

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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**COMPLETE TITLE OF CASE**

THE HIGHLANDS HOMES ASSOCIATION, et al.,

Appellants,

v.

THE BOARD OF ADJUSTMENT, et al.,

Respondents.

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**DOCKET NUMBER WD70862**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE:** December 22, 2009

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**Appeal from**

The Circuit Court of Boone County, Missouri  
The Honorable Kevin Crane, Judge

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**APPELLATE JUDGES**

Division Three: Karen King Mitchell, P.J., and James Edward Welsh and Mark D. Pfeiffer, JJ.

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**ATTORNEYS**

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Attorney for Appellant,

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Attorney for Respondents Sprint Spectrum, L.P.,  
E. Stanley Kroenke, William James, Jr., Dennis Harper and  
Sterling Kelly d/b/a Highland Properties Co.,

Susan G. Crigler, Columbia, MO

Attorney for Respondent Board of Adjustment  
of the City of Columbia, Missouri.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**  
**MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

<b>THE HIGHLANDS HOMES</b>	)
<b>ASSOCIATION, et al.,</b>	)
	)
<b>Appellants,</b>	)
<b>v.</b>	)
	)
<b>THE BOARD OF ADJUSTMENT, et</b>	)
<b>al.,</b>	)
	)
<b>Respondents.</b>	)

WD70862

Boone County

Before Division Three Judges: Karen King Mitchell, P.J., and James Edward Welsh and Mark D. Pfeiffer, JJ.

The Highlands Homes Association and several homeowners (“Association”) appeal from the administrative decision of the Columbia Board of Adjustment (“Board”) granting two variances to Highland Properties Co. (“Landowner”) and Sprint Spectrum, L.P. (“Sprint”). The variances allow Sprint and Landowner to construct a disguised cellular support structure (“cell tower”) ninety-five-feet tall, which is in excess of the height restriction for the current zoning of the property, and to construct an aboveground equipment storage facility to accompany the cell tower.

**AFFIRMED.**

**Division Three holds:**

We interpreted Association’s claims as stating that the Board abused its discretion in granting the non-use variances for the height of the cell tower and the accompanying equipment storage facility. An applicant for a non-use variance must prove that it faces “practical difficulties” in complying with the ordinance as it is written. Sprint and Landowner presented evidence to the Board establishing that the requested variances were necessary because: cellular telephone use is rapidly increasing in Columbia; Sprint had significant gaps in cellular coverage for its customers; Sprint had searched unsuccessfully for several years to find a suitable site for its cell tower before finding Landowner; the requested ninety-five-foot height was necessary for providing adequate cellular coverage to Sprint’s customers; the support equipment for the cell tower could not adequately be stored underground; and the cell tower and accompanying equipment storage facility would not detrimentally affect the value of nearby homes. We analyzed the evidence presented against the factors Missouri courts have considered in determining when “practical difficulties” exist, and concluded that the Board did not abuse its discretion in granting the requested variances.

We also hold that the Board’s administrative decision did not improperly rely on the Federal Telecommunications Act, 47 U.S.C. § 332(c)(7) (1996) in granting the requested variances.

**Opinion by: Karen King Mitchell, Judge**

December 22, 2009

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