

BOARD *of* ADJUSTMENT



Joe Bazzoli
Commission Chair
BOA@ci.moscow.id.us

Public Meeting
~ Agenda ~

Aimee Hennrich
Staff Liaison
208.883.7095

<https://www.ci.moscow.id.us/581/Agendas-and-Minutes>

Wednesday
April 7, 2021

5:30 PM

Council Chambers
206 E Third Street

WELCOME AND ATTENDANCE

REGULAR AGENDA

1. Approval of March 29, 2021 Minutes (ACTION ITEM)

PROPOSED ACTIONS: Approve minutes as presented; approve minutes with amendments; or provide staff further direction.

2. Approval of Reasoned Statement of Relevant Criteria and Standards (ACTION ITEM)

A Conditional Use Permit application for a proposed 80-foot-tall Wireless Communication Facility (WCF). The WCF would accommodate three carriers within a fully enclosed 800 sf lease area and would resemble a church tower.

PROPOSED ACTIONS: Review the draft Relevant Criteria and Standards documents and approve the documents; or approve the documents with modifications; or provide Staff further direction as deemed necessary.

REPORTS

ANNOUNCEMENTS

UPCOMING EVENTS/MEETINGS

ADJOURN

NOTICE: Moscow City Council and Commission meetings can be televised, videotaped and/or recorded. Individuals attending the meeting who require special assistance to accommodate physical, hearing, or other impairments, please contact the City Clerk, at (208) 883-7015 or TDD 883-7019, as soon as possible so that arrangements may be made.

BOARD of ADJUSTMENT



Joe Bazzoli
Commission Chair
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Regular Hearing
~ Minutes ~

Aimee Hennrich
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<http://www.ci.moscow.id.us/354/Board-of-Adjustment>

Monday
March 29, 2021

7:00 PM

Council Chambers
206 E Third Street

Bazzoli called the meeting to order at 7:06 PM

MEMBERS PRESENT: Joe Bazzoli, Chair; Steve Bush, Marshall Comstock, Mark Monson, Tim Thomson
MEMBERS ABSENT: Annette Bieghler, Laurene Sorenson
STAFF: Jennifer Fleischman, Aimee Hennrich, Mike Ray

REGULAR AGENDA

1. Approval of November 19, 2020 Minutes (ACTION ITEM)

Monson moved for approval of the minutes as presented, seconded by Thomson. Vote by Acclamation; Ayes: Bush, Monson, Thomson (3). Nays: None. Abstentions: Bazzoli, Comstock (2). Motion carried.

2. Election of Officers (ACTION ITEM)

Bazzoli mentioned that he will not be able to attend any meetings that occur at 5:30 PM, but still would like to be considered for Chair for 2021. Monson was also willing to continue serving as Vice Chair.

Comstock nominated Bazzoli for Chair and Monson as Vice Chair, who both accepted. Thomson seconded the motion to elect Joe Bazzoli as Chair and Mark Monson as Vice Chair for the Board of Adjustment. Vote by Acclamation: Ayes: Unanimous (5). Nays: None. Abstentions: None. Motion carried.

3. Public Hearing: Proposal for a Conditional Use Permit at 1400 E Seventh Street – LUP2021-0004 (ACTION ITEM)

A Conditional Use Permit application a proposed 80 foot tall Wireless Communications Facility (WCF). The WCF will accommodate three carriers within a fully enclosed 800 sf lease area and would resemble a church tower.

Hennrich presented on the proposal as described above, as well as outlining the background of a previous Conditional Use Permit (CUP) WCF application and the subsequent appeal. The presentation included zoning information, pictures of the proposed cell tower, and height and location of adjacent vegetation and structures. The service area that the applicants would like to achieve was also displayed, and the reason they want a tower in the proposed location as opposed to alternate site locations. Followed was the development standards and explanations and/or conditions of each.

According to the Zoning Code for the City of Moscow, WCF cannot be placed within 500 feet of Highway 8 and Highway 95, as required by the Idaho Department of Transportation. Federal Aviation requires lighting on towers over 200 feet, and the proposed tower would only be 80 feet tall. The previous application was for the same location and the same height. The house located directly south of the proposed site is also owned by the Church of the Nazarene.

Public Hearing opened at 7:21 PM

Kim Allen and Gregg Busch, applicants' representatives, discussed the application from Parallel Infrastructure and explained the reasons for the proposed structure and underlying service needs in the area. Allen mentioned AT&T's participation in a public safety network called FirstNet, which would be included in the coverage the proposed facility would provide. The criteria for a CUP were addressed individually and in detail; the alternate site locations that were considered and ultimately dismissed as inadequate; and a description of the proposed facility in compliance with code standards. The public comment, included in the agenda packet, about the difference between 4G and 4G LTE service was also addressed.

The necessary height of a WCF tower depends on the desired service coverage, topography in the area, and the need to co-host two other carriers. Surrounding structures such as buildings, tall trees, and other impeding objects will also make a difference in facility height. Different carriers use varying ranges of the spectrum for their signal and have height requirements per those specifications. There is proposed to be at least two generators on site, which would be tested once a month for an hour. It is unknown whether there would be space, or carrier desire, for a third generator. The alternate sites are selected by the AT&T RF (Radio Frequency) Engineers, based on data frequency search rings and wireless transmission zones. It is unknown why Latah County Fairgrounds was not selected as an alternate site by the engineers.

Why the applicant chose to house 4G instead of 5G was discussed, and it was unknown what construction material the proposed tower facility would be made from. Different carriers desire their own generator because the power needs could possibly vary for each company. The application states that generators would run once a week for maintenance, but Allen had mentioned once a month previously. Bush suggested that another alternate site could be located on the Fire Station 2 training structure, but Allen argued that there might be some engineering concerns for co-locating on that type of building. It is unknown if the City of Moscow had been approached by FirstNet, but it was assumed that they would reap the benefit of having the additional coverage. The applicant had previously approached the City of Moscow regarding the Vista Water Tank as an alternate site and was denied co-location.

David Hall (Moscow), agreed with the written testimony submitted by Michael Kyte, and David Renner in opposition of the application. Argued that current application is essentially the same as the previous application in 2018 that was denied by the Board of Adjustment and upheld by City Council. City Code states that WCF must be at least 80 feet from adjacent property zoned as Residential. AT&T service coverage in the area was addressed and concluded as unnecessary.

10-minute recess called due to technical difficulties.

Jerry Lewis (Moscow), explained that he was mistaken about the proposed application, thinking it was for providing 5G service. Expressed dissatisfaction with 5G and is opposed to that.

Maury Wiese (Moscow), was opposed to the application. Addressed confusion around monthly versus weekly check for diesel generators. Currently has cell and internet service from Verizon and does not have problem with available services in the area. Proposed that the WCF should be adjacent to church instead of set aside, and pointed out that the presentation did not have pictures of the proposed tower immediately from the south, north, or west. Brought up City Code in accordance with maintaining the character of the neighborhood and minimal impact on the surroundings; argued that the Triangle park is the center of interest in the neighborhood and that the proposed facility would distract from that.

Gary Saunders (Moscow), did not see much difference between the current application versus the last application in 2018. Brought up the significant height difference and maximum height allowed in the area, and how the proposed facility would be three to four times taller than any other structures. Saunders seconded what Wiese said about the placement of pictures demonstrating height. He thought that the evaluation of alternative sites was incomplete and expressed concern about the potential progression from

an 80ft WCF to 100ft. He did not think there was a need in the neighborhood for the additional service or coverage.

Scott Fleischman (Moscow), was opposed to the application. Argued that it would be hard to remove a WCF once it has been established, and it would be easier for the applicant to expand upwards. He conceded that there is need of extra service and coverage in the area, but was still against erecting a WCF in that location.

Allen, applicants' representative, thanked Lewis for his comment in regards to 4G, and addressed the structures proximity to the church. Discussed the proposed height of the tower in relation to the Zoning Code and that it is not out of proportion to the church. The WCF was designed and engineered to fit in with the character of the church architecture. The Latah County Fairgrounds and Fire Station 2 suggested alternate sites were at the southern edge of the RF Engineer search ring and so were not considered.

Public Hearing closed at 8:37 PM

Zoning Code sets standards for the distance needed between a WCF and adjacent residential, or other, property lines. The proposed tower would be just over 100ft from the nearest house on the southwest corner. The width of Park Drive is approximately 60 feet, including the right-of-way. The subject property, as defined by the Zoning Code, includes all parcels on the Church campus when it comes to designating adjacent properties. The maximum height of a building in a Neighborhood Business zoned area is 40 feet, with allowances for no maximum if a Conditional Use Permit was approved. Another CUP would be required if the applicant desired to go higher than 80 feet in the future. There was discussion about the structural integrity needed for a tower taller than 80 feet. Then preceded conversation regarding whether a WCF application was required to have three users or just enable space to house three carriers per facility.

It was mentioned that a cell tower of the proposed type could be considered as a building and would be under the same conditions as a commercial structure. There was talk about the proposed WCF being located in a residential zone, in relation to the height and noise disturbances. It was opined that this facility would be better suited in a commercial or industrial location. Some discussion about targeted neighborhood for service coverage appearing to be more to the north than the neighborhood it was proposed to be built in. The conversation continued about the proposed project being different than the 2018 proposal of a mono-pine cell tower.

Ray clarified that the Latah County Fairgrounds is zoned R-3 (Residential) as opposed to the proposed location as Commercial. There was continued discussion about the maintenance of generators on a weekly basis. A Board member recommended that there are better sites further north that the applicant could look at to reach their target audience. The need for cell service in the area was brought up again, but it was argued that whether or not there would be a need for service, it was not relevant to the Criteria and Standards. It was decided that Criteria Two (2) and Criteria Three (3) were the most important to address, as they were highly contested and the Board was unsure of whether the proposal complies with them. It was noted that a masonry wall was proposed as the fencing around the tower and generators. The Vista Water Tower tank was not a good location because of the type of material it was originally constructed from.

Thomson moved for approval of the Conditional Use Permit at 1400 E Seventh Street as presented, seconded by Monson. Vote by Acclamation: Ayes: Monson, Thomson (2). Nays: Comstock, Bush, Bazzoli (3). Abstentions: None. Motion failed.

Whether the proposed WCF would be in harmony with the neighborhood was brought up again and discussed. There continued to be more conversation about the height of the tower in relation to the coverage and service provided.

Comstock moved to denial of the Conditional Use Permit at 1400 E Seventh Street because it would not be in harmony with the neighborhood and surrounding land uses, resembling a guard tower: taller and larger than any other structures in the area. Motion seconded by Bush. Vote by Acclamation: Ayes: Comstock, Bush, Bazzoli (3). Nays: Monson, Thomson (2). Abstentions: None. Motion carried.

REPORTS

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UPCOMING EVENTS/MEETINGS

The meeting adjourned at 9:21 pm.

Joe Bazzoli, Chair

Date

**BEFORE THE BOARD OF ADJUSTMENT
OF THE CITY OF MOSCOW,
COUNTY OF LATAH,
STATE OF IDAHO**

REASONED STATEMENT OF RELEVANT CRITERIA AND STANDARDS

**REASONED STATEMENT OF RELEVANT CRITERIA AND STANDARDS
REGARDING A CONDITIONAL USE PERMIT APPLICATION FOR A WIRELESS
COMMUNICATION FACILITY LOCATED AT 1400 EAST SEVENTH STREET IN THE
CITY OF MOSCOW, IDAHO, WITHIN THE NEIGHBORHOOD BUSINESS (NB)
ZONING DISTRICT PER MCC 4-3-4.**

WHEREAS, the applicant filed an application for a Conditional Use Permit on February 19, 2021; and

WHEREAS, this matter came before the Moscow Board of Adjustment during a duly noticed public hearing on March 29, 2021; and

WHEREAS, having reviewed the application, including all exhibits entered, having listened to the testimony presented at the public hearing, and having considered the issues presented:

**THE MOSCOW BOARD OF ADJUSTMENT OF THE CITY OF MOSCOW, IDAHO,
AFTER DUE DELIBERATION AND CONSIDERATION, HEREBY CONCLUDES:**

I. RELEVANT FACTS AND CONCLUSIONS

1. The Board of Adjustment considered the request pursuant to the City of Moscow Zoning Code, Comprehensive Plan, State Statutes, U.S. Constitution, and Moscow City Code.
2. The applicant Parallel Infrastructure proposed an eighty-foot (80') Wireless Communication Facility (WCF) located at 1400 E 7th Street, Moscow, Idaho. The proposed tower is designed to resemble a church tower.
3. On July 30th of 2018, Pro Land LLC applied for a Conditional Use Permit to construct an 80-foot-tall Wireless Telecommunications Facility at 1400 E 7th Street, Moscow, Idaho. The application proposed that the facility would be located on the property of the Church of the Nazarene and would accommodate three carriers within a fully enclosed 800 square foot lease area. The facility design in this application was a stealth-style mono-pine tower intended to resemble a tree.
4. The matter came before the Board of Adjustment on November 18th, 2018. The Board of Adjustment denied the application finding that the proposed WCF was not consistent with the existing character of the neighborhood and would not be in harmony with land uses surrounding the subject property. The Board found that the scale of the proposed tower is significantly larger than other structures or trees in the surrounding area.
5. On November 27th, 2018, Busch Law Firm PLLC filed an appeal on behalf of the applicant.

6. On January 7th, 2019, City Council reviewed the appeal during a regularly scheduled meeting and sustained the decision to deny the application.
7. The subject property sits on the southwest corner of the 231,678 square foot block, which is owned entirely by the Church of the Nazarene. The proposed site is a 20-foot by 40-foot enclosure that contains the proposed WCF and all ancillary uses.
8. The subject property is located within the Neighborhood Business (NB) Zoning District, which requires a Conditional Use Permit (CUP) for Antenna Towers per MCC 4-3-4.
9. Adjacent properties to the north and south are located within Medium Density Residential Zoning District (R-3). Adjacent properties to the west and east are located in the Neighborhood Business (NB) Zoning District.
10. The area surrounding the proposed WCF is primarily residential. There are two businesses nearby including Short's Funeral Chapel to the west and Pickard Orthodontics to the north. The two community parks nearby include Carol Ryrle Brink Park and Triangle Park, both to the south. Adjacent residential uses sit to the north and south the proposed WCF. Residential structures in the surrounding area vary between approximately twenty feet (20') to thirty (30') in height.
11. The Neighborhood Business Zoning District is the lowest intensity commercial Zoning District permitted within the City. It is intended to apply to areas of less than two (2) acres, where commercial services may be provided in convenient locations serving adjoining residential neighborhood rather than the community as a whole. The commercial services permitted are those where traffic generation, access requirements, impacts of lighting, neighborhood need for services, and noise production will be compatible with residential uses. The NB Zoning District is appropriately applied in the following circumstances:
 - a. Where local commercial facilities will serve the everyday needs of a limited neighborhood area;
 - b. Where activity levels associated with small scale office development can be accommodated or tolerated by surrounding land uses and existing public services;
 - c. Where a neighborhood core is identified which is easily accessible by pedestrian or vehicular circulation; and
 - d. Where such commercial development will result in minimal interference with residential uses in the vicinity of the NB Zoning District.
12. Chapter 2 of the 2019 Comprehensive Plan, Community Character and Land Use, designates the subject property as Public and Semi-Public.
13. According to the Comprehensive Plan, Public and Semi-Public designated areas, "provide for government buildings and properties, as well as semi-public or institutional uses such as churches, schools, and the hospital."
14. The Zoning Code has specific use standards for Telecommunications Facilities within MCC 4-3-5(H).
15. Telecommunications Facilities that exceed sixty feet (60') are not permitted within five hundred feet (500') of US Highway 95 and/or State Highway 8 right-of-way. The proposed facility is over 3,400 feet north of the State Highway 8 right-of-way.

16. Telecommunications Facilities must be protected from unauthorized access by appropriate security measures. The site is proposed to be enclosed by a six foot (6') high masonry wall and the ancillary facilities are fully enclosed within the proposed site.
17. Every antenna and antenna tower must not be lighted unless required by the Federal Aviation Administration and other state or federal agency having such authority, and such lighting must not be more than the minimum required by such agency. Submitted plans do not show any lighting on the proposed tower.
18. Antenna towers are required to be separated from the property line of any adjacent property residentially zoned at least a distance equal to the height of the antenna tower, and must be separated from all other adjacent property lines at least a distance equal to one-half (1/2) the height of the antenna tower.
19. The church campus is made up of 11 parcels including a residential home owned by the Church of the Nazarene, adjacent to the south of the proposed WCF.
20. The proposed WCF is located approximately 5,100 feet from properties zoned SR, 1,300 feet from properties zoned R-1, 190 feet from properties zoned R-2, 100 feet from properties zoned R-3 (not including the church owned residential property), and 600 feet from properties zoned R-4.
21. The closest residential structures sit 120 feet to the west, 190 feet to the south, 360 feet to the north, and 675 feet east of the proposed WCF.
22. While the height of the dome on the Church of the Nazarene stands approximately fifty feet (50') tall, the existing cross at the top of the church stands sixty-six feet (66') tall. The residential properties in the vicinity generally do not exceed thirty feet (30'). Nearby trees reach approximately sixty feet (60') in height.
23. Maximum height in Neighborhood Business (NB) Zoning District is forty (40') feet. Non-residential structures in excess of forty (40') feet require a Conditional Use Permit.
24. Public testimony in opposition of the proposed WCF was heard from a total of 5 individuals. Concerns included sound from the proposed weekly generator testing, height of the structure, and no need for additional cell phone coverage.

BASED ON THE ABOVE RELEVANT FACTS AND CONCLUSIONS, THE BOARD OF ADJUSTMENT OF THE CITY OF MOSCOW HEREBY FINDS THE FOLLOWING RELEVANT CRITERIA AND STANDARDS:

II. RELEVANT CRITERIA AND STANDARDS

1. **The proposed use is a conditionally permitted use within the Zoning District:** All Wireless Communication Facilities are conditionally permitted per MCC 4-3-4.
2. **The character of the proposed use will be in harmony with the neighborhood and surrounding land uses:** The Board found that the proposed WCF is not consistent with the existing character of the uses within the surrounding neighborhood. Additionally, the Board found that the cell tower looked out of place and will not be in harmony with land uses surrounding the subject property, including the Nazarene Church. The surrounding

neighborhood is primarily residential with few commercial uses nearby. The scale of the proposed tower is significantly larger than other structures or trees in the surrounding area. Public testimony was received by 5 individuals, one (1) individual that was neutral to proposal, commenting that in his opinion 4G was better than 5G. Four (4) individuals testified that the proposed WCF is not consistent with the existing character of the uses of the surrounding neighborhood. These individuals expressed concern regarding the scale of the proposed WCF, noise, and other aesthetic concerns.

3. **The proposed use as approved, or as approved with conditions, will not generate nuisances that would be injurious or detrimental to the adjoining properties or the neighborhood (including, but not limited to, noise, dust, glare, vibrations, odors, and the like):** The proposed use would not generate nuisances to the adjoining properties or the neighborhood through noise, dust, glare, vibrations, or odors. All ground equipment would be fully screened with existing landscaping and a six foot (6') tall wall constructed of brick, stone, or textured concrete block. The proposed diesel generators would be double contained and would be used in the event of a power outage. Each generator would run once a week for approximately one hour for maintenance.
4. **The location, design, and size of the proposed use will be adequately served by existing streets, public facilities and services:** The proposed WCF is located on a parcel that has access on all four sides of the Church of the Nazarene campus. Public services proposed are power and telephone and are existing.
5. **The proposed use will not endanger the public health or safety if located where proposed:** The proposed use would not endanger the public health or safety on the proposed site.
6. **The proposed use meets all applicable development standards of the Zoning Code:** The proposed use meets all applicable development standards of the zoning code and Telecommunications Facility Standards that are required by this code for setbacks, security, lighting, noise reduction, signage, separation from adjacent residential zoning districts, and aesthetic considerations.
7. **The proposed use will not be in conflict with the Comprehensive Plan:** The use is consistent with the Comprehensive Plan as it supports the goals and strategies of multiple chapters and does not conflict with other sections of the Plan.
8. **No existing antenna towers or antenna support structures within the necessary geographic area for the applicant's antenna tower meet the applicant's requirements considering: a) height, b) structural integrity, or c) that there are other prohibitive conditions that render existing antenna towers or antenna support structure within the applicant's required geographic area unsuitable.** The applicant conducted a search of all FCC regulated towers within the necessary geographic areas to accommodate for the proposed WCF's requirements and did not find any existing antenna towers or antenna support structures to meet their needs. This determination was based on required height, structural integrity, and other prohibitive measures that render the existing antenna towers or support structure undesirable. The applicant provided a site analysis of four other sites. The locations of the site analysis included the water tower located on Hathaway Street, 8th Street water tower, Carol Ryrie Brink Park and East Side Market Place. The Board found that there were alternate sites locations that could have been explored as options for the proposed WCF.

9. **The design of the antenna tower, including the antennas and ancillary facilities, minimizes visual impact and other complies with provisions and intent of this Section.**

The proposed WCF is designed to resemble a church tower in order to minimize visual impact to the surrounding area. Ancillary facilities are contained within the proposed 20-foot by 40-foot site and surrounded by a six foot (6') tall wall constructed of brick, stone, or textured concrete block surrounding the telecommunications facility. Proposed plans also show a twelve foot (12') wide Type A Buffer yard on the western side of the proposed facility, as is required per MCC 4-3-5(H)(5)(h)(iii).

10. **The proposed antenna tower location minimizes the number and/or size of antenna towers or antenna support structure that will be required in the area.**

The WFC is designed to accommodate three (3) carriers. Alternative sites in the area where other carriers have established antennas are unable to provide sufficient structural support to allow the applicant to co-locate.

11. **The applicant has not previously failed to take advantage of reasonably available shared use opportunities or procedures provided by this Ordinance or otherwise.**

The applicant has no prior history of failing to take advantage of reasonably available shared use opportunities or procedures provided by this Ordinance or otherwise. The applicant provided a site analysis of four alternate locations and determined this location to be the most favorable.

III. DECISION

Based on the above Reasoned Statement of Relevant Criteria, the City of Moscow Board of Adjustment denies the application for a Conditional Use Permit for a Wireless Communication Facility located at 1400 E 7th Street, Moscow, Idaho.

DENIED BY THE BOARD OF ADJUSTMENT OF THE CITY OF MOSCOW THE 7TH DAY OF APRIL 2021.

Mark Monson, Vice Chair
Board of Adjustment