

FRANKLIN COUNTY BOARD OF ADJUSTMENT

January 25, 2021

The Franklin County Board of Adjustment held its regular monthly meeting on Monday, January 25, 2021 in the Franklin County Administration Building, Commissioners Conference Room, 113 Market Street, Louisburg, North Carolina.

Present: Stuart May, Scott Lerew, James Roberson, Robert Carlson, Shane Brantley
Staff: Scott Hammerbacher, Brad Thompson, and Tracy Walthour

Chairman Scott Lerew called the meeting to order at 7:00 P.M.; and welcomed everyone in attendance.

Stuart May made a motion to approve the agenda and was seconded by Shane Brantley, the motion passed by a vote of 5-0.

Stuart May made a motion, seconded by Shane Brantley, to approve the minutes from the October 26, 2020 meeting, the motion passed by a vote of 5-0.

1. Variance 21-VAR-01 requested by Duke Energy to allow for a Variance from the Unified Development Ordinance Article 15-8, Lot Size and Setbacks, for the height of the tower plus twenty percent (20%) setback requirements at 78 Broadway Dr. Franklin County PIN 2718-81-8118.

Brad Thompson stated that the applicant, Duke Energy is petitioning the board for a variance from the setback requirements. According to the UDO, the setback must meet the distance equal to the height plus twenty percent (20%) of a communications tower to accommodate for a fall zone. The applicant has stated within the petition to allow for the replacement of the 40-year-old communications tower with a new communications tower of the same height and location which is occupied by both Duke Energy and Franklin County. The applicant has stated the current 300 ft. tower will not pass structural inspections with the new added equipment and has outlived its expectant life. The newer, safer tower will be constructed to allow for an engineered break point at 100 ft to cause the tower to collapse on itself. This newer tower will allow for the current occupants to continue operations in serving the community for many years to come. Neither Franklin County nor Duke Energy can continue to operate without the updated newer equipment and would be forced to relocate. The applicant has stated that it would be a considerable loss of time and money without the variance approval due to the prime location and the dependency on this tower.

Toby Coleman-150 Fayetteville Street, Raleigh NC, 27601

Toby Coleman stated that he is the Land Use attorney representing Duke Energy. We have a group here today that can answer any technical questions you may have. I do not want to repeat anything that has already been said because that was a good presentation. There is an existing tower that was put into place 49 years ago, its 300 feet tall. This replacement tower is going to be the same height and just to

the south of it. It is going to be improved, as was stated. It will have a 100-foot fall radius. Anything that both the property line and any existing structure, which is really what this zoning ordinance goes to, are all more than 100-feet away. Even though it doesn't meet the technical requirements of the variance it does meet the intent. As far as hardship again, with the zoning code requires is the height of the tower plus 20%, so in this case it would have to be 360 feet from every lot line etc. The widest point of this parcel is about 650 feet and so where it is located it is about 350 feet.

Scott Lerew asked what is the narrowest point.

Toby Coleman answered the narrowest point is about 350 feet.

Scott Lerew stated so it is about 10 feet short.

Toby Coleman stated well actually it must be 360 feet all the way around so it would have to be 720 feet wide to meet it, so it is impossible anywhere on this lot to meet it. That is the hardship that is based on the particulars of the property. We have folks here that can talk to you about the needs. This tower is used for Duke internal communications to monitor the grid and for Franklin County emergency services communications. It is a hub for the County, Duke leases it out to the County, at no cost to the County.

Scott Lerew asked so this is an important hub and something that is needed to continue as the evidence already put into place.

Toby Coleman asked the board has in the record the plans. I do not want to make this formal, but we would like to reserve time and we are available for questions if there is any.

Mr. Coleman requested to enter more evidence into the records as formality.

Matthew Finneran-45 Pilot-Riley Rd. Zebulon, NC 27597

Mr. Finneran stated that he was opposed to the variance but had some questions that would affect my response to some of things that I would say. What is the new equipment. They mentioned new equipment, what is the new equipment attached to the new tower.

David Fulner- 124 Watersong Ln. Irma, SC 29063

Mr. Fulner stated that he is with Duke Energy and he is a professional engineer in North Carolina. I am the project manager that is responsible for building these towers. We are installing the field area network that allows us to control sub stations, control switching's and other assets.

Scott Lerew asked if that was the new equipment that you are talking about.

Mr. Fulner replied yes, and that is essential what we are installing

Mr. Finneran asked what is the megahertz.

Mr. Fulner replied 5.8 gigahertz.

Mr. Finneran asked is the tower omnidirectional or unidirectional.

Mr. Fulner replied what we are installing there is 3 panels, 120 degree so that it gets all 360 around the site.

Mr. Finneran asked how far does that signal go.

Mr. Fulner replied it is typically line of site and which is about 5 to 8 miles for sure.

Mr. Finneran asked is it used in any way for cellphone communications.

Mr. Fulner replied no.

Mr. Finneran asked is there any plans for that at all.

Mr. Fulner replied no.

Scott Lerew asked it is not designed for that, correct.

Mr. Fulner replied that it is not, theoretical we could beef the tower up if someone wanted but we have no plans for that.

Mr. Finneran asked is that potential in the future for that tower to have that use.

Mr. Fulner replied we have no plans for that.

Mr. Finneran stated my concern is about the 60 gigahertz towers that are going in and because of the location, it's in the neighborhood and there have been no studies on the health effects of the 60 gigahertz.

Mr. Fulner replied we lay out the loading on the tower that lays out the microwave the camping in the field network and we have future loading, but it is internal microwave, things like that but no cellular.

Mr. Finneran stated no cellular usage, but it has microwaves. Are they any different than a cellular microwave that comes out.

Mr. Fulner replied stated no, this is 6 gigahertz.

Mr. Finneran stated we are out in the middle of a nice farmland out in the country there and we have this ugly tower. Is there any reason why it can't be moved to an area that is more commercial, any reason at all.

Scott Lerew replied they are currently using the existing spot of the tower that is what they are replacing. Which is the most functional and operational way they can do it to reduce cost. We do not really have a designation unless Scott, you correct me, we have a commercial designation for the towers.

Scott Hammerbacher stated no, sir.

Scott Lerew stated they are typically setup on people's land, where they make the arrangements for the lease and that is how they set those up throughout the county.

Mr. Finneran asked was this set in 1963

Scott Lerew replied whenever it was 50 years ago.

Scott Hammerbacher responded the County established zoning in 1987.

Mr. Coleman stated yes it was installed in the 70's.

Scott Lerew stated so all they are doing is replacing what is there.

Mr. Finneran replied yes, I know. I live within eyeshot of it on the county part, about two tenths of a mile from it. I am concerned of the radiation. I moved out to the country; I really didn't want to be in the spot of a cell tower. There is one at 64 at the entrance and then there is one up in Bunn. This one just has a couple of antennas on it, it looks like microwave antennas, it doesn't have a lot. What I am concerned about is something going on there and you guys increasing the outage, increasing the number of antennas, doing more to it to make it potentially more radiation going, because my house is in the shadow of it. So, I am concerned about that. I would rather have it moved somewhere else because cell towers are best away from homes, from schools, there is no reason we must bath ourselves with this radiation continually. I am opposed to upping the cell tower or the potential of upping it, I would rather see it moved so I don't have to worry about 3 years from now they so oh we want to put 5G here, with 60 gigahertz into the neighborhood, that is my concern.

James Roberson stated can I ask how long you have lived at your property.

Mr. Finneran replied since 2001

James Roberson stated so the tower was there when you moved there.

Mr. Finneran replied yes, it was but the cellphone antennas that are on there now where not on there when I moved in. It was not the same. There was not many of the somethings done in 2001 somethings were done in 2005.

James Roberson asked are there cellphone antennas on there now.

Mr. Finneran replied it looks like cellphone antennas, I am not an expert on it, but it's the single ones you might see if people just had one in an area. It is a great big one but when I moved in that was not there. I came in later in months and I was very disappointed, that is like 2 miles away from my house. I do not know which one came first the one in Bunn is about 4 ½, 5 miles away, I was comfortable with that one. I was okay with this but then Duke can just upgrade this at any time and then suddenly, we have got towers.

James Roberson stated it must be approved by the County for them to add collocation or any additional equipment to it.

Scott Lerew stated so all they are doing is replacing what is there as we understand it.

Scott Hammerbacher stated it also must be done in accordance with the FCC standards, FAA as well. Along with another host of agencies.

Scott Lerew stated, clearly the tower itself is not being used for cellphones, it is being used to monitor the substations with regard to what Duke Energy manages, correct.

Mr. Fulner replied correct.

Scott Lerew stated it is a different application all together.

Scott Hammerbacher stated specifically, the UDO stipulates should this had been able to meet all dimensional setbacks this would not have been before you this evening, to replace a tower. It would have been on an admirative level rather than a quasi-judicial proceeding.

Mr. Finneran asked so if they were going to change it to a cellar phone tower they would have to come before the board.

Scott Lerew stated absolutely.

Mr. Finneran asked the new equipment that he just explained was that something that needed to be brought before the board or not.

Scott Lerew replied it is just what they are doing with the tower to replace it, telling us what equipment needs to be on there.

Scott Hammerbacher stated one point of correction with that is my understanding of state law in this should you collocate that is done so on an administrative level, there is a burden of proof that must be met to approve that. That is not something that would go before this board.

Mr. Finneran asked that is something that would not.

Scott Lerew replied yes, would not typically.

Mr. Finneran asked could you explain that again, what would not go before the board.

Scott Hammerbacher stated any collocation typically every cell tower is required to allow for potential collocation for additional amenities, or different tower signals, it could be the states vaper system, highway patrol system, Verizon, that could be a possibility going forward. But it would be subject to the owner allowing such a collocation for a lease. In my experience most municipalities try to limit the number of overall cell towers thus the required collocation. It has also been my observation rather than collocating because everyone wants to have the top spot on the tower, they would rather go build a

new tower because they want the top spot or they are unable to negotiate a contract to be able to collocate that is amendable to them.

Mr. Finneran asked so they can collocate with this one and could change to a cell tower without appearing before the board.

Scott Hammerbacher stated based on current ordinance standards yes, sir.

Scott Lerew stated they are the ones that must designate who they are going to work with and what that contract would be, we do not have any power over that.

Mr. Finneran stated but if you refused the variance then they wouldn't have the freedom to do that, correct.

Scott Lerew replied correct.

Mr. Finneran asked they would have to move the tower.

Scott Lerew replied or whatever their options were for them to do.

Mr. Finneran stated does the board know that there has been no extensive scientific study in this country regarding 5G, the health effects of 5G on humans there has been no study done.

Scott Lerew replied all we do is follow the UDO, as it has been written for us to follow and they have certain qualifications that they must follow. Once all those specific things have been met, we just decide whether it is going to work with the county.

Mr. Finneran stated I guess my concern is just based on this tower it can be anything they want it to be in a couple of years. Is the intensity of the radiation admitting from the tower going to increase with this change.

Toby Coleman stated at this point I would like to at least launch an objective for the record. This is a variance proceeding which only relates to the setbacks. That is the only question for the board, whether there is a hardship that allows for a variance for the setbacks. The board does not look at anything related to radiation and so objection of relevance. Also, you indicated that you are not an expert and it sounds like we are talking about some expert issues and I would also like to object to delving into that area without an expert.

Scott Lerew replied it is a public hearing as well and he is willing to share those objections that he finds, and the board is willing to listen to them.

Toby Coleman stated the only thing that I am saying is because this is a quasi-hearing and I just want to get those for the record.

Mr. Finneran stated I guess my last statement would be since it is supposedly a hardship case it is difficult for me to understand how this is a hardship on Duke Energy versus the potential of having high

radiation even up to 60 megahertz in our neighborhood. I would apply to the board to make them go somewhere else.

Scott Lerew stated I would challenge you as well that this board works from a basis of findings of facts. You cannot go into radiation, something that we do not understand or something that we do not have the experts to talk about. There has been nothing that has been submitted to this board that would say otherwise. We only work with, like he mentioned, within the perimeters of the variance request itself and findings of fact to make our determination, period, end of statement on that. So there is not much we can take into account with regards to, we can listen to your concerns and take them into account for future reference but for this particular proceeding there is not much we can do unless you are presenting something physically that says, because they are doing this, this is going to be the outcome and we do not have that.

Nancy Finneran- 45 Pilot-Riley Rd. Zebulon, NC 27597

Mrs. Finneran stated my question would be where we go to get the information because we are representing our neighborhood and we are concerned that this is a health risk for our neighborhood. We have been led to believe up until this point that it was just a radio tower with no admissions coming out as far as microwaves in it. So, going forward where do we go to get the information that this is going to be something safe for our community.

Scott Lerew replied you are going to have to track down the appropriate legal authority to do that. We could not direct you to tell you where to go, that is something that you are going to have to research on your own. Then have that person bring something back to the county and say, time out, other than that I couldn't tell you. I am sure there are attorneys that specialize in that kind of information on how to deal with those kinds of things, but I couldn't tell you.

Mrs. Finneran stated why can't they give us this information. Why can't Duke Energy tell us, they obviously must know what this is going to remit. So, we as concerned citizens in our community need to know what they are putting up.

Scott Lerew stated well he did say that it was 6 gigahertz.

David Fulner replied 5.8 gigahertz and the FCC does publish guidelines on RF radiation. Just go to FCC and look for radiation guidelines and it is listed and ours is all within the guidelines.

Shane Brantley stated I am not an expert but if you do go 5G doesn't that cut the towers down where they must be very close together.

Mr. Fulner replied theoretically when you are looking at 5G instead of big big cells you are shrinking the cells and you have a whole bunch of them.

Shane Brantley stated they are only affective for what a mile and a half.

Mr. Fulner replied right, this is for land mobile radio use and from my point we are connecting sites that are 15, 20, 30 miles away. So, it is not like we are a small cell it is for the buyer and local law enforcement.

Shane Brantley stated generally 5G is going to be more for your cities because it is not going to be for urban use because your cells are closer together.

Mr. Fulner replied typically.

Mrs. Finneran stated so the 6 gigahertz if I am understanding what you are saying, we look at the FCC and look at the 6 gigahertz and we find that is a problem for our neighborhood then what do we do.

Scott Lerew replied contact an attorney that can help you present something to the county because that is the only person that can legally represent a community or a person that wants to bring up that objection to the county.

Mrs. Finneran stated then we bring it to you.

Scott Lerew replied they would bring it to the county and then they would decide the appropriate board if it must go before a board if they can handle it at an administrable.

Scott Hammerbacher stated the county is looking at this from a land use perspective as a relocation. Granting the setbacks in the public interest. In terms of microwaves and things of that nature it has no baring.

Mrs. Finneran stated right, but it has baring for the community.

James Roberson stated but it has no baring before this board so we cannot consider that.

Mrs. Finneran stated right, I understand but then how can an attorney come back then.

Scott Lerew replied you are going to have to talk to an attorney and find that out. I cannot tell you; I don't know.

Mrs. Finneran stated so then my last question would be can this be stayed until we do that.

Scott Lerew replied no ma'am.

James Roberson stated that is not a consideration.

Scott Lerew replied that is not a consideration for what we are considering tonight. We are talking about a variance of a setback regarding where it is positioned, that is it and that is all we are limited too.

Mr. Coleman stated Mr. Chairman out of an abundance of caution I would like to enter evidence the full copy of the plans for this. I want to enter this into the record.

Scott Lerew stated and what is this apart of as far as.

Mr. Coleman stated these are just the full plans for the tower, this is an excerpt that maybe easier to show. Again, I apologize this is just for the record but is worthwhile. That is a 2-page document that talks about the fall zone. The key issue here in this case because it is a land use issue, is the fall zone. The

reason this is regulated when you look at section 15.8 is the intent relates to safe and the requirement is the setback, the height plus 20% and the idea is that is the worse case fall zone. What these documents show is that the fall radius for this, the way this tower is designed is it is a 100-foot fall radius, because it collapses in on itself. I just wanted to put that in the record, I know you have heard it before but out of an abundance of caution I just wanted to put that in the record. And underline that is the intent of the ordinance there is a hardship related to the property.

Scott Lerew stated so noted.

Scott Hammerbacher stated are those documents highlighted and sealed by a professional engineer.

Scott Lerew replied yes.

With no questions or comments from the public, Chairman Scott Lerew closed the public hearing.

Stuart May made a motion to approve the Findings of Fact, seconded by Shane Brantley. The motion passed with a vote of 5-0.

Stuart May a motion to approve the variance request, seconded by Robert Carlson. The motion passed with a vote of 5-0.

With there being no further business before the Board of Adjustment, Chairman Scott Lerew adjourned the meeting at 7:31 P.M.



Scott Lerew, Chairman
Franklin County Board of Adjustment



Tracy Walthour, Clerk
Franklin County Board of Adjustment

