



Oconee County Board of Zoning Appeals

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Minutes

6:00 P.M., Thursday, October 24, 2013
Oconee County Council Chambers

Members Present:

Mr. Lee, Chairman
Mr. Nichols
Mr. Reckert
Mr. Hughes
Mr. Littlefield
Mr. Medford

Staff Present:

Mr. Josh Stephens, Zoning Administrator
Mr. Matthew Anspach, Planner I

Media present:

Dick Mangrum, WGOG
Ray Chandler, Anderson Independent

Item 1. Call to Order

Mr. Lee called the meeting to order.

Item 2. Approval of Minutes – August 29, 2013

Mr. Lee called for a motion to approve the minutes from the Board of Zoning Appeals meeting on August 29, 2013.

Mr. Littlefield motioned to approve the minutes. Mr. Nichols seconded the motion. The motion was approved unanimously.

Item 3. Public Comment – Non-Agenda Item

None.

Item 4. Special Exception Hearing Regarding a Proposed Cell Tower 123-00-02-001

Mr. Stephens stated the matter before the Board was a special exception hearing regarding a proposed cell tower. All cell tower proposals are required to go before the Board in addition to the specifics of the property's zoning regulations (Agricultural District) that call for a special exception hearing.

Mr. Yates (attorney) introduced Mr. Davis of AT&T (design engineer) and Mr. Shaw (AT&T). Mr. Yates presented details of the proposed tower and how AT&T met the application requirements for a special exception according to Chapter 32-4.32.138. He also spoke to the safety/911 concerns that are remedied when tower infrastructure is sufficient.

Mr. Davis spoke to the reasoning for the particular site choosing. He mentioned less dropped calls, emergencies, coverage and service to neighboring residents as some of the reasons for the particular location.

Mr. Lee asked Mr. Stephens for any staff comments.

Mr. Stephens responded that the representatives for AT&T went through the ordinance as outlined in Chapter 32 Article 4. He added that they provided information that meets the standards required in Chapter 32.

Mr. Lee moved the hearing to public comment.

Ms. Melinda Brock commented that it would be nice to have coverage on the particular area of the lake that she lives on and her kids use.

Mr. Jim Codner represents Advocates for Quality Development. He stated that he is not for or against the issue, but that he is interested in the process. He pointed out that the property is Agricultural but is surrounded by residential areas. He suggested a balloon test and more sign postings as necessary in the application and public hearing processes.

Ms. Sherry Barrett was the final public commentator on the matter. She agreed with Mr. Codner in that she was not for or against the matter but believed she needed more information. She added that a better visual analysis would be helpful.

Mr. Lee asked Mr. Stephens if all of the information that the Board had on the matter was available online to the public.

Mr. Stephens confirmed that everything was available online.

Mr. Lee added that he received two emails from Mr. Stephens from neighboring residents that they were in support of the tower. Mr. Lee then asked if there were any rebuttals by the AT&T representatives.

Mr. Nichols wanted to know more about the coverage area before rebuttals.

Mr. Davis described the coverage area.

Mr. Yates asked the Board to please consider the special exception.

Mr. Nichols asked about the timeframe in which the tower would be constructed.

Mr. Shaw described a timeframe of 90 days maximum.

Mr. Medford asked Mr. Stephens about the advertising for the hearing and what it consisted of.

Mr. Stephens explained that staff placed signs that read “Public Hearing” along with the office phone number to contact us for more information. He also mentioned the letters that staff mailed out to adjacent properties stating the reason for the hearing and that if they need more information, how to contact the Community Development Office. He lastly mentioned the advertising required to be done in The Journal newspaper two weeks in advance of the hearing. Mr. Stephens added that he believes, for the record, that staff followed all of the required procedures for public hearing noticing requirements.

Mr. Lee read the items under review to be affirmed or denied based on the special exception requirements in Article 4 of Chapter 32. Mr. Lee stated he would entertain a motion.

For the first item, Chairman Lee read:

Based on the evidence presented to the Board, the proposed special exception does meet the standards put forth in the Oconee County Unified Performance Standards Ordinance.

Chairman Lee then stated: Chair will entertain a motion. Mr. Hughes motioned for approval. Mr. Littlefield seconded the motion. The motion passed unanimously.

For the second item, Chairman Lee read:

Based on the evidence presented to the Board, the proposed special exception is compatible with current and known planned land uses in the district and will not substantially diminish the value of adjacent property in the district.

Chairman Lee then stated: Chair will entertain a motion. Mr. Medford motioned for approval. Mr. Hughes seconded the motion. The motion passed unanimously.

For the third item, Chairman Lee read:

Based on the evidence presented to the Board, the proposed special exception will have a positive impact on the general health, safety, and welfare of the residents of Oconee County

Chairman Lee then stated: Chair will entertain a motion. Mr. Medford motioned for approval. Mr. Reckert seconded the motion. The motion passed unanimously.

Mr. Stephens explained that he would read the items under review to be affirmed or denied based on the special exception requirements in Chapter 38 (Zoning Enabling Ordinance) Article 7:

For the fourth item, Mr. Stephens read:

1) The proposed special exception is in accordance with the comprehensive plan and is consistent with the spirit, purposes, and the intent and specific requirements of this chapter, to include the definition and intent of the district in which the special exception is being requested;

2) The proposed special exception is in the best interests of the county, the convenience of the community and the public welfare;

3) The proposed special exception is suitable for the property in question, and designed, constructed, operated, and maintained so as to be in harmony with and appropriate in appearance to the existing or intended character of the general vicinity;

4) The proposed special exception is suitable in terms of effects on highway traffic, parking and safety with adequate access arrangements to protect streets from undue congestion and hazards.

Mr. Hughes moved to approve all four items as stated. Mr. Nichols seconded the motion. The motion passed unanimously.

Chairman Lee stated: Chair will entertain a motion for approval of the Special Exception.

Mr. Reckert motioned to approve the special exception. Mr. Hughes seconded the motion. The motion passed unanimously.

Chairman Lee called for a brief recess for preparation of the Board Order.

Chairman Lee called meeting from recess and called for a motion to approve the Board Order.

Mr. Nichols made a motion to approve the Board Order. Mr. Hughes seconded the motion. The motion passed unanimously.

Item 5. Administrative Appeal 117-00-0-014

Mr. Stephens gave the statement of the matter. He stated that an individual decided to build a tower structure and then consulted with staff about the structure. It was staff's decision that Chapter 32 Article 4 applied to the situation. The individual decided to appeal that decision.

Applicant Comments:

The applicant (Mr. Hopkins) commented that he asked if there were any regulations concerning tower height. He believed to have remembered the answer being 65' as the height limit. Mr. Hopkins built the tower based on that belief. He stated the purpose of the tower was to "bring his family into the 21st century" by providing internet service. He added that the tower works and that he has been using it. Mr. Hopkins stated he wanted clarification on whether he is truly a commercial enterprise and what the definition of that would be. He mentioned that it is a benefit to the community.

Mr. Hopkins added that he does not have the funds to jump through all to go through the review/approval process for commercial cell tower and that that is why he appealed; to get some clarification on where his tower falls in regards to commercial or private.

Mr. Littlefield asked Mr. Hopkins about some of the specifications of the tower. He also asked Mr. Hopkins if he was charging anyone for the service.

Mr. Hopkins detailed the technical specifications of the tower and that he was in deed charging some of the recipients of his service. He added that he "had not even covered his costs yet". He stated that it is possible to make some money out of it.

Mr. Lee asked Mr. Hopkins if he had any engineering documents or wind load data to go with the towers construction.

Mr. Hopkins responded that he has experience building signs taller than the tower and that he has no actual data but that the tower had been up for about six months and been through a lot of heavy windstorms with no problems.

Mr. Nichols asked Mr. Hopkins about his servers.

Mr. Hopkins mentioned his servers are from his former ISP (in Arkansas) and are now in an office in Walhalla. He also mentioned that he would like to put a storage/workshop at the tower and that he would need power for that reason.

Staff Comments:

Mr. Stephens discussed the initial contact made by Mr. Hopkins concerning the tower. He mentioned that Mr. Hopkins desired to provide service to the people in the area and be an ISP, similar to what he did in Arkansas. Mr. Stephens states that he reviewed the case with staff. Staff came to the conclusion that the ordinance would apply to the plans Mr. Hopkins disclosed. Mr. Stephens also covered that the tower construction was not permitted and that it would require engineering data as well. Mr. Stephens followed that as conversations continued, Mr. Hopkins professed to not want to be an ISP any longer and that he would want to provide service for his own. At that point of the conversation, Mr. Stephens stated that he stood by staff's original decision.

Mr. Littlefield asked Mr. Stephens about the 65 foot height limit.

Mr. Stephens clarified that the 65 foot height limit is irrelevant to the tower; that the ordinance requirement has to do with use, not height. He mentioned that the height limit is found in building height limit regulations in Article 9 of Chapter 32.

Mr. Hopkins stated that he would like to be an ISP and make money. He added that he does not currently have the capability to do so at his current tower height. He mentioned that he would like to continue to provide service to those that he currently provides to. He stated that he does have the business My State Live as Mr. Stephens had mentioned, but that it covered a lot more services than just ISP. He followed that they are "not really "that (an ISP)" anymore".

Mr. Hughes asked Mr. Stephens if the issue is whether it is a commercial enterprise or is it an issue with the tower.

Mr. Stephens responded by reading the ordinance under discussion. He stated that he believes Mr. Hopkins originally disclosed his intent to be a commercial enterprise which would force the ordinance to apply.

Mr. Lee asked Mr. Hopkins if he applied for a building permit.

Mr. Hopkins informed Mr. Lee that he had not applied for a building permit because did not think he needed one due to a misunderstanding.

Mr. Stephens responded that that is an issue that staff will need to follow up with Mr. Hopkins on regardless of the Board's decision.

Mr. Lee asked Mr. Hopkins if he intends to charge money now or in the future.

Mr. Hopkins responded that he does intend to charge money but not to make money with the current size of the tower.

Mr. MacMahan spoke for public comment in support of Mr. Hopkins plans for a tower. He believed that many residents are living just outside of ever getting broadband service due to their rural location and that Mr. Hopkins tower would fill that void.

Mr. Lee proposed for staff to develop a written finding of fact along with Mr. Littlefield of the Board. He believes the Board should table the issue until the next meeting. Mr. Lee motioned to table the matter until the next meeting. Mr. Littlefield seconded the motion. The motion carried unanimously.

Item 6. Old Business

None.

Item 7. New Business

Mr. Littlefield motioned that the Board meet with staff to try and improve the procedures in place dealing with towers and the visual analysis. Mr. Hughes seconded the motion. The motion carried unanimously

Mr. Reckert suggested the site plans submitted to the Board be in larger print or easier to read.

Next Board meeting will be Thursday, November 21.

Item 8. Adjourn

Mr. Lee made a motion to adjourn. Mr. Reckert seconded the motion. The motion passed unanimously.