



ONLOW COUNTY BOARD OF ADJUSTMENT

MEETING MINUTES

June 23, 2020

Onslow County Government Center

Commissioners' Chambers

234 NW Corridor Blvd, Jacksonville, NC 28540

BOARD MEMBERS WERE PRESENT:

Mr. Jerome Shaw, Chairman

Mr. John Smith

Mr. Ricky Cannon

Mr. Jeff Brown

Mr. Roger Brown

Ms. Marilyn Bunce

PLANNING AND DEVELOPMENT DEPARTMENT MEMBERS PRESENT:

Jessica Rhue, Planning and Development Director

Angie Manning, Land Use Administrator

Austin Brinkley, Chief Zoning and Environmental Officer

Matthew Stuart, Planner

Kourtney Lanier, Administrative Assistant

David Barnhardt, Zoning Enforcement Officer

Jonathan Briggs, Residential Code Administrator

I. MEETING CALLED TO ORDER

Mr. Jerome Shaw, Chairman, called the meeting to order at 6:30 p.m.

II. INVOCATION

Mr. Jerome Shaw pronounced the invocation.

III. PLEDGE OF ALLEGIANCE

Mr. Smith led all present in the Pledge of Allegiance.

IV. APPROVAL OF MINUTES AND DECISIONS

Mr. Jeff Brown made the motion to approve the May 26, 2020 minutes. Mr. Smith seconded the motion. All members were in favor and the motion passed.

Mr. Jeff Brown made the motion to approve the Board Decision: SUP-2019-00029. Mr. Smith seconded the motion. All members were in favor and the motion passed.

Mr. Smith made the motion to approve the Board Decision: SUP-2020-00005. Mr. Jeff Brown seconded the motion. All members were in favor and the motion passed.

Mr. Roger Brown made the motion to approve the Board Decision: SUP-2020-00002. Mr. Cannon seconded the motion. All members were in favor and the motion passed.

Mr. Cannon made the motion to approve the Board Decision: SUP-2020-00007. Mr. Jeff Brown seconded the motion. All members were in favor and the motion passed.

Mr. Jeff Brown made the motion to approve the Board Decision: SUP-2019-00024. Mr. Smith seconded the motion. All members were in favor and the motion passed.

V. NEW BUSINESS

A. VAR-2020-00001— Justin Gober is requesting a front setback variance for an accessory structure on property at 117 Old Beechtree Lane, Jacksonville, NC, Parcel ID 56A-38:

Mr. Brinkley provided an overview of the application VAR-2020-00001.

Applicant: Justin Gober

Summary of proposal: Justin Gober is requesting a variance from the front setback requirement of an accessory structure. The property owners are Justin Gober and Henry and Nikki Diaz. The property is within the Residential 30M (R-30M) Zoning District. In December 2019, a building permit was issued for a residential accessory structure at this property. The site plan showed the building to be setback 44 feet from the edge of Old Beechtree Lane right-of-way, which more than exceeded the required 25 feet setback requirement. On January 7, 2020, Zoning Enforcement Officer David Barnhardt performed the setback inspection. The location of the structure was marked with flags and Mr. Barnhardt approved the accessory structure based off of the flags on the property. On January 23, 2020, Jonathan Briggs, Planning and Development Residential Code Administrator, issued a Stop Work Order to the applicant due to a footing inspection not taking place and the building was near completion. On January 24, 2020, a Notice of Violation was issued due to the accessory structure not meeting the required front setback for the R-30M Zoning District. After receiving the Notice of Violation, Mr. Gober met with County staff. He informed the County that he would provide an as-built survey to demonstrate the exact location of the building on the property. The survey was provided on March 5, 2020 and showed the accessory structure to be located 22 feet on the eastern corner and 21.3 feet on the western corner from the front property line.

Mr. Barnhardt testified that he did conduct a setback inspection on the accessory structure at 117 Old Beechtree Lane on January 7, 2020 and it met the 25 feet setback, as required. He explained he based the setback inspection off of the street right-of-way line and the flags on the property marking the proposed location of the structure.

Henry Diaz, 608 Shadow Wood Drive, Jacksonville, NC 28540 testified that they built the accessory structure within the flags that were put out for the setback inspection. He stated that he is asking for a minimum variance so that he can continue building. He plans to use the building to hold materials to build the house on the site.

Mr. Smith asked if the road was paved and if there were State ditches.

Mr. Diaz stated that it is a paved street and there is a slight ditch.

Mr. Cannon asked if Mr. Diaz's intention is to begin building the principal residence after he completes the accessory structure.

Mr. Diaz confirmed that is his intention.

John Rankin, 178 Old Beechtree Lane, Jacksonville, NC 28540 spoke against the variance request. Mr. Rankin provided the Board members with a packet to keep for their records. Mr. Rankin is a resident of Old Beechtree Lane, and he and the neighbors have been aware of the construction of the accessory structure since October 2019. He expressed that he and the neighbors do not believe it would be fair and just to grant a variance to the owner when all the other property owners have had to adjust their building needs or desires to meet county ordinances. Mr. Rankin believes the hardship was self-created and the property owners should have done their due diligence to prevent this situation from happening. All of the houses in this area have been built in compliance with the rules and regulations established for this area and Mr. Rankin asked why these owners should be granted special latitude and not abide by the same rules. He explained that the accessory structure is a 30'x50' red, steel building and is an eyesore to the neighborhood.

Anthony Garavaglia, 187 Old Beechtree Lane, Jacksonville, NC 28540 spoke against the variance request. Mr. Garavaglia is a resident of Old Beechtree Lane. He stated that this area received a lot of damage during Hurricane Florence. He as well as the other residents in this area have all followed the correct process and have abided both laws and regulations to repair their homes and he does not believe that the property owners should be granted the variance.

Mr. Rankin expressed to the Board that he has a copy of the restrictive covenants for this neighborhood and he explained how he felt this accessory structure was not following the restrictive covenants.

Mr. Shaw explained that the Board of Adjustment does not vote based off of restrictive covenants; adding that issue would be something that would go to civil court.

First General Conclusion: That 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. Mr. Smith made a motion to approve the finding. Mr. Jeff Brown seconded the motion. Mr. Smith stated that he felt as if the hardship was self-inflicted because if the applicant had followed through with inspections as required, they would have discovered the issue sooner. The motion failed by unanimous vote.

Second General Conclusion: That 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. Jeff Brown made a motion to deny the finding. Mr. Roger Brown seconded the motion. Mr. Jeff Brown stated that the accessory structure could have been placed somewhere else on the property. The motion passed by unanimous vote.

Third General Conclusion: That 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. Roger Brown made a motion to deny the finding. Mr. Cannon seconded the motion. Mr. Roger Brown stated that the applicant knew where the other structures were previously located on the property and failed to follow the County's instructions. The motion passed by unanimous vote.

Fourth General Conclusion: That 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. Jeff Brown made a motion to deny the finding. Mr. Roger Brown seconded the motion. Mr. Jeff Brown stated that if the rules and procedures would have been followed initially, there would be no existing problem and he does not believe the requested variance is consistent with the spirit, purpose, and intent of the ordinance. The motion passed by unanimous vote.

B. SUP-2020-00009— Optima Towers and Verizon Wireless are requesting to install a 195' wireless communication tower on property in Hubert, NC, Parcel 1314-114.

Mr. Stuart provided an overview of the application SUP-2020-00009.

Applicant: Optima Towers and Verizon Wireless (Jonathan L. Yates)

Summary of proposal: Jonathan L. Yates for Optima Towers and Verizon Wireless is requesting a Special Use Permit to install a 195' wireless telecommunications facility on the property located at 208 Queens Haven Road in Hubert, NC. The property owners are Jackson and Linda Provost. The property is within the

Rural Agricultural (RA) Zoning District. The subject property totals 47.17 acres. The Future Land Use Map shows most of the subject property as falling within the Medium Density Residential classification and a smaller section within the Conservation category. A TRC meeting was conducted on May 19, 2020 and all comments appear to have been addressed.

Scott Holmes, 12 North 5th Avenue, Wilmington, NC 28401 introduced the speakers who would be presenting to the Board about the cell tower.

Jonathan Yates, 105 Broad Street, Charleston, SC 29401 testified that they have met all of requirements provided by the County. The setback requirement for a monopole cell tower is 50 feet, and with the large size of this property, they were able to meet the setback requirements easily. Before beginning discussions with County staff, they had to do federal and state regulatory work. The tower was reviewed by FAA and by any Native American tribe that lived in or migrated through Onslow County. During consultations, Mr. Timothy McCurry, Marine Corps liaison for MCAS New River, recommended installing an upgraded lighting package to the tower and they propose to meet those requests. Mr. Yates explained that the tower was designed by an engineer specifically for this area and discussed the fall zone.

Stephen Kennedy, 11142 N 165th Drive, Surprise, AZ 85388 provided the Board with an information packet. Mr. Kennedy stated that Verizon would be the anchor tenant. He explained that adding this tower in this location would increase the coverage in the area as well as the coverage in buildings. It will also provide capacity. He explained that Verizon conducts research to see what areas are having or will have issues in the future. This area is running out of capacity which is why there is a need for this site. Mr. Kennedy provided information about the RF Safety Report. He also discussed information regarding the concerns about 5G service. He explained that the same frequency bands are used for 3G, 4G or 5G, just a different technology. This site will not be a 5G millimeter wave site.

Mr. Cannon asked if this would be a 5G site but on a different band.

Mr. Kennedy stated that as of right now, this would not be a 5G site. As Verizon starts to convert some of the radio channels to 5G, they will be using the existing bands.

Mr. Cannon stated that he visited cancer.org and it shows that there is insufficient evidence on the harmful effects cell towers have on the human body.

The carriers are required by law to meet FCC standards. Mr. Kennedy stated that there are no established side effects except for heat.

John Palmer, 221 S. Plains Drive, Asheville, NC 28803 testified as a NC certified Commercial Real Estate Appraiser. He stated that he has done numerous impact studies like this in North Carolina and he has also done many utility impacts studies, including studies with and against utility providers. Mr. Palmer provided the Board with corrections to three pages of his report. These corrections had nothing to do with

the conclusion of the report. Mr. Palmer explained what was considered during the study and how he reached his conclusion in the report. He stated that he concluded that the cell tower would have no negative impact on surrounding property values.

Mr. Shaw asked if the cell tower would have any positive impacts on the surrounding properties.

Mr. Palmer stated that he was not studying positive impacts. When studying positive impacts, there could be other influences on the property that could affect the value.

Mr. Yates shared a story with the Board about a time in Hilton Head Island, South Carolina when a piece of property did not sell due to no cell service being available within the home.

Keith Powell, 1009 Mathis Ferry Road, Mount Pleasant, SC 29464 provided photos to the Board showing different views and how the cell tower would look from these different views.

Mr. Yates stated that by providing service for 911 emergency calls, he believes the cell tower would enhance the public health and safety in this area. He stated that he believes they have met and exceeded all of the standards and requirements. Based upon the appraisal report, the cell tower will not negatively affect the surrounding property values. Mr. Yates explained that because of the location of the tower on a large piece of property with trees, he believes that this use will be in harmony with the surrounding area.

Ronald York, 407 South Elisa Lane, Hubert, NC 28539 spoke against the special use request. Mr. York stated that he is the President of Jacks Branch Homeowner's Association. He expressed that his community would be directly impacted by this tower because the cell tower would be completely visible to their homes. Mr. York shared a statement from Justice Warren E. Burger about visual pollution. The individuals that live in this community pay for the privilege of their homes being private. Mr. York stated that this was a planned community with underground utilities. Mr. York asked that the Board consider that this cell tower would be an obstruction and visual pollution that would affect everyone in that community.

Shawna Houle, 228 Loren Road, Hubert, NC 28539 spoke against the special use request. Ms. Houle stated her concerns about the affects the cell tower would have on her children, grandchildren, and others in the neighborhood. She stated she is also concerned about her property value. Ms. Houle asked that the Board take into consideration the community's concerns and feelings instead of the comments of individuals who do not live in the area.

Beverly Riznik, 130 Winding Creek Way, Hubert, NC 28539 spoke against the special use request. Ms. Riznik explained that her major concern is the affect on her property value. She stated that she does not understand the location and placement of the tower on the property. She explained that each time she would pull in her driveway, she would be looking directly at the cell tower. Ms. Riznik is also concerned that with a storm or hurricane, the cell tower might fall on her property.

Orathai Bulfer, 110 Winding Creek Way, Hubert, NC 28539 spoke against the special use request. Ms. Bulfer stated that her concern is about property value. She explained that a cell phone company approached her and her husband approximately a year and half ago, but they were not interested in constructing a cell tower on their property. Ms. Bulfer shared an article with the Board about the effects that cell towers have on property values.

Whitney Cantrell, 116 Shell Rock Lane, Hubert, NC 28539 spoke against the special use request. Ms. Cantrell stated that she has concerns about the harmful effects that cell towers have. She asked that the Board look into the affects that cell towers can have and consider the local people in the community versus the opinions of those who do not live in this area.

Kathie Yenulis, 124 Shell Rock Lane, Hubert, NC 28539 spoke against the special use request. Ms. Yenulis sent the Board an email prior to the meeting regarding the dangers of 5G network. Ms. Yenulis asked how long it would be before the tower is changed from a 4G network to a 5G network. She expressed that the children in the neighborhood may have serious health issues in the future resulting from the cell tower.

Tory Baisden, 123 Shell Rock Circle, Hubert, NC 28539 spoke against the special use request. Ms. Baisden asked why Verizon is stating that this tower is needed, but their community has never expressed concerns about coverage in the area. Ms. Baisden asked if there was any proof that individuals within the community have had issues with making 911 emergency phone calls. She stated that she has never had issues with connection in Hubert. She also expressed that she would have never purchased her home if there was a tower in sight. Her other concerns included the affects that the tower can have or will have on the human bodies within the community and their property values.

Mr. Powell showed the Board existing structures that are adjacent to this property. He explained that there are nearby cell towers but there is nothing in the middle to provide service. To prevent gaps and provide coverage, this cell tower of this size is needed. He expressed that if he thought there was something they could do with the height, size or structure design, he would be open to it.

Mr. Shaw asked if the cell tower could be placed in the middle of the property.

Mr. Powell answered that there are some terrain challenges. If the tower is moved to a lower spot on the ground, then the tower must be taller. The reason for the location of the tower on the property is elevation.

Mr. Yates asked the Board to consider if they have met all the requirements of the ordinance. He expressed that capacity was strained over the last few months with individuals working from home. Unfortunately, with wireless service, they do not have the ability to put their infrastructure underground. He stated that they are trying to provide the community with service and stay ahead of issues before they arise.

Mr. Shaw asked how many carriers could attach to this tower and if adding carriers changes the safety factor.

Mr. Kennedy responded that Verizon and three other carriers could attach to this tower and that the changes would be minimal. He stated that it would never be more than 8% of the 100% standard.

Mr. Brett DeSelms stated that pursuant to federal guidelines, local governments are not able to regulate the placement, construction or modification of personal wireless service facilities based on environmental effects of radio frequency if they meet the Commission's(FCC) regulations.

Mr. Kennedy stated that each site is studied annually, and every three years, Verizon performs an onsite inspection to determine safety factors.

First General Conclusion: That the Special Use, if approved, will not materially endanger the public health or safety, if located where proposed according to the plan submitted and approved. Mr. Jeff Brown made a motion to approve the finding. Mr. Roger Brown seconded the motion. Mr. Jeff Brown stated that it appears that it will not materially endanger the public health or safety. The motion passed by unanimous vote.

Second General Conclusion: That the use meets all special uses and specifications. Mr. Smith made a motion to approve the finding. Mr. Jeff Brown seconded the motion. Mr. Smith stated that it appears to be compliant with the standards set forth in the Zoning Ordinance. Mr. Cannon asked if a condition could be added to only allow the cell tower to provided 4G and not 5G service. Mr. DeSelms stated that the Board could add the condition that they must always meet the Commission's conditions, but that is something that they would already be required to do. The motion passed by unanimous vote.

Third General Conclusion: That the use would not substantially injure the value of the adjoining or abutting property, or that the use is a public necessity. Mr. Cannon made a motion to approve the finding. Mr. Jeff Brown seconded the motion. Mr. Cannon stated that there is no evidence that the use will injure the value of the adjoining or abutting properties based on the appraiser's report provided with the application. The motion passed by unanimous vote.

Fourth General Conclusion: That the location and character of the use, if developed according with the plan as submitted and approved, will be in harmony with the area in which it was to be located and in general conformity with the Onslow County Comprehensive Plan and other Onslow County Ordinances. Mr. Jeff Brown made a motion to approve the finding. Mr. Cannon seconded the motion. Mr. Jeff Brown stated that it appears to be in general conformity with the County Comprehensive Plan. The motion to approve passed by a vote of 4 to 1 (Smith).

C. SUP-2020-00010— Patsy Hoffman is requesting to set-up a single RV on property in Hubert, NC, Parcel ID 11-22.3:

Mr. Brinkley provided an overview of the application SUP-2020-00010.

Summary of proposal: Patsy Hoffman is requesting a Special Use Permit to set-up a single RV at 382 Hewitt Road in Richlands, NC. The property is within the Rural Agricultural (RA) Zoning District. The subject property totals 3.95 acres. The Future Land Use Map shows this property as being within the Agriculture/Forestry category. A TRC meeting was conducted on May 19, 2020 and the following comments were received:

1. A note was required to be added that addresses the preliminary flood information.
2. A note has been required that indicates any accessory structures, porches, etc. require building permits.

Richard Hoffman, 204 Blue Creek Farms Drive, Jacksonville, NC 28540 stated that the RV would be used for family to stay in when they visit.

Mr. Smith asked if the lot would be rented.

Mr. Hoffman stated that it would not be rented, just used for family to stay in when visiting.

Mr. Jeff Brown asked if the RV was already on the lot.

Mr. Hoffman answered that it is not currently on the lot.

First General Conclusion: That the Special Use, if approved, will not materially endanger the public health or safety, if located where proposed according to the plan submitted and approved. Mr. Cannon made a motion to approve the finding. Mr. Smith seconded the motion. Mr. Cannon stated that the use will not pose an immediate threat to the public health or safety. The motion passed by unanimous vote.

Second General Conclusion: That the use meets all special uses and specifications. Mr. Smith made a motion to approve the finding. Mr. Roger Brown seconded the motion. Mr. Jeff Brown stated that the application appears to be in compliance with the standards set forth in the Zoning Ordinance. The motion passed by unanimous vote.

Third General Conclusion: That the use would not substantially injure the value of the adjoining or abutting property, or that the use is a public necessity. Mr. Jeff Brown made a motion to approve the finding. Mr. Smith seconded the motion. Mr. Jeff Brown stated that there is no evidence that the use will injure the value of the adjoining or abutting properties as certified by the report provided by a NC licensed appraiser. The motion passed by unanimous vote.

Fourth General Conclusion: That the location and character of the use, if developed according with the plan as submitted and approved, will be in harmony with the area in which it was to be located and in general conformity with the Onslow County Comprehensive Plan and other Onslow County Ordinances. Mr. Cannon made a motion to approve the finding. Mr. Jeff Brown seconded the motion. Mr. Cannon stated that the property is 3.95 acres and the Future Land Use Map shows the property as within Agriculture/Forestry category. The motion passed by unanimous vote.

D. SUP-2020-00011— Joseph and Yvonne White are requesting to set-up a single RV on property in Sneads Ferry NC, Parcel ID 772-164:

Mr. Brinkley provided an overview of the application SUP-2020-00011.

Applicant: Joseph and Yvonne White

Summary of proposal: Joseph White is requesting a Special Use Permit to set-up a single RV at 1687 Old Folkstone Road in Sneads Ferry. The property is within the Rural Agriculture (RA) Zoning District. The property consists of approximately 2.11 acres. The Future Land Use Map shows this property within the Medium-Density Residential land use category. The Sneads Ferry Community Plan shows the property as within the Traditional Neighborhood designation. A TRC meeting was conducted on May 19, 2020 and the following comments were received:

1. A note was required to be added that addresses the preliminary flood information.
2. A note has been required that indicates that building permits are required for any accessory structures, porches, etc.

Joseph White, 1687 Old Folkstone Road, Sneads Ferry, NC 28460 stated that his daughter would like to set up an RV on the property to stay in when she comes to visit during the summer.

Mr. Cannon asked if there was any intention to set up additional RVs on this site.

Mr. White answered that this would be the only RV.

Mr. Smith asked if there is an existing septic system on this site.

Mr. White responded that there is an existing septic system, but it is in the process of being repaired.

First General Conclusion: That the Special Use, if approved, will not materially endanger the public health or safety, if located where proposed according to the plan submitted and approved. Mr. Smith made a motion to approve the finding. Mr. Cannon seconded the motion. Mr. Smith stated that the use will not pose an immediate threat to the public health or safety. The motion passed by unanimous vote.

Second General Conclusion: That the use meets all special uses and specifications. Mr. Cannon made a motion to approve the finding. Mr. Jeff Brown seconded the motion. Mr. Cannon stated that the application appears to be compliant with the standards set forth in the Zoning Ordinance. The motion passed by unanimous vote.

Third General Conclusion: That the use would not substantially injure the value of the adjoining or abutting property, or that the use is a public necessity. Mr. Roger Brown made a motion to approve the finding. Mr. Smith seconded the motion. Mr. Roger Brown stated that based on the report provided by a NC licensed appraiser, there will be no adverse effects on the surrounding properties. The motion passed by unanimous vote.

Fourth General Conclusion: That the location and character of the use, if developed according with the plan as submitted and approved, will be in harmony with the area in which it was to be located and in general conformity with the Onslow County Comprehensive Plan and other Onslow County Ordinances. Mr. Jeff Brown made a motion to approve the finding. Mr. Smith seconded the motion. Mr. Jeff Brown stated that it seems to be in character and harmony with the surrounding area and in general conformity with the Onslow County Comprehensive Plan. The motion passed by unanimous vote.

VI. COMMENTS

A. PUBLIC

There were no comments from the public.

B. BOARD OF ADJUSTMENT MEMBERS

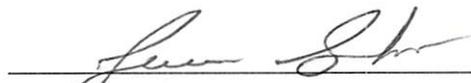
There were no comments from the Board of Adjustment.

C. PLANNING DEPARTMENT STAFF

There were no comments from the Planning Department staff.

VII. ADJOURNMENT

There being no further discussion, the meeting was adjourned at 8:54 p.m.



Jerome Shaw, Chairman

ATTEST:



Kourtney P. Lanier, Administrative Assistant