



## Planning, Development & Inspections

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### MINUTES OF REGULAR MEETING

#### Wake County Board of Adjustment

Tuesday, February 12, 2019 (9:00 a.m.)

Wake County Justice Center

300 S. Salisbury St., Room 2700

Raleigh, North Carolina

**Members Present:** (5) Mr. Brenton McConkey (Chair), Mr. Don Mial (Vice Chair), Mr. Waheed Haq, Ms. Sheree Vodicka, Mr. Will Barker

**Members Absent:** (4) Mr. Brian Foxx, Mr. John Barker, Mr. Deantony Collins, Ms. Lisa Humphreys

**County Staff Present:** (5) Mr. Steven Finn (Land Development Administrator), Ms. Jenny Coats (Community Services Director of Operations) Chris Record (Planner II), Ms. Celena Everette (Planner II), Mr. Tim Maloney (Planning Development & Inspections Director).

**Guests:** Mr. John Higgins, Wake County Acting Director and Chief Technology Officer, Mr. Tom Johnson, Williams Mullen Law Firm

**County Attorney Present:** (1) Mr. Ken Murphy (Senior Assistant County Attorney)

- 1. Meeting called to order:** Mr. McConkey called the meeting to order at 9:00 a.m.
- 2. Approval of Minutes of the January 8, 2019 Meeting:** Mr. McConkey made a motion to approve the January 8, 2019 meeting minutes as drafted. The motion was seconded by Mr. Will Barker and the minutes were approved unanimously.
- 3. Approval of Written Decision Regarding PLG-SU-000981-2018 – Juniper Level Baptist Church Variance to reduce the required 40-foot Type C bufferyard to a 15-foot Type C bufferyard along the north property line located at 9109 Sauls Rd., Garner, NC:** Mr. McConkey noted that four of the five original voting members present were: Mr. McConkey, Mr. Haq, Ms. Vodicka, and Mr. Will Barker. Mr. McConkey made a motion to approve the written decision as drafted. The motion was seconded by Mr. Will Barker. By a vote of 4-0, the written decision was adopted.
- 4. PLG-SU-1105-2018 – Special use permit approval as required by section 4-11 of the Wake County Unified Development Ordinance to construct a 499' foot freestanding telecommunication tower.** Before the case was heard, Wake County staff member Mr. Chris Record was duly sworn. The voting members were identified as: Mr. McConkey, Mr. Haq, Mr. Will Barker, Ms. Vodicka and Mr. Mial.

## Testimony and Evidence Presented

### Documentary Evidence Accepted into Record

Mr. Record, Planner II with Wake County Planning, Development and Inspections, requested that the Wake County Planning Staff Report, PowerPoint presentation, the Applicant's verified Zoning Hardship Variance Application with supporting documentation be accepted into record. The Chair accepted documents as described into the record as evidence.

### Testimony

Mr. Record stated that the property is located west of Law Enforcement Drive off Battle Bridge Road in the eastern part of Wake County.

### Project Profile

WAKE COUNTY PIN: 1751 04 7213

PROPERTY ADDRESS: 2320 Law Enforcement Drive

PROPERTY SIZE: 1,462 acres

ZONING DISTRICT: Residential-30 (R-30)

LAND USE CLASSIFICATION: City of Raleigh Long Range Urban Services Area

WATERSHED: Lower Neuse River

CROSS REFERENCE FILES: BA 512, BA 2092-08, BA SU-2113-09, PLG-ZV-926-2018

PROPERTY OWNER: City of Raleigh

APPLICANT: John Goins

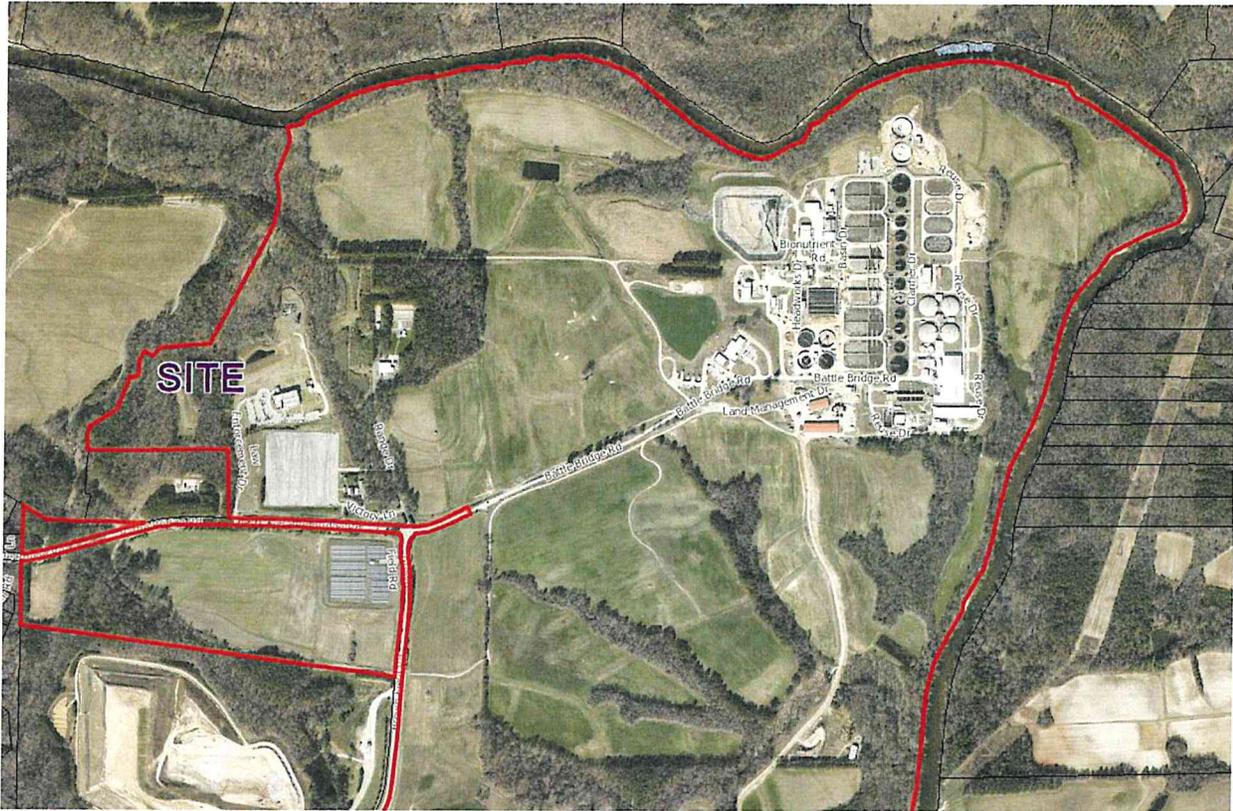
EXISTING USE: Law Enforcement Training

PROPOSED USE: Telecommunication Tower

### Project Setting – SURROUNDING ZONING DISTRICTS AND LAND USES

<b>DIRECTION</b>	<b>LAND USE</b>	<b>ZONING</b>
North	Vacant / Residential	Residential-30 (R-30)
East	Vacant / Residential	Residential-30 (R-30)
South	Vacant / Residential/Static Transformer Station	Residential-30 (R-30)
West	Vacant / Residential	Residential-30 (R-30)

## Aerial Map



## Background

The petitioner is proposing to construct a 499' foot self-support telecommunication tower at the Wake County Law Enforcement Training complex. The purpose of the tower is to provide increased coverage for Wake County Government Information Services and Public Safety Communications systems in this portion of the county.

Telecommunications towers over 200 feet in height are permitted with a Special Use Permit in the R-30 zoning district and are not required to be within an activity center to be consistent with the Wake County Land Use Plan.

Notification letters to adjoining property owners were mailed on January 30, 2019. A public hearing placard was placed on the site on January 30, 2019.

## Zoning Standards

1. Utilities: No utilities are proposed for this project due to the nature of the use.
2. Streets: The property has access off Law Enforcement Drive.
3. Reduction in setback: Section 4-56-(B)(1), *Telecommunication Facilities*, requires all freestanding towers adjacent to residential districts to have a minimum setback equal to the tower's height but not less than 50 feet. Section 4-56-B(2) authorizes the Board of Adjustment to reduce the minimum

setback distance required by the UDO if a qualified structural engineer certifies in writing that any collapse of the tower will occur within a lesser distance. The petitioner, John Goins, is a professional structural engineer and has provided a sealed letter indicating that the tower will be designed so as not to collapse outside of a 260-foot radius from the base of the tower. This fall zone radius is completely contained within the project area and will not impact local residential districts per the site plan.

4. Parking: Pursuant to Section 15-10 of the Wake County Unified Development Ordinance, off-street parking is required at the following rates: Two per site or one per employee. The site plan is in compliance with section 15-10 by providing two parking spaces.
5. Stormwater management/impervious surface coverage: No additional stormwater measures are required for this project due to a negligible increase in impervious surface with regard to the large land area of the parcel.

### Land Use Plan

Telecommunication towers over 200 feet in height within the Residential-30 zoning district require special use approval and are not required to be located within an activity center. The proposed use is consistent with the Wake County Land Use Plan.

### Findings

#### Special Use Required Conclusions:

The Board of Adjustment shall not approve a petition for a Special Use Permit unless it first reaches each of the following conclusions based on findings of fact supported by competent, substantial, and material evidence. The Board of Adjustment must make positive findings on the following findings of fact from Article 19-23 of the Wake County Unified Development Ordinance in order to approve or deny this special use request:

- (1) The proposed development will not materially endanger the public health or safety.

#### Considerations:

- a. Traffic conditions in the vicinity, including the effect of additional traffic on streets, street intersections, and sight lines at street intersection and curb cuts.
  - b. Provision of services and utilities, including sewer, water, electrical, garbage collections, fire protection.
  - c. Soil erosion and sedimentation.
  - d. Protection of public, community, or private water supplies, including possible adverse effects on surface waters or groundwater.
- (2) The proposed development will comply with all regulations and standards generally applicable within the zoning district and specifically applicable to the particular type of special use or class of special uses.
  - (3) The proposed development will not substantially injure the value of adjoining property or is a public necessity.

#### Considerations:

- a. The relationship of the proposed use and the character of development to surrounding uses and development, including possible conflicts between them and how these conflicts will be resolved.
- b. Whether the proposed development is as necessary to the public health, safety, and general welfare of the community or County as a whole as to justify it regardless of its impact on the value of adjoining property.

(4) The proposed development will be in harmony with the area in which it is located.

Considerations:

- a. The relationship of the proposed use and the character of development to surrounding uses and development, including possible conflicts between them and how these conflicts will be resolved.

(5) The proposed development will be consistent with the Wake County Land Use Plan.

Considerations:

- a. Consistency with the Plan's objectives for the various planning areas, its definitions of the various land use classifications and activity centers, and its locational standards.
- b. Consistency with the municipal and joint land use plans incorporated in the Plan.

### Recommendation

Staff recommends that, if the Board of Adjustment reaches positive conclusions on all of the required findings, that it approve the request subject to the following conditions:

- 1) The petitioner must record the notarized form pertaining to the Order of the Board in the Wake County Register of Deeds and return a copy to the Planning, Development and Inspections Division of Community Services;
- 2) The petitioner must obtain and complete appropriate building permits from the Wake County Inspections Development/Plans/Permits Division;
- 3) A final zoning inspection to verify site plan compliance must be performed by the Wake County Zoning Administrator prior to the issuance of a certificate of completion by the Wake County Planning, Development and Inspections Division of Community Services;
- 4) The landowner must maintain compliance with the special use approval and Wake County Unified Development Ordinance.

Upon the conclusion of Mr. Record's presentation, Mr. McConkey asked if there were any questions for staff.

The Board members engaged in a brief discussion.

- Mr. Haq asked for clarification on the letter submitted by the applicant, specifically regarding the FAA study and the FCC environmental document that is currently in progress to satisfy federal regulations. Mr. Record stated that the Board would not necessarily get a copy of that report, but that it is necessary for the applicant to get approval from those organizations prior to the special inspections report portion of the building permit.

### **Voting Members (5)**

The voting members were identified as: Mr. McConkey, Mr. Haq, Mr. Will Barker, Ms. Vodicka and Mr. Mial. Mr. McConkey then swore witnesses in favor of the petition.

### **Sworn Witnesses in Favor of the Petition**

1. Mr. Tom Johnson, Attorney
2. Mr. John Higgins, IT Director and Chief Technology Officer, Wake County Information Services

Mr. Johnson stated that he has a copy of the FAA approval for the Board and would like to submit the copy for the record. Mr. McConkey accepted the report into the record.

Mr. Johnson stated that the tower will enhance public health and safety in Wake County, is in harmony with other public infrastructure in the area and is in a well-wooded area. Mr. Johnson also clarified that the tower is 480 feet to the top of the scale of the tower.

Mr. Higgins addressed the issues of Wake County population growth and increased concern of poor radio reception for local law enforcement and EMS. Mr. Higgins stated, that the current radio system was initially built for 3500 users across 20 agencies. Currently, those number have increased to about 7700 users in over 50 agencies, equaling about 50,000 radio calls per day on average. Mr. Higgins testimony is that this growth in system utilization puts the need for this tower as a public necessity.

There being no one further wishing to speak in favor or in opposition of the petition, Mr. McConkey closed the public hearing portion of the meeting and opened the floor for Board discussion.

### **Board Discussion**

Mr. McConkey noted that this item is straightforward and suggested that they proceed to reviewing each of the five findings of fact.

### **FINDINGS OF FACT**

The Board of Adjustment discussed the following findings of fact from Article 19-23 of the Wake County Unified Development Ordinance in order to approve this special use permit:

#### **(1) The proposed development will not materially endanger the public health or safety;**

Mr. Will Barker stated that per Mr. Higgin's testimony, the tower would benefit public safety. He reiterated that there is a need within Wake County's public safety departments, and that Mr. Higgins testimony stated that.

Mr. McConkey stated that the Board has the certified letter from Mr. Goins regarding the 260-foot fall zone, and in accepting this first point as fact would also approve the fall zone and acceptance of that certification.

Ms. Vodicka added that the tower would be near public land that the approval of this special use permit would not be an issue in terms of public health and safety.

#### **(2) The proposed development will comply with all regulations and standards generally applicable within the zoning district and specifically applicable to the particular type of special use or class of special uses.**

Mr. McConkey stated that the finding of staff does support this, and this point is also detailed more in the statement of justification.

Mr. Mial stated that it is important to note that FCC approval regarding this point has been obtained.

Mr. McConkey stated that one of the staff recommendations is that the petitioner would have to obtain and complete appropriate building permits from those federal bodies, and therefore these conditions would be part of the motion to approve should the Board decide to.

Mr. Will Barker stated that the petitioner is meeting the standard of setbacks as stated in the engineer's letter and with the design of the fall.

**(3) The proposed development will not substantially injure the value of adjoining property or is a public necessity.;**

Mr. McConkey stated that as mentioned by Mr. Higgins, the project meets both criteria.

Mr. Mial reiterated that as mentioned, both Raleigh Police and Wendell were concerned about the current tower signal and the additional tower will improve radio communications.

Mr. McConkey added that there is little development in the part of Wake County that would be impacted.

**(4) The proposed development will be in harmony with the area in which it is located.**

Mr. Mial stated that point was noted since the tower would be placed at a law enforcement training center. Mr. McConkey agreed that the development would be harmonious with the area.

**(5) The proposed development will be consistent with the Wake County Land Use Plan.**

Ms. Vodicka indicated that the staff report indicated that the development is consistent with the Wake County Land Use Plan.

There being no further discussions on the finding of facts, Mr. McConkey asked for a motion.

**MOTION TO GRANT:** In the matter of PLG-ZV-000981-2018, Ms. Vodicka moved that the Board find and conclude that the petition does meet the requirements of Article 19-23 of the Wake County Unified Development Ordinance and the special use permit be granted with the recommended staff conditions. The motion to approve is made based on the following conclusions based on Board discussion and findings of fact:

1. The proposed development will not materially endanger the public health or safety;
2. The proposed development will comply with all regulations and standards generally applicable within the zoning district and specifically applicable to the particular type of special use or class of special uses;
3. The proposed development will not substantially injure the value of adjoining property, or is a public necessity;
4. The proposed development will be in harmony with the area in which it is located, and
5. The proposed development will be consistent with the Wake County Land Use Plan.

The motion was seconded by Mr. Will Barker. The variance was granted with a unanimous vote (5-0).

**5. Planning, Development & Inspections Report**

Mr. Steven Finn reintroduced Ms. Kathy Williams, Planner 1, who will be presenting cases to the Board. Mr. Finn also reported that building permits is trending up and the LDS system continues to perform very well.

**6. Other Business**

No other business was brought to the Board.

Mr. McConkey adjourned the meeting at 9:25 a.m.

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REGULAR MEETING  
WAKE COUNTY BOARD OF ADJUSTMENT  
February 12, 2019

All petitions complete, Brenton McConkey declared the regular meeting  
of the Wake County Board of Adjustment for  
Tuesday, February 12, 2019 adjourned at 9:25 a.m.

Respectfully Submitted:

Brenton McConkey  
Wake County Board of Adjustment

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