



Minutes

Board of Zoning Appeals

6:00 PM- Monday, September 28TH- 2020

Members present:

Jim Codner
John Eagar
Gwen Fowler
Charles Morgan
Marty McKee

Staff present:

Adam Chapman, secretary
Vivian Kompier

Media present:

None

- ITEM 1- Call to Order – Mr. Codner called the meeting to order at 6PM
- ITEM 2- Brief statement about rules and procedures – Mr. Codner outlined the rules and logistics for the applicants and citizens in council chambers.
- ITEM 3- Approval of minutes of May 28th, 2020 meeting.
- ITEM 4-** Special exception hearing for application #SE20-02- Construction of a new communication tower. The applicant is applying to construct a 250' tall communication tower located at 224 Highway 107 in Mountain Rest TMS 093-00-01-049

Mr. Codner opened the hearing. The applicant, Johnathan Yates or Hellman, Yates, and Tisdale attorneys and counselors at law introduced the proposed communications tower plan. Mr. Yates provided visual representations of the proposed tower's height from various locations in the immediate area. Mr. Yates noted this tower will include AT&T's "First-net service" which is to operate, maintain, and improve the first high-speed, nationwide wireless broadband network dedicated to public safety.

Mr. Codner opened the floor for public comment in support or in opposition to the proposed communication tower:

Speaking in-favor of the project	Representing	Reason in-favor
Charlie Price	Self	Emergency services communications
Bob Craig	Property owner	Betterment of the community via communications
Speaking in-opposition of the project		
Mike Ahern	Self	Visual nuisance, phone and internet available already, lighting nuisance, scenic highway location
Ernie Lombard	Self	Visual nuisance and not compatible with the scenic highway.
Lee Ahern	Self	Visual nuisance and not compatible with the scenic highway. Not against tower, just against the tower there.

Rebuttal by Mr. Yates:

Mr. Yates noted that the lighting issues will be upscale, there will be little to no traffic generated, this project will provide improved wireless communications and internet services, and the ability for first responders to utilize AT&T's FirstNet services.

Mr. Eagar asked if the tower could be moved back off the road further. Mr. Yates indicated due to technical specifications it could not be located elsewhere on the property. Mr. Morgan asked about the distance from the road, Mr. Yates noted it will be 266' from the road. Mr. Codner asked Mr. Chapman to present the balloon-test photos to the citizens present.

Mr. Codner began the voting process with the Special Exceptions Sec. 32-5 General criteria for granting a special exception.

1. *is* in accordance with the comprehensive plan and 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;
 - a. Motion: Mr. Eagar made the motion Mr. Morgan seconded the motion.
 - b. Discussion: Mr. Morgan noted the similarities to a prior case for a communications tower on Highway 11 and that

the Board felt that a communications tower adjacent to a scenic highway was not appropriate.

Mr. Codner noted this a balance of needs of technology and the needs to keep a scenic area scenic and that this communication tower conforms to the comprehensive plan.

Mr. Eagar noted this tower conforms to the comprehensive plan.

c. Vote: Vote 4:1 with Mr. Morgan voting against

2. *is* in the best interests of the county, the convenience of the community and the public welfare;

a. Motion: Mr. Eagar made the motion and Mr. Mckee seconded.

b. Discussion: Mr. McKee noted that safety needs being met are good for the general welfare of the Community.

Mr. Eagar noted this project is in the best interest of the County and community.

c. Vote: 5-0

3. *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;

a. Motion: Mr. Eagar made the motion, Mr. Morgan made the seconded.

b. Discussion: Mr. Morgan noted this is the sticking point and asked if making this a stealth tower to make the tower look like a tree. Mr. Codner asked Mr. Yates if a stealth design is possible. Mr. Yates did not believe so and the way the tower is self-supported without the guy wires a stealth design is the least obtrusive way. Mr. Eagar noted the design as submitted is unobtrusive as shown. Mr. Morgan noted that being consistent with prior Board decisions is important. Mr. Morgan noted that precedent being set on one case being different from another is not consistent. Mr. Morgan does not think the tower is in harmony with the community in the area. Mr. Morgan noted that being consistent with rulings is important. Mr. Codner noted that the board cannot be restricted by previous votes by the board and that the board needs to look at this case with the information presented at this time. Mr. Eagar noted that as we, as a society, become more technology dependent that we have to assist in supporting that growth. Mrs. Fowler noted she lived in Mountain Rest for 30-years and having the ability to call for help is a necessity for both locals and tourists.

c. Vote: 3:2 with Mr. Morgan and Mr. McKee voting against

4. *is* Suitable in terms of effects on highway traffic, parking and safety with adequate access arrangements to protect streets from undue congestion and hazards.

a. Motion: Mr. Eagar made the motion, Mr. Morgan seconded the motion

- b. Discussion: Mr. McKee, Eagar, and Codner noted traffic is a non-issue with this proposed development.
- c. Vote: 5-0

Mr. Codner then noted based on the evidence presented to the Board, do I hear a motion that the proposed special exception be approved (or denied if even one criterion is not met).

- a. Motion: Mr. Eagar made the motion, Mr. Morgan seconded the motion.
- b. Discussion: No additional discussion.
- c. Vote: 4:1 with Mr. Morgan voting against.

ITEM 5- Variance request for application #VA20-4- 12.7' variance from the required 25' setback from a right-of-way for permitting an existing carport at 510 Rainbow Road, Seneca 29678 / TMS 241-01-01-001.

The applicant, Brad Johnson, noted that the house had its roof blown off during the Seneca tornado on April 13th, 2020. He noted Rainbow road ends at his property and is less than 600' long. Mr. Johnson gave a brief outline of the surrounding properties and the topographic issues related to his property. He did note that the builder built the structure prior to permitting. Mr. Codner noted that six emails were sent in support of this proposed variances. There were no comments in opposition.

1. There *are* extraordinary and exceptional conditions pertaining to the particular piece of property;
 - a) Motion: Mr. Eagar made the motion, Mr. Morgan seconded.
 - b) Discussion: Mr. Codner noted that topography and the road right-of-way appeared to be an issue with this site.
 - c) Vote: 5:0
2. These conditions *do not* generally apply to other property in the vicinity;
 - a) Motion: Mr. Eagar made the motion, Mr. Morgan seconded the motion.
 - b) Discussion: Mr. Codner noted there were unique circumstances.
 - c) Vote: 5-0
3. Because of these conditions, the application of this chapter to the particular piece of property *would* effectively prohibit or unreasonably restrict the utilization of the property; and
 - a) Motion: Mr. Eagar made the motion, Mr. Morgan seconded the motion.
 - b) Discussion: None
 - c) Vote: 5-0
4. The authorization of a variance *will not* be of substantial detriment to adjacent uses or to the public good, and the character of the district will not be harmed by the granting of the variance.
 - a) Motion: Mr. Eagar made the motion, Mr. Morgan seconded it.

- b) Discussion: Mr. Eagar made the motion, Mr. Morgan seconded it.
- c) Vote: 5-0

Mr. Codner noted” based on the evidence presented to the Board, do I hear a motion that the proposed Variance be approved (or denied if even one criterion is not met)”.

- a. Motion: Mr. Eagar made the motion, Mr. Morgan made the second.
- b. Discussion: None
- c. Vote: 5-0

ITEM 6-

Variance request for application #VA20-5- 15’ variance from the required 25’ setback from a right of way for construction of a new home TMS# 052-01-01-057 (unaddressed parcel) on Evergreen Ridge Road, Lot 17, with nearest addressed parcel being 339 Evergreen Road.

Staff note: Mrs. Fowler recused herself from this hearing due to a conflict of interest. Recusal form attached to these minutes.

Mr. Eagar asked staff about the normalcy of a five (5) foot side throughout the County. Mr. Chapman noted five feet is the side setback for Control-free District.

Mr. Lauren Wise, representing himself as a potential buyer. Mr. Wise noted there was an original bench-cut of land for a house however a previous owner placed a septic tank and field. Mr. Wise noted the steepness of the lot as being a constraint to build. Mr. Wise noted the neighboring properties with houses were built prior to the County having development standards and are built very close to the right of way.

Mr. Codner opened the floor for public comment in support or in opposition to the proposed variance:

Speaking in-favor of the project	Representing	Reason in-favor
None	-----	-----
Speaking in-opposition of the project	Representing	Reason in-opposition
Nancy Cochran	Self	Not extraordinary or special in relation to surrounding properties. Contests accuracy of survey
Andrew McCall	Self	Building in this area is a known challenge. Survey provided is not correct. Concerns about traffic and parking issues.

Rebuttal by Mr. Wise:

Mr. Wise noted that the septic permit is being followed and the installed septic tank is in place and only gives thirty feet between septic and road right of way. The consideration is not the view, but the grade of the lot and the existing septic tank and field. Mr. Wise's wife, Mrs. Wise noted where the house is going and the relationship to the required setback, proposed setback variance, septic field, and the neighboring home. Mr. Codner asked if moving the septic field is an option to move the house. Mr. Wise noted that the grade and the lack of native soil would preclude the installation of a different septic system. Mr. Eagar asked if the age of the septic system and if it would still work. Mr. Wise noted that the septic tank location was identified but as they do not own the property there has not been an inspection or any repair done to the existing tank.

1. There *are* extraordinary and exceptional conditions pertaining to the particular piece of property;
 - d) Motion: Mr. Eagar made the motion, Mr. Morgan seconded the motion.
 - e) Discussion: Mr. Morgan noted for safety a steep drop off is not an appropriate thing to build alongside a road. The topography is extraordinary. Mr. Codner agreed with Mr. Morgan.
 - f) Vote: 4-0

2. These conditions *do not* generally apply to other property in the vicinity;
 - d) Motion: Mr. Eagar made the motion, Mr. Morgan seconded the motion.
 - e) Discussion: Mr. McKee noted topography is similar to other lots in the area. Mr. McKee noted that the septic system setup on this lot makes this unique. Mr. Morgan noted such a large retaining wall near the road, if the variance is not granted, could be an unnecessary danger. Mr. McKee noted gravel roads, especially narrow ones like this, move over time and the retaining wall could be a hazard that sets this request apart.
 - f) Vote: 4-0

3. Because of these conditions, the application of this chapter to the particular piece of property *would* effectively prohibit or unreasonably restrict the utilization of the property; and
 - d) Motion: Mr. Eagar made the motion, Mr. Morgan seconded the motion.
 - e) Discussion: Mr. Codner noted that the future use of the house, as a private dwelling or as a rental is not what the Board is look at. Mr. Eagar noted that rentals may create more traffic.
 - f) Vote: 4-0

4. The authorization of a variance *will not* be of substantial detriment to adjacent uses or to the public good, and the character of the district will not be harmed by the granting of the variance.
 - d) Motion: Mr. Eagar made the motion, Mr. McKee seconded the motion
 - e) Discussion
 - f) Vote: 4-0

Mr. Codner noted “Based on the evidence presented to the Board, do I hear a motion that the proposed Variance be approved (or denied if even one criterion is not met)”.

- a. Motion/second: Eagar/Morgan
- b. Discussion: None
- c. Vote on original motion with any conditions as amended: 4-0

ITEM 7- Adjourn