MINUTES
BOARD OF ADJUSTMENT
SEPTEMBER 11, 2012

Vice Chair Clithero called the meeting to order at 7:00 p.m. Those members attending included Philip Clithero, Joe Gorman, Rex Campbell, Fred Carroz and Martha John. Also attending were the City Clerk, Sheela Amin, Development Services Manager, Pat Zenner, and Assistant City Counselor, Rose Wibbenmeyer.

The minutes from the regular meeting of August 14, 2012 were approved as submitted on a motion by Mr. Campbell and a second by Mr. Gorman.

The following case, properly advertised, was considered. All persons testifying were duly sworn by the City Clerk.

Case Number 1843 was a request by Daniel Beckett, attorney for Broadway Office Park Condominium Association and Broadway Office Park, LLC (owner/lessor) and St. Charles Tower, Inc. (lessee), for a conditional use permit to construct a 110 foot stealth flag pole communications antenna and tower and the related above ground equipment shelter on property located at West Broadway (the lot on which the buildings addressed as 1201, 1203 and 1205 West Broadway sit).

Vice Chair Clithero opened the public hearing.

Daniel Beckett, an attorney with offices at 111 S. Ninth, stated he was representing Broadway Office Park, LLC and Broadway Office Park Condominium Association, who was the owner of parcel number 16-317-0016-009.00 01, a common area without a mailing address. He noted Broadway Condominium Association intended on leasing the property to St. Charles Tower, Inc., the entity that desired to construct the communications tower. He explained they were requesting the Board grant a conditional use permit to construct a 110 foot stealth communications tower designed to resemble a flag pole to accommodate three cellular carriers. At the previous Board meeting, he and others had presented testimony and exhibits regarding the efforts St. Charles Tower had made to find an alternate site and why no other viable site existed in the area. The hearing had been tabled due to a concern that not all parties in interest, defined as property owners within 185 feet of the subject tract, had received notice by mail. Notice of the hearing was sent to all proper parties this time. He asked the Board to review the minutes and evidence admitted at last month’s hearing, and to ask questions if clarification was needed. The subject property was zoned O-P and consisted predominately of commercial development. The site location was topographically depressed in relation to the surrounding area, and the photo simulations suggested the communications tower would be relatively obscure due to existing vegetation when approaching from the west and east. He felt the aesthetic impact on the community would be minimal. He commented that there were no existing towers or structures within the area that met the engineering requirements. St. Charles Tower had made a diligent effort to co-locate the proposed antenna on other facilities in the area, but had been unsuccessful because the technical requirements of enhanced cellular service could not be met. The subject site would be a capacity site, and was necessary to meet the demands of the carrier’s voice and data network. This tower was integral to the process of cell splitting, and was required to be equidistance from three existing towers. He understood a resident had voiced concern about the
emission of radiation from the proposed antenna at the previous meeting. The FCC regulated the operation of communications towers to include emissions, and studies had failed to find evidence linking radio waves or microwaves emitted by transmitting antennas. In addition, the Federal Telecommunications Act indicated no state or local government could regulate the placement, construction or modification of personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such facilities complied with the regulations of such emissions. He asked the Board to grant a conditional use permit to allow construction of the communications tower per the plans and specifications defined in the site plan.

Mr. Campbell commented that the area to the immediate north of this tract was a large open area, and asked if consideration had been given to placing the tower there.

Greg Yocum, an engineer with St. Charles Tower, 4 West Drive, Chesterfield, Missouri, stated they had looked at that tract of land, but the owner was planning to use the land for future development. The proposed tower would be tucked in between two buildings, which would help conceal it. If they would have used the open site, it would be in the middle of a field.

John James, 1115 W. Broadway, Unit D, explained he had purchased this property with his wife about three years ago, and they had hoped to start a family at this location. One of the reasons they had purchased the property was because the back of the property abutted a water retention pond with vegetation, which allowed for muskrats, families of geese, ducks, etc. The tranquility of nature would be replaced by a giant 40 yard structure of steel he would see everyday. He noted he had reviewed the project documents and did not feel the necessity had been documented. The applicant vaguely indicated it wanted capacity, but it did not show they were failing with regard to capacity. He stated he was on the phone virtually all day, and he was able to use his cell phone. The photos provided were from one mile and over a quarter-mile away, but that was not the reality that would be experienced by him or his neighbors. The materials indicated the fire station would not respond and that there was strong community opposition in that residential neighborhood. He pointed out the residents of his neighborhood did not want a tower either. He commented that a rezoning had occurred to allow the Business Park as this was a residential neighborhood, and the tower would be out of place in this location. He questioned the need for the tower since only one antenna would be placed on it initially. He felt this was a situation in which the corporations wanted to make money at the expense of the residents of Columbia. He stated this would negatively affect their standard of living, their enjoyment of their properties and their property values. He asked the Board to deny this request.

Kelli Hopkins, 1115 W. Broadway, Unit B, stated she had lived at this location since 2001, and noted the conditions around the Office Park had deteriorated. The fence was in need of repair and the lake often had debris in it. She was concerned that going forward, the tower would also not be kept up.

Ron DeLaite, 1115 W. Broadway, Unit F, commented that he still had not received notification and explained he was real estate broker and was concerned about the effect this tower would have on property values. He had consulted some of the neighbors and the feedback received had been negative. He stated he did not believe there had been a lot of opposition to the rezoning of this property for the Office Park because they felt it would be non-intrusive, but that would change with the tower being constructed. He asked the Board to deny this request to override the existing zoning.
Benjamin Long, 1115 W. Broadway, Unit E, commented that he and his wife had a one year old boy, and pointed out a tower existed two city blocks away at the Family Health Center. He thought that location was close enough for them to receive cell service from it.

Judy Clark, 1115 W. Broadway, Unit A, commented that there were a number of reasons a tower should not be placed at this location, to include aesthetics and practicality. She noted West Broadway was heavily traveled and it would create an eyesore. In addition, this was not the highest point in town, so it did not appear to be a practical location.

There being no further comment, Vice Chair Clithero closed the public hearing.

Ms. Wibbenmeyer read portions of Section 29-21.3 of the Code of Ordinances that included the standards the Board was to apply in its review of this request and was to consider in its decision.

Ms. Wibbenmeyer asked Mr. Gorman if the City Clerk had provided him a copy of the video from the hearing at the August meeting and if he had reviewed it. Mr. Gorman replied he was provided a copy and had reviewed it.

Mr. Zenner commented that staff felt the applicant had provided sufficient documentary information. He noted they relied on the technical expertise of the applicant in understanding their technologies and needs. He pointed out this was not a rezoning action. This was a conditional use under the provisions of the zoning ordinance, and it was permitted as a use, provided the Board deemed it appropriate. It was also permitted for the height variation being requested. He agreed the adjacent properties at the base or near the base of the tower would be impacted and recommended that additional landscape screening be installed. He stated staff felt the applicant had made due diligent efforts to locate on structures of a sufficient height. He noted the fire station discussed was challenged in its location and was a tight site. He commented that staff believed the tower was necessary in this particular location in order to meet the overall objectives stated by the applicant and the needs of the community.

Mr. Campbell stated the Board had received many of these types of requests during his tenure, and in the early days, cell phones were a new and important technology whose use needed to be enhanced when possible, but he felt they could now be more selective. The proposed site would be located on Broadway, one of the community’s premier streets, so it would be highly visible compared to another site. In addition, it was close to a residential area. He noted he would be more comfortable if it was in an area with tall trees or other screening.

Mr. Gorman asked for clarification regarding the need for the tower in terms of capacity and demand, and whether the Worley site at the Family Health Center would have been sufficient.

Mr. Yocum commented that in the past cell phones had been used primarily for highways and byways, but now people relied on cell phones in their homes. This was a high traffic road and resulted in high demand on the road and in the residential area. He explained the only reason a carrier and his company would spend this type of money and make this kind of effort was due to high demand. He noted the demand was not only for voice, but also for data, emergency services, etc. The only way to satisfy the demand was with towers and the only way to provide enhanced coverage and capacity was through cell splitting. In the past, 300-400 foot towers were built and Columbia would have been covered with six towers, but now 100-200 smaller towers were needed. He pointed out this was carrier specific due to the number of cell phone companies, so
Mr. Campbell asked if they owned the tower on Worley. Mr. Yocum replied no. Mr. Campbell commented that they were building this tower for their company to sell space. Mr. Yocum stated they were commissioned by the carrier, and they would not speculate without having a carrier in need of the tower space. He explained the first choice of any carrier was to co-locate, but nothing in the area would work, which was why his company was commissioned.

Ms. John asked for the radius a tower such as this would cover. Mr. Yocum replied it depended on frequency, but it was typically a quarter of a mile. He noted it was more about the number of people in the radius.

Mr. Gorman understood the economics of building the tower, and being the first carrier on the tower showed a need because carriers would first co-locate if possible. He asked how the need was identified. He wondered if people were not getting reception or if they had slow internet speed. He asked what was driving the need and how that was identified. Mr. Yocum replied everyone had different metrics, but he believed they typically looked at blocked calls and customer complaints.

Mr. Campbell asked why the City should try to provide perfect coverage for all companies. Mr. Yocum replied he believed that was addressed by the Telecom Act of 1996 in order to try to eliminate holes in the system so the consumer had good service.

Mr. Gorman stated he appreciated everyone coming to the meeting to voice their opinions, and explained the Board did not take anything for granted or make its decision lightly. This was not one of the easier decisions they had to make. He appreciated the comments made by Mr. James and agreed it was a family area, but felt family areas needed cell reception as well. He understood the neighbors would be looking up at the tower, so it would be larger for them than others with a different perspective, but cell towers had to go somewhere.

Mr. Campbell commented that he believed there were alternatives to what was being proposed, such as the Worley Street site, etc. Mr. Clithero understood the Worley Street site would not work. Mr. Beckett stated his understanding was that the Worley Street site would not meet the technical requirements. Mr. Campbell thought the fire station site would work. Mr. Clithero stated he understood that site was too small, and asked for clarification. Mr. Zenner replied his understanding, per conversations with Chief Witt and the City Manager’s Office, was that the site was not capable of supporting the cell tower adequately while still ensuring proper fire service movement within the property. It was at the discretion of the department that controlled the site as to whether the tower would impede its operations and the Fire Department was not interested in continuing to proceed forward. He noted Fire Station No. 2 was one of the smaller sites and challenged. As a result, he thought the lack of a response by the City was a clear indication it was not an available property.

Mr. Campbell understood the City generated income from sites and asked if that would go back to
the Fire Department if it was a Fire Department property. Mr. Zenner replied he was not an expert, but thought the City had contractual arrangements with carriers and the income went into the general fund and the Fire Department was a general fund department. He understood the City was currently investigating the distribution of revenue from municipal sites and options to partner with communications providers to reduce the proliferation of towers within inappropriate areas. He noted there was a demand, and the City had a need to ensure the public had the ability to have access to a cellular network. Economic development and growth as a community relied on the ability to have technology available to its residents and users.

Mr. Gorman understood the City had already negotiated down the original proposed height of the tower. Mr. Zenner replied that was correct, and noted the tower was located further from the exterior property line. It was tucked between the buildings, but it was still a very tall structure in the middle of a residential neighborhood. Staff felt the justification for the tower was the need in terms of dropped calls and blocked calls.

Mr. Campbell made a motion to approve the conditional use permit with the condition that the initial installation of required landscape screening surrounding the wrought iron fencing is, upon planting, a height of no less than eight (8) feet tall. The motion was seconded by Ms. John.

Mr. Campbell noted this was a hard decision for the Board.

CASE NO. 1843 VOTE RECORDED AS FOLLOWS: VOTING YES: CLITHERO, GORMAN, CAMPBELL, CARROZ, JOHN. VOTING NO: NO ONE. The conditional use permit was approved with the condition that the initial installation of required landscape screening surrounding the wrought iron fencing is, upon planting, a height of no less than eight (8) feet tall.

There being no further business, the meeting adjourned at 7:54 p.m.

Respectfully Submitted,

Sheela Amin
City Clerk