



Stanly County Planning Board
October 11, 2021- Meeting Minutes

Call to Order Chair Jay Eckman called the meeting to order on October 11, 2021 at 6:30 p.m. in the Gene McIntyre meeting room at 1000 N. First Street, Albemarle, North Carolina. Bailey Emrich served as Clerk of the meeting.

Stanly County Planning Board members attending David Underwood, Candice Brasington, Michael Williams, Tim Fesperman, TJ Smith, Jay Eckman, Joel Mauldin

Absent: none

Stanly County Planning Staff Attending Bob Remsburg, Planning Director & Bailey Emrich, Planner 2

Chair Eckman asked if there were any conflicts of interests with the case to be heard due to financial or personal relationships.

There were none

Chair Eckman asked for a motion to approved the proposed agenda

Motion: Tim Fesperman

Second: David Underwood

Approved: 5-0

Chair Eckman asked for a motion to approve the minutes from October 11, 2021

Motion: David Underwood

Second: Michael Williams

Approved: 5-0

Chair Eckman stated the first item the board would hear was a requestCellco Partnership with Verizon to apply the Telecommunications Tower Overlay District to a 37.6 acre tract located on Austin Road.

Chair Eckman invited Planning staff to share information regarding the case.

Mr. Remsburg shared the following:

You have your memorandum, I will not go all the way through it but there are a couple of points that I should make. This is a telecommunications tower overlay district request on Austin Road. Property is

currently zoned RA, as well as all of the properties around it. It contains 37.6 acres and is owned by Lynn Bowers Hunter. Cellco partnership with Verizon proposes to lease a 10,000 square foot portion of the property and construct a 195 foot monopole tower for additional coverage in the area. Sketch plans were provided with a layout of the plan and there is a 30 foot easement that will allow access back to the site. The area is vegetated on one side and a proposed buffer will be on the other, which does meet the requirements of the ordinance as well as it being away from roadways and encouraging colocation when feasible. The fall area is 100 feet and it is more than 100 feet from the adjoining property lines. The closest existing home is over 650 feet away from the tower and there are no towers in that coverage area that are available for colocation. Access will be from Austin Road which has surprisingly only 470 vehicles per day. This is not in a growth area according to the land use plan.

Mr. Remsburg displayed aerial, zoned, coverage and site plan maps. He explained where the exact location of the tower would be as well as the surrounding area.

Mr. Remsburg asked if there were any questions from the board.
There were none.

Chair Eckman invited Victoria Farmer and any other representing Cellco to speak.

Victoria Farmer shared the following:

Thank you members, it is good to see everyone again. I won't go through the whole presentation again, Bob just did and I don't want to be redundant. I just want to say the purpose of this new facility and any new facility for that matter is to address any significant need and to strengthen the coverage of the network data speeds for its customers. Wireless providers are mandated to operate efficiently and effectively and match growth areas of the market by regularly making improvements to the systems. This proposal is to increase the coverage along Austin Road in Oakboro. It complies with Section 614 of the Stanly County Regulations. The proposed facility will be located towards the rear of the parcel as described and the area is already surrounded by tree lines and we will provide additional landscaping as provided in the site plans. Stanly County zoning ordinance identifies the minimum setback for free standing structures as one foot for every foot of the cell tower or the collapse zone, whichever is less. This structure has a collapse radius of 100 feet or less. The Stanly County ordinance requires that all towers be at least 300 feet from the nearest residential dwelling unit and this structure exceeds the requirements. Verizon confirmed the nearest existing facility is over 2 miles from this site along Frog Pond Road. There is no existing structure within the search area. This facility meets or exceeds all of the required requirements. This applicant respectfully requests approval of its application.

Ms. Farmer asked if there were any questions from the board.

David Underwood asked "Back in August we approved a tower for Verizon in Aquadale, do you know the status of that tower?"

Ms. Farmer stated "I do not, that is not my project."

Mr. Remsburg stated “I can give an update, I think the antennas were installed and it is almost operational. I think it may be missing signage, which is a requirement from zoning. But I do not believe it has been turned on.”

Mr. Underwood stated “The reason I am asking is, I am getting all of these calls. When we approved it everyone was happy and now they are all mad. They just have to be patient.”

Mr. Fesperman stated “The impact study, is this just a plug and play? I have found several mistakes. One being it referred to the tower that is currently under litigation on McLester Road. Also referring to the roads, they don't intersect. So I am just wondering how much of the impact is impacted here.”

Ms. Farmer stated “Mr. Berkowitz is here and he will be able to share all of that with you himself. Are there any more questions for me?”

There were no further questions for Ms. Farmer

Mr. Berkowitz stated “ I apologize I was having a linkage issue. I have an excel grid that links into the report and unfortunately the old information was in there and I apologize for that. Obviously the wording was confusing and misleading and that was my fault. A lot of the same things were reiterated in this one as the last case. The general format is the same for all of them. The fact that it is on the cover is embarrassing to me. I did include a lot more match pair analysis in this one and included much more additional information.”

TJ Smith stated “I don't have a problem with it, I am for it and I think it belongs in the middle of a field. As far as the buffering, I am assuming it is going to be around the fence?”

Mr. Remsburg stated “ On the outside of the fence, is what is required.”

Chair Eckman asked if there were any others wishing to speak.
None came forward.

Chair Eckman asked for a motion from the board to recommend to the County Commissioners approval or denial of the request to apply the telecommunications tower overlay district to the parcel located on Austin Road and owned by Lynn B. Hunter.

Motion: Michael Williams stated “I move that this board recommends approval of the request to apply the Telecommunications Tower Overlay District to the parcel owned by Lynn Bowers Hunters west of Ridgecrest Road because the proposed location and plan meet the tower requirements of the Stanly County Zoning Ordinance for the establishment of a Tower Overlay District.

Second: Candice Brasington

Approved: 7-0

Chair Eckman stated “The Stanly County Board of Commissioners will likely consider this request following a legislative public hearing at their meeting scheduled for Monday, November 1st at 6:00 PM.”

Chair Eckman stated the second item on the agenda is a discussion about possibly amending Section 614 of the Zoning Ordinance to allow Telecommunication Towers which meet all the requirements of the ordinance to be allowed in certain zoning districts by right instead of requiring an overlay district. Jay Eckman, Chair of the Planning Board (I) made a request of the staff to review this idea and perhaps draft some language which could allow telecommunications tower plans which meet all requirements to be approved without the need for a legislative review process for a zoning amendment. The Planning staff can now report their suggestions and then we'll discuss whether this is an amendment we would like to consider. I made a suggestion to Planning Staff to maybe look into this.

Mr. Remsburg shared the following:

Dr. Eckman and Joel approached me concerning this after our last case. In the case of cell towers generally there are a very few things you can base a denial on. We have figured that out, especially with the one on McLester Road. Cell Towers must be in an overlay district with Planning Board review and Commissioner approval. As we know FCC rules and case law offer only a few ways that a tower can be denied. Aesthetic, landscaping, setbacks and fall zone requirements or location. The zoning ordinance outlines the requirements for setbacks, buffers, locations, etc. If the tower meets those requirements it should be approved. We are kind of at the mercy of the cell companies, if they say this is the spot we need it and we need it in this area and it meets the guidelines, we are pretty much obligated to approve it. There is this idea why go through all of this. Obviously people have the right to speak on the request and we had a few phone calls concerning this most recent case but they did not come. This is another case kind of like the Mclester Road situation in that it meets all the requirements in the ordinance. I guess the question is, does it need to go through the approval process or do we allow them by right in certain districts. There are some advantages and there are some disadvantages. The advantages are that it does avoid political controversy and the idea of "I won't vote for you" well that's not a good excuse but it does weigh on you as an official. It streamlines the process if all the conditions are met, obviously the company doesn't have to wait months before approval. From a county standpoint, it saves the expense to bring you all together. The disadvantage is the neighborhood may have problems as far as not having a say. The way I would think about this is so that if the cell company can meet all the requirements that are listed then that might be something allowed by right. If there is something they can't meet or don't want to meet that would still go before the boards. The existing overlay district towers would remain. I have talked to Victoria Farmer and she sent me an ordinance from Knox County in Tennessee and it doesn't fit us very well so I adjusted it to more fit our ordinance. You would have section 614 and then there would be a section 424 which is where all the specifications and conditional items lie. There are a few other jurisdictions that are doing this more because if you have to allow them, why not draw where you would like them to go. The issue with the McLester Road case is that it was really a family issue that we all stepped into.

David Underwood stated “Dr. Eckman and I felt like we had our hands tied with the last one. I don't think we can herd them into one spot, even by the FCC rules if they want it somewhere they are going to get it there. Is that not the way that it is written?”

Mr. Remsburg stated “It has the potential to be, and obviously by the setback rules we can make sure they abide by it.”

Tim Fesperman stated “The reason I talked to Bob about it is because we got smacked down in Locust about this. You can read the general statute and you have no say and if you turn them down then they will sue you. I know it has not been through yet, but just like the one in the court it is going to cost the county thousands of dollars.”

TJ Smith stated “ So in the county, I want to build a cell tower, what is the process?”

Mr. Remsburg stated “If you change it to something that allows it by right, they are simply going to provide all of that information that they already provide now, pretty much the same package. It will go before staff and myself and we will issue the zoning compliance and let them put the cell tower up.”

Joel Mauldin stated “Don't you think the open door policy makes it so much easier.”

Chair Eckman stated “The alternative though, is we have the meeting and do the same thing we do now. It comes down to the neighbors suing or we deny it and we get sued.”

Mr. Remsburg stated “I guess the question is, can the public somehow have an input in this.”

Joel Mauldin stated “My problem with all of this is that when they set these guys up they do a 99 year lease on them. We don't know what will change. If they put a smaller lease time on there it would help some. But, if you put an open door on there it will cause an issue. These guys are no different than solar guys, they are trying to scoop up as much and as easy as they can. Because one day there will be a glitch and we have made it too easy for them.”

Chair Eckman stated “I don't think we have made it too easy for them, I think the FCC has made it too easy for them.”

TJ Smith stated “I am with you guys though because at the end of the day, if they want to put a tower right beside my house, I want at least some type of say. I feel like I should be able to voice my opinion.”

David Underwood stated “When she said footprint that is what scared me. If it is one mile, that is a half mile in each direction so therefore in order to cover the way they want it means there will have to be a tower every mile.”

TJ Smith stated “I feel like we are throwing our hands up because we had one bad meeting.”

Tim Fesperman stated “It just depends on how many thousands of hours you want to listen to it.”

Chair Eckman stated “That is why we are discussing it right now. When we get into a situation like this where there are hundreds of people out here we either get sued or put a rubber stamp on it.”

TJ Smith stated “There are plenty of properties out there. Like this one, it is in the middle of a field. But I will do whatever y'all decide to do.”

Joel Mauldin stated “I was very adamant about the last one co-locating and they called me about two weeks after that meeting. They wanted to put another tower on another piece of property I have that is within a mile of the one that currently sits behind my house. I talked to Bob and I didnt want it there and told them that they could collocate on that tower and they did. AT&T is on that tower and they still are and Verizon is going on top of it. As opposed to saying go ahead and do it I told them no.”

David Underwood stated “do they get the same coverage? I don't understand their one mile footprint.”

Joel Mauldin stated “Yes, it is a quarter mile difference.”

Tim Fesperman stated “I think they have gone into that 5G is going to be requiring increased data which requires more towers.”

Joel Maulin stated “The guy that came to me says they wanted a 200 foot tower and we only allow the 195 foot towers. So now they are putting it under the AT&T one. They can do it if they want to but instead they are doing what these guys are doing and just requesting more towers.”

TJ Smith stated “Is there someone unbiased that maybe we can talk to about this?”

Candice Brasington stated “Like with the last issue when they realized they could not hone in on the radioactive side of things , they really went for the aesthetics. What is determined to be aesthetically okay?”

Mr. Remsburg stated “That is a good question. So the ordinance simply addresses it by the buffer and there is some language in here that indicates we don't want it near the roads or on top of a hill. That is more of a wish than a requirement. If they come in and say we studied it and our engineer says it has to be inside of the search ring, they will send the rep out and show the landowner the ring. So the aesthetics is a challenge. This is where we get open to lawsuits. If we base it on aesthetics and we have requirements for vegetation and buffers and they meet those buffers then they are meeting our aesthetic conditions.”

Tim Fesperman stated “Does the School of Government have anyone who might be able to educate us more on this?”

TJ Smith stated “I spoke to Tommy Jordan briefly after the last meeting and he actually voted yes for that tower. He explained to me that he knows that whole world. Would y'all be against bringing him up to a meeting and help us understand.”

Mr. Remsburg stated “Jay has the authority to appoint a sub-committee or something like that and they could meet and come up with something. Or bring Tommy to come to a meeting.”

Tim Fesperman stated “I think bringing Tommy to it would be great because this is what he does and he knows alot about it.”

Bob Remsburg stated “Apparently Knox County went through a lengthy process involving the public to draft the language of the ordinance to allow them by right. That does not necessarily solve it but the advantage of getting more public folks involved is telling the people you did invite folks to comment.”

Tim Fesperman shared “I know that was in Tennessee, would that not affect the state law of North Carolina because it is different from Tennessee or is it all a federal mandate?”

Bob Remsburg stated “The states are all pretty similar in their approach to this and it is all based on FCC and the Federal Telecommunications act of 1996. That is what gets you.”

Tim Fesperman stated “Would you tell what the gentleman who made the mistake said to the Verizon lady when he came in?”

Joel Mauldin stated “He said I am glad Verizon finally grew a pair so they can start suing people.”

Chair Eckman stated “They have that authority because of the FCC and the regulations that they put in front of us.”

Tim Fesperman stated “The way it is all written is concerning to me as a taxpayer. The money they are spending in this lawsuit could have gone to different departments for different things that matter like the sheriff’s department or the school system.”

TJ Smith stated “At some point we can't keep passing by boards because of the laws.”

Bob Remsburg stated “The advantage of this process is you can end up with a room full of people who have all had their say. We do have another Planning Board meeting on November 9th and could continue discussion”

Tim Fesperman stated “I am willing to listen to anyone with some knowledge because obviously what we are currently doing is not working.”

TJ Smith stated “Has there been any legal guidance on this?”

Bob Remsburg stated “No, Jenny Furr has not put her eyes on this.”

Candice Brasington stated “What is the point in continuing on and on, I mean you cannot change the statute.”

Michael Williams stated “Maybe we can do what was mentioned and get Tommy in here and let him teach us a little about it.”

TJ Smith stated “It sounds like a majority of yall want to cut it out but I just feel like we are making an uneducated decision. At the end of the day it can happen anywhere in the county.”

Bob Remsburg stated “It may be beneficial Tim, for you to explain to the board about Locust allowing them by right in certain areas.”

Tim Fesperman stated “Highway Commercial, Highway Business, CBI, and some more if you come to Locust and see right on the highway by Locust Lumber is the tower and then the 350 foot tower in the square of Locust and they have not hurt a soul.”

David Underwood stated “Why don't we get Tommy To come in and teach us what he knows and go from there.”

TJ Smith stated “Since this is on record I am totally for what the majority does, I just feel like we need to be more educated. I respect all of you.”

Chair Eckman entertained a motion for Adjournment

Motion: David Underwood

Second: TJ Smith

Approved: 7-0

Time of Adjournment: 7:30 PM

Chair, Jay Eckman

Clerk, Bob Rensburg