



Joe Bazzoli

~Agenda~

Leah Carlson

Commission Chair

Staff Liaison

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

Monday

Council Chambers

5:30 PM

November 19, 2018

206 E 3rd Street

1. Approval Of Minutes From November 13, 2018

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

Documents:

[MINBOA20181113.PDF](#)

2. Approval Of Relevant Criteria And Standards For Property Located At Located At 1400 East 7th Street – LUP2018-0023

Conditional Use Permit application for a Wireless Communication Facility located at 1400 E. 7th Street. The applicant is proposing to construct an 80' Wireless Communication Facility to accommodate three carriers within a fully enclosed 800 sf lease area that will be a stealth style tower intended to resemble a tree.

ACTION: Review the draft Relevant Criteria and Standards document and approve the document; or approve the document with corrections; or provide Staff further direction as deemed necessary.

Documents:

[LUP2018-0023 - 1400 E 7TH CUP - 11-13-18.PDF](#)

3. Board Communications
4. Other Business

NOTICE: Moscow City Council 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

~Meeting Minutes~
November 13, 2018

Leah Carlson
Staff Liaison

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

The meeting was called to order at 7:02 PM

MEMBERS PRESENT: Mark Monson, Vice Chair; Annette Bieghler, Steve Bush, Marshall Comstock, Tim Thomson

MEMBERS ABSENT: Joe Bazzoli, Laurene Sorensen

STAFF IN ATTENDANCE: Leah Carlson, Mike Ray, Anne Peterson

1. Approval of Minutes from October 11, 2018.

Bush moved approval of the minutes as presented by staff.

RESULT:	ACCEPTED
MOVER:	Bush
SECONDER:	Bieghler
ABSENTIONS:	Comstock, Thomson

Motion carried by acclamation.

2. Public Hearing: Proposal for Conditional Use Permit for a Wireless Communication Facility located at 1400 E 7th Street – LUP2018-0023

Carlson presented the application for an 80-foot tall wireless communication facility within a fully enclosed 800sf area to be located in the southwest corner of the Nazarene Church property. Subject property is within an area of Neighborhood Business zoning which is completely surrounded by R-3 residential zoning. There is currently a large area of poor cell coverage on the east side of Moscow which the applicant seeks to remedy with this tower. There will be space for three carriers. Carlson reviewed the eight development standards required by the zoning code and described how the application meets all development requirements, as well as the typical relevant criteria and standards for conditional use permits, plus four extra criteria required for cell towers. Staff recommended approval with three conditions:

1. The applicant shall construct a six-foot (6') high decorative wall constructed of brick, stone, or textured concrete block surrounding the telecommunications facility, as is required per MCC 4-3-5 (G)(iii).
2. The applicant shall implement a 12' wide Type A Buffer yard on the western side of the proposed facility, as is required per MCC 4-3-5 (G)(iii).
3. The applicant shall enter into a co-location agreement as required by City Code, subject to City staff approval.

Comstock asked if a blinking light on top would be required by the FAA and staff deferred to the applicant. Bieghler asked about signage and staff said no commercial signs would be allowed but appropriate hazard signs would need to be in place per building regulations. Thomson asked for examples of possible noise mitigation for the generators, and whether it might be incredibly expensive. Staff replied that enclosing the structure or sound deadening are both options.

Monson opened the public hearing at 7:18 pm.

Derek Budig, PO Box 8436, Spokane, representing PI Towers Lend Lease which is doing a build-to-suit for T-Mobile. The proposed tower will support T-Mobile's expansion of service within Moscow and the monopine design will minimize the visual impact. Budig stated the area of low coverage in southeast Moscow requires many residents to resort to wifi calling. He added there were no other suitable existing structures available in that area of town where they could co-locate.

Bush asked what other sites were considered and Budig replied the only existing structure located in the proper geographic area was the water tower on Hathaway Street, but it was not available. Their engineering studies indicated the proposed location was optimal and they had found a willing landlord. Budig said lights aren't required by the FAA under 200 feet. Bush asked about megahertz levels and Budig said he wasn't sure but it would be within the appropriate FCC safety guidelines. Monson asked why it needed to be so tall. Budig said it was the optimum height for signal transmission while still allowing room for additional carriers.

There was no testimony in favor of the application. Testimony in opposition:

David Hall, 1334 Wallen Rd, was concerned about health effects of the magnoelectronic fields. He thought the Board and public should know the radiation levels.

Faris Paxton, 824 Park Drive, suggested that people in the subject area who can't get T-Mobile service should just change carriers. He said FCC safety regulations are 22 years old and the Telecommunications Act of 1996 actually prohibits the Board from denying the application on the basis of health concerns. Studies show property values decrease up to 22 percent next to cell towers, which would affect property tax income for Moscow. He cautioned the Board to take more time to study this request, and thought he was accurate in saying that once approved, the tower could be increased up to 100 feet.

Maury Wiese, 711 Park Drive, opposed the tower. He asked if there would be a diesel generator for each carrier or one for the whole tower. Staff replied the application noted one. He said the look of the tower changes the complexion of the whole neighborhood and he asked the Board to deny the proposal.

Kensington Hill, 721 Park Drive, asked the Board to consider the nature of the neighborhood which is turning over to young families. She said the aesthetics of the structure wasn't desirable and carried potential health risks. She didn't think other carriers had coverage issues in that area of town so it was really just a T-Mobile issue.

Gary Saunders, 1217 Kamiaken, said his Sprint coverage is just fine. He appreciated the idea of co-location but said it sounds like other carriers don't need extra coverage in the subject area. He urged more time to study other options such as micro-tower technology and using existing church steeples. He was interested in knowing the revenue to the church for this lease, but didn't think that revenue should offset the implications the tower would create for the neighborhood. He thought it was odd to place a tower in such a low-lying area.

Michael Madsen, 1221 East Seventh, lives right across the street from the proposed location. He cited studies done in several countries showing the health effects of microwaves, particularly on young children, and there is a park, ballfields, and young families living all around the proposed site.

Mike Scott, 1130 Kamiaken, said the proposed tower is twice as tall as anything else in the neighborhood. The homes in the neighborhood would be devalued by \$20-30,000. He thought the church could find a different income model for keeping itself afloat.

Martha Ford, 1009 East Seventh, had the same concerns about aesthetics, noise, and property values. The applicant testified the tower will actually be 85 feet so she wanted to know if the illustrations were based on 80 or 85 feet. She thought most generators run about 65 decibels and said, if approved, the generator should be required to be within the decibel range rather than waiting for neighborhood complaints.

Merilee Paxton, 824 Park Drive, repeated the concerns about aesthetics and property values. She would never have moved her family near such an eyesore and possible health hazard.

Bruce Menadier, 1121 East Eighth, said the very large trees in his neighborhood don't come close to the size of that tower. He stated a National Institute of Health report showed a very high percentage of people said they would never purchase or rent property near a cell tower. He suggested it be placed on City owned property somewhere. He asked the Board members if they'd like it in their neighborhood.

Jeff Lonneker, 1022 East Eighth Street, said it seems like a T-Mobile problem. He suggested a tower further on a hill further east would be more beneficial. He hoped the church didn't instigate this just for the revenue stream without consideration to all the neighborhood families.

Beverly Madsen 1221 East Seventh Street, objected to the tower for aesthetic reasons, lowered property values, and because it would be right out her front window.

Zach Thomas, 103 East Seventh, was also concerned about health risks to his family, as well as the generator noise and possible health risks for the group home residents who live approximately 100 feet from the proposed site.

Monson allowed introduction of written testimony received today from David Hall (attached).

Rebuttal from Applicant:

Budig responded to citizens' coverage comments and thought it was important for people to keep in mind that there are already cell towers all over town on water towers, schools, downtown buildings, Theophilus Tower, etc. Regarding the height question, Budig said the tower is 80 feet tall with five-foot branches to camouflage the antennae. Ray clarified that code allows the antennae to extend 18 feet beyond the top of the tower, but any tower addition would require another CUP.

Thomson asked whether wifi routers expose people to the same radio frequencies. Budig said he wasn't an expert in that area but knew that routers are high frequency but not regulated, whereas cell towers are highly regulated. Comstock asked staff the height comparison between the 80-foot tower and the high voltage power lines on Mountain View. Ray speculated the power line towers were probably 80-100 feet tall. Comstock then asked why co-location wasn't available on the Hathaway water tower and Carlson replied with a memo from the Public Works Director stating the design of that particular tower didn't have the structural support to make co-location feasible. Comstock asked the applicant if they studied options in commercial locations such as Eastside Marketplace or Fire Station 2. Budig replied there were no commercial zones that met the geographic coverage requirements, nor any existing towers in the appropriate area. Bush suggested the Fairgrounds property wouldn't create as much opposition because the neighbors are further away. Budig seemed unaware of that property. Monson asked the range of a typical tower and Budig said there were a lot of variables, but he thought roughly a mile.

Michael Kyte, 1009 Seventh Street, thought the conversation itself indicated that not enough homework had been done to prove that the proposed site was the only alternative. He suggested the Board deny the application and request additional information about service areas and other possible locations.

Public hearing closed at 8:13 pm.

Comstock didn't think it was a good fit for the residential character of the neighborhood and thought other commercial options could be explored. He acknowledged there are already other tower-like structures along Mountain View, and said generally CUPs can be conditioned in ways to fit the neighborhood but he did have an aversion to this tower in this residential area. He thought the application met the relevant criteria, however, so he didn't know how it could be denied. Bieghler trusted that the engineers had done the right work to identify the best location for their business needs and thought it was important to consider the growth of commerce. Bush didn't think the property values would be affected any differently than that of residential properties near other cell antennae in town. He mentioned the studies regarding health concerns in other countries pertained to much larger towers, however, Bush did some research and learned that 300 megahertz is the threshold for health concerns. It bothered him that the megahertz level isn't mentioned in this application so he wanted more answers before approving the application. Thomson said the application met the FCC requirements and City regulations, and moving it to another site just puts any potential health concern on a different neighborhood. Comstock said he inspects all the cell towers in Latah County, and he thought the City did a good job with its requirements for buffering the structure, but he remained concerned about it not fitting into the neighborhood. Monson shared Comstock's concern that it's a permitted use and the applicant followed all the requirements to the letter. He said if the facility has FCC approval, he had to assume the frequency levels must be acceptable.

Ray reminded the Board that approval must be based on the seven Relevant Criteria and Standards for CUPs and the additional four that are specific to cell towers.

Comstock moved denial of the application based on the application not sufficiently satisfying Criterion #2.

RESULT:	DENIED [UNANIMOUS]
MOVER:	Comstock
SECONDER:	Bush

Motion carried by acclamation.

3. Board Communications

None.

4. Other Business

The RCS approval meeting was scheduled for Monday, November 19, at 5:30pm in Council Chambers.

Adjournment

The meeting adjourned at 8:10 pm.

Mark Monson, Vice 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 4-2-3(2)(I).**

WHEREAS, the applicant filed an application for a Conditional Use Permit on July 30, 2018; and

WHEREAS, this matter came before the Moscow Board of Adjustment during a duly noticed public hearing on November 13, 2018; and

WHEREAS, having reviewed the application, including all exhibits entered, 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, and Moscow City Code.
2. The applicant proposed an Eighty-foot (80') Wireless Communication Facility (WCF) located at 1400 E 7th Street. The proposed tower is a monopine design; a stealth-style tower intended to resemble a tree.
3. 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.
4. 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.
5. 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.
6. 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 East Gate 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.

7. 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.
8. Chapter 2 of the 2009 Comprehensive Plan, Community Character and Land Use, designates the subject property as Public and Semi-Public.
9. 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."
10. The Zoning Code has specific use standards for Telecommunications Facilities within MCC 4-3-5(H).
11. 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.
12. Telecommunications Facilities must be protected from unauthorized access by appropriate security measures. The proposed site is enclosed by a six foot (6') high fence and the ancillary facilities are fully enclosed within the proposed site.
13. 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.
14. Antenna towers are required to be separated from the property line of any adjacent property zoned SR, R-1, R-2, R-3, or R-4 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.
15. 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, and 600 feet from properties zoned R-4.

16. 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.
17. While the height of the dome on the Church of the Nazarene stands approximately fifty feet (50') tall, residential properties in the vicinity generally do not exceed thirty feet (30'). Nearby trees reach approximately sixty feet (60') in height.
18. Public testimony in opposition for the proposed WCF was heard from a total of 13 individuals, 12 of which live within a quarter mile of the proposed site.
19. Three (3) individuals expressed opposition to the proposed WCF during the public hearing due to noise concerns.
20. Three (3) individuals expressed opposition to the proposed WCF during the public hearing due to concerns about property value depreciation.
21. Seven (7) individuals expressed opposition to the proposed WCF during the public hearing due to aesthetic concerns, including the scale of the tower in comparison to nearby residences.

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 and will not be in harmony and land uses surrounding the subject property. 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 13 individuals 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, decreased property value, 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 fence. Construction would create some noise that would last approximately one month. The proposed diesel generator would be double contained and would be used in the event of a power outage. The 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. A new access is proposed off Park Drive. 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. **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 within

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 tree 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 fence. Staff recommends the fence be constructed of brick, stone, or textured concrete block surrounding the telecommunications facility and recommends that the applicant implement a 12' wide Type A Buffer yard on the western side of the proposed facility, as is required per MCC 4-3-5 (G)(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 water tank located on Hathaway Street is not structurally sound to support antenna structures. The tower

at Rotary Park is out of the geographic search area. No other registered support structures within one (1) mile of the proposed site are available.

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.

DENIED BY THE BOARD OF ADJUSTMENT OF THE CITY OF MOSCOW THE ____ DAY
OF AUGUST 2018.

Joe Bazzoli, Chair
Board of Adjustment