



Planning, Development & Inspections

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MINUTES OF REGULAR MEETING

Wake County Board of Adjustment

Tuesday, August 13, 2019 (9:00a.m.)

Wake County Justice Center

300 S. Salisbury St., Room

2700 Raleigh, North Carolina

Members Present: (4) Mr. Brenton McConkey (Chair), Mr. Don Mial (Vice Chair), Mr. Waheed Haq, Mr. Will Barker

Members Absent: (3) Mr. John Barker, Ms. Sheree Vodicka, Mr. DeAntony Collins

Vacant Seats: (2)

County Staff Present: (7) Mr. Steven Finn (Land Development Administrator), Ms. Jenny Coats (Community Services Operations Director), Mr. Tim Maloney (Planning Development & Inspections Director), Ms. Beth Simmons (Community Services Operations Supervisor), Ms. Loretta Alston (Clerk to the Board), Mr. David Parks (Planner II), Mr. Geoffrey Pearson (Code Enforcement Program Manager)

Guests: Mr. Jeb Zarzour (Applicant); Mr. Lloyd McCarthy (Applicant), Tower Engineering Professionals; Ms. Barbara McGinnis; Ms. Pamela Sutterfield; Ms. Diane Payne; Mr. Jerry Stuart; Mr. Mark Barker

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

- 1. Meeting called to order:** Mr. McConkey called the meeting to order at 9:01 a.m.
- 2. Approval of Minutes of the May 14, 2019 Meeting:** Mr. Will Barker made a motion to approve the May 14, 2019 meeting minutes as presented. The motion was seconded by Mr. Mial and the minutes were approved unanimously.
- 3. Approval of Written Decision Regarding PLG-ZV-001292-2019 – Variance at Sweet Meadow Lane**
Mr. McConkey noted that three of the five original voting members present were: Mr. McConkey, Mr. Mial, and Mr. Will Barker. Mr. McConkey made a motion to approve the written decision as drafted. The motion was seconded by Mr. Mial. By a vote of 3-0, the written decision was adopted.
- 4. PLG-ZV-001302-2019 – A variance request to allow for a 31.8-ft reduction in the setback requirement for the detached garage and a 17.8-ft reduction in the setback requirement for the 1-story metal detached building at 3035 Banks Road**
Mr. McConkey informed the petitioner that a four-fifths majority vote is required to approve a variance, therefore all members present would need to vote in favor of the petitioner. Mr. McConkey suggested that the board hear the next case, allowing the petitioner time to consider options to move forward or delay the vote until the next board meeting.

5. PLG-SU-001347-2019 – Special Use Permit Request to construct a 120-foot tall telecommunication tower on the Bayleaf Fire Station Property at 11713 Six Forks Road

Before the case was heard, Wake County staff members, David Parks, Geoffrey Pearson, and Steve Finn, were duly sworn. Planning staff member, Geoffrey Pearson, began by introducing himself and the title of the case before the board.

Mr. Haq stated that his firm represents a commercial investment building in which T-Mobile is a tenant. He further stated that the relationship would not hinder his judgement of the case. Mr. McConkey thanked Mr. Haq for disclosing that relationship and asked staff to proceed with the request.

Voting Members (4)

The voting members were identified as: Mr. McConkey, Mr. Mial, Mr. Haq, and Mr. Barker.

Documentary Evidence

Staff Report, PowerPoint presentation, Petitioner's Application

Testimony of Staff

Mr. Pearson, Code Enforcement Program Manager, asked that the staff report (attached here as Appendix 1) and the PowerPoint (attached here as Appendix 2) presentation be accepted as evidence into the record for Special Use Permit request PLG-SU-001347-2019. Mr. McConkey accepted the evidence into record.

This item is a request for special use permit approval to construct a 120' tall telecommunication tower. The petitioner is Lloyd McCarthy of Tower Engineering Professionals, and the landowner is Bayleaf Volunteer Fire Dept. Inc.

The subject site is located at 11713 Six Forks Rd, which is in the northern part of the county, between Norwood Rd & Honeycutt Rd. The parcel upon which the tower is proposed is 2.53 acres and currently contains a volunteer fire station. The site is zoned Residential-80 Watershed and is located in the Critical Area of the Falls Lake Watershed. The surrounding properties are predominantly residentially zoned and developed.

The Bayleaf Volunteer Fire Department was granted Special Use Approval for the existing 16,560 square foot Volunteer Fire Station Building with 28 parking spaces on August 14, 2007. The Bayleaf Volunteer Fire Department also owns an adjoining .12-acre lot (located at 11715 Six Forks Rd) which it leases to Aqua Utilities. The adjoining lot is occupied by a water tank which is currently used to co-locate multiple cell tower antennae from various cell phone carriers.

Aqua Utilities plans to perform required maintenance to the water tank. In order to perform this maintenance, the cell tower antennae need to be relocated until the maintenance is completed. Subsequently, the applicant has applied for special use approval to construct a temporary 120-foot tall cell tower to place the antennae on this tower for approximately three months until the maintenance work is completed.

Mr. Pearson presented in his PowerPoint presentation, the submitted site plan of the property, which shows the project area for the proposed telecommunication tower and pointed out that the project would not impact the existing on-site utilities.

Existing vegetation surrounding the entirety of the parcel as well as the area immediately surrounding the tower project area, is to be retained to meet required buffer-yard standards. Furthermore, two parking spaces are required for the tower, and the applicant proposes to use two of the existing 28 spaces on site. Mr. Pearson stated that per Section 4-56-1(B)(1) of the UDO, the minimum distance between a tower and a residentially zoned or developed lot must be equal to the tower's height, but not less than 50-feet. The proposed 120-foot tower is 80.1-feet from the northern adjoining residential property. Mr. Pearson stated that this distance does not comply with Section 4-56-1(B)(1) of the UDO. Per the UDO, the tower setback could be reduced by up to 50% of its height if an engineer's letter stating the tower will collapse in place. Mr. Pearson indicated that such a letter has not been submitted. Furthermore, Mr. Pearson stated that the plan shows an off-site easement onto the adjoining northern property to accommodate the fall zone. However, an off-site easement cannot be used to mitigate setback requirements.

The impervious surface coverage for the property is legally nonconforming. Per Section 5-11-1, the maximum built-upon-area should be 6% for R-80W zoning district for nonresidential development. However, the pre-existing built-upon-area is 38.5%. Mr. Pearson pointed out that the original Special Use was approved in 1982, and the impervious requirements predated the ordinance amendment. Section 7-13-2(B) of the UDO states "No action may be taken that increases the degree or extent of the nonconforming development feature." The applicant proposes to establish a 25x25 pervious area on the lot to offset the increase in impervious. Therefore, this will meet the requirements of Section 7-13-2(B).

Mr. Mial asked for clarification regarding the applicants' letter to Mr. Finn, requesting the Special Use, as the letter stated they were requesting a 150-foot tower. Mr. Pearson clarified that the applicants has since revised their request to a 120-foot tower.

Mr. Barker asked if there were any building on the property north of the site and if so, how close are they to the property line. Mr. Pearson stated that there is a residential structure, but that it is closer to Six Forks Road, away from the proposed tower site.

Mr. Pearson presented several photos and a video from his PowerPoint presentation. Mr. Pearson stated that notification letters to adjoining property owners were mailed on July 17, 2019. A public hearing placard was placed on the site on July 24, 2019.

Testimony of the Petitioner

Before testimony was given witnesses were duly sworn:

1. Lloyd McCarthy, 5224 Knights Bridge Way, Raleigh, NC
2. Jeff Hlava, 2125 Water Ridge Parkway, Charlotte, NC

Mr. McCarthy of Tower Engineering began by thanking the Board for allowing them to present additional information and added that the staff report was an accurate representation of the request. Mr. McCarthy added that this request is for a defacto temporary tower which is a modification of a previously approved special use permit. The tower will allow T-Mobile and other carriers to relocate its equipment from the existing 182-foot water tower to a proposed 120-foot temporary tower to be removed within three months.

Mr. McCarthy stated that if the mobile carriers are unable to relocate the equipment to a new temporary tower, it would create an undue hardship on not only the carriers, but also the customers using the communication service. Mr. McCarthy also stated that they have provided an engineer's report that shows the tower is structurally sound. Although the tower is not designed with a weak point or breakpoint, they do not anticipate that it will fall nor that it will endanger public safety.

Mr. McCarthy presented a copy of a Temporary License and Fall Zone Easement Agreement (attached here as Appendix 3) with the adjoining property owner, granting T-Mobile the use of the property as a fall zone in the event the tower collapses. Mr. McConkey accepted the document into the official record.

Mr. McCarthy pointed out that the water tower is 180-feet tall and is closer to the adjoining property than the temporary tower and is substantially taller. Mr. McCarthy stated that the construction of this tower will not endanger public safety and well-being, it will not change the character of the area and it will not conflict with the Wake County comprehensive plan or the land use plan.

T-Mobile representative, Mr. Hlava added that since this tower is temporary, they are not able to design it with a fall zone the way the code envisioned. In order to overcome that, the fall zone agreement has been provided. AT&T and Sprint are also affected, in addition to T-Mobile, and all three will relocate to the new temporary tower.

For the benefit of the Board, Mr. Ken Murphy read the ordinance provisions at issue.

UDO 4-56B: Freestanding telecommunication towers must comply with the following standards: (1) The minimum distance between the tower and an adjoining parcel of land that is residentially developed or is vacant and zoned Residential, Residential Mobile Home, Highway District, or Residential Highway Commercial, or from an adjoining local road separating the tower site from such a parcel, must be equal to the tower's height, but not less than 50 feet, nor less than the minimum set back depth applicable in the zoning district; and (2) The Planning Director or the Board of Adjustment may reduce the minimum distance required above on finding that a lesser distance will not be injurious to properties or improvements in the affected area, but in no case may the minimum distance be reduced to less than that equal to 50% of the tower's height, or 50 feet, nor less than the minimum required setback depth applicable in the zoning district in which the tower is located. The Board of Adjustment is authorized to reduce the minimum setback distance required in this paragraph if a qualified structural engineer (licensed by the state of North Carolina) certifies in writing that any collapse of the pole will occur within a lesser distance under all foreseeable circumstances.

Mr. McConkey asked for clarification in that these ordinances do not specifically say that an off-site easement cannot be used, only that the only way an easement can be used is when an engineer's letter is provided. Mr. Finn confirmed that staff perspective is that without the engineer's letter, there is no authority to approve an easement.

Mr. Barker inquired if the engineer's letter is the only provision for approving, and Mr. Murphy stated that the board has the authority to interpret the ordinance. Mr. Murphy allowed the Board members to view the exact language of the ordinances mentioned for further clarification.

Mr. Haq inquired about property owner use of the easement area. Mr. Murphy stated that the property owner is restricted in how they use the part of their property that is subject to the easement.

Mr. McConkey asked Mr. Hlava what type of tower was being built. Mr. Hlava explained the basic construction of stick towers. Mr. Hlava presented the board with a simulation photo of the proposed tower. Mr. Murphy asked the petitioners if they would like the photo entered as evidence, to which the petitioners agreed (attached here as Appendix 4).

Mr. McConkey asked the petitioners about building a shorter tower to meet the 80.1-foot tower restriction. Mr. Hlava stated that a tower of that height would meet the needs for one carrier, but not the needs of moving three carriers completely off the water tower. With the 120-foot tower, all carriers will still have reduced coverage and 911 holes, but a shorter tower would create additional problems.

Mr. Haq asked about the possibility of the tower failing. Mr. Hlava stated that temporary towers are not up for a period long enough to get any statistics on that. T-Mobile has not had any temporary towers in the area with structural damage or issues.

Public Hearing

Mr. McConkey opened the public hearing section of the meeting at 9:49am.

Mr. McConkey began by interpreting the ordinance as saying that the presentation of an engineer's letter is the only means to reduce the easement requirement.

Mr. Barker interpreted that the engineer's letter was one way to determine if the reduced easement was safe or the board can make its own judgement. He also interprets the policy to be applicable to permanent structures, not temporary structures.

Mr. McConkey pointed out to the board that the Easement Agreement is for a term of 120 days. If the board were to approve this request, there may need to be an expiration to coincide with the agreement.

Mr. Murphy reminded the Board that the decisions of this board are not precedential and do not have precedential value. The role of the board is to examine each case that comes before it and apply the unique set of facts to the ordinance standard. It is not bound by precedent.

Mr. Mark Barker (property owner adjacent to the fire station, 6028 Valencia Ct, Raleigh, NC) was duly sworn and spoke before the board. He stated that he was not necessarily opposed to the temporary tower, but rather he was requesting additional information of the applicant regarding additional vegetation, additional lighting, temporary nature of the tower, and inquired if an engineer's letter existed. Mr. Barker is concerned that the utilization of an easement to comply with fall zone requirements will set precedent for future cases. Mr. Barker also inquired if there was a representative from the fire department present.

Mr. Hlava stated that there will not be additional vegetation planted nor removed. Mr. McCarthy stated that the property is well screened with vegetation. Mr. Hlava also stated that there are no lighting requirements under the federal rules. There may be additional lighting for workers and for access to the compound, but no new floodlight or spotlights.

Mr. Haq inquired about the security of the property. Mr. McCarthy explained that there is already a fence around the property and an additional temporary fence will be erected around the temporary tower.

Mr. Mark Barker asked the petitioners to consider planting permanent underbrush type landscaping since the existing landscaping lacks that. He also asked if the lighting that will be installed will be removed after the temporary tower is removed, and Mr. Hlava confirmed that any lighting installed would be removed. The temporary fencing and lighting will be erected within a week, the tower maintenance is expected to take 60 days, but no more than 120 days, and then the temporary fencing and lighting will be removed within a week afterward.

Having no additional persons speaking for or against the special use request, Mr. McConkey closed the public hearing section of the meeting at 10:03am and opened the floor for Board discussion.

Board Discussion

Mr. McConkey reminded the Board that the Board of Adjustment must make positive findings on the following from Article 19-23 of the Wake County Unified Development Ordinance in order to approve this special use request:

Findings of Fact

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

Mr. McConkey stated that despite the lack of an engineer's certification, he is not concerned about the fall zone of the tower. There is an easement agreement and the area in question is not occupied. Mr. McConkey also did not see anything in the record that shows any material endangerment to 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.

Mr. Mial, Mr. Barker, and Mr. Haq agree that since the structure is temporary and that the petitioner has acquired additional land through the temporary easement to satisfy that fall zone distance, they have complied with regulations. Mr. Barker stated that since the tower is temporary in nature it would be pointless to purchase the property and then sell it back to the landowner. Mr. Mial further stated that if the structure was meant to be a permanent tower, that he would have serious concerns. Mr. Haq feels the applicant has done their best to secure an easement to comply with the regulations and industry-wide the failure rate is very low. Mr. Haq also agrees that because it is temporary in nature and as soon as the maintenance is completed the tower will be taken down as to not harm property values.

Mr. McConkey stated that he believes this does not comply with regulations in that they did not obtain an engineer's certification and he interprets the ordinance to say that the existence of the engineer's certification is the only mechanism by which the board can find in favor of this finding. Mr. McConkey stated that he cannot support the special use as a result and realizes that it is a hardship for T-Mobile and the other carriers. Mr. McConkey would ask that staff re-evaluate the language in the ordinance to clarify the meaning.

3. The proposed development will not substantially injure the value of adjoining property, or is a public necessity.

Mr. Barker stated that he believes that this finding is met since the temporary tower is needed in order to relocate the antennae to minimize 911 outages in the event of an emergency, and since the tower is temporary, it will not injure the value of adjoining property. Mr. Haq agreed and further stated that since the tower and attached lighting is temporary and will be taken down as the applicant agreed, it will not injure adjacent properties. Mr. Mial pointed out that the area is an already pre-existing tower location.

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

Mr. McConkey restated Mr. Mial's point that it is an existing tower location in which a smaller tower will be erected beside a larger tower, making it harmonious.

Mr. Haq pointed out that the tower is for the greater good of the public and will not benefit a private individual. Mr. Mial agrees that not having the temporary tower would possibly cause harm with dropped call to emergency services.

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

Mr. McConkey pointed out that the development is consistent with the Wake County Land Use plan as stated in the staff report.

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

Motion and Conclusions: In the matter of PLG-SU-001347-2019, Mr. Barker moved that the Board find and conclude that the petition does meet the requirements of Article 19, Section 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 findings of fact:

- 1) The proposed development will not materially endanger the public health or safety. Mr. Barker stated that by securing the temporary easement, this intent is met;**
- 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. Barker stated that since the structure is temporary, the easement would be the correct means, in lieu of purchasing the property.**
- 3) The proposed development will not substantially injure the value of adjoining property, or is a public necessity. Mr. Barker stated that it is a public necessity in order to prevent potential outages in relation to calls to emergency services**
- 4) The proposed development will be in harmony with the area in which it is located. Mr. Barker cited that the tower is currently used as a location for an existing tower, and;**
- 5) The proposed development will be consistent with the Wake County Land Use Plan, as stated in the staff report.**

Mr. Barker added that an important part of the approval for this special use, the following condition must be met:

That the easement shall be required and enforceable throughout the duration of temporary tower, and if the petitioner finds the need to extend or change the easement agreement, Wake County Planning, Development and Inspections Division of Community Services must be notified.

The motion was seconded by Mr. Haq. The special permit was granted with a vote of three in favor (Mr. Barker, Haq, and Mial) and one opposed (Mr. McConkey).

It is Therefore Ordered:

1. The petitioner/landowner must record the notarized form pertaining to the order of the Board in the Wake County Register of Deeds and return a copy to 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, and;
 5. That the easement shall be required and enforceable throughout the duration of temporary tower, and if the petitioner finds the need to extend or change the easement agreement, Wake County Planning, Development and Inspections Division of Community Services must be notified.
6. **PLG-ZV-001302-2019 – A variance request to allow for a 31.8-ft reduction in the setback requirement for the detached garage and a 17.8-ft reduction in the setback requirement for the 1-story metal detached building at 3035 Banks Road**

Before the case was heard, Wake County staff members, David Parks and Steve Finn, were duly sworn. David Parks, Planner II, began by introducing himself and the title of the case before the board.

Voting Members (4)

The voting members were identified as: Mr. McConkey, Mr. Mial, Mr. Haq, and Mr. Barker.

Documentary Evidence

Staff Report, PowerPoint presentation, petitioner's application

Testimony of Staff

Mr. Parks asked that the staff report, the PowerPoint presentation, and the petitioner's application be accepted as evidence into the record for Zoning Variance Request PLG-ZV-001302-2019. Mr. McConkey accepted the evidence into record.

This item is a request for a zoning hardship variance to reduce the required corner side yard building setbacks for two existing accessory structures, within the R-30 District, in relation to Article 4-70 of the Unified Development Ordinance.

The property owner is Jeb Zarzour. The subject site is located on the southeastern corner of Banks Road and Shield Circle and contains approximately 0.689 acres. Mr. Parks presented an aerial map and background information on the property.

The lot contains a 1,318 square foot single family home. There are two existing detached accessory structures located on the property and they are currently within the required setback along Shield Circle. The applicant is requesting a reduction in the 50-ft required setback to 31.8-ft and 17.8-ft, respectively. The detached garage was constructed in 2008 and the one-story metal building was constructed in 2018. Code enforcement generated the setback violation while investigating the operation of a commercial business at the residence.

Mr. Parks presented the property site plan, showing that the metal building is 32.2-ft from the property line on Shields Circle and the garage is 18.2-ft from the property line on Shields Circle. Mr. Parks also presented a video of the property.

Notification letters to adjoining property owners were mailed on July 24, 2019. A Public Hearing sign was also placed on the site on July 25, 2019. Mr. Parks recommended that, if the Board of Adjustment reaches positive conclusions on all of the required findings, that it approves the variance subject to the conditions identified in the staff report.

Mr. McConkey asked Mr. Parks what the required setback would be if the property line were adjacent to another residence instead of Shields Circle, and Mr. Parks stated there would be a 5-ft reduction for accessory structures in that instance for side and rear lot lines, depending on the type of subdivision.

Mr. Haq inquired whether Shields Circle was a private or public road, and therefore subject to Wake County rules. Mr. Parks stated that the setbacks are set by the Wake County Unified Development Ordinance of 50-ft for accessory structures. The ordinance states that accessory structures shall be located no closer to the street than the house or 50-ft, whichever is less.

Mr. Mial asked if the accessory structures were already built. Mr. Parks indicated that the garage was originally permitted and built in 2008, and an addition to the garage was permitted in 2010. The metal building was built in 2018. Mr. Parks went on to state that in 2008, when the permit to erect the garage was given, there was already an existing slab and at that time the Wake County Planning/Inspections policy was that if there was a structure completed on top of the existing slab with no net gain, the building was allowable. Mr. Finn confirmed that policy.

Mr. McConkey asked if the Board could vote on these two buildings separately, although the variance request covers both structures. Mr. Murphy confirmed that the Board can approach the case as two separate votes.

Testimony of the Petitioner

Before testimony was given, petitioner Jeb Zarzour of 3035 Banks Road, Raleigh, NC was duly sworn.

Mr. Zarzour began by restating information that was presented by Mr. Parks. The initial garage was permitted and built in 2008 and was extended in 2010. Later, Mr. Zarzour erected the metal building in the spirit of the original building and was built farther away from the property line at a position that they thought was in accordance with the current setbacks. Mr. Zarzour stated that he has been working on motorcycles out of the garage since it was built in 2008 and the metal building is used to store personal items and equipment.

Mr. McConkey asked Mr. Zarzour about septic lines. Mr. Zarzour stated there are three lines that run on the inboard side and runs down to the rear of the property.

Mr. McConkey asked the reasoning of the location of the metal building. Mr. Zarzour stated that location was the most neutral place out of the way of the septic lines and was thought to be far enough off the property line.

Mr. Zarzour stated that he had planned this week off to do some landscaping around the accessory buildings.

Mr. Haq asked about the nature of the metal building and if it had plumbing. Mr. Zarzour described it as a glorified metal carport with a concrete foundation.

Public Hearing

Mr. McConkey opened the public hearing section of the meeting at 10:37am. Those in favor of and in opposition of the petition were duly sworn and spoke before the board:

1. Barbara McGinnis, 5172 Shield Circle, Raleigh, NC
2. Pamela Sutterfield, 5128 Shield Circle, Raleigh, NC
3. Diane Payne, 3101 Banks Road, Raleigh, NC

Mr. McConkey asked staff if the garage was appropriately permitted in 2008 and 2010. Steven Finn confirmed that was the case, but their office does not get involved in the review process for residential building permits unless a concern is brought before them. He stated the metal building was required to have a permit, and that it was not permitted.

Having no additional persons speaking for or against the special use request, Mr. McConkey closed the public hearing section of the meeting at 10:54am and opened the floor for Board discussion.

Board Discussion

Mr. McConkey noted that there are two separate buildings and circumstances involved with this case, and that the board needed to address each separately.

Mr. McConkey reminded the Board that the Board of Adjustment must make positive findings on all of the following from Article 19-26 of the Wake County Unified Development Ordinance in order to grant the variance request.

Findings of Fact for the GARAGE ONLY at 3035 Banks Road

- 1. Unnecessary hardship would result from the strict application of the ordinance. It shall be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;**

Mr. Barker pointed out that the structure was appropriately permitted and would be an unnecessary hardship to take down the structure.

- 2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance;**

Mr. McConkey stated that the location where the garage is currently is the only feasible location. A location at the back of the house would be on the septic line, a location at the front of the house would not be in compliance with setback requirements off Banks Road, and the east side of the house would require the homeowner to reroute the entire driveway.

- 3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship;**

Mr. McConkey recognized that staff confirmed that the petitioner took the necessary steps to appropriately permit the garage. Mr. Mial agreed that the applicant follow guidelines.

- 4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.**

Mr. McConkey stated that a large factor with respect to setbacks is ensuring that some buffer stands between neighbors and that one does not encroach on others privacy or aesthetics. Mr. McConkey pointed out that the testimony from the neighbors do not point to concerns with the position of the garage, and that it does not encroach into their privacy.

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

Motion and Conclusions for the GARAGE ONLY: In the matter of PLG-SU-001347-2019, Mr. Mial moved that the Board find and conclude that the petition **does meet** the requirements of Article 19-26 of the Wake County Unified Development Ordinance and North Carolina General Statute Section 160A-388(d), and that the requested variance be granted to allow for a 31.8-ft reduction in the setback required for the detached garage. The motion to approve is made based on the following conclusions and findings of fact:

- 1) **Unnecessary hardship would result from the strict application of the ordinance. It shall be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property, Mr. Mial stated the hardship would occur by the removal of the garage;**
- 2) **The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. Mr. Mial sited the only viable location for the garage is where it currently stands;**
- 3) **The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regards as a self-created hardship. Mr. Mial stated that the applicant did get the appropriate permit for the garage;**
- 4) **The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.**

The motion was seconded by Mr. Barker. The zoning variance for the GARAGE ONLY was granted with a unanimous vote of the Board (4-0).

Findings of Fact for the METAL ACCESSORY BUILDING ONLY at 3035 Banks Road

1. **Unnecessary hardship would result from the strict application of the ordinance. It shall be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;**

Mr. Barker stated that removing the structure would be a hardship, similarly with the garage. Mr. McConkey stated that he feels the hardship is different from the garage in that the metal building is less than one year old.

2. **The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance;**

Mr. McConkey stated that the location where the metal building is located is perhaps not the only possible location for a metal accessory building or was not the only way to store items on the property, and the petitioner could have investigated that further. He stated that it differs from the garage in that the garage really needs access to the driveway.

3. **The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regards as a self-created hardship;**

Mr. McConkey recognized that the petitioner did not follow the appropriate process for permitting the metal building, and therefore the hardship would be a result from actions of the applicant. He stated that although the garage was already there and was setback even further, that does not excuse the need for a permit for the metal building. He felt that the owner knew of the permitting process because he followed it with the garage, but that was not the case with the metal building.

4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

Mr. McConkey stated that it is unknown if the variance would be consistent with the intent of the ordinance, as the building was not permitted and did not follow the setback requirements.

Mr. Haq inquired to staff if there was a limit to the number of accessory buildings on a property. Mr. Steven Finn said the limit was three or the limit is the cumulative square footage cannot exceed the square footage of the primary residence.

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

Motion and Conclusions for the METAL ACCESSORY BUILDING ONLY: In the matter of PLG-SU-001347-2019, Mr. McConkey moved that the Board find and conclude that the petition **does NOT** meet the requirements of Article 19-26 of the Wake County Unified Development Ordinance and North Carolina General Statute Section 160A-388(d), and that the requested variance be denied in regards to the proposed 17.8-ft reduction in the setback required for the 1-story metal detached building. The motion to deny is made based on the following conclusions and findings of fact

- 1) Unnecessary hardship would not result from the strict application of the ordinance due to the nature of the structure;**
- 2) There would not be hardships resulting from conditions that are peculiar to the property;**
- 3) The hardship did result from actions taken by the applicant or the property owner; and**
- 4) The requested variance (could not be verified as to the consistency?) with the spirit, purpose, and intent of the ordinance because the building was not permitted and did not follow setback requirements**

The motion was seconded by Mr. Mial. The zoning variance for the METAL ACCESSORY BUILDING ONLY was DENIED with a unanimous vote of the Board (4-0).

7. Planning, Development & Inspections Report

Mr. Steven Finn noted the Board's decision to consider two different structures separately although the items were included in one variance request and agreed with Mr. McConkey that the action worked out to the benefit of the property owner.

Mr. Finn noted that develop remains consistent, with an increasing number of subdivision requests and nonconforming use requests being submitted.

Mr. McConkey asked Mr. Finn to have staff review the text of the Unified Development Ordinance in regard to the engineer's letter when considering a special use permit. Mr. McConkey would like clarification for the board on whether the board has authority to consider things in lieu of an engineer's letter or if it is the intent of the County Commissioners that the letter is the deciding factor. Mr. Finn agreed that staff would look at this text for possible update.

Mr. Tim Maloney informed the Board that there are two board vacancies and he expects the Board of Commissioners to make new appointments at its August meeting.

8. Adjournment

Mr. McConkey adjourned the meeting at 11:16 a.m.

Appendix 1 – Staff Report: PLG-SU-001347-2019

**PETITION FOR: MODIFICATION TO A PREVIOUSLY APPROVED SPECIAL USE
PERMIT TO CONSTRUCT A 120' CELL TOWER**

STAFF REPORT TO THE WAKE COUNTY BOARD OF ADJUSTMENT
August 13, 2019 Meeting Date

Planning Staff
Geoffrey Pearson

I. REQUEST: PLG-SU-001347-2019

The petitioner is requesting special use permit approval to construct a 120' tall cell tower on the Bayleaf Fire Station Property.

II. PROJECT LOCATION

The property is located at 11713 Six Forks Rd, which is located in the Barton's Creek Township

III. PROJECT PROFILE

WAKE COUNTY PIN#: 1709 59 6297
ZONING DISTRICT: Residential-80 Watershed (R-80W)
LAND USE CLASSIFICATION: Non-Urban Area Water Supply Watershed
WATERSHED: Falls Lake – Critical Area
CROSS REFERENCE FILES: BA-2073-07; BA-719-82
APPLICANT: Lloyd McCarthy, Tower Engineering Professionals
PROPERTY OWNER: Bayleaf Volunteer Fire Dept, Inc.
PROPERTY SIZE: 2.53 acres
CURRENT LAND USE: Governmental – Volunteer Fire Services
PROPOSED LAND USE: Same

IV. PROJECT SETTING – SURROUNDING ZONING DISTRICTS AND LAND USES

DIRECTION	LAND USE	ZONING		
North	Residential	Residential-80 Wake County	Watershed	(R-80W)
East	Six Forks Road and Residential	Residential-80 Wake County	Watershed	(R-80W)
South	Residential	Residential-80 Wake County	Watershed	(R-80W)
West	Residential	Residential-80 Wake County	Watershed	(R-80W)

V. AERIAL MAP



VI. ZONING DISTRICT

The subject property is zoned Residential-80 Watershed (R-80W) and is located in the critical area of the Falls Lake Watershed.

VII. BACKGROUND

The Bayleaf Volunteer Fire Department was granted Special Use Approval for the existing 16,560 square foot Volunteer Fire Station Building with 28 parking spaces on August 14, 2007. The Bayleaf Volunteer Fire Department also owns an adjoining .12-acre lot (located at 11715 Six Forks Rd) which it leases to Aqua Utilities. The adjoining lot is occupied by a water tank which is currently used to co-locate multiple cell tower antennae from various cell phone carriers.

Aqua Utilities plans to perform required maintenance to the water tank. In order to perform this maintenance, the cell tower antennae need to be relocated until the maintenance is completed. Subsequently, the applicant has applied for special use approval to construct a 120' tall cell tower to place the antennae on this tower for approximately 3 months until the maintenance work is completed.

Notification letters were mailed to adjacent property owners on July 17, 2019. A public hearing placard was placed on the property on July 24, 2019.

VIII. ZONING STANDARDS

A. MINIMUM TOWER SETBACK / FALL ZONE

Per Section 4-56-1(B)(1) of the Wake County Unified Development Ordinance, the minimum distance between the tower and an adjoining parcel of land that is residentially developed or zoned must be equal to the tower's height, but not less than 50 feet. The proposed 120' tower is showing a distance of 80.1 feet from the northern adjoining residential property. This distance DOES NOT comply with Section 4-56-1(B)(1) of the UDO.

Per Section 4-56-1(B)(2) of the UDO, the Board of Adjustment may reduce the minimum distance required by up to 50% of the tower's height if a qualified structural engineer (licensed by the State of North Carolina) certifies in writing that any collapse of the pole will occur within a lesser distance under all foreseeable circumstances. As of the date of this report, the applicant has not supplied an engineer's certification for reduction. Furthermore, an off-site easement can not be used to comply with Section 4-56-1.

B. STREETS

The property has frontage along Six Forks Road.

The site is currently accessed by an existing driveway onto Six Forks Rd. There are no changes proposed to the existing driveway.

C. UTILITIES

The existing fire station is served by a community water system and individual on-site septic system. The proposed cell tower will have no impact on existing utilities.

C. PARKING

Pursuant to Section 15-10 of the Wake County Unified Development Ordinance, off-street parking for freestanding telecommunication towers up to 250' is required to be provided at a rate of two (2) parking spaces per tower. The applicant proposes to utilize 2 parking spaces of the existing 28 spaces for the volunteer fire station. Per the originally approved SUP (BA-2073-07), the fire station is required to have a minimum of 17 parking spaces. Therefore the application complies with Section 15-10 of the UDO.

D. LANDSCAPING AND BUFFERYARDS

Section 4-56-1(B)(8), *Telecommunication Facilities -- Freestanding* requires a 40-foot Type C bufferyard along the inside perimeter of a leased lot or parcel for the utilization of telecommunication towers. The applicant is proposing to establish a 25' X 25' temporary lease area for the tower site. The applicant wishes to use the existing vegetation along the perimeter of the fire station parcel to satisfy the bufferyard requirement.

E. STORMWATER MANAGEMENT/IMPERVIOUS SURFACE COVERAGE

The impervious surface coverage for the property is legally nonconforming. Section 5-11-1, *Conventional Development – Residential Watershed Districts*, establishes the maximum impervious coverage for the R-80W lot for nonresidential development not to exceed 6% of the lot. The total impervious surface for the lot that is existing prior to the development of the proposed cell tower is 38.5%. The existing impervious surface was created prior to the adoption of the current ordinance provisions and is therefore considered a nonconforming development feature as defined in Section 7-13 of the UDO.

Furthermore, Section 7-13-2(B) of the UDO states that “No action may be taken that increases the degree or extent of the nonconforming development feature”. Since the impervious coverage currently exceeds the maximum allowed, there can be no net increase in the impervious surface coverage. The applicant proposes to establish a 25 x 25 pervious area on the lot to offset the increase in impervious. Therefore, this will meet the requirements of Section 7-13-2(B).

F. LAND USE PLAN

The property is located in the Falls Lake Non-Urban Area/Water Supply Watershed as shown on the Wake County Land Use Plan: General Classifications Map. The proposed project is consistent with the Land Use Plan.

G. 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.

IX. 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;
- 7) 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;
- 8) The landowner must maintain compliance with the special use approval and Wake County Unified Development Ordinance.

Board of Adjustment

PLG-SU-1347-2019

August 13, 2019

@wakegov    



wakegov.com

PLG-SU-1347-2019

Special Use Modification Request

- **Petitioner:** Lloyd McCarthy, Tower Engineering
- **Landowner:** Bayleaf Volunteer Fire Dept., Inc.
- **Request:** Special Use approval to construct a 120' telecommunication tower

WAKE COUNTY

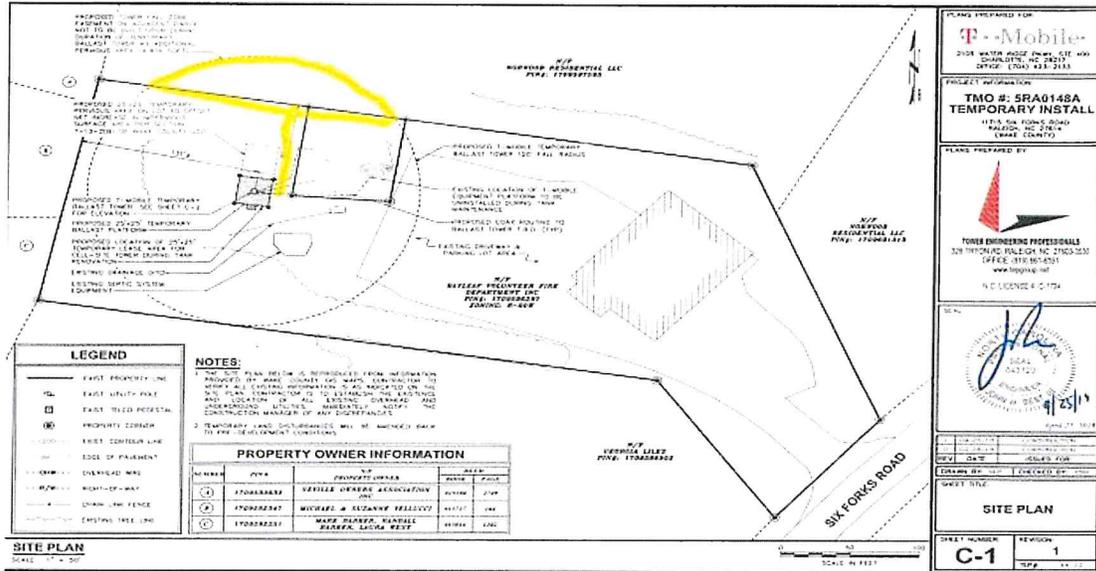
SITE LOCATION



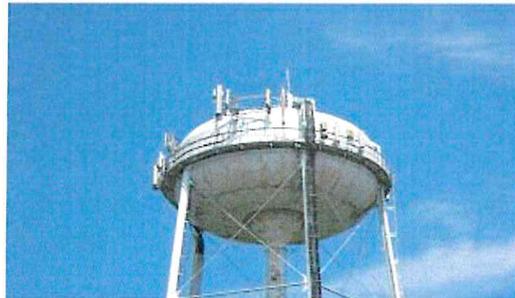
BACKGROUND

- Bayleaf Fire Department granted special use approval in 2007(BA-2073-07).
- Aqua Utilities leases adjoining .12 acre lot for existing water tank that is also used to co-locate multiple cell tower antennae.
- Purpose of tower is to temporarily relocate co-located antennae while Aqua performs maintenance on water tank

SITE PLAN



PHOTOS FROM THE SITE



WAKE COUNTY

VIDEO FROM SITE



WAKE COUNTY

RECOMMENDATION

Staff recommends that, if the BOA reaches positive conclusions on all of the required findings, that it approve the special use request subject to the conditions identified in the staff report.

WAKE COUNTY

PLG-SU-1347-2019

- Presentation by Petitioner
- Comments by Proponents
- Comments by Opponents

WAKE COUNTY

Appendix 3 – Agreement: PLG-SU-001347-2019

Market: Carolina
Site Number: SRA0148A
Site Name: Bay Leaf WT

TEMPORARY LICENSE AND FALL ZONE EASEMENT AGREEMENT

This License and Easement Agreement (the "**Agreement**") is made and entered into by and between Norwood Residential, L.L.C., a North Carolina limited liability company ("**Licensor**"), having an address of 2812 Pleasant Union Church Road, Raleigh, North Carolina 27614 and T-Mobile South LLC, a Delaware limited liability company ("**Licensee**"), having an address of 12920 SE 38th Street, Bellevue, WA 98006-1350.

RECITALS

WHEREAS, Licensor is the owner of certain real property located in the County of Wake, State of North Carolina, having an address of 11717 Six Forks Road, Raleigh, NC 27614 (PIN: 1709597595) being more particularly described in **Exhibit A**, attached hereto and incorporated herein; and

WHEREAS, Licensor and Licensee wish to provide for Licensee's periodic entry upon, access to and use of a portion of the property described in attached **Exhibit A** (the "**Property**") to establish a temporary fall zone easement in support of the installation and operation of a temporary antenna facility (the "**Antenna Facilities**") on the Bay Leaf WT Parcels (as defined below).

WHEREAS, the Bay Leaf Volunteer Fire Department, owner of two parcels (the "**Bay Leaf WT Parcels**") in Wake County, North Carolina, more commonly known as 11715 Six Forks Road, Raleigh, NC 27614 (PIN: 1709596366) and 11713 Six Forks Road, Raleigh, North Carolina 27614 (PIN: 1709596297) adjacent to the Property (described in attached **Exhibit B**) has entered into a Temporary Tower and License and Easement Agreement (the "**Lease Agreement**") with Licensee for a the lease of a portion of the Bay Leaf WT Parcels for the installation of a one hundred and twenty (120) foot or one hundred and fifty (150) foot temporary wireless communications tower (the "**Tower**").

WHEREAS, The Wake County Code, Section 4-56-1(B) requires a minimum distance between the Tower and an adjoining parcel equal to the Tower's height (1:1 or 100%), and Section 5-20-5(C) of the said code requires the designation of additional temporary impervious space for the proposed Tower, and, this Agreement is entered to satisfy the Telecommunication Facilities Fall Zone requirements and the Storm Water Management requirements for the R-80W district of the Wake County Code, Plan Review Number PLG-001347-2019.

COVENANTS

NOW, THEREFORE, in consideration of these premises and the mutual promises and conditions in this Agreement, the parties agree as follows:

1. **Premises**. Licensor hereby licenses to Licensee a non-exclusive easement (the "**Easement**") for the purpose of a fall zone over that area of the Property being in a circular shape, with a radius of approximately one hundred and twenty (120) feet or for a maximum radius of two hundred (200) feet, and covering the portion of the Property (the "**Easement Area**"). The location and orientation of the Easement Area on the Property is generally described and depicted in attached **Exhibit C** (the "**Premises**").

2. **Use**. The Premises may be used by Licensee for the transmission and reception of radio communication signals and for the installation, maintenance, repair or replacement of the Antenna Facilities described and depicted in attached **Exhibit B** (the "**Permitted Use**"). During the Term (as defined below), Licensee shall keep and maintain the Antenna Facilities in commercially reasonable condition. Upon the expiration of the Term, Licensee shall remove the Antenna Facilities from the Premises and restore the Premises to its condition immediately prior to the Effective Date (as defined below), normal wear and tear excepted.

3. **Term**. The term of this Agreement shall commence on the date of written notification by the permitting jurisdiction to Licensee that Licensee's construction permit to construct the Antenna Facilities upon the Premises is granted (the "**Term Commencement Date**"). The term of the Agreement will terminate at the expiration of one hundred twenty (120) days after the Term Commencement Date (the "**Term**").

Market: Carolina
Site Number: 5RA0148A
Site Name: Bay Leaf WT

4. **License Fee.** Licensee shall pay rent to Licensor in the amount of _____ per month (the "**Rent**"), the first payment of which shall be due within thirty (30) days of the Term Commencement Date, and installments thereafter on the first day of each calendar month, provided that Licensor shall submit to Licensee a complete and accurate IRS form W9 prior to Licensee's first payment of Rent. Licensor shall specify the name, address, and taxpayer identification number of a sole payee who/which shall receive Rent on behalf of the Licensor. Rent will be prorated for any partial month.

5. **Access.** Licensor shall have twenty-four-hour-a-day, seven-day-a-week access to the Premises at all times during the Term.

6. **Environmental Laws.** Licensee represents, warrants and agrees that it will conduct its activities on the Premises in compliance with all applicable environmental laws. Licensor represents and agrees that, to the best of its knowledge, it has in the past and will in the future conduct its activities on the Property in compliance with all applicable environmental laws and that the Property is free of hazardous substances as of the date of this Agreement.

7. **Hold Harmless.** Licensee agrees to hold Licensor harmless from claims arising from the installation, use, maintenance, repair or removal of the Antenna Facilities, except for claims arising from the negligence or intentional acts of Licensor, its employees, agents or contractors.

8. **Insurance and Subrogation.** Licensee will provide Commercial General Liability insurance in an aggregate amount of \$1,000,000.00 and include Licensor as an additional insured on the policy or policies. Licensee may satisfy this requirement by obtaining appropriate endorsement to any master policy of liability insurance Licensee may maintain.

9. **Miscellaneous.** This Agreement contains the complete agreement between the parties and cannot be varied except by the written agreement of the parties. The parties agree that there are no oral agreements, understandings, representations or warranties that are not expressly set forth herein. Whenever required by the context in this Agreement, the singular number shall include the plural and neuter shall include the masculine or feminine gender, and vice versa. Article and section headings appearing in this Agreement are convenient reference only and are not intended, to any extent or for any purpose, to restrict or define the text of any article or section. This Agreement shall not be construed more or less favorably between the parties by reason of authorship or origin of language. This Agreement may be executed by original, facsimile, or electronic signatures (complying with the U.S. Federal ESIGN Act of 2000, 15 U.S.C. 96) and in any number of counterparts which shall be considered one instrument. Counterparts, signed facsimile and electronic copies of this Agreement shall legally bind the parties to the same extent as original documents. This Agreement shall be construed in accordance with and governed by the laws of the state where the Property is located. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

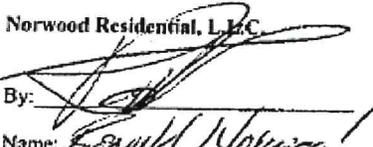
[SIGNATURE PAGE TO FOLLOW]

Market: Carolina
Site Number: 5RAD148A
Site Name: Bay Leaf WT

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed effective as of the date of execution by the last party to sign (the "Effective Date").

LICENSOR:

Norwood Residential, L.L.C.

By: 

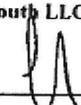
Name: Ronald Norwood

Title: President

Date: 6/25/19

LICENSEE:

T-Mobile South LLC

By: 

Name: Luis Reyes

Sr. Director, Carolinas
T-Mobile USA, Inc.

Title: _____

Date: 7-3-2019

robert.doa
ne@t-
mobile.co
m

Depends upon the
information
provided
Date of Birth
01/16/1950

T-Mobile Legal Approval As To Form

Market: Carolina
Site Number: 5RAD148A
Site Name: Bay Leaf WT

ACKNOWLEDGMENTS

WITNESS the following signatures: Licensor

STATE OF North Carolina)

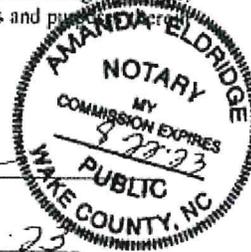
COUNTY OF Wake)

I, the undersigned, a notary public in and for the State and County aforesaid, do hereby certify that Ronald Norwood, known to me to be the same person(s) whose name(s) (is) (are) subscribed to the foregoing Agreement, appeared before me this day in person and (severally)acknowledged that (he) (she) (they) signed the said Agreement as (his) (her) (their) free and voluntary act for the uses and purposes therein stated.

Given under my hand and seal this 26 day of June, 2019


Notary Public

My commission expires 8.22.23



Market: Carolina
Site Number: 5RA0148A
Site Name: Bay Leaf WT

WITNESS the following signatures: Licensee

STATE OF _____)
COUNTY OF _____)

I, the undersigned, a notary public in and for the State and County aforesaid, do hereby certify that _____ known to me to be the same person(s) whose name(s) (is) (are) subscribed to the foregoing Agreement, appeared before me this day in person and (severally)acknowledged that (he) (she) (they) signed the said Agreement as (his) (her) (their) free and voluntary act for the uses and purposes therein stated.

Given under my hand and seal this ____ day of _____, 20__.

Notary Public

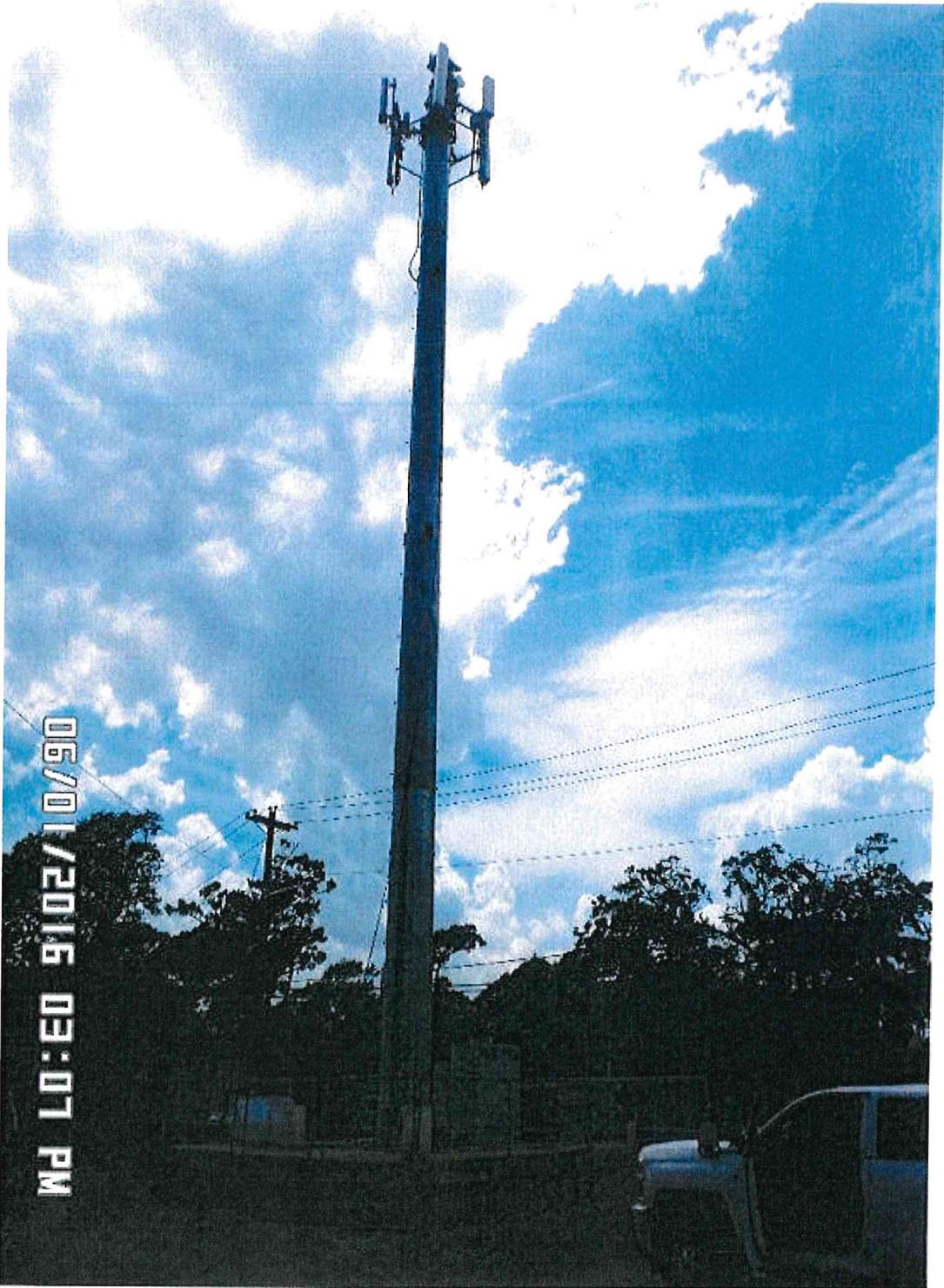
My commission expires _____

Market: Carolina
Site Number: 5RA0148A
Site Name: Bay Leaf WT

EXHIBIT A



Appendix 4 – Photo: PLG-SU-001347-2019



Appendix 5 – Staff Report: PLG-ZV-001302-2019

**PETITION FOR: A VARIANCE TO REDUCE THE REQUIRED CORNER SIDE YARD
BUILDING SETBACK FOR TWO ACCESSORY STRUCTURES.**

STAFF REPORT TO THE WAKE COUNTY BOARD OF ADJUSTMENT
August 13, 2019 Meeting Date

Planning Staff
David Parks

I. REQUEST: PLG-ZV-001302-2019

This is a request for a variance from Article 4-70-1, *Accessory Uses and Structures*, which restricts accessory buildings and structures from being located nearer the street than the main building or 50 feet whichever is less.

The applicant is requesting a variance to allow for a 31.8-foot reduction in the setback requirement for the detached garage and a 17.8-foot reduction in the setback requirement for the 1-story metal detached building.

II. PROJECT LOCATION

The property is located at 3035 Banks Road.

III. PROJECT PROFILE

WAKE COUNTY PIN: 0698 16 7206

PROPERTY ADDRESS: 3035 Banks Road

PROPERTY SIZE: 0.689 acres

ZONING DISTRICT: Residential-30 (R-30)

LAND USE CLASSIFICATION: City of Fuquay Varina Short Range Urban Services Area

WATERSHED: Neuse River

CROSS REFERENCE FILES: None

PROPERTY OWNER: Jeb Zarzour

APPLICANT: Jeb Zarzour

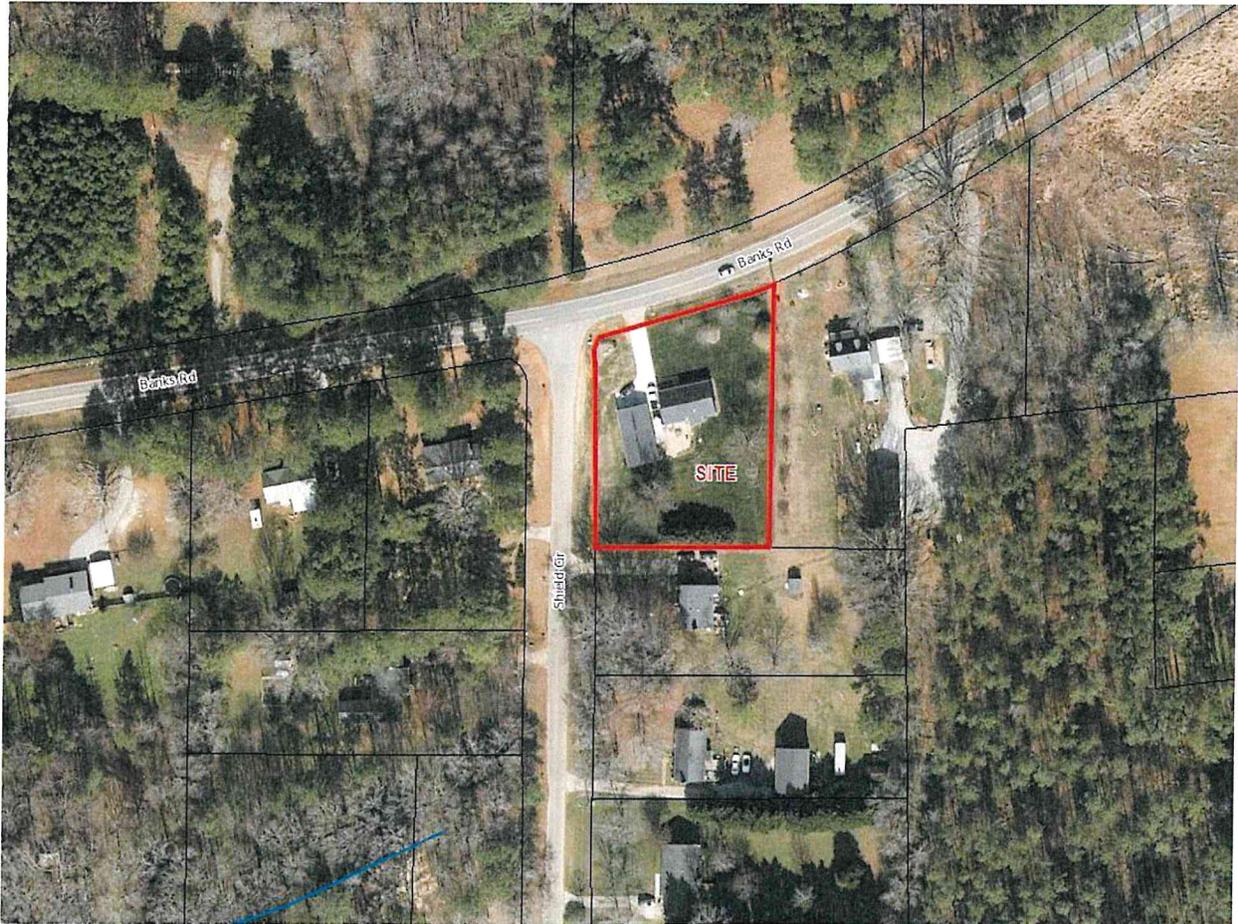
EXISTING USE: Single Family Residential

PROPOSED USE: Single Family Residential

IV. PROJECT SETTING – SURROUNDING ZONING DISTRICTS AND LAND USES

DIRECTION	LAND USE	ZONING
North	Vacant / Residential	Residential-30 (R-30)
East	Residential	Residential-30 (R-30)
South	Residential	Residential-30 (R-30)
West	Residential	Residential-30 (R-30)

V. AERIAL MAP



VI. ZONING STANDARDS

Article 4 of the Unified Development Ordinance contains use regulations including accessory uses and structures. Section 4-70-1, *Accessory Buildings and Structures*, restricts accessory buildings and structures from being located nearer the street than the main building or 50 feet whichever is less.

VII. VARIANCE

A. REQUEST

The applicant is requesting a variance from Section 4-70-1, *Accessory Buildings and Structures*, to allow for a reduction in the required 50-foot setback requirement for two existing detached accessory buildings.

B. BACKGROUND

The subject property contains 0.689 acres and is located along the southeast corner of Banks Road and Shield Circle within the Squire Estates subdivision. The lot contains a 1,318 square foot single family home with 2 existing detached accessory structures; a garage, and a metal building. The two detached structures are currently 18.2 feet and 32.2 feet away from the corner side yard setback. The detached garage was constructed in 2008 and the one-story metal building was constructed in 2018. Code enforcement generated the violation on the building setbacks while investigating the operation of a commercial business at the residence.

Notification letters to adjoining property owners were mailed on July 24, 2019. A public hearing placard was placed on the site on July 25, 2019.

C. REQUIRED CONCLUSIONS/FINDINGS:

The Board of Adjustment shall not approve a petition for a variance 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 **all** of the following findings of fact from G.S. 160A-188 in order to approve this variance request:

- (1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;
- (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance;
- (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship;
- (4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

VIII. RECOMMENDATION

Staff recommends that if the Board of Adjustment reaches positive conclusions on **all** of the required findings of fact, the following conditions be required:

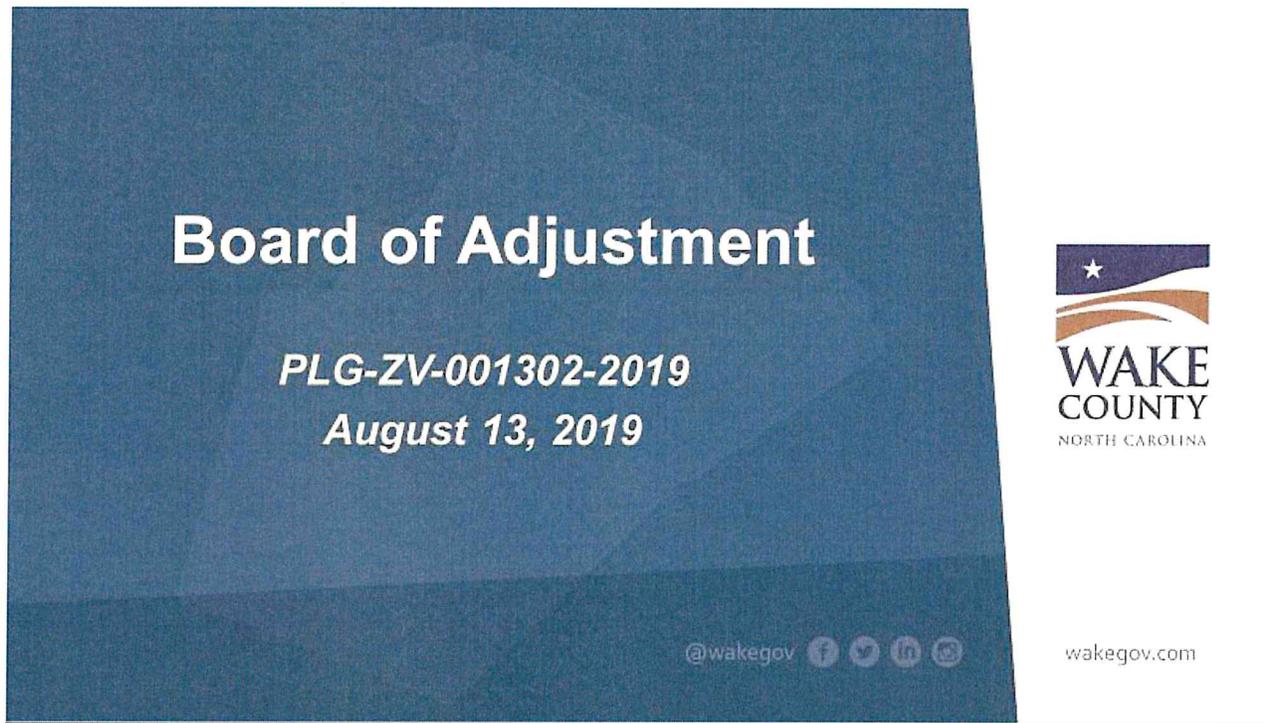
- (1) The petitioner/landowner must record the notarized form pertaining to the order of the Board in the Wake County Register of Deeds and return a copy to Planning, Development and Inspections Division of Community Services.
- (2) The petitioner must obtain and complete appropriate building permits from the Wake County Inspections/Plans/Permits Division.

MOTIONS

TO GRANT: In the matter of PLG-ZV-001302-2019, I move that the Board find and conclude that the petition does meet the requirements of Article 19-26 of the Wake County Unified Development Ordinance and North Carolina General Statute Section 160A-388(d), and that the requested variance be granted to allow a 31.8-foot reduction in the setback requirement for the detached garage and a 17.8-foot reduction in the setback requirement for the 1-story metal detached building, with the recommended condition. The motion to approve is made based on the following conclusions and findings of fact:

- 1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;
- 2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance;
- 3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship, and
- 4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

TO DENY: In the matter of PLG-ZV-001302-2019, I move that the Board find and conclude that the petition does not meet the requirements of Article 19-26 of the Wake County Zoning Unified Development Ordinance and North Carolina General Statute Section 160A-388(d) for the reason that (state why) and that the requested variance be denied.



The slide features a dark blue background with a faint mountain range silhouette. The text is centered and reads: "Board of Adjustment", "PLG-ZV-001302-2019", and "August 13, 2019". In the bottom right corner, there are social media icons for Facebook, Twitter, LinkedIn, and Instagram, along with the text "@wakegov". To the right of the slide, the Wake County North Carolina logo is displayed, featuring a star and wavy lines above the text "WAKE COUNTY NORTH CAROLINA". Below the logo is the website "wakegov.com".

PLG-ZV-001302-2019

Zoning Hardship Variance

- Landowner: Jeb Zarzour
- Request: A variance to reduce the required corner side yard building setback for two accessory structures.

SITE LOCATION



BACKGROUND

- The lot contains a 1,318 square foot single family home.
- Two existing detached accessory structures are located on the property and are currently within the required setback along Shield Circle.
- The applicant is requesting a reduction in the 50' required setback to 31.8 feet and 17.8 feet, respectively.
- The detached garage was constructed in 2008 and the one-story metal building was constructed in 2018.
- Code enforcement generated the setback violation while investigating the operation of a commercial business at the residence.

RECOMMENDATION

Staff recommends that, if the BOA reaches positive conclusions on all of the required findings, that it approve the variance subject to the conditions identified in the staff report.

WAKE COUNTY

PLG-ZV-001302-2019

- Presentation by Petitioner
- Comments by Proponents
- Comments by Opponents

WAKE COUNTY

Appendix 7: Application for Variance: PLG-ZV-001302-2019

Manage Plan PLG-ZV-001302-2019 Address 3035 BANKS RD

Menu

- Plan Details
- Additional Info
- Linked Records
- Workflow Details
- Associated Tasks
- Conditions
- Bonds
- Documents
- GIS Information
- History

Plan Details

Refresh Search Action New Save Cancel Geo Rules 0

Plan Type	PLG - Zoning Hardship Vari...	Project	Apply Date
Work Class	Zoning Hardship Variance	District	Wake County
Plan Status	In Review	Assigned To	Parks, David
Description	Applying for a variance for		
		Apply Date	2/6/2019
		Expire Date	Enter date
		Complete Date	Enter date
		Approval Expire Date	Enter date

Parcels (1) Addresses (1) Zones (1) Contacts (1) Notes Activities Fees (1) Holds Review Team Add Contact

Drag a column header and drop it here to group by that column

	Company Name	First Name	Last Name	Contact Type	Billing Contact
>	Tapped Out Cycles	Job	Zarzour	Applicant	<input checked="" type="checkbox"/>

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REGULAR MEETING
WAKE COUNTY BOARD OF ADJUSTMENT
August 13, 2019

All petitions complete, Brenton McConkey declared the regular meeting
of the Wake County Board of Adjustment for
Tuesday, August 13, 2019 adjourned at 11:16 a.m.

Respectfully Submitted:

Brenton McConkey
Wake County Board of Adjustment

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