

Case Summation:

TowerCom/Verizon Wireless applied for a Building Permit on October 2, 2015, and a Zoning Permit on October 12, 2015, to install a new cell tower, equipment, and 200 amp service at 210 Walnut Street, Tax Map # 010-04-27-001 [note that the applications for both the building permit and zoning permit incorrectly reference tax map # 010-04-27- 005]. **See Exhibit A.**

Staff reviewed the applications and both were approved on October 14, 2015. However, the permits were not immediately picked up by the applicant and, following concerns raised by neighbors about the project, staff held the permits. On December 11, 2015, following a thorough reexamination of the zoning application to be sure that all requirements were met, the Zoning Permit and Building Permit were released to the applicant.

The subject property is located behind the American Thread mill at 210 Walnut Street and is approximately 0.35 acres. The property owner is J.A. Benfield Plumbing who has entered into a lease agreement with TowerCom/Verizon Wireless. The property is zoned Industrial. **See Exhibit B.**

Communications Towers and Antennas are allowed as a Conditional Use in the Industrial district. Section 3.2, Communication Towers and Antennas, of the Town's Zoning Ordinance sets forth the conditions that must be met:

Section 3.2 Communication Towers and Antennas

Where conditionally permitted as a principal use by Table 1, communication towers and antennas shall adhere to the following regulations:

1. All new towers shall be designed to accommodate additional antennas equal in number to the applicant's present and future requirements. Prior to the issuance of a permit for a new tower the applicant shall submit documentation indicating a good faith but unsuccessful effort was made to co-locate on an existing communication tower, building or other structure, and that no suitable facilities within the desired coverage area were available. Documentation shall include coverage maps, letters from adjacent tower owners, and calculations from a specialist with appropriate radio frequency credentials.
2. All applicable safety code requirements shall be met, including those of the U. S. Fish and Wildlife Service to minimize harm to birds.
3. Towers or antennas shall not be painted or illuminated unless otherwise required by state or federal regulations.
4. No tower or antenna shall be located within 2,000 feet of an existing tower or antenna, except where the applicant certifies that the existing tower does not meet the applicant's structural specifications and applicant's technical design requirements, or that a co-location agreement could not be obtained.

5. The height of a tower or antenna mounted on a building, water tank or other structure shall not exceed 30% of the height of the structure.

Towers or antennas shall be located such that adequate setbacks are provided on all sides to prevent the tower's fall zone from encroaching onto adjoining properties. Should this fall zone encroach onto another property, a recorded easement may be prepared and signed by the adjacent property owner to ensure there will not be any structure built within the fall zone.

6. Permit requirements for the erection or replacement of a tower or antenna shall be accompanied by the following:
 - a. One copy of typical specifications for proposed structures and antenna, including description of design characteristics and material.
 - b. A site plan drawn to scale showing property boundaries, tower location, tower height, guy wires and anchors, existing structures, fall zone (as determined by a structural engineer, licensed & certified in South Carolina), photographs or elevation drawings depicting typical design of proposed structures, parking, fences, landscape plan, and existing land uses on adjacent property; [site plan not required if antenna is to be mounted on an approved existing structure].
 - c. Identification of the owners of all antenna and equipment to be located on the site.
 - d. Written authorization from the site owner for the application.
 - e. Evidence that a valid FCC license has been issued.
 - f. A written agreement to remove the tower and/or antenna within 120 days after cessation of use.
 - g. A certificate from a registered engineer that the proposed facility will contain only equipment meeting FCC rules, together with written indemnification of the affected government and proof of liability insurance or financial ability to respond to claims up to \$1,000,000 in the aggregate which may arise from operation of the facility during its life, at no cost to the Town.
7. Towers no longer in service shall be dismantled and removed by the owner within 120 days of discontinuance. Towers in need of repair or reconstruction shall require a permit.

Upon finding that the zoning application for the cell tower at 210 Walnut Street meets the conditions set forth in the ordinance, the zoning permit was approved and released. **See Exhibit C.**

Appeal:

An Appeal of the decision was filed by William Edward Dees, Jr., 103 Hampshire Lane, on November 25, 2015, but was considered pending until the zoning permit was released on December 11, 2015, at which time the appeal became active. The appeal states that the granting of the zoning permit was erroneous and contrary to the provisions of Section 3.2 #5 (highlighted above) in that the tower's fall zone encroaches on the neighboring properties. The applicant is aggrieved by the approval of the zoning permit in that the fall zone encroaches on his property and the tower will diminish property value, will be an eyesore, and will create buzzing noise. Mr. Dees contends the permit should have been denied due to the fall zone being greater than 42 feet for a 180-foot tower. **See Exhibit D.**

Staff Response:

The approved Site Plan shows the fall zone of the tower as 42 feet. See **Exhibit C Tab 6-b**. The closest distance from the edge of the fall zone to Mr. Dees property is 36 feet. The closest distance from the edge of the fall zone to his home is approximately 150 feet (and approximately 120 feet to the neighboring property at 105 Hampshire Lane).

Documentation was provided by two South Carolina Registered Professional Engineers specifically addressing the fall zone. Staff contacted one of the engineers, David G. Brinker, to get a better understanding of how the fall zone was determined and how the tower was designed. In the November 13, 2015, letter from Mr. Brinker, he states that the lower portion of the tower is reinforced so that if it were to fail during an event, the tower would "bend and buckle" - not fall over at the base. **See Exhibit C Tab 5 and 6-a**.

Based upon Mr. Brinker's professional opinion, staff determined that the fall zone does not encroach on neighboring property and maintains that the zoning permit was approved in accordance with the conditions set forth in Section 3.2 of the Ordinance.

The Zoning and Land Development Ordinance does not address or provide relief for alleged property value impacts. The noise created by the tower is expected to be within normal parameters. A 15-foot bufferyard with Leyland Cyprus trees will be provided between Hampshire Lane and Walnut Street. **See Exhibit C Tab 8**.

Board Authority:

The Town of Clover Zoning and Land Development Ordinance, §9.4-6 states the Board of Zoning Appeals has the power and duty "to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination by the Zoning Administrator in the enforcement of this Ordinance."

All decisions and orders of the Board must be in writing and be permanently filed. The Board must approve Findings of Fact and Conclusions of Law.

Action:

Board of Zoning Appeals (BZA) may reverse or affirm, wholly or in part, or may modify the decision of the Zoning Administrator, or may determine that additional information is necessary to make an informed decision in which case the Board may remand the matter to the Zoning Administrator and set a rehearing.

Additional Notes:

The BZA originally heard this appeal at its May 26, 2016 meeting and overruled the Town of Clover Zoning Administrator's approval of the permit to construct the telecommunication tower. **See Exhibit E**. Subsequently, the Board's decision was appealed to the Court of Commons Pleas for the 16th Circuit. The Court reversed the Board's decision and remanded it back to the BZA for "a rehearing to make such findings of fact and conclusions necessary concerning the application...of appeal, to issue a final order consistent with the findings and conclusions made" in the Court's Order. **See Exhibit F**.