

Mount Vernon Board of Adjustment
Minutes
April 2, 2013

Meeting was called to order at 6:08 p.m. Members present: Moe Richardson, Pat Charboneau, Liz Sparks and Gary Ulch. Absent: Lori Boren. Also in attendance: Zoning Administrator, Matt Siders and residents James Darby and Carolyn Sippel.

1. Approval of Agenda. Motion made by Charboneau, seconded by Sparks to approve agenda. Carried all. Ulch and Boren absent.
2. Public Hearing and discussion and possible action on a request for a Conditional Use Permit for an amateur radio tower at 520 15th Avenue SW. Richardson said that board members had read the materials submitted and asked Zoning Administrator, Matt Siders to explain the application and his decision. Siders stated that Mr. Darby has set up a mechanism for amateur radio operation in his yard. He was approached by several neighbors wondering what it was and asking what could be done about it. Siders said he looked into it and determined that it would be an antennae for an amateur radio. Siders looked into whether it needed a building permit, if it was permitted in that zone and did it meet the criteria of the code. In that zone it is listed as a Conditional Use Permit for an amateur radio tower. He then approached Mr. Darby and told him that he would need a Conditional Use Permit for this mechanism in his yard. Siders looked up miscellaneous uses and tried to identify where it would fall under and broadcasting tower was one of the definitions and also amateur radio tower. In the TR district a broadcasting tower is not permitted at all. An amateur radio tower is permitted with a Conditional Use Permit. The definition of an amateur radio tower in the code states, "A structure or structures for the transmission or broadcasting of electronic or electromagnetic signals by amateur radio operators". When he approached Mr. Darby about what he had, he asked if it transmitted electronic or electromagnetic signals and he stated yes. Siders then categorized it as an amateur radio tower. Siders told Mr. Darby that he was not telling him that he couldn't have it but there was a process in order for him to have it. Darby provided Siders with information from the FCC that was very helpful and stated that the City could not tell him that he couldn't have the tower but there might be accommodations that he would need to make based on the City's code. The process for a Conditional Use Permit is to go to Planning and Zoning for a recommendation from them sent to Board of Adjustment. This was done about a month ago and Planning and Zoning made this recommendation.

Pictures were provided to board members of the structure. Siders stated that the wires are down on the pictures that were provided as these were taken early on in the process. Darby has since pulled taut in a square around the house. Two poles are on

the side of the house and two poles are on the back lot line. The wires were tight but one of the poles has been taken down. They will be up higher once it is complete.

Darby stated that this structure is not a tower. It is horizontal wire antennae. The size of it is the function of what frequency you are going to operate at. For the frequency Mr. Darby is using it requires 270 feet of wire. Sparks asked Darby to explain his intended installation. Darby said that the intent is to building a wire rectangle horizontally above the earth, 270 feet in length. There are two antennae masts, one each located within the NE and SE corner of the house, approximately 8 feet inside the property line. Two other masts are located on each side of the house so that when the wire is tensioned with the antennae it is taut. The height of the wire is roughly 20 feet. There will be some sag between the poles of approximately one foot. The lowest height of the wire is approximately 18 feet. Charboneau asked how they were affixed to the ground if they are affixed at all. Darby stated that he has oversized pipes and driven them into the ground. The two in the back where the ground is soft will have concrete around them. The poles will go in the ground about three feet and stick out of the ground about three feet. The two masts that are at the house will not require concrete. It will be used for the transmission of radio frequency energy but there is no danger of radiation problems from the transmissions. Darby also said that the optimum height is 40 feet but he did not want to put up 40 foot poles.

Richardson asked what the criteria was for the Board to grant the Conditional Use Permit. Siders stated that there is a Conditional Use approval section that states "Board of Adjustment may grant an exception from the height limit for a zoning district for a Conditional Use as part of its approval of that use. The limit or extent of this exception shall be a specific part of the special use permit". The Conditional Use procedure is stated in section 1303 of the Mount Vernon Code. It states, "Board of Adjustment may, at its discretion, apply a Conditional Use Permit to a specific owner or applicant. The Board of Adjustment may establish special site development or operational regulations as a condition for approval of a Conditional Use Permit". Sparks felt that this is very broad authority. Charboneau agreed. Ulch stated that the only thing the board was doing tonight was granting the Conditional Use Permit, not approving a building permit. It is up to the applicant to follow the rest of the ordinance to put the antennae up in the required space he has to work with. Siders stated that one of the criteria for site plan review and Conditional Use Permits is setbacks. "Development should respect pre-existing setbacks in surrounding area. Variation should be justified by site or operating characteristics". This was found in Table 13-1. Siders said that it would be extremely difficult for Mr. Darby to continue to operate the way he needs to with a rear setback being at 30 feet.

Sparks said that the board could say that they would grant a Conditional Use Permit for this particular owner of the house for so long as he is in the house and desires to operate amateur radio to erect a wire amateur radio antennae and it would have to

meet all of the requirements of putting a structure in a TR zone. Then there would need to be a request for a variance for the setback limitations. This would end up being a two-step process. Ulch and Sparks felt that this would be considered a structure, Charboneau did not. Ulch asked if a Conditional Use Permit could be granted to an applicant that is not an owner of the property. Carolyn Sipple stated that Mr. Darby is the widower of the owner of the property. Ms. Sipple also stated that the house was left in the living trust until it can be sold because there were too many legal complications to try and give it to the heirs. It will go to Helen Darby's children and a grandchild once Mr. Darby passes away. The house remains in the Helen I. Darby Living Trust dated January 8, 1998. Sparks said that the Conditional Use Permit is granted to the use of property and the board could grant it based on this.

Sparks felt that they could get around the two step process stated above if they decided to grant the Conditional Use Permit subject to certain conditions and the conditions could address the issues. Siders said that he had spoken with the City Attorney and he stated that Board of Adjustment could make any recommendations on site characteristics or site development, specifically stating that Board of Adjustment may establish special site development or operational regulations as a condition of approval of a Conditional Use Permit. All members were in agreement with this.

Sparks asked Darby if he is participating in any of the local civil defense activities. Darby stated that he has not done that yet but will look into it when he is up and running. He stated that the antennae that he is putting up now is a basic antennae for his operating station but in order to do the civil defense activities, he needs a high frequency antennae of 2 meters. It is a simple pole antennae that goes up in the air and he intends to put this up. It would be unobtrusive and you will not be able to see it unless you go to the back of the house. Sparks clarified by saying that the initial intention is to do the amateur radio work for personal recreation but if Mr. Darby has the vertical pole installed he could participate in emergency civil defense. Mr. Darby agreed.

Sparks asked Matt Siders what the requirements would be for this lot for erecting a structure and also the setbacks for fencing. Siders stated that in the TR district, interior side setback minimum is 5 feet and rear setback is 30 feet. It is within the 75 feet height guidelines for an amateur radio tower. Sparks felt that they should take into consideration different setbacks for different purposes and determine which might be appropriate in this case if they were going to make an exception. Siders said that a 30 foot setback is extremely difficult in that area.

Sparks stated that FCC requirements specify various safety items and asked if there were any kind of markings that need to go on the poles or wires to keep people from running into them. Darby stated not at that height. Sparks then asked if there were

any safety measures on the ground to prevent children or animals from running into a wire they don't see. Darby stated that he was planning on putting out flags for visibility. Siders said that according to the City Attorney, this is the liability of the homeowner. Sparks stated that the covenants of this subdivision do not allow for this antennae but thought it was important to note that, if a Conditional Use Permit is granted, this would not supersede the covenants.

Ulch stated that he personally felt this was a structure and is ok with allowing the two poles being set but said that something should be done to help identify the guy wires so they are more visible and guarded.

Sparks then made a motion that Board of Adjustment overturn the February 5, 2013 decision of Mount Vernon Zoning Administrator requiring the removal of the non-conforming amateur radio tower antenna at 520 15th Avenue SW, Mount Vernon, Iowa and that the Board of Adjustment grant a Conditional Use Permit to permit a 270' radio wire antennae (horizontal loop) to be installed on the property subject to each of the following conditions:

1. This Conditional Use Permit is granted to the property owner, the Helen I. Darby Living Trust dated January 8, 1998 for so long as James Darby is operating an amateur radio on the premises. When James Darby ceases to operate an amateur radio on the premises this Conditional Use Permit shall automatically terminate and the radio wire antennae must be promptly removed.
2. The poles installed for the antenna will meet a setback of 8' from the side and back property lines and the pole guy wires will meet a setback of 1' from the side and back property lines.
3. Guy guards will be installed on all guy wires.
4. The installation, operation and maintenance of the wire antenna will comply with all applicable FCC, FAA and Iowa code requirements applicable for this antenna type.

Charboneau seconded the motion made by Sparks. Carried all. Conditional Use Permit approved.

Meeting adjourned at 7:09 P.M.

Respectfully submitted,
Marsha Dewell
Administrative Assistant