



Bonner County Planning Department

"Protecting property rights and enhancing property value"

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Memorandum Re: Remand of File CUP0011-24 from the Board of County Commissioners to Zoning Commission

From: Alex Feyen, Assistant Planning Director

To: Bonner County Zoning Commission

Zoning Commissioners,

Idaho Code § 67-6512 authorizes an applicant for a Conditional Use Permit to request deviations from applicable development standards as part of the permit application; *"(f) In addition to other processes permitted by this chapter, exceptions or waivers of standards, other than use, inclusive of the subject matter addressed by section 67-6516, Idaho Code, in a zoning ordinance may be permitted through issuance of a special use permit or by administrative process specified by ordinance, subject to such conditions as may be imposed pursuant to a local ordinance drafted to implement subsection (d) of this section."*

These standards include the dimensional requirements identified in Idaho Code § 67-6516, including, *"...lot size, lot coverage, width, depth, front yard, side yard, rear yard, setbacks, parking space, height of buildings, or other ordinance provision affecting the size or shape of a structure or the placement of the structure upon lots, or the size of lots."*

As submitted, the applicants have requested a deviation from the required property line setback. Pursuant to BCRC 12-488, a communication tower must be set back from all property lines a distance equal to the height of the tower. Based on the proposed tower height of 190 feet, the required setback is 190 feet from all property lines. The applicants have requested approval of a reduced setback of 115 feet from the eastern property line.

According to the application materials, the proposed communication tower has been engineered to collapse into itself in the event of a structural failure, thereby minimizing the potential impact on adjacent properties. In addition, the applicants have provided a recorded "Fall Easement" from the adjoining property owner to the east, authorizing the tower to extend beyond the property line in the unlikely event of a collapse.

Idaho Code authorizes the governing body to approve or deny requested deviations as part of the Conditional Use Permit process. Consistent with the direction of the Board of County

Commissioners, the Zoning Commission shall determine whether the requested setback reduction may be considered as a deviation under Idaho Code § 67-6512 considering the variance provisions of Idaho Code § 67-6516. If the Commission determines that such a deviation may be considered, it shall further determine whether the requested deviation should be approved or denied and provide findings supporting its decision.

ZONING COMMISSION

MOTION TO APPROVE: I move to approve this project file CUP0011-24, requesting a conditional use permit to construct and operate a 190' lattice tower with an 8' x 10' unmanned equipment shelter in a 50' x 50' compound enclosed in a chain-link fence, finding that it is not in conflict with the policies of the Bonner County Comprehensive Plan and Bonner County Revised Code as enumerated in the following conclusions of law:

Conclusion 1:

The proposal **is not** in conflict with the policies of the Bonner County Comprehensive Plan.

Conclusion 2:

This proposal was reviewed for compliance with the criteria and standards set forth at BCRC Title 12, Chapter 2, Subchapter 2.2 Conditional Use Permits; Chapter 4 Development Standards and Chapter 7 Environmental Standards. The proposal **is** in accord with the Bonner County Revised Code.

Conclusion 3:

The proposed use **will not** create a hazard or **will not** be dangerous to persons on or adjacent to the property.

This decision is based upon the evidence submitted up to the time the Staff Report was prepared, and testimony received at this hearing. I further move to adopt the reasoned statement as discussed in deliberation at this hearing and the analysis as set forth in the Staff Report (or as amended during this hearing) and direct planning staff to draft the reasoned statement to reflect this motion as set forth in Idaho Code section 67-6535, have the Chair sign, and transmit to all interested parties. This action does not result in a taking of private property. The action that can be taken to obtain this Conditional Use Permit is to complete the conditions of approval as adopted.

MOTION TO DENY: I move to deny this project file CUP0011-24, requesting a conditional use permit to construct and operate a 190' lattice tower with an 8' x 10' unmanned equipment shelter in a 50' x 50' compound enclosed in a chain-link fence, based upon the following conclusions:

Conclusion 1:

The proposal **is/is not** in conflict with the policies of the Bonner County Comprehensive Plan.

Conclusion 2:

This proposal was reviewed for compliance with the criteria and standards set forth at BCRC Title 12, Chapter 2, Subchapter 2.2 Conditional Use Permits; Chapter 4 Development Standards and Chapter 7 Environmental Standards. The proposal **is / is not** in accord with the Bonner County Revised Code.

Conclusion 3:

The proposed use **will not / will** create a hazard or **will not** be dangerous to persons on or adjacent to the property.

This decision is based upon the evidence submitted up to the time the Staff Report was prepared, and testimony received at this hearing. I further move to adopt the reasoned statement as discussed in deliberation at this hearing and the analysis as set forth in the Staff Report (or as amended during this hearing) and direct planning staff to draft the reasoned statement to reflect this motion as set forth in Idaho Code section 67-6535, have the Chair sign, and transmit to all interested parties. This action does not result in a taking of private property.

The action that could be taken, if any, to obtain the Conditional Use approval is to:

1. File a new application with the Planning Department and meet the standards required by Bonner County Revised Code; or
2. Pursue such remedies as may be applicable at Title 67, Chapter 65, Idaho Code.