

BOARD of ADJUSTMENT



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

Public Hearing
~ Minutes ~

Aimee Hennrich
Staff Liaison
208.883.7095

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

Monday
August 30, 2021

7:00 PM

Council Chambers
206 E Third Street

Bazzoli called the meeting to order at 7:02 PM

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

REGULAR AGENDA

1. Approval of August 24, 2021 Minutes

Thomson moved for approval of the minutes as modified, seconded by Comstock. Vote by Acclamation; Ayes: Unanimous (3). Nays: None. Abstentions: None. Motion carried.

2. Approval of Reasoned Statement of Relevant Criteria and Standards

City Council remand in part of a Conditional Use Permit application for a proposed 80' Wireless Communication Facility (WCF). The WCF will accommodate three carriers within a fully enclosed 800 sf leased area and would resemble a church tower per MCC 4-3-5(H).

The Board discussed the residential structure directly to the south of the proposed WCF.

Comstock moved to approve the Relevant Criteria and Standards as amended, seconded by Thomson. Vote by Acclamation; Ayes: Unanimous (3). Nays: None. Abstentions: None. Motion carried.

3. Public Hearing: Proposal for a Conditional Use Permit at 3400 Robinson Park Road – LUP2021-0033

Conditional Use Permit application for an accessory cottage in excess of 900 square feet located at 3400 Robinson Park Road within the Agricultural/Forestry Zoning District (AF) in the Area of City Impact, per Latah County Code 03.01.02(14)(H).

Hennrich presented the application as described above, and recommended the Board put forth a recommendation for approval to Latah County with no conditions. The prior owner of the subject property was issued a Conditional Use Permit for a dance studio in the detached garage.

The Public Hearing opened at 7:08 PM

Jonathan Brownell (applicant), Moscow, explained that the accessory dwelling would be built to house elderly parents. Talked about the previous Conditional Use Permit issued for the dance studio. A separate septic system would be built to service the cottage, and the water would be connected to the main residence well. The proposed accessory dwelling would be built recessed into the hill, with minimal retaining wall work needed. There continued to be discussion regarding previous remodels, drainage tiles, and the pond located on the property.

The Public Hearing closed at 7:14 PM

Comstock moved that the Board put forth the recommendation to Latah County to approve the Conditional Use Permit at 3400 Robinson Park Road, with no conditions as recommended by Staff, and for Staff to prepare the Relevant Criteria & Standards. Thomson seconded the motion. Vote by Acclamation; Ayes: Unanimous (3). Nays: None. Abstentions: None. Motion carried.

ANNOUNCEMENTS

Public Meeting to approve the Relevant Criteria and Standards will be scheduled for the week of September 7th.

UPCOMING EVENTS/MEETINGS

The meeting adjourned at 7:22 PM

A handwritten signature in black ink, appearing to read 'Mark Monson', is written over a horizontal line.

Mark Monson, Vice Chair

9-7-21
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 29th, 2021; and

WHEREAS, having considered the matter including all materials presented and testimony received, the Moscow Zoning Board of Adjustment denied the proposed Conditional Use Permit, based on Criterion #2, finding the WCF was not consistent with the existing character of the uses within the surrounding neighborhood and instructed Staff to prepare the Reasoned Statement of Relevant Criteria for the Board's review and approval; and

WHEREAS, on April 7, 2021, the Moscow Zoning Board of Adjustment met and approved the Reasoned Statement of Relevant Criteria and Standards establishing the Board's written decision upon the request and serving as the Board's final action upon the matter; and

WHEREAS, on April 16, 2021, Wireless Policy Group, filed a timely appeal to the decision of the Moscow Zoning Board of Adjustment in accordance with the requirements of Moscow City Code Section 4-8-5; and

WHEREAS, the Moscow City Council considered the appeal during a public meeting conducted on May 3, 2021; and

WHEREAS, the Moscow City Council reviewed the record established by the Board of Adjustment, did not consider any new or additional evidence, and heard appellant's argument on the appeal; and remanded the decision in part to the Moscow Board of Adjustment; and

WHEREAS, this matter came before the Moscow Board of Adjustment during a duly noticed public hearing on August 24, 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. On February 19th 2021, the City of Moscow received an application. Conditional Use Permit application for a proposed 80' Wireless Communication Facility (WCF). The WCF will accommodate three carriers within a fully enclosed 800 sf lease area and would resemble a church tower.
8. The matter came before the Board of Adjustment in a duly noticed public meeting on March 29th, 2021.
9. 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.
10. 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.
11. 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.

12. 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 Ryrie 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.
13. 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.
14. Chapter 2 of the 2019 Comprehensive Plan, Community Character and Land Use, designates the subject property as Public and Semi-Public.
15. 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."
16. The Zoning Code has specific use standards for Telecommunications Facilities within MCC 4-3-5(H).
17. 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.
18. 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.
19. 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.
20. 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.

21. 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.
22. 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.
23. The closest residential structures, outside of the church campus, sit 120 feet to the west, 190 feet to the south, 360 feet to the north, and 675 feet east of the proposed WCF. The church is the owner of the residential structure adjacent to the south.
24. 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.
25. 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.
26. The Board of Adjustment denied the application finding that the proposed WCF. 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.
27. On April 16th 2021, Wireless Policy Group, filed a timely appeal in accordance with the requirements of Moscow City Code.
28. On May 3rd, 2021, City Council reviewed the appeal during a regularly scheduled meeting and remanded the decision in part to the Zoning Board of Adjustment with the sole and specific purpose, "To develop additional material information. Specifically, to determine whether the horizontal footprint and width of the proposed Wireless Communication Facility can be reduced in order to be less intrusive to the neighborhood and surrounding land uses and ultimately satisfy Criterion #2".
29. This matter came before the Moscow Board of Adjustment during a duly noticed public hearing on August 24, 2021.
30. After analysis of the proposed design the applicant determined it was not possible to reduce the horizontal footprint and width of the structure and offered three alternative designs.
 - a. Design Alternative 1: The current tower, as designed, with additional architectural features such as window starting at 40 feet, to reduce the visual bulk of the structure.

- b. Design Alternative 2: Three-legged tower design. While this will reduce bulk, it will potentially reduce collocation opportunity. This design is not favorable to the applicant.
 - c. Design Alternative 3: A standard monopole design. The diameter of the proposed platform would be consistent with the original design. However, the pole would be much less in diameter (22 inches at the top, tapering to approximately 35 inches at the bottom).
31. The Church of the Nazarene provided a letter stating that relocation of the tower to another location on site was not possible. This documentation sited concern over underground utilities and potentially restricting access.
32. In addition to the written testimony received, public testimony in opposition of the proposed WCF was heard from a total 6 of individuals. Concerns included sound from the proposed weekly generator testing, height of the structure, no need for additional cell phone coverage, and the proposed tower does not fit the character of the existing neighborhood. Public testimony in favor of the proposed WCF was heard from a total of 5 individuals.

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. Seven (7) written letters in opposition to the proposal was received as well as a petition signed by 56 individuals. Public testimony was received by 6 individuals who testified that the proposed WCF is not consistent with the existing character of the surrounding neighborhood, and that the proposal would generate 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 Ryrle 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 WCF 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 30 DAY
OF AUGUST, 2021.



Joe Bazzoli, Chair
Board of Adjustment