



**CITY OF LIMA
BOARD OF ADJUSTMENTS2
Minutes – May 11, 2022**

Board
Members:

Doug Daley
Michael Ley
Grant Sullivan
Daisy Jones
Bailey Joseph

City Staff:

Susan Crotty
Sophia Fisher

Petitioner:

City Switch
Case# 22-03

Susan Coleman
Case# 21-02

Doug Daley called the meeting to order at 3:30 pm

ROLL CALL showed the following members present: Daley, Jones, Joseph, and Sullivan

Grant Sullivan motioned to approve the minutes from the March 23, 2022 meeting; 2nd by Daisy Jones; motion carried 4-0.

Matters Previously considered but not disposed of: None

New Items for Consideration:

**22-03 Special Use Permit
300 Block of E. Market St
37-3107-14-013.000**

The petitioner was present. Mr. John Sinila an attorney representing City Switch stated the petitioner is requesting a special permit to allow the installation of a 125' monopole communication tower with a 10' lightning rod on CSX property in the 300 block of E. Market Street, a 28' X 98' fenced compound. It will be fenced in by a standard chain link along with a six foot board on board fence with 25 evergreen trees for screening on the east side of the compound. CSX has determined that they need the tower for communication purposes. He stated that when City Switch works with the railroads they determine if there are any wireless carriers that have a need to provide coverage to the residents in the City of Lima. Dish Wireless has indicated they have a need to provide coverage as well. Their intention is to locate City Switch tower, CSX antennas, and Dish Wireless antennas. The proposal encapsulates the area of the city that is zoned Industrial. He stated that the surrounding properties are commercial or industrial in use.

Mr. Doug Daley asked if this is a standard height for cell towers. Mr. Sinila stated that this is unique.

Ms. Daisy Jones asked if this was like a 5G tower. Mr. Sinila responded that Dish Wireless will be providing 5G coverage to its customers. The CSX Antennas are for the operation of their railroad. They utilize their antennas for train communications. They are establishing a digital radio system between moving trains and people on the ground, their workers. In addition, this gives them the ability to install train control tests. It is a federal mandate for the purpose of stopping a runaway train in the event the conductor becomes incapacitated.

Ms. Sophia Fisher presented the staff report. She reported that this is a Special Use Permit and not a variance. While the use is permitted in the zoning code, a Special Use Permit is required and that is why this matter is before the board. She included the City Code in the Board packet for reference. Notices were sent to 8 neighboring properties and no responses were received. She indicated that Engineering had no comments. The Building Dept. indicated that the petitioner must follow all Ohio Building Code Requirements. The staff is recommending approval of a special permit to install a monopole communication tower at this 300 block of E. Market St. with the condition that all building and permits are approved by city staff.

Bailey Joseph motioned to approve the petitioners request for a Special Use Permit located at the 300 block of E. Market St. allowing the installation of a City Switch tower, CSX antenna, and Dish Wireless antenna with the condition that all building codes are followed and permits are approved by staff; 2nd by Grant Sullivan; motion carried 4-0.

Ms. Sophia Fisher informed the petitioner that the Order will be written, signed and forwarded to them. The petitioner asked where they would obtain an address. Ms. Fisher responded that they would need to contact Ian in the Engineering Dept.

21-02 Susan Coleman
954 Crestwood Dr.
36-2607-08-011.000

Mr. Doug Daley that this request had been before the board previously. This is a request to modify, affirm, or clarify the order filed by the city. He indicated that the fence has been installed and there are some concerns about the installation.

The original petitioner was not present. Mr. Jon Neeper was present representing the homeowner to the east of the property. Mr. Neeper stated that the fence is not structurally sound and they are not in compliance with the height requirements of the variance. In addition, according to the variance, the fence needed to be done in an aesthetically pleasing manner. The panels were cut lengthwise and installed and does not look visually appealing from the neighbor's point of view. Mr. Neeper indicated that the neighbor is willing to assist the homeowner in fixing the matter.

Mr. Daley stated that this is before the Board because the original variance that was granted had certain terms and those terms were not complied with. Mr. Daley stated that the board has a quasi legislative prevue. They attempt to fill in some gaps between legislation but he is not aware of any kind of enforcement power. Tony Geiger, City of Law Dept stated that Mr. Daley is correct. He continued that the city is not looking for any type of enforcement action from the board other than a reconsideration of the previous decision based on the factors that the home owner has articulated. He stated that someone from the Building Dept inspected the fence and told the original petitioner that it was okay even though it was above the 6' 10' stipulated in the order. The question becomes if the Board wants to reaffirm this order regarding the fence height at which point the administration would have to take enforcement action or modify the order, leaving it as built. The Board can also determine that they don't want to entertain any further discussion on the matter.

Mr. Doug Daley asked what does the city mean when it states 6ft. Mr. Geiger responded that 6ft means from the dirt and that could vary based on the side of the fence you are on. Mr. Daley recapped that the Board allowed for additional height allowing for the level of the dirt. He stated that they would like to know how this impacts the neighbors quality of life. Mr. Neeper, speaking on behalf of the neighbor indicated that it has nothing to do with the quality of life. It impacts the aesthetics of his property. He continued that the height of the fence is not an issue if it was well put together but as it is installed now, he believes it detracts from his property. He explained that the additions to the bottom were cut and placed in the opposite direction of the vertical slats, there are gaps in between, the top of the fence is not level, some of the posts are 6 and 8 inches higher. It looks as if it was just thrown together. Ms. Jones asked for clarification on the bottom portion of the fencing. Mr. Neeper said there were gaps there until the fencing was installed horizontally. He stated that the building official said that what they had done was okay but when zoning went to inspect, the homeowner was told that it was not okay. Ms. Fisher added that the building dept stated that historically when inspecting fencing, they base their decision on the average height of the panels. Ms. Crotty added that the Building Official also indicated that there could be variation of the ground based on freezing and thawing by a few inches. Ms. Bailey Joseph asked if the bottom panels were pulled out, would it look better. Mr. Neeper responded that if they did that it would be in compliance with the original order. He stated that the objecting homeowner would consider helping the original petitioner with the installation. Grant Sullivan asked that regardless of what is decided, whether we make them adhere to the height restrictions or not, does the Board have the authority to change the aesthetics on the fence. Ms. Crotty responded that the Order does indicate that it be aesthetically appropriate. It does not define how to achieve that. Mr. Daley stated that if the Board is reviewing this as a quasi legislative regulatory matter, the height and being aesthetically pleasing, he does not know if they are in a position to say that we want them to buy certain panels and install it this way. He stated that his concern is how can the Board change what they have already done. If there is a violation of the height, that is an issue that someone can measure and the city can enforce. There are a total of 10 panels with 6 being over the height requirements and 4 being under the height requirements. Ms. Crotty stated that she was told by the Building dept that they cannot deny a building permit based on a zoning issue. Ms. Joseph asked if there is any ramification for the homeowner to come back to the City and say that they approved

the fencing installation. Mr. Geiger responded that would be an argument that she could make. In terms of something being aesthetically pleasing and appropriate. Ms. Joseph if the Board has received any comments from any other neighbors. Mr. Neeper responded that the issue does not impact any other neighbors. Mr. Daley stated that the majority of the discussion is about the enforcement of the issue and not the original variance that was granted. He added that maybe the code itself does not adequately addresses the issue of uneven ground because it states above the grade and if there was a slope is it suggesting that the fence would slope with the ground. Another issue is the use of the phrase "aesthetically pleasing" which is in the eyes of the beholder to some extent which makes it more of a legal issue as opposed to a legislative issue. The board can say that this is okay, they can redefine what 6ft 10in means, but without code defining what 6ft means. It is his impression that the Board made a decision, and there is no reason to believe that the decision is incorrect. If the follow thru is bad for someone, then they have to address it in a different forum whether it be with a zoning violation or suing the neighbor because they have an eyesore of a fence. It is not clear what the Board of Adjustment can do. Grant Sullivan added that the written petition before the Board is in reference to the height of the fence and not the aesthetics of the fence which appears to be the main issue. Ms. Crotty stated that they were under the same impression and were trying to clarify the height and if the Board needed to affirm the original variance regarding that. If so, they would go back to the original petitioner affirming the variance and request that they remove the panels or lowering the panels. That is something the staff will do which may result in additional expenses incurred by the homeowner or the loss of the fence. She continued that it is more of a challenge for the Board to determine if the way it is done is aesthetically appropriate or not. Grant Sullivan stated that it appears that if the homeowner were to install a flower bed or raise the dirt level where the 3 or 4 offending panels are they would be in compliance with the fence height requirement. Ms. Fisher stated that is what the Building Department informed her. Mr. Neeper asked if this Board was accountable to the abutting landowners who were informed of the original variance request. Mr. Daley responded that none of the Board members are required to go out to the fence and measure to determine if they have done what was granted. Ms. Crotty stated that the City will enforce the height requirement. Mr. Daley responded that the item of aesthetically appropriate is a matter of interpretation and opinion. That would be up to a judge and not this Board. Mr. Neeper clarified that the opposing homeowner would have to go to some other entity if they did not agree with the result of the variance granted. Mr. Daley stated that the board does not make findings on aesthetically appropriateness. Mr. Sullivan stated that there are multiple ways that variances can be violated and in those situations they don't come back to this board they would go to whomever would enforce that. Mr. Geiger stated that the remedy would be to go to court.

Mr. Daley stated that the motion outlines several options. One of which is to affirm the order as it is, not changing the height or the aesthetically appropriateness of the fence. Secondly, the board could modify the motion to permit the height of the existing fence panels. Finally, the board could clarify the order by defining what height means as in average height.

Grant Sullivan asked for clarification from the Law Director. He asked if the options available to the board include, affirming, modifying/ clarifying, or ignoring the request. Mr. Geiger responded that the board could also decline jurisdiction.

Grant Sullivan motioned to table the matter until some time in the future where it can be added to the agenda where other cases are discussed; 2nd by Daisy Jones; motion carried 4-0.

Ms. Daisy Jones stated that a previous case that was brought before the board regarding a carport on Elm Street is actually a shed and not a carport per the order. She asked if the Board could look into that further and what could be done about that. Ms. Crotty stated that if there was a variance granted, the City will inform the petitioner that they are in violation of the order. Dionne Dickey stated the address is 2742 W. Elm St., Case# 21-07.

Doug Daley stated that this brings up the issue of whether or not there should be any type of follow up to variances granted. Ms. Crotty stated that zoning violations are enforced or inspected by the Property Maintenance Code Enforcement Staff. Currently, they are somewhat limited and it is not something they have done but they can try to follow up.

Bailey Joseph motioned to adjourn; 2nd by Daisy Jones; motion carried 4-0

Doug Daley

Chairman

Susan Crotty

Director, Community Development