

**MINUTES
BOARD OF ADJUSTMENT
DECEMBER 11, 2012**

Chair Townsend called the meeting to order at approximately 7:00 p.m. Those members attending included David Townsend, Philip Clithero, Rex Campbell, Elizabeth Peters 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 November 13, 2012 were approved as submitted on a motion by Mr. Campbell and a second by Ms. John.

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

Case Number 1849 was a request by Thomas Schneider, attorney for McRiiley Properties, LLC, for a conditional use permit to construct an uncovered, surface off-street parking area on property located at 906 Woodson Way.

Ms. Amin explained a letter had been received from Travis McGee of THM Investments indicating THM Investments, a member of MM III LLC, did not see any issues with the approval of the conditional use permit, but wanted to be informed of formal plans and traffic control designs submitted to the City in the future.

Chair Townsend opened the public hearing.

Thomas Schneider, an attorney with offices at 11 N. Seventh Street, stated he represented the applicant, McRiley Properties, LLC, and explained this location had been before the Board in 2009 with regard to the construction of an apartment house, but there had been a change of plans. They now planned to use the property for a surface parking lot. He explained this property was enclosed or boxed in on each side by other developments. They anticipated having approximately 28 parking spaces and felt the use and location were appropriate as parking was always needed near the University of Missouri campus. He reiterated it would be aesthetically sealed off in every direction, so it would not impact the neighborhood in that manner. He pointed out the Board was only being asked to approve the concept of this use at this location as other development issues and amenities would be worked out with City staff, and noted they would comply with the minimum requirements in terms of screening and landscaping. He explained the access issues would need to be worked out, and stated he anticipated access to be from the west, south or both. He reiterated they were prepared to work out those and other development details.

Mr. Campbell asked if this would be a parking lot for coming and going traffic, or for tenants. Mr. Schneider replied that had not yet been decided.

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

Ms. Wibbenmeyer listed the standards the Board needed to consider in granting this conditional use permit.

Mr. Zenner stated staff was satisfied the project met the criteria the Board needed to consider. The parking lot would be enclosed and was a second tier property. The use was consistent with the surrounding areas and no variances were requested, so full compliance with all of the City's code requirements in term of landscaping, screening and stormwater had to be met prior to the issuance of a permit. He noted staff was supportive of the application and recommended approval of the conditional use permit.

Mr. Campbell understood this was a congested area without much street access and asked if the City required any sort of access or if it was up to the owner to secure access. Mr. Zenner replied Woodson Way was a private driveway with access to the street and access would need to be worked out with the City's traffic engineer. He noted the alleys were public and the ability to utilize the alley as access to the parcel would not be inconsistent with other developments in the downtown area. The circulation patter would have to be analyzed more closely as the formal site plan was submitted.

Mr. Campbell stated the entire University area was highly congested, and parking was at a premium within a mile of campus. He felt this was an appropriate use.

Mr. Campbell made a motion to approve the conditional use permit. The motion was seconded by Mr. Clithero.

CASE NO. 1849 VOTE RECORDED AS FOLLOWS: VOTING YES: TOWNSEND, CLITHERO CAMPBELL, PETERS, JOHN. VOTING NO: NO ONE. The conditional use permit was approved.

Case Number 1850 was a request by Daniel Beckett, attorney for Greg and Misti Post (owner/lessor) and St. Charles Tower, Inc. (lessee), for a conditional use permit to construct a 110 foot stealth communications tower and the related above ground communications equipment shelter on property located at 2400 S. Providence.

Chair Townsend opened the public hearing.

Daniel Beckett, an attorney with offices at 111 S. Ninth Street, stated he represented St. Charles Tower, Inc. and Greg and Misti Post, the owners of 2400 S. Providence, who intended to lease the property to St. Charles Tower for the construction of the communications tower indicated in the application. They wanted to build a 110 foot communications tower, designed to resemble an elm tree, and the related above ground communications shelter on the site. He provided exhibits 1-6, which included certified copies of Sections 29-13.1, 29-21.3 and 29-23 of the Columbia Code of Ordinances, the proposed site plan, letters from St. Charles Tower that accompanied the site plan, and photo simulations showing the visibility of the tower once built, for the record. The property was zoned O-P, and vacant lots adjacent to, south and north of the tract were zoned A-1 and O-P. In addition, directly across the outer road was a multi-family development known as Providence Village. He noted that as part of the conditional use permit request, they were also seeking approval to exceed the height limit in the O-P district by 75 feet. The 110 foot height was necessary given the topographical conditions of the area surrounding the site and was due to the technical requirements of the site itself. He referred to the site plan and photo simulations, and pointed out the proposed tower and support facilities would be built on the southeast portion of the subject tract and be relatively obscured by the vegetation when approaching from the north, so the aesthetic impact of the tower on the community would be minimum. He noted St. Charles Tower was willing to bring the branches of the disguised tower to the existing tree canopy or as low as

the Board requested in order to alleviate concerns. He commented that he believed the matters outlined in Section 29-21.3(e)(2) had been satisfied. There were no existing towers or structures within the geographical area that met the engineering requirements of the proposed tower. This was a capacity site that was necessary to meet the demands of the carriers' voice and data network, and was integral in the process known as cell-splitting, which required the tower to be equidistant from three existing cell towers to achieve greater capacity coverage. It would assist in reducing the stress placed on the system held at the University of Missouri. He pointed out that neither St. Charles Tower, nor the applicant, had previously failed to take advantage of available shared use opportunities, and noted the proposed tower could accommodate four cellular carriers. He asked the Board to grant the conditional use permit to allow construction of the communications tower per the plans and specifications provided.

Ms. John asked for the reason for the change from a pine tree to an elm tree. Mr. Beckett replied it was changed per staff recommendation, and pointed out the branches of the tower would be brought down to the existing tree line.

Greg Yocum, 4 West Drive, Chesterfield, Missouri, stated he was with St. Charles Tower and explained elm tree branches had been more successful. Pine trees did not have the same effect and tended to look like old-time Christmas trees. He pointed out staff had expressed opposition to a pine tree, and they agreed and felt the elm tree was a better alternative as it would look better.

Ms. John asked what would happen in the fall when the other trees turned brown. Mr. Yocum stated they had pictures of the area during the fall and summer, and noted there were some evergreens in the stand of trees.

Mr. Campbell asked for clarification regarding the location of the tower as he wondered if it would be near the old shed on the property. Mr. Yocum showed Mr. Campbell the location on a site map.

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

Ms. Wibbenmeyer listed the standards the Board needed to consider in rendering its decision on this conditional use permit request, and pointed out approval of this request would be contingent upon City Council approval of revisions to the statement of intent of the underlying O-P zoning.

Mr. Zenner noted the original proposal of a 110 foot pine tree was not acceptable to staff as it was aesthetically out of place. He explained the offering of the elm tree was proposed as an alternative, but staff still had reservations regarding the actual stealth design of a tree based upon the fact the average stand of trees in this area ranged from 45-60 feet. It would still be 40 feet above the existing canopy. He understood it was a technology that was necessary, but most of the other towers in Columbia were monopole structures that housed the antennas internally to reduce the visible impact created. He commented that staff felt the telecommunications regulations promoted co-location, and the design proposed promoted the maximum amount of co-location opportunity possible. They felt this particular site was a necessity based on the fact there was nothing else at an elevation similar to this that could support the actual expansion of the system and reduce the infrastructure impact experiences at the athletic complex of the University of Missouri, but they were also not comfortable with having a structure that might look out place to the skyline at the highest elevation point as guests were leaving or entering the campus. He pointed out the aesthetic concern compromised the co-location aspect of the telecommunication

regulations desired. He agreed the elm tree looked better than the pine tree, would hide the antenna array mounted exteriorly and allow the opportunity for easier exchange of antenna and other exteriorly mounted equipment for more expansion of the system over time. If the Board was concerned about the aesthetics at this highly prominent location, co-location would be limited in terms of three carriers instead of four, and there might be a need for another tower in close proximity in order to allow for expansion of the system as the customer base grew in Columbia. He explained the revised site plan handed out this evening addressed concerns regarding screening and driveway access, and pointed out any Board action was contingent upon Council approval of the site plan and the revision to the underlying zoning. He anticipated Council considering this request on January 22, 2013. He reiterated staff was not comfortable with the stealth design of a pine or elm tree, but was supportive of a monopole fully enclosed tower.

Mr. Campbell asked about the long term maintenance of a pine or elm tree stealth tower as anything constructed would gradually deteriorate. He wondered if the City would monitor whether it was maintained. He was concerned it could become an eye sore. Mr. Zenner explained the City did not have any provisions within its regulatory structure related to maintenance of the leaf structure. The tower owner or its tenants would have to maintain the integrity of the initial improvement. He commented that City Code was set up in a way that maintenance tended to be reactive and by request.

Mr. Clithero asked if the pine or elm tree design was proposed at the request of staff or if it was the desire of the applicant. Mr. Zenner replied the original request was a pine tree, and noted it was based upon the need to maximize co-location opportunity and exteriorly mount the antennas. Mr. Clithero understood it was designed to camouflage the antennas. Chair Townsend asked if the monopole structure would maximize co-location opportunities. Mr. Zenner replied the monopole structure would accommodate three carriers at this height while the elm tree structure would accommodate four carriers and make the changing out of antenna panels easier. Mr. Clithero asked if it made financial sense to allow for three carriers instead of four carriers. Mr. Zenner replied that was a question for the applicant as it was not something staff considered.

Mr. Campbell asked if the Board had the prerogative of changing the request from one type of pole to another type of pole, such as a pine tree to an elm tree or monopole. Ms. Wibbenmeyer replied the notice was advertised as a stealth tower. Chair Townsend understood the broad definition of a stealth pole could include a monopole, tree, watch tower, etc. Ms. Wibbenmeyer stated that was correct as long as it met the definition of a stealth pole.

Mr. Campbell made a motion to approve the conditional use permit for a 110 foot monopole structure. He was concerned with how the structure would look in 20 years if it was a pine or elm tree structure.

Mr. Yocum explained a monopole structure was a pole with a full array and a slim-line or flagless flag pole was a stealth facility. He pointed out monopole and stealth were not the same. He noted maintenance was typically 8-10 years for trees, and asked if maintenance could be a condition of approval if the concern was branches falling off, etc. Ms. Wibbenmeyer replied the duty to maintain would be before the branches fell off. She explained this was considered a structure and the property maintenance code would require it to be painted, etc., and kept in good repair.

Mr. Campbell explained he was not concerned with what was being built now, but was concerned about how it would look in 10-20 years. Mr. Yocum stated St. Charles Tower had been around for

10 years and explained they were notified by the community or tenant, if they were not already aware of a maintenance issue. Mr. Campbell asked how long it took for any previous elm tree structure to be affected by weather. Mr. Yocum replied it was 8-10 years with palm trees in Nevada and Arizona. Pine trees had been in Missouri for about six years, and they had not had any degradation on those yet. The elm tree was relatively new, so he was not certain. He explained they wanted the tree as opposed to a pole structure because more antennas and spectrums were required for increased data speed for smart phones. The slim-line only allowed for three antennas and essentially two carriers, but an elm tree or array tower allowed for twelve antennas along with all of the associated radio gears and four carriers. He noted they were willing to go down to 100 feet for an elm tree structure if it appeased the Board.

Mr. Campbell withdrew his previous motion.

Ms. John asked if they needed to specify the type of stealth tower or if they could just say it was a stealth tower. Mr. Zenner replied the Board needed to specify the type of tower and the conditions. Ms. Wibbenmeyer explained that the Board needed to specify the color if they wanted it to be a certain color. The property maintenance code would require the structure to be painted, but would not require it to be the color of a tree. Mr. Campbell thought it should be as unobtrusive as possible. Ms. John understood the plans indicated elm tree green for the leaves and some kind of brown for the branches. Mr. Campbell thought it should fit in with the natural environment of the site.

Mr. Campbell made a motion to approve the conditional use permit for a 100 foot stealth communications tower decorated in the elm tree format while maintaining the leafy green appearance with brown bark and maintenance upkeep to follow as needed, and for the related above ground communications equipment shelter, subject to City Council approval of the revisions to the statement of intent and the required O-P development site plan. The motion was seconded by Mr. Clithero.

CASE NO. 1850 VOTE RECORDED AS FOLLOWS: VOTING YES: TOWNSEND, CLITHERO CAMPBELL, PETERS, JOHN. VOTING NO: NO ONE. The conditional use permit was approved subject to conditions.

Case Number 1851 was a request by Marjorie Lewis, attorney for the Housing Authority of the City of Columbia, Missouri (owner/lessor) and Full Stream, LLC (lessee), for a conditional use permit to install communications antennas on existing antenna support structures, antenna support structures, tower, accessory equipment, equipment shelters and/or cabinets, power and optic fiber conduit and other materials and items as provided for in the plans, and for variances to the maximum height requirement and screening requirement on property located at 1201 Paquin Street.

Chair Townsend opened the public hearing.

Marjorie Lewis, an attorney with offices at 601 E. Broadway, Suite 203, stated she was representing the Housing Authority of the City of Columbia, Missouri (CHA) and Full Stream LLC, and explained CHA was the owner of the property at 1201 Paquin Street and Full Stream planned to install the communications facility at issue. She offered exhibits 1-10, which included a copy of the application for the conditional use permit and variances, the notice of public hearing before the Board, certified copies of Sections 29-8, 29-21.3, 29-23, 29-26 and 29-31 of the Code of

Ordinances, a photograph of the outside of Paquin Tower, a report of Full Stream LLC verifying requirements of 29-21.3, and the staff report, for the record. The property was zoned R-3 and was surrounded by R-3 properties and uses, and Paquin Tower was a large multi-family housing complex. She commented that Full Stream planned to expand its existing WiMAX wireless data telecommunications network by placing WiMAX and microwave equipment on the roof and penthouse of Paquin Tower in order to provide wireless communications service to the southern downtown area, the University campus and the lobby area of Paquin Tower. They were requesting a conditional use permit be granted to allow them to install communications antennas on existing antenna support structures, antenna support structures, towers, accessory equipment, equipment shelters and/or cabinets, power and optic fiber conduit and other materials and items as provided in the plans and drawings submitted on the roof and penthouse roof of Paquin Tower. They were also asking for two variances. One was a variance to the maximum height requirement of 35 feet plus 6 feet imposed by Sections 29-8(d)(4) and 29-26(a)(3) by allowing the installation and mounting of the communications facilities on the Paquin Tower roof up to a height of ten feet above the Paquin Tower penthouse rooftop. The other variance request was to waive the screening requirements imposed by Section 29-21.3(f)(6)(b). She stated the communications facilities included an antenna as defined by Section 29-21.3(b), which was a permitted use per Section 29-21.3(c)(2), but it also included equipment and an equipment shelter, and those were not listed as a permitted use, so the conditional use permit was being requested to allow all of the associated equipment of the antenna. She commented that in rendering its decision, the Board had to consider the factors listed in Section 29-21.3(e)(2), and stated the reasons she believed they met those factors along with the conditions listed in Section 29-23. She also listed the reasons she believed the variances were reasonable.

Kent Froeschle, 700 Fay Street, stated he was CEO of Full Stream, LLC, and noted they were in the process of building a WiMAX high speed and high capacity broadband wireless network for Boone County and the surrounding counties. This would allow for high capacity wireless data transfers that could serve residential as well as commercial activity. It was independent of existing data networks, such as cable, telephone and other copper fiber networks. He listed the locations of the company's other facilities and explained this was needed to meet the demands of the downtown and campus areas. The Fay Street facility allowed coverage to northern downtown and this would assist with the southern downtown area and the central campus area of the University of Missouri. The advantage of Paquin Tower was its height as there was not another facility in the downtown area at that height. He explained they had contacted the City about locating on the new parking garage, but the City did not want these types of installations. They had also looked at the Tiger Hotel, but due to the Fay Street location, that was not satisfactory in terms of the RF design since they were relatively close together. Paquin Tower was far enough away, even though it was only three blocks away, for the engineering to be worked out. He commented that there were other facilities already on Paquin Tower, and this would be in line with those.

Ms. Lewis stated she believed all of the requirements of the conditional use permit and variances requested had been satisfied, and noted the staff report recommended approval. She asked the Board to approve the conditional use permit and the variances requested.

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

Ms. Wibbenmeyer noted Ms. Lewis correctly stated the legal standards the Board was to consider for granting the conditional use permit and variances.

Mr. Zenner commented that the application was for an antenna, and noted this was a two-phased project. Phase one was the installation of six telecommunication antennas and associated equipment, and phase two was the installation of some microwave dishes associated with an expansion of the improvements involved in phase one. The building, which was in a R-3 zoning district, well exceeded the 41 foot maximum height limit, and there were existing telecommunication facilities on the roof. Some of those facilities existed prior to the adoption of the current telecommunications regulations and others had existing Board of Adjustment approvals. Staff was suggesting the maximum height of any future structure be 10 feet above the top of the current penthouse roof, which was about 172-173 feet, and for the screening and landscaping variances to be approved for any future structure on the roof of Paquin Tower. He explained staff was supportive of the taller structures in town being used more frequently with less administrative and regulatory process, and this was a first step in that direction.

Mr. Clithero asked if staff was okay with it being 10 feet above the Paquin Tower penthouse or if they wanted it defined more closely. Mr. Zenner replied he was satisfied and did not believe it needed to be defined more closely.

Ms. John made a motion to approve the requested conditional use permit and variances by allowing a maximum height of ten feet above the existing roof elevation of the Paquin Tower penthouse and by waiving the screening requirements. The motion was seconded by Mr. Clithero.

Mr. Campbell stated he was surprised there were not more antennas, etc. on the site. Chair Townsend thought it was only a matter of time.

CASE NO. 1851 VOTE RECORDED AS FOLLOWS: VOTING YES: TOWNSEND, CLITHERO CAMPBELL, PETERS, JOHN. VOTING NO: NO ONE. The conditional use permit and associated variances were approved.

There being no further business, the meeting adjourned at 8:14 p.m.

Respectfully Submitted,

Sheela Amin
City Clerk