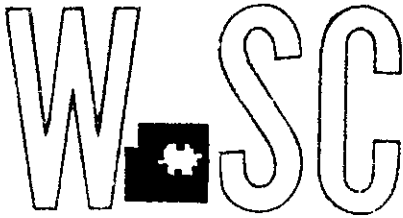


WICHITA — SEDGWICK COUNTY



METROPOLITAN AREA PLANNING
DEPARTMENT

CITY HALL — TENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202-1688
(316) 268-4421
FAX (316) 268-4390

November 20, 1997

J.W. and Pamela E. Russell
455 N. Maize Road
Wichita, KS 67212

RE: BZA 18-97 - Variance to reduce the compatibility height standard setback for a communications tower from 395 feet to 10 feet on property zoned "GC" General Commercial and generally located 1/3 mile south of Central, on the west side of Maize Road.

Dear Mr. and Mrs. Russell:

Enclosed is a signed copy of the above-referenced BZA Resolution approved by the Board of Zoning Appeals on November 18, 1997. This resolution reflects the official action of the Board to grant your request and sets out the conditions of approval. It is forwarded to you for your information and files.

This is a reminder that the zoning adjustment signs should now be removed from the property. If you have any questions concerning this matter, please call our office.

Sincerely yours,

Lawrence P. Mitchell, Secretary
Board of Zoning Appeals

LPM/sah

cc: SMSA/Wichita Limited Partnership (Contract Purchaser) 7801 Farley, Overland Park, KS 66204
Curtis M. Holland PWV&S, 7500 College Blvd., #750, Overland Park, KS 66210
J. R. Cox, OCI
Paul Hays, OCI
Ray Sledge, OCI
Pat Burnett, Deputy City Clerk
Yolanda Anderson, MAPC (resolution only)



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BZA RESOLUTION NO. BZA 18-97

WHEREAS, J.W. and Pamela E. Russell (owners); SMSA/Wichita Limited Partnership (Contract Purchaser), pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to reduce the compatibility height standard setback for a communications tower from 395 feet to 10 feet on property zoned "GC" General Commercial and legally described as follows:

The south 50 feet, except the east 136 feet thereof Lot 1, J.W. Russell First Addition to Wichita, Sedgwick County, Kansas, also described as commencing at the northeast corner of the Northeast Quarter of Section 19, Township 27 South, Range 1 West of the 6th P.M., thence south on the east line of said Quarter a distance of 1879.05 feet on an assumed bearing of south 00 degrees 00' 00" east, thence on a bearing of north 89 degrees 56' 30" west a distance of 136 feet to the point of beginning, thence in 00 degrees 00' 00" east a distance of 50 feet, thence north 89 degrees 56' 30" west a distance of 133.45 feet, thence south 02 degrees 51' 44" east a distance of 49.73 feet, plus or minus, thence north 89 degrees 56' 30" west a distance of 131 feet to the point of beginning. INGRESS/EGRESS EASEMENT: The north 20 feet of the east 190 feet and the west 20 feet of the east 210 feet except the south 50 feet thereof of Lot 1, J.W. Russell First Addition to Wichita, Sedgwick County, Kansas. Generally located 1/3 mile south of Central, on the west side of Maize Road.

WHEREAS, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of November 18, 1997, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has found that the variance arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owners or the applicant inasmuch as it is surrounded on two sides with "GC" General Commercial zoning and uses and the other two sides, although zoned "SF-6" Single-Family Residential, have been developed with a maintenance facility and a floodway reserve; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents inasmuch as the color of the tower will be unobtrusive and the tower shall not be lighted with a strobe light, therefore, these two conditions will lessen the impact of the structure being viewed from adjacent properties; and

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application inasmuch as the site could not be used as a location for a communication tower by the applicant thus impacting negatively the quality of service that can be provided to the public wireless user; and

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare, inasmuch as the proposed tower will not encroach any existing utility easements or street right-of-way and will be an unobtrusive color and a monopole design; and

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance inasmuch as the intent of the compatibility standards is to protect residential development and in this specific instance there are no adjacent residential developments.

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita that this request be approved for a variance to reduce the compatibility height standard setback for a communications tower from 395 feet to 10 feet on property zoned "GC" General Commercial and legally described as follows:

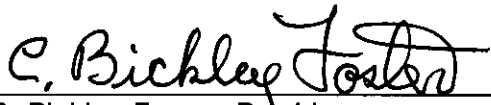
The south 50 feet, except the east 136 feet thereof Lot 1, J.W. Russell First Addition to Wichita, Sedgwick County, Kansas, also described as commencing at the northeast corner of the Northeast Quarter of Section 19, Township 27 South, Range 1 West of the 6th P.M., thence south on the east line of said Quarter a distance of 1879.05 feet on an assumed bearing of south 00 degrees 00' 00" east, thence on a bearing of north 89 degrees 56' 30" west a distance of 136 feet to the point of beginning, thence in 00 degrees 00' 00" east a distance of 50 feet, thence north 89 degrees 56' 30" west a distance of 133.45 feet, thence south 02 degrees 51' 44" east a distance of 49.73 feet, plus

or minus, thence north 89 degrees 56' 30" west a distance of 131 feet to the point of beginning.
INGRESS/EGRESS EASEMENT: The north 20 feet of the east 190 feet and the west 20 feet of the east 210 feet except the south 50 feet thereof of Lot 1, J.W. Russell First Addition to Wichita, Sedgwick County, Kansas.

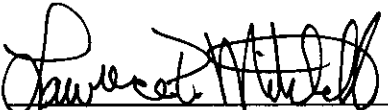
subject to the following conditions:

1. The tower shall be a smooth taper slip collar monopole design and located as indicated on the approved site plan.
2. The tower shall be fenced with chain link fence which has a minimum height of 6 feet with an additional 3 strands of barbed wire extended above the chain link fence.
3. The color of the tower shall be silver or gray or a similar unobtrusive color.
4. There shall not be any nighttime lighting of or on the tower except for aircraft warning lights or similar emergency warning lights required by applicable agencies. If a light is required it shall be red, and remain on at all times or fade in or fade out, if required, but no strobe lights shall be used.
5. No commercial advertising signs shall be allowed on the tower or fence.
6. The tower shall not exceed 120 feet in height.
7. At the time of requesting a building permit for a communication tower, the applicant shall demonstrate to the satisfaction of the Zoning Administrator that: (1) there is no available space on existing or approved towers or other structures which can be utilized to meet the applicant's communication needs, and (2) there is no other physically and/or fiscally feasible opportunity to rebuild an existing tower or other such structure on which the communication equipment may be located, or to modify an approved tower or other structure. A rebuilding opportunity will be considered fiscally feasible if the cost of rebuilding an existing tower is no more than the cost of building a new tower on a new site.
8. The owner of the tower shall agree in writing at the time of the issuance of a building permit that: (1) the tower is designed to accommodate at least two additional communication companies and that reasonable accommodations will be made to lease space on the tower to other communication companies so as to avoid having a proliferation of towers which are not fully utilized, and (2) the owner of the land and the tower will make available in the future the opportunity for another party to pay the cost to rebuild the tower to support additional communication equipment where physically and fiscally feasible.
9. The property owner shall be responsible for the removal of unused communication towers within twelve (12) months of cessation of use. If such a tower is not removed by the property owner, then the city or county may employ all legal measures, including, if necessary, obtaining authorization from a court of competent jurisdiction, to remove the tower, and after removal may place a lien on the subject property for all direct and indirect costs incurred in the dismantling and disposal of the tower, including court costs and reasonable attorney fees.
10. The tower shall be installed within one year or the resolution granting this variance shall become null and void.
11. The variance reducing the compatibility height standard setback for the communication tower may be declared null and void upon a finding by the Board that the applicant have failed to comply with any of the foregoing conditions of approval.

ADOPTED AT WICHITA, KANSAS, this 18th day of November, 1997.


C. Bickley Foster, President

ATTEST:


Lawrence P. Mitchell, Secretary

SECRETARY'S REPORT

CASE NUMBER: BZA 18-97

OWNER/APPLICANT: J.W. and Pamela E. Russell (owners);
SMSA/Wichita Limited Partnership (Contract Purchaser)

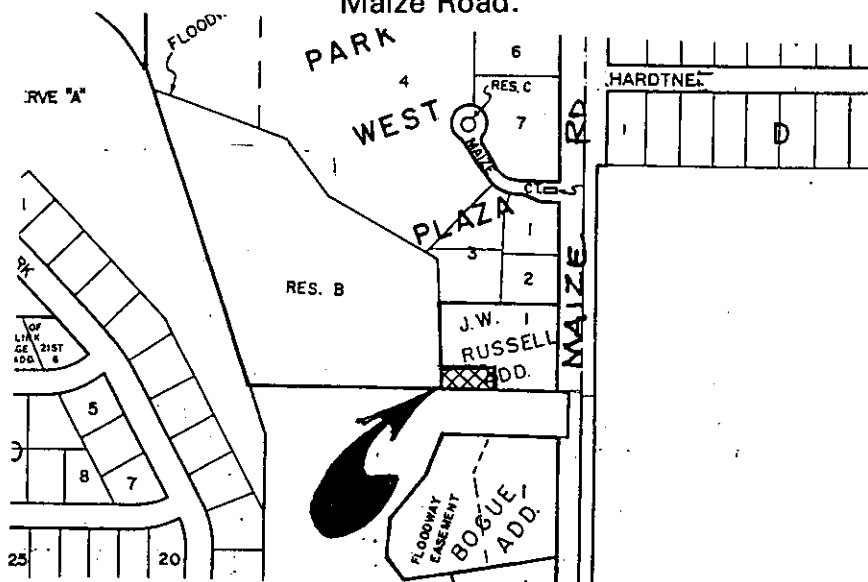
AGENT: Curtis Holland

REQUEST: Variance to reduce the compatibility height standard setback for a communications tower from 395 feet to 10 feet.

CURRENT ZONING: "GC" General Commercial

SITE SIZE: 0.15 acres

LOCATION: 1/3 mile south of Central, on the west side of Maize Road.



JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

BACKGROUND: The applicant requests a reduction in the compatibility height standard setback from 395 feet to 10 feet to allow the construction of a 150-foot commercial communications tower on a 0.15 acre site zoned "GC" General Commercial, located ½ mile south of Central and west of Maize Road. The tower is to be used by Southwestern Bell Wireless to provide wireless communication services to customers as part of a wireless network in Sedgwick and Butler Counties.

Southwestern Bell Wireless, Inc., is developing a nationwide personal communication service system, including approximately 20 sites in the Sedgwick and Butler Counties trading area. The applicant is proposing to construct a monopole tower 150 feet tall. The site plan shows the tower compound, measuring 40 feet by 56 feet, being enclosed with a 6-foot chain link fence with extension posts for three strands of barbed wire. The plan also shows a 11-foot 3-inch by 26-foot equipment area near the base of the tower. There is a 20-foot wide access easement leading to the tower site from Maize Road.

Although a commercial communication tower is permitted by right in the "GC" General Commercial zoning district, it must comply with the compatibility height standards set out in the Unified Zoning Code. That standard requires that no structure shall exceed 35 feet in height within 50 feet of the lot line of property zoned "TF-3" Two-Family Residential or more restrictive. Structures located more than 50 feet from the lot line of property zoned "TF-3" Two-Family Residential or more restrictive may increase height, if permitted by the base district regulations, at a ratio of one foot in height for each three feet of setback beyond 50 feet. The application area is adjacent to "SF-6" Single-Family Residential zoning district on the west (rear yard) and the south (side yard). Therefore, the applicant would be required by code to locate the 150-foot tower 395 feet from their property line. Since the property is only 50 feet by 132 feet, the required compatibility standards cannot be met; therefore, the applicant is requesting a variance to reduce the standard from 395 feet to 10 feet.

The applicant has indicated that although their property is adjacent to the "SF-6" Single-Family Residential zoning district on the west and south that the adjacent property is not used for residential purposes. The property to the south is being used as the Delano Township Hall/maintenance facility, and the property to the west is a floodway reserve which is owned by the City of Wichita Park Department, and neither of these adjacent sites will be developed as home sites. The nearest single family lots with homes on them are 600 feet away to the west and 800 feet away to the northeast.

ADJACENT ZONING AND LAND USE:

NORTH	"GC"	Auto Body Repair (Service Body Shop)
SOUTH	"SF-6"	Delano Township Hall/Maintenance Facility
EAST	"GC"	Auto Body Repair (Service Body Shop)
WEST	"SF-6"	Platted Floodway Reserve

UNIQUENESS: It is the opinion of staff that this property is unique inasmuch as it is surrounded on two sides with "GC" General Commercial zoning and uses and the other two sides , although zoned "SF-6" Single-Family Residential, have been developed with a maintenance facility and a floodway reserve.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners inasmuch as the color of the tower will be unobtrusive and the tower shall not be lighted with a strobe light, therefore, these two conditions will lessen the impact of the structure being viewed from adjacent properties.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning regulations may constitute an unnecessary hardship upon the applicant inasmuch as the site could not be used as a location for a communication tower by the applicant thus impacting negatively the quality of service that can be provided to the public wireless user.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest inasmuch as the proposed tower will not encroach any existing utility easements or street right-of-way and will be an unobtrusive color and a monopole design.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations inasmuch as the intent of the compatibility standards is to protect residential development and in this specific instance there are no adjacent residential developments.

RECOMMENDATION: Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance be granted, subject to the following conditions:

1. The tower shall be a smooth taper slip collar monopole design and located as indicated on the approved site plan.
2. The tower shall be fenced with chain link fence which has a minimum height of 6 feet with an additional 3 strands of barbed wire extended above the chain link fence.
3. The color of the tower shall be silver or gray or a similar unobtrusive color.

4. There shall not be any nighttime lighting of or on the tower except for aircraft warning lights or similar emergency warning lights required by applicable agencies. If a light is required it shall be red, and remain on at all times or fade in or fade out, if required, but no strobe lights shall be used.
5. No commercial advertising signs shall be allowed on the tower or fence.
6. The tower shall not exceed 150 feet in height.
7. At the time of requesting a building permit for a communication tower, the applicant shall demonstrate to the satisfaction of the Zoning Administrator that: (1) there is no available space on existing or approved towers or other structures which can be utilized to meet the applicant's communication needs, and (2) there is no other physically and/or fiscally feasible opportunity to rebuild an existing tower or other such structure on which the communication equipment may be located, or to modify an approved tower or other structure. A rebuilding opportunity will be considered fiscally feasible if the cost of rebuilding an existing tower is no more than the cost of building a new tower on a new site. (NOTE: The applicants have verbally explained to staff that they can demonstrate that they can make these "demonstrations"; we have asked for a written technical report to this effect and we are hoping that it will be available for the BZA by the time of the hearing)
8. The owner of the tower shall agree in writing at the time of the issuance of a building permit that: (1) the tower is designed to accommodate at least two additional communication companies and that reasonable accommodations will be made to lease space on the tower to other communication companies so as to avoid having a proliferation of towers which are not fully utilized, and (2) the owner of the land and the tower will make available in the future the opportunity for another party to pay the cost to rebuild the tower to support additional communication equipment where physically and fiscally feasible.
9. The property owner shall be responsible for the removal of unused communication towers within twelve (12) months of cessation of use. If such a tower is not removed by the property owner, then the city or county may employ all legal measures, including, if necessary, obtaining authorization from a court of competent jurisdiction, to remove the tower, and after removal may place a lien on the subject property for all direct and indirect costs incurred in the dismantling and disposal of the tower, including court costs and reasonable attorney fees.
10. The tower shall be installed within one year or the resolution granting this variance shall become null and void.

11. The variance reducing the compatibility height standard setback for the communication tower may be declared null and void upon a finding by the Board that the applicant have failed to comply with any of the foregoing conditions of approval.

