

Board of Zoning Appeals
Minutes
April 8, 2008

I. Call to order

Chairman Guy Taylor called the regular meeting of the Board of Zoning Appeals to order on April 8, 2008 at 5:30PM in the Building Department Conference Room, 1301 Palm Boulevard. Other members present were Suzanne Galloway, Arnold Karig, Mike Layman and Tom Miller also the zoning administrator, Douglas Kerr, was present. Mr. Kerr explained that the meeting was advertised in the paper and the agendas for the meeting posted at City Hall in compliance with the Freedom of Information Act.

II. Approval of Minutes

The next item on the agenda was the review of the minutes of the March 11, 2008 meeting. Mr. Karig made a motion to approve the minutes as written and Mr. Layman seconded the motion. The vote was unanimous in favor of the motion.

III. Home Occupation- 2600 Waterway Boulevard

Mr. Taylor explained that the applicant for the first case was not present and asked for a motion to continue the case until the next meeting. The Board agreed to continue the case.

IV. Variance- 40A- 41st Avenue

Mr. Taylor explained that the next request was for a variance. He explained that the Board acted as a quasi-judicial body and swore in all members of the audience planning to give testimony.

Mr. Kerr explained that the applicant was SunCom Wireless and they were requesting a setback variance to allow them to collocate antennas onto the existing tower at 40A- 41st Avenue. He explained that the pertinent zoning code was Section 5-4-14. Accessory uses. (3), which reads: "except for parking, permitted accessory uses or buildings shall not be located in the front or the side yard, and such uses or buildings shall not be located within six (6) feet of any side lot line."

He explained that the applicant is requesting a variance from the six-foot (6') setback requirements to allow the construction of a platform for cellular

equipment to be located one foot and ten inches (1'10") from one side property lines and four feet and four inches (4'4") from another side property line.

The applicant claims that the property is unusual because it has an existing cellular tower. Additionally the applicant claims that the size of the proposed platform is dictated by the International Building Code and federal requirements which do not leave adequate area for the equipment to be installed in compliance with the City's setback requirement. The applicant claims that the authorization of the variance will not be of substantial detriment to adjacent property because the new equipment would be installed within an existing compound of cellular equipment. The applicant claims that the unnecessary hardship that will result if the standards of the ordinance are met will be that SunCom will be required to find a new location to install a new cellular tower.

Mr. Martin Deputy explained that he was acting as the agent for SunCom Wireless and that they wanted to collocate on the existing tower, which has been in place for many years. He explained that the platform in question would be located behind a fence and not be visible from the outside of the compound.

Mr. Miller asked if the new platform would be located in same place as the existing concrete pad. Mr. Deputy answered, yes, they would be roughly in the same location. Mr. Miller explained that he had discussed this issue with the Fire Chief and she has confirmed that this additional equipment will not interfere with the Fire Department's communication equipment.

Mr. Kerr explained that he had become aware of Federal laws that govern municipalities ability to control cellular equipment and that he had requested that Mike Daniel, the City's Deputy Attorney, be present if the Board wanted to hear from him. Mr. Miller made a motion to go into executive session to receive legal advice and the motion was seconded and approved.

The Board came out of executive session and explained that they had received legal advice. Mr. Layman made a motion to approve the request based on the findings that: the property is exceptional and unlike other property in the vicinity, because there is an existing cellular tower on the site; that the application of the ordinance would effectively prohibit the applicant from utilizing the property because they would be unable to collocate their equipment onto the tower and that under the Federal Telecommunications Act of 1996, it may be discriminatory to prohibit the applicant from collocating on a tower being used by numerous other service providers; and that the authorization of the variance will not be detrimental to the surrounding area, because the new equipment will be locate behind an existing fence within an existing compound of cellular equipment. Mr.

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Miller seconded the motion and the vote was unanimous in favor of the motion to grant the variance.

IV. Adjournment

With no other business, the meeting was adjourned at 6:15pm.