.

Judy explained the zoning code was created years ago for fall safety. That was probably prior to better engineering. She has been told these are supposed to fall in on themselves or bend in half.

Mr. Riha stated that typically weight is on top so that’s where it will snap. Other municipalities have upgraded their zoning and some don’t care as long as it meets and exceeds the design standards.

Glenn Van Velson, Van Velson Law Office, was present representing Brymarke Inc. who owns property to the north across the street from this property. He stated they are in opposition to the change not because of being afraid it will land on the building. The concern is the degradation of the quality of the neighborhood, aesthetic appeal. The concern is that the appearance of this tower would be detrimental to the property value of the nearby properties. A single monopole seems to be less intrusive than the larger more substantial antennas that are being asked for. Visitors to this area will drive by this huge array of antennas and tower etc. It concerns the owner of the adjacent property that what was to be a single aesthetic monopole but now it will have a lot more junk on the top. He feels the applicant is trying to make more money and asks this variance not be granted.

Mr. Riha stated as far as general appearance, aesthetics and neighborhood, he understands. They would never even consider a guy tower. A pole is more friendly and they are put up in industrial and commercial areas. To help improve the demand of the wireless world you have to have the structure (hardware). As far as property values, he doesn’t know one assessor that has lowered property values from a structure like this being in the area.

Mr. Van Velson explained they are not talking about assessed values, they are talking about market values, ultimate sale of that property.

Judy stated the original application was a conditional use, not a variance.

Mr. Van Velson stated the Board of Adjustment is the protector of the regulations. If the array comes toppling down, will it have a large enough setback? They are asking for protection of the adjacent property owner.

Ellen Kennedy, 319 E. Francis St., owns building across the street, was present. She stated that area was really ugly at one time. They planted trees and tried to make it pretty. She doesn’t want an ugly pole where people drive into town. She’s concerned about the pole coming down onto cars etc.

Stefka moved and Backenstose seconded the motion to close the public hearing. Roll call vote: “Aye”: Backenstose, Wilke, Pedersen, Patterson, Stefka. “Nay”: None. Absent: Fudge. Motion carried.

Judy explained the purpose of this request is to change the style of pole and increase the height. If the Board of Adjustment doesn’t approve this, the applicant can go back to the original plan they have already been approved for. The Board of Adjustment does have to prove a hardship.

There was some discussion regarding the height requirements and whether this is a hardship.

Patterson asked the Attorney if this is approved, would it be a basis for any company wanting to put 100’ tower any place.

Attorney Troshynski stated it is possible they would be setting a precedent. A Board of Adjustment is required to look specifically at the findings of fact. If this doesn't meet any of those factors, it could be setting a precedence.

When questioned if the Board of Adjustment has ever granted a variance for a cell tower before, Judy explained that as far as she remembers, they have not.

Several of the board members did not feel this application met a couple of the findings of fact.

Backenstose moved and Stefka seconded the motion to find that the application for variances to North Platte City Code of Ordinances Section 156.305 (F)(1) to allow a 30 foot rear yard setback and allow a 30 foot side yard setback located at 1302 S. Chestnut St. be denied. The strict application of the zoning regulation would not produce an undue hardship. Roll call vote: "Aye": Backenstose, Wilke, Pedersen, Patterson, Stefka. "Nay": None. Absent: Fudge. Motion carried.

That will pull it from the agenda tonight.

Mr. Riha apologized for the anxiety this causes. They are growing and want to be a good neighbor to everyone.

4. Old Business. There was no old business to be discussed.
5. New Business. Judy stated the new city attorney may come to some of the Board of Adjustment meetings.
6. Adjourn. Chair Wilke adjourned the meeting at 9:20 a.m.

Michelle Bain, Recording Secretary