ZONING BOARD OF APPEALS
THURSDAY, NOVEMBER 9, 2017
CITY HALL, ROOM 400 – 1:00 P.M.

AGENDA

1. CALL TO ORDER

2. ROLL CALL

3. APPROVAL OF OCTOBER 12, 2017 MINUTES

4. REGULAR BUSINESS
   Deliberations will be held at the end of each case after public comment has been closed. No public comment is allowed during deliberations.

   **CASE NO. ZBA 3036**
   Petitioner Ari Rosenthal of Ginsberg Jacobs, LLC, on behalf of Cellco Partnership d/b/a Verizon Wireless, is requesting a reconsideration of ZBA Case 3021, appealing the Site Plan Review Board’s decision regarding the denial of a consolidated application for a zoning certificate and building permit, for the collocation of wireless communication antennas, for the property located at 2112 N Linn Street (Parcel Identification No. 14-33-378-019 & 14-33-378-020), Peoria, Illinois (Council District 2).

   **CASE NO. ZBA 3037**
   Public Hearing on the request of Cassie Snell d/b/a Pawprint Palace LLC., to obtain a variance from the City of Peoria Unified Development Code Section 5.4.7.C. Fence Requirements, to increase the height of a side yard fence from 6 feet to 8 feet for the property located at 1623 W Pioneer Parkway (Parcel Identification No. 14-05-353-003), Peoria, Illinois (Council District 5).

   **CASE NO. ZBA 3038**
   Public Hearing on the request of Michael Cook of Cook Rentals to obtain a variance from the City of Peoria Unified Development Code Section 4.3.4 CN and CG District Building Envelope Standards, to eliminate: 1) maximum building setback of 80 feet, and 2) minimum building facade of 60% along the primary street frontage, to allow for a building setback of 112 feet for the property located at 1910 NE Jefferson Avenue (Parcel Identification No. 18-03-276-035), Peoria, Illinois (Council District 1).

5. CITIZENS’ OPPORTUNITY TO ADDRESS THE COMMISSION

6. ADJOURNMENT
**WELCOME!**

If you plan on speaking, please complete a **Blue Speaker Form**

For each case the following sequence will apply:

1. Chairperson proceeds with swearing in procedures
2. Chairperson announces the case
3. Staff enters case into the record
   a. Staff presents the case
   b. Staff answers questions from the Commission
4. Petitioner presents case and answers questions from the Commission
5. Chairperson opens the meeting to the public
6. Public comments – Chairperson may ask for response/input from staff and petitioner
7. Petitioner presents closing statements
8. Public testimony is closed (No further public comment)
9. Commission deliberates and may consult staff
10. Commission prepares findings, if applicable
11. Commission votes

All comments and questions must be directed to the Commission
A regularly scheduled Zoning Board of Appeals Meeting was held on Thursday, October 12, 2017 at 1:00p.m., City Hall, 419 Fulton Street, Room 400, with Chairperson Richard Russo presiding and with proper notice having been posted.

**ROLL CALL**

The following Zoning Board of Appeals Commissioners were present: Laith Al-Khafaji, Lon Lyons, Jerry Jackson, and Richard Russo-4. Absent: Dorian LaSaine, Scott Kelsey, and Nathan Wagner – 3.

Staff Present: Ross Black, Donald Leist, Shannon Techie, and Madeline Wolf

**MINUTES**

Commissioner Lyons moved to approve the minutes for the Zoning Board of Appeals meeting held on July 13, 2017; seconded, by Commissioner Jackson.

The motion was approved viva voce vote 4 to 0.

**REGULAR BUSINESS**

**CASE NO. ZBA 3036**

Petitioner Ari Rosenthal of Ginsberg Jacobs, LLC, on behalf of Cellco Partnership d/b/a Verizon Wireless, is requesting a reconsideration of ZBA Case 3021, appealing the Site Plan Review Board’s decision regarding the denial of a consolidated application for a zoning certificate and building permit, for the collocation of wireless communication antennas, for the property located at 2112 N Linn Street (Parcel Identification No. 14-33-378-019 & 14-33-378-020), Peoria, Illinois (Council District 2).

Senior Urban Planner, Shannon Techie, Community Development Department, read Case No. ZBA 3036 into the record.

Donald Leist, Corporation Counsel for the City of Peoria, requested the Zoning Board of Appeals remand the May 2016 Site Plan Review Board (now Development Review Board) application to the Development Review Board for consideration.

Ari Rosenthal, petitioner representing Verizon Wireless, submitted Exhibits A, B, and C to the commission. Mr. Rosenthal provided background of the request. Mr. Rosenthal stipulated the public testimony of Kathleen Groark, representative of Verizon Wireless, and David Patch, owner of the subject property.

Commissioner Lyons requested the proposed height of the wireless communication antennas. Mr. Rosenthal referred to the history of proposed wireless communication antennas and said revised building plans have not been submitted to the city as was indicated in the memo.

Commissioner Jackson favored following the proper protocol and remanding the application to the Development Review Board as requested by Mr. Leist.

Chairperson Russo opened the Public Hearing at approximately 1:29p.m.

Cynthia Kimber, of 2117 N Linn Street, was opposed to the request due to health safety concerns regarding the emissions of the wireless communication facility.

Shanel Johnson, 2114 N Linn Street, supported the request. Ms. Johnson encouraged citizen participation in public discussions.

With no further interest from the public to provide public testimony, Chairperson Russo closed the Public Hearing at approximately 1:30p.m.
Discussion:  
Chairperson Richard Russo supported Corporation Counsel’s request to remand the May 2016 Site Plan Review Board application to the Development Review Board for review.

Motion:  
Commissioner Jackson made a motion to remand the May 2016 application to the Development Review Board; seconded by Commissioner Al-Khafaji.

The motion to remand the application to the Development Review Board was APPROVED by roll call vote.
Nays: None.

CITIZENS’ OPPORTUNITY TO ADDRESS THE COMMISSION
There was no interest from the public to address the Zoning Board of Appeals at 1:33p.m.

ADJOURNMENT
Commissioner Al-Khafaji moved to adjourn the Zoning Board of Appeals Meeting; seconded by Commissioner Lyons.

The motion was approved unanimously viva voce vote 4 to 0.

The Zoning Board of Appeals meeting adjourned at approximately 1:33p.m.

__________________________
Shannon Techie, Senior Urban Planner

__________________________
Madeline Wolf, Development Technician
TO: City of Peoria Zoning Board of Appeals
THRU: Development Review Board
FROM: Shannon Techie, Senior Urban Planner
DATE: October 12, 2017
CASE NO: ZBA 3036
SUBJECT: Petitioner Ari Rosenthal of Ginsberg Jacobs, LLC, on behalf of Cellco Partnership d/b/a Verizon Wireless, is requesting a reconsideration of ZBA Case 3021, appealing the Site Plan Review Board’s decision regarding the denial of a consolidated application for a zoning certificate and building permit, for the collocation of wireless communication antennas, for the property located at 2112 N Linn Street (Parcel Identification No. 14-33-378-019 & 14-33-378-020), Peoria, Illinois (Council District 2).

PROPERTY CHARACTERISTICS
The subject property contains .52 acres of land and is currently developed with a 32 unit apartment building. The property is zoned Class R-6 Multi-Family residential and surrounded by R-4 (Single-Family Residential) zoning to the north, west and south, and C-G (General Commercial) zoning to the east.

Per assessment records, the building was built as a 32 unit apartment building in 1925. The property has historically been zoned as follows:

<table>
<thead>
<tr>
<th>Date</th>
<th>Zoning</th>
</tr>
</thead>
<tbody>
<tr>
<td>1931-1958</td>
<td>C (Apartment)</td>
</tr>
<tr>
<td>1958-1963</td>
<td>C (Apartment)</td>
</tr>
<tr>
<td>1963 - 1990</td>
<td>R-2 (Medium Density Residential)</td>
</tr>
<tr>
<td>1990 - Present</td>
<td>R-6 (Multi-Family)</td>
</tr>
</tbody>
</table>

Summary of the Appeal Reconsideration:
On August 11, 2016, the Zoning Board of Appeals upheld the Site Plan Review Board’s (now Development Review Board) decision, which deferred to the action of the City Council and denied the consolidated application for a zoning certificate and building permit (administrative request through the Development Review Board) on June 8, 2016, based on Appendix B, Article 3.3.d.(1).(b), ‘notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the City may disapprove an application that is in conflict with the historic nature or character of a neighborhood or historical district’.

Per an order from the United States District Court, Central Illinois District, this matter was remanded back to the City of Peoria Zoning Board of Appeals for further consideration. Since the ZBA application for reconsideration of the appeal was submitted, the City has received revised plans regarding the placement of antennas on the building.

DEVELOPMENT REVIEW BOARD RECOMMENDATION
Since revised plans have been received since this request, staff recommends that the Zoning Board of Appeals send the amended application and plans back to the Development Review Board for consideration.
1. APPEAL REQUEST

Cellco Partnership d/b/a Verizon Wireless, do hereby appeal the decision made for the property located at
2112-2118 N. Linn Street, by the Site Plan Review Board
for the City of Peoria, on behalf of the Zoning Administrator of the City of Peoria, on 6/8/16 regarding the following (Summary of Decision):

Denial of Verizon Wireless' Consolidated Application for Zoning Certificate and Building Permit

to the Zoning Board of Appeals (ZBA) pursuant to Article 2.7 of the Unified Development Code of the City of Peoria. *pursuant to remand by order of the U.S. District Court for the Central District of Illinois entered August 3, 2017

2. OWNER INFORMATION – REQUIRED

David Patch

351 Catherine Street, Pekin, Illinois 61554

(309) 696-8302

patch349@aol.com

3. APPLICANT INFORMATION – engineer, architect, attorney or other, if applicable

Ari J. Rosenthal

300 S. Wacker Drive, Suite 2750, Chicago, Illinois 60606

(312) 660-9625

arosenthal@ginsbergjacobs.com

Applicant's Interest in Property:

☐ Contractor
☐ Contract Purchaser
☐ Other

Send Correspondence To: Select one entity to receive all correspondence. E-mail will be used for all correspondence unless otherwise requested.

☐ Owner
☐ Applicant
☐ Representative of Applicant

Zoning Board of Appeals Appeal Application - Page 1 of 2

Rev. 10/19/2016
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

CELLCO PARTNERSHIP d/b/a
VERIZON WIRELESS,

Plaintiff,

v. Case No. 16-1337

CITY OF PEORIA, CITY OF
PEORIA ZONING BOARD OF
APPEALS, and CITY OF PEORIA
SITE PLAN REVIEW BOARD,

Defendants.

ORDER

This matter is now before the Court on Plaintiff Cellco Partnership d/b/a Verizon Wireless’s (“Verizon” or “Plaintiff”) Motion for Summary Judgment on Count I of the Amended Complaint. (ECF No. 38). For reasons stated herein, the Motion is GRANTED insofar as this matter is REMANDED to the Defendants City of Peoria, the City of Peoria Zoning Board of Appeals (“ZBA”), and the City of Peoria Site Plan Review Board (“SPRB”) for further consideration as more fully described herein. The Parties are DIRECTED to provide a joint status report on their proposed disposition of the remaining counts on or before August 11, 2017.

PROCEDURAL BACKGROUND

On September 9, 2016, Plaintiff filed its four-count Complaint against the Defendants. (ECF No. 1). On December 8, 2016, Verizon moved to file the administrative record, stay discovery, and request an expedited hearing on Count I, which sought review under 47 U.S.C. § 332 of the City’s decision to deny Verizon’s request to place wireless services facilities at a property located at 2112 North Linn Street, Peoria, Illinois. (ECF No. 9; see also ECF No. 16). A supplement to the administrative record has been filed. (ECF No. 24).
On March 2, 2017, Plaintiff filed its Amended Complaint. (ECF No. 12). Count I of the Amended Complaint again alleges a violation of the Federal Telecommunications Act of 1996. *Id.* Plaintiff specifically alleges the Defendants failed to support the denial of its application with a written decision based on substantial evidence.

As it relates to this matter, the Federal Telecommunications Act of 1996 provides:

Any decision by a State or local government or instrumentality thereof to deny a request to place, construct or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

47 USC §332(c)(7)(B)(iii).

The Act further provides:

Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis.

47 USC §332(c)(7)(B)(v) (Emphasis added).

Pursuant to the schedule previously entered by Chief Judge Shadid, and subsequently modified by this Court on July 14, 2017, Plaintiff filed its Motion for Summary Judgment on Count I. (See ORDER dated 5/17/2017; see also TEXT ONLY ORDER dated 5/24/2017 and ECF No. 36). Defendants’ filed their Response on July 21, 2017, and this Court held a hearing on the Motion on July 27, 2017. (See ECF No. 39 and Minute Entry dated 7/27/2017). This Order follows.

**FACTUAL BACKGROUND**

The property at 2112 North Linn Street, Peoria, Illinois is described as a:

.52 acres of land and is currently developed with a 32 unit apartment building. The property is zoned Class R-6 Multi-Family residential and surrounded by R-4 (Single-Family) Residential) zoning to the north, west and south, and C-G (General Commercial) zoning to the east.
(ECF No. 24-1 at 1; see also AR 0054). Plaintiff explains, and the record indicates, there were
gaps in coverage (or, perhaps more accurately stated, signal strength concerns) in the areas
surrounding the 2112 North Linn Street property. (ECF No. 24-3 at 23-24). Initially, Verizon
sought to place the antennas above the existing penthouse, which would have increased the
building’s height from 60 feet to 70 feet. Id. This plan required Plaintiff to obtain a Special Use
Permit from the City of Peoria. Id. On January 27, 2016, through its agent, Plaintiff submitted a
Special Use Application to the SPRB for the proposed wireless communications facility at the
Linn Street property. Id. The initial plans were eventually changed because the SPRB was going
to recommend the Peoria Zoning Commission deny the permit. Id.

There were apparently on-going discussions between the Plaintiff and Defendants
regarding the site after the initial review. Plaintiff submitted revised site plans with the changes
discussed, and on February 23, 2016, the SPRB recommended approval of the Special Use Permit,
with certain conditions. (ECF No. 24-1 at 14; see also ECF No. 24-1 at 21, Plaintiff
decreased the
proposed antenna height from 60 feet to 65 feet. This still required a Special Use Permit because
the overall height was over the maximum height allowed in the R-6 zone). In its recommendation,
the SPRB explained in its findings that there would be:

- No detriment to public health, safety, or general welfare;
- No injury to other property or diminish property values;
- No impediment to orderly development;
- Provides adequate facilities;
- Ingress/egress measures designed to minimize traffic congestion;
- Adherence to the comprehensive plan;
- If a public use/service, then a public benefit;
• [Adherence to the] Comprehensive Plan Critical Success factors (Grow employers and jobs); [and]

• [Adherence to the] City Council Strategic Plan Goals (Grow Peoria business, jobs and population).

(ECF No. 24-1 at 18). On April 7, 2016, the Peoria Zoning Commission voted to approve the Plaintiff’s request. (ECF No. 44-1 at 22). On April 26, 2016, the permit was considered by the City Council at its meeting, and the permit was denied. The minutes of the meeting are contained in the record, and reveal the following:

Mr. Thomas Wester, President of the Heart of Peoria Neighborhood Association, said he and his neighbors worked hard to restore the quality of life within that neighborhood and he voiced his concern regarding the installation of the facility. He said there were no issues of lack of cell service in the area and the neighbors did not want to see a wireless facility in the neighborhood. He asked the Council to deny the request for the Special Use.

Council Member Grayeb said he was certain Verizon would find another location, which would not be damaging to a fragile neighborhood, and he moved to deny the request to adopt Ordinance A or the Recommendation of Staff to Adopt Ordinance B, approving a Special Use for a wireless communication facility for the property located at 2112 N. Linn Street, Peoria, IL; seconded by Council Member Jensen.

Discussions were held regarding the impact this facility would have on the neighborhood, and Mr. Wester remarked that the neighborhood was not a commercial neighborhood stating it would take away from the neighborhood's vibrancy.

Council Member Grayeb said the height of the facility would exceed what could be approved administratively. He said the facility would be visible and did not belong in a residential neighborhood. He voiced his disapproval of this item, and he asked Council to deny the item as outlined.

In response to Council Member Akeson's question on what would happen should this item be denied, Ms. Groark said Verizon would come back to look for a new location.

Council Member Montelongo inquired whether the City had a policy for cell towers or facilities in commercial and residential areas.

Community Development Director Black said the City Code had a list of priorities from high to low in terms of location for cell towers and cell service. He said the
Code did not necessarily break down the location in terms of residential or commercial. He said the intent of the Code was to put an antennae on top of an existing structure. He said if that was not available, then a new tower would be erected.

Council Member Montelongo inquired whether a policy and a process could be established in order to eliminate City Council input and to let policy drive the decision.

Mayor Ardis said Verizon would come back in a week with another location. He said he would defer to the District Council Member in support of his neighborhood association.

In response to the issues identified by Council Member Akeson, Council Member Grayeb remarked that the property owners recently met with Director Black to address those issues.

Motion to DENY the request to adopt Ordinance A or the Recommendation of Staff to Adopt Ordinance B, approving a Special Use for a wireless communication facility for the property located at 2112 N. Linn Street, Peoria, IL was approved by roll call vote.

Yeas: Akeson, Grayeb, Jensen, Johnson, Montelongo, Moore, Riggenbach, Ruckriegel, Spain, Turner, Mayor Ardis - 11;
Nays: None.

(ECF No. 24-3 at 34-35).

Following the denial of the Special Use Permit, Plaintiff revised its site plans by lowering the antennas’ proposed installation height from 65 feet to 60 feet. (ECF No. 19 at 1-5). Under Plaintiff’s revised site plan the antennas would not exceed the building’s height. Id. On May 24, 2016, Plaintiff submitted its Building Permit Application (“BPA”) to the SPRB. Id. The SPRB rejected Verizon’s BPA on June 8, 2016. The entirety of the SPRB’s denial states:

Appendix B, Article 3.3.d.(1).(b), states that the City may disapprove an application that is in ‘conflict with the historic nature or character of a neighborhood or historical district’. The Site Plan Review Board therefore defers to the action taken by the City Council that the proposed wireless communication facility is not compatible with the residential character of the neighborhood and disapproves this request.

Per Section 2.7 of the Land Development Code, this decision can be appealed to the Zoning Board of Appeals within thirty (30) days of the date of determination.
(ECF No. 16-6 at 1).

On July 7, 2016, Plaintiff filed its appeal to the ZBA. (ECF No. 16-8). On August 11, 2016, the regularly scheduled Zoning Board of Appeals Meeting was held wherein the ZBA denied Plaintiff’s appeal. (ECF No. 16-11). The “draft” minutes of the meeting reveal, among other things, ZBA’s finding that the “[SPRB’s] previous findings prior to June 8, 2016, was not binding to the Site Plan Review Board’s decision on June 8, 2016 because two different applications were reviewed.” (ECF No. 16-11 at 1). The minutes also reflect that “[a] concerned citizen, was not in support of businesses near the subject property.” (ECF No. 16-11 at 2). Plaintiff then brought this action.

**DISCUSSION**

As noted above, the Federal Telecommunications Act of 1996 requires “[a]ny decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.” 47 U.S.C. § 332(c)(7)(B)(iii). Although there is discretion for the local government in how the writing requirement is satisfied, the writing must be such that the “locality's reasons are stated clearly enough to enable judicial review.” *T-Mobile S., LLC v. City of Roswell, Ga.*, 135 S. Ct. 808, 190 L. Ed. 2d 679 (2015). In this case, Plaintiff argues the record is void of any written notice of the ZBC’s decision to deny Plaintiff’s appeal. Defendants counter that:

Plaintiff was not deprived of a meaningful opportunity to obtain judicial relief. When the ZBA denied its application, the ZBA referenced the minutes of the City Council Proceedings of April 26, 2016. These [minutes] were not only publically available, but were also in the possession of the Plaintiff. Therefore, since the reasoning within the minutes of the City Council Proceeding was the same as the ZBA’s reasoning for denial, Plaintiff was not hindered or required to wait of the ZBA’s written decision to seek judicial review.
Defendants concede that the draft minutes of the ZBA’s proceeding were never formally adopted. Yet, still stand by their position that these minutes satisfy the writing requirement. Because the Court finds that the decision was not supported by substantial evidence, for purposes of this Motion, the Court makes no determination of whether the minutes are sufficient under the Federal Telecommunications Act of 1996. Importantly, however, the record demonstrates that the Plaintiff was able to timely file this appeal and obtain judicial review.

As for the requirement that the decision be supported by substantial evidence contained in a written record, the Supreme Court in *T-Mobile S., LLC v. City of Roswell, Ga.* provides significant guidance. In Supreme Court explained:

Our conclusion follows from the provisions of the Telecommunications Act. The Act generally preserves “the traditional authority of state and local governments to regulate the location, construction, and modification” of wireless communications facilities like cell phone towers, but imposes “specific limitations” on that authority. *Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 115, 125 S.Ct. 1453, 161 L.Ed.2d 316 (2005); see § 332(c)(7)(B). One of those limitations is that any decision to deny a request to build a tower “shall be in writing and supported by substantial evidence contained in a written record.” § 332(c)(7)(B)(iii). Another is that parties adversely affected by a locality's decision may seek judicial review. § 332(c)(7)(B)(v). In order to determine whether a locality's denial was supported by substantial evidence, as Congress directed, courts must be able to identify the reason or reasons why the locality denied the application. See *Rancho Palos Verdes*, 544 U.S., at 128, 125 S.Ct. 1453 (BREYER, J., joined by O'Connor, Souter, and GINSBURG, JJ., concurring) (observing that the Act “requires local zoning boards ... [to] give reasons for [their] denials ‘in writing’ ”).

The requirement that localities must provide reasons when they deny applications is further underscored by two of the other limitations on local authority set out in the Act. The Act provides that localities “shall not unreasonably discriminate among providers of functionally equivalent services,” and may not regulate the construction of personal wireless service facilities “on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the [Federal Communications Commission’s] regulations concerning such emissions.” §§ 332(c)(7)(B)(i), (iv). Again, it would be considerably more
difficult for a reviewing court to determine whether a locality had violated these substantive provisions if the locality were not obligated to state its reasons. 

Id. at 814. Undoubtedly, the substantial evidence standard is highly deferential to the local government making the decision. VoiceStream Minneapolis, Inc. v. St. Croix County, 342 F.3d 818, 830 (7th Cir.2003). And, the Plaintiff has an additional burden as this case is at the summary judgment stage, and the corresponding standard of review applies. See Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). But, the Parties have submitted the administrative record, and this Court’s review finds the decision to deny the application is not supported by substantial evidence.

The first problem with the denial is that the reasoning adopted the determination related to the Special Use Permit, not the application. Ironically, the ZBA recognized the distinction as it held the “[SPRB’s] previous findings prior to June 8, 2016, was not binding to the Site Plan Review Board’s decision on June 8, 2016 because two different applications were reviewed.” Of course, the previous findings were related to a tower 5 feet higher, and it is curious that its subsequent findings were inapposite of its initial findings. The reality, of course, is the SPRB was deferring to the City Council’s decision.

The difficulty with City Council’s decision is that it lacked any evidentiary support. Without any supporting documentation, the City Council apparently adopted the Neighborhood Association’s President’s conclusion that “there were no issues of lack of cell service in the area and the neighbors did not want to see a wireless facility in the neighborhood.” The Court finds it problematic that the City Council would give weight to these statements without any supporting evidence. Additionally, the City Council apparently gave weight to Councilman Grayeb’s statement that “the facility would be visible and did not belong in a residential neighborhood.” The problem is that there were modifications to the proposed facilities (e.g. height) – and the visibility or lack of visibility – changed with the subsequent applications. The Plaintiff were
entitled to have a review on the new application. Nothing in the record suggest any consideration was given by the ZBA to the changes presented in the subsequent application. In fact, the record contains photos of the proposed facilities that do not appear to be unsightly – but again, that is an issue not for this Court to decide. The Court’s decision is not meant to be overly critical of the local government. Local governments are much more familiar with the intimate details of matters such as these. That being said, a reviewing body – and the public - should be able to discern from the paper trail the reasons for the decision. In this case, such reasons are simply not present on the written record.

Accordingly, this Court finds this matter should be REMANDED back to the City of Peoria Zoning Board of Appeals for further consideration on the application consistent with this decision.

CONCLUSION

For reasons stated herein, Plaintiff Cellco Partnership d/b/a/ Verizon Wireless’s Motion for Summary Judgment on Count I of the Amended Complaint is GRANTED insofar as this matter is REMANDED to the City of Peoria Zoning Board of Appeals for further consideration as more fully described herein. The Parties are DIRECTED to provide a joint status report on their proposed disposition of the remaining counts on or before August 11, 2017.

ENTERED this 3rd day of August, 2017.

s/: Michael M. Mihm
Michael M. Mihm
U.S. District Court Judge
Appendix A, Section 2.7.5. Appeals – Zoning Board of Appeals Decisions

Following a hearing by the Zoning Board of Appeals on any appeal from a Development Review Board decision, an administrative order, requirement, decision or determination relating to this development code, the Zoning Board of Appeals shall make findings and affirm, reverse or modify the Development Review Board or administrative decision. A decision by the Zoning Board of Appeals shall be final administrative determination.

The Zoning Board of Appeals shall not, by its decision on appeal, permit a variation in the application of the regulations of this chapter. In order to reverse or modify an action, any one or combination of following findings must be satisfied:

A. The provision in question is unclear and an interpretation is necessary to determine the intent and application of the provision.
   True  False

B. The Zoning Administrator or DRB misinterpreted the provisions of this chapter.
   True  False

FIRST MOTION: __________________________________________________________

INITIATED BY: ____________________________________________
SECOND: ____________________________________________

SECOND MOTION: __________________________________________________________

INITIATED BY: ____________________________________________
SECOND: ____________________________________________

SIGNATURES

Chairperson Richard Russo
Vice Chairperson Scott Kelsey
Commissioner Laith Al-Khafaji
Commissioner Jerry Jackson
Commissioner Dorian LaSaine
Commissioner Lon Lyons
Commissioner Nathan Wagner

VOTE:

Chairperson Richard Russo  ____________  Yea  Nay
Vice Chairperson Scott Kelsey  ____________  Yea  Nay
Commissioner Laith Al-Khafaji  ____________  Yea  Nay
Commissioner Jerry Jackson  ____________  Yea  Nay
Commissioner Dorian LaSaine  ____________  Yea  Nay
Commissioner Lon Lyons  ____________  Yea  Nay
Commissioner Nathan Wagner  ____________  Yea  Nay

VOTE:  Approved  Denied  to
TO: City of Peoria Zoning Board of Appeals
FROM: Development Review Board (Prepared by Josh Naven)
DATE: November 9, 2017
CASE NO: ZBA 3037

SUBJECT: Public Hearing on the request of Cassie Snell d/b/a Pawprint Palace LLC., to obtain a variance from the City of Peoria Unified Development Code Section 5.4.7.C. Fence Requirements, to increase the height of a side yard fence from six feet to eight feet for the property identified as Parcel Identification No. 14-05-353-003, with an address of 1623 W Pioneer Parkway, Peoria, Illinois (Council District 5).

PROPERTY CHARACTERISTICS
The subject property is 1.03 acres (44,866 sq. ft.) in size and zoned Class C-2 (Large Scale Commercial) District. The site is surrounded by the following classifications:

<table>
<thead>
<tr>
<th>North</th>
<th>South</th>
</tr>
</thead>
<tbody>
<tr>
<td>I2 (Railroad/Warehouse Industrial) District</td>
<td>C2 (Large Scale Commercial) District</td>
</tr>
<tr>
<td>East</td>
<td>West</td>
</tr>
<tr>
<td>C2 (Large Scale Commercial) District</td>
<td>C2 (Large Scale Commercial) District</td>
</tr>
</tbody>
</table>

The subject property is developed with a personal service establishment known as Camp Bow Wow.

REQUESTED VARIANCES:
The Petitioner is requesting a variance from Section 5.4.7.C. Fence Requirements, to increase the height of a side yard fence from six feet to eight feet (33% increase). The following table provides the percentage of variance for each required yard:

The Petitioner states that the variance request is due to pet safety.

SITE PLAN REVIEW BOARD RECOMMENDATION
Staff’s recommendation is to DENY the variance due to a lack of hardship and failure to meet all of the following criteria:

1) Reasonable Return: The subject property can yield a reasonable return without the requested variance.
2) Unique Circumstances: The property does not have a unique shape, size, or topography that prevents it from complying with fence height requirements. The lot is level and appropriately sized. Based on the application, the requested variance is due to circumstances of convenience and self-creation. Please recall that a hardship only exists when application of the ordinance to a particular property practically destroys the value for any permitted use.
3) Character: The proposed variance may not alter the character of the neighborhood. The area surrounding the subject property is large scale commercial and industrial development. Review of the area found some fences greater than six feet in height.

Approval of the variance request will set precedent for the next proposal that comes to the community which may not be viewed as beneficially as this proposal and would put the City of Peoria in a precarious position if it were to be denied.

Staff requests the following conditions be added to any variance approval by the Board:

1) All provided disabled spaces must comply with UDC Section 8.1.5.E.
2) The existing parking and paved access areas are unmaintained and unstriped. These areas must comply with UDC Section 8.1.5.H.
3) Bicycle Parking shall be installed pursuant to UDC Section 8.1.6. – Bike Parking Table.
4) The current site landscaping configuration does not appear to meet the point requirements (UDC Section 8.2.6. & 7.) or minimum planting standards (UDC Section 8.2.13.D). A compliant Landscape Plan must be submitted and reviewed for approval per UDC Section 8.2. and implemented on the site.
5) All rooftop and ground mounted mechanical units must be screened pursuant to City Code Chapter 5, Section 601.2.
6) Any refuse dumpsters must be screened pursuant to City Code Chapter 13, Section 40.b.

ATTACHMENTS
1. Surrounding Zoning Map
2. Aerial Photo
3. Application
4. Site Plan
5. Fencing Standards
6. Similar Use Fence Examples
7. DRB Comments
Disclaimer: Data is provided 'as is' without warranty or any representation of accuracy, timeliness or completeness. The burden for determining fitness for, or the appropriateness for use, rests solely on the requester. The requester acknowledges and accepts the limitations of the Data, including the fact that the Data is in a constant state of maintenance. This website is NOT intended to be used for legal litigation or boundary disputes and is informational only. - Peoria County GIS Division
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ZONING BOARD OF APPEALS
VARIANCE APPLICATION

1. PROPERTY INFORMATION
   a) Address: 1623 W Pioneer Parkway Peoria IL 61615
   b) Tax ID Number(s): 14-05-353-003
   c) Parcel Area (acres or square feet): 1.01 acres
   d) Current Zoning District: C-2
   e) Current Property Use: Doggy Daycare & Boarding

2. OWNER INFORMATION – REQUIRED
   Cassie Snel
   Pawprint Palace LLC
   Name
   2920 W Sylvan Lane Peoria IL 61615-3632
   Address, City, State, ZIP+4
   309-370-7367
   Phone
   snell-cassie@gmail.com
   Email
   Cassie Snel 10/5/17
   Signature of Owner(s) & Date

3. APPLICANT INFORMATION – engineer, architect, attorney or other, if applicable
   Cassie Snel
   Pawprint Palace LLC
   Name
   2920 W Sylvan Lane Peoria IL 61615-3632
   Address, City, State, ZIP+4
   309-370-7367
   Phone
   snell-cassie@gmail.com
   Email
   Cassie Snel 10/5/17
   Signature of Applicant & Date

Applicant's Interest in Property:
- Contractor
- □ Contract Purchaser
- □ Other

Send Correspondence To: Select one entity to receive all correspondence. E-mail will be used for all correspondence unless otherwise requested.
- □ Owner
- □ Contractor
- □ Applicant
- □ Representative of Applicant
4. VARIANCE INFORMATION

a) Variance being requested: Currently we are allowed to install a 6' fence, but we are requesting permission for an 8' fence.

b) From what section of the zoning ordinance is a variance being requested? Fencing UDC Section 5.4.7.C

c) What unique or exceptional characteristics of your property prevent it from meeting the requirements in your zoning district? (Check applicable)

- Too narrow
- Too small
- Soil
- Subsurface
- Elevation
- Slope
- Too shallow
- Shape
- Other [Too Tall]

d) What is your hardship? Please be specific.

We are requesting an 8' fence for the safety of the dogs. Some dogs may be capable of jumping the 6' fence, so we want to make sure we have the proper measurements in place.

If granted a variance in the form requested, will it be in harmony with the neighborhood and not contrary to the intent and purpose of the Unified Development Ordinance?

[ ] Yes [ ] No

Please elaborate: This fencing will not be visible from the street, nor will it interfere with any of our neighbors’ views. This is strictly for the safety of the dogs.

5. FILING FEE (MUST ACCOMPANY APPLICATION)

Variance Application Fees for any property in the City shall be as set forth below:

$750.00 minimum plus $100 per acre to a maximum of $7500.00

Per Unified Development Code Article 2.14 - Fees Table:

6. REQUIRED SITE PLANS

One copy of the site plan and one on a compact disc or appropriate digital media.
7. FINDINGS OF FACT WORKSHEET

Please select true or false for the following three questions:

Sections 2.6.3.E. Standards for Variations
No variations from the regulations of this development code shall be granted unless the entity or person granting such variation shall find based upon the evidence presented to them in each specific case that all three of the following criteria are true:

1) The property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations in that zoning district.

   True   False

   Explanation: We are requesting this variance to ensure the dogs have a safe outdoor space to play without the concern of them jumping a short fence to escape.

   Fact to consider:
   a. The purpose of the variation is not based primarily upon a desire to increase financial gain.

2) The plight of the owner is due to unique circumstances.

   True   False

   Explanation: We need this variance because dogs are able to jump higher than most people would think. We want to make sure we are prepared for all surprises by making sure our six fence will contain the dogs.

   Facts to consider:
   a. The particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience if the strict letter of the regulations were to be carried out.
   b. The conditions upon which an application for a variation is based are unique to the property for which the variance is sought, and are not applicable, generally, to other property within the same zoning classification.
   c. The practical difficulty or hardship is caused by this ordinance and has not been created by any persons presently having an interest in the property.

3) The variation, if granted, will not alter the essential character of the locality or be injurious to the public or other property or properties.

   True   False

   Explanation: The location of the fence is out of sight from the street and it will not obscure the view for anyone except the dogs.

   Facts to consider:
   a. The granting of the variation will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.
   b. The proposed variation will not impair an adequate supply of light and air to adjacent property or substantially increase the danger of fire, or impair natural drainage or create drainage problems on adjacent properties, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.
8. APPLICATION/MEETING PROCEDURES

A) The Zoning Board of Appeals has regularly scheduled meetings the second Thursday of each month at the City Hall Building, Room 400, 419 Fulton Street, Peoria, Illinois.

B) The deadline for submitting applications for regularly scheduled Zoning Board of Appeals meetings is twenty-eight (28) days prior to the meeting.

C) The Zoning Administrator must certify that an application for a public hearing is complete (completely filled out, received by the filing deadline, and accompanied by a compact disc or appropriate digital media of the site plan, including digital versions of the application and other attachments as required, including the filing fee) to be processed and scheduled for the next regularly scheduled meeting. Incomplete applications will be returned.

D) The applicant or applicant's representative will receive notice of the date and time of the public hearing. At least fifteen days prior to the hearing, the Community Development Department will mail notices of the hearing to the owners of all property within 250 feet of the subject property.

E) The format for each public hearing is:

- Chairperson proceeds with swearing-in procedures.
- Chairperson announces the case.
- Staff enters case into the record.
  - Staff presents the case.
  - Staff answers questions from the Commission.
- Petitioner presents case and answers questions from the Commission.
- Chairperson opens the meeting to the public.
- Public comments - Chairperson may ask for response/input from Staff and Petitioner.
- Petitioner presents closing statements.
- Public testimony is closed. (No further public comment)
- Commission deliberates and may consult Staff.
- Commission prepares findings, if applicable.
- Commission votes.

F) Application and inquiries should be submitted to:

Zoning Administrator  
City of Peoria Development Center  
419 Fulton Street, Room 300  
Peoria, Illinois 61602-1217

Phone: (309) 494-8600  
Fax: (309) 494-8680
## C. Fences Requirements

<table>
<thead>
<tr>
<th></th>
<th>Residential, Office, Commercial, Institutional, and I-1 Zoning Districts</th>
<th>I-2 and I-3 Zoning Districts</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Maximum Height</td>
<td>Required Setback</td>
</tr>
<tr>
<td>Front Yard</td>
<td>3 feet</td>
<td>None</td>
</tr>
<tr>
<td>Corner Side Yard</td>
<td>3 feet</td>
<td>None</td>
</tr>
<tr>
<td></td>
<td>6 feet</td>
<td>10 feet from abutting street</td>
</tr>
<tr>
<td>Side Yard</td>
<td>6 feet, no fence or wall is permitted when less than 3 feet between fence or wall and any principal structure</td>
<td>None</td>
</tr>
<tr>
<td>Rear Yard</td>
<td>6 feet</td>
<td>None</td>
</tr>
<tr>
<td>Through Lot</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Must comply with all of the above, unless all principal structures in same block face the same street or direction, and there is no vehicular access to the street in which the principal structure does not face, a fence or wall may be constructed as per the rear yard regulation for interior lots.*
Address / PIN / General Location: 1623 W Pioneer Parkway
Building Job ID: Project # 17-181
Project Description: ZBA – Variance, Fence Height, Pawprint Palace
Project Status: ACTIVE
Department: Public Works
Comment Date: October 18, 2017

CONDITIONS OF APPROVAL REGARDING THE PLANS AND APPLICATION

No Comments.
TO: City of Peoria Zoning Board of Appeals
FROM: Development Review Board (Prepared by Leah Allison)
DATE: November 9, 2017
CASE NO: ZBA 3038
SUBJECT: Public Hearing on the request of Michael Cook of Cook Rentals to obtain a variance from the City of Peoria Unified Development Code Section 4.3.4 CN and CG District Building Envelope Standards, to eliminate: 1) maximum building setback of 80 feet, and 2) minimum building facade of 60% along the primary street frontage, to allow for a building setback of 112 feet for the property located at 1910 NE Jefferson Avenue (Parcel Identification No. 18-03-276-035), Peoria, Illinois (Council District 1).

PROPERTY CHARACTERISTICS
The subject property is 0.93 acre in size and zoned Class C-G (General Commercial) District. It is surrounded by Class C-G (General Commercial) to the north and east, Class R-6 (Multi-Family Residential) to the west, and Classes C-G (General Commercial) and I-2 (Railroad/Warehouse Industrial) to the south.

REQUESTED VARIANCE:
The Petitioner is requesting a variance from Section 4.3.4 CN and CG District Building Envelope Standards, to eliminate: 1) maximum building setback of 80 feet, and 2) minimum building facade of 60% along the primary street frontage (Jefferson Ave), to allow for a building setback of 112 feet.

The petitioner would like to construct a new building set back 112 feet from the front property line of Jefferson Avenue. The maximum setback allowed within the C-G zoning district is 80 feet. The C-G district also requires the width of the building façade to be at least 137 feet (60% of the width of the lot frontage) in length along Jefferson Avenue. Currently, an existing building has a length of approximately 63 feet (27% of the width of the lot frontage) along Jefferson Ave.

The Petitioner states if the proposed building is placed per Code requirements, it would interfere with traffic flow, truck deliveries, and the overall ability to utilize the property.

SITE PLAN REVIEW BOARD RECOMMENDATION
Staff recommends APPROVAL of the requested variances subject to the following conditions:
1) Exterior façade improvements to existing buildings to match the new building.
2) Replace gravel surface located in the parking/loading area with hard surface per Section 8.1.5 of the Unified Development Code.
3) Install new 6-foot tall solid fence to replace chain link along alley.
4) Provide a landscape plan for the installation of shrubs along the frontage of Abington Street.
5) Participate in the City sidewalk program to install a new sidewalk along Abington Street.
6) Restripe handicap accessible parking space to provide 5 ft wide access aisle and provide required signage per State of IL and Section 8.1.5 of the Unified Development Code.
7) Architectural construction documents sealed and signed by a licensed Illinois Design Professional must be submitted with the building permit application prior to construction of the building.
ZONING BOARD OF APPEALS
VARIANCE APPLICATION

1. PROPERTY INFORMATION
   a) Address: 1910 NE Jefferson Peoria IL 61603
   b) Tax ID Number(s): 18-03-276-035
   c) Parcel Area (acres or square feet): .93
   d) Current Zoning District: CG
   e) Current Property Use: Rental Service

2. OWNER INFORMATION – REQUIRED
   Michael Cook
   Name
   Millerents Inc DBA Cook Rental
   Company
   1910 NE Jefferson Peoria IL 61603
   Address, City, State, ZIP+4
   309-678-2584  309-676-3231 cookrentals@gmail.com
   Phone  Fax  Email
   Signature of Owner(s) & Date

3. APPLICANT INFORMATION – engineer, architect, attorney or other, if applicable
   Name
   Company
   Address, City, State, ZIP+4
   Phone  Fax  Email
   Signature of Applicant & Date

Applicant’s Interest in Property:
☐ Contractor
☐ Contract Purchaser
☐ Other

Send Correspondence To: Select one entity to receive all correspondence. E-mail will be used for all correspondence unless otherwise requested.
☐ Owner
☐ Applicant
☐ Representative of Applicant
4. VARIANCE INFORMATION

a) Variance being requested: Sec 4.3.4.H - Front yard setback

b) From what section of the zoning ordinance is a variance being requested? Sec 4.3.4.H.

c) What unique or exceptional characteristics of your property prevent it from meeting the requirements in your zoning district? (Check applicable)

- Too narrow
- Too small
- Soil
- Subsurface
- Elevation
- Slope
- Too shallow
- Shape
- Other

X

d) What is your hardship? Please be specific.

IF the area for the building I requested can't be used it would affect the flow of the property. Traffic flow would be interrupted. Parking for our delivery trucks would be interrupted. And the area we use to clean our equipment would be interrupted.

X Yes  ____ No

Please elaborate: We currently have 3 other buildings in the alley way behind our property. The building we want to remove and replace with a bigger building is in the alley as well. Sherie Food's building goes along the alley as well which is our neighbor.

5. FILING FEE (MUST ACCOMPANY APPLICATION)

Variance Application Fees for any property in the City shall be as set forth below:

$750.00 minimum plus $100 per acre to a maximum of $7500.00

Per Unified Development Code Article 2.14 - Fees Table:

6. REQUIRED SITE PLANS

One copy of the site plan and one on a compact disc or appropriate digital media.
1. FINDINGS OF FACT WORKSHEET

Please select true or false for the following three questions:

Sections 2.6.3.E. Standards for Variations
No variations from the regulations of this development code shall be granted unless the entity or person granting such variation shall find based upon the evidence presented to them in each specific case that all three of the following criteria are true:

1) The property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations in that zoning district.

   X  True    False

Explanation: After being in the rental business for 40 years, and accumulating equipment for 3 locations we have had to close 2 locations due to the economy. Logistically bringing equipment from other locations for customers to come.

Fact to consider: Is making it too difficult.

a. The purpose of the variation is not based primarily upon a desire to increase financial gain.

2) The plight of the owner is due to unique circumstances.

   X  True    False

Explanation: Our property is a corner property, and it fronts onto a state route. If a building were placed to code, it would interrupt traffic into the property and wouldn’t look right.

Facts to consider:

a. The particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience if the strict letter of the regulations were to be carried out.

b. The conditions upon which an application for a variation is based are unique to the property for which the variance is sought, and are not applicable, generally, to other property within the same zoning classification.

c. The practical difficulty or hardship is caused by this ordinance and has not been created by any persons presently having an interest in the property.

3) The variation, if granted, will not alter the essential character of the locality or be injurious to the public or other property or properties.

   X  True    False

Explanation: Adding a bigger building along an alley way wouldn’t be out of character because we have 4 buildings there now and our neighbor has built a new building along the alley too.

Facts to consider:

a. The granting of the variation will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.

b. The proposed variation will not impair an adequate supply of light and air to adjacent property or substantially increase the danger of fire, or impair natural drainage or create drainage problems on adjacent properties, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.
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City of Peoria Development Center
419 Fulton Street, Room 300
Peoria, Illinois 61602-1217

Phone: (309) 494-8600
Fax: (309) 494-8680
Sections 2.6.3.E. Standards for Variations

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1) The property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations in that zoning district.

True       False

Fact to consider:

a. The purpose of the variation is not based primarily upon a desire to increase financial gain.

2) The plight of the owner is due to unique circumstances.

True       False

Facts to consider:

a. The particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience if the strict letter of the regulations were to be carried out.

b. The conditions upon which an application for a variation is based are unique to the property for which the variance is sought, and are not applicable, generally, to other property within the same zoning classification.

c. The practical difficulty or hardship is caused by this ordinance and has not been created by any persons presently having an interest in the property.

3) The variation, if granted, will not alter the essential character of the locality or be injurious to the public or other property or properties.

True       False

Facts to consider:

a. The granting of the variation will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.

b. The proposed variation will not impair an adequate supply of light and air to adjacent property or substantially increase the danger of fire, or impair natural drainage or create drainage problems on adjacent properties, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.
Section 2.12.f./2.6.4.G Right to Impose Conditions
The person or entity granting any variance may impose such conditions and restrictions upon the premises benefitted by a variation as may be necessary to comply with the standards established in this Section and the objectives of this ordinance.

1) __________________________________________________________________________
2) __________________________________________________________________________
3) __________________________________________________________________________

MOTION: ______________________________________________________________________

INITIATED BY: __________________________________________________________________
SECOND: _______________________________________________________________________

SIGNATURES

Chairperson Richard Russo ________________________________ Yea _____ Nay ______
Vice Chairperson Scott Kelsey ______________________________ Yea _____ Nay ______
Commissioner Laith Al-Khafaji ______________________________ Yea _____ Nay ______
Commissioner Jerry Jackson ______________________________ Yea _____ Nay ______
Commissioner Dorian LaSaine ______________________________ Yea _____ Nay ______
Commissioner Lon Lyons ________________________________ Yea _____ Nay ______
Commissioner Nathan Wagner ______________________________ Yea _____ Nay ______

VOTE: Approved ___________ Denied ___________ _______ to _______