

BA-V-2222-15



ZONING HARDSHIP VARIANCE APPLICATION

WAKE COUNTY
NOV - 6 2015
PLANNING, DEVELOPMENT & INSPECTIONS

File #
Fee
Amt Paid
Check #
Rec'd Date
Rec'd By

Submit required documentation to:
Wake County Planning, Development and Inspections
PO Box 550 Wake County Office Building
Raleigh, NC 27602-0550 336 Fayetteville Street Mall, Downtown Raleigh
Contact (919) 856-6335 for additional information.

Unified Development Ordinance Regulation(s) Proposed to be Varied (cite each section(s) and identify requirement from which the variance(s) is (are) being requested; quantify variance – i.e. if this is a variance to allow an encroachment into a setback, give depth of encroachment and total square feet of area proposed to encroach into setback- be specific):

Applicant seeks a variance from Section 4-56(5) of the Wake County United Development Ordinance pertaining to the minimum 1500' distance between two freestanding towers. Applicant seeks to locate its proposed tower.

Property

Parcel Identification Number: 1701046088

Address: 1313 Farm Road, Raleigh, NC 27603

Location: South side of Farm Road at end of street, at/between
(north, east, south, west) (street)

_____ and _____
(street) (street)

Total site area in square feet and acres: 1,609,977 square feet 36.96 acres

Zoning District(s) and Overlay Districts (if any) and land area within each: I-1 - approximately 1,225,600 sf + HD approximately 384,377 sf

List Conditions of any Conditional Use Zoning Districts: N/A

Present land use(s): Vacant

How is this proposed use a public necessity?

Proposed tower will improve wireless communication capabilities in and around the area, including emergency response capabilities.

What is impact on surrounding neighborhood and adjacent properties?

None

Property Owner

Name: Lee & Hudgins Enterprises, LLC - Joey Lee

Address: 4200 Glen Laurel Drive

City: Raleigh State: NC Zip Code: 27612

E-mail Address: N/A Fax: N/A

Telephone Number: 919-880-3068

Applicant (person to whom all correspondence will be sent)

Name: Skyway Towers c/o Thomas H. Johnson, Jr.

Address: 4141 Parklake Ave., Ste. 200

City: Raleigh State: NC Zip Code: 27612

E-mail Address: tjohnson@nexsenpruet.com Fax: 919-653-0435

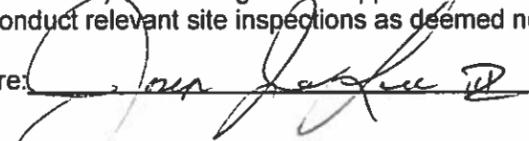
Telephone Number: 919-755-1800 Relationship to Owner: _____

Extent of Proposed Variance (Describe the extent to which the regulation is proposed to be varied.)
Attach additional sheet as necessary.

Applicant seeks to change the minimum distance between two freestanding towers to 1000'
for this site.

All property owners must sign this application unless one or more individuals are specifically authorized to act as an agent on behalf of the collective interest of some or all of the owners (provide a copy of such authorization).

The undersigned property owner(s) hereby authorize the filing of this application (and any subsequent revisions thereto). The filing of this application authorizes the Wake County staff to enter upon the site to conduct relevant site inspections as deemed necessary to process the application.

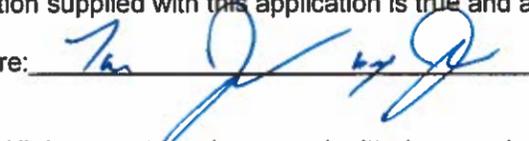
Signature:  Date: _____

Signature: _____ Date: _____

Signature: _____ Date: _____

Land use professionals (architects, engineers, planners, landscape architects, etc.), as well as employees of corporate or municipal applicants, may testify at quasi-judicial proceedings about factual matters in support of an application, petition or appeal. However, they MAY NOT examine or cross-examine witnesses, make legal arguments as to why an application, petition or appeal should be granted, or otherwise advocate for results on behalf of another individual or entity at a quasi-judicial proceeding. These functions can ONLY be performed at a quasi-judicial proceeding by an attorney licensed to practice law in North Carolina. Therefore, it is **strongly recommended** that unless you are an individual representing yourself in a quasi-judicial proceeding, you have an attorney present to present your case.

The undersigned applicant hereby certifies that, to the best of his or her knowledge and belief, all information supplied with this application is true and accurate.

Signature:  Date: 11/6/15

Notes: All documents and maps submitted as required become the property of Wake County.
The Wake County Unified Development Ordinance is on the web at www.wakegov.com.

Exhibit A
Application for Variance
Skyway Towers, LLC & Lee & Hudgins Enterprises, LLC
1313 FARM ROAD
RALEIGH, NC 27603

1. Unnecessary hardship would result from the strict application of the ordinance.

This site has been leased by Skyway Towers, LLC to build a tower to improve T-Mobile's service in the area. The ordinance provision from which applicant seeks a variance requires a minimum distance of 1500' feet between two freestanding towers throughout all zoning districts. In this case, Capital Telecom, LLC received approval on March 4, 2015 for the construction of a wireless communication tower located on an adjacent parcel (located at 5124 Fayetteville Road) which is approximately 1250' from the applicant's proposed tower. Despite the fact that it received the approval more than eight months ago, upon information and belief, Capital Telecom, LLC has not undertaken any efforts to begin construction of their tower. In fact, Capital Telecom LLC's first building permit expired without any work being done on their site and was only recently renewed. Upon information and belief, Capital Telecom, LLC does not have any current lease with a wireless carrier for their proposed tower and does not intend to construct the tower at this time. Rather, it appears as though Capital Telecom, LLC has renewed its building permit simply as a means of preventing applicant from developing a competing tower site in the area.

Simply put, there is no freestanding tower within 1500' feet of the applicant's proposed tower. However, Wake County planning staff has interpreted Section 4-56(5) of the Unified Development Ordinance to include approved tower sites that have not been constructed in determining the 1500' separation requirement.¹ Therefore, applicant seeks a variance from this requirement for the reasons stated below.

While the provision of the Unified Development Ordinance requiring a minimum of 1500' between two freestanding towers makes sense when two towers are actually developed in order to prevent clustering of towers, the ordinance was not intended to be used as a means of stifling competition by preventing the development of any towers in the vicinity of Capital Telecom, LLC's site when there is no evidence to suggest it has any intention of ever building a tower within 1500' feet of the applicant's proposed tower. Therefore, a strict interpretation of this provision will create undue hardship on the landowner because it prevents the development of a wireless communication tower on any portion of the owner's parcel and prevents T-Mobile from providing service in this area in violation of the federal Telecommunications Act of 1996. As a result, we ask that the minimum distance between the two towers be reduced to 1200' for this site, as shown on the site plan, because to do otherwise is inconsistent with the intent of the ordinance and creates unnecessary hardship on the landowner.

¹ Applicant has filed a Zoning Appeal Application concurrently with this variance application.

2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography.

The undue hardship created by planning staff's current interpretation of the ordinance results from the fact that Capital Telecom LLC's approved tower site lies within 1500' of the applicant's proposed tower. These conditions are peculiar to this property as more particularly described in No. 1 above.

3. The hardship did not result from actions taken by the applicant or the property owner.

The existence and location of Capital Telecom LLC's approved tower site did not result from actions taken by the applicant or the property owner, nor have the applicant or property owner undertaken any measures to prevent Capital Telecom LLC from undertaking construction of its proposed tower site.

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.

As described in the response to No. 1 above, the reduced distance between the landowner's proposed tower and the location of Capital Telecom LLC's unconstructed tower site is consistent with the spirit, purpose and intent of the ordinance and achieves substantial justice for the landowner.

NOTES:

- THE BASIS OF THE MORNINGS AND COORDINATES FOR THIS PLAN IS THE NORTH CAROLINA STATE PLANE COORDINATE SYSTEM WITH NORTH AMERICAN DATUM (NAD83) AND IS BASED ON DIFFERENTIAL GPS OBSERVATIONS PERFORMED ON JULY 2, 2014
- VERTICAL INFORMATION SHOWN BASED ON THE NORTH AMERICAN VERTICAL DATUM OF MADO 1988 IN FEET
- ALL DISTANCES ARE GROUND UNLESS OTHERWISE NOTED
- THE TOWER IS LOCATED IN ZONE "A" AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN ACCORDING TO FEMA COMMUNITY PANEL #3720170100L DATED MAY 2, 2008
- THIS PROPOSED FACILITY IS UNMANNED
- TRIP GENERATION TO PROPOSED FACILITY IS EXPECTED TO BE APPROXIMATELY 6-8 WSPIS PER CARRIER YEAR
- ZONING OF PARCEL ACROSS STREET: R-40W

LANDSCAPING BUFFER REQUIREMENT

QTY.	PROPOSED VEGETATION
18	EVERGREEN TREES
44	EVERGREEN UNDERSTORY TREES
280	SHRUBS

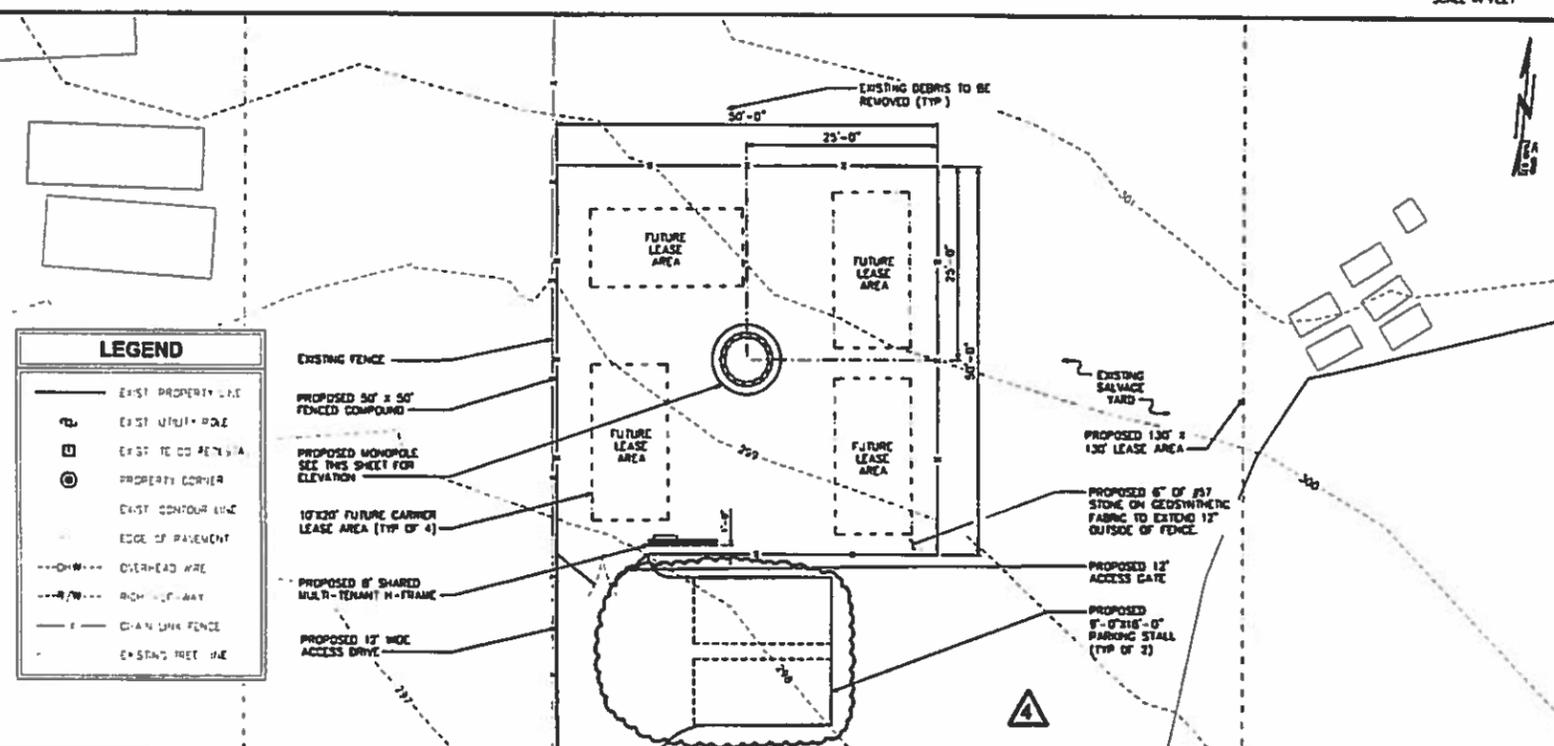
LEGEND

- EXIST. PROPERTY LINE
- EXIST. UTILITY POLE
- EXIST. FEED PEDESTAL
- PROPERTY CORNER
- EXIST. CONTOUR LINE
- EDGE OF PAVEMENT
- OVERHEAD WIRE
- RIGHT-OF-WAY
- CHAIN LINK FENCE
- EXISTING TREE LINE

IMPERVIOUS DATA TABLE

TOTAL PARCEL AREA:	3.3 ACRES
EXISTING BUILDING:	0.16 ACRES (2,903)
EXISTING DRIVEWAY:	0.08 ACRES (1,315)
TOTAL EXISTING IMPERVIOUS:	1.07 ACRES (18,542)
PROPOSED ACCESS DRIVE & PARKING:	0.04 ACRES (673)
PROPOSED COMPOUND:	0.06 ACRES (1,094)
TOTAL PROPOSED IMPERVIOUS AREA:	0.10 ACRES (1,824)
TOTAL EXISTING AND PROPOSED IMPERVIOUS:	1.12 ACRES (20,366)

SITE PLAN
SCALE: 1" = 60'



COMPOUND DETAIL
SCALE: 1" = 10'



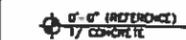
NOTES:

- TOWER SHALL BE CONSTRUCTED OF GALVANIZED STEEL OR PAINTED PER APPLICABLE STANDARDS OF THE FAA OR OTHER APPLICABLE FEDERAL OR STATE AGENCY
- A SINGLE SIGN, 2 FEET SQUARE, IN A VISIBLE LOCATION SHALL BE REQUIRED WITH NAME AND EMERGENCY TELEPHONE NUMBER OF THE TOWER OWNER AND ALL COMPANIES OPERATING ON THE TOWER. NO ADVERTISING SHALL BE ATTACHED TO THE TOWER.
- THIS TOWER IS A VISUAL REPRESENTATION OF THE STRUCTURE ONLY. THE ACTUAL TOWER DESIGN MAY VARY
- TOWER COLOR TO BE GALVANIZED GRAY
- TOWER UNDER 199'. THEREFORE, NO ILLUMINATION REQUIRED



FUTURE ANTENNAS BY OTHERS (TYP)

PROPOSED MONOPOLE TOWER



TOWER ELEVATION
SCALE: 1" = 10'



PLANS PREPARED BY:

CAPITAL

CAPITAL TELECOM ACCOUNTING, LLC
15400 W. ALLEN AVE. SUITE 203
MORRISTOWN, NC 27560

PROJECT INFORMATION:

FAYETTEVILLE RD

5170 FAYETTEVILLE RD
FAYETTEVILLE, NC 28403
(WAKE COUNTY)

CONSTRUCTION: 10-24-14
CONSTRUCTION: 10-15-14
ZONING DRAWINGS: 10-01-14
ZONING DRAWINGS: 03-02-14
ZONING DRAWINGS: 05-22-14

DESIGNED BY: JAS
CHECKED BY: MAS
DRAWN BY: MAS
DATE:

SCALE:

SITE PLAN & TOWER ELEVATION

REVISION: 4
SHEET NUMBER: **C-1**
REF: E-33396

10/24/14

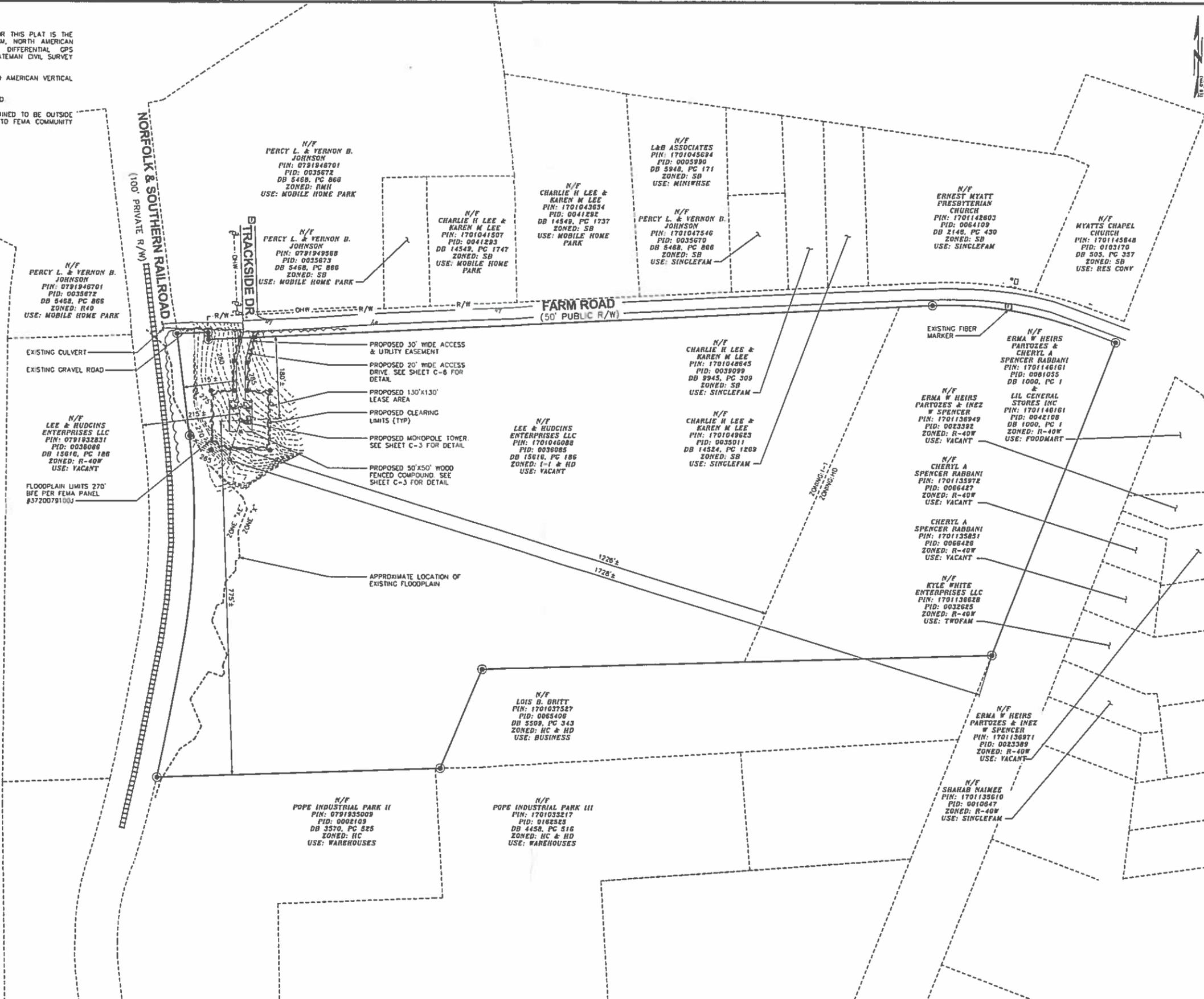
NORTH CAROLINA
LAND SURVEYING
MEMBER 9 54878

NOTES:

1. THE BASIS OF THE MERIDIANS AND COORDINATES FOR THIS PLAT IS THE NORTH CAROLINA STATE PLANE COORDINATE SYSTEM, NORTH AMERICAN DATUM 1983 (NCSPCS NAD 83), BASED ON DIFFERENTIAL GPS OBSERVATIONS PERFORMED ON JULY 14, 2015 BY BATEMAN CIVIL SURVEY COMPANY.
2. VERTICAL INFORMATION SHOWN, BASED ON THE NORTH AMERICAN VERTICAL DATUM OF NAVD 1988 IN FEET.
3. ALL DISTANCES ARE GROUND UNLESS OTHERWISE NOTED.
4. THE TOWER IS LOCATED IN ZONE "X." AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN ACCORDING TO FEMA COMMUNITY PANEL #3720079100J, DATED MAY 2, 2006.

LEGEND	
	EXIST. PROPERTY LINE
	EXIST. UTILITY POLE
	EXIST. TELCO PEDESTAL
	PROPERTY CORNER
	EXIST. CONTOUR LINE
	EDGE OF PAVEMENT
	OVERHEAD WIRE
	RIGHT-OF-WAY
	CHAIN LINK FENCE
	EXISTING TREE LINE

OVERALL SITE PLAN
SCALE: 1" = 100'



PLANS PREPARED FOR:

Mobile

SKYWAY TOWERS
3637 MADACA LANE
TAMPA, FL 33618
OFFICE: (813) 960-6817

PLANS PREPARED BY:

TOWER ENGINEERING PROFESSIONALS
326 TRYON ROAD
RALEIGH, NC 27603-5363
OFFICE: (919) 661-6331
FAX: (919) 661-6350
N.C. LICENSE #C-1754

NO.	DATE	REV.	ISSUED FOR:
4	10-29-15		DRAWN BY: SMC
3	10-06-15		CREATED BY: DAM
2	09-29-15		
1	06-25-15		
0	06-20-15		

PROJECT INFORMATION:

VANESSA DR.
TMO ID: 5RA0571
SKYWAY SITE #: NC-08807

1313 FARM ROAD
RALEIGH, NC 27603
VANESSA DR. (171)
PINA# 1701040088



SHEET TITLE:
OVERALL SITE PLAN
Existing Conditions

SHEET NUMBER:
C-1

REVISION:
4

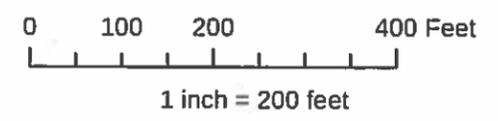
DATE:
October 29, 2015

TITLE BLOCK NUMBER:
4
TOP # 61733

Text



PIN: 1701046088
Real Estate ID: 0036085
Map Name: 1701 13
Owner: LEE & HUDGINS ENTERPRISES LLC
Mailing Address 1: 4200 GLEN LAUREL DR
Mailing Address 2: RALEIGH NC 27612-3704
Deed Book: 015616
Deed Page: 00186
Deed Date: 03/28/2014
Deeded Acreage: 36.96
Assessed Building Value: \$0
Assessed Land Value: \$921,960
Total Assessed Value: \$921,960
Billing Class: Business
Property Description: WHITAKER LD SPLIT
Heated Area: 0
Site Address: 5100 FAYETTEVILLE RD
Township: Swift Creek
Year Built: 0
Total Sale Price: \$0
Land Class: VACANT
Old Parcel Number: 679-00000-0003



Disclaimer
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