

**MINUTES**  
**DOUGLAS COUNTY BOARD OF ZONING APPEALS**  
Training Room, Public Works/Zoning and Codes  
3755 E 25<sup>th</sup> Street  
**Monday, January 25, 2020**  
10:00 a.m.

MEMBERS PRESENT: Charlie Thomas, Chair; Phil Metsker, Scott Eudaly, Jerry Wohletz, Rich Barr  
MEMBERS ABSENT: N/A  
STAFF PRESENT: Tonya Voigt, Zoning Director; Dre'VeL Taylor, Zoning Specialist; Ben Harris, Code Enforcement Officer  
PUBLIC PRESENT: Jill Dickerson 1996 ? 1250 Rd, Mr Calkins

Charlie called the meeting to order at 10:01 a.m.

Charlie called roll and a quorum was established.

**ITEM NO. 1: MINUTES**

Approve, revise, or approve with conditions the December 21, 2020 meeting minutes.

Rich Barr moved to approve the October, Charlie Thomas seconded. Motion carried 5-0.

**ITEM NO. 2: DISCLOSURE OF EX PARTE COMMUNICATIONS**

Chair asks each Board member for disclosure of any ex parte communications on the items on the agenda.

Charlie asks, all members attest to no communication.

**ITEM NO. 3: STAFF REPORT**

**10:02 Charlie Thomas introduced variance request.**

**ON AN APPLICATION FOR: A VARIANCE** under the terms of the Douglas County Zoning and Land Use Regulations of Douglas County, Kansas, from Brad Ochs, for a 45 foot reduction of the required 80 foot setback for a ground mounted wireless internet tower, located at 1927 N 1275 Rd. Section 12-306-31.05: A ground mounted tower shall be set back from the nearest property line a distance which is at least equal to the height of the tower, measured from the center of the tower.

**APPLICANT/OWNER:** Brad and Connie Ochs

**LOCATION:** 1927 N 1275 Rd

**AREA:** 9.97 Acre  
**DATE OF PUBLIC HEARING:** January 25, 2021  
**DATE PUBLIC NOTICE PUBLISHED:** January 6, 2021  
**PRESENT LAND USE:** AG-2, Transitional Agricultural District

**10:04 Tonya Voigt introduces Variance request...**

**Tonya, discussed floodplain regulations related to property.**

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**SECTION AND REQUIREMENT OF ORDINANCE PERMITTING VARIANCE:**

12-306-31.05: A ground mounted tower shall be set back from the nearest property line a distance which is at least equal to the height of the tower, measured from the center of the tower.

**DESCRIPTION OF VARIANCE REQUESTED:** The subject property is a 9.97 acre interior lot that that contains approximately 4.5 acres of land within the regulated floodplain. The remainder of the land is in the .02% floodplain. In the southeast corner of the lot, lies a half-acre pond, which appears to have partially existed since the 1960's. Spring Creek makes up the eastern border of the property. Contours show that the properties to the east drain into Spring Creek, which is a major cause of the floodplain designation on this lot. The highest elevations on the lot consist of the driveway on the west side and the southwest corner where the house sets. The applicant is proposing installing an 80' tall freestanding aluminum tower with antenna for private internet service. The location of the proposed tower is 35' from the southwest corner of the lot. In order for the tower to have maximum efficiency, the tower must be elevated at least flush with the nearby trees to receive and boost signal, but County staff require the tower be placed a minimum of its height away from adjacent property lines. This regulation is one that County staff are firm on holding due to the potential danger that a falling tower can have, regardless of material or weight.

10:07 Brad Ochs applicant speaks on his behalf.

Rich Barr asks if there are other locations he can place the tower on his property in order to meet the regulations?

Brad Ochs stated theoretically yes. In the middle of the driveway. It get more expensive the further it is from the house. Tower has to be above the canopy. That is a problem in the spring, summer.

Rich Barr ask about moving it closer to the house. Brad states, it would be in driveway at that point and could fall on house.

Scott Eudaly, I assume you have exhausted other paths to find internet.

Brad explains that even before buying the property he tried to solve the internet problem. Both wireless companies that looked at the property could only get a weak signal. They came out in the

winter. Could not get a signal in the summer. Believes he was given bad information from the internet companies. Brad and his wife both work from home due to Covid-19.

Scott asks about telephone land line.

Brad states that he attempted that.

Scott asks about placing it near driveway.

Brad states that he would be concerned about it being hit by a vehicle if near driveway.

Brad states that winds from the east do not blow 110 mph, so it is very unlikely that the tower would fall to the west.

He says the application made it seem that it would be dangerous to the neighbor. He believes that is not the case and the neighbor only has grassland.

Rich Barr states that 250 lb. falling across the roof of the house is less than a tree.

Rich Barr states that he has had experience with 2 towers falling. Across Iowa St. and Law Enforcement parking lot.

Rich Barr states that there is good reason for this regulation. He states that he feels for the applicant. He doesn't know if he could get a taller tower, or move it closer to the house. He states that if we do this for Brad then he has to do this for other people.

Brad Ochs states that he know he can get it further than 35 ft. away but 80 feet is unfeasible. Brad asks if he would be allowed to anchor the tower up halfway with guy wires so that it would not fall onto the neighbor's property. The guy wires would be at 40 ft. That would eliminate the risk to the neighbor.

Scott Eudaly states that they are not qualified to make a determination on the guy wire. That would be an engineer's role.

10:24 Scott stated that an easement from the neighbor is they only path her could see.

Brad Ochs asks if the board would entertain an engineer's report if he had that drafted.

Rich Barr discusses self-collapsing towers.

Tonya Discusses towers in the county.

Rich Barr states that he is not qualified to make a call about how the tower would fall.

Charlie Thomas asks about neighbors input.

Tonya Voigt states that no neighbors have reached out to the office.

Brad Ochs states that one neighbor called him.

10:30 asks if any neighbors would like to give input.

Jill Dickerson, a neighbor asks Brad to describe where the tower would be located?

10:37 Brad Ochs shows and discusses the tower schematics.

Brad Ochs offers to drop off the tower information to Jill. Brad states that 10 years from now this tower will likely be obsolete and he will take it down.

10:38 Steve Calkins (neighbor) He is asking if it will be a visibility issue. After listening to the meeting, he has no problem with the tower.

Brad Ochs states that he is working two full time jobs right now. And hasn't connected with Joe Tignor. The neighbor effected.

Steve Calkins gave Brad Joe's phone number.

Charlie Thomas thanks the neighbors for joining to provide input and to see how the process works.

10:42 Scott Eudaly states that the county reg. is to protect landowners. He discusses how property could change hands and how future owners could be affected. The BZA has to look at the long term and that is his hesitation, unless there is a waiver with the neighbor.

10:42 Charlie Thomas lost internet connection from the meeting

Jerry Wohletz states that he is concerned about the neighbor's property. He would be in favor of a tower that would collapse or be held by guy wire. He feels for the applicant. He states that Brad has a concern for his house and the BZA has a concern for the neighboring property.

Brad Ochs states that the people in Douglas County are suffering. He believes this variance would show people that these towers are possible in the county.

10:46 Tonya Voigt states that towers taller than 80' would go through a Conditional Use permit Process.

10:49 Rich Barr states that he understands a taller tower would cause admin headache. That said, he has to be an advocate for the neighbors in the county. This limits the neighbor's ability to use his land the way he could possibly want to use it. The regulations are meant so that it would not impact the neighbor. HE suggests Brad moves the tower closer to the house.

10:51 Brad Ochs states that if it falls it would most likely fall on his house.

Rich Barr states that it is Brad's tower and the risk should be on Brad and not the neighbor. The board has to make sure that if the tower falls it does not affect those who have no control right now. If Charlie wants a motion, he would move for denial of the application.

10:53 Charlie Thomas asks for any more comment before a motion.

Brad asks if he has other options if the tower is denied.

Tonya says that one option is to table the application until additional information is brought forward.

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## **STANDARDS FOR VARIANCES**

**That the variance requested arises from such condition which is unique and which is not ordinarily found in the same zoning district; and is created by this Resolution and not by an action or actions of the property owner or the applicant**

While most towers constructed in Douglas County must go through the Conditional Use permit process, staff have determined that due to the height and private nature of this tower, this building permit application can be processed as an accessory building, providing that all zoning regulations, including setbacks, are met. The applicant is proposing the tower to be located 35' from the south and west property lines, which is a 45' reduction of the required 80' setback for a tower of this height. If the tower met setbacks or was certified as self-collapsing, this application would be administratively approved. There are other adequate locations on the property that lie outside of the regulated floodplain that are a similar elevation as the proposed location.

**Granting the variance would not adversely affect the rights of adjacent property owners or residents**

The adjacent property owner could potentially suffer damage or harm if the tower were to fail. While the amount of damage is arguable due to the weight of the tower, the opportunity for harm to occur still exists. County staff are not comfortable in permitting a structure that has the potential to infringe upon the safety and rights of the adjacent owner.

**The strict application of the regulations for which the variance is requested would constitute unnecessary hardship upon the property owner represented in the application**

The strict application of these regulations would require the applicant to construct the proposed tower in a different location on the property. The applicant would put their personal home at risk of fall damage in other locations, but would not infringe upon the rights of the adjacent neighbor, nor risk endangering any persons, animals or future structures the neighbor may put on their land. The use of the tower may be less effective the lower it is in relation to the height of trees on the property.

**The variance desired would not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare**

The proposed aluminum tower is intended to provide the applicant and his household access to reliable internet. This proposed location of the tower will not have any impact on the general public besides the adjacent property owner. The tower is unlikely to be seen by any other owners except the neighbor to the southwest. The antenna will function to provide better internet to the applicant only, therefor will not benefit or harm others.

**Granting the variance desired would not be opposed to the general spirit and intent of these Regulations**

The intent behind the regulations is to ensure that in the instance of a critical failure, the structure will fall completely onto the owners property. As this tower lacks features to ensure it is self-collapsing, staff find the proposed location to be against the intent of the safety aspects of these regulations.

**Agency Comments**

**Emergency Communications:**

TBD

**STAFF RECOMMENDATION**

County Staff recommend denial for a VARIANCE under the terms of the Douglas County Zoning and Land Use Regulations of Douglas County, Kansas, from Brad Ochs, for a 45 foot reduction of the required 80 foot setback for a ground mounted wireless internet tower, located at 1927 N 1275 Rd. Section 12-306-

31.05: A ground mounted tower shall be set back from the nearest property line a distance which is at least equal to the height of the tower, measured from the center of the tower.

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**10:55 Rich Barr Moved for more information to be brought back.**

**Phil Metzger seconded.**

**Tonya clarified that more information about collapse or guy wires be brought forward.**

**Scott asked if a waiver/easement could be brought forward from the neighbor.**

**Tonya states that easement would be in perpetuity with the land.**

**Charlie Thomas states that we are tabling and in 1 month Brad will come back with all relevant information.**

**10:58 – DreVel discusses that it will be tabled and brought back for the February meeting if Brad has the needed documents in time.**

**Charlie asks for a vote. Phil, Jerry, Rich, Scott, Charlie all vote YES to table the application for additional information.**

11:01 DreVel shows off the BZA Website

11:01 Charlie asks if we are ready to adjourn.

11:02 Jerry Wohlez motions to adjourn and Scott Eudaly seconds.

11:03 Motion Adjourned.