

## MINUTES

**Regular Meeting  
Wake County Board of Adjustment  
Tuesday, August 8, 2017  
9:00 a.m., Room 2700  
Wake County Justice Center  
300 S. Salisbury St.  
Raleigh, North Carolina**

**Members Present: (8)** Mr. Brenton McConkey (Chair), Mr. Don Mial (Vice-Chair), Mr. Brian Foxx, Mr. Waheed Haq, Mr. John Barker, Ms. Sheree Vodicka, Mr. Will Barker, and Mr. DeAntony Collins

**Members Not Present: (1)** Mr. Terence Morrison

**County Staff Present: (7)** Ms. Celena Everette (Planner II), Mr. Steven Finn (Land Development Administrator), Mr. Chris Record (Planner I), Mr. Lee Gupton (Deputy Fire Marshal), Mr. John Higgins (Information Technology Director), Mr. Frank Hall (Information Services Division Supervisor), and Mr. Russ O'Melia (Clerk to the Board)

**County Attorneys Present: (1)** Mr. Scott Warren (County Attorney)

**Item 1, Call to Order:** Mr. McConkey called the meeting to order at 9:02 a.m. with 8 members present.

### IN RE MINUTES

#### **Item 2, Approval of Minutes of the July 11, 2017 Meeting**

Ms. Vodicka made a motion to approve the July 11<sup>th</sup> meeting minutes, and Mr. Mial seconded. The motion carried unanimously.

#### **Item 3, Approval of Written Decision Granting the Special Use in the matter of BA SU-2242-16**

Mr. McConkey made a motion to approve the written decision granting the special use in the matter of BA-SU-2242-16, and Ms. Vodicka seconded. The motion carried unanimously.

Before the case was heard, Wake County staff members Mr. Record and Ms. Everette were duly sworn.

#### **Item 4, BA SU-2255-17**

Mr. Warren stated that North Carolina law prohibits the practice of law by a non-lawyer. The North Carolina State Bar has determined that it is the unauthorized practice of law for someone other than a licensed attorney to appear at a quasi-judicial hearing in a representative capacity to advocate the legal position of another person, firm, or corporation. In the matter of BA SU-2255-17, the applicant was an engineer acting as a consultant, and the property owner was the State of North Carolina. There did not appear to be an attorney involved. The applicant may testify, but if there were any witnesses opposed the special use request, the engineer would not be able to cross-examine those witnesses since that would be the unauthorized practice of law.

Voting Members: Mr. McConkey, Mr. Mial, Mr. Foxx, Mr. Haq, and Mr. John Barker

Landowner: State of North Carolina

Petitioner: John Goins

PIN#: Not yet assigned

Location: The site is located within NCDOT right-of-way at the northwest quadrant of the NC 50 & NC 98 interchange.

Zoned: Residential-40 Watershed (R-40W)

Land Use Classification: Non-Urban, Non-Critical Residential Watershed

The petitioner is requesting special use permit approval as required by section 4-11 of the Wake County Unified Development Ordinance (UDO) to construct a 340-foot freestanding telecommunications tower with a maximum height with appurtenances of 358 feet.

**TESTIMONY AND EVIDENCE PRESENTED**

Documentary Evidence: Staff report, PowerPoint presentation, site plans, application, video, aerial maps, and relevant sections of the Unified Development Ordinance were shown and/or available.

Testimony:

Mr. Record, Planner I, entered the staff report and PowerPoint presentation for BA SU-2255-17 into the record. Mr. McConkey accepted the staff report and PowerPoint slides into the record. Mr. Record stated the petitioner's name, zoning classification, background and history of the petition. The purpose of the telecommunications tower is to provide increased coverage to State Highway Patrol and Wake County Public Safety communications systems in the northwest portion of the county. No utilities are proposed for this project due to the nature of the use. The property has frontage on the northwest entrance/exit ramp at the NC 50 and NC 98 interchange. A driveway permit from NCDOT is required for access into the project area. Regarding setbacks, the UDO requires all freestanding towers adjacent to residential districts and a local road 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 180-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 or adjoining roads per the site plan. Two parking spaces are provided for the use to meet UDO standards. Telecommunications towers are required to have a 40-foot Type C bufferyard along the inside perimeter of a leased lot or parcel for the utilization of telecommunications towers. The site plan shows that existing vegetation within the interchange project area will be used to satisfy this bufferyard requirement. No stormwater measures are required for this site due to a proposed impervious surface coverage of 1.5%, which is below the 12% impervious surface coverage threshold for non-residential uses in R-40W. Notification letters to adjoining property owners were mailed on July 27, 2017. A public hearing placard was placed on the site on July 27, 2017.

Sworn witness in favor of the petition:

John Goins, 326 Tryon Road, Raleigh, NC 27603-3530

Mr. Goins said that he works for Tower Engineering Professionals on behalf of the North Carolina Highway Patrol. He said that the tower is the result of a partnership between the North Carolina Highway Patrol and Wake County to improve the public communications in northern Wake County. Mr. Goins said that the development will abide by the Wake County ordinances. The site would generate approximately one vehicle trip per month for maintenance. There would be no water or sewer connections. There are existing NCDOT stormwater control measures along the exit and entrance ramps. All stormwater will flow from the site through the stormwater devices. Mr. Goins said that the FCC has determined that the proposal is environmentally compliant with federal regulations. The tower will have a 180-foot fall zone which will exclude it from any traffic lanes and structures. There is an existing encroachment contract with NCDOT and the North Carolina Highway Patrol. The NCDOT had a role in determining that the northwest quadrant will be the least impactful to the public right-of-way. The proposed site is within a wooded area. Mr. Goins said that the proposal is consistent with the Wake County Land Use Plan.

Mr. McConkey asked how the proposed development is a public necessity.

Mr. Goins said that the tower would be used for the North Carolina Highway Patrol VIPER interoperability and Wake County public communications.

Mr. John Higgins, Wake County Information Technology Director, was duly sworn. He said that Wake County operates a radio communications system for public safety agencies in Wake County, such as EMS, Fire Services, municipal law enforcement, the sheriff's office, and others. He said that there have been coverage issues in the northern portion of the county, and the proposed tower will assist with the coverage in the area.

Mr. Foxx asked about the fall radius for the tower. Mr. Goins said that the tower will be designed to have a fall radius of 180 feet so that it would be within the existing travel lanes. Towers are constructed using 20-foot sections, and a weak point can be designed at one of the joints so that the tower hinges at that point if the tower falls.

Mr. Haq asked if the 180-foot fall radius is an industry standard. Mr. Goins answered that towers can be designed with different heights and weak points along the structure. Mr. Haq asked if the tower would have any impact on bio-basin #1 shown on sheet Z-2. Mr. Goins answered that the tower will not impact bio-basin #1. The stormwater will enter bio-basin #4, and there is an existing bio-swale #3 to the northeast.

Sworn witness in opposition to the petition:

Brad Wiggs, 4737 Willeva Drive, Wake Forest, NC 27587

Mr. Wiggs stated that he is the senior pastor at the Faith Harvest Church adjacent to the site. He said that he and his church support the local emergency services in the area. He expressed concerns about the tower falling into the parking lot of the church and the potential danger to the staff of the church from radiation from the tower.

Mr. Goins said that all of the antennas are licensed spectrum through the FCC. He said that the tower would be 200 feet from the entrance/exit ramp plus another distance of approximately 250 feet to the church property. He said that the tower will be designed so that it would not fall on the church's property if it fell.

Mr. Mial asked if the tower would be a repeater system.

Mr. Frank Hall, Wake County Information Services Division Supervisor, was duly sworn. Mr. Hall said that the height and the transmission components of the tower will transmit the signal to a greater distance to serve the northern portion of the county. He said that the antennas will be licensed to meet certain radiation standards to prevent hazards to personnel. Based on the height and the location of the transmitting components, there would be minimal harm, if any, to anyone on the ground.

Mr. Wiggs asked if there was another potential location for the tower to have less impact on the area.

There was no one else wishing to speak in favor of or in opposition to the petition. Mr. McConkey closed the public hearing.

BOARD DISCUSSION

The board discussed the five required findings.

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

Mr. McConkey said that the tower antenna would be in compliance with FCC standards. The tower would be built in compliance with building standards, and it would be engineered to have a fall radius of 180 feet which would be entirely within the project area. There would be no impact on parking or traffic.

Mr. Mial said that the tower will help the public safety due to the improved coverage for the radio communications of the public safety agencies.

*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 said that the staff report and the application both concluded that the development would comply with all regulations.

Mr. John Barker said that the landscape buffers, impervious surface, and stormwater management practices meet the UDO requirements.

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

Mr. Mial said that the tower is a public necessity to assist with the emergency communications in the area that has seen growing population.

Mr. McConkey said that the tower will not substantially injure the value of adjoining property. The tower is at the intersection of two major highways, and it is not in a residential area. He said that the base of the tower will be shielded by the surrounding vegetation. Mr. McConkey noted the testimony of Mr. Higgins who said that the tower will solve coverage issues in the area for the radio communications of the public safety agencies.

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

Mr. McConkey said that the tower will be in compliance with FCC regulations.

Mr. Foxx said that the tower will not alter the overall harmony.

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

Mr. McConkey said that the conclusion of the staff report and the application is that the proposed development will be consistent with the Wake County Land Use Plan.

## MOTION

Mr. Mial made a motion in the matter of BA SU-2255-17 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. Mr. Haq seconded the motion. By a vote of 5-0, the motion passed, and the special use permit was granted. So ordered.

## FINDINGS OF FACT

(1) The proposed development will not materially endanger the public health or safety. The tower antenna will be in compliance with FCC standards. The tower will be built in compliance with building standards. The tower will be engineered to have a fall radius of 180 feet which would be entirely within the project area. There will be no impact on parking or traffic. The tower will help the public safety due to the improved coverage for the radio communications of the public safety agencies.

### 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. The development will comply with all regulations, including the landscape buffers, impervious surface, and stormwater management practices.

(3) The proposed development will not substantially injure the value of adjoining property, and it is a public necessity. The tower is a public necessity to assist with the emergency communications in the area. The tower is at the intersection of two major highways, and it is not in a residential area. The base of the tower will be shielded by the surrounding vegetation. The tower will solve coverage issues in the area for the radio communications of the public safety agencies.

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 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. The tower will be in compliance with FCC regulations. The tower will not alter the overall harmony.

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.

### CONCLUSIONS OF LAW

The proposed development will not materially endanger the public health or safety. 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. The proposed development will not substantially injure the value of adjoining property, or is a public necessity. The proposed development will be in harmony with the area in which it is located. The proposed development will be consistent with the Wake County Land Use Plan.

### IT IS THEREFORE ORDERED:

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) The petitioner must obtain a driveway permit from the North Carolina Department of Transportation;
- 4) 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;
- 5) The landowner must maintain compliance with the special use approval and Wake County Unified Development Ordinance.

**Item 5: New Business** – Mr. Finn provided a brief update to the board.

**Item 6: Old Business** – There was no old business.

**Item 7: Adjournment**

Hearing no additional business, the meeting was adjourned at 9:42 a.m.

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REGULAR MEETING  
WAKE COUNTY BOARD OF ADJUSTMENT  
August 8, 2017

All petitions complete, Brenton McConkey declared the regular meeting  
of the Wake County Board of Adjustment for  
Tuesday, August 8, 2017 adjourned at 9:42 a.m.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read 'Brenton McConkey', with a long horizontal flourish extending to the right.

Brenton McConkey  
Wake County Board of Adjustment

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