

**BOARD OF ZONING APPEALS
MEETING
MARCH 23, 2010**

MEMBERS PRESENT: Lynne Matthews, Chairman
Henry Bauman, Richard Kilmer, James McClary,
Gene Murtha, Ray Rose, Robert Sween

MEMBERS ABSENT: David Baird

OTHERS PRESENT: Teri Tubbs, Zoning Official
Lisa Hannon, Zoning Coordinator
Lauralee Westine, Jeff Birkey

CALL TO ORDER/ANNOUNCEMENTS

- A. Roll Call
- B. Next Scheduled Meeting - April 27, 2010
 - Ms. Matthews announced Mr. Kilmer would not be available for the April 27, 2010 meeting.
- C. Amended Meeting Dates
 - Ms. Matthews announced the Board's last meeting of 2010 had been changed to December 21, 2010.
- D. Election of Officers
 - Recording Secretary Kelly opened the floor for nominations for Chairman.
 - Mr. Bauman NOMINATED Ms. Matthews for Chairman.
 - Recording Secretary Kelly called three times for any other nominations.
 - As there were no other nominations, Ms. Matthews was appointed Chairman by acclamation.
 - Ms. Matthews then opened the floor for nominations for Vice Chairman.
 - Mr. McClary NOMINATED Mr. Bauman for Vice Chairman.
 - Ms. Matthews called three times for any other nominations.
 - As there were no other nominations, Mr. Bauman was appointed Vice Chairman by acclamation.

APPROVAL OF MINUTES

- A. Meeting of January 26, 2010
 - Mr. McClary MOVED, Mr. Kilmer SECONDED approval of the January 26, 2010 minutes.
MOTION CARRIED UNANIMOUSLY.

PUBLIC HEARINGS

- Recording Secretary Kelly swore in all participants.
- A. V-03-10 - Request a variance to the Land Development Regulations as per Chapter 26, Article 16, Section 16.10, of the City Code of Ordinances to allow AT&T Mobility, LLC to construct a new replacement Unipole wireless communication facility that is 150 feet in height instead of 110 feet in height as permitted by Chapter 26, Article 4, Section 4.3(b) of the City Code of Ordinances and to allow a chain link fence topped with a barbed wire barrier to enclose the ancillary structures associated with the wireless communication facility instead of a 6 foot high opaque screen of landscaping and wood fence or wall as required in Chapter 26, Article 4, Section 4.34(f).
LEGAL: A portion of Lots 5 and 6, Block 1, Plan of Punta Gorda Center according to the map of plat thereof as recorded in Plat Book 1, Page 20, of the Public Records of Charlotte County, Florida [long legal description on file with the City of Punta Gorda, Urban Design Division, 126 Harvey Street, Punta Gorda, Florida 33950 (941)575-3372], a/k/a 1623 or 1625 Aqui Esta Drive, Punta Gorda, Florida.
- Ms. Teri Tubbs, Zoning Official, displayed an overhead of the site location, as delineated in the agenda material, stating the request was to replace the existing Unipole, which currently could accommodate up to 3 carriers, with a 150 foot Unipole, which could accommodate up to 6 carriers. She mentioned the extra height would allow for better coverage and service for customers of these companies as well as assist the accuracy of locating a 911 wireless caller. She noted the site currently housed a fire station and was surrounded by a nature park which provided sufficient buffering for both the existing and replacement Unipole. She advised installation of the original Unipole included a provision for buffering through a solid fence and landscaping; however, the site was already buffered due to the distance from any open area and the natural vegetation on the site; therefore, a chain link fence was installed instead of a solid fence. She clarified this request included expansion of the chain link fence to enclose the ancillary facilities to the Unipole, opining same was logical and did not have a negative impact to the surrounding area given the location and existing vegetation. She stated the granting of a variance to increase the height of the Unipole would not be injurious to the surrounding neighborhood as it would allow for an additional three carriers to utilize the site, thus increasing the service area for wireless providers and customers. She mentioned the Federal Aviation Administration (FAA) had determined there was no hazard to air navigation for the requested facility height of 150 feet. She concluded the additional height would allow for better service to area

customers, adding staff did not anticipate any adverse effects from same; thus, based on the information provided by the applicant, she recommended approval of V-03-10.

- Ms. Matthews asked if the existing chain link fence was topped with barbed wire.
- Ms. Tubbs replied she believed so.
- Ms. Matthews confirmed there had been no problems associated with same to date.
- Mr. Bauman stated he understood the existing fence was constructed in error as far as the material.
- Ms. Tubbs agreed, pointing out the applicant this date was not the same as the prior owner. She advised the error was not discovered until submission of the subject application.
- Mr. Murtha asked if the existing tower could accommodate any additional carriers.
- Ms. Matthews responded she understood the tower's existing height would support only three carriers, adding the increased height to one hundred fifty feet would allow for six carriers, one of which was AT&T. She noted a question arose at the Planning Commission meeting of March 22, 2010, with regard to the propensity of the tower to fall during severe weather, suggesting same be addressed by the applicant later in the meeting.
- Mr. Kilmer recalled the original tower had provisions for a flag; however, he had never observed same.
- Ms. Tubbs replied the plans specified there would be no flag in that it was not desirable to draw attention to the tower.
- Mr. Murtha asked how AT&T operated currently, pointing out he had no difficulty with his own AT&T service.
- Ms. Lauralee Westine, applicant's agent, introduced Mr. Jeff Birkey, AT&T's Radio Frequency Engineer. She confirmed AT&T had no facilities on the existing tower, which currently accommodated Nextel, Verizon and Sprint, adding there was insufficient room for another carrier to collocate within same. She clarified AT&T had a gap in service in the area. She mentioned AT&T did not actually own the tower but rather same was owned by Towerco Assets LLC. She explained AT&T conducted the original site walk with the City, including Fire Department personnel, at which time AT&T offered to establish additional buffering; however, the Fire Department advised they did not wish to lose any more space. She stated the Fire Department expressed a preference for a chain link fence in that it was felt same was more secure and provided better visibility. With regard to a flag, nearby property owners did not desire a flag due to the noise associated with same flapping in the wind.

- Mr. Birkey displayed two maps, denoting current and projected coverage areas for AT&T service, stating solid, in-building coverage would be provided throughout Punta Gorda Isles (PGI).
- Ms. Matthews mentioned the applicant held a neighborhood meeting on March 1, 2010, to address the community's concerns, pointing out only 20 people attended.
- Mr. Bauman asked if other towers in the area were also 150 feet in height.
- Mr. Birkey replied they varied in height from 150 to 250 feet
- Mr. Sween questioned the effect of metal roofs on service quality.
- Mr. Birkey replied there was no impact on coverage, stating he spoke from personal experience.
- Mr. Bauman asked why the existing tower could not be reconfigured to allow for AT&T's presence without increasing the overall height to 150 feet.
- Ms. Westine replied City Code limited tower height to 110 feet and required 3 tenants within each. She explained a monopole allowed the addition of more antennas to its exterior, adding City Code required such equipment to be installed internally. She clarified the existing tower provided only three spaces.
- Mr. Bauman questioned the potential for another increase in height in the future.
- Ms. Westine replied the proposed tower would be designed for a maximum of 150 feet in height.
- Mr. Baumann clarified the proposed tower was a complete replacement.
- Mr. Murtha asked if 150 feet in height was necessary to cover the horizon as far as communications.
- Mr. Birkey replied every precaution was taken to prohibit going over the horizon as this only created interference, bad call quality, dropped calls, etc. He explained AT&T was attempting to localize their antennas to specific areas without causing interference.
- In response to the earlier comment relative to the tower being able to withstand severe weather, Ms. Westine advised the tower was designed to "bend" as opposed to "topple over."
- Mr. Bauman asked how fast such a tower could be reconstructed following a significant weather event.
- Ms. Westine replied AT&T would first bring a "Cellular on Wheels" to the area as a temporary fix, stating same could be mobilized within hours. She continued the next stage would be actual replacement of the tower.
- Mr. Kilmer questioned ownership of the property.
- Ms. Westine replied the City, which in turn leased the space to Towerco, adding AT&T had a tenant lease with Towerco to collocate their antennas on the tower.

- Mr. Kilmer asked if AT&T negotiated space on the tower prior to this date.
- Ms. Westine replied AT&T approached Towerco who then approached the City. She clarified Towerco did not enter into a lease agreement with AT&T until they were advised the City was interested in allowing the tower to be rebuilt.
- Mr. Kilmer clarified there was no agreement in place at this time. He asked if the existing tower's inability to accommodate more carriers was the result of a lack of planning.
- Ms. Westine expressed uncertainty regarding same, noting the tower was established in accordance with City Code. She then displayed photo-simulations depicting the subject area with a 150 foot tower.
- Mr. Kilmer commented a second tower represented another solution.
- Ms. Westine agreed; however, the Fire Department expressed disfavor with same.
- Mr. Rose asked if City Code prohibited two towers within one mile of each other.
- Ms. Tubbs replied affirmatively.
- Mr. Rose recalled the subject location had been determined to be the least obtrusive in PGI.
- Mr. Murtha questioned the possibility of another technical solution, pointing out 150 feet was not insignificant.
- Ms. Westine replied there were no other feasible parcels from a zoning perspective.
- Mr. Sween asked if other antennas could be mounted on the outside of the existing tower, acknowledging same would be more unsightly.
- Ms. Matthews countered the intent behind the existing tower was to avoid same.
- Ms. Westine added City Code prohibited same, allowing only internal antennas.
- Mr. Kilmer asked why Towerco was not the applicant of record.
- Ms. Westine noted the file indicated an agent of record from Towerco to herself, adding a lease option was in place in the event the variance request was approved. She clarified AT&T was given permission to move forward at their own risk with this application.
- Mr. Kilmer clarified this was not unusual.
- Mr. Bauman questioned the timeframe of the lease.
- Ms. Westine replied between 25 to 30 years.
- Ms. Matthews then announced the PGI CA Board of Directors was mostly in favor of the request provided the number of carriers was increased from three to six and there was no strobe light.
- Ms. Westine confirmed receipt of a determination of no hazard to air navigation from the FAA, adding the tower was not required to be lit.

- Ms. Matthews called three times for anyone to speak on V-03-10.
- Mr. McClary MOVED, Mr. Sweeney SECONDED to close the public hearing. MOTION CARRIED UNANIMOUSLY.
- Mr. Sweeney MOVED, Mr. Bauman SECONDED to recommend approval of V-03-10 based upon the evidence and testimony presented. MOTION CARRIED UNANIMOUSLY.

UNFINISHED BUSINESS

- A. Results of City Council Action on February 17, 2010
 - 1. V-04-09 - Request for a variance to the Land Development Regulations per Section 16-16.10 of the City Code to allow an existing swimming pool and deck to have a rear yard setback of 6.2 feet instead of 20 feet as required per City Code Section 26-3.13(d); and to allow the wooden steps that extend to the seawall cap instead of having a maximum 5 foot encroachment into the required yard as allowed per City Code Section 26-8.14(f); and to allow the existing swimming pool deck to have a side yard setback of 4.73 feet at the closest point on the south side of the property instead of 7.5 feet as required by City Code Section 26-3.4(g)(3); and a variance to allow an existing 24.82 foot street yard setback on the existing single family residence instead of 25 feet as required by City Code Section 26-3.4(g)(2); and a request to allow a new screen enclosure to be constructed over the existing swimming pool deck with an existing non-conforming rear yard setback of 6.2 feet instead of 20 feet as required by City Code Section 26-3.13(d); and to allow the new screen enclosure to have a non-conforming side yard setback of 4.73 feet at the closest point instead of 7.5 feet as required by City Code Section 26-3.4(g)(3).

LEGAL: Block 72, Lot 8, Punta Gorda Isles Section 7 of the Public Records of Charlotte County, Florida (a/k/a 841 Pamela Drive, Punta Gorda, Florida).

- Ms. Tubbs reported City Council approved both portions of V-04-09.
- Mr. Bauman asked if any Councilmembers had opposed same.
- Ms. Tubbs replied she believed V-04-09 was approved by a 3 to 2 vote.
- Ms. Matthews asserted she was distressed by this action, pointing out the Board was required to adhere to certain rules. She continued members were given explicit instructions that variance applications must meet all criteria, adding this application clearly had not done so.
- Ms. Tubbs recalled comments from the applicant's neighbors weighed in on City Council's decision.
- Ms. Matthews countered the rules were not being followed.
- Mr. Kilmer stated he raised this same issue relative to a different variance application. He noted this was a continuing problem in that City Council was not abiding by the

recommendations of this Board. He suggested this Board be given decision making authority.

- Mr. Sween commented perhaps it was time to rewrite the rules if City Council was not abiding by same.
 - Mr. McClary countered the rules had served the City well.
 - Mr. Bauman stated it was apparent City Council was not abiding by the City's zoning rules; thus, there seemed to be no point to the Board discussing these variances. He mentioned the PGI CA was opposed to V-03-10; however, there was no PGI CA presence to express that displeasure.
 - Mr. McClary suggested the Board explore the procedure to become decision making.
 - Mr. Kilmer responded City Council had considered same but decided otherwise.
 - Mr. Bauman recalled a financial concern in that the Board would require independent legal counsel.
 - Mr. McClary pointed out the Building Board had its own attorney.
 - Mr. Rose interjected City Council's approval seemed to be based upon favorable recommendations from the applicant's neighbors.
 - Ms. Matthews reiterated the Board was required to abide by certain criteria.
 - Mr. Kilmer stated perhaps City Council could remand applications back to the Board for further consideration when their decisions differed.
 - Mr. Murtha confirmed direct discussions with City Council had taken place.
2. V-01-10 - Request for a variance to the Land Development Regulations per Chapter 26, Article 16, Section 16.10, of the City Code to allow a newly constructed attached garage to have a side yard setback of 3.8 feet at the closest point instead of 5 feet as required by City Code Chapter 26, Article 3, Section 3.7(g)(3); and to allow a newly constructed driveway to have a side yard setback of .9 feet at the closest point instead of 5 feet as required by City Code Chapter 26, Article 10, Section 10.3(h)(1).
LEGAL: Block 76, Lots 8 and 9, City of Punta Gorda of the Public Records of Charlotte County, Florida (a/k/a 503 McGregor Street, Punta Gorda, Florida).
- Ms. Tubbs announced City Council approved the request contingent upon the driveway being corrected, specifically a portion of the driveway must be removed.
3. V-02-10 - Request for a variance to the Land Development Regulations per Chapter 26, Article 16, Section 16.10, of the City Code to allow an existing ground sign to remain in place for the multi-tenant commercial building located at 212 West Virginia Avenue instead of removing said ground sign, which would otherwise be required by City Code Chapter 26, Article 11, Section 11.4(e)(7)(c), upon the installation of three (3) new façade signs as proposed by the Applicant (a prior variance was granted to allow the

existing ground sign to be 30 square feet in area instead of 16 square feet in area as permitted; and to allow the ground sign to be 9 feet/8 inches in height instead of a maximum of 5 feet in height as permitted by City Code).

- Ms. Tubbs reported the applicant presented a rendition depicting all signage on the building's façade, withdrew her application and received approval under the creative sign provisions in City Code. She explained the ground sign would be removed along with all temporary signage.
- 4. AV-02-09 - Request for an Administrative Variance, per City Code Chapter 26, Section 16.10(l), on an existing single family structure located at Block 235, Lot 111, Punta Gorda Isles Section 15-Replat, a/k/a 3310 Tripoli Boulevard, Punta Gorda, Florida, to allow an existing side yard setback of 5.7 feet instead of 7.5 feet as required by City Code Chapter 26, Article 3, Section 3.4(g)(3); and to allow an existing driveway with a side yard setback of 3.3 feet from the south side property line instead of 6 feet as required by City Code Chapter 26, Article 10, Section 10.3(h)(12).
- Ms. Tubbs announced AV-02-09 was approved by City Council.

MEMBER COMMENTS

- Mr. McClary stated the Building Board was presented with Resolution #2870-10, which formally adopted the City's procedures for quasi-judicial proceedings and rules for ex-parte communications, confirming same would be a part of the Board's next agenda packet.
- Mr. Murtha observed the distribution list for the Board's agendas included the PGI CA, requesting same also be provided to the Burnt Store Isles (BSI) and Burnt Store Meadows (BSM) CAs.

ADJOURNMENT

- Meeting Adjourned: 4:49 p.m.

Lynne Matthews, Chairman

Mary Kelly, Recording Secretary