

**VANCE COUNTY BOARD OF ADJUSTMENTS**

The Vance County Board of Adjustments met at a regular and duly advertised meeting on August 8, 2013 at 4:00 p.m. in the Commissioners Meeting Room of the Vance County Administrative Building at 122 Young Street in Henderson, NC.

MEMBERS PRESENT

Blake Haley – Chairperson  
Agnes Harvin – Vice Chairperson  
Thomas Shaw  
Phyllis Stainback  
Alvin Johnson, Jr.  
Ruth Brummitt  
Rev. Roosevelt Alston

MEMBERS ABSENT

Ruxton Bobbitt – Alternate #1

STAFF PRESENT

Jordan McMillen, Deputy County  
Manager/Director of Planning and Development  
Jonathan Care, County Attorney

ALTERNATES PRESENT

Darrell Mullinix – Alternate #2 – did not  
need to participate

Chairperson Haley called the meeting of the Board of Adjustment to order and asked for a review of the minutes from the June 13, 2013 meeting. Ms. Agnes Harvin made a motion to approve the minutes as presented. Ms. Ruth Brummitt seconded said motion and all present were in favor. VOTES: 7-0.

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Mr. Jonathan Care (County Attorney) explained to the board that the matters for consideration will be considered in a quasi-judicial hearing which includes swearing in those giving testimony. He further explained that the decision of the board should be made upon competent, relevant, and substantial material.

Chairperson Haley introduced the first case explaining the order of business, gave an opportunity for board members to express any conflicts, hearing none and then declared the public hearing open.

***BOA CASE NO. 20130808-1; Christine Moody (owner), Nexsen Pruet, PLLC – Thomas H. Johnson, Jr., Esq – agent for property owner (applicant) – Conditional Use Permit to allow construction of a 195 foot monopole cell tower.***

Chairperson Haley asked Mr. McMillen to present the staff report. He then swore in Mr. McMillen and affirmed in the following individuals: John Mabe (Nexsen Pruet Attny), Carl Stamford (identified as property owner), Graham Herring, GRI (Graduate REALTOR INSTITUTE), David J. LaCava (Radio Access Network Specialist – AT&T), Stephen Howard (AT&T), Jill House (American Tower representative).

Chair Haley asked whether any other individual in the audience has interest in giving testimony on the first matter. No one responded.

*Mr. McMillen* presented the staff report and reviewed the DRAFT findings of fact as follows:

1. The request is for a conditional use permit to allow a 195’ monopole wireless telecommunication facility (cell tower) on a parcel zoned (OS) Open Space.
2. Christine Moody is the property owner. The cell tower site is to be leased from the property owner.
3. The property is located along Satterwhite Point Road near 5225 Satterwhite Point Road; more specifically identified as tax parcel 0591 02009.
4. The parcel consists of approx. 41 acres of which a 100’ x 100’ lease area would be established for the cell tower and associated equipment.
5. The property is currently zoned (OS) Open Space, is predominantly farmland/grassland and includes 2 residential structures and several agricultural structures.
6. The output levels from non-ionizing electromagnetic radiation (NIER) will be less than 1% of the

maximum permissible exposure (MPE) level. Therefore the electromagnetic field (EMF) effects of the tower should have no harmful effects on the health of the public.

7. The application requesting a conditional use permit was filed on 06/29/2013.
8. The adjoining property owners were notified on July 24, 2013.
9. The property was posted on July 25, 2013.
10. The legal notice was run on July 25, and August 1, 2013.

Mr. McMillen mentioned that notice was given to adjoining property owners as well as all property owners within 1,500 feet of the proposed tower site.

#### Staff Comments

The applicant is proposing to construct a 195 ft. monopole cell tower to initially be utilized by AT&T with space for colocation by other carriers. Once the tower is complete, it will be owned by American Tower Corporation. The applicant has included a statement indicating the tower owner's intention to allow shared use of the tower in the future. The tower will be located on a leased portion of land and will be surrounded by an 8 ft. fence with a 25 ft. wide landscaped buffer area. The buffer area will consist of 12 red maple trees, 54 American boxwoods for shrubbing and mulch for ground cover. The proposed landscaping and buffering appear to meet the buffer requirements for cell towers as outlined in section 6.10 O.5 of the zoning ordinance.

As is required by the zoning ordinance, the applicant has provided a study determining that the power output levels do not exceed federally approved levels. Specifically, the evidence shows that the output level from non-ionizing electromagnetic radiation (NIER) will be less than 1% of the maximum permissible exposure (MPE) level. Additionally, the applicant has supplied a justification for needing a cellular tower in this location that shows the necessity in terms of filling the gap in cellular coverage within this area. Staff research confirms that this cell tower will not be located within 1 mile of any other existing towers within the County (The closest tower is approximately 2.4 miles straight-line distance). Staff believes that this will significantly improve cell tower communication signals within the surrounding area. Mr. McMillen also mentioned that the Vance County Fire Marshall has also mentioned to staff that a cell tower in this location would greatly improve cell coverage within this area of need.

Due to the towers location within a parcel that is residentially used, it is required that the tower be setback from any structures at a distance of 1 foot for every 1 foot in height of the tower. This requires no structures to be within 199 feet of the tower (height includes antenna on top of tower). According to the plans, no structures are within this fall zone. The property owner has also provided a certification stating that no future development will be made within this established fall zone setback.

As a condition of approval, it would be recommended that documentation be provided by a registered engineer that the tower has sufficient structural integrity to accommodate more than one user.

#### **THOSE SPEAKING FOR THE REQUEST (all those speaking in favor were previously affirmed)**

*Mr. John Mabe* (on behalf of the applicant) – 4141 Parklake Avenue, Suite 200, Raleigh, NC, addressed the board. He provided a brief history of the improvement in health and safety issues surrounding cell towers as a result of the 1996 Telecommunications Act. He also provided statistics on the increase in cell phone usage and volume (minutes and text messages) over the last several years. He explained that there is a lack of cell coverage in this area of Satterwhite Point Road and Kerr Lake and reiterated the need for an additional tower in this location to enhance coverage in this area. He introduced Mr. Graham Herring as a real estate expert and licensed real estate broker to provide a summary of his analysis of the proposed tower in terms of impact on property values.

*Mr. Graham Herring, GRI* (Graduate REALTOR INSTITUTE) - 8052 Grey Oak Drive, Raleigh NC, addressed the board. He explained that he had been hired to look at the proposed site and surrounding area for American Tower. He explained that in his opinion the location is appropriate and will not create any adverse influence in values or adverse influence on any surrounding property. He further mentioned that the tower will not substantially be injurious to the surrounding property or other properties in the

general vicinity and that no negative aesthetic effects on scenic or other features of the area will be created by the tower.

Mr. Mabe questioned Mr. Herring as follows:

1. Have you been qualified to provide expert opinion in other settings? Mr. Herring responded, "Yes I have across the state of North Carolina and South Carolina."
2. Approximately how many hearings has opinion been accepted in North Carolina in regard to property evaluations? Mr. Herring responded, "Well over 1,000."

Ms. Brummitt (board member) questioned the distance to nearest resident. Mr. Herring responded that the nearest structure was the County fire and EMS structure, but he was unaware of the exact distance. He corrected himself that it was not the EMS structure, but another structure that is 200 feet from the tower. Ms. Brummitt questioned whether the tower would always be necessary or if other technology such as satellites could be used. Mr. Mabe mentioned that there is an assurance which would be a condition of the use permit as well as a condition of the lease that the tower would be removed should it not be needed in the future.

Ms. Stainback (board member) questioned as to which house was the property owners. Mr. McMillen responded that the closest house is 200 feet, but he is unsure if that is the exact location of Ms. Moody's (the property owner's residence). Mr. Mabe responded that the 200 feet distance meets the 1 foot for every 1 foot in height of the tower setback requirement. Ms. Stainback clarified that the fire department is not the closest structure, but is further to the south.

Mr. Shaw (board member) pointed out an inconsistency within the impact statement and requested clarification as to the lease area, compound area and buffer area sizes.

*Mr. Steven Howard (AT&T)* addressed the Board. He explained that the lease area would be 100 ft. by 100 ft. area. He further explained that tower would be a monopole – a solid steel pole with the electronics on the inside and with the cell array on exterior. He confirmed that no guy wires would be required for this type of tower. He further mentioned that AT&T intends to colocate on all surrounding towers that are available, and that no towers are currently available in this area. He confirmed that the new tower will be available for others to colocate.

Ms. Harvin (board member) questioned whether any lighting will be provided. Mr. Howard confirmed that no lighting will be provided as that will not be required by the FAA because of the tower height being less than 200 feet. He further mentioned that maintenance of the buffer area would be handled by American Tower. He confirmed that no utilities (water or sewer) will be provided at the site. Ms. Harvin questioned whether requests for towers are typically generated from the public or from AT&T or cell providers. Mr. Howard responded that this would depend upon the situation, but for the most part AT&T is attempting to stay ahead of the customers by filling in white spaces such as this area which is an area with no coverage.

Mr. Haley (board member) questioned whether the homes behind the property are permitted to use the existing easement. Mr. Howard mentioned that the easement would be improved, but he was unaware of whether the property owners behind the subject property have legal access to the right-of-way.

Mr. Mabe questioned Mr. LaCava as follows:

1. Did you perform an examination of the footprint of the area that would have coverage from the proposed tower on Satterwhite Point Road? Mr. LaCava responded, "I did."
2. Did you represent that in a graphic such as the one shown within the application packet? Mr. LaCava responded, "I did."
3. Are you a licensed engineer, registered engineer or technician? Mr. LaCava responded, "I am not a licensed engineer in the State of North Carolina. My title is a Radio Access Network Specialist with AT&T and I have been with AT&T for approximately 15 years as a design work specialist."

4. Do you have training in engineering of electronic signaling? Mr. LaCava responded, "Yes I do, I have a degree in electronic engineering technology."
5. Did you prepare the graphics that illustrate the coverage with and without tower 591 that was attached to the application? Mr. LaCava responded, "I did, that is correct."
6. Is it your opinion that those graphics fairly and accurately reflect the improvement in the cell coverage in the area where the cell tower is requesting? Mr. LaCava responded, "That is correct."
7. According to your examination of the physical space available for colocation towers in the vicinity, is it your opinion that this tower is necessary to get that improvement in cell coverage and signal coverage? Mr. LaCava responded, "Yes it is."

*Mr. LaCava* explained the process that is used to determine whether surrounding towers are available for colocation. He explained that this was done through utilizing an FCC master database of available towers by major tower companies as well as an internal AT&T database that adds additional towers owned and utilized by smaller tower companies. He further confirmed that no colocation opportunities were available to produce the coverage within this area that is needed.

Ms. Brummitt (board member) asked whether a structural analysis has been completed as per the zoning ordinance requirements. Mr. Mabe confirmed that this analysis would be completed and submitted as a part of the construction drawings. He further explained that monopole cell towers are constructed such that if a catastrophic event were to take place it would break at the midpoint therefore reducing potential safety issues.

Mr. Mabe finalized his testimony by stating that he would like to submit the application materials and testimony that was submitted today.

#### **THOSE SPEAKING AGAINST THE REQUEST**

No one responded

#### **BOARD DISCUSSION**

The Board discussed the case briefly.

#### **DECISION:**

Ms. Brummitt made a motion to approve the tower contingent upon the site plan requirements as presented in Section 6.10.O.6 of the zoning ordinance. Those requirements are as follows:

- (a) Identification of the intended user(s) of the tower.
  - (b) Documentation provided by registered engineer that the tower has sufficient structural integrity to accommodate more than one user.
  - (c) Documentation by the applicant that no suitable existing facilities within the coverage area are available to the applicant.
  - (d) A statement indicating the owner's intent to allow shared use of the tower and how many other users can be accommodated.
- She also requested to include in the motion that the electromagnetic field be in compliance with FCC requirements. Ms. Harvin seconded said motion and all present were in favor.

VOTES: 7-0.

Ms. Brummitt amended her motion to include the findings of facts as presented by staff. Ms. Harvin seconded said motion and all present were in favor. VOTES: 7-0.

*Chairperson Haley declared the public hearing closed.*

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Chairperson Haley introduced the second case explaining the order of business, gave an opportunity for board members to express any conflicts, hearing none and then declared the public hearing open for the following case:

***BOA CASE NO. 20130808-2; Christine, Carl, & Joe Samford (owners), Nexsen Pruet, PLLC – Thomas H. Johnson, Jr., Esq. – agent for property owner (applicant) – Conditional Use Permit to allow construction of a 300 foot monopole cell tower.***

Chairperson Haley asked Mr. McMillen to present the staff report. He then swore in Mr. McMillen.

Mr. McMillen addressed the board and mentioned that the second case is in regard to a proposed cell tower along NC 39 Hwy North. He further mentioned that there has been some additional information which has come to light which would necessitate additional staff review time. Mr. McMillen asked for a continuance of the case to allow for further staff preparation and review. Included in this is the need to allow submittal of additional items by the applicant.

Mr. Mabe requested that those facts be mentioned for the record. Mr. McMillen mentioned the following items/issues with the application as follows:

1. Incorrect owners are represented on the application.
2. Required materials are missing from the application such as a certification from the property owners stating that no structures will be located within the setback area/fall zone area in the future.
3. No materials have been presented which appoints an agent to represent the property owner on the matter.
4. There is some concern with the accuracy of the location analysis provided by AT&T.

Mr. Mabe requested an opportunity to respond to the identified deficiencies. He mentioned that in conversations with Mr. McMillen last week, there was no concern with items 1-3 having supplemental information presented at the hearing and being presented as conditional items for approval. He explained that the title of the property is being placed in an LLC and at this point they are appointed as agents for the property owner. He mentioned that Mr. Sanford is present at the hearing and Mr. Sanford's brother who adjoins in the application is in Texas, but has not signed anything in the file presented to the board. He explained that the ownership interest of the Sanford's mother is in trust and they are the trustees holding all of the title interest in the property. He mentioned that the only new concern presented is with the possibility of the location analysis being incorrect, but no basis has been presented for that issue thus far. He further mentioned that the engineer is present that has certified to the location of surrounding towers. He expressed his concern with a continuance for reasons other than an incomplete application.

The board asked for a response from Mr. McMillen. Mr. McMillen reiterated that in his final review of the materials prior to the hearing there has been a need for additional information from the applicant. Ms. Harvin questioned the amount of time that is needed for preparation of the materials. Mr. McMillen responded that it would depend on the timing for allowing the applicant to submit additional information, but that a couple of weeks would be adequate.

**DECISION:**

Ms. Harvin made a motion to continue the hearing until the next regularly scheduled board of adjustment meeting on September 12<sup>th</sup> at 4 PM. Ms. Brummitt second said motion and all present were in favor.  
VOTES: 7-0.

Mr. Mabe asked Mr. McMillen whether he has been any communication with anyone else asking him to continue the hearing. Mr. McMillen responded, "No, I have not."

**ADJOURNMENT:** There being no further business, Chair Haley declared the meeting adjourned.