



QUASI-JUDICIAL HEARING MINUTES  
PASQUOTANK COUNTY BOARD OF ADJUSTMENT  
MAY 25, 2023

THE PASQUOTANK COUNTY BOARD OF ADJUSTMENT HELD AN IN-PERSON MEETING ON THURSDAY, MAY 25, 2023, AT 7:00 PM IN COURTROOM C

Planning Board Members Present: William Kruse, Chairman  
Kevin Brickhouse, Vice-Chairman  
David McGuire  
Robert Pippen, Jr.  
Joseph Gregory, Jr.  
Richard Bovie

Staff Present: Michael Cox, County Attorney  
Shelley Cox, Planning & Inspections Director  
Adrienne Cole, Clerk to the Board

Applicants & Witnesses: Gary Bryant  
Larry Bickings  
Lisa Murphy  
Bryan Stallings

1. Call to Order

Chairman Bill Kruse called the meeting to order at 7:00 p.m. Chairman Kruse provided the welcome.

2. Approval of Minutes from March 23, 2023

Chairman Bill Kruse addressed the first item on the agenda. A motion was made by the Vice Chairman, Kevin Brickhouse, to approve the minutes. The motion was seconded by David McGuire. Motion approved. **Vote 6-0.**

3. New Business

Chairman Bill Kruse called for new business. The first item is a public hearing for the new case SUP 23-02 and the swearing-in of witnesses.

#### 4. Swearing-In

All parties and witnesses who chose to present evidence and testimony were sworn in and provided the oath by Shelley Cox.

#### 5. Parties

The parties present: Cellco Partnership doing business in association with Verizon Wireless ("Applicant"), Verizon representatives Larry Bickings and Lisa Murphy with Sites Unlimited, Gary Bryant and the property owner Bryan Stallings (Property Owner).

#### 6. Case Overview & Staff Analysis

A case review was presented by Shelley Cox. The special use permit (SUP 23-02) application request is to construct and operate a 195-foot monopole wireless communication tower with a 4-foot lightning rod. The structure will include a 50x50 foot compound on an approximately 10,000 square foot portion of the 15.34-acre parcel Zoned A-1 Rural Agricultural at 541 US Hwy 158 in the Newland Township behind existing grain silos, a grain elevator, and farm equipment. Written consent from the owner was submitted with the application. The property owner and the adjoining property owners were both informed of the public hearing by notice, as per the NC State Statutes and the County Zoning Ordinance. Property owner notifications were mailed, a sign was posted on the property, and an ad was run as a public hearing advertisement in the Daily Advance newspaper. Shelley Cox reviewed the Quasi-Judicial process, provided staff recommendations, and then provided a brief review of the evidence submitted into the record.

Staff Recommendation: Should this request be approved, the staff recommends the following conditions:

1. The applicant shall complete the development strictly in accordance with application and with any conditions approved by the Board of Adjustment.
2. The cumulative electromagnetic radiation levels shall be maintained in compliance with all requirements of the Federal Communications Commission.
3. A security bond in the amount of \$75,000 shall be posted by the applicant prior to the issuance of a building permit and the bond must remain in full force and effect until any necessary site restoration is complete to restore the site to a condition comparable to that which existed prior to the issuance of the permit.
4. The Special Use Permit will remain valid for 30 years from the date it is recorded by the Pasquotank County Register of Deeds.

## 7. Evidence

The following information was submitted into evidence.

- (7A) Exhibit 1: SUP Application
- (7B) Exhibit 2: Project Narrative
- (7C) Exhibit 3: TOWAIR Determination Results Notice
- (7D) Exhibit 4: Verizon Location Site License Agreement
- (7E) Exhibit 5: Non-Ionizing Electromagnetic Radiation Report
- (7F) Exhibit 6: Maps
- (7G) Exhibit 7: Lease with the Property
- (7H) Exhibit 8: Staff Report
- (7I) Exhibit 9: Witness Testimony
- (7J) Exhibit 10: Witness Documents
- (7K) Exhibit 11: Cross-Examination

The case hearing for SUP 23-02 procedures:

- a. The appellant or his attorney was called to present his case.
- b. The floor was opened for any objections or support.
- c. A call was made for rebuttals by the appellant and then objectors.
- d. The chairman summarized the evidence.
- e. Consideration and determination of the case was heard.
- f. Parties were informed about the decision process and the board's stance.

### (7E) Testimony

Gary Bryant, an attorney licensed in Virginia and North Carolina, provided his testimony. During his statements, Mr. Bryant reviewed the licensure requirements related to the Federal Communications Commission. Mr. Bryant provided the need for the approval. Verizon has a need to provide an antenna site for the current area, which includes the Highway 158 Corridor. The proposed tower will connect the existing antenna sites. Mr. Bryant provided an overview of the research used to decide the location of the tower noting the closest tower is less than 3 miles away. The applicant has leased the property from Mr. Bryan Stallings, the property owner. The proposed tower will be located in the northern section of the property with a 2,500 square foot equipment compound surrounded by a commercial chain-length fence with bobbed wire. Accessibility will be via a gravel driveway will be extended by the applicant. The structures and site will comply with the Ordinance and the County's Land Use Plans Rural Agricultural Plan for the subject property, including setbacks and property lines. Signage will comply with FAA, FCC, state, local government, and any additional forms of government. The facility will be unmanned and visited infrequently by technicians. This tower will not cause interference with Public Safety communications. Mr. Bryant stated, "The tower will in fact enhance

public safety by providing better access to wireless services for the residence and for those transversing this area.” Co-location will be available as this tower may be shared with other networks. Anything that might constitute as a nuisance was addressed to avoid concerns with abutting properties. A request is being made for a Special Use Permit.

(7F) Cross-Examination or Questions from the Board of Adjustment

The Board asked evidence-based questions for fact-finding purposes after the appellants’ and the witnesses’ testimonies:

- Rich Bovie requested to include a collision avoidance light on the tower for safety purposes identifying the 199-foot tower located in a dark wooded area. Helicopters and other crafts do not have specific flight patterns. Light will not cause light pollution.
- Lisa Murphy and Mr. Bryant responded to the collision avoidance light request. Lisa Murphy stated, “The light should not be a problem as long as the lighting complies with FAA lighting requirements (and regulations)”.
- Vice Chairman Kevin Brickhouse asked the owner if he objected to having a light.
- Mr. Stallings, the owner, did not dispute the proposed request.
- On behalf of the parties involved, Mr. Bryant requested a 50- year use permit instead of a 30-year use permit based on the amount of money, investment, and value. Mr. Bryant stated that fifty years is permitted (allowed) per the Ordinance.
- Shelley Cox deferred to the County Attorney for comments.
- The County Attorney deferred to the Board. “If it is permitted based on the Ordinance, it is a judgment call for the Board of Adjustment.”
- Chairman Kruse asked Shelley to confirm and verify the Ordinance position on the request, then addressed the findings.
- Vice Chairman Kevin Brickhouse asked Shelley Cox for the details of the length of time in the Ordinance.
- Shelley stated, “The Ordinance does not specify the maximum timeframe, so it is up to the Board on what you think will be appropriate.”
- Chairman Kruse restated for the Board members the maximum time was not specified as 30 or 50 years.
- Vice Chairman Kevin Brickhouse asked about the general life expectancy of the tower.
- Lisa Murphy explained the lease is a 25-year lease. The request is to have enough time without renewing or extending the permit. The tower is galvanized steel and should last 50 years as a part of the utility infrastructure. Fifty years should not be an issue because of the design. The antennae will be changed regularly.

- Michael Cox motioned for Lisa Murphy's report and Shelley Cox's report to be recorded as evidence. There were no objections.
- Chairman Kruse confirmed the details, the requirements, and the findings before making a motion for approval.

## Findings

1. That the use will not materially endanger the public health or safety if located where proposed and approved: **Yes, there are no public health issues. This is a rural environment and the use will not cause public health or safety concerns if located where proposed. Approval vote 6-0.**
2. That the use meets all required conditions and specifications of the Zoning Ordinance: **Yes, this area is zoned Agricultural, this proposal is allowed by County Ordinance. Approval vote 6-0.**
3. That the use will not substantially injure the value of adjoining or abutting property, or that; the use is a public necessity: **Yes, the use will not substantially injure the adjoining or abutting property. No one has spoken in opposition to the proposed applicant. The use is a monopole used for cellular service. There are similar towers in the County. Approval vote 6-0.**
4. That the location and character of the use, if developed according to the plan as submitted; and approved, will be in harmony with the area in which it is to be located and in general conformity with the plan of development for Pasquotank County. **Yes, because it is in a rural area there are no detrimental aspects. It is agreed that if developed according to the plan using the conditional requirements proposed by the Board of Adjustments, the site will be in harmony with the area and in general conformity with the plan of development for Pasquotank County. Approval vote 6-0.**

**Conditions Added for Approval:** Collision avoidance lighting will be installed if permitted and applicable to the FAA regulations. The staff recommendations must be honored: a 75,000 security bond, compliance with the FCC requirements, and compliance with all local and state requirements. If the lighting is not allowed or approved by the FAA, the applicant will inform the County.

## 8. Motion

Vice Chairman Kevin Brickhouse made a motion to approve based on the Board's responses to the four findings, the recommendations by staff, and the collision avoidance lighting requirement. Mr. David McGuire provided a second motion to approve. The motion was approved. **Vote 6-0.**

Vice Chairman Kevin Brickhouse made a motion to approve the 50 years extension request proposed. Richard Bovie provided the second motion to approve. **Approval vote 6-0.**

**Completion of the Process:** The Planning Director, Shelley Cox, and the County Attorney will draft the orders. Once prepared, the applicants will take the paperwork to the Register of Deeds for recording. After the documents are recorded, the building permit can be issued.

## 9. New Business

The Board revisited the proposed recommendation for a ZTA (Zoning Text Amendment) in the Zoning Ordinance, ZTA 23-01. The amendment is being proposed at the request of the Planning Board/Board of Adjustment. The Board recently reviewed a Special Use Permit application for a duplex that was proposed in the A-1, Agricultural District. Although the Board issued an approval for the request, members expressed concerns that density that is higher than a single family residence may not be appropriate or consistent with the rural characteristics of the A-1, Agricultural District.

### **Recommended Action And Consistency Statement:**

Motion is made to recommend approval of the proposed amendment to the Pasquotank County Zoning Ordinance with standards recommended by staff. This amendment is consistent with the following policies within the Pasquotank County Elizabeth City Advanced Core Land Use Plan. The proposed text amendment would eliminate duplexes as a use permitted with the issuance of a Special Use Permit in the A-1, Agricultural District.

The amendment is reasonable and in the public interest because the text will eliminate a use that is not consistent with the Land Use Plan and will minimize potential impacts on surrounding property.

The ZTA 23-01 recommended consistency statement will be presented to the Board of Commissioners.

Vice Chairman Kevin Brickhouse motioned to approve. Richard Bovie provided the second motion. **Approval vote 6-0.**

## 10. Staff Report

Shelley Cox provided the staff report. Shelley Cox provided information regarding several pieces of legislation that are being currently discussed or have been approved by the state. The legislation has had limited local input and could significantly affect local communities. Some of the proposed legislation would

impact extraterritorial zoning, flooding, and density requirements regulated by local government. Local protection efforts would be limited. The current maximum impervious surface area allowed is 24%, which aims to decrease flooding. This is an example of a requirement that is impactful for coastal areas such as Pasquotank County.

Vice Chairman Kevin Brickhouse proposed a recommendation to the County Commissioners to adopt a resolution opposing the proposed new legislation. Bovie provided the seconded. The motion was approved with a **6-0 vote**.

The Office of Planning & Inspections adopted new building permit fee schedules. This adoption was the first change to the building fee schedule since the year 1996. The changes will be in effect July 1, 2023. Any fees collected will be used to pay for services provided in the Planning and Inspections Office. No applications were submitted for June. The Board will not meet next month.

Chairman Kruse requested a motion to adjourn the meeting. Richard Bovie motioned to adjourn the meeting, which was seconded by Mr. Joseph Gregory, Jr. **(Vote 6-0)**. The motion carried. The meeting adjourned.

  
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Planning Board Chair

  
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Planning Board Staff