

**MINUTES OF THE
NASH COUNTY BOARD OF ADJUSTMENT MEETING
HELD TUESDAY, SEPTEMBER 25, 2018 AT 6:00 P.M.
CLAUDE MAYO, JR. ADMINISTRATION BUILDING – THIRD FLOOR
FREDERICK B. COOPER COMMISSIONERS ROOM**

BOARD MEMBERS PRESENT

James McDonald “Mac” Tilley, Chairman
Cindy Joyner, Vice-Chairman
William Parker, Regular Member
Tommy Bass, Regular Member
Dennis Cobb, Alternate Member #1

BOARD MEMBERS ABSENT

Charles Johnson, Regular Member
Kenneth Mullen, Alternate Member #2

STAFF MEMBERS PRESENT

Nancy Nixon, Planning Director
Adam Tyson, Senior Planner
Windy Braswell, Planning Technician
Jessica Flores, Planning Technician

ATTORNEY TO THE BOARD

Dylan J. Castellino

OTHERS PRESENT

Brent A. Glover
V. Randy Glover
Jim LaPann
Sanjay Gupta
Graham Herring
Susan Rabold
Jon Edwards

1. Call to Order.

Chairman Tilley called the meeting to order at 6:00 p.m.

2. Determination of a Quorum.

Chairman Tilley recognized a quorum.

3. Recognition of the Voting Members.

Chairman Tilley recognized the voting members for this meeting to be himself, Ms. Joyner, Mr. Parker, Mr. Bass, and Mr. Cobb.

4. Approval of the Minutes of the July 30, 2018 Regular Meeting.

The minutes of the July 30, 2018 regular meeting were previously mailed to each member of the Board for review. Chairman Tilley asked if there were any revisions or additions. None were offered.

BOARD ACTION: Mr. Bass offered a motion which was duly seconded by Mr. Cobb to approve the minutes of the July 30, 2018 regular meeting as submitted. The motion was unanimously carried.

5. Oath of Witnesses.

All persons wishing to give testimony during the public hearing were sworn in by Chairman Tilley.

6. Special Use Permit Request S-180702 Made by James L. LaPann with Faulk & Foster Real Estate, Inc. on behalf of Verizon Wireless to Authorize the Construction and Operation of a 195 Foot Monopole Cell Tower and Wireless Telecommunications Facility to be Located on the North Side of Fire Tower Road (S.R. 1138) West of S NC Highway 581 and Across From Morgan Road (S.R. 1177) on an Approximately 44 Acre Tract in the Ownership of Brent A. Glover in the R-40 Single-Family Residential Zoning District.

- AND -

Variance Request V-180701 Made by the Same Applicant to Authorize the Same Proposed 195 Foot Monopole Cell Tower to Exceed the Standard 150 Foot Maximum Height Limitation Required for Freestanding Non-Concealed Wireless Communication Facilities Located in Residential Zoning Districts by the Nash County Unified Development Ordinance Article XI, Section 11-5, Subsection 11-5.5 (3)(c)(ii).

Chairman Tilley recognized Mr. Tyson to present the staff report.

Mr. Tyson began by reviewing the notice of public hearing and stating that, in accordance with the requirements of the Nash County Unified Development Ordinance and the North Carolina General Statutes, a written notice of this public hearing was sent by first class mail on September 12, 2018 to the permit applicant and to the owner of the subject property as well as to the owners of record for tax purposes of all properties located within 600 feet of the subject property. A notice of this public hearing was also published in the Rocky Mount Telegram on September 13, 2018 and posted prominently on the subject property itself on September 12, 2018.

Mr. Tyson reported that Special Use Permit Request S-180702 had been by submitted James L. LaPann with Faulk & Foster Real Estate, Inc. on behalf of Verizon Wireless to authorize the

construction and operation of a 195 foot (199 foot including the lightning rod) monopole cell tower and wireless telecommunications facility to be located on the north side of Fire Tower Road (S.R. 1138) west of S NC Highway 581 and across from Morgan Road (S.R. 1177) on an approximately 44 acre tract in the ownership of Brent A. Glover in the R-40 Single-Family Residential Zoning District. Mr. Tyson continued, stating UDO Article XI, Section 11-5, Subsection 11-5.5 (3)(c)(ii) limits the maximum height of a freestanding non-concealed wireless communication facility located in a residential zoning district such as this one to only 150 feet. Therefore, the applicant has also submitted Variance Request V-180701 in order to request permission to exceed this limitation and to allow the tower to be constructed to the proposed height of 195 feet. Mr. Tyson explained that the facility is intended to improve wireless service coverage in the southern portion of Nash County. The tower would be utilized initially by Verizon Wireless and is designed with the additional capacity to support wireless antenna array collocations for up to four other wireless service providers in the future. He stated that the proposed site plan includes a 60' x 60' fenced ground compound with planted landscape screening around the base of the tower to enclose the related equipment cabinets located within a larger 100' x 100' lease area accessible from Fire Tower Road by a 30' wide private access and utility easement. The site is located on the west side of S NC Highway 581 between W NC Highway 97 to the north and the Town of Bailey to the south. It is not located within a regulated floodplain, however, it does appear to include stream features that could potentially be subject to riparian buffer requirements. The site is also located within the WS-III-BW Watershed Protection Overlay District, meaning that the total built-upon area of the project may not exceed 24% of the overall area of the tract. There are currently no existing structures located on the subject tract.

Mr. Tyson stated that the Nash County Land Development Plan (LDP) designates the subject property as Suburban Growth Area, which it defines as "those areas of the County where significant residential growth is expected to occur within the 10-year planning horizon." The proposed cell tower and wireless telecommunications facility would be considered to be in general conformity with the recommendations of the LDP for this Suburban Growth Area due to the modern necessity of wireless service coverage for residential development. He explained that the UDO prioritizes the placement of wireless communication facilities on County-owned property whenever possible, however, in this case Nash County Public Utilities has determined that they are not interested in locating this proposed facility on the County-owned elevated water tank property located across from the subject site at 5953 Fire Tower Road due to concerns related to space limitations and equipment maintenance.

Mr. Tyson reminded the Board that prior to the issuance of a special use permit, the Board of Adjustment must conclude, based upon the evidence and testimony presented at the public hearing, that:

- (1) The submitted permit application is complete;
- (2) The proposed development complies with all of the applicable requirements of the Nash County Unified Development Ordinance;
- (3) The proposed development will not materially endanger the public health or safety;
- (4) The proposed development will not substantially injure the value of adjoining or abutting property;
- (5) The proposed development will be in harmony with the area in which it is to be located; and
- (6) The proposed development will be in general conformity with the Nash County Land Development Plan.

He stated that if the Board concludes that the proposed development will not comply with any one of the above requirements, then it may either deny the permit request or attach additional reasonable conditions to the permit in order to ensure its compliance.

Mr. Tyson then defined a variance as "*official permission to depart from the requirements of this ordinance*" (UDO Article II, Section 2-4.198) and stated that general variance requests are heard and decided by the Board of Adjustment.

The North Carolina General Statutes require that when unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of ALL of the following:

- (1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
- (4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

Mr. Tyson instructed the Board that they may impose appropriate conditions on a variance, provided that the conditions are reasonably related to the variance itself or the related requirements of the ordinance. Whereas any other action taken by the Board of Adjustment only requires a simple majority vote, the issuance of a variance requires a four-fifths majority vote.

Mr. Tyson directed the Board to materials included in the meeting agenda packet which visually interpreted how the proposed cell tower would appear. He instructed the Board that prior to granting a variance, the Board of Adjustment must adopt a set of specific reasons or findings which explain how the request satisfies the requirements detailed above. A variance request shall be denied if any one or more of the above criteria are not satisfied or if the application is determined to be incomplete.

Mr. Tyson said that CityScape Consultants Inc., in its capacity as telecommunications consultant for Nash County, has reviewed the application and related documentation submitted for the project. He stated that in a report dated September 6, 2018, CityScape determined that the need for a cell tower and wireless telecommunications facility in the proposed location is justified due to technological reasons and is essential in order for the applicant (Verizon Wireless) to continue to provide its telecommunications service in the area. The report also states that this project (with the specific exception of the proposed tower height) will comply with all the applicable requirements of the Nash County Unified Development Ordinance as well as all other pertinent telecommunication-related state and federal rules and regulations. Therefore, CityScape Consultants Inc. recommends approval of Special Use Permit Request S-180702 to authorize the construction and operation of a monopole cell tower and wireless telecommunications facility at the proposed site located on the north side of Fire Tower Road subject to the suggested permit conditions.

Mr. Tyson listed suggested conditions for the Board's review as:

- (1) The proposed cell tower and wireless telecommunications facility shall be developed on the subject property in accordance with the approved site plan and in compliance with all of the applicable requirements of the Nash County Unified Development Ordinance.
- (2) The height of the proposed tower support structure shall not exceed the 150 foot maximum height permitted by the Nash County Unified Development Ordinance for a freestanding non-concealed wireless communication facility located in a residential zoning district unless otherwise authorized by the issuance of a variance or an amendment to the applicable ordinance requirements.
- (3) Prior to the issuance of a construction authorization, the applicant shall provide a structural analysis for review by CityScape Consultants, Inc. and acceptance by Nash County demonstrating that the proposed tower will support a total of five (5) wireless antenna arrays comparable to that of the applicant's initial proposed equipment installation;
- (4) Prior to the issuance of a construction authorization, the applicant shall provide a revised site layout plan for review by CityScape Consultants, Inc. and acceptance by Nash County depicting a total of five wireless service provider equipment lease areas within the fenced ground compound.
- (5) Prior to the issuance of a construction authorization, the applicant shall provide a statement verifying that the proposed facility will comply with the FCC's OET-65 RF exposure requirements.
- (6) Prior to the issuance of a construction authorization, the applicant shall provide a Buffer Determination Letter from the North Carolina Department of Environmental Quality, Division of Water Resources demonstrating the project's compliance with any applicable riparian stream buffer requirements.
- (7) Prior to the issuance of a construction authorization, the applicant shall provide the required approvals from the State Historic Preservation Office (SHPO) and the U.S. Fish & Wildlife Service regarding the project.
- (8) Prior to the issuance of a construction authorization, the applicant shall provide a driveway permit issued by the N.C. Department of Transportation for the proposed new access drive on Fire Tower Road.
- (9) Prior to the issuance of a construction authorization, the applicant shall provide a revised landscape plan removing the proposed plantings on any sides of the fenced ground compound that will already be effectively screened from view by the existing, surrounding vegetation and relocating them in a more dense pattern to the sides of the compound that will be potentially visible from the road or adjacent properties.
- (10) All feed lines shall be installed within the support structure and antenna ports shall be sealed in a manner as to prevent access by birds and any other wildlife.
- (11) The proposed structure shall not be lighted, unless required by the FAA.
- (12) In the event that the antenna arrays are ever lowered to a height that is below a removable section of the monopole, then the tower owner shall remove this upper section that is no longer in use.
- (13) This special use permit is issued subject to the subsequent approval and issuance of the required Zoning Permit and Building & Trade Permits by the Nash County Planning & Inspections Department.

Mr. Tyson cautioned the Board against being concerned about the number of conditions as these are all conditions that have been addressed in previous applications. He summarized by saying that CityScape recommends approval of the special use permit subject to the conditions presented.

Mr. Tyson then drew the Boards attention to a supplemental report by CityScape, a copy of which was provided to the applicant.

Mr. Tyson reported that CityScape Consultants, Inc. submitted an additional report dated September 24, 2018 that serves as a supplement to its original report dated September 6, 2018. The supplemental report addresses and corrects an error from the previous report whereby the proposed tower location was considered a wireless service coverage site when it should actually be considered a wireless service capacity site. He instructed the Board to disregard the erroneous description in the original information pertaining to the tower site as a wireless coverage site. He explained that although CityScape has changed the supporting reasons, they still recommend denial of the variance for a taller tower.

Mr. Tyson stated that in the corrected supplemental report, CityScape acknowledges that restricting the proposed tower to the standard 150 foot height limitation will offer less wireless coverage area and service than could potentially be provided by a taller tower, however, the supplemental report also concludes that a 150 foot tower would still be sufficient to satisfy the need for additional wireless service capacity in this residential area.

He added that the report states that the standard 150 foot height limitation required in residential zoning districts does not prohibit the applicant from accomplishing its wireless service goals by either installing additional equipment on other existing towers in the subject area or, when necessary, by constructing additional towers in compliance with the applicable ordinance requirements, including the height restriction.

Mr. Tyson continued, saying that CityScape Consultants Inc. recommends denial of Variance Request V-180701 to allow the proposed tower to exceed the standard 150 foot tower height limitation required in residential zoning districts based on its determination that the enforcement of the height restriction does not constitute an "unnecessary hardship" as defined by the variance standards and its determination that allowing the proposed tower to exceed the height restriction would not be consistent with the spirit, purpose, and intent of the Nash County Unified Development Ordinance.

He said that CityScape's report cautions that granting this variance to increase the permitted tower height in a residential zoning district just to allow this applicant to reach a larger service area using only a single tower could set a precedent entitling other tower applicants to the issuance of similar variances in the future.

Mr. Tyson then addressed the portion of the staff report that offered suggested motions for the Board to consider regarding the Special Use permit and then to the section of the report regarding the variance. Mr. Tyson instructed the Board that their regular attorney, Mr. Rose, suggested that if the Board felt comfortable in approving either request, the staff and Mr. Castellino could help in adopting those findings, but if the Board is inclined to deny either request, that the Board consider tabling the matter until the next meeting and instruct the staff and the attorney to come back with a set of supporting findings of fact and conclusions for review and adoption at that time.

Mr. Tyson offered to take any questions that the Board may have for the staff. He suggested that CityScape representatives present their report next, followed by the applicant, Mr. LaPann and then to open the floor to the public.

Chairman Tilley asked Mr. Tyson if one or both requests could be voted on or tabled as the Board sees fit.

Mr. Tyson confirmed but passed along the advice of the Board's regular attorney, Mr. Rose, that if the Board chooses to approve either request, they have the resources to do so. If the Board is inclined to deny either request, the Board's best interest may be served by indicating to the applicant their intended action but tabling the action until supporting documentation can be drafted supporting that action.

Mr. Tyson introduced the CityScape representatives as Mr. Jonathan Edwards and Ms. Susan Rabold.

Mr. Edwards addressed the Board to explain the difference in the terminology regarding coverage versus a capacity site and how that resulted in the original report from CityScape and the subsequent corrected report. He explained that the farther away you are from a cell tower, the weaker your cell signal becomes. The taller the tower, the farther out the signal goes. This is basically how coverage works. He further explained that your phone could have four bars but if those resources are used up, or there are too many people accessing that device, your phone won't work even though it is showing plenty of signal strength. This is capacity. Mr. Edwards stated that the information submitted by Verizon used both capacity and coverage verbiage. Based on the wording in the original submittal, CityScape concluded that Verizon was attempting to broaden its coverage. Once their initial report was sent out, Verizon clarified that it was seeking a capacity site. Their original conclusion of a coverage site resulted in the proposed idea of using two existing towers instead of the construction of a singular new tower for supplemental coverage. Mr. Edwards explained that this proposal was unfeasible when it became clear that the applicant was searching for a capacity site instead of a coverage site. The need for a capacity site limits the location to approximately a half mile radius within their search area. If the tower is not located within this particular area, the capacity cannot be improved for the area that is having issues. CityScape concluded that this was the best area for the new tower. Mr. Edwards continued, saying that the height of a capacity tower is limited because too much area coverage is not desirable. If the desire is to improve the capacity, the tower height needs to be such that the coverage is to a more confined area making a shorter tower a more reasonable choice. He informed the Board that because the applicant is seeking additional coverage to the northern area as well as more capacity, CityScape has determined that a shorter tower will work best for the capacity need and additional infrastructure will be necessary to improve coverage to the area identified as even a tower of 190 feet would not substantially improve coverage to the northern area.

The applicant, James LaPann, identified himself as a Zoning Specialist with Faulk & Foster Real Estate, Inc. and addressed the height issue of the tower. He questioned how the ordinance height limit of 150 feet for residential districts was chosen.

Mr. Tyson replied that he was not privy to that information, but he speculated that the height limit was chosen for aesthetic reasons limiting the height of utility structures in residential areas. He stated that the limits were adopted at the recommendation of CityScape and he deferred the question to them.

Susan Rabold stated that when the Nash County ordinance and Master Plan were developed more than 8 years ago, the goal of the County was to come up with a height that was the least of the maximums. Based on models ranging from 100 feet to 300 feet and the amount of coverage provided versus the number of structures necessary to provide that coverage, the height of 150 feet was established for residential areas to ensure coverage but to still maintain aesthetics by the County.

Ms. Joyner asked Ms. Rabold about ordinance requirements regarding tower height in other counties.

Ms. Rabold answered that the height limits varied. Some counties limit height to 100 feet and they want the tower to be concealed. She said some communities have 199 foot towers maximum limits because they're concern is just getting service. The height limitation is very specific to each community or county. Ms. Rabold stated that CityScape does not make recommendation on heights. They allow the client to tell them what is desired and then, based on CityScape's understanding of the client's wishes, they present their review.

Mr. Tyson informed the Board that the 150 foot limitation is for residential zones. There is a 300 foot height limitation for non-residential zones. If the Special Use permit is approved at the current height limitation, the applicant is not precluded from appearing before the Board of Commissioners and asking for an amendment to the ordinance. He cautioned the Board that they are currently operating under the ordinance as it exists and therefore their options at this time would be limited to approving or denying the variance request.

Mr. LaPann expressed his delight to learn how the ordinance evolved. He stated that the concept of a variance is what is consistent with public safety and common sense currently and whether maintaining the current height limitation is a hardship when applied to this applicant. Mr. LaPann stated his intent to present how technology has drastically changed over the last 8 to 10 years and how the demand for data has increased exponentially as well as the draw on the available signal.

Mr. LaPann introduced his colleague, Mr. Sanjay Gupta to the Board and asked the Board to allow him to help Mr. Gupta with his communication to the Board.

Mr. Gupta stated that he works for Verizon Wireless and has over 31 years of experience. He stated that technology is moving into the 5th generation of mobile technology or 5G which requires a higher frequency band and that the presented models were done on a low frequency band. Mr. Gupta stated that he ran models based on the 2100 megahertz frequency band at the 150 foot height and he determined that that height was insufficient. His concern was the area that they are trying to improve coverage/capacity involves a local high school where a large number of students are consuming a large volume of data and at the 150 foot height, the reception outside the building was poor. Mr. Gupta informed the Board that Verizon has 60 percent of the market and their desire is to provide fast download speed for everyone on their network. He equated the height of the tower with the signal's ability to penetrate a building's wall within a larger footprint coverage area.

Mr. LaPann asked Mr. Gupta to elaborate on the portion of Mr. Edward's remarks regarding the search ring and its importance to the tower's location. Mr. Gupta referenced YouTube and Netflix as popular applications requiring speed and data and the precise calculations used to determine the optimal location in relation to existing network. Mr. Gupta agreed the Mr. Edwards was correct in that capacity is better served by a shorter tower height, but he stated that line of sight is very important for higher frequencies and a taller tower goes towards line of sight.

Mr. LaPann asked Mr. Gupta what the data usage was in 2008 and what data usage was today.

Mr. Gupta responded that data usage has increased 500 times since 2008 and everyone wants everything immediately regarding their smart phone usage.

Mr. LaPann told the Board that Mr. Gupta had explained why the height of the tower was necessary and how a 150 foot limit would create a hardship regarding coverage and speed. He then turned his attention to the issue of aesthetics. He referenced photo simulations prepared to emphasize the visual impact of the proposed tower and asked Mr. Graham Herring to address the Board regarding specifics of how the photos were created.

Mr. Graham Herring addressed the Board and stated that he has been involved in the telecommunications industry for 30 years. He flies balloons and blimps at proposed tower heights according to jurisdictional ordinance requirements and providing photorealistic presentations of the telecommunications facility. He displayed actual photos of the blimp he flew at the requested tower height from various locations around the proposed site to give a visual representation of what could be seen.

Mr. LaPann reviewed the same photographs for the Board as to how far away it was taken from the pole. He offered the photos to the Board for review. He submitted to the Board that visibly, there would be little difference if the tower height was allowed to be 190 feet. Any hardship incurred would be suffered by the people surrounding the site including school children and first responders. He pointed out to the Board that the ordinance pertaining to the tower height is ten years old. Mr. LaPann stated that his last point to make was towards setting precedent. He offered that he has been involved with Planning and Zoning for twenty years including representing Planning Boards as well as Boards of Adjustment. He stated that each and every application is different based on its own set of facts. He stated that without good supporting facts, a variance is not granted. If the facts are good, a variance is granted.

Chairman Tilley asked Mr. LaPann that if the Board were to allow the Special Use permit for a tower, but not the Variance for the increased height, did that imply that the applicant would not put a tower on the site at all.

Mr. LaPann informed the Board that if the height request variance request is denied, the applicant intends to request that the ordinance be changed.

Vice-Chairman Joyner said that, based on the applicant's statement, data usage has increased 500 times over the last ten years. If the tower is allowed at the 195 foot height, how long before that height becomes "out of capacity" compared to the 150 foot tower. She questioned whether the additional forty five feet would add six months or a year of additional relevancy until the next new technology renders that obsolete.

Mr. Gupta responded that their plans are projected over the next five years. Mr. Gupta stated that if they become over capacity, they will go to the FCC and buy more frequency.

Mr. Tyson addressed the Board to acknowledge that the need for data has increased nationwide as well as county wide, not just for this site. If Nash County needs to address its tower heights, there is a mechanism whereby it can go through the Board of Commissioners. He reminded the Board that their job at this meeting was to determine whether the applicant had provided sufficient justification to relax the height requirements as they exist based on something specific or particular to this site. Mr. Tyson invited CityScape representative to address the questions and concerns regarding the projected increased need for data in the Telecommunications Plan from 2008 as well as the proximity of this site to Southern Nash High School because of its specificity to this site and this community.

The Board took a 5 minute recess.

Upon reconvening, Ms. Rabold of CityScape addressed the Board to explain that when the Telecommunications Master Plan was developed, it was based on high frequency engineering. At that time, the United States was behind the mark in wireless deployment and more advanced Asian and European models were used. This allowed for future projections. Ms. Rabold acknowledged that fifth generation technology is going to need more sites and CityScape is currently booking at capacity for fifth generation sites. She said that typically these are small wireless facilities in the range of 30 to 50 feet in height and around 1/3 mile in distance depending upon the density of the area. They are usually about the size of a utility pole. Ms. Rabold emphasized that all this is taken into consideration when applications are reviewed by CityScape. She also wanted to clarify that CityScape is not biased. Their job is to review the request based on Nash County's ordinance and the Master Plan which CityScape helped design. Ms. Rabold informed the Board that if the County's desire is to hold the height limit at 150 feet, there are alternatives which CityScape would be happy to help identify.

Mr. Parker asked if sustainability was projected from a 150 ft tower height.

Ms. Rabold responded that the benefit of infrastructure is that it is reusable. She explained that what was built ten, twelve and even fifteen years ago is still in use. What is being built today will still be in use over the next fifteen, twenty, thirty even fifty years from now. She called these structures building blocks so construction does not have to begin from scratch each time. She reminded the Board that the goal of the county at the time was to limit heights in residential areas. CityScape was asked to present a height solution which would be applicable to the constituency at that time for residential areas and the solution was determined to be 150 feet. Ms. Rabold addressed Vice-Chairman Joyner's previous question regarding other communities by saying that she was recently in a rural area of Virginia with comparable to Nash but with more topography which had built their entire network with 100 foot towers. They used more towers due to the necessity of the towers being closer together. She stated that the number of collocations is limited due to the height of the towers, but that was what that county desired.

Mr. Edwards spoke to the Board regarding the proximity of the Southern Nash High School to the proposed tower location. He stated that for the signal to actually penetrate the school, the signal would need to be stronger. Mr. Edwards stated that, based on the coverage maps indicating coverage area at both the 150 ft tower height and the 190 ft tower height, there was no improvement in coverage for the school. He went on to convey that in regards to capacity, the location is the most important factor and that he agreed with Mr. Gupta in that, due to the increase in today's technology the reach of these set facilities are being limited so that they can reach a targeted area and improve capacity. The broader the coverage, the more users you have trying to access that cell resulting in less capacity. The equipment can only handle so many callers so coverage has to be limited so the equipment can handle the quantity of users. This is why towers have become shorter. Mr. Edwards went on to state that the 150 foot tower will meet capacity needs, the coverage aspect will dictate the need for an additional tower to improve the coverage. If you were to allow a 190 foot tower, it may allow the next tower to the north to support some of the coverage but it will not eliminate the need for an additional tower along highway 64. Mr. Edwards summarized by stating that CityScape feels that the capacity will be covered with a 150 foot tower, the coverage will need additional infrastructure. Mr. Castellino, the Attorney representing the Planning Board asked about Mr. Edwards's background and expertise.

Mr. Edwards stated that he graduated from Georgia Tech in 1996, has been in the broadcast/telecommunication field for approximately 15 years and in his current position of providing cellular analysis with CityScape for about 8 years. He added that he is a registered Professional Engineer in 5 states including North Carolina.

Mr. LaPann addressed the Board to comment on the remarks presented by CityScape. Mr. LaPann stated that most of what CityScape related involves “small cells.” He stated that he has recently been involved in such a project in Houston Texas and that these projects are not for rural areas but for more densely populated areas where several apartment buildings and the like are located. He asked Mr. Gupta to respond to the remark that Verizon could project both coverage and capacity at 150 feet.

Mr. Gupta stated that Mr. Edwards is 100 percent correct in that they can project coverage and capacity at 150 foot, but it can be done better with more height. He said the company currently uses 5G models, which indicate that service is better with line of sight contact so a taller tower would be better.

Mr. LaPann asked about the relationship of the proposed tower to other Verizon towers in the area, and Mr. Gupta agreed that the area near the school was located near a “fringe” area of an existing tower. He stated that the proposed 195’ tower would put the school in a more uniform coverage area by overlapping with the current tower, and this would give better service because a signal from one tower is better. Mr. LaPann noted that when multiple towers cover a fringe area, signal reception switches among the available towers, increasing the interference level for the customer. This would limit the data speed. Mr. LaPann showed a map indicating an area of coverage around the high school. Mr. LaPann stated that if a 150 foot tower is used, the student’s coverage would be limited and subject to interference. If the 190 foot tower is allowed, the school would be covered by one tower and have optimal coverage. He argued in favor for the variance because strict adherence to height ordinance as it exists would create hardships for the community and the school.

Chairman Tilley asked Mr. Tyson if there was anything he wanted to add.

Mr. Tyson stated that the Board had two requests with multiple motions – (1) Motions to approve or deny a Special Use Permit for a tower at the permitted 150’ and (2) motions for Approval/Denial of the variance request. If the Boards feels like it has enough information before it to make a decision regarding the special use permit then it should do so. As for the variance, regardless of which way the Board intends to decide, Mr. Tyson asked that the staff and attorney be given the opportunity to draft a findings and conclusions document for the Board’s review at a later date. Mr. Tyson suggested beginning with the special use request to determine whether the Board is in favor of allowing a cell tower of 150 feet at the proposed location.

If, at a later date, a variance or a text amendment is granted, then the height requirement would be amended.

Chairman Tilley stated that, as there appears to be no opposition to a tower located at the proposed site, the chair would entertain a motion regarding the special use request.

BOARD ACTION: Vice-Chairman Joyner offered a motion which was duly seconded by Mr. Parker to adopt the following findings of fact and conclusions related to Special Use Permit S-180702 based on the evidence and testimony presented at the public hearing:

FINDINGS OF FACT:

- (1) The subject property is a 44.09 acre parcel depicted as Tract 1 on Plat Book 13 Page 227 recorded in the Nash County Registry, further identified as Nash County Tax Map PIN #276600351805 and Parcel ID #300206, listed in the ownership of Brent A. Glover, and located on the north side of Fire Tower Road (S.R. 1138) west of S NC Highway 581 and across from Morgan Road (S.R. 1177) within the planning and zoning jurisdiction of Nash County, North Carolina.**
- (2) The application for Special Use Permit Request S-180702 was submitted by James L. LaPann with Faulk & Foster Real Estate, Inc. on behalf of Verizon Wireless in order to authorize the construction and operation of a cell tower and wireless telecommunications facility on the subject property intended to improve wireless service coverage in the southern portion of Nash County.**
- (3) The subject property is located in the R-40 Single-Family Residential Zoning District and the development of a cell tower and wireless telecommunications facility is permitted by the Nash County Unified Development Ordinance with the issuance of a special use permit and subject to the development standards required for wireless communication facilities by Article XI, Section 11-5.**
- (4) The subject property is designated by the Nash County Land Development Plan as Suburban Growth Area and the proposed cell tower and wireless telecommunications facility shall be in general conformity with the recommendations of the plan due to the modern necessity of wireless service coverage for residential development.**
- (5) The Nash County Board of Adjustment conducted a quasi-judicial public hearing on Special Use Permit Request S-180702 on September 25, 2018.**
- (6) Notice of the public hearing was sent by first class mail on September 12, 2018 to the permit applicant, to the owner of the subject property, and to the owners of record for tax purposes of all properties located within 600 feet of the subject property; published in the Rocky Mount Telegram on September 13, 2018; and posted prominently on the subject property itself on September 12, 2018.**
- (7) The proposed facility includes a monopole support structure designed to feature a total of five wireless antenna array collocations and a 60' x 60' fenced ground equipment compound with landscaped screening at the base of the structure all located within a larger 100' x 100' lease area accessible from Fire Tower Road via a 30' wide private access and utility easement.**
- (8) The application and other documentation related to Special Use Permit Request S-180702 was reviewed by CityScape Consultants, Inc. in its capacity as telecommunications consultant for Nash County.**
- (9) A Telecommunications Site Review Report prepared by CityScape Consultants, Inc.; dated September 6, 2018; and presented at the public hearing concluded that the need for a cell tower and wireless telecommunications facility in the proposed location is justified due to technological reasons and is essential in order for the applicant to continue to provide its telecommunications service in the area and that this proposed development will comply with all the applicable requirements of the Nash County Unified Development Ordinance as well as all other pertinent telecommunication-related state and federal rules and regulations.**

CONCLUSIONS:

- (1) The application submitted for Special Use Permit Request S-180702 is complete.
- (2) The proposed cell tower and wireless telecommunications facility complies with all of the applicable requirements of the Nash County Unified Development Ordinance.
- (3) The proposed cell tower and wireless telecommunications facility will not materially endanger the public health or safety.
- (4) The proposed cell tower and wireless telecommunications facility will not substantially injure the value of adjoining or abutting property.
- (5) The proposed cell tower and wireless telecommunications facility will be in harmony with the area in which it is to be located.
- (6) The proposed cell tower and wireless telecommunications facility will be in general conformity with the Nash County Land Development Plan.
- (7) The applicant is entitled to the issuance of Special Use Permit S-180702 to authorize the construction and operation of a cell tower and wireless telecommunications facility on the subject property located on the north side of Fire Tower Road.

The motion was unanimously carried.

The Chairman asked for a motion to approve the Special Use Permit request for a tower, based on the findings just adopted.

BOARD ACTION: Mr. Bass made a motion which was duly seconded by Ms. Joyner to approve Special Use Permit Request S-180702 to authorize the construction and operation of a cell tower and wireless telecommunications facility on the subject property located on the north side of Fire Tower Road subject to the following conditions.

CONDITIONS FOR APPROVAL:

- (1) The proposed cell tower and wireless telecommunications facility shall be developed on the subject property in accordance with the approved site plan and in compliance with all of the applicable requirements of the Nash County Unified Development Ordinance.
- (2) The height of the proposed tower support structure shall not exceed the 150 foot maximum height permitted by the Nash County Unified Development Ordinance for a freestanding non-concealed wireless communication facility located in a residential zoning district unless otherwise authorized by the issuance of a variance or an amendment to the applicable ordinance requirements.
- (3) Prior to the issuance of a construction authorization, the applicant shall provide a structural analysis for review by CityScape Consultants, Inc. and acceptance by Nash County demonstrating that the proposed tower will support a total of five (5) wireless antenna arrays comparable to that of the applicant's initial proposed equipment installation;

- (4) Prior to the issuance of a construction authorization, the applicant shall provide a revised site layout plan for review by CityScape Consultants, Inc. and acceptance by Nash County depicting a total of five wireless service provider equipment lease areas within the fenced ground compound.
- (5) Prior to the issuance of a construction authorization, the applicant shall provide a statement verifying that the proposed facility will comply with the FCC's OET-65 RF exposure requirements.
- (6) Prior to the issuance of a construction authorization, the applicant shall provide a Buffer Determination Letter from the North Carolina Department of Environmental Quality, Division of Water Resources demonstrating the project's compliance with any applicable riparian stream buffer requirements.
- (7) Prior to the issuance of a construction authorization, the applicant shall provide the required approvals from the State Historic Preservation Office (SHPO) and the U.S. Fish & Wildlife Service regarding the project.
- (8) Prior to the issuance of a construction authorization, the applicant shall provide a driveway permit issued by the N.C. Department of Transportation for the proposed new access drive on Fire Tower Road.
- (9) Prior to the issuance of a construction authorization, the applicant shall provide a revised landscape plan removing the proposed plantings on any sides of the fenced ground compound that will already be effectively screened from view by the existing, surrounding vegetation and relocating them in a more dense pattern to the sides of the compound that will be potentially visible from the road or adjacent properties.
- (10) All feed lines shall be installed within the support structure and antenna ports shall be sealed in a manner as to prevent access by birds and any other wildlife.
- (11) The proposed structure shall not be lighted, unless required by the FAA.
- (12) In the event that the antenna arrays are ever lowered to a height that is below a removable section of the monopole, then the tower owner shall remove this upper section that is no longer in use.
- (13) This special use permit is issued subject to the subsequent approval and issuance of the required Zoning Permit and Building & Trade Permits by the Nash County Planning & Inspections Department.

Mr. Tyson asked if the Board wanted to leave the public hearing open to enable additional information at another meeting, or close the public hearing and move forward with action on the variance request. Mr. Tyson requested, in the event of action by the Board, that a motion instruct the staff and attorney to develop a document with findings and conclusions based on the testimony presented in support of approval or denial, for consideration at a future meeting.

BOARD ACTION: Mr. Bass made a motion to close the public hearing and to instruct the staff and attorney to prepare findings and conclusions in support of Variance Request V-180701 to be presented and approved by the Board at their next meeting.

There was no second. The motion died.

Chairman Tilley asked if the Board had an alternative motion. He stated that he felt that having the staff and attorney prepare documentation to support whichever way the Board was favoring seemed to be the logical choice. He stated that there is an ordinance in place which has served the County for 10 years. If a change is necessary, he felt that the Planning Board and the Board of Commissioners

should be the ones to act on that change as opposed to a variance being issued. He asked again for a motion from the Board. None was offered.

Ms. Nixon noted that since that motion died, the public hearing is still open.

Mr. Parker asked if there was a motion, could the Board move forward with either approving or denying the variance. Mr. Tyson listed options for moving forward, such as leaving the public hearing open if the Board is not ready to act and wants the option of hearing additional information from the staff, CityScape and the applicant, and give staff no instructions about drafting findings or conclusions, or to close the public hearing and then either direct the staff & attorney to prepare findings and conclusions or make no instruction and meet again to consider the item further based on the information received.

BOARD ACTION: Mr. Parker offered a motion which was duly seconded by Vice-Chairman Joyner to close Public Hearing.

The motion was unanimously carried.

Chairman Tilley asked for a motion on whether to instruct staff in drafting a document supporting denial of the variance request. Mr. Tyson clarified that the motion could be for instructing the staff & attorneys to draft findings and conclusions in support of either approval or denial of the variance.

Ms. Joyner asked if a motion would trigger an opportunity for CityScape to analyze whether the UDO has reached maturity and needs updating. Mr. Tyson stated that it would be a separate process, which would be processed through the Planning Board and the County Commissioners and initiated as a text amendment, either by staff through consultation with CityScape or from another applicant.

Chairman Tilley stated that since there was no second to the previous motion in favor of approving the request for a variance, that he would entertain a motion to instruct staff to draft documents supporting denial.

Mr. LaPann asked to be heard regarding the propriety of the motion request. He stated that he had heard several confusing motions including one that offered to close the public hearing and at the same time to recommend approval of the tower permit, but the Board could not infer that all members wish to deny the variance based on a motion that asked for both actions. He stated that he felt that it was improper for the Chairman to call for a motion of denial when no one on the Board has stated a preference for denial.

Chairman Tilley thanked Mr. LaPann for his input and stated the he would hear the Board's recommendation for action of its pleasure.

BOARD ACTION: Vice-Chairman Joyner offered a motion which was duly seconded by Mr. Cobb to instruct the staff and attorney to prepare documents of findings of fact and conclusion in support of denial of Variance V-180701.

The motion was unanimously carried.

Mr. Tyson informed the Board that prior to the next meeting, the staff and attorney(s) will present and review for the Board, findings and conclusions in support of denial. He stated that there will likely be

two motions: one to either adopt the findings & conclusions as written or revised by the Board at that meeting, followed by a second motion to actually approve or deny the variance. He invited the applicants to attend that meeting although they would not have the opportunity to present any further argument as the public hearing had been closed.

7. Other Business.

Chairman Tilley asked for other business.

Ms. Nixon stated that as the meetings have been moved to an earlier time on the traditional fourth Monday monthly, the Board's regular attorney, Mr. Rose has a standing appointment which he believes will cause a conflict with the Board's 6:00 p.m. meeting. She suggested to the Board that they consider moving the meeting back to its original time of 7:00 p.m. on the fourth Monday monthly or selecting a different night. She did not feel that any conclusion should be reached immediately, as Mr. Rose was not present and it was his schedule that the Board is attempting to accommodate.

8. Adjournment.

There being no further business, Chairman Tilley adjourned the meeting at 8:08 p.m.