

VANCE COUNTY BOARD OF ADJUSTMENTS

The Vance County Board of Adjustments met at a regular and duly advertised meeting on October 10, 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
Thomas Shaw
Phyllis Stainback
Ruth Brummitt
Rev. Roosevelt Alston

ALTERNATES PRESENT

Ruxton Bobbitt – Alternate #1
Darrell Mullinix – Alternate #2 –

MEMBERS ABSENT

Agnes Harvin – Vice Chairperson
Alvin Johnson, Jr.

STAFF PRESENT

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

Chairperson Haley called the meeting of the Board of Adjustment to order and asked for a review of the minutes from the September 12, 2013 meeting. Mr. Thomas Shaw made a motion to approve the minutes with 1 correction (Mr. Chris Fisher should be indicated as grandson within minutes). Ms. Phyllis Stainback seconded said motion and all present were in favor. VOTES: 7-0.

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Mr. Jonathan Care (County Attorney) presented the board with a recent change to the general statues that allows a majority vote for quasi-judicial hearings with the exceptions of a variance which still needs a 4/5 vote by the board. He explained that this went into effect October 1st. Mr. Care also disclosed to the board that he has been involved with the landowner in forming an LLC and in negotiating a lease with the applicant and tower company. He explained that if the board has any issue with this he is willing to be excluded from the proceedings. The board had no issue with the disclosure.

Chairperson Haley began the continuation of BOA Case No. 20130808-2. Continuation of 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.

Having previously swearing in Mr. McMillen, Chair Haley swore 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).

Chairperson Haley asked Mr. McMillen to present the staff report.

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 300 foot self-supporting lattice wireless telecommunication facility (cell tower) on a parcel zoned (A-R) Agricultural Residential.
2. Christine, Carl, and Joe Samford were the property owners when the application was submitted. The property is now owned by Triple S Farm & Services, LLC as per Deed 1267, Page 1137 which was recorded on September 10, 2013. The cell tower site is to be leased from the property owners.
3. The property is located along NC 39 North; more specifically identified as tax parcel 0331 03004.
4. The parcel consists of approx. 156 total acres of which a 100 x 100' lease area would be established for the cell tower and associated equipment.
5. The lot is currently zoned (A-R) Agricultural Residential, is predominantly grassland with pockets of woodland and includes a few residential structures and agricultural structures.
6. The output levels from non-ionizing electromagnetic radiation (NIER) will be significantly less than federally approved levels and therefore 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, 2013 and August 1, 2013.
11. A public hearing was held on August 8, 2013 and was continued until September 12, 2013 to allow the applicant to provide additional cell coverage analysis and additional requested information.
12. The applicant provided supplemental information concerning the cell coverage analysis and justification on August 30, 2013.
13. The public hearing continued on September 12, 2013 and once again was continued to October 10, 2013. The applicant requested the continuance with concurrence from County staff.

#### Staff Comments

The applicant is proposing to construct a 300 ft. self-supporting lattice 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 15 red maple trees, 73 American boxwoods for shrubbing and mulch for ground cover. The proposed landscaping and buffering meets the buffer requirements for cell towers as outlined in section 6.10 O.5 of the zoning ordinance.

Due to the tower 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 310 feet of the tower (height includes antenna on top of tower). According to the plans, no structures are within this fall zone with the closest structure located over 700 feet away.

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. With the original conditional use application, evidence was submitted portraying an analysis of the coverage area from the proposed tower. Prior to the hearing on August 8<sup>th</sup>, the applicant was made aware of a US Cellular tower within 1.5 miles north of the proposed tower that was not included on the original cell coverage analysis. Prior to the September 12, 2013 meeting, additional analysis was completed and submitted by AT&T to determine whether a colocation on the existing tower would be adequate in place of building a new tower. It is important to note that the zoning ordinance discourages towers to be located within 1 mile of each other and limits the height to 200 ft. if they are located within 1 mile of each other. In considering this proposed tower, it is important that adequate evidence be submitted to determine whether the tower location and tower height is justifiable. Staff advises the board to hear more specific information from the applicant regarding the need for a new tower within this location relative to collocating on the tower to the north. In reviewing the newest analysis, it appears that a comparable gap remains in the coverage when comparing whether to build a new tower or to collocate on the existing. If building the new tower, there appears to be a gap to the north; If collocating on the existing US Cellular Tower, a gap remains to the south. This comparison is made by comparing figure E & F of the newest analysis. Additionally staff questions whether a smaller tower (i.e. 200 ft. monopole) could be constructed in conjunction with a colocation on the tower to the north thus creating a smaller visual impact on the surrounding area.

Following the meeting on August 8<sup>th</sup>, staff has made the applicant aware of several items that are necessary in order to constitute a complete submittal. To date, the following items are still in need of being submitted:

1. Documentation by a registered engineer that the tower has sufficient structural integrity to accommodate more than 1 user.

2. Certification from the property owners stating that no future development will be made within the established setback area (310 feet from the tower).
3. Submittal of a new application that includes the correct property owner information. The property was recently moved into an LLC by the previous owners.
4. Submittal of an appointment of agent executed by all property owners allowing an agent or the applicant to represent them for purposes of the conditional use permit.

Mr. McMillen asked that the staff report be included within the minutes.

Ms. Brummitt questioned whether any lighting was required on the tower. Mr. McMillen explained that according to the county ordinance no lighting is required

Mr. Bobbitt questioned the requirements for a buffer in light of the fact that the tower would be a good distance off of the main road. Mr. McMillen mentioned that the zoning ordinance requires a 25 ft. vegetative buffer from the base of the tower regardless of the tower location due to the potential for further development on the property in the future.

**THOSE SPEAKING FOR THE REQUEST (all previously affirmed)**

*Mr. John Mabe* (agent for property owner and tenant) – 4141 Parklake Avenue, Suite 200, Raleigh, NC, addressed the board. He explained that the title of the property has been transferred into Triple S Farm and Services following the initial meeting in September and that the transfer of the property was in the process at that point. Mr. Sanford remains a manager-member of the Triple S Farm and Services, LLC. He mentioned that an agent appointment letter has been presented to the board with Mr. Sanford's signature. In regards to affirming that no development will occur within 310 feet of the tower, Mr. Mabe mentioned that no letter is present, but asked Mr. Sanford (under oath) if there will be any development within this area. Mr. Sanford responded that there would not.

Mr. Mabe requested that the board consider accepting consent from the current property owner who is present as opposed to requiring a new application to be submitted. Mr. Jonathan Care (County Attorney) mentioned to the board that the dutiful property owner has given the consent to filing the previous application and feels that could cover this situation adequately.

Mr. Mabe mentioned that the proposed use meets the ordinance requirements and statute requirements. He reiterated the need for additional wireless infrastructure by stating that over 1 trillion text message are now being sent, that there is an extraordinary volume of cell traffic currently, that 80% of 911 calls are from cell phones, and that 1/3 of the population relies exclusively on cell phones. Further he reiterated that buffer requirements would be met even though they seem to provide extra protection with the tower being located 340 feet from the roadway. He mentioned that colocations would be made available on the tower and that the setback requirement would be met by 230 percent.

He mentioned a need to address the staff report concerns with the need for the tower as well as staff comments regarding a colocation on the existing cell tower to the north (U.S. Cellular tower). He mentioned that the U.S. Cellular tower does not meet the needs of AT&T particularly with its location 1.5 miles north of this site and also with a much lower elevation available for colocation. He mentioned that cell towers operate by line of site and the available elevation on the U.S. Cellular tower is not adequate to bridge the gap between existing towers in Williamsboro and Townsville. Mr. Steven Howard (Network Development Manager with AT&T -2002 Pisgah Church Road, Greensboro, NC) clarified that the U.S. Cellular tower to the north is 200 feet in height with an available colocation elevation of 170 feet and that this did not meet the needs of AT&T.

In regards to addressing the effects of the proposed tower on property values, Mr. Mabe introduced Mr. Jack Blackburn (licensed appraiser) who has done a recent impact study dated September 12, 2013 on the effects of cell towers on property values. Mr. Blackburn mentioned that the aspects considered included noise, traffic, lighting and visual impacts. He stated that there were no discernable noise impacts,

negligible amounts of traffic, no measureable lighting, with visual impacts being the only consideration that may have any possible impacts. He further mentioned that he focused his attention on the Huntstone Subdivision within Vance County that is located directly across from an existing cell tower at the intersections of Watkins Road and Old Oxford Road (US 158 Business). He stated that based upon sales data from 2007-2013 there was no measureable market negative impact as a result of the cell tower on the properties that are within a visual range of the cell tower.

Mr. Mabe offered the availability of Mr. Lacava for any questions that the board may have regarding the technical details or coverage analysis that has been completed. Mr. Bobbitt questioned what factors would determine the necessary height for a tower. Mr. David Lacava (5715 Glenwood Avenue, Raleigh, NC - AT&T Radio Access Network Specialist) addressed the board and explained that factors such as population density, number of customers in the area using various mobile technologies, number of towers in the vicinity, as well as quantitative calculations are used to determine tower heights. He further mentioned that through analyzing surrounding towers and available colocation spaces are important in the analysis to deploy a network that provides maximum benefit to the customer at the least cost. He mentioned that these factors determined the need for a 300 ft. tower. Mr. Bobbitt questioned whether there would be an advantage to locating on other infrastructure such as water towers as opposed to building new towers. Mr. Lacava mentioned that a proposed future water tower in the area was modeled as was the existing U.S. Cellular Tower north of the proposed site and it was determined that the availability of the height for either of these structures would not meet the business needs of AT&T.

Mr. Mabe requested that the submitted items and testimony be included in the record and then concluded his comments.

**THOSE SPEAKING AGAINST THE REQUEST (all previously affirmed)**

Mr. David Coghill (Townsville, NC) addressed the board. He presented a letter from Faye Guin (local realtor) in regard to cell towers effects on surrounding real estate values. This letter was not requested to be or admitted as evidence. Mr. Coghill also presented a study by Campanelli & Associates that referenced 3 separate studies Bond and Hue Study, Bond and Wang Study and the Bond and Bermish Study addressing the effects of cell tower construction on surrounding property values. Mr. Mabe objected to the presentation of the studies as evidence. In quoting from the Bond and Hue Study he quoted that the study conducted in 2004 “involved an analysis of 9,514 residential home sales in 10 suburbs, the study reflected the close proximity to a cell tower reduced price by an average of 15%.” Mr. Coghill asked the board, “What AT&T was doing for Vance County?” Mr. Coghill disputed the accuracy of the coverage analysis studies as there was not a valid scale shown on the analysis.

Mr. Coghill reviewed the conditional use permit checklist and disputed whether all of the conditions were being met. He referenced a “CBS This Morning” segment stating that in 2012 there was a significant spike in auto fatalities as a result of texting and cell phones. He mentioned that a cell tower is only contributing more to this safety problem. He further mentioned that the cell site is less than 1,500 feet from the New Hope Elementary school and questioned the board as to whether they would like their children playing within this area. He stated that the cell tower will not enhance or maintain the surrounding property values and will only contribute very little to the tax base for the county.

Mr. Coghill mentioned that a neighbor (Tim Hunt) was also against the proposed tower and was unable to make the hearing today.

Mr. Care (County Attorney) reminded the board that their decision should be based upon competent, relevant information and testimony and not hearsay or personal opinions as they do not trump an expert’s testimony.

Mr. Haley asked if Mr. McMillen had any additional comments or questions. Mr. McMillen questioned Mr. Lacava as to whether the cell coverage analysis as presented in Figure F of the agenda packet was completed assuming a 170 foot elevation being utilized. Mr. Lacava responded that the analysis was done

using the actual AMSL of the location, but that he was unsure of the exact figure. Mr. McMillen questioned whether a different result could be obtained if a different elevation value were used? Mr. Lacava responded that it would.

Mr. Bobbitt questioned whether the buffer screening of the tower would be contained within a fenced area to prevent wildlife or cattle from interfering with the required screening. The board discussed that this buffer would need to be maintained in the future even if there is interference from wildlife.

Ms. Brummitt questioned the elevation that was utilized for the coverage analysis of the U.S Cellular Tower. Mr. Mabe following discussion with Mr. Lacava responded that the available elevation of 170 feet was used in this analysis.

Mr. Mabe mentioned that Mr. Graham Herring was present at the hearing and would testify if necessary that the top of the tower from Hwy NC 39 North would not be visible as it will be below the tree line. He explained that one would need to be a considerable distance away to be able to see it as it would not be visible along the property road frontage.

**BOARD DISCUSSION**

The Board discussed the case briefly. Mr. Shaw mentioned that the paperwork mentions a 100'x100' lease site with an 80'x80' fenced compound. He questioned whether there would be adequate space between the two for the required 25 foot landscaped buffer. Mr. Mabe mentioned that they will meet the landscaped buffer requirement.

The Board reviewed the conditional use permit checklist.

Mr. Care clarified for the board that the applicant has presented information and has made a request that the information be admitted as evidence. He further mentioned that additional information has been presented with no request to be accepted or admitted. He reminded the board to be wary of items that have been included and not included in making their decision. If the board had any questions on this, Mr. Care offered his opinion if necessary.

**DECISION:**

Mr. Bobbitt made a motion to issue the special use permit based upon the testimony presented and upon a review of the justification as presented in AT&T's letter dated June 27<sup>th</sup>. He requested that the staff comments inclusive of the findings of facts as presented be accepted and included. He clarified that included in this motion is that the buffer requirements will be met and that an engineer's letter will be presented regarding the structural integrity as presented in number 1 of the staff comments and that items 2-4 of the staff comments are fulfilled based upon presented information.

Mr. Shaw seconded said motion and all present were in favor. VOTES: 7-0.

*Chairperson Haley declared the public hearing closed.*

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