

STAFF REPORT

GENERAL INFORMATION

APPLICANT	Carrie Willey, Telamon, on behalf of Anthemnet
LOCATION	6698 East State Highway 9
ZONING	A-2, Rural Agricultural District
REQUESTED ACTION	Variance of 113.5' to the 200' setback under Section 431.2(3)(d) from adjacent property used for residential purposes
SUPPORTING DATA	Location Map Application with attachments Site Plan

SYNOPSIS: The applicant is requesting a variance of 113.5' to the 200' setback from the adjacent property to the west, which is used for residential purposes, to allow for construction of a Commercial Communications Tower.

The application and site plan are attached for your review. Please see the applicant's responses to the four criteria below.

VARIANCE CRITERIA PER SECTION 441.11:

A variance from the terms of this ordinance shall not be granted by the Board of Adjustment unless and until:

- (a) An applicant shall submit to the Board of Adjustment a written application indicating:
 - (1) That special conditions and circumstances exist that are peculiar to the land, structure, or building involved and are not applicable to other lands, structures, or buildings in the same district;
 - (2) That the literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance;
 - (3) That the special conditions and circumstances do not result from the actions of the applicant;

- (4) That granting the variances requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structure, or buildings in the same district;

No non-conforming use of neighboring lands, structures, or buildings in the same district and no permitted use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

Before any VARIANCE can be granted, the Board shall make a finding that the following four requirements have been met by the applicant:

1. ***There are special conditions or circumstances peculiar to the land or structure involved.***
See attached response from applicant.
2. ***The literal interpretation of the provisions of the Ordinance would deprive the applicant of rights enjoyed by others in the same district.***
See attached response from applicant.
3. ***The special conditions or circumstances do not result from the actions of the applicant.***
See attached response from applicant.
4. ***The granting of the Variance will not confer special privileges on the applicant that are denied to other lands and/or structures in the same district.***
See attached response from applicant.

DISCUSSION: This is an application for a variance to the required 200' setback from the property line on the west side of the subject tract for Commercial Communication Towers.

Section 431.2, Chapter 22, Zoning Ordinance requires the following:

Setbacks. No commercial tower shall be located closer than 200 feet to the boundary line of any property zoned or used for residential purposes or within 200 feet of any residential structure on the same lot.

While there is not a residential structure on this subject tract, the possibility of a residential structure on the adjacent tract to the west in the future is very real.

Normally these applications are permitted directly following their Pre-Development meeting because placement of a Commercial Communication Tower is a permitted use in the A-2 zoning district. However, a setback violation was discovered by City Staff and relayed to the applicant; staff advised them to look at other possible locations on the tract. In lieu of reconfiguring the site plan, the applicant has opted to seek a variance based on the location demonstrated at its Pre-Development meeting.

As noted above, the applicant submitted a packet with their justification of a request to vary the proposed location of the tower from what is required by ordinance.

CONCLUSION: Staff forwards this request and BOA-2223-9 for your consideration.